

EDITORIAL COMMENT

IN MEMORIAM: EDWIN M. BORCHARD, 1884-1951

Edwin M. Borchard, lawyer, scholar, teacher, public servant, and kindly humanitarian, died July 22, 1951, after a lingering illness. Born in New York, October 17, 1884, he received his LL.B. at New York Law School in 1905 and a Ph.D. at Columbia University in 1913. He was awarded honorary degrees of Doctor of Laws by the University of Berlin in 1925 and by the University of Budapest in 1935. He served as expert on international law to the American Agency, North Atlantic Coast Fisheries Arbitration at The Hague in 1910; as Law Librarian of Congress from 1911 to 1913 and from 1914 to 1916; as Assistant Solicitor, Department of State, 1913-1914; as chief counsel for Peru in the Tacna-Arica Arbitration; as special legal adviser to the Treasury Department; as technical adviser to the American Delegation to The Hague Codification Conference of 1930; and as a member of the Pan American Committee of Experts for the Codification of International Law.

In 1917 Mr. Borchard became Professor of Law on the faculty of the Yale University Law School, where he taught international law to a generation of students and produced some distinguished disciples.

Professor Borchard was an able and productive scholar. His monumental study of *The Diplomatic Protection of Citizens Abroad*, published in 1915, remains without peer in the literature of international law. In the same field, his mastery of the subject was demonstrated in his preparatory studies for the draft of the *Institut de Droit International* and in the comment of the Harvard Research in International Law Draft on the Responsibility of States for Injuries to Aliens, and in numerous articles in legal periodicals. A member of the Board of Editors of this JOURNAL from 1924 until his death, Mr. Borchard enriched and enlivened its pages for a quarter of a century with sound scholarship and incisive comment.

In addition to his other duties, Mr. Borchard found time to compile *Coastal Waters* (1910); *Guide to Law and Legal Literature of Germany* (1911); *Bibliography of International Law and Continental Law* (1913); *Commercial Laws of England, Scotland, Germany and France* (with A. J. Wolfe, 1915); *Guide to Law and Legal Literature of Argentina, Brazil and Chile* (1917); and *Latin-American Commercial Law* (with T. Esquivel Obrégon, 1920). In 1917 Mr. Borchard translated and edited Fiore's *International Law Codified*.

Following his life-long friend and mentor, John Bassett Moore, Mr. Borchard became a strong partisan of neutrality for the United States prior to

both World Wars. In 1937 (new edition with W. P. Lage in 1940) he published an incisive analysis of legal and political aspects of the problem under the title, *Neutrality for the United States*. So imbued did he become with the idea that the United States had taken the wrong path in the two World Wars and their aftermath that he tended to become polemical against the participation of the United States in efforts at collective security, and profoundly skeptical of general international organizations.

Professor Borchard's professional interests were not confined to international law. With a zealous humanitarian interest in legal reform, he published *Declaratory Judgments* in 1918 and his influential book, *Convicting the Innocent* in 1932. As a result he was instrumental in drafting the Declaratory Judgments Act, the Tort Liability Act, and the State Indemnity for Innocents Act in United States law.

For more than a quarter of a century, Professor Borchard was an active and stimulating participant in the affairs of the American Society of International Law. His recognized erudition, his willingness to tilt a lance for causes he held dear, and his kindly interest in younger scholars won him the affectionate regards of a host of friends. A great legal scholar and a warmly humane man has passed from our midst.

HERBERT W. BRIGGS

NATIONALIZATION OF FOREIGN-OWNED PROPERTY IN ITS IMPACT ON INTERNATIONAL LAW

The nationalization of foreign-owned property presents problems which put a severe strain upon some of the accepted principles of international law. Chandler Anderson, one of the founding members of the American Society of International Law, pointed out nearly a quarter of a century ago that the principle which safeguards foreign-owned property from confiscation in time of peace "has become a part of the law of nations not merely because it represents a universally recognized standard of justice, but also because it is absolutely essential for the welfare of every nation, for without its protection no commercial, or financial international intercourse could safely be carried on."¹ Since that time, the practice of expropriating foreign property by "nationalization" has spread from Soviet Russia to other countries constituting important parts of the free world strongly opposed to Communism.

The most recent case of nationalization has brought about the tension between Great Britain and Iran because of the nationalization of the property of the Anglo-Iranian Oil Company. This has introduced some new phases of the problem, because the property seized was not owned by private interests alone but by a corporation, the majority of the stock of which

¹ C. P. Anderson, "Bases of the Law against Confiscating Foreign-owned Property," this JOURNAL, Vol. 21 (1927) p. 526.