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Bernard Goodwin

THE COMMON MARKET TWENTY-FIRST CENTURY

(WITH AN INTERNATIONAL FRANCHISING ASSIST)

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The development of a supranational economy calls for novel legal approaches to bridge the gaps created by national boundaries. These barriers are now too artificial with the increasingly accelerated pace of an ever-shrinking world of speedy, even instantaneous, communications, much more so than they were in the pre-Industrial Revolution era ending with the close of the eighteenth century.

To understand the possibilities of a supranational economy, it will be helpful to look briefly at history, because some intergroup action or economy has always existed among neighboring groups. It was usually the power of one group over another that controlled their relations through the enforcement of customs and law, even reaching back to the dim days of prehistoric man, but certainly so during the last six thousand years of known history.

Force, most often the sword but sometimes the spiritual, made possible the law which promulgated and enforced the rules to facilitate trade internationally, that is, beyond the reach of the taboos and loyalties of any closely knit group which had painfully learned, during eons of cautious cooperation, to trust only its members, not the stranger or the foreigner, who was with good reason identified as the deadly enemy to be feared.[1] Considering the immense time periods involved in the evolution of our tiny world in the vast universe, mankind has only for a relatively brief six thousand years begun feebly, albeit unsuccessfully as yet, to search for an alternative to power as the lubricant and preservative of an international economy. No such extra-group economy, whether or not established by force, can hope to function or grow, or even to exist, without a recognized, respected system of law governing and regulating its relations

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[1]As used herein, international includes any intergroup relation and national includes any type of group.

within and without the group enclave. Also, and more importantly, a viable international economy is one of the requisites in organizing any form of international order. Without that motivation, international unions either die a-borning like the late League of Nations or become grandiose debating societies like the United Nations beset by much discussion but with little execution, usually helplessly subject to the wishes or whims of notoriously amoral Great Powers.

Public and private international law, including pertinent principles of conflict of laws and multinational corporation law, are entirely dependent, for their effectiveness, on the national forum whose protection or decision is being sought.[2] Any municipal or extraterritorial application thereof rests solely upon the interpretations of the forum Courts. Their rulings and fiats depend in turn on the national public policy of the sovereignty giving them life and enforcement, except where outside naked power or great economic pressure can be brought to bear. This is a highly unsatisfactory state of affairs for any economy which risks substantial investments and operations in all parts of the world, whether or not within the national territorial borders of the home base. The vagaries in the unpredictable fluctuations of nationalism, when divorced from realistic supranational controls, will in time doom any international economy. The isolated legal phenomenon of the true, but rather rare separate and distinct entity of the international corporation, created by bilateral or multilateral agreements or treaties between or among sovereignties, and existing by their sufferance alone, emphasizes the foregoing.[3]

Since time immemorial, public and private international law have been euphemistic creations to cloak intergroup Great Power machinations. Such law has been anemic or dynamic, beneficent or Machiavellian, in direct ratio to the brawn or brain and permissiveness in the national needs of enforcement. As a result, a devious game of logical legal charades has been formulated, fascinating in its study, classification and didactic, theoretical application,

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[2] See generally Cheatham & Maier, Private International Law and Its Sources, 22 VAND. L. REV. 27 passim (1968).

[3] See generally Lador-Lederer, The International Corporation — Its Status in International Law, 1 IS. L. REV. 593 passim (1966).

but very often shatteringly useless in the practical world of stark realism. To compound this confusion, another very serious, increasingly influential happening should be noted: the geometric progression of technology, with its nuclear and space science, as compared to the arithmetic progression of man's ability to give it spiritual and philosophical meaning and motivation. The outmoded protocol, thinking and legalities of the fast passing age of frock coats, silk hats, striped pants, and ascot ties should be discarded to free us for the supreme effort we must make to change cooperation for conflict to cooperation for survival.

