The Right To Fly cites with apparent approval the British government plan of nationalizing its international aviation. Then in the final chapter we read:

We must face the problem that all industry and air operations are nationalized in the Soviet Union, that international air transport operations, though not manufacturing aircraft, have been nationalized in many other countries, including Britain, France, Canada, and South Africa. Costs do not mean the same thing under nationalization as under free enterprise. A government can purchase success in an international competitive market at figures which free enterprise cannot meet. These things must be considered in planning for the future.

It is hardly necessary to defend here the system of free enterprise on which Mr. Cooper delicately casts doubt. Monopolists like Mr. Cooper believe that the fact that most European powers have a single international airline is an argument that should influence the conduct of our country. They neglect to point out that in every European country the railroads are also monopolies owned by the government. Our country, fortunately, is the world’s symbol of free enterprise; what we do here is everywhere closely watched by other champions of freedom. That is particularly true of our international carriers that represent America in the major cities of the world as well as in many out of the way places. For that reason and for our own sake, it is hoped that neither our ways of life, our civil liberties, nor our economic theories will be altered merely because some other country has momentarily adopted different ways, liberties, or theories which have features that appeal to the ambitions of one of our commercial interests.

GEORGE A. SPATER*


A maritime war usually necessitates an overhauling of prize law and procedure by the belligerents and prompts an increased interest on the part of admiralty practitioners and students of international law. This was the experience of World War I which repeated itself during the recent war. England, Canada, the United States, France and the enemy nations enacted new rules and statutes relating to prizes

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1 Prize Act, 2 & 3 Geo. VI, c. 65 (1939), amending the Naval Prize Act, 27 & 28 Vict., c. 25 (1864); the Prize Courts (Procedure) Act, 4 & 5 Geo. V, c. 13 (1914), and The Prize Courts (Procedure) Act, 5 & 6 Geo. V, c. 57 (1915), by extending the prize law to aircraft and extending the powers relating to the establishment of prize courts under the Prize Courts Act of 1894 to protectorates and mandates; Prize Court Rules, St. R. & O. No. 1466, 2798 (1939) (superseding the Prize Court Rules, 1914-1917, everywhere except in Eire and the Union of South Africa); Prize Salvage Act, 7 & 8 Geo. VI, c. 7 (1944).


3 56 Stat. 746 (1942), An Act to facilitate the disposition of prizes captured by the United States during the present war, and for other purposes; 59 Stat. 581 (1945), 34 U.S.C.A. § 1159 (Supp., 1946), An Act to facilitate further the disposition of prizes captured by the United States, and for other purposes; Prize Rules and Standing Interrogatories in Prize, U.S. Dist. Ct. for the S.D. of N.Y., Maritime Law Association Doc. No. 271 (1942).


5 See the Italian Law of War of July 8, 1938, arts. 213 et seq., 6-7 Raccolta Ufficiale delle leggi e dei decreti, 4294 et seq. (1938), and The Rules of Procedure for the Adjudications of
either before or after they assumed belligerent status, and a number of interesting
articles or new editions of standard works on the subject appeared in the English
language. Dr. Jambu-Merlin's work is to the knowledge of the reviewer the most re-
cent contribution of a French author to the field. As the title (which may be translated
as "Prize Cases and the Conflict of Laws") indicates, the author does not purport to
present a treatment of the entire subject of prize law but only of its private law and,
particularly, conflict of laws aspects. The public international law problems, viz., the
legality of the capture, nature of contraband, etc., are not dealt with. The author
justifies this limitation by the fact that the private law aspects of prize law have been
completely neglected in French literature and that they should be considered by a stu-
dent of conflict of laws, like himself, rather than by a student of public international
law.

The author divides his work into two books entitled "The Creation of Rights" and
"The International Efficacy of Rights Definitively Adjudged." The first deals accord-
ingly with the choice-of-law rules and substantive law applicable in prize courts,
while the second treats the recognition accorded by courts in subsequent litigation to
adjudications of the prize courts. The first book consists of three parts dealing with
the rights of ownership, creditors' rights and the rights of insurers in prize cases.

