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The Trading with the Enemy Acts in the age of expropriation, 1914–49[†]

Nicholas Mulder

Department of History, Cornell University, McGraw Hall, 141 Central Ave, Ithaca, NY 14850, USA
Corresponding author. E-mail: nicholas.mulder@cornell.edu

Abstract

This article examines one of the most consequential legal–political models for the confiscation of private property in the twentieth century: the Trading with the Enemy Acts (TEAs). Two laws with this name were passed in Britain (1914) and the United States (1917), enabling the large-scale expropriation of ‘enemies’ and ‘aliens’. The extra-territorial application of these laws during the era of total war led to the globalization of its paradigm of expropriation in Latin America, Asia, and Africa. The TEAs made the administrative process of dispossession effective and profitable for liberal states. The US law was repurposed for domestic use during the New Deal, while its British counterpart played an unforeseen role during decolonization and the great partitions of the late 1940s, as the nascent nation-states of India, Pakistan, and Israel used it to constitute themselves as territorial and economic units by taking land and property from ‘evacuees’ and ‘absentees’. The article provides a short history of these four national cases in their international context and argues that the history of the TEAs shows that state-driven mass expropriation was much more common throughout the mid twentieth century than usually supposed; the ‘age of extremes’ was also in part an ‘age of expropriation’.

Keywords: decolonization; expropriation; First World War; globalization; total war

The unprecedented levels of violence of the mid-twentieth-century ‘age of extremes’ were made possible by a vast increase in the power of the modern state, which historians have associated with patterns of warfare, mass violence, genocide, forced displacement and other forms of cruelty against civilians.¹ Yet the disruption of human life involved more than just physical and psychological coercion; it also entailed severing people from the material assets and wealth on which their livelihoods were based. At a strategic level, depleting the physical and financial resources of opposing states through economic warfare became integral to total war. These two dimensions of state coercion, the biopolitical and the military–economic, came together in the mass expropriation of property. This article examines the early twentieth-century history of the British and American Trading with the Enemy Acts (TEAs), an important but underappreciated mechanism of such expropriation. It argues that the TEAs represented a distinctive Anglo-American strand of economic warfare legislation, and shows its appeal to early and mid-twentieth-century states as a template for drastic intervention in the civilian property order during war, economic crisis, and other domestic and international emergencies.

The history of the TEAs shows how property confiscation took place across political systems with different ideological characters and legal traditions, allowing us to reassess the mid-century turmoil as an ‘age of expropriation’. Liberal states were more committed to peacetime property rights than autocratic states and empires, but in both world wars they were enthusiastic participants and even pioneers in the practice of dispossession. For Britain, the United States, and the

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¹Mark Mazower, ‘Violence and the state in the twentieth century’, *American Historical Review*, 107, 4, 2002, pp. 1158–78.

nations that emerged from their formal and informal empires in the wake of the Second World War, intervening in the configuration of property and wealth was not only a domestic policy but also a way of using global economic power as a warfighting strategy.

The initial TEA was a British law adopted at the start of the First World War in September 1914. The US Congress passed an economic warfare law of its own under the same name in October 1917. Some differences between these laws notwithstanding, both versions of the TEA gave the British and American governments new and far-reaching powers to intervene in the international distribution of private property that had emerged during the first era of globalization in the late nineteenth and early twentieth centuries.² These laws expressed a broader transformation of state power, already widely recognized at the time, from a *laissez-faire* model designed to protect private property to a more interventionist liberal model that actively sought to manage the property within its jurisdiction.³

As a legal-political paradigm of confiscatory state power, the TEAs have not received a degree of historical attention that is commensurate with the size and nature of the property seizures that they enabled. The British empire and the United States were the two largest economies in the world for at least a century, from 1870 to 1970. Crucially, their foreign investment in the Central Powers was a fraction of the enormous stock of German foreign wealth present in Anglo-American jurisdictions by 1913.⁴ In this setting, the TEAs became powerful instruments for targeting enemy firms and individuals based on both their residence and their nationality. They were used to seize assets across the British and US overseas empires, from the Persian Gulf to the Philippines. In the United States, the TEA continued to provide a template for government intervention into the property order, and the expansive executive powers that it conferred on the American presidency were used into the 1970s for major and minor economic interventions.

The TEAs' global reach re-emerged around the Second World War, when in 1939 a new version of the law was adopted throughout the British empire. Across the Eurasian space of colonies and mandate territories where the British TEA was in force, this had unforeseen after-effects on state formation in the great partitions of the late 1940s. Between 1947 and 1949, the nascent nation-states of India, Pakistan, and Israel adopted their own versions of the law to seize property – especially politically contested land – and in the process constituted themselves as national, territorial, and economic units.

This article adds to the comparative historical literature on the treatment of enemy aliens and property. Daniela Caglioti has examined how most belligerents in the First World War adopted increasingly discriminatory notions of citizenship and enemy alien status.⁵ She makes a compelling case that the war was 'a watershed in the conception and defence of property rights' and that, as such, it exemplified a broader 'crisis of the liberal system', while acknowledging that many property seizures were symptomatic of 'a larger and multifaceted economic war'.⁶ On the whole, Caglioti finds that, during the First World War, expropriation (as well as the resettlement and imprisonment of entire ethnic and national groups) was most extreme in the Russian and Ottoman empires.

²Kevin H. O'Rourke and Jeffrey G. Williamson, *Globalization and history: the history of a nineteenth-century Atlantic economy*, Cambridge, MA: MIT Press, 2001.

³Ludwig von Mises, *Kritik des Interventionismus: Untersuchungen zur Wirtschaftspolitik und Wirtschafts Ideologie der Gegenwart*, Jena: Gustav Fischer, 1929; Elie Halévy, 'Une interpretation de la crise mondiale de 1914–1918', in *L'ère des tyrannies: études sur le socialisme et la guerre*, Paris: Gallimard, 1938, pp. 171–99.

⁴Cornelius Torp, *The challenges of globalization: economics and politics in Germany, 1860–1914*, New York and Oxford: Berghahn, 2014, pp. 27–8.

⁵Daniela L. Caglioti, 'Property rights in time of war: sequestration and liquidation of enemy aliens' assets in western Europe during the First World War', *Journal of Modern European History*, 12, 2014, pp. 523–44; Daniela L. Caglioti, 'Aliens and internal enemies: internment practices, economic exclusion and property rights during the First World War', *Journal of Modern European History*, 12, 2014, pp. 448–59.

⁶Caglioti, 'Property rights', p. 524.

Violent seizure and displacement was certainly widespread in the southern and eastern European ‘shatterzone of empires’.⁷ Such ethno-economic nationalism prefigured dispossession drives undertaken in the interwar period by Nazi Germany and to a lesser degree by the Soviet Union, and in later years by nation-states such as Czechoslovakia.⁸ Yet the general practice of property seizure based on nationality, religion, and/or residence was quite common. Moreover, a focus on confiscation in illiberal states and empires neglects the fact that their legal and political traditions generally granted far less prominence to strong individual private property rights than did the highly developed capitalist legal orders of Anglo-American societies.⁹ That the imperial Ottoman and Russian governments resorted to force is less surprising than evidence that the Western cheerleaders of ‘civilization’, the international gold standard, and the Open Door – Britain, the United States, and France – expropriated much more property than with their Ottoman and Russian counterparts.

The reason was simple: in a world economy characterized by a high level of integration and interdependence, the large multicontinental liberal empires were far better positioned than authoritarian land empires to profit from economic war by dispossession. This article adds to the work of Caglioti and others on economic nationalism during the First World War by bringing out the distinctive nature of Anglo-American expropriations. The TEAs were the domestic component of a much wider Allied strategy of economic warfare in 1914–18 – a transnational campaign waged through naval blockade, administrative interdiction in goods, financial markets and energy networks, preclusive purchasing of raw materials, signals interception, and shipping control.

Granting the trading with the enemy provisions a more distinct place in the long history of state violence in the twentieth century allows us to understand how liberal states undertook mass property seizure as part of a strategic paradigm that was aimed at the total subjection of the enemy through the projection of massive material pressure at a distance. As practised under the TEAs, expropriation by liberal states was thus not so much a practice that ‘challeng[ed] both economic globalisation and conventional methods of warfare’ as a particularly hard-nosed exploitation of this uneven and combined global condition.¹⁰ Nonetheless, TEAs could still serve as a model for defining the ethnic other during the formation of new nation-states in the 1940s; as the British empire began to relinquish imperial territories after the Second World War, partitions in South Asia and the Middle East used the law’s legal provisions to form a new territorial basis for sovereignty.

The article proceeds in five parts. Part one charts the creation and development of the TEA in Britain in the First World War. Part two examines its adoption in the United States after 1917. Part three traces the TEAs’ after-effects in the interwar period and their renewed application in the Second World War. Part four investigates the highly consequential afterlife of the TEAs in the postcolonial partitions of the late 1940s in South Asia and the Middle East. Part five offers some concluding thoughts about the ‘age of expropriation’.

