LAW AND ADMINISTRATION IN MILITARY OCCUPATION: A REVIEW OF TWO RECENT BOOKS

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Unlike the First World War, the Second World War has already produced at this stage of its progress significant publications concerning the problems of military government which may well assist interested students and practitioners in cutting a path through this thorny field. Occupying the area of enemy countries is a task of which by all odds the most difficult part, that of the occupation of both Germany and Japan, still lies ahead. Two recently published studies, both of them by jurists with a European legal background who are at present engaged in the service of a war agency of the United States Government, must be welcomed as conspicuous contributions in this field. The first of these studies is an analysis of an important recent precedent of Allied occupation; the second of the enemy’s contemporary occupational practices in Europe.†

I

Dr. Fraenkel’s study of the Rhineland occupation is the work of an author who, already in an earlier volume, has investigated the problem of the survival of the rule of law in an institutionally hostile environment.‡ As the title of his new book suggests, a similar question runs as a red thread through his elaborate examination of the Rhineland occupation in its belligerent and peaceful phases. For this reason alone, if not for any more practical ones, a re-examination of this historical precedent


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1 See footnotes to title, supra.

2Ernst Fraenkel, The Dual State; A Contribution to the Theory of Dictatorship (1941).
of an extended occupation of a sector of Germany by the Allied armed forces is a timely and promising undertaking which the recently established Institute of World Affairs and the Carnegie Endowment for International Peace did well to sponsor. It is appropriate to recall, moreover, that the only full treatments of this occupation readily accessible to the American reader have thus far been the two volumes by General Allen and the so-called Hunt Report which until 1943 was only available in mimeographed form and to a limited public. Neither of these authors were primarily concerned with the detailed legal analysis of the manifold problems of occupation. While the research student has heretofore been able to draw on legal materials in periodicals and in foreign literature, Dr. Fraenkel’s new volume is the first book published in the English language which, while utilizing these writings, combines a careful analysis of the legal and related political and administrative problems with the presentation of a quantity of hitherto rather inaccessible, mostly German, materials.

It is of course quite true, and the author himself rightly stresses it in his introductory remarks, that there are profound differences between the circumstances of that partial occupation at the end of World War I and those surrounding the total occupation which impends after the defeat of Germany in World War II. This must neither be slurred over nor dismissed as negligible. The end of World War II will see a Germany bereft of any responsible government and, most likely, in a state of chaos utterly surpassing anything experienced or imaginable the last time; a Germany with most of her basic social and political institutions ground to dust, including a large part of her traditional administrative establishment, and with the possible exception of her church organizations; a Germany in which physical destruction, conspicuously lacking then, will profoundly handicap all plans and functions of military government; a Germany, furthermore, in which the purging of the personnel managing the remaining administrative, economic and social machinery will be an indispensible prerequisite for the effective functioning of any occupational authority. There cannot be now, as there was then in large measure, any simple “taking over.” Granted that all this is very clearly understood by the responsible authorities of the major powers among the United Nations and that,

8 Henry T. Allen, My Rhineland Journal (1923) and The Rhineland Occupation (1927) by the same author.

unlike on that earlier occasion, elaborate preparations have been made for some time to cope with the larger problem, a review of the functioning of that earlier occupation, with the accompanying typical, functional disturbances of military government, will be found truly helpful at this time.

Dr. Fraenkel’s volume is divided into a smaller part, devoted to the Rhineland regime during the armistice period, that is from November, 1918 until January, 1920, and a more elaborate and larger part for the period 1920-23 which was ushered in by the Treaty of Versailles and the Rhineland Agreement. Throughout, the author’s treatment places considerable emphasis on the interaction of political and legal, administrative, military and economic considerations and factors, and he succeeds in conveying a very lively sense of the complexities of that occupational regime which were the results, very largely, of certain divergences in policy and resultant difficulties in coordinating the measures of the four powers participating in the occupation. In the discussion of the armistice period, which should be regarded as a case of belligerent occupation, the institutions of the occupying powers, their relations with the occupied country and the prosecution of war criminals are singled out for special consideration.

