

Such a statement reflects a clear lack of realization that authority carries with it a degree of responsibility. No paper majority, in and of itself, could have converted the great powers to support sanctions against Italy. In this instance, as in many others, *The American Tradition in Foreign Policy* presents an unsophisticated picture of the political process which presupposes the existence of a powerful sense of community among nations, when, in fact, such a community is still struggling to be born. In this respect it follows in the tradition of the old-line peace advocates who objected to the intrusion of "politics" into international relations and who cherished as an ideal international cooperation and a federation of the nations upon the basis of a universal international legal norm, but who failed to appreciate the primitive nature of international law.

Thus, in numerous ways *The American Tradition in Foreign Policy* obscures with slogans vital issues which require consideration. The book suffers, furthermore, from being loosely organized and inexcusably redundant.<sup>10</sup>

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THE LEGAL ASPECT OF MONEY. By F. A. Mann. Second Edition. New York: Oxford University Press, 1954. Pp. xi, 488. \$6.15.

The enormous depreciation, and in several instances complete collapse, of numerous currencies, together with the great disequilibrium of international balances of payment and other economic changes which have emerged from the two great wars, have brought to the forefront the importance of monetary law. The gold standard toppled. What was believed to be its automatic mechanism safeguarding the stability of the value of money was supplanted by legislative fiats.<sup>1</sup> In numerous countries gold and other valuation clauses were outlawed.<sup>2</sup> Severe exchange control restrictions, and discriminatory trade practices frequently curtail

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10. Tannebaum stated his case more effectively in an article, of which this book is an expansion. See, for example, *The Balance of Power Versus the Co-ordinate State*, 67 POL. SCI. Q. 173 (1952).

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1. For some of the writings on this subject, see NAT'L INDUSTRIAL CONFERENCE Bd., *SHALL WE RETURN TO THE GOLD STANDARD—NOW?*, STUDIES IN BUSINESS ECONOMICS No. 43 (1954); KENT, *MONEY AND BANKING* 21, 22, 59 (1951); BEYEN, *MONEY IN THE MAELSTROM* 37-39 (1949).

2. 48 STAT. 112, 31 U.S.C. § 463 (1952); Gold Clause Act, 1937, 1 GEO. 6 c. 33 (Canada); Gold Clause Act, 1939, 3 GEO. 6 c. 45 (Canada). With respect to other countries, see NUSSBAUM, *MONEY IN THE LAW* 280-83 (1950).

the freedom to contract, to discharge, or to enforce obligations where non-residents or foreign currencies are involved. Single or multiple rates of exchange have been enacted by numerous countries<sup>3</sup> and so-called black, gray, and free market rates of exchange have made their appearance.<sup>4</sup> Some of the issues have become the subject matter of unique, and sometimes vague, international agreements.<sup>5</sup>

These phenomena have confronted the courts with almost unprecedented problems. It is only natural that the court decisions in this novel field are frequently inconsistent and ill-founded.<sup>6</sup> Rather than diminish, they have further increased the risks of international commerce.

Dr. Mann's book, as in its first edition,<sup>7</sup> presents a systematic analysis of this new branch of the law. However, the second edition has been substantially enlarged and some of the author's conclusions on important problems have been changed. To a considerable extent, it may be said to be a new book. These facts, and the author's great reputation giving weight to his views, justify a critical review.

The author's examinations generally start with English law. From there he proceeds to a comparison with foreign laws, and to the conflict of laws.

In the first two parts of the book<sup>8</sup> the author analyzes the legal characteristics of money and monetary obligations, both domestic and foreign, the effect of the nominalistic principle on their quantum, the nature and role of gold and other valorization clauses, the importance of the proper determination of the money of account and of the money of payment, and the metamorphosis of foreign money obligations into the

3. INT'L MONETARY FUND, FIRST ANN. REP. EXCH. RESTR. (1950). On present restrictions see INT'L MONETARY FUND, SIXTH ANN. REP. EXCH. RESTR. (1955).

4. MIKESSELL, FOREIGN EXCHANGE IN THE POSTWAR WORLD 173, 190, 460-65 (1954); PICK, BLACK MARKET YEARBOOK (1954); KENT, MONEY AND BANKING 547, 575-77 (1951); KRIZ, *The Price of Gold*, in PRINCETON UNIVERSITY ESSAYS IN INT'L FINANCE No. 15 (1952). Among the numerous cases on the subject are *Hughes Tool Co. v. United Artists Corp.*, 279 App. Div. 417, 110 N.Y.S. 2d 383 (1952), *aff'd without opinion*, 304 N.Y. 942, 110 N.E.2d 884 (1953); *Marrache v. Ashton*, [1943] A.C. 311. See also cases cited in GOLD, THE FUND AGREEMENT IN THE COURTS, INT'L MONETARY FUND STAFF PAPERS 316 (1951).