The British Trading with the Enemy Act, 1914–17

On 5 August 1914, a British royal proclamation prohibited ‘any person resident, carrying on business, or being in Our Dominions, to trade or have any commercial intercourse with any person

⁷Omer Bartov and Eric D. Weitz, eds., *Shatterzone of empires: coexistence and violence in the German, Habsburg, Russian, and Ottoman Borderlands*, Bloomington, IN: Indiana University Press, 2013.

⁸*Ibid.*, pp. 524–5; Ugur Ümit Üngör and Eric Lohr, ‘Economic nationalism, confiscation and genocide: a comparison of the Ottoman and Russian empires during World War I’, *Journal of Modern European History*, 12, 2014, pp. 500–21; David Gerlach, *The economy of ethnic cleansing: the transformation of the Czech–German borderlands after World War II*, Cambridge: Cambridge University Press, 2017.

⁹Ekaterina Pravilova, *A public empire: property and the quest for the common good in imperial Russia*, Princeton, NJ: Princeton University Press, 2014; Kent F. Schull, M. Safa Saraçolu, and Robert F. Zens, eds., *Law and legality in the Ottoman empire and Republic of Turkey*, Bloomington, IN: Indiana University Press, 2016, pp. 65–91, 179–200.

¹⁰Caglioti, ‘Aliens and internal enemies’, p. 459.

resident, carrying on business, or being in the German Empire without Our permission'.¹¹ By 'person', the Crown meant both individuals and firms incorporated as legal persons. The proclamation severed trade between two economies that up to that point had been highly interconnected. Britain and Germany were both export-oriented industrial manufacturers and food importers. Their international economic presence also encompassed banks to finance trade, merchant fleets to transport goods, and extensive foreign investment in production plants, agricultural lands, railroads, harbours, mines, electricity generation, foreign stocks, bonds, and other financial instruments. Decades of labour migration had created a large community of German immigrants and expatriates in Great Britain and across the United States. German and British enterprises and banks had established plentiful local subsidiaries and foreign branches. It was in this integrated world economy that the First World War erupted.¹²

The 5 August proclamation marked the start of not just an economic war of manoeuvre – the naval and commercial blockade of the Central Powers – but also of what one might call an economic 'war of position' in the world economy.¹³ Whereas the blockade targeted flows of goods, foodstuffs, raw materials, energy, information, and money between the Central Powers and the rest of the world, the TEA regime focused on the control of stocks, chiefly of German and Austro-Hungarian property and assets, that were located within the jurisdiction of the British empire.

A full version of the Trading with the Enemy Act was formally passed by Parliament on 18 September 1914. It specified fines and imprisonment for British subjects found to violate the trading prohibitions, and enabled the Board of Trade to place suspect firms under government control and to exercise the powers of receivership. This 'sequestration' procedure abrogated the property rights of the original owner, whether this person was a British resident or a foreign enterprise. German firms were automatically liable to be sequestered and placed under government 'controllers'. The TEA also channelled any interest or dividend income accruing to designated enemy firms into the coffers of the Public Trustee, a government office that managed trusts and estates in England and Wales.

How severe was the initial British law? At a technical legal level it might be argued that the Act was not particularly ground-breaking. After all, it gave the government the power to interfere in private economic relations only in those specific cases where enemy contact, ownership, or allegiance could be proven in court. This resulted in discrete individual sequestrations, not blanket expropriation. Moreover, the TEA did not overturn any existing legal safeguards against sovereign interference in private affairs, such as the common law courts. When pressed in Parliament on whether contracts with enemy individuals and firms would be cancelled, the British Attorney-General, Sir John Simon, said that the government would remain pragmatic, giving attention to 'the complexities of each individual case'.¹⁴ This left most entrepreneurs and bankers wondering whether their business relations would be affected, and many manuals were published by commercial lawyers explaining the ramifications of the TEA for the commercial world.¹⁵

But in its wider political, social, and economic context, the law appears very radical. In adopting it, the British state effectively threw out any principled protection of property rights. Common law courts remained open to appeals, but those labelled enemy subjects were deprived of legal personhood by the TEA and had to rely on the goodwill of their British barristers and business partners. Given Britain's iconic status as the champion of unrestricted free trade, the coercive nature of the TEA shocked businesspeople at home and abroad. British commitment to free trade had

¹¹A proclamation relating to trading with the enemy', *Supplement to the London Gazette*, 5 August 1914, p. 6166.

¹²Adam Tooze and Ted Fertik, 'The world economy and the Great War', *Geschichte und Gesellschaft*, 40, 2, 2014, pp. 214–38.

¹³Antonio Gramsci noted in 1929–30 that 'boycotts are a form of war of position'. See Quintin Hoare and Geoffrey Nowell Smith, eds., *Selections from the prison notebooks of Antonio Gramsci*, New York: International Publishers, 1971, p. 229.

¹⁴*Hansard*, HC Deb., 16 September 1914, vol. 66, col. 937.

¹⁵Arthur Page, *War and alien enemies: the law affecting their personal and trading rights, and herein of contraband of war and the capture of prizes at sea*, London: Stevens and Sons, 1915; Walter S. Schwabe, *The effect of war on stock exchange transactions: a short treatise on the emergency legislation*, London: Effingham Wilson, 1915; George Croydon Marks, *The enemy's trade and British patents*, London: The Technical Publishing Company, 1914.

become an integral element of its national culture and had very strong grassroots support.¹⁶ Yet in the first six weeks after the start of the war, Britain moved from leader of a free-trade world economy to passing the most comprehensive regime of trade prohibition since the Napoleonic-era continental blockade.

Moreover, the effect of the TEA was magnified because it applied across the entire British empire. From the outset, economic warfare was more extreme in the colonies than in the metropole. In British colonies, the liquidation of enemy firms began just two and a half months after the start of the war. In Hong Kong, the passing of the so-called 'Alien Enemies Winding Up Ordinance' on 27 October 1914 allowed the colony's governor to disband enemy firms entirely. He could seize their assets, pocket the proceeds from forced sales, or keep them in government ownership to raise money for the war effort later. As one historian of the war put it, the Hong Kong governor had acquired 'very wide emergency powers similar to those exercised by military authorities under martial law'.¹⁷ The main prize in Hong Kong was the Deutsche Asiatische Bank, the Asian branch of Deutsche Bank. But the ordinances passed under the TEA were also used to disband more innocuous organizations, such as the Berlin Ladies Mission and the Basel Missionary Society, supposedly for spreading anti-British propaganda. In total, thirty firms and thirty-seven individual fortunes were liquidated in 1914, yielding £16 million for the Hong Kong Custodian of Enemy Property, of which £685,000 was invested in British war loans.¹⁸

By early 1915, the president of the Board of Trade, Sir Walter Runciman, estimated that the Germans possessed property in Great Britain worth 2.425 billion marks (about 3.7% of British 1915 GDP). Conversely, there were approximately 1.5 billion marks of British investments in Germany (about 2.6% of the falling German GDP), a very small fraction of Britain's enormous overseas capital stock.¹⁹ Although the German occupation of Belgium and Poland had brought almost a billion more marks in British-owned property and investments under German control, economic warfare progressed much more slowly on land.²⁰ The reach of common law and British global maritime infrastructure meant that the British could scale up economic warfare by legal means in ways that Germany's land-based territorial militarism could not. Between June and November 1915, the TEA's scope was expanded by royal proclamation to citizens of the Central Powers in the extra-European neutral territories of China, Spanish Morocco, Liberia, Persia, Portuguese East Africa, and Siam.²¹ It thus became 'an offence to trade with any person or body of persons of enemy nationality resident or carrying on business' in these countries. Through the mechanism of the Statutory List or 'black list', which connected the blockade with the TEA, this was a serious strike on German private interests. One British diplomat reported to a colleague in the French blockade administration that the blacklisting of enemy firms and individuals under the TEA in China worked so well that local merchants as well as neutrals did not dare trade without approval from British authorities, 'even when such transactions were perfectly harmless and certainly legitimate'.²² Tying domestic law to Britain's informal economic influence

¹⁶Frank Trentmann, 'Political culture and political economy: interest, ideology and free trade', *Review of International Political Economy*, 5, 2, 1998, pp. 217–51.

¹⁷Charles P. Lucas, ed., *The empire at war*, vol. 5, London: H. Milford: Oxford University Press, 1926, p. 444.

¹⁸*Ibid.*, pp. 446–7.

¹⁹Faits et informations: Angleterre', *Journal du Droit International*, 42, 1915, p. 286. GDP figures from Stephen Broadberry and Mark Harrison, 'The economics of World War I: an overview', in *The economics of World War I*, Cambridge: Cambridge University Press, 2005, pp. 7–10, tables 1.1 and 1.2.

²⁰Eugène Dreyfus, 'De la liquidation des firmes ou maisons de commerce anglaises qui fonctionnent en Allemagne et de la saisie des biens anglais en pays occupé', *Journal de Droit International*, 44, 1917, pp. 492–6.