It will be remembered that the occupied territory at the outset was divided into four zones, with no particular reference to the state lines in that area, but with an eye, essentially, to military and political considerations. At the beginning of the occupation, Marshal Foch, as supreme commander, explicitly referred to the Hague Convention as the basis for the exercise of occupational authority over local government, a declaration all the more important since the German occupation of Belgium had not conformed to these high standards. “During the war,” the author observes on this point, “the German military machine, in occupation of French and Belgium territory, had flagrantly violated the principles of international law and common humanity; and there was a substantial body of opinion to the effect that Germany had forfeited her right to enjoy the benefits of the Hague Convention by ignoring the obligations that it entailed. . . . In these circumstances, a professed adherence to the principles of international law, proclaimed by the French commander in chief, represented a triumph of law over the temptations of revenge. . . . It is true that the occupation did not always conform with the principles laid down at the beginning. But the very fact that they were proclaimed, in the embittered mood of 1918,

5 The Prussian part, by far the largest, was divided among all four powers.
is of considerable significance” (p. 9). Although the Supreme Command retained a measure of supervisory authority and promptly created a special coordination agency on Foch's staff, the commanding generals of the several armies of occupation had far-reaching autonomy. The author states that it was by virtue of the initial proclamation of “martial law” by these commanders that they assumed their sweeping powers. In the American view, military government (which denotes such authority) rather springs from the fact of occupation itself, so that such a proclamation has more a declaratory than a constituent character. In spite of the machinery of coordination the inevitable frictions and tensions were not slow to arise. Even more important, in each of the different areas, the management of civil affairs had its particular character and machinery, in keeping with the institutions and traditions of the several occupying forces. The economic and social distress prevailing among the Rhineland population as a consequence of a disastrous war made it increasingly necessary for the occupational authorities to concern themselves with economic and related questions. Although the armistice agreement had involved an undertaking of relative non-interference in the industrial affairs of the Rhineland, a more active role was thrust upon these agencies. In addition to the inauguration (early in 1919) of various Inter-Allied committees on such problems as food, trade and finance, and blockade, the pressure of mounting needs finally resulted in the establishment of the civilian-staffed Inter-Allied Rhineland Commission in April 1919, under Tirard's chairmanship, a body which soon became in fact the top administrative agency, with a jurisdiction exceeding the economic question for which it had been created. During the six months between the signing and ratification of the peace treaty the Rhineland Commission, formally an agency of the Supreme Command, but practically a civilian organization, in substance directed much of the administrative operations of the several armies of occupation.

6 Under Tirard, a French civilian, who was to wield great powers in the next phase of the occupation.

7 Cf. U. S. ARMY AND NAVY MANUAL OF MILITARY GOVERNMENT AND CIVIL AFFAIRS (December 22, 1943) FM 27-5; OPNAV 50E-3, Sec. I, 1, a: “The term ‘military government’ is used . . . to describe the supreme authority exercised by an armed force over the lands, property, and the inhabitants of every territory, or allied, or domestic territory recovered from enemy occupation, or from rebels treated as belligerents. It is exercised when an armed force has occupied such territory, whether by force or by agreement, and has established its authority for that of the sovereign or a previous government. . . .”
In his discussion of the occupying powers' institutions, Fraenkel brings to light some illuminating and suggestive details on the differences in Allied policy of which the operations of the French sections économiques, maintained to foster commercial relations between French business and Rhineland residents and linked as they were to a long-run Rhineland policy, retain considerable topical interest. Before the lifting of the blockade, their activities (described by General Allen as "scarcely ... germane to a holding force") encouraged private transactions involving profiteering and engendering, rightly or wrongly, a good deal of politically exploitable (and exploited) ill feeling among the population.

As far as the occupational judicial system of this period was concerned, there was, from the outset, a notable emphasis upon the observation of the rule of law, with Foch insisting that no penalties should be inflicted without ordinary court procedure. On the other hand, in at least one zone of occupation, in cases of "police violations," the military commanders inflicted punishment without due process, and in all zones the commanders retained the right to take far-reaching administrative measures against individuals whose conduct, while not in violation of law, was regarded as "reprehensible."

The author emphasizes (p. 24) that, in this phase of the occupation, "a state of siege existed in the occupied Rhineland, and that authoritarian discretion is a necessary consequence of martial law." While the reference to a "state of siege" essentially turns upon a concept of continental domestic law, one might add that "authoritarian discretion" is also the necessary consequence of such belligerent occupation per se, even when modified by armistice terms.