Of course, it is difficult to abandon the comfortable habits of the past. The imminence, if not the inevitability, of the holocaust confronting Society today, however, should impel putting international economy and related law in the proper perspective of history. New legal and economic buoys must be placed to mark the channels for those who dare to sail the unexplored seas of new societies. Orthodox public and private international law, as now understood and taught, should not be shelved but should be presented as an historical foundation. Even when projecting our thinking beyond the past and present, there is still with us the same common denominator of homo sapiens. Man has constantly waged wars, from primordial periods to today, for food and females, sugar-coating his fighting with those emotions which alone could move him to fierce action.

It is interesting to name a few such propellants: claims to group, racial, or religious superiority; desire to defend, acquire, or avenge family, home, and hearth; "Make the World Safe for Democracy"; Marxian class warfare for the welfare of the proletariat; and Robin Hood have-nots against those who have. In the final analysis, they are simply reversions to the fundamentals of staying alive and of eating and propagating in peace, no matter what the beautiful semantics of motivation. In these pursuits, law becomes essential to preserve continuity, to protect ownership, to increase productivity and growth, and to clarify, crystallize, and ensure peaceful personal and economic relationships. Such law was imposed and obeyed by the group, whether clan, tribe, family, race, creed, city, state, or nation, through love or fear or some other form of group devotion or loyalty. Current nationalism, with its deified flag and symbols, is the modern parochial, protective City or Group God so common in earlier times.

In brief, then, a functioning supranational economy is a condition precedent to a viable supranational social and

political existence. Relevant supranational law not only must but surely will evolve with the interaction of these forces. To understand what can or should be done in the future, we should glance at the past. There we will find instances of the marriage of empire and commerce giving birth to a law not only supported by that combine but also giving it the sinews for survival--a necessary reciprocity for the continuity of a civilization.

The romantic Homeric epics of The Iliad and The Odyssey glamorized the struggles of the Mycenaean Greeks of the Minoan Thalassocracy in the Aegean area to keep their trade routes open, especially when they were forced to migrate into Asia Minor, to which the City of Troy was the key. The Law of Minos dominated that Society by virtue of Minoan sea power, and set the rules for trade therein, keeping the peace with its war galleys. When that power was destroyed by the overwhelming Völkerwanderung of the Achaean-Dorian Greeks, the old peace of the law also disappeared, as was told in the symbolized story of Theseus, the mythological Hero-King of Athens who killed the Minotaur Bull of Crete, thereby ending all tributes being given by the Greek cities to the Minoan State.

The new Hellenic Society of Greece and, later, of Rome, used its military supremacy to conquer the then Western World in and far beyond the Mediterranean Basin and even extending, with Alexander the Great, to deep Central Asia. The Hellenic armed might, culminating in the Pax Romana, made possible the peace of its law which was paramount and obeyed throughout that world, thus protecting and furthering the international trade which gave Rome its great luxuries and riches. The resultant decadence finally softened it for destruction. Nevertheless, Roman Law permeates law today in a great many parts of the world.

The Pax Romana of trade and law was not easy to achieve. It came after much suffering and terrible warfare. The best known of these conflicts were the Punic Wars of Hannibal's Carthage against Rome. This resulted in the total destruction of Carthage. That unhappy City then lost the ability to spread its culture and law, which it had inherited, as a colony, from the maritime, trading Phoenicians, who were the great navigators that had centuries earlier sailed far and wide from their stronghold city seaports on the Mediterranean coast of Asia Minor.