²¹John W. Scobell Armstrong, *War and treaty legislation affecting British property in Germany and Austria-Hungary, and enemy property in the United Kingdom*, London: Hutchinson & Co., 1921, pp. 189, 193.

²²Archives diplomatiques, Ministère des Affaires Étrangères, La Courneuve, Paris, serie Blocus 1914–1920, box 145, Will Spens (Foreign Trade Department) to Comité R, Paris, 28 January 1918, fols. 2–3.

in semi-colonial territories meant that German commerce was slowly but surely being forced out of East Asia.

In early 1916 a radicalization in British economic warfare took place. Supporters of tariff reform wanted to push German business interests out of Britain, and increasingly fervent public opinion impelled the cabinet, the Board of Trade, and Parliament to adopt very stringent measures against the German economic presence.²³ This resulted in the Trading with the Enemy (Amendment) Act of 27 January 1916, under which the Board of Trade could disband German firms; at least 583 would suffer this fate by the war's end.²⁴ The Board of Trade was now able to annul any contract between British nationals and companies and any enemy national or corporation. Nor was the right to property the only liberal totem to be sacrificed during the war; the right of contract was also seriously circumscribed. The government was now able to seize bank deposits belonging to German and Austro-Hungarian nationals and allocate them to the Public Trustee. Simultaneously with the TEA amendment, a fully fledged Ministry of Blockade was created under Lord Robert Cecil to coordinate the interdiction of trade into central Europe.

Caglioti notes that 'states at war . . . preferred to deal with collective categories instead of individuals'.²⁵ The British TEA could be used against an increasingly broad definition of 'enemy aliens', yet it also allowed exceptions for individual German and Austro-Hungarian firms to continue operating. Companies could apply for a licence with the Board of Trade, and several dozen such licences were in fact granted. In overall terms, however, the TEA was highly effective in confiscating the majority of German property in British and British-controlled territories worldwide. The chronology of the British economic warfare regime, in which construction (August 1914–February 1915) was followed by extension (throughout 1915) and then intensification (January 1916–summer 1918), would be replicated in the United States.

The US Trading with the Enemy Act, 1917–19

The US Congress passed a Trading with the Enemy Act of its own on 6 October 1917, six months after the American declaration of war against Germany.²⁶ President Wilson signed the bill into law on 23 November. Previously, in the summer of 1917, a group of officials from the State, Treasury, Commerce, and Justice Departments had started to discuss a more ambitious administrative law that would give the government the ability to cut off trade with the enemy. The British TEA served as a model, and the drafters decided to adopt not just the name of the British law but also its structure as a piece of delegated legislation, namely an administrative law that conferred on the executive branch the right to make new law within a circumscribed area.²⁷

However, the question as to which government agency would assume responsibility for the new TEA law remained open. Unlike in Britain, where the Foreign Office led the development of a new bureaucracy to administer the blockade, Secretary of State Robert Lansing showed little interest in promoting economic warfare. Over the summer of 1917, the creation of an institutional structure to control flows of money and goods developed into a struggle between the Department of Commerce and the Treasury under William McAdoo.²⁸ The Federal Reserve counsel Milton Elliott managed to persuade Congress that McAdoo's Treasury should be granted special wartime

²³Panikos Panayi, 'German business interests in Britain during the First World War', *Business History*, 32, 2, 1990, pp. 249–53.

²⁴John McDermott, 'Trading with the enemy: British business and the law during the First World War', *Canadian Journal of History*, 32, 2, 1997, pp. 201–19.

²⁵Caglioti, 'Aliens and internal enemies', p. 458.

²⁶Benjamin A. Coates, 'The secret life of statutes: A century of the Trading with the Enemy Act', *Modern American History* 1, 2, 2018, pp. 151–72.

²⁷Michael Taggart, 'From "parliamentary powers" to privatization: the chequered history of delegated legislation in the twentieth century', *University of Toronto Law Journal*, 55, 3, 2005, pp. 575–627.

²⁸Edward S. Miller, *Bankrupting the enemy: the U.S. financial siege of Japan before Pearl Harbor*, Annapolis, MD: Naval Institute Press, 2007, pp. 29–32.

powers to regulate trade and foreign transactions proposed by the TEA. By the time that Congress passed the law on 6 October, the Treasury's primacy in controlling foreign economic transactions had been established.²⁹

The most sweeping provision of Elliott's bill was Section 5(b), which stipulated that

The President may investigate, regulate, or prohibit . . . by means of licenses or otherwise, any transactions in foreign exchange, export, or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form . . . and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States.³⁰

The definition of the enemy in the US TEA was not substantially different from that of the British version, namely 'a person residing in enemy territory or resident outside the United States and doing business within enemy territory'.³¹ Thus, while the TEA did not explicitly target any one nationality as such, it had a very expansive definition of territoriality embedded within it. One contemporary lawyer explained that 'the rule emerged as an economic weapon to be used in aid of the military, aimed, by preventing the accrual of any economic benefit to persons within enemy territory, to weaken the enemy country economically, if possible, and at least to prevent any improvement of its position'.³²

Wilson appointed A. Mitchell Palmer as the so-called Alien Property Custodian, the American equivalent of the British Custodian of Enemy Property. Palmer was a Pennsylvanian lawyer from the Progressive wing of the Democratic Party who had made his name as a tough tariff slasher and free-trade advocate. He had an expansive understanding of the potential powers enshrined in the 1917 TEA. Originally, the law merely mandated the sequestration of German and Austro-Hungarian nationals who were resident in Europe but owned property in the US. However, as anti-German sentiment grew in the public sphere, the lure of outright expropriation of the original owners became stronger. Sensing the possibility for more far-reaching action, Palmer began to target German nationals regardless of residence. He moved to fully Americanize the businesses and property of enemy nationals who were now being subjected to a programme of forced registration across the United States. Under the aegis of the Department of Justice, more than 480,000 'enemy aliens' were registered (some 6,000 of them were interned in detention camps for not being willing or able to establish their loyalty to the government).³³

Palmer unleashed a veritable crusade against German economic influence. His job was made easier by the large and visible presence of German investments in the US economy. In 1914 Germany was the second-largest foreign investor in the United States, with US\$1.1 billion split quite evenly between portfolio investment (US\$575 million) and direct investment (US\$525 million).³⁴ Three years later, despite some capital flight, there was still a considerable stock of German property within US jurisdiction. Palmer argued that 'the same peace which frees

²⁹*Ibid.*, p. 33.

³⁰Act Oct. 6, 1917, CH. 106, 40 STAT. 411, available at https://www.law.cornell.edu/uscode/html/uscode50a/usc_sup_05_50_10_sq1_20_sq1.html (consulted 5 September 2019).

³¹Edson R. Sunderland, 'Who is an alien enemy?', *Michigan Law Review*, 16, 1918, pp. 256–8.

³²C. H. Hand Jr, 'Trading with the enemy', *Columbia Law Review*, 19, 2, April 1919, p. 112.

³³Jörg Nagler, *Nationale Minoritäten im Krieg: Feindliche Ausländer' und die amerikanische Heimatfront während des Ersten Weltkriegs*, Hamburg: Hamburger Edition, 2000; Adam Hodges, "'Enemy aliens" and "silk stocking girls": the class politics of internment in the drive for urban order during World War I', *Journal of the Gilded and Progressive Era*, 6, 4, 2007, p. 434.

³⁴Mira Wilkins, *The history of foreign investment in the United States, 1914–1945*, Cambridge, MA: Harvard University Press, 1989, p. 9.

the world from the menace of autocratic militarism of the German Empire should free it from the menace of its autocratic industrialism as well'.³⁵ As Germanophobia surged in the press, on 28 March 1918 Congress amended the TEA, giving Palmer the power to sell all seized property 'only to American citizens and in public to the highest bidder'.³⁶ The Custodian immediately started a selling campaign that lasted for the next two years.³⁷ Sales advertisements adorned with the American eagle would continue to appear in national newspapers until 1920.

By the summer of 1918 the Alien Property Custodian had taken over more than US\$500 million-worth of German and Austro-Hungarian assets.³⁸ Moreover, Palmer's agency had confiscated tens of millions of dollars in 'free cash', savings, and money balances that German and Austro-Hungarian nationals held in US banks. These funds were used to buy Liberty bonds, and Palmer's confiscations made the Alien Property Custodian 'the largest single buyer of Liberty Loan bonds in the United States', with US\$43 million invested by July 1918.³⁹ The American state thus used German expatriates' savings directly to fund the war against the Central Powers.