Fraenkel's section on the occupants' relations with the occupied country should contribute to a better understanding of the peculiar problems confronting military government in an environment shaken by a revolutionary crisis. It is a truism to say that it is the fundamental tendency of military government to attach primary value to stability and order and that, therefore, great importance is attributed (both as a matter of practical utility and traditional international law) to the re-

6 A procedure which had been indulged in to an astonishing extent by the German authorities in Belgium: cf, the statistics collected by a German judge and quoted in Ernst Fraenkel, Military Occupation and the Rule of Law, p. 24, n. 3, (1944), hereinafter cited as Fraenkel.

tention of the existing administrative machinery. In a revolutionary situation, this emphasis can lead intentionally or otherwise, to the undue favoring of the established party over its opponents. Our general awareness of this problem, in a period characterized by a succession of such occupational undertakings, is naturally a good deal keener than it was in 1918-1919. In the revolutionary period, which coincided with the armistice, the predominantly moderate Rhineland partisans of a new democratic order in Germany found themselves distinctly rebuffed by the occupational authorities. While the administrative personnel, both high and low, which was largely devoted to the crumbling imperial regime, was retained in office on partly technical, partly political grounds, the revolutionary councils received no recognition. This timely recollection is pointedly summarized by the author:

"By recognizing exclusively the functionaries of the old regime as the legitimate authorities to deal with, the commanding generals of the occupying armies threw their influence not only on the side of law and order but also on the side of the very elements of the population that represented the militarism and nationalism at the roots of the war itself. For the old bureaucracy, despite its 'objectivity' and 'non-political' dedication to its duties, was drawn primarily from the conservative middle classes, and constituted a privileged caste not greatly different in spirit from the officer corps of the old army. When today one looks back at these events, it is evident that the appeasement policy toward German nationalism began even before the German nationalists realized what a tremendous chance was being offered them" (pp. 30-31).

In commenting on the several aspects of the relations with the local agencies, Fraenkel shows, incidentally, that the military authorities did not only assure but, with hardly any exception, respected the independence of German courts and judges in full measure. In the chapter on the prosecution of war criminals, attention is drawn to the fact that a number of war crimes committed by German nationals in the course of Germany's belligerent occupation of Allied territory, were prosecuted and tried during the Rhineland occupation. In the case of such "occupation crimes" (as the author calls them in distinction from those committed in the course of hostilities) particular difficulties of identification

10 Cf. on this point the language of U. S. ARMY AND NAVY MANUAL OF MILITARY GOVERNMENT AND CIVIL AFFAIRS (December 22, 1943) FM 27-5; OPNAV 50E-3, Sec. I, par. 9 and especially subparagraph a.

11 On the whole "strongly in favor of orderly, constructive, republican constitutionalism and federalism" according to John W. Davis, as quoted by FRAENKEL 28.
and apprehension are encountered, so that only a limited number ever comes to trial. This suggests the timeliness and value of Fraenkel’s study of some rather remarkable Belgian and French cases which followed the apprehension of the defendants in the occupied zone.\(^\text{12}\) It must suffice here to remark that the vexing questions of jurisdiction as well as of \textit{respondeat superior} play a central role in them. In the light of recent experience, the case involving the Röchling brothers, leading Saar industrialists, who were tried and sentenced by a French military tribunal for their part in removing machines and materials to their own factories, is of especial interest. An appeal court reversed the original decision, absolving the defendants on the plea of superior orders (pp. 59-60). Dr. Fraenkel’s conclusions from the record as it bears on the contemporary problem are commended to the attention of the specialists. The extraterritoriality of the members of an invading armed force still is something of a legal stumbling block in the path of effective prosecution: “But to claim the privileges of extraterritoriality without adhering to the duties is an abuse of law. Thus if a state in belligerent occupation systematically violates its duty\(^\text{18}\) to prosecute members of its army for crimes against the resident population, it forfeits the privileges of extraterritoriality.” There emerges then, it is contended (p. 66) a “concurrent criminal jurisdiction of the violated state.” All signs at present suggest that domestic tribunals of the injured states, whether ordinary or special, are going to be assigned such a role.\(^\text{14}\)

Fraenkel’s analysis of the pacific phase of the Rhineland occupation, as inaugurated by the Rhineland Agreement, is as full of suggestive matter and insight as the first part. After an examination of the agreement itself, the author again examines the institution of the occupying powers, their relations with the occupied country, and, further, the administration of justice, the jurisdiction of the occupying powers and the touchy question of judicial review by the courts of the occupied country.