The ancient Hebrews also had picked that same general Canaanitic area lived in by the Phoenicians as the Promised Land in which to end their migrations, and there they became

a tiny, inland patriarchal theocracy. The choice of a Home made by Moses and the other Elders proved to be a prime piece of real estate with the real potential of a land of "milk and honey," not only for its soil but also because it had always been the crossroads of commerce from and to all parts of the world. The Great Powers fought and still fight savagely for control of this land in the endemic interests of their respective economies, with Rome being the last of the Pre-Christian or Pre-Common Era conquerors to destroy Jerusalem, first by Titus and then by Hadrian. The sufferings of the Jews, during and after the buffetings delivered by the powerful warring contenders around them, tempered the steel in their will to survive. They found another, greater force to protect and inspire them. This was the message of Deutero-Isaiah in his revelations during the Babylonian Exile over twenty-five hundred years ago. He was the anonymous prophet whose insight perceived that it was necessary to discard the national henotheism of a numinous, tribal Jehovah for a universal monotheism and related immanent law which could help create a Supranational Society for all persons, peoples and nations. The Diaspora, following the disastrous Roman victories in the two Jewish Wars six and seven centuries later, dispersed this teaching throughout the world in its original form, thus also permitting catalytic action on other cultures, while Christianty and Islam, as subsequent heirs, diffused it ecumenically in different versions. All of them combined comprise one of the finest, yet woefully weak, attempts to maintain peaceful social, political and economic international relations within the influence and under the guidance of an omnipresent law, respected and obeyed for its moral values and not for its brute strength.

The Medieval Church aborted its magnificent opportunity to develop and perhaps perfect such a world-wide order of law and peace, concomitantly with an international economy under an aegis of love instead of hate, when ambition and lust for power persuaded it to adopt the fatal principle of the infallibility of the Papal absolute monarchy without the benefit of a strong Church Council or other international legislative representation. Those same medieval times had one demonstration of the spread of an international economy and law by fierce, yet ephemeral, military power. This was the empire of Genghis Khan, The Scourge of God, who, with his Mongols, destroyed the decadent, luxury-loving nations in his path of conquest. Thereafter, the Khan introduced trade, law, and order throughout the territory controlled by his Mongols, supervised by his able Chinese merchants, with their commercial

customs and rules. This lasted only as long as Mongolian armies prevailed.

Other international trends, with more promise for our long term future, also made their appearance during the Western medieval age. Three were most important. First, there were the financially and politically strong international banking families, such as the Medici of Renaissance Florence, the Pierleoni of eighth to thirteenth century Rome and the German Fuggers of fifteenth century Augsburg. Second, there were the intimate ties engendered by the common race, religion or tongue of a persecuted people scattered among strangers in various parts of the world, such as the Diaspora Jews and Chinese families of numerous "cousins." Such family, racial or other loyalties made possible an informal, binding commercial law outside the law of any sovereignties, showing that the cement mixed by reciprocal economic interests, when founded on confidence, could produce a functioning international system. Third, and probably the most significant, was the Hanseatic League, an early bellwether to lead us out of current destructive international insanity. The League, consisting of free towns in Medieval Northern Germany and adjoining countries was a union formed for economic advancement and protection. A uniform commercial code was developing in that nascent Common Market, with a peace among the cities based solely on economic ties. The League, however, was not strong enough to resist the new, unitary nationalism of the Holy Roman Empire and the ambitions of the warrior Hapsburg monarchs. A supranational union of economic reciprocity was not yet able to develop into a full-fledged Supranational Society without the cocoon of Church or Great Power in the early stages of its growth.

Thereafter, for over three centuries from the defeat of the Spanish Armada to World War I, Great Britain, through sea strength and balance of power diplomacy, was able to impose a form of Pax Britannica, with an international law of a sort, especially Admiralty Law enforced in British Courts, to promote and protect an international economy. There were, nevertheless, intermittent wars during that period. The worst of these wars was with Napolenic France, whose armies forcefully gave the Code Napoléon to Europe and, through France, Spain and Portugal, to most of the Western Hemisphere.