At first the Custodian used the TEA's powers by targeting German nationals in the United States, but soon a wider variety of ethnic and gender-based discriminatory criteria were used. In a particularly opportunistic series of confiscations, Palmer seized a combined US\$25 million from wealthy American women who had married German and Austrian citizens and whose property was, under the principle of coverture, held under their husbands' names.⁴⁰ Some of those designated alien enemies lost large fortunes: the Wall Street banker Adolph Pavenstedt, who was interned in New York, saw his entire US\$1,661,000 fortune appropriated by the Custodian.⁴¹ By February 1919, the Custodian controlled an asset stock which it expected to be worth US\$700 million, once ongoing valuations had been completed.⁴² The American state thus seized an amount of enemy property larger than an entire annual government budget in the pre-1917 period.

The size of these revenues is not just of analytical interest. Palmer himself saw his task as a great entrepreneurial challenge: how to make the dispossession of the enemy both efficient and productive in the long term. In a report that he wrote in February 1919, he boasted that no confiscation campaign had ever yielded so much at so little expense:

the cost to the Government of administering nearly 33,000 trust estates of a total value of \$700,000,000, located in every State in the Union and in every insular possession, is only about one-seventh of one per cent of the principal of the trust estates for a period of 16 months; a record of economical administration which has never been approached by any trust company in the world.⁴³

Palmer was by no means wrong. Certain features of the US legal and economic system made the TEA a uniquely profitable expropriation regime. Careful valuation procedures, combined with the Custodian's legal duty to sell seized property to the highest bidder, ensured that the government maximized revenue. Moreover, from 1918 the Custodian's sales of enemy property were supervised by an advisory committee whose purpose it was to prevent 'the possibility of favouritism or unfairness in the sale'.⁴⁴ The fact that the American Custodian operated in a free-market

³⁵German industrialism as menace to peace: Palmer says that enemy-owned business here will not be restored after the war', *New York Times*, 8 November 1918.

³⁶James Wilford Garner, *International law and the World War*, London: Longmans, Green, 1920, p. 104.

³⁷A. E. Hinrichs, 'The spread eagle vs. alien property rights', *The Nation*, 10 November 1920, p. 529.

³⁸Enemy property held by the alien property custodian on July 31, 1918', *Economic World*, 10 August 1918, p. 198.

³⁹*Ibid.*, p. 199.

⁴⁰Adam Hodges, "'Enemy aliens'", p. 434.

⁴¹Emerson D. Fite, 'Germany's losses in America', *Current History*, February 1921, p. 270.

⁴²*Report of the US alien property custodian: 15 February 1919*, Washington, DC: Government Printing Office, 1919, p. 9.

⁴³*Ibid.*

⁴⁴'Disposal of German corporations', *Board of Trade Journal*, 101, 1918, p. 287.

environment and could not display favouritism that was too overt made the auctioning of foreign property very lucrative. Contrary to what the influential literature in new institutional economics has suggested, free markets and strong legal institutions are not always antithetical to the expropriation of property, which can be an attractive proposition for a capitalist economy at war, as long as it is undertaken primarily against foreigners and not the majority of the citizenry.⁴⁵

Palmer argued that the TEA enabled a nationalizing transformation of the American economy and society. In his words, ‘Germany’s great hope for the future lay in the industrial conquest of this continent . . . Great permanent good will come to this country from the Americanization of these enemy-owned concerns. A hybrid Americanization is no less dangerous in industry and commerce than in individuals.’⁴⁶ It was a matter of ‘securing American industrial independence by dislodging the hostile Hun within our gates, whose methods are such as to unsettle the future peace of the world’.⁴⁷ Palmer suggested that, if all wartime gains and losses were properly tallied, no net confiscation would have taken place, ‘for each Government would pay the claims of its own people and have the property of its enemies with which to pay them’. Ignoring the highly uneven international distribution of foreign capital, he insisted that the real crime would be to return seized property to its rightful German owners, because an upright American citizen would shun such an enemy alien anyway, and the American people would be denied a deserved compensation for their efforts.⁴⁸ Palmer is best known in American history as the face of the first Red Scare that dominated American politics and society in 1919–21. His contemporary critics accused him of systematic violations of civil liberties and abuses of executive and judicial power. But Palmer’s economic war against German and Austro-Hungarian nationals in 1917–19 was an important precedent for the campaign against political radicals that earned him such notoriety in the years following the war.

The 1917 TEA did not just affect the United States itself. Like the British law, its effects reverberated across the US imperial space, as well as in its hemispheric zone of influence. German merchants in the Philippines and Hawai‘i saw their properties seized by the Alien Property Custodian.⁴⁹ US involvement in the war also prompted many Latin American nations to follow suit in declaring war against Germany. From an economic point of view this was another major blow for the Reich; at 3.8 billion marks, Germany had more foreign investment in Latin America than in the US and Canada put together.⁵⁰ Latin American governments could be tempted by the prospect of receiving a welcome boost in revenues from selling seized German assets, while US businesses would be able to conquer market share and profit from expanded commercial opportunities now that one of their main European competitors was being evicted from the region. In US-occupied Haiti, for example, the government seized all German-held property when it joined the war against the Reich on Bastille Day (14 July) 1918 and declared that it would ‘follow the practice of the United States government in this respect’.⁵¹ Nineteen firms were liquidated, with American investors swooping in to pick up the most lucrative operations at very low prices. Nonetheless, the extra-territorial TEA was more than just an extension of new techniques to old doctrines. It laid the foundation for future global hegemony, especially in the intensified use of economic sanctions after 1945, which the US government has often applied extra-territorially against firms and individuals not resident or incorporated in the United States itself.

⁴⁵Douglass North and Barry Weingast, ‘Constitutions and commitment: the evolution of institutions governing public choice in seventeenth-century England’, *Journal of Economic History*, 49, 4, pp. 803–32.

⁴⁶*Report of the US alien property custodian*, p. 15.

⁴⁷*Ibid.*, p. 17.

⁴⁸*Ibid.*, p. 18.

⁴⁹Wigan Salazar, ‘German economic involvement in the Philippines, 1871–1918’, PhD thesis, SOAS, University of London, 2000; Richard Hawkins, ‘Heinrich Hackfeld’, in William J. Hausman, ed., *Immigrant entrepreneurship: German-American business biographies, 1720 to the present, volume 2: the emergence of an industrial nation, 1840–1893*, German Historical Institute, 2017, available at <https://www.immigrantentrepreneurship.org/> (consulted 14 May 2019).

⁵⁰Herbert Feis, *Europe: the world’s banker 1870–1914*, New Haven, CT: Yale University Press, 1961, p. 74.

⁵¹‘Hayti: liquidation of enemy firms’, *Board of Trade Journal*, 101, 1918, p. 287.

The TEA in the interwar period and Second World War, 1919–45

Britain and the United States had perfected a highly efficient form of expropriation, but the practice took more more violent forms in the land empires of east-central Europe and the Middle East. Rapacious seizures by the Young Turk government from 1915 onward accompanied the mass murders of the Armenian genocide.⁵² The internationally sponsored Greek–Turkish population exchange of 1923 also involved significant property transfers.⁵³ This endorsement expressed the complex attitude to property inherent in the international institutions created at the Paris Peace Conference at the end of the war. On the one hand, the League of Nations maintained a minority rights regime and enabled legal and commercial lobbies to push for the protection of foreign assets. On the other hand, its endorsement of national self-determination, as well as the confiscation clauses in the Versailles Peace Treaty with Germany, tended to keep the nationalizing impulses of the First World War alive.

In one domain, the wartime expropriations even became the model for new League institutions. The techniques of Allied economic warfare in 1914–18, notably comprehensive blockade and trading with the enemy laws, inspired the economic sanctions in Article 16 of the Covenant, widely seen as the League’s promising new peacekeeping tool. British blockade specialists thought that TEA legislation was valuable for future sanctions regimes because it enabled gradual pressure that began with ‘suspensory’ action (sequestration) before it could pass on to ‘destructive’ measures against enemy commerce (liquidation).⁵⁴ This distinction also mattered to the political issue of reparations under the Versailles Treaty. German assets held by the British Custodian of Enemy Property served as a buffer with which to fulfil Berlin’s payment obligations.⁵⁵ Although some private actors contested these decisions, reparations tended to overrule restitution.

Wartime seizures coincided with significant revolutionary expropriation during the Russian Revolution. Endorsing expropriation in the Paris peace treaties made it more difficult for liberal states to recover their property and investments in Russia which had been confiscated by the Bolsheviks. At the Genoa Conference in 1922, the Soviets rejected Allied calls for the repayment of tsarist-era debts. Why should Soviet Russia respect foreign property when the Entente countries had seized their enemies’ wealth during the war and affirmed this in the peace treaty? The Soviet delegation pointed out that

the governments of the victorious states did not hesitate to sequester the property of subjects of defeated states situated on their territory and also in foreign territory. In accordance with this precedent, Russia cannot be obligated to assume any corresponding responsibility whatsoever to foreign Powers and to their subjects by the cancellation of public debts and the nationalization of private property.⁵⁶

In the United States, the TEA legislation continued to produce a significant amount of commentary and jurisprudence.⁵⁷ Government officials such as Palmer and many congressional Republicans insisted that it be fully nationalized. To others in the US elite, the TEA had enabled

⁵²Taner Akçam and Umit Kurt, *The spirit of the laws: the plunder of wealth in the Armenian genocide*, New York and Oxford: Berghahn, 2015; Uğur Üngör and Mehmet Polatel, *Confiscation and destruction: the Young Turk seizure of Armenian property*, London: Bloomsbury, 2011.

