Has France A Legal Case?

IN the discussions in the press, justification of the French invasion of the Ruhr has arisen for the most part out of general considerations: we fought on the side of the French and against the Germans. Germany did much damage to France and is under moral as well as treaty obligations to make reparation. France has a right to reparation. If Germany fails to meet her obligations France is justified in seizing German territory and property. Such is a brief epitome of the arguments by which France's course is defended. On the other hand, the question of legality has received surprisingly little attention and surprisingly superficial treatment.

Our "Sense for Legality"

So largely has the question of the legality of France's course been passed over, or else conceded without argument, that one may well ask: Are we losing our sense for legality in general? A lawyer's "letter to the editor," in one of our leading newspapers recently adopted the positions of M. Poincaré and elaborated them, to make out what looked like an impregnable argument in favor of the French contention. But how did he do this? By ignoring completely the only provision of the Versailles Treaty that fixes the limits of territory that might be occupied by the Allied armies. That provision is found in paragraph 428 of the Treaty. It reads:

> As a guarantee for the execution of the present Treaty by Germany, the German territory situated to the west of the Rhine, together with the bridgeheads, will be occupied by the Allied and Associated troops for a period of fifteen years from the coming into force of the present Treaty.

The language of this provision is so clear and simple, there is such an aspect of finality to it, that it would seem incredible that any power should venture to ignore or evade it. What legal justification does M. Poincaré put forward for occupying territory not included within the limits of this paragraph? He bases his case upon sections 17 and 18 of Annex II of Part VIII, and also upon paragraph 248. The two sections are as follows:

> 17. In case of default by Germany in the performance of any obligation under this part of the Treaty, the Commission will forthwith give notice of such default to each of the interested Powers and may make such recommendations as to the action to be taken in consequence of such default as it may think necessary.
>
> 18. The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

Paragraph 248 makes reparation payments "The first charge upon all the assets and revenues of the German Empire and its constituent states."

Do any of the stipulations just quoted give France the right to invade German territory beyond the limits prescribed in paragraph 428? M. Poincaré contends that France has that right under the words "in general such other measures" etc., of section 18.

Before answering the question just stated, two important principles of legal interpretation must be borne in mind. In the interpretation of contracts, laws, constitutions, treaties, it is a rule of law that every such document must be treated as in harmony with itself. In other words, a plain and specific stipulation must not be disregarded in favor of some general provision elsewhere in the document. An example of this is found in our own Constitution and its interpretation by the Supreme Court. That document makes very clear stipulations of the things that Congress may do and of those that it may not do. Attached to the positive functions of Congress is the so-called "general welfare clause," which gives to Congress the right to make "all laws which shall be necessary for carrying into execution the foregoing powers." It has been the uniform practice of the Supreme Court to insist that legislation of this general character must be in harmony with the positive delegations of power made to Congress, and must not provide for doing things prohibited to Congress.

Under this rule of law the French case has not a leg to stand on. Any American court would decide unhesitatingly that the specific language of paragraph 428 must prevail as against any deductions that might be drawn from the general terms of section 18.

The Basket Clause

The second law principle has to do with the interpretation of section 18 itself. In all legal enactments and treaties it becomes necessary to amplify the meaning of certain provisions by citing instances of their application, and after noting several such cases it is usual to end the matter with some general statement. This gives us a so-called "basket clause," which is resorted to in order to save words, since it is often impossible to mention all the applications of a law provision.