The administrator and the civil affairs officer as well as the student of administration will benefit from pondering the anomalous position of the American occupational authority, resulting from the circumstance that, since the United States had not ratified the Peace Treaty

\(^{12}\) \text{Fraenkel} 49 ff.

\(^{18}\) The positivist, of course, may well question whether such a duty exists in international law.

(to which the Rhineland Agreement was subsidiary), the High Commission's supervisory jurisdiction did not extend to the American zone. Gradually, a practical compromise was negotiated, one of many occasions demonstrating General Allen's good sense. The nature of the broad powers vested in the High Commission, an Inter-Allied civilian agency, over the military authorities is again a matter of considerable practical interest. The story of the establishment of a body of local representatives of the commission, liaison agents with both military government and German local government, and the frictions occasionally arising over their jurisdiction, are well worth examining with an eye to the future. In this connection Fraenkel suggests that the exercise of bureaucratic controls by such civilian agents created greater psychological disturbances in the military-minded bureaucracy than that of army officers. It is an interesting observation, open to dispute and suggestive of the complexities involved in all aspects of occupational government which ordinarily entails the intrusion of one culture pattern upon another, with all the attendant problems of mutual misunderstanding.

When it came to the control of local German administration, difficulties arose from the fact that, after all, there was a German federal government whose authority in general was not to be impaired. As particular local situations arose—of which the Dorten abduction affair and the resultant removal of a district president is an illustration—the authority of the High Commission and that of the German Government were not always found to be reconcilable. From time to time, therefore, solutions were found which were more practical than in strict accord with the law as laid down in the Rhineland Agreement. The detailed analysis of the multiple problems arising from a dual administration of law, occupational and local, will be found highly thought-provoking. Even though, in this field, both sides conducted themselves with conspicuous correctness (there was even a growing tendency on the part of the occupying powers to enlarge the jurisdiction of the German courts), questions of jurisdiction, especially, in both criminal and civil law, engendered unavoidable controversy and friction. The extensive use of military police and its power of arrest which could not always be squared with the letter of the law, gave rise to similar difficulties.15

Altogether, this book is a treasure trove of occupational lore, administrative and legal, which well illustrates the inherent limitations and pitfalls of military government. The rule of law is difficult to

15 Cf. Fraenkel 175 ff.
reconcile with a regime of military force, even with the best of intentions. The “discrepancy between the proclaimed principles and their practical application” is probably a fundamental dilemma of all military government exercised by the instrumentalities of democratic states.

II

It is unnecessary to emphasize the usefulness and singular importance of a work such as that undertaken by Dr. Lemkin, a Polish scholar and attorney. Ever since the outbreak of the war and the resultant occupation of extensive areas of continental Europe, the reports of the frequently inhuman and barbarous practices of the Nazis’ occupational regime have multiplied. A large number of pamphlets and monographs dealing with the situation in the several occupied countries have been pouring from the presses in recent years, not to mention the frequently informative information bulletins of the several governments in exile. In addition, a few attempts have been made to produce a more comprehensive survey and interpretation of the character of the once widely advertised New Order, such as the book by a former staff member of the secretariat of the League of Nations, The Spoil of Europe. Dr. Lemkin’s Axis Rule in Occupied Europe is a work which, as he explains, “grew out of a desire to give an analysis, based upon objective information and evidence, of the rule imposed upon the occupied countries of Europe by the Axis Powers—Germany, Italy, Hungary, Bulgaria, and Rumania. This regime is totalitarian in its method and spirit. Every phase of life, even the most intimate, is covered by a network of laws and regulations which create the instrumentalities of a most complete administrative control and coercion. Therefore these laws of occupation are an extremely valuable source of information regarding such government and its practices. For the outside world they provide undeniable and objective evidence regarding the treatment of the subjugated peoples of Europe by the Axis Powers. . . . The author therefore believed that a collection of occupation laws was essential to supplement an analysis of the Axis regime” (p. ix). In addition to a representative body of laws and regulations illustrative primarily of the German occupational practices throughout Europe, the author has produced a close and penetrating analysis of some basic occupational instrumentalities which he follows up in each case with special proposals for the redress of the resultant legal violations and entanglements. For these purposes the book has been divided into three parts. The first part contains the analysis of the principal German techniques of occupation,
under such headings as Administration, Police, Law, Courts, Property, Finance, Labor and Genocide, a term coined by the author which will be explained below (pp. 7-98). The second part (pp. 99-266) is given over to brief and convenient summaries of the legal and administrative situation prevailing under the occupation in the several occupied countries. There are chapters in this part dealing with Albania, Austria, the Baltic states, Belgium, Czechoslovakia, Danzig, Denmark, the English Channel Islands, France, Greece, Luxemburg, the Memel Territory, the Netherlands, Norway, Poland, the U.S.S.R., and Yugoslavia. A third part, in a sense the most significant and by far the most voluminous (pp. 267-640), offers a classified selection of representative statutes, decrees, and other documentary sources of the occupational legislative regime, organized under country headings.