⁵³Ellinor Morack, ‘Refugees, locals, and “the” state: property compensation in the Province of Izmir following the Greco-Turkish population exchange of 1923’, *Journal of the Ottoman and Turkish Studies Association*, 2, 1, 2015, pp. 147–66; Ellinor Morack, ‘Turkifying property, or: the phantom pain of Izmir’s lost Christian working class, 1924–6’, *Middle Eastern Studies*, 55, 4, 2019, pp. 499–518.

⁵⁴The National Archives, Kew, London, Cabinet Office files (henceforth TNA, CAB) 47/3, paper ATB 65, W. Arnold Foster, ‘Sanctions and trading with the enemy’, 26 December 1926, p. 6.

⁵⁵Panayi, ‘German business interests’, p. 254.

⁵⁶Riposta russa al memorandum delle Potenze (Conferenza di Genova – 11 maggio 1922), *Politica*, 12, 1922, p. 83.

⁵⁷Charles Huberich, *The law relating to trading with the enemy*, New York: Baker Voorhis Company, 1918; Arthur Garfield Hays, *Enemy property in America: a survey of the Trading with the Enemy Act*, Albany, NY: Matthew Bender & Company, 1923.

actions that were unjustifiably severe. As the Yale law professor Edwin Borchard put it, ‘the Custodian now apparently regard[ed] it as his function to make war on large industrial investments’, which ‘despoil[ed] the property held in trust ... after the Armistice, when no belligerent purpose could have been served’.⁵⁸ Borchard was an advocate of neutralism and anti-interventionism, and retained a liberal understanding of international property rights as the key to prosperity and peace. Without such protections, the only way for states to safeguard their nationals’ overseas property was by force, which required ‘a constant increase in armaments’ and stimulated imperialism, gunboat diplomacy, and thereby war.⁵⁹

Many of the powers that the TEA conferred to the government lapsed in 1921 when the United States signed a peace treaty with Germany. Yet the emergency powers enshrined in Section 5(b) remained in effect because of a single phrase that had been slipped into the original bill by the Treasury to allow regulation, control, and seizure of the assets of ‘any foreign country, whether enemy, ally of enemy, or otherwise’. Although the enemy status of Germany had ended with the treaty’s activation, powers relating to countries labelled ‘otherwise’ did not, strictly speaking, expire, and remained in the hands of the executive. A small but important part of Section 5(b) was thus a permanent peacetime US law governing the economic and financial interaction of US citizens with any foreign country. In 1922, the US Alien Property Custodian still held US\$350 million in confiscated enemy assets, enough to cover 15% of federal government expenditure that year.⁶⁰ Wartime confiscation had been a lucrative activity for the American state, and, since fiscal conservatism was influential in the 1920s, it contributed to the maintenance of ‘economies’ in the administration of government more generally.

To US presidential administrations the TEA’s peacetime powers under Section 5(b) represented a uniquely powerful tool for government intervention. Accordingly, the TEA was used by Roosevelt during initial phases of the New Deal in 1933. On 6 March, in his Proclamation 2039, Roosevelt declared that the escalating bank run amounted to a national emergency, invoked Section 5(b) to institute a five-day bank holiday, and forbade the export of gold from the United States. The immediate purpose was to stave off a financial disaster; however, over the weekend and into the next week, the White House amended the TEA to render this state of exception permanent. On 9 March, Section 5(b) was amended to grant the president authority over domestic as well as foreign financial transfers. The Emergency Banking Act of that day is generally regarded as marking the start of serious legislative reform. In the simultaneous Proclamation 2040, Roosevelt announced that the national emergency would remain in effect until the president chose to terminate it.⁶¹

Although historians have played down the radical nature of these laws in comparison to dictatorial enabling acts elsewhere, contemporary commentators like Walter Lippmann were alarmed.⁶² Roosevelt’s most significant intervention under the amended TEA was Executive Order 6102 of 5 April 1933, which prohibited the hoarding of gold and obligated all citizens to hand in their monetary gold and gold certificates. Intended to increase the Federal Reserve’s gold reserves in order to expand the economy’s monetary base, the measure was controversial but ultimately successful at initiating deflation.⁶³

⁵⁸Edwin Borchard, introduction to James A. Gathings, *International law and American treatment of alien enemy property*, Washington, DC: American Council on Public Affairs, 1940, p. v.

⁵⁹*Ibid.*, p. vi.

⁶⁰Joseph Conrad Fehr, ‘Disposal of enemy property’, *North American Review*, 216, July 1922, pp. 10–20; ‘Budget statement no. 1’, in *Message of the President of the United States transmitting the budget for the service of the fiscal year ending June 30 1924*, Washington, DC: Government Printing Office, 1922, table A5.

⁶¹Amendments to the Trading with the Enemy Act limit presidential power to regulate international economic transactions’, *Maryland Journal of International Law*, 3, 2, 1978, pp. 413–20.

⁶²Ira Katznelson, *Fear itself: the New Deal and the origins of our time*, New York: Knopf, 2013, p. 123.

⁶³Milton Friedman and Anna Jacobson Schwartz, *A monetary history of the United States 1867–1960*, Princeton, NJ: Princeton University Press, 1963, p. 463, 464; Sebastian Edwards, *American default: the untold story of FDR, the Supreme Court, and the battle over gold*, Princeton, NJ: Princeton University Press, 2018.

The US TEA's dual-use function for regulation and redistribution at home and economic pressure abroad made it a versatile tool of New Deal statecraft in the 1930s. Yet the special peacetime power of Section 5(b) led to unforeseen misunderstandings when Washington and London considered joint economic sanctions against Japan over its aggression in China in December 1937. The US Treasury Secretary, Henry Morgenthau, phoned his British colleague John Simon to propose a yen embargo and exchange controls under the TEA, but officials in London worried that such measures were impossible if the government was not at war, which was what the British version of the law required. The American practice of granting broad executive powers in peacetime was so puzzling to British civil servants that they told Simon that Morgenthau 'may have got the reference wrong' when he mentioned he could impose sanctions on Japan under the TEA.⁶⁴

Since 1929, British economic war planning had envisioned issuing a second trading with the enemy proclamation at the outbreak of a future conflict.⁶⁵ When a second TEA was adopted on 3 September 1939 as the Second World War began, difficult questions emerged over the means to combine efficacy with legitimacy. British officials were all too aware of the controversy created by their previous treatment of Germany, first in the global economic war of 1914–18 and then during the Versailles Treaty and its aftermath. As the Custodian of Enemy Property, Sir Ernest Fass, noted to his colleagues in the Board of Trade,

after the Great War the British Government were accused of having introduced for the first time into international relations a policy of confiscation of private property of enemy subjects for reasons other than reasons connected with the prosecution of the war . . . It seems to me that this time it is very important to secure that no handle is given to the German government for a similar accusation.⁶⁶

The new Ministry of Economic Warfare nonetheless pursued an increasingly vigorous campaign of economic war against the Axis Powers from the autumn of 1939 onwards.⁶⁷ It correctly surmised that, since Germany was not self-sufficient in strategic raw materials, it would pursue autarky through conquest of resource-rich territories. As German occupation might lead to Nazi control over the occupied countries' foreign investments, this would turn those countries' possessions abroad into property of an 'enemy character'.⁶⁸ The British 1939 TEA therefore differed from its 1914 predecessor in targeting not just German-owned property but the property of countries occupied by the Nazis. This process had begun in March, when Britain sequestered the foreign assets of the Czech government after Nazi invasion; by the summer of 1940, with most continental European countries under Axis occupation, all property located within Great Britain that belonged to residents of these countries was placed under the control of the Custodian of Enemy Property.⁶⁹

This expansion of the scope of expropriation demonstrates how the TEAs interacted with a world in which the existence of 'enemies' was always mediated by various sovereign and semi-sovereign state entities and independent corporations. Economic warfare aimed at undermining the material power of the enemy. In a complex world economy, however, getting a grip on this power required disentangling the web of global property relations. This search for ultimate control led the British and US governments not only to breach corporate legal personhood, but also to

⁶⁴TNA, Treasury files T160/693/11, John Simon to Neville Chamberlain, fols. 26–7; report on sanctions by Sir F. Philipps and N. F. Warren Fisher, 18 December 1937, fol. 31.

⁶⁵TNA, CAB 47/1, Committee of Imperial Defence, Advisory Committee on Trading and Blockade in Time of War, 'Conclusions of the fourteenth meeting', 19 April 1929.

⁶⁶TNA, Foreign Office files FO 371/23931, W15235/14783/49, Sir Ernest Fass to E. M. Hodgson, 20 October 1939.