The end of World War I ushered in a new Great Power on the international stage, the young United States of America. It was a paradigm of a Common Market, first unified in colonial days by mutual economic interests. During the nineteenth century and early twentieth century, it had flexed

its imperialistic economic and political muscles with the Monroe Doctrine's protective custody over the Western Hemisphere, the undeclared war seizure of Florida from Spain, the numerous Indian Wars, the Mexican and Spanish-American Wars, the purchases of the Louisiana Territory, Alaska and the Virgin Islands, and the gunboat diplomacy of its presidents from McKinley to Hoover. The United States was ready, with its economic and military strength, to impose and enforce its hegemony and to protect some effective international law which certainly would have eventually evolved. Nevertheless, within a short span of less than fifty years, the grave errors and incredible miscalculations of the John Foster Dulles Shogunate during Eisenhower's presidency arrested this potential. The world was adruptly restored to a renewed, if not a worse, Toynbeean Time of Troubles, with the United States of America, Soviet Russia and Communist China as the main contestants, but also with a strong, dark horse in the running, the Common Market of The European Economic Community (EEC), the future political United States of Europe.

The gargantuan multinational corporations of the United States, those fantastic instruments of world economic suzerainty, were fully primed and ready to dominate the international economy. Suddenly, however, they were deserted by the national political protector, the source of the law and strength enabling them to function, on which they relied, because the unexpectedly inept rules of the old game no longer applied. Furthermore, a dangerous vacuum was also being created by the increasingly rapid international retreat of the United States to the illusory bastions of continental military isolation. This was made necessary by the tough pioneer fiber of the American people having finally been woven into the soft, delicate fabric of a too rich, materialistically mad, spiritually devoid, decadently spoiled, and internally divided Great Power, aggravated from time to time, at least to date, by ambivalent or opportunistic diplomacy and leadership--not unusual in the history of the decline and fall of civilizations that no longer exist.

The round rhetoric of President Nixon, in his first annual State of the World, Foreign-Affairs Message to The Congress on February 18, 1970,[4] is splendid but will not alone

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[4]United States Foreign Policy for the 1970's: A New Strategy for Peace, 2 U.S. CODE CONG. & AD. NEWS 123 (1970).

substitute for some realistic, international force that will be needed to make a peaceful Supranational Society, as has been demonstrated over and over again in world history. Practical measures and steps must be taken promptly, or else the United States risks becoming a second rate, if not a third rate power within the next generation. The congenital disease of nationalism, with its instinctive xenophobia stemming from the psychoses of primitive man's well-founded fear of strangers outside his group, when mixed with industrialism and either democracy or communism, produces a trauma of soul sickness that repeatedly frustrates mankind's efforts to operate internationally in peace. The cure must be both psychologically and rationalistically adapted to the cause, so that nationalism can be evenly balanced and transmuted on an international level through a workable supranational economy with an enforceable law; and then, and only then, will there be any broad regional, or more universal, stable social and political unions.

The old order of economic spheres of influence, created and protected by competitive Great Powers, is collapsing about us and changing swiftly into other forms of economic and political activity. The problem is to find a new, effective supranational economy and law as peacefully as possible, so as to give food and females a reasonable chance to preserve our species, now so dangerously close to joining the dinosaurs in complete extinction because science is outstripping wisdom.

One of the reasons for our great economic success is the modern multinational corporation. Yet, it is slowly but surely being weakened as it now exists and operates under the national umbrella of the law of the place which houses its legal origin and regulates its ruling Board of Directors or Commissars. A state socialistic or stockholder profit-oriented multinational corporation is finding it more difficult to do business internationally amidst bristling nationalisms and the uncertainties of their emotional or illogical and actual or threatened expropriations and regulations. Consequently, it is time to reorganize our international way of life and abandon the meaningless movements of old international diplomacy and economics, as they have been and are presently being performed under ineffective rules of public and private international law.