Dr. Lemkin's analysis and interpretation in the first part will be found to be exceedingly substantial, despite the fact that a few fields, such as perhaps his first chapter on administration, might have profited from a somewhat more elaborate and comprehensive presentation. Yet in examining the section on administration this reader was struck with the success of the author in concentrating so much in so little space. It provides a very convenient outline and classification of the administrative organization which has prevailed in occupied Europe. It is a tribute to the author's realism that he subsumes the puppet regimes under this heading of (occupational) administration. A rather useful distinction is made in this connection which this reviewer has not seen put forth so clearly elsewhere, namely that between puppet governments and puppet states. Examples of the former are, or were, found in Norway, in Serbia, Greece and France, while Slovakia and Croatia are rightly described as puppet states. "A puppet state," says the author, "is an entirely new organism created by the occupant, whereas in a puppet government only the governmental functions are a creation of the occupant, whereas in a puppet government only the governmental functions are a creation of the occupant, the original state having been in existence before the occupation. . . . The creation of puppet states or of puppet governments does not give them any special status under international law in the occupied territory. These organizations derive their existence from the will of the occupant and thus ought to be regarded as organs of the occupant. Therefore the puppet governments and puppet states have no greater rights in the occupied territory than the occupant himself. Their actions should be considered as actions of the occupant and hence subject to the limitations of the Hague Regulations" (p. 111). This is both a useful and a sound construction. Another aspect of the Nazis' occupational administration clearly brought out in this chapter, is the series of
practices by which the temporary masters, despite the essentially provisional character of belligerent occupation, have usurped rights of sovereignty in territories both east and west.

The chapter on Police is again substantial and workmanlike. The author, with the aid of judiciously selected evidence and citations, gives a clear picture of the character of the Nazis' police organizations which have been principally employed in the occupational regime. He is properly justified in emphasizing that not only is the political police completely freed from any legal controls, but that it is deliberately organized as the advance guard of the Nazis' political action and therefore to be guided in its activities, according to the commentators of a standard text of the police statute by such "legal sources" as the following in the indicated order:

a) the program of the National Socialist Party and the Fuehrer's book, Mein Kampf;
b) the Fuehrer's opinions as expressed in his speeches and statements;
c) government ordinances;
d) legal literature and court decisions issued after the Nazis' assumption of power.

The intimate personal and organizational connection of police and party is rightly stressed by the author, even though Lemkin is hardly correct in stating that every Germany policeman belongs to the SS. While that is doubtless true for the police personnel recruited in the course of the last eight years or so and for all members of the various political police organizations, it cannot be assumed for a large part of the remaining members of the formerly local police forces in Germany proper. A further important and well-known aspect brought out in this connection and amply documented from many sources is the key role played by the police organizations in the administration of occupied areas and in the actual commission of a large number of war crimes. It is only natural that Dr. Lemkin raises the question of the future punishment of members of these police forces for crimes committed in the countries of occupied Europe, at which point he comes to grips with the vexing problems of superior orders. On this issue the author makes reference, among other authorities upholding the plea of superior orders, to the British Manual of Military Law (p. 24) which he quotes in the edition of 1914, apparently unaware of the fact that there is an edition of 1929,

amended in 1936. Since it will be gratifying to the author and to others to know that by a very important recent amendment (of 1944) the British Manual has reversed its original doctrine on that point, it may not be inappropriate to cite the new provision:

"The fact that a rule of warfare has been violated in pursuance of an order of the belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. Undoubtedly, a court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received. The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot, therefore, escape liability, if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity."  