Such "basket clauses" are one of the most fruitful grounds of litigation, for the temptation is ever present to try to pluck out of the basket things that the lawmakers never intended to put there. Hence it became necessary a long time ago to establish a law rule for their interpretation—the so-called ejusdem generis rule, whose meaning is that particulars not enumerated in such a given law clause must be of the same general character as

those enumerated. Let me illustrate again: In a state having a homestead law a creditor gets from a court a writ allowing him to obtain settlement of a debt by selling "Property of the debtor, such as household and kitchen furniture, watches and jewelry, securities, and such other property as may be necessary for satisfying the claim." The creditor proceeds to execute his writ, sells all the articles mentioned, and then finds that the proceeds do not cover the debt. "Well then, let us sell his house," says the creditor. But here the debtor objects: "You are reading into your writ a meaning that the court could not have had, for the court knows very well that we have a homestead law in this state. Therefore it could not have given you the right to sell my home." And any court would certainly sustain the objection. Here the words of the writ "such other property" must be interpreted in accordance with the rule ejusdem generis; the creditor has no right to interpret the "basket clause" of his writ so as to entitle him to sell property of a different legal status than the kinds enumerated.

An Impossible Deduction

In France's case the "basket clause" is indeed very inclusive: "in general such other measures as the respective Governments may determine to be necessary in the circumstances." Standing alone this clause would permit the Allied governments to take any action whatever against Germany. But apply the law rule just mentioned, and we must conclude that they have only the right to adopt such measures as fall naturally into the same classification as the particulars mentioned in the previous part of the sentence; namely, "economic and financial prohibitions and reprisals." Now to pretend that the invasion of a neighbor's territory can be deduced from this "basket" would be a most monstrous conclusion; to accept it would be to put an end to all treaty-observance, for such a wresting of the meaning of words would give to a strong power the right to read into treaty stipulations any meaning that might suit its whim.

That M. Poincaré has here wrested the language of the Treaty to suit his purpose can be shown by other considerations. If the treaty-makers had contemplated, when they drew up section 18, that its terms might be interpreted as justifying an invasion of German territory, it appears humanly impossible that they could have so sharply restricted their right of occupation as they did in paragraph 428. This latter paragraph must have laid down the utmost limits of occupation intended by them, else they would have saved themselves by some modifying clause.

Moreover, that they did not intend to provide for further occupations can be shown by at least three other considerations:

1. When the Treaty was about to be adopted in June 1919, the German peace commissioners objected to the large powers accorded to the Reparation Commission, intimating the fear that they would usurp rights within Germany which would conflict with Germany's territorial sovereignty. This allegation appeared to the treaty-makers so monstrous that they used sharp language in repelling it. In their note of June 16, 1919, they replied thus.

> In short, the observations of the German delegation present a view of the Commission so distorted and so inexact that it is difficult to believe that the clauses of the Treaty have been calmly or carefully examined. It is not an engine of oppression or a device for interfering with German sovereignty. It has no forces at its command; it has no executive powers within the territory of Germany.

Here the objection may be made that this language applies only to the Commission, not to the Allied governments themselves. To which the answer is this: The Commission was established by those governments as their organ for carrying the Treaty into effect. Would anybody make the imputation, so dishonoring to Clemenceau, Lloyd George, Orlando and Wilson, that when they laid down the functions of the Commission as here quoted they did so with the mental reservation that any one of the powers themselves might usurp its functions by interfering with German sovereignty?

2. The French government in 1920 actually did make that assumption when it occupied Frankfort. But within a brief time it recognized its error and withdrew its troops. At the same time it assured the British government that henceforth it would act only in agreement with its other allies. Here France recognized that any decision by the Allies to adopt measures against Germany must be taken by unanimous agreement—a point that must be recalled a little later on.

3. When in January 1920, the Treaty ratifications were exchanged at Paris, M. Clemenceau, still Premier, assured the German signatories that this act terminated the application of such sanctions as belong to war. Evidently the "Tiger" must have understood what the Treaty means; and it is not surprising that he was one of the few eminent Frenchmen who opposed the invasion of the Ruhr. Or would anybody be bold enough to claim that this invasion is not "such a sanction as belongs to war?"

Decision not Unanimous

If we examine the manner in which the decision to go into the Ruhr was adopted, France's case is still further damaged. In section 13 of the same Annex II it is stipulated that any vote of the Commission on "questions of the interpretation of this Part of the present Treaty" must be unanimous; also that "abstention from voting is to be treated as a vote against the proposal under discussion."