A substantial portion of the book (137 of the 316 pages) deals with the right of own-
ership as a fundamental element in determining the enemy character of goods and
vessels. As long as a naval war has not assumed global proportions the question of
whether property is owned by neutrals will remain an important issue, although the
vast extension of the concept of contraband has greatly reduced its significance. The
author refers only briefly to the split between continental and Anglo-American prac-
tice as to whether the domicile or the nationality of the owner controls and concen-
trates on two private law problems which arise in connection with the law regulating
enemy character. The first concerns the passage of title. The ascertainment of the
ownership of goods presents not only special problems regarding the permissible
methods of proof but also complicated questions of contracts and conflicts law. The
other group of problems dealt with under the heading of rights of ownership relates to
the enemy character of vessels or goods owned by unincorporated or incorporated as-
sociations. The remainder of the first book discusses questions clearly described by the
chapter headings mentioned. The much more brief content of the second book is
similarly well defined by the title indicated above.

the Prize Tribunal of Sept. 5, 1939, 7-2 ibid., 5649 et seq.; the German Prize Law Code and
Prize Court Code of Aug. 28, 1939, 1 Reichsgesetzblatt 1585 et seq. (1939), translated in

6 See Parry, The Prize Act, 1939, 3 Modern L. Rev. 298 (1940); Kunz, British Prize Cases,
1939–1941, 36 Am. J. Int. L. 204 (1942); Rowson, British Prize Law, 1939–1944, 63 L. Q. Rev.
49, 133 (1945); Rowson, British Prize Law, 1944–1946, 63 L.Q. Rev. 337 (1947); Fitzmaurice,
Modern Contraband Control and the Law of Prize—Some Aspects, 22 Brit. Y. B. Int. L.,
73 (1945); Rowson, Scottish Prize Law, A Note, 62 L. Q. Rev. 132 (1946); Charteris, Notes on
International Law, 13 Aust. L. J. 549 (1940), 14 Aust. L. J. 13 (1940); Diemont, South African
Prize Courts, 58 So. Afr. L. J. 122 (1941); Jessup, Prize Rules, 36 Am. J. Int. L. 452 (1942);
Knauth, Prize Law Reconsidered, 46 Col. L. Rev. 69 (1946); Sereni, Italian Prize Courts,
1866–1942, 37 Am. J. Int. L. 248 (1943); see also Riesenfeld, Book Rev., 36 Am. J. Int. L.
344 (1942).

The author has endeavored to treat the problems on a comparative basis, giving proper attention to the actual cases decided in various countries—Belgium, China, France, Germany, Great Britain and the Dominions, Italy, Japan, and the United States. The British cases are, of course, the most numerous. By far the greater number of cases relied upon were decided before World War II. Only five French, four Italian, and five British decisions rendered during the recent conflict are mentioned by the author. Although, for various reasons, prize law played a much smaller part in the last war than in World War I, the author has not given adequate treatment to recent English and colonial cases. This is to a large extent excusable for a scholar working on the continent, particularly with regard to colonial cases. Nevertheless the defects are partly the result of a somewhat artificial delimitation of the subject. Thus the author has failed to take account of the English rule that ownership of goods by a neutral does not prevent condemnation if the neutral owns or is a partner of an enemy house of trade and has not dissociated himself from it, nor of the rule that ownership by a neutral corporation does not exclude condemnation if the goods are in fact "the concerns" of an enemy branch. As a consequence he has overlooked the recent case of The Glenroy, which held that goods owned by a neutral carrying on business through a limited company incorporated in an enemy country were liable to condemnation if they were so connected with the enemy branch as to be regarded as its concern. In the somewhat scanty treatment of the rights of creditors one also misses any reference to the rules pertaining to "compensation in lieu of freight." 

Even more regrettable is the author's lack of attention to continental statutes. Several problems which are discussed with reference to World War I cases are now apparently settled by statute. Thus the German Prize Code of 1939 provides expressly that ownership controls the enemy character of goods and that transfers in transitu are not given effect until arrival at the port of destination. Similarly the Italian Law of War of 1938 contains a specific provision that a decree of condemnation passes title to all confiscated things free from any incumbrances, including mortgages, without differentiating between ships and goods.

In conclusion it may be said that although the book may fill a gap in the French literature, as the author claims, it does not add much to the information contained in Garner's treatise, upon which the author has apparently heavily relied. Consequently it is not particularly helpful to the American student of prize law, who has access to and is able to read the recent foreign prize cases in the original. A book which treats prize law during World War II on the basis of all existing sources still remains to be written.

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8 Thus, Loxley v. Attorney General, 45 Ceylon N.L.R. 109 (1944), dealing with the passage of title in maritime sales, is overlooked.


12 See, for instance, the recent cases of Williamson v. The Attorney General, 45 Ceylon N.L.R. 103 (1944); The Sado Maru, [1947] P. 17.

13 German Prize Code, 1939, op. cit. supra note 5, arts. 8 and 9.

14 Italian Law of War, 1938, op. cit. supra note 5, art. 224.

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