On the basis of the earlier provision of the British Manual and many other similar sources Dr. Lemkin rightly refers to the "considerable difference of opinion among the authorities on international law as to the admissibility of the plea of superior orders" (p. 24). Yet he is of the opinion that such a plea could not successfully be invoked by the SS and police for primarily the following reasons: 1) contrary to the Hague Regulations, the police of the Nazis have not undertaken merely acts necessary to insure order and safety, but have engaged in systematic activities aiming at the destruction of nations; 2) the conduct of the SS and the police in the occupied countries is part of a systematically planned pattern for which they have been trained and in which they believe; 3) these are voluntary services unlike that of the Army; 4) the German police has large discretionary powers and, consequently, often gives individual members opportunity to reach decisions for which they cannot disclaim personal responsibility.

While the soundness of this reasoning and of some supplementary arguments cannot well be denied, it should be added that actually there are more obvious and positive grounds for rejecting in the future, in

18 Amendment No. 34, April, 1944, HMSO. I am indebted for this citation, as well as for some further valuable suggestions, to Major Morris Zimmerman of the Judge Advocate General's School in Ann Arbor, Michigan.
the normal run of cases, the defense plea of superior orders. As another Polish lawyer, Dr. Rafael Taubenschlag, has recently, and quite correctly, pointed out, the German military code now in operation, which is not only applicable to members of the army itself but, according to its paragraph 155, "to all persons who in their capacity as officials or contractual employees are with the belligerent army and to all others who stay with or accompany the belligerent army," provides in paragraph 47 that in spite of orders the subordinate has the duty to use his judgment. The provision reads as follows: "Where the execution of an order in a military matter violates a penal law, the superior who gave the order is alone responsible therefor. However, the subordinate who obeyed the order shall be punished as a participant (i.e., as an accomplice, instigator or accessory) if he knew that the order concerned an act which aimed at a civil or military crime or offense."19

In his discussion of law and of courts in the occupied areas, the author points to the large-scale and illegal introduction of German law into non-German occupied territory, to certain enforced departures in the interpretation of the law, such as the use of analogy in criminal law in keeping with Nazi domestic practices, and the deliberate undermining of established procedures in the administration of justice, culminating in the denial of justice to whole ethnic groups and the wholesale superseding of local courts by the occupant's military and special civil tribunals. In this connection the question may be raised whether the author is right in regarding the introduction of extraterritoriality for German civilian nationals as quite so striking a departure. Perhaps it should be described as the abusive extension of a time-honored device. It is not an uncommon practice for military government to remove cases involving its civilian nationals from the jurisdiction of local courts, inasmuch as, unlike the situation in certain Axis-occupied areas, the majority of such civilians under belligerent occupation are normally in some fashion connected with the occupant's armed forces. For instance the United States Army and Navy Manual of Military Government and Civil Affairs provides that "if the criminal courts of the occupied territory are open and functioning satisfactorily, they should ordinarily be permitted to try persons charged with offenses against local criminal laws, not involving the rights, interests, or property of the United States or other persons serving with the occupying forces and subject

19 I refer to Dr. Taubenschlag's communication to the New York Times, December 31, 1944, 8E:7; it is an aspect which Sheldon Glueck in his recent treatment of the problem similarly failed to take into account; cf. his War Criminals, Their Prosecution and Punishment 150 ff. (1944).
to military or naval law of the United States." 20 A similar provision is made for civil local courts. These provisions embody a policy which is designed for fairly broad application. One might also refer to an example from the pacific phase of the Rhineland occupation. Article 3c of the Rhineland Agreement of 1920 exempted from the civilian and criminal jurisdiction of the German courts the armed forces and "persons accompanying or employed by them." 21