5. *E.g.*, Articles of Agreement, Int'l Monetary Fund, 1944, T.I.A.S. No. 2187; Loan Agreement between United States and United Kingdom, 1946, T.I.A.S. No. 1545; General Agreement on Tariffs and Trade, 1949, T.I.A.S. No. 1700. With respect to the 1955 amendment of the latter, see Bronz, *An International Trade Organization—The Second Attempt*, 69 HARV. L. REV. 440 (1956). On the novel features of some of these agreements, see BEYEN, *op. cit. supra* note 1, at 2; Gold, *The Interpretation by the International Monetary Fund of Its Articles of Agreement*, 3 INT'L & COMP. L. Q. 256 (1954).

6. *Celia v. Volturmo*, [1921] 2 A.C. 544, 548; GRAVESON, *The Discharge of Foreign Money Obligations in English Courts*, in UNIVERSITY OF MICHIGAN LECTURES ON CONFLICT OF LAWS AND INTERNATIONAL CONTRACTS 112 (1951).

7. Oxford University Press (1938).

8. Pp. 1-331.

money of the forum in legal proceedings instituted in common law countries.

One of the most striking innovations is Dr. Mann's courageous attempt to prove that under the English law, post-maturity damages for depreciation of foreign, or even English, money are not necessarily too remote to be recoverable.<sup>9</sup> If correct, this would bring an end to what appears to be a rule of English law that conversions of foreign money obligations into sterling are to be effected as of breach or maturity-day, irrespective of whether the outcome will give reparation to the injured party or result in a windfall.<sup>10</sup> Unfortunately, the realistic conclusions to the contrary reached by Dr. Mann in his earlier writings,<sup>11</sup> by Professor Kahn-Freund in Dicey's *Conflict of Laws*,<sup>12</sup> and elsewhere,<sup>13</sup> still appear to be more in accordance with the weight of English judicial authority.<sup>14</sup> Dr. Mann seems to be looking to the future. He may desire to expose the unsoundness of the present English doctrine rather than to deny its existence. In this respect his opposition to its perpetuation is most commendable.

The author correctly points out that the situation is different in the United States. However, he fails to recognize the growth of a new and well-founded doctrine on which the modern American decisions are based.

A survey of numerous American cases, some of which actually do or may appear to contradict each other, convinces him that different rules have been adopted by federal and New York courts. He suggests that under the federal rule the valuation is to be effected at the judgment-day rate of exchange where the payment was due in a foreign country;<sup>15</sup> and that the breach-day rate of exchange is proper where it was due in the United States. Similar views have been expressed by others by whom he seems to have been influenced.<sup>16</sup> Dr. Mann qualifies his

9. P. 87.

10. Evan, *Rationale of Valuation of Foreign Money Obligations*, 54 MICH L. REV. 307, 323 (1956).

11. MANN, *THE LEGAL ASPECTS OF MONEY* 78, 214 (1st ed. 1938). See also Mann, *The Rate of Exchange: An Urgent Appeal for a Minor Reform of the Law*, 15 MODERN L. REV. 369 (1952).

12. Rules 160(2), 165(2) (6th ed. 1949).

13. See Kahn-Freund, *Foreign Currency Obligations and the Devaluation of Sterling*, 68 L.Q. REV. 163 (1952).

14. See note 10 *supra*.

15. P. 309.

16. RESTATEMENT, *CONFLICT OF LAWS* §§ 423-24 (1934); 2 BEALE, *CONFLICT OF LAWS* §§ 423.1-24.1 (1935); RESTATEMENT, *CONFLICT OF LAWS*, NEW YORK ANN. §§ 423-24 (1935). Similar conclusions were reached in numerous other writings and cases, e.g., Shaw, Savill, Albion & Co., Ltd. v. The Fredericksburg, 189 F.2d 952 (2d Cir. 1951). Note, however, that in this case the equities of the outcome were also considered by the court. See also *Paris v. Central Chicleria S. de R.L.*, 193 F.2d 960 (5th Cir. 1952).

conclusion by adding that the doctrines propounded by the Supreme Court of the United States "are not yet clearly established" and that there is no "satisfactory line of demarcation" between New York cases applying the breach-day conversion rule and others in which the foreign currency is valued at the rate prevailing on the day of the trial court's judgment.<sup>17</sup>

As illustrated by this reviewer elsewhere,<sup>18</sup> these views appear too gloomy. By trial and error our courts appear to have developed a new, just, and rational rule. A thorough analysis of the cases, including the affirmance of *Hughes Tool Co. v. United Artists Corp.*<sup>19</sup> by the New York Court of Appeals after Dr. Mann's book went to press, shows that all purely mechanical valuation rules were rejected by our courts. Where the creditor elects to claim compensation for his loss from depreciation of foreign money after maturity, recovery appears to be subject to the doctrine of consequential damages. This excludes losses which could not have been reasonably expected by the parties. It permits a recovery for others which are not so remote. The selection of a proper valuation date becomes one of the most important factors in the measuring of the correct quantum of damages. The date will necessarily fluctuate, although most frequently, where the valuation is based on our substantive law of damages, the breach or maturity day will be proper.