⁶⁷W. N. Medlicott, *The economic blockade*, 2 vols., London: HMSO, 1952.

⁶⁸Martin Domke, *Trading with the enemy in World War II*, New York: Central Book Company, 1943, pp. 10–22.

⁶⁹Foreign and Commonwealth Office, *British policy towards enemy property during and after the Second World War*, History Notes, Foreign and Commonwealth Office, no. 13, 1998, pp. 5–10.

breach the barrier of state sovereignty. On 10 April 1940, Roosevelt issued Executive Order 8389 in response to the German invasion of Denmark and Norway. The Treasury wanted to prevent Nazi Germany from using Danish and Norwegian foreign assets to fund their occupation and conquest of the rest of Europe. The order used the authority of the TEA to establish a Treasury agency called Foreign Funds Control, which seized all Danish and Norwegian property under US jurisdiction. This action was framed as an intervention ‘Protecting Funds of Victims of Aggression’. The United States would hold the property of the occupied in trust until liberation. These executive orders testified to the vast international economic power of the US. Foreign Funds Control would become responsible for controlling all enemy and enemy-controlled foreign assets and financial transactions during the war. The agency remained in operation until 1947, when its activities were transferred to the Treasury’s Office of International Finance, while the Office of Alien Property – now housed in the Department of Justice – took responsibility for asset freezes.

In the Second World War, the TEAs’ linking of economic war and the war economy was reaffirmed. As the attorney of the Office of Alien Property, Joseph Bishop, put it, ‘The Trading with the Enemy Act has in modern economic warfare two basic objectives: to keep an enemy from using for his own purposes any property which he owns or controls, located within the United States; and to make that same property available for the purposes of the United States.’⁷⁰ In material terms, its role in 1941–45 was less important than in 1917–18. Because interwar German, Italian, and Japanese business expansion in the United States had been more restrained than before 1914, TEA seizures after 1941 yielded relatively less than those that began in 1917. By 1945, the Custodian had taken control of around US\$500 million in property; US\$79 million in estates, trusts, and financial assets; 46,000 patents and inventions; close to 500,000 copyrights; and enemy-owned interests in 414 firms, one-quarter of which it administered directly.⁷¹ The TEAs were now part of a fully extra-territorial regime of economic control integrated into Allied supply bodies and the US Board of Economic Warfare and the British Ministry of Economic Warfare.

American use of the TEA did not end in 1945. By declaring emergencies through executive orders and proclamations, presidents continued using TEA powers in peacetime. When the Korean War broke out, Truman used this procedure to create a new Treasury agency, the Office for Foreign Assets Control (OFAC), which continued the activities of Foreign Funds Control during the Second World War. The TEA was also invoked by Johnson in 1968, to restrict capital flows out of the US and gain control over foreign dollar balances.⁷² Its last application was by Nixon in 1971, who imposed a 10% import surcharge on tariffs while he simultaneously ended the dollar’s international convertibility into gold and thereby suspended the Bretton Woods system.⁷³ In the wake of Watergate, Congress ended the state of emergency that Section 5(b) had enabled for four decades. The International Emergency Economic Powers Act (IEEPA) of 1977 rebalanced executive powers, insulating American civil society and economy from executive intervention.⁷⁴ Instead, the presidency was empowered to act against foreign economic interests. The IEEPA marked a further point in the retreat of the mid-century administrative state, which had been geared towards economic warfare and domestic welfare. It heralded the rise of the modern sanctions state, whose powers of intervention are aimed primarily at foreign countries.⁷⁵

⁷⁰Joseph W. Bishop, Jr, ‘Judicial construction of the Trading with the Enemy Act’, *Harvard Law Review*, 62, 5, 1949, p. 721.

⁷¹*Public papers of the Presidents of the United States: Franklin D. Roosevelt*, vol. 11, New York, 1950, p. 154.

⁷²John R. Garson and Jeffrey G. Miller, ‘The foreign direct investment regulations: constitutional questions and operational aspects examined’, *Boston College Industrial and Commercial Law Review*, 11, 2, 1970, pp. 143–74.

⁷³Proclamation no. 4074, 3 C.F.R. 60 (1971–75 comp.), reprinted in 85 Stat. 926, 1971; William R. Nester, *American power, the new world order and the Japanese challenge*, Basingstoke: Palgrave Macmillan, 1993, p. 200; Nigel Bowles, *Nixon’s business: authority and power in presidential politics*, College Station, TX: Texas A&M University Press, 2005, p. 165.

⁷⁴The International Emergency Economic Powers Act: a congressional attempt to control presidential emergency power’, *Harvard Law Review*, 96, 5, 1983, pp. 1102–20.

⁷⁵Coates, *Secret life of statutes*, p. 153.

The Trading with the Enemy Acts during the postcolonial partitions, 1945–49

During the world wars, the conception and implementation of TEA laws occurred within a largely Atlantic orbit. Yet the global application of the trading with the enemy paradigm meant that it also shaped the legal formation of colonial and postcolonial territories. As we have seen, it had important effects in places such as Hong Kong and Haiti. But it is worth bringing out the ramifications of TEA legislation for post-1945 state formation in two key areas of the former British empire: the Indian subcontinent and Mandate Palestine. In both settings, the 1939 British version of the law directly shaped the outcome of the great partitions of 1947–49. In their use as nationalist state-building tools amid the chaotic disintegration of imperial territories, the TEAs' appropriation in postcolonial territories came to resemble more closely the Ottoman and Turkish post-1918 laws concerning Armenian and Greek 'abandoned property'.⁷⁶

India had observed the economic campaign during the First World War as one of the crucial territories and economic pillars of the British empire. British and Indian lawyers had engaged with the intricacies of TEA laws on the subcontinent.⁷⁷ There was thus already a measure of familiarity with TEA legislation in the local court system and among Indian jurists when the Second World War broke out. The adoption of the Defence of India Act on 3 September 1939 moved the government of the subcontinent on to an emergency footing. On the same day, the British Parliament passed the new TEA, which applied throughout the empire. Taken together, these laws created a Custodian of Enemy Property for British India and unleashed an internment campaign directed against enemy nationals.

During the war, the Raj dramatically increased its powers over economy and society, as it undertook requisitioning of food, housing, and raw materials, and appropriated property such as factories and warehouses for government use.⁷⁸ The creation of an Indian war economy both stimulated an economic war of dispossession against the Axis and was served by that confiscation. Moreover, in effect the Indian government was already operating on the principle that, if a given piece of land, capital, or other asset lacked a clear proprietor, it would fall into the hands of the state. This was a key premise in the treatment of refugee property during Partition four years later.

After the war ended, several factors preserved the state of exception within which the TEA could operate. First, the Indian National Congress and the All-India Muslim League increased political and social mobilization among the populace, spurring political uncertainty, fear of internal and external enemies, and communal violence. Partition had been on the table since it had first been openly demanded by Jinnah's Muslim League in 1940, but the stakes were raised by the British Cabinet Mission sent to India in March 1946. A tentative agreement on the mission's proposed scheme for a federation broke down over the summer amid mutual suspicion.⁷⁹ The political preconditions for expropriation therefore remained.⁸⁰ Second, the emergency legislation of September 1939 did not terminate at the end the war, but was kept in force by two ordinances passed on 25 September 1946: the Requisitioned Land (Continuance of Powers) Act [No. XIX] and the Emergency Provisions (Continuance) Ordinance [No. XX]. The latter ordinance's definition of 'enemy' was exceptionally wide, applying both the principle of territoriality and the principle of nationality, as well as the catch-all discretionary provision 'any other person or body of persons declared by the Central Government to be an enemy'.⁸¹

⁷⁶Ellinor Morack, *The dowry of the state? The politics of abandoned property and the population exchange in Turkey, 1921–1945*, Bamberg: University of Bamberg Press, 2017.

⁷⁷Henry Campbell, *The law of trading with the enemy in British India*, Calcutta: Butterworth & Co., 1916; Praphullachandra Ghosh, *The effects of war on contracts*, Calcutta: University of Calcutta, 1920.

⁷⁸Yasmin Khan, *India at war: the subcontinent and the Second World War*, Oxford: Oxford University Press, 2015, pp. 163–6; Srinath Raghavan, *India's war: World War II and the making of modern South Asia*, New York: Allen Lane, 2016, ch. 14.

⁷⁹Yasmin Khan, *The great Partition: the making of India and Pakistan*, New Haven, CT: Yale University Press, 2007, p. 63.

⁸⁰*Ibid.*, p. 33.

⁸¹Ordinance no. XX of 1946, Article 97 (d), in *A collection of the Acts of the Central Legislature and ordinances of the governor generals for the year 1946*, Simla: Government of British India, 1946, p. 24.