In the chapter on property the author provides an excellent survey of the occupying power's practices with regard to both public and private property. He places special emphasis upon the large-scale violations of the pertinent rules of international law, such as the fundamental rule of article 46 of the Hague Regulations which provides that "family honor and rights, the lives of persons, and private property, as well as religious convictions and practices must be respected. Private property can not be confiscated." A good example of the Nazis' occupational practice in the east, much more drastic in many ways than in most western areas, is a decree of September 17, 1940, proclaimed for the western part of Poland 22 which provides for the mass sequestration and confiscation of property if such property is required for "the public welfare, particularly in the interests of Reich defense or the strengthening of Germanism." There is good reason to believe that it is part of the implications of modern total warfare that sequestration will be invoked by all belligerents more so than in World War I. In individual cases, property which is vital to the needs of the civilian population or the needs of the occupant and the civil population may be placed under the direct control and management of the occupant. This is not confiscation but a temporary possession of property which is returned to the owner when the need which prompted the action no longer exists. 23 In principle it would seem that the injunction of the Hague Regulations against confiscation would require that the owner be compensated to the extent of the net profits earned by the occupant, if any. 24 It might have been well for the author to enlarge upon a matter as important as the relation of Article 46 of the Hague Regulations and the technique of sequestra-

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21 Fraenkel 150.
22 Decree concerning the Treatment of the Property of Citizens of the Former Polish State, September 17, 1940. Lemkin 511 ff.
23 Cf. 2 Oppenheim, International Law, 6th ed. by H. Lauterpact, p. 313 (1940); Donaldson, International Economic Relations 100 (1928).
24 Cf. Spaight, War Rights on Land 413 (1911).
In any event, the author's conclusion, that the sequestrations by the Nazis as a means for enrichment or for political purposes are illegitimate, is sound. The infringements upon private property by the Nazis' military government, if properly understood as part of a total pattern, doubtless violate the requirements of international law in letter as well as in spirit.

The author's plan for the solution of the problem of the restitution of property after liberation will repay careful examination by those working in this immensely complex field. In order to facilitate and integrate the development of necessary practical procedures, the author recommends the establishment of an International Property Restitution Agency with national autonomous branch agencies in each of the countries concerned. Some such measure will doubtless have to be adopted. The immensity of the problem, proportional to the enormity of the looting, formalized and informal, will probably provide a need for years of the most highly skilled legal surgery.

On a few pages the author succeeds in giving a most concise and carefully drawn survey of the Nazis' financial practices from which the closely woven network of currency manipulation, exchange controls, taxation, confiscation of gold reserves and foreign exchange, and clearing devices plainly emerges as a pattern of systematized spoliation. That, as a whole and as a series of individual practices, these measures have far exceeded military necessity and flagrantly violated such provisions as articles 46, 53, and 56 of the Hague Regulations cannot be seriously doubted upon inspection of this analysis and the relevant materials. In his proposals for redress, the author recommends the creation of an International Liquidation Agency for Occupation Finance which is to be charged with the necessary measures specifically enumerated by the author (p. 66). A critical examination of the author's proposals in this field would exceed this reviewer's qualifications.

Of the remaining analytical chapters the one on "Genocide," in conjunction with the preceding one on the legal status of Jews, is of special significance and originality. The author has here coined a new term "to denote an old practice in its modern development," a useful conceptual tool to apply to the population policies by which the Nazis have revived the memory of Genghis Khan and Tamerlane: "Generally speaking," he explains, "genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups them-
selves. ... Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group" (p. 79). Two phases of this destructive process are distinguished by the author: the destruction of the national pattern of the oppressed group and the imposition of the national pattern of the oppressor. It is not entirely clear whether, by the author's own definition, he does not thereby exclude the anti-Jewish policy because the Nazis certainly have at no time manifested an intention of imposing their own national pattern on them. As he specifically emphasizes, genocide so understood is the deliberate antithesis of the Rousseau-Portalis doctrine which underlies the Hague Regulations, and which holds that war is waged against sovereigns and armed forces, not against civilian populations. Such a deliberate reversion to primitivism becomes no less objectionable when it occurs in a world where modern total warfare, even as conducted by those who fundamentally repudiate the Nazis' totalitarian conceptions, increasingly draws civilian populations into its vortex. In the concluding pages of this part the author soberly and impressively outlines the fundamental techniques—political, social, cultural, economic, biological, physical, religious, and moral—which have been used by the Nazis in their systematic war against "inferior" and even some "racially superior" peoples of continental Europe. In the light of this analysis and of the steadily mounting European record of relevant brutal facts, the author's recommendations for the future are of the highest significance. He justly points out that, while the pertinent rules of the international law of war as laid down in the Hague Convention,\(^2\) protect certain essential rights of the individual, they do not embody an integrated legal policy commensurate with the problem: "... These rules do not take into consideration the interrelationship of such rights with the whole problem of nations subjected to virtual imprisonment. The Hague Regulations deal also with the sovereignty of the state, but they are silent regarding the preservation of the integrity of a people" (p. 90). This is a legal situation which is in imperative need of change, a change for which the more recent evolution of international law, in terms of its widening recognition of the rights of minorities as such, has prepared the way. The author recalls, with justifiable, though regretful satisfaction, that as early as 1933\(^2\) he vainly recommended the formulation of two new international law crimes to be adopted by the legisla-