Now it would seem that there can be no doubt that when the Commission voted to declare Germany in voluntary default it was voting on "the interpretation of this Part of the Treaty"; also that Sir John Bradbury's abstention from voting amounted to a negative vote by England.

What then? Section II goes on to provide as follows:

> In case of any difference of opinion among the Delegates, which cannot be solved by reference to their Governments, upon the question whether a given case is one which requires a unanimous vote for its decision or not, such difference shall be referred to the immediate arbitration of some impartial person. . . .

But here was a disagreement and no arbitration; and yet France and her group of powers decided the matter for themselves.

M. Poincaré's Interpretation

The logic by which M. Poincaré justified that step has been sharply attacked by various authorities, especially in England. He made a show of legality indeed by alleging that the words: "Such other measures as the respective Governments may determine," in section II above, mean these governments individually—in other words, that each of the governments or any group of them might take such measures. But this is an impossible interpretation in view of the general form of expression used by the treaty-makers elsewhere in the peace document. That they knew how to use precise language when they wanted to speak of the powers individually they showed in the section immediately preceding: The Commission is directed to give notice "to each of the interested Powers"; and numbers of other passages might be quoted to enforce this point. The interpretation of the word "respective" by M. Poincaré is forced, and the forcing becomes nothing short of monstrous when the right of invading another country in a time of peace is the end sought.

So much for the question of the legality of the invasion from the standpoint of the Treaty itself. But what has international law to say about the matter? International law knows no such conception as the invasion of a country which is not ipso facto war. That Germany has offered no armed resistance does not alter by one whit the fact that France is now making war upon Germany. That is the standpoint of international law, for which no citation of authorities is necessary.

What, finally, is to be said of the legal aspect of the acts of the French military authorities since entering the Ruhr region? I shall not go into any atrocity stories here. I confine myself to these admitted facts: that the French have arrested and tried before their military courts numerous Germans, whose only offence was that they discharged their duties of loyalty to their own country; that these courts have imposed heavy fines and long terms of imprisonment upon them; and the further fact that the French are seizing and confiscating the property of private individuals.

France went into the Ruhr ostensibly to collect what Germany owes her; but the Hague Convention of 1907, to which France solemnly pledged her faith, forbids the collection of debts by means of armed force, except where the debtor state has rejected arbitration. But Germany has never rejected arbitration. Furthermore, paragraph 248 of the Treaty, under which France is acting, makes only the assets and revenues of the German national and state governments liable for meeting reparation payments. Yet the French military has not scrupled to confiscate the property of municipalities and even private persons. And many of the deeds of violence against individuals—imprisonments and expulsions of Germans as penalties for refusing to become traitors to their own country—are expressly condemned by the war regulations adopted at the Hague. Note well: condemned even in times of war. But M. Poincaré claims to be at peace with Germany. Will he also claim that the laws of peace are more severe than those of war?

I shall not attempt to characterize further the course of the French armies on the Ruhr, but rather let this characterization come from the little state of Finland. In February about two hundred and forty Finnish judges, law professors and eminent lawyers adopted a strongly-worded declaration against what they called France's "breach of law." Their protest was based, apparently, not upon any breach of the Treaty of Versailles, but upon the treatment of the German population of the Ruhr. Having pointed out that, despite the fact that France and Germany are at peace with each other, German citizens have been dragged before French courts-martial and condemned, these Finns said further: "They were condemned although they were guilty of no crime: for it has been accounted a universally valid principle of international law that the inhabitants of a country cannot be compelled by a foreign power to take part in acts that conflict with their fidelity to their own country and injure it." They expressed further their "profound disapproval of this breach of law."

A Reversal of Rôle

That this sharp criticism comes precisely from Finland should be felt in France as a heavy blow morally for M. Poincaré's policy, for it recalls a time when Finland was the sufferer and France the country to protest. When Russia was doing things in Finland before the war such as France is now doing on the Ruhr, some four hundred members of the Chamber of Deputies and the Senate sent a strong protest to the Russian Duma in favor of the Finns. Now Senators and Deputies are silent. It is Finland that protests.