As public order in Punjab and Bengal began to break down between January and March 1947, the Congress politician S. V. Patel and the civil servant V. P. Menon worked out plans to divide up the subcontinent in territorial, administrative, and proprietary terms. This was the context for the passing of India's own TEA, the Trading with the Enemy (Continuance of Emergency Provisions) Act of 20 March 1947, which concerned all 'persons and firms belonging to States at war with the Government of India, and the custody of the property belonging to them'.⁸² The Act was intended not so much as a tool of economic statecraft against the Pakistani state as a future enemy, but rather as a way of consolidating official ownership over the land and property that Congress and its allies in the private sector and armed forces already effectively controlled. Yet the distribution of wealth and assets was by no means static. Now that Partition was imminent, capital flight ensued; in May 1947 alone, for example, wealthy Hindus transferred £250 million from Punjabi banks to Delhi.⁸³ When Partition went into effect on 15 August, the Indian TEA automatically granted the government in Delhi enormous power over the property of Indian Muslims.

At least 14.5 million people were displaced during Partition, amid appalling violence.⁸⁴ In some cases, this violence involved the looting and destruction of property; in other cases, direct dispossession.⁸⁵ Yet, as Mark Mazower has noted, this was 'scarcely to be attributed to the all-powerful modern state'.⁸⁶ Indeed, the extension of government authority actually brought an end to the worst violence, and it was in this second stage of the Partition process that TEA laws in both India and Pakistan set in motion large transfers of property. Expropriation under the TEA involved coercion, as well as the assertion of *de jure* claims to state ownership to legitimize *de facto* control of abandoned and seized property. In many cases, the dislocated refugees had carried whatever portable possessions they could save while leaving their homes, workshops, land, tools, and animal herds behind.⁸⁷ The most valuable property seizures were large estates left behind by landowners, as well as factories, industrial goods, and warehouses belonging to entrepreneurs and merchants.

Faced with the challenge of creating a new nation-state where none had existed, the Pakistani authorities quickly linked their own Custodian of Enemy Property to a newly created reconstruction agency, the Rehabilitation Authority. The Custodian made official the expropriation of property owned by Hindus and Sikhs from Punjab, Sindh, and West Bengal, and transferred the property thus obtained to this agency, which assigned it to incoming Muslim refugees. Expropriation and redistribution were linked in a single administrative process, with the laws of economic warfare directly contributing to the institutional, economic, and territorial consolidation of the Pakistani state. The Pakistanis rebutted criticisms of expropriation by pointing to Indian conduct on the other side of the border. In their view,

legislation has been passed in India . . . in which the definition of 'evacuee' has been so enlarged and extended that almost any Muslim might be declared an evacuee and his property taken possession of by the Custodian as evacuee property . . . The result would be that large sections of the Muslim population of India may be deprived of their possession of and control over their properties of all descriptions, and thus rendered adrift.⁸⁸

⁸²Trading with the Enemy (Continuance of Emergency Provisions) Act, Act no. 16 of 1947 (20 March 1947).

⁸³Khan, *Great partition*, pp. 101–2.

⁸⁴Swarna Aiyar, "'August anarchy': the Partition massacres in Punjab, 1947", *South Asia* 18, 1995, pp. 13–36; Joya Chatterji, *Bengal divided: Hindu communalism and Partition, 1932–1947*, Cambridge: Cambridge University Press, 1994, pp. 220–65.

⁸⁵Urvashi Butalia, *The other side of silence: voices from the Partition of India*, Durham, NC: Duke University Press, 2000, pp. 107, 238.

⁸⁶Mazower, 'Violence and the state', p. 1166.

⁸⁷Vazira Fazila-Yacobali Zamindar, *The long partition and the making of modern South Asia: refugees, boundaries, histories*, New York: Columbia University Press, 2007, pp. 120–59.

⁸⁸'Pakistan and India fail to agree on treatment of evacuee property', *Pakistan Affairs*, 3, 32, July 1949, p. 4.

Pakistani officials had an interest in convincing the Indian government to keep the scale of expropriations and anti-Muslim discrimination to a minimum; after all, violence and forced displacement increased the incoming flows of Muslim refugees, adding to the already existing pressure on land and resources in the new Islamic republic.

In January 1949, the two governments negotiated an agreement in Karachi about the status of refugee property. Recognizing that neither side would benefit from more ethnic and economic cleansing, they resolved to stabilize the situation by limiting seizures and redistributions to 'agreed areas' where Partition had been marked by 'disturbances', and allowing free sales of property.⁸⁹ Both states contested the actual amount of property affected. The Indian government claimed that the 5 million Hindus and Sikhs who fled to India left behind property worth ten times as much as that of the 7.9 million Muslims who sought refuge in Pakistan: 38.1 billion rupees (approximately 44% of India's national income in 1948) as opposed to 3.8 billion rupees (16% of Pakistani GDP in 1949).⁹⁰ However, what mattered in real life was the specific regional and demographic balance created by patterns of displacement and resettlement. For example, Muslim Punjabis who fled to West Punjab, now in Pakistan, benefited from the considerable landholdings that had been seized there, whereas many Muslim refugees who moved to Sindh still did not have any permanent residence or property years later.⁹¹

For the young Indian nation-state, the treatment of evacuee property after Partition was also a major social, legal, and economic issue. The Administration of Evacuee Property Act of 1950 produced a vast legal architecture for the adjudication of private claims that affected millions of households. The Custodian of Evacuee Property became a well-known public office involved in crafting a national community through redistribution.⁹² In Pakistan, the 1951 Administration of Evacuee Property Act emulated the Indian legislation, creating a certain symmetry to Indo-Pakistani Partition.

One contemporary observer of the Partition of the subcontinent was Joseph Schechtman, who had worked for the US Office of Strategic Services as a migration expert, had written in depth about population transfers, and was a close associate of the Revisionist Zionist thinker Ze'ev Jabotinsky.⁹³ His account of the Partition of India is particularly interesting because he described 'the exchange of population as a bitter but inevitable necessity' that should be conducted 'in a constructive way'.⁹⁴ Schechtman's argument was not a critique of expropriation or violence as such, but an indictment of what he saw as the failure of the Indian and Pakistani governments to make it a productive process. Both Delhi and Islamabad 'never even tried to make a virtue out of necessity and to convert the obviously unavoidable tragedy of mass flight into a state-directed device for at least a partial solution of the minority problem in the most explosive sector of the Indian sub-continent'.⁹⁵ In regarding population transfer as a necessity, Schechtman was envisioning a post-war order of homogenous nation-states. His outlook in the late 1940s was influenced by the League of Nations' interwar minority rights regime, widely seen as an unsatisfactory arrangement, as well as by the Nazi New Order.⁹⁶ In fact, towards the end of his *Population*

⁸⁹Fazila-Yacobali Zamindar, *Long partition*, p. 125.

⁹⁰*Concerning evacuee property*, New Delhi, 1950, p. 6; B. R. Mitchell, *International historical statistics: Africa, Asia and Oceania 1750–1993*, Basingstoke: Palgrave Macmillan, 1998, pp. 1028, 1034.

⁹¹Partha S. Ghosh, *Migrants, refugees and the stateless in South Asia*, New Delhi: SAGE, 2016, p. 204.

⁹²Rohit De, 'Taming the Custodian: rethinking the archive of evacuee property', in Gyan Prakash, Michael Laffan, and Nikhil Menon, eds., *The postcolonial moment in South and Southeast Asia*, London: Bloomsbury, 2018, pp. 87–106.

⁹³Joseph B. Schechtman, *Population transfers in Asia*, New York: Hallsby Press, 1949; 'Evacuee property in India and Pakistan', *Pacific Affairs*, 24, 4, December 1951, pp. 406–13.

⁹⁴Schechtman, *Population transfers*, p. 21.

⁹⁵*Ibid.*, p. 42.

⁹⁶Mark Mazower, 'The strange triumph of human rights', *Historical Journal*, 47, 2, 2004, pp. 387–90; Mark Mazower, *No enchanted palace: the end of empire and the ideological origins of the United Nations*, Princeton, NJ: Princeton University Press, 2009, pp. 104–49.

transfers in Asia, Schechtman had entirely abandoned his advocacy for minority rights protection. Full and effective population exchange could create ethnically uniform states without foreign enclaves.

Global population transfers in the post-war period were a pressing humanitarian issue, placing millions of people at risk of statelessness. But it also had a significant economic dimension. State formation involved not just the movement of people but the movement of assets and property too. Schechtman's views on minority rights show how the implementation of effective population transfers required weakening if not destroying the rights to property and contract that marked an older, rights-based liberalism.

During the war in Mandate Palestine that led to the creation of the state of Israel in 1948, this orientation was put into practice. As Palestine was a British-administered territory, the 1939 TEA had been in effect there during the Second World War, and was used to seize the property of the significant number of German subjects who inhabited the territory. As in India, the law remained in force after the war because the Mandate authorities appreciated its emergency character as they faced increasing anti-British agitation by both Arab and Jewish groups. The status of the property held by the Custodian for Mandate Palestine became a potentially important prize. The Custodian held more than 10,000 acres of land seized from German religious organizations such as the Templars and the Lutheran Church, as well as 4,000 acres of land owned by the Orthodox Patriarchate.⁹⁷ Throughout 1946–47, Zionist organizations tried to pressure the Custodian to release these lands, and were prepared to buy them from their original owners.