\(^{25}\) Cf. Preamble, arts. 46, 48, 52, 56.

\(^{26}\) On the occasion of the Fifth International Conference for the Unification of Penal law, held at Madrid. \textit{Lemkin 91}. 

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The draft was designed to outlaw genocidal practices and provided internationalization to the extent of permitting apprehension and punishment by any signatory state. His present recommendations, to this reviewer, seem an important practical contribution, may be summarized as follows:

a) A revision of the Hague Regulations adequate to outlaw genocide which is to consist of “two essential parts: in the first should be included every action infringing upon the life, liberty, health, corporal integrity, economic existence, and the honor of the inhabitants when committed because they belong to a national, religious, or racial group; and in the second, every policy aiming at the destruction or the aggravation of one of such groups to the prejudice or detriment of another.

b) By analogy to the existing and functioning international control agencies charged with the investigation of the treatment of prisoners of war, a similar agency should be established, under the amended Hague Regulations, with power to investigate and inquire into the treatment of populations under military occupation.

c) Considering that the problem involves the law of peace quite as much as the law of war, an international multilateral treaty should provide for national legislation and machinery expressly designed to outlaw genocidal practices: it should clearly establish the full responsibility of agents executing superior orders (provide, in other words, for a special modern “right of resistance”) and subject offenders to the principle of universal repression.

Because of the terrible importance of this question for our generation, these recommendations should command the widest possible attention. Especially the framers of an international Bill of Rights will do well to ponder their implications.

Space does not permit a similarly detailed analysis of part II, which is devoted to a discussion of the occupational regimes in the several countries, nor a close examination of the documentary materials. Each of the brief area chapters contains succinct and surprisingly complete information on a number of basic administrative, legislative and economic developments during the occupation. The selection of representa-

27 Lemkin defined them as “barbarity, conceived as oppressive and destructive actions directed against individuals as members of a national, religious or racial group,” and as “vandalism, conceived as malicious destruction of works of art and culture because they represent the specific creation of the genius of such groups” (p. 91). (Italics supplied). These are admirably formulated and one cannot help deploping that we are not now in the possession of such useful legal tools.

28 Lemkin 93. (Italics supplied).
tative laws of occupation varies in scope for the several countries. While the reader will find twenty-five pages of materials for Luxem­burg, there are only eight for Norway; Poland, with a much more com­plex occupational regime, is given about fifty pages in this section. On the whole, the student who is looking for some basic statements of policy will easily find them and will, moreover, be indebted for the use of a voluminous bibliography and an adequate index for further reference and cross-reference. Dr. Lemkin and the Carnegie Endowment are to be congratulated on this very substantial work which will constitute an indispensable tool in the hands of the general student of public affairs, the international lawyer, the political scientist, the economist, and the administrator, both civilian and military.

The great issues raised in the course of the occupation of one country by the forces of another, issues of a legal, political, administrative, eco­nomic, social and moral character, have been strikingly brought to light by Messrs. Fraenkel and Lemkin. They have presented the record and analysed it with care and balance. While the reader leaves them in the expectation that the task in process will profit from past experience, his gaze is captured by the image of a world in which occupation, belliger­ent or otherwise, shall seem as archaic an institution as war itself.