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What the Worker Doesn't Get*

THERE is no word which is more frequently used in the same sentence with labor than the word production. An entire engineering theory of management is based on the assumption that true industrial progress is to be made only by increases in productivity. The enemies of trade-unions charge that some of their rules and practices interfere with efficient production, and hence that they are to be condemned. Many friends of the unions are eager to encourage the growing interest in production on their part. When it is asked whether increases in productivity lead to any advantage to labor other than such advantage as might possibly arise from increased profits of employers, it is said that higher productivity results in lower unit costs, which in turn reduce prices and the cost of living, and so increase the purchasing power of wages. When demands are made for a minimum living wage, it is said that it cannot be paid because the national income is not large enough, and that the only hope of improving labor's status is in a larger volume of production.

Recent Fundamental Studies

This is a point of view which on the surface seems reasonable, but it rests on a series of assumptions which have not until recently been tested on the basis of facts statistically measured. It so happens that we have accumulated in the last few years a good deal of information about the physical volume of production and about wages. Is it true that production increases, and that it increases more rapidly than the population? Is it true that the purchasing power of wages increases as production increases? What is the actual relation between wages and productivity?

Careful studies of the production of important goods have been made by several economists, and while these studies do not cover the whole field, they do include nearly all the basic commodities in the various industries. In agriculture, for instance, they include the staples, though not the consumers' articles made out of the staples such as loaves of bread or packages of shredded wheat. Their comprehensiveness results from catching the flow of goods near the source. The chief criticism of them is that they may not sufficiently indicate the elaboration of the manufacturing process which takes place from year to year in the course of dressing up goods for the market. But if this defect were remedied the figures would undoubtedly show a more rapid increase in productivity than appears from the data dealing with the basic products.

The figures prove that the production of physical goods in the United States increased about 80 percent in the 22 years between 1899 and 1920. During the same period the population increased about 40 percent. Production was increasing, therefore, at a rate about twice as rapid as the increase in population. If we calculate the increase in production per capita, we find that it was nearly 30 percent for this period. If we eliminate the effect of the ups and downs of production incident to temporary booms and depressions, we find that production was increasing at a normal rate of a little less than 2 percent a year for each man, woman and child in the country. Manufacturing production increased at a more rapid rate than total production, which includes agriculture and mining.

The conclusion from these facts is that it would have been possible for the goods received by every person in the country to increase at the rate of about 2 percent a year during this period, and that at the end of the period everyone might have received every year about 30 percent more than he received at the beginning. This could have happened without any change in the relative distribution of income—that is, without giving labor, for instance, any of the share of the earnings of industry formerly claimed by property owners. Wage-earners, salary-earners, farmers, capitalists, traders and everyone else might have been 30 percent better off—not in meaningless dollars, but in actual purchasing power—at the end of the period than at the beginning. If the theories mentioned in the first paragraph were valid, real wages—or the purchasing power of wages—would have been at least 30 percent higher in 1920 than in 1899.

Curtailed Purchasing Power

What are the facts about wages? Very careful studies, calculated from census figures and other sources, show that during this period the purchasing power of wages, far from increasing, actually declined. In 1904 and 1909 the yearly incomes of factory workers in the United States could buy slightly less than in 1899. In 1914 they could buy only 90 percent as much as in 1899. This fact is worth remembering, by the way, in discussions of the increase of wages during the war, in which the base of the increase is usually taken as 1914. In 1919, one of the years in which factory wage-earners were so widely accused of profiteering, their average yearly earnings could not buy quite as much as in 1899, in 1904 or in 1909, though they had recovered from the 1914 slough of despond. The indications are that since 1920 real wages have at last risen above the 1899 level—though not more than 5 percent above. We have, therefore, a drop of 10 percent in real wages, followed by an increase of 5 percent above the 1899 level, to compare with an increase of 30 percent in

* The statistical material on which this article is based is explained in greater detail in a paper by the same author in the proceedings of the annual meeting of the American Economic Association, December, 1922.