It is only with respect to conversions required solely by reason of our *procedural* rule that judgments are to be expressed in our national currency,<sup>20</sup> and that the ultimate foreign money obligation, which may or may not include damages, is to be valued at the judgment day rate of exchange.<sup>21</sup>

A large portion of the third and the entire fourth part of the book are new. In these two parts, Dr. Mann outlines the principles of exchange control in the United Kingdom, the effect of foreign exchange control and of the International Monetary Fund Agreement (Bretton Woods)<sup>22</sup> on the conflict of laws, rate of exchange problems, and what he refers to as international law of money.

His views on the recognition due foreign exchange control restrictions outside the legislating country are based primarily on general theories of conflict of laws. He has misgivings about the much dis-

17. Pp. 311-15.

18. See note 10 *supra*.

19. 279 App. Div. 417, 110 N.Y.S.2d 383 (1952), *aff'd without opinion*, 304 N.Y. 942, 110 N.E.2d 884 (1953).

20. 1 STAT. 250, 31 U.S.C. § 371 (1952); *Frontera Transportation Co. v. Abaunza*, 271 Fed. 199 (5th Cir. 1921).

21. *Evan, supra* note 10, at 340-41.

22. See note 5 *supra*.

cussed House of Lords decision in *Kahler v. Midland Bank*.<sup>23</sup> which gave far-reaching recognition to foreign exchange restrictions with respect to property situated outside the restricting country. Dr. Mann suggests that such restrictions should not affect the owner's rights *in rem*. At most, he would limit the importance of the decision to the question of possession as distinguished from title.

His interpretation of the International Monetary Fund Agreement and particularly of art. VIII (2) (b),<sup>24</sup> insofar as it exceeds the scope of the conflict of laws doctrines, may be said to follow a middle-of-the-road course. The pertinent provision of art. VIII, using most ambiguous language, speaks of "exchange contracts" which "involve" the currency of any member and which "are" contrary to exchange control regulations of that member maintained and imposed "consistently" with the Fund Agreement. It makes them unenforceable in the territories of any member. Dr. Mann's construction is opposed to tainting a great variety of claims with unenforceability, including such as may be based on rights *in rem* or on purely domestic contracts in which an action was instituted abroad. They should not be so tainted, he says, merely because the claim may have become contrary to the exchange restrictions of a country whose currency may have been involved.<sup>25</sup>

Yet, his construction of the novel provision is far less restrictive than that of Professor Nussbaum. The latter would limit the meaning of "exchange contracts" to contracts having "as their immediate object 'exchange,' that is international media of payment."<sup>26</sup>

Contrary to the more radical views of some writers,<sup>27</sup> Dr. Mann also questions the binding force of the Fund's interpretation of art. VIII(2) (b) by its executive directors under art. XVIII, which would greatly curtail the power of the courts.<sup>28</sup>

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23. [1950] A.C. 24. See also the companion case, *Frankman v. Zivnostenska Banka*, [1950] A.C. 57. *But cf.* *Matter of Liebl*, 201 Misc. 1102, 106 N.Y.S.2d 715 (1952).

24. 59 STAT. 516, 22 U.S.C. § 286(h). The act expressly enumerates art. VIII(2) (b) of the Fund Agreement among the provisions which "shall have full force and effect" in this country. But note that art. IV and XVIII, mentioned further below, are not among those enumerated.

25. Such an extensive interpretation was given to art. VIII(2) (b) in Meyer, *Recognition of Exchange Controls After the International Monetary Fund Agreement*, 62 YALE L.J. 867, 885 (1953).

26. Nussbaum, *Exchange Control and the International Monetary Fund*, 59 YALE L.J. 421, 426 (1950); NUSSBAUM, *MONEY IN THE LAW* 542 (1950).

27. Gold, *supra* note 5; Van Campenhout, *International Monetary Fund*, 2 AM. J. COMP. L. 389 (1953).

28. Similar doubts were expressed by others, *e.g.*, Nussbaum, *Exchange Control and the International Monetary Fund*, 59 YALE L. J. 421, 426 (1950); NUSSBAUM, *MONEY IN THE LAW* 528-29, 540 (1950).

The vagueness of the court decisions on the subject of exchange control does not permit any clear forecast. The courts may well find Professor Nussbaum's moderation more acceptable.