As a civil war broke out between Jewish forces and Arab militias in Palestine following the UN Partition Plan of November 1947, the question of land ownership and property rights became crucial. In March 1948, the Israeli army created a Committee for Arab Property.⁹⁸ The Abandoned Property Ordinance of 21 June 1948 facilitated ongoing land seizures by giving cabinet ministers the power to regulate land ownership.⁹⁹ Israeli settlers and agricultural firms and collectives submitted requests for permission to start cultivating formerly Arab lands. The Ministry of Agriculture introduced special Fallow Lands Regulations in October to speed up the process. By November, some 112,000 acres of former Arab land had been officially reassigned to Jewish immigrants and cultivators under the Fallow Land Regulations.¹⁰⁰ Israeli scholars have described this process as one in which 'appropriation and reallocation were closely related'.¹⁰¹

The Israeli system of expropriation was formalized under the so-called Emergency Regulations on Property of Absentees. These laws created a new legal category, that of 'absentee' (*nifkad*), which was defined in relation to the date of the UN Partition Plan, 19 November 1947. Any person who was either a citizen or a resident of an Arab state, or passing through one on or after that date could be labelled an 'absentee', which would place their land in the possession of the Custodian, whose office was now renamed as the supreme authority over 'absentee property'.

The Pakistani Evacuee Property legislation shaped thinking at the highest levels of the Israeli government. Zalman Lifshitz, an engineer, land surveyor, and cartographer who worked for the Jewish National Fund, had compiled several plans for the partition of Palestine and the best location for a Jewish state within it.¹⁰² As Ben-Gurion's special adviser on land and border demarcation issues, Lifshitz studied the Pakistani legislation extensively. On 18 March 1949, he presented a

⁹⁷Uri Bialer, *Cross on the Star of David: the Christian world in Israel's foreign policy, 1948–1967*, Bloomington, IN: Indiana University Press, 2005, pp. 166–7, 180.

⁹⁸Benny Morris, *The origins of the Palestinian refugee problem revisited*, Cambridge: Cambridge University Press, 2004, pp. 83–4.

⁹⁹Michael R. Fischbach, *Records of dispossession: Palestinian refugee property and the Arab–Israeli conflict*, New York: Columbia University Press, 2003, p. 20.

¹⁰⁰Schechtman, *Population transfers*, pp. 129–30.

¹⁰¹Jeremy Forman and Alexandre (Sandy) Kedar, 'From Arab land to "Israel Lands": the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', *Environment and Planning D: Society and Space*, 22, 2004, p. 813.

¹⁰²Yossi Katz, *Partner in partition: the Jewish Agency's partition plan in the Mandate era*, London: Routledge, 1998, pp. 42–5.

report on refugee property to the Knesset. The study, 'Report on the need for a legal settlement of the issue of absentee property to facilitate its permanent use for settlement, housing, and economic recovery needs', provides insight into the global political and legal imaginary of the early Israeli state and its sources in the Pakistani legislation.

Lifshitz underscored the need for a more permanent regime of ownership. 'Legally unauthorized actions that have already been taken', he argued, 'must be given legal force, in order to prevent complications and legal claims against the government or against the possessors of this absentee property. The Absentee Property Regulations and the Fallow Land Regulations are transitory regulations and prevent any possibility of using these properties permanently.'¹⁰³ He pointed out that, after both world wars, states such as Turkey, Greece, Bulgaria (in 1913–23), and Czechoslovakia (in 1945–48) had assumed great powers to liquidate property belonging to refugees. Yet the best practice, according to Lifshitz, was not European but South Asian: Pakistan's Custodian had shown how a fluid confiscation and redistribution mechanism could be set up and operated. The Absentee Property Law was presented to the Knesset in the fall of 1949. The Israeli Finance Minister, Eliezer Kaplan, under whose ministry the Custodian operated, explicitly mentioned to Knesset deputies that it was inspired by British wartime practice.¹⁰⁴ However, Lifshitz's praise of the South Asian examples and contemporary studies by Schechtman and other Zionists of Custodian-type systems make it clear that the Pakistani expropriation-and-reallocation regime was a more direct model.¹⁰⁵ Israeli government officials thus placed their actions squarely within the context of contemporary processes of state formation and the concomitant wars, expropriations, displacements, and population transfers.

Conclusion: an age of expropriation

What was the place of the TEAs in the mid twentieth century, a period when property seizure reached unprecedented heights? From their use as an instrument of economic warfare during the First World War to a technique of state intervention in the New Deal United States, to a tool of state formation in the postcolonial Middle East and Asia, these laws were deployed widely on multiple continents, within and beyond national borders. Although the TEAs remain active today in both the United States and Britain (as does the Israeli Custodian of Absentee Property), their use by nation-states peaked during a mid-century 'age of expropriation' between 1914 and the late 1940s. The diachronic development of the TEA as a legal paradigm sheds some light on the character of this period more broadly. Mass expropriations characterized the conduct of governments that were otherwise often politically and ideologically opposed. Similar policies could be driven by very different motivations, from purposive economic warfare strategies to commercial opportunism, and from revolutionary anti-capitalism to ethnic nationalism. Expropriation policies are thus better understood as an intensified, concentrated phase of what Charles Maier has called the 'long century of modern statehood', a period from the 1850s to the 1970s in which the reach of the modern state was extended and strengthened on the basis of territorial integrity, legal unity, and industrial power.¹⁰⁶ That such modern states intervened radically in the property order created during the nineteenth century is explained more readily by their common involvement in global processes of war- and state-making, rather than by their specific political or ideological character.

¹⁰³Cited in Forman and Kedar, 'From Arab land to "Israel Lands"', p. 816.

¹⁰⁴Yifat Holzman-Gazit, *Land expropriation in Israel: law, culture and society*, London: Routledge, 2007, p. 110.

¹⁰⁵Fischbach, *Records of dispossession*, p. 25; Alexandre Kedar, 'Expanding legal geographies: a call for a comparative approach', in Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar, eds., *The expanding spaces of law: a timely legal geography*, Stanford, CA: Stanford University Press, 2014, pp. 95–113.

¹⁰⁶Charles Maier, *Leviathan 2.0: inventing modern statehood*, Cambridge, MA: Harvard University Press, 2014, p. 8.

The institutional similarities in expropriation regimes are striking. In each case, the TEA paradigm created a custodian who could use the full administrative power of the state to target a particular subject of confiscation, whose legal definition differed according to the circumstances of the situation: in Britain, this subject was simply labelled the ‘enemy’; in the United States, the ‘alien’; in India and Pakistan, the ‘evacuee’; and, in Israel, the ‘absentee’. This model of state administration was premised on war as a moment of exception. Originally an Anglo-American common law template, it was globalized by economic total war and reactivated by decolonization.

An important aspect of the TEAs is that they allowed practices of confiscation against foreign individuals and companies whose wealth represented the external assets of the capitalist economies of Germany and Austria-Hungary. This made them different from notorious interwar expropriation drives such as the Aryization of Jewish property in Nazi Germany, which before the German conquest of Europe in 1940–45 was largely an internal process of redistribution; and from the Stalinist collectivization of agriculture, which targeted the Soviet Union’s own population. Through the TEA-enabled confiscations, the British and American national economies acquired new net assets and enlarged their own balance sheets. Given their much more limited exposure to similar measures taken by their enemies, this economic aspect of global warfare did yield serious positive incomes.

A historical research agenda comparing modes of economic war would be facilitated by the fact that comparison was built into the TEAs’ structure: seized property was accumulated as a reservoir of assets with which peace settlements could be negotiated and post-war reconstruction could be aided. The notion of exchange through a clearing system was shared by many of the property custodians and their defenders, from A. Mitchell Palmer to Joseph Schechtman. Economic warfare involved not only physical power projection, but also an unbundling and settling of accounts between emergent states and their mutually entangled citizens.

The destructive aspects of twentieth-century warfare often loom large in historical writing. But war also had important redistributive effects. Economic warfare in particular imposed severe costs on some groups and classes while conferring benefits to others. This insight allows us to bring politics and the question of distribution back into the economic and military history of the mid twentieth century. But if the costs of expropriation were often uneven and divisive, the gains were instrumental in securing legitimacy for various nationalist projects. In the partitions on the Indian subcontinent and in the Middle East, as in post-war central Europe, the process of mass confiscation became a way of building and consolidating the territorial nation-state. The TEAs thereby enabled not just the redistribution of wealth and assets and the winning of wars, but the constitution of new national communities as such.

Nicholas Mulder is a postdoctoral associate in the Department of History at Cornell University, where he will be Assistant Professor of Modern European History from the summer of 2020. He is currently working on a book project on the origins of economic sanctions in European and international politics between 1914 and 1945.