

Having said all this, one must not fail to take note of Mr. Baruch's many charities and generousities, and of his undoubted love of country. True enough and praiseworthy enough. But to think of Mr. Baruch as a statesman of the first rank (somebody named Bradley Dewey wrote him in 1949 that he was "the greatest living American"³¹) is preposterous. And it should give us much pause that the great public has been led seriously to entertain the notion that Mr. Baruch is a statesman of the first importance.

I will conclude with a story of Miss Coit's that seems to me quite telling. One day in 1953, Mr. Baruch attended a matinee performance by Danny Kaye at the Palace Theater in New York. There, "in the midst of slapstick, muggery, all-American folksiness, and the poignant childlike quality of Kaye's humor, the blond-haired comedian came down to the footlights. He swung his legs over the orchestra pit . . . as the lights went up. Then he stood and raised a hand for silence. 'Ladies and gentlemen,' he shouted, 'we have in our midst one of the great Americans of all time, an elder statesman, whose name will go ringing down the corridors of history. I give you Mr. Bernard M. Baruch.'"³² And the crowd went wild. Well, there you have it—the slapstick, the muggery, the windy clichés of the introduction; vaudeville presents everybody's favorite statesman. The scene rings true. But its ring is not one often heard in the corridors of history.

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CONFISCATION IN PRIVATE INTERNATIONAL LAW. By P. Adriaanse. The Hague: Martinus Nijhoff, 1956. Pp. xiii, 193. Guilders 12.50 (1 Guilder is \$0.265).

THIS little book considers the treatment one country gives the law of another when the latter takes private property without fair payment. At the outset, the author states that the subject "has [elsewhere] been constantly considered from the point of view of public international law" and that his study will be restricted in the main to "the point of view of private international law," although he recognizes "that elements of public law still play a part here."¹ After an introductory historical review of some notable confiscations during the twentieth century, he discusses three "preliminary topics." The first is the problem of recognition of the confiscating state. The next is jurisdictional immunity. The third is the situs of intangibles, a doctrine which he believes "can be radically thrown overboard."² The rest of the book, apart from conclusions, is devoted to the distinction between territorial and extraterritorial

31. P. 674.

32. Pp. 670-71.

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1. Pp. 9-10.

2. P. 56.

confiscations, involving, principally, problems of recognition and enforcement. The epilogue contains a plea for the protection of private property.

One trouble with the book is that the author decided at the start to exclude, as far as possible, a body of law which underlies every major question and pervades almost every aspect of the subject. The book not only lacks a foundation in public international law, an omission which can be corrected by recourse to other works that the author may understandably have wished not to repeat, but more important, it fails to bring particular problems into relationship with that law and thereby misses the chance of analyzing them in the most meaningful way. The book is like an analysis of a wagon wheel—only the rim is described because the hub and spokes have been treated elsewhere and any reference to them must be avoided; the result is that analysis ends where it starts or else repeats itself, and, in either case, all that has been achieved is a circle.

For example, on the problem of recognition of the confiscating state, the author writes of "two main views": "the old, dogmatic one" that the law of an unrecognized government is to be ignored, and "the realistic approach" that the law of an unrecognized government should be respected as soon as that government can be considered effective. He prefers the latter on the ground "that recognition should be left where it belongs, *i.e.*, in the sphere of the law of nations governing mutual relations between states and administrations. The law of an unrecognized government should be recognized as such by the judiciary as soon as that government can be considered effective. So it is effectiveness that counts."³

This treatment poses a number of questions. Is "the realistic approach" any more realistic than "the old, dogmatic one" or any less dogmatic? Why should the fact of a foreign government's effectiveness invariably win support for its confiscations in the face of its nonrecognition by the state of the forum? More broadly, is the matter of recognition really in another sphere or is that "sphere of the law of nations" directly relevant to the question at hand? Is not every nation free to decide for itself whether and to what extent it will recognize another state and its acts? Whatever the answers, the concept of recognition and its meaning in the law of nations seems to go to the very heart of the matter. To exclude reference to that law is to limit discussion to the fingertips of the problem.

The book also fails to accord proper attention to policy, as distinguished from doctrine, except to make a plea for the protection of private property. Essentially, the problem for the state of the forum is a choice of policy. The policy may be to protect private property, to advance a national interest, to foster international comity or something else. No rule of international law, private or public, controls the exercise of choice by the state of the forum. The legal rules which have been formulated are expressions of the chosen policy, even where that policy is some sort of compromise between national policy and

3. P. 32.

international comity or is influenced by domestic constitutional problems, such as the proper function of courts in matters affecting foreign affairs. This appears from one of the basic distinctions, that between so-called "territorial" and "extraterritorial" confiscations: a "territorial" confiscation acts upon property located within the territory of the confiscating state at the time of the confiscation; an "extraterritorial" confiscation is one of property located outside. As usually stated, the rule is that territorial confiscations will be supported but extraterritorial confiscations will not, on the theory that every state is the sole sovereign over its own territory and is entitled to respect for its acts there. Certainly, this rule is not a necessary legal consequence of the principle of sovereignty, from which it is derived. If the aid of the state of the forum is required to give effect to a territorial confiscation, the sovereignty of that state is as relevant as the sovereignty of the confiscating state. Why should the state of the forum subordinate its sovereignty to the law of the confiscating state? Or, in the case of extraterritorial confiscations, why should the fact of extraterritoriality automatically result in denying effect to the confiscation? Conceivably, the policy of the state of the forum might be otherwise. Territorial confiscations are, in fact, subject to the public policy of the state of the forum, including recognition or nonrecognition by that state of the confiscating state; and extraterritorial confiscations may sometimes be approved by the public policy of the state of the forum, as in the case of the Litvinov Assignment. In short, the answers to the questions in this field are more likely to be found from an analysis of the policies behind the legal rules than from the rules themselves.

The book contains a useful bibliography and table of cases. Unfortunate awkwardness of English usage distracts the reader's attention and occasionally obscures the author's meaning.

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WAS JUSTICE DONE? THE ROSENBERG-SOBELL CASE. By Malcolm P. Sharp. New York: Monthly Review Press, 1956. Pp. xxxvi, 216. \$3.50.

Was Justice Done was written because the author sensed a grave injustice in the conviction and sentence of Julius and Ethel Rosenberg and Morton Sobell for conspiracy to commit espionage in time of war. When a sensitive legal scholar of Professor Sharp's standing makes serious charges against the workings of the judicial process, the legal profession and those engaged in the critical study of law should be deeply concerned. Sharp expresses his charges against the fairness of the conviction and sentence somewhat obliquely in the "Author's Preface":

"I think that the average intelligent citizen, after considering the facts in this case, will come to doubt the justice of the conviction or at

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