The new chapter on valuation of foreign currencies correctly points out that no rule of law exists for appropriately determining the type of exchange in all cases. However, when it comes to the choice between the so-called official or the free-market rate of exchange, the reader may infer from Dr. Mann's somewhat indefinite statements<sup>29</sup> that, except where a country adopted multiple rates of exchange,<sup>30</sup> all other than the so-called official rate are merely "pseudo-rates." Dr. Mann points out that "what happens in law is that a price is being paid for the assignment of a debt" and more particularly of a blocked bank account. It is true that in law such accounts are choses in action distinguishable from currency units. However, foreign money obligations, unaffected by exchange control restrictions, are also choses in action. Still, their value is primarily measured by the rate of exchange. Moreover, in the American free market, foreign currency units are frequently bought and sold at the free-market rate, and sometimes physically delivered.

In order to stay within the limits of a book review, only a few remarks can be added in order to prove that the American free-market rates are not necessarily "pseudo-rates." The starting point is the relation of the dollar to gold. Dr. Mann's view, that it is the same as of the pound sterling, does not appear accurate.<sup>31</sup>

This country is on a restricted international gold bullion standard.<sup>32</sup> Foreign central banks may actually redeem the dollar for gold.<sup>33</sup> The pound sterling is not so convertible.<sup>34</sup> This may have considerable ramifications under art. IV, sec. 4(b) of the International Monetary Fund Agreement.<sup>35</sup> The subsection's second sentence provides in substance

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29. Pp. 395-97.

30. Such multiple rates of exchange were adopted by numerous countries. See INT'L MONETARY FUND, SIXTH ANN. REP. EXCH. RESTR. 8-10, 14 (1955).

31. P. 30.

32. BOGEN, FOSTER, NADLER & ROGERS, MONEY AND BANKING 66 (1953); KENT, MONEY AND BANKING 90, 428 (1951).

33. See International Gold and Dollar Movements, 40 FED. RESERVE BULL. 237 (1954).

34. DAY, THE FUTURE OF STERLING 6, 120 (1954); INT'L MONETARY FUND, FIFTH ANN. REP. EXCH. RESTR. 5, 307 (1954); *id.* SIXTH ANN. REP. 2 (1955). See also art. VIII, § 4 of the Fund Agreement limiting the international convertibility of currencies of member countries availing themselves of exchange restrictions under art. XIV, § 2. For the ramifications of a future convertibility of the sterling, if the United Kingdom reverts, on discriminatory quantitative restrictions, see Bronz, *supra* note 5, at 460.

35. Art. IV, § 3 of the Fund Agreement limits "the maximum and the minimum rates for exchange transactions between currencies of members taking place within their territories" to a certain margin based on parity, the so-called "par value" under the Fund Agreement. The first sentence of § 4(b) reads: "Each member undertakes,

that members whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the agreement shall be deemed to be fulfilling the provision requiring members to permit exchange transactions only at par values, more or less the "official" rates of exchange. This presumption appears to constitute a quite logical exemption of countries, including the United States, which redeem their currency in gold internationally.<sup>36</sup> Hence, it seems that the legality of the American transactions at other than the official rates of exchange cannot be doubted. There are certainly situations in which a free-market rate may be not only the genuine, but also the proper rate of exchange.

In a subject as novel, and in many respects as unsettled, as the law of money, these and other differences of opinion, whatever their justification, do not detract from the value of a book. It is Dr. Mann's analysis, systematic presentation, and classification of the respective problems, his profound knowledge and understanding of the same, both in their national and international settings, the clarity of thought, and accumulation of invaluable material, which give the work its great and permanent value.

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MONOPOLY IN AMERICA: THE GOVERNMENT AS PROMOTER. By Walter Adams and Horace M. Gray. New York: The Macmillan Company, 1955. Pp. xv, 217. \$4.00.

We often wonder how much good the Sherman Act accomplishes but we can never hope to have very accurate information on the question. Obtaining it would probably require experimentation on a scale which we cannot afford to risk. Instead, we put our faith in the proposition, for which there is at least some evidence, that such laws do in-

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through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article." This is followed by the second sentence discussed in the text above. As pointed out in note 24 *supra*, art. IV is not among the provisions stated to have full force and effect in this country. See NUSSBAUM, MONEY IN THE LAW 532 (1950). He questions the internal, as distinguished from the international, force of the provisions of the Fund Agreement which were omitted.

36. NUSSBAUM, MONEY IN THE LAW 535 (1950); Nussbaum, *The Legal Status of Gold*, 3 AM. J. COMP. L. 360, 361 n. 8 (1954). See also GOLD, THE FUND AGREEMENT IN THE COURTS, INT'L MONETARY FUND STAFF PAPERS 316 n. 3 (1951).

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