Jean Monnet, one of the great of this century, lived through the destruction of two World Wars. Nevertheless, or perhaps because of this, he had the vision, wisdom and patience to inspire and help the making of a new Western

Europe, an EEC Common Market. This would be an economic union which would lead to a United States of Europe with its own supranational tariffs, money, economy, law, judiciary, executive and legislature; quite different from a simple free trade association such as the internationally weak European Free Trade Association.[5] Nobody would have believed this possible because of the inclusion of two such old enemies as The Federal Republic of Germany and France, but it is happening. The multinational corporations of the respective EEC nations will in time become EEC corporations within a peaceful and secure economic, legal and political orbit in an area formerly devastated by national wars. The Executive Commission of the EEC has noted in its report for 1969 that the Common Market has moved on schedule into the final stage of further economic integration before the Council of Ministers, the EEC's highest decision-making body today, starts by 1975 to surrender authority to an elected European Parliament. Thereafter, the national sovereignties in EEC will begin to wither away, thus paving the road for the active appearance of a United States of Europe.

The twenty-first century should be the Century of Common Markets: the EEC-United States of Europe; a similar grouping in Eastern Europe; an Economic Community of the Federated States of the Middle East including Iran, Turkey, Israel and the Arab states; two or more such groups in Asia and the Pacific; an Economic Community of the Federated States of Africa; and an Economic Community of the Western Hemisphere--possibly a United States of All of The Americas.

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[5] See BUSINESS REGULATION IN THE COMMON MARKET NATIONS (Blake ed., vols. I-III, 1969); id. (Rahl ed., vol. IV, 1970); CCH COMMON MARKET REP: COMMON MARKET L. REP. (published annually since 1962 by Central Book Company, Inc., Brooklyn, New York); EUROPEAN COMMUNITY (a monthly published by EEC Information Service, with offices in the capital cities of each member nation plus New York City, Washington, London, and Geneva); JOINT COMM. ON CONT. LEGAL EDUC. OF ALI AND ABA, LAW GOVERNING INTERNATIONAL TRANSACTIONS (W. Surrey rep. 1962); J. LANG, THE COMMON MARKET AND COMMON LAW (1966); UNIVERSITY OF MICH. L. SCHOOL, AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET, A LEGAL PROFILE (Stein & Nicholson eds., 2 vols., 1960); Salter, Toward A Supranational Law: The Common Market Experience, 53 A.B.A.J. 620 (1967).

President Nixon, in his recent "State of The World" foreign policy message, pointed in this direction when he wrote of national partnerships and United States contribution, not domination, and when he said specifically:

> To encourage regional cooperation we have offered to support economic integration efforts. We have reiterated our offer of financial assistance to the Central American Common Market, the Caribbean Free Trade Area, the Andean Group and to an eventual Latin American Common Market.

A less complex world than that of today will be the result, with viable systems of Common Market supranational economies and law leading over the centuries to combinations of Common Markets based, hopefully, on by then well understood reciprocal interests.

Bearing in mind these goals, private and public international law should be slanted to the law of ideal Common Markets for different regions. EEC law is now available, with its origin, continued growth and supranational enforcement, effects, and benefits.[6] This is something real, not chimerical, which can be used to help rejuvenate American international economy, law, and future. The United States should begin to plan a Common Market of the Western Hemisphere, so that all nations therein can live in an equality of an economy, trade and law, at first, and later, in an equality of social and political unions. Public or private emissaries of the existing multinational corporation--sphere of influence system should not be sent as benevolent advisors or patrons to deal with the aggressively independent, nationalistic sister Western Hemisphere nations to the South. The United States should forget its Big Brother psychology and fruitless platitudes regarding the fetish of democracy as a miraculous social and political panacea, no matter for whom, where, when, why, how, or under what circumstances and conditions. Instead, the United States should concentrate on first blending that most important prior amalgam given by a firm economic union.

A Western Hemisphere Common Market will certainly be a very difficult undertaking and will take much time, but really not more so than for a United States of Europe. Once the ingenious United States businessman and lawyer are thoroughly

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[6] Id.

convinced that the old order is really changing, even if over a period of several more decades, they will become their usual resourceful selves, adopt the necessary measures, take the needed steps, and adjust to the future. The important thing is for them to understand that different rules must and will apply in a Common Market greater than the present United States of trade, law and politically protected peace. Business will then quickly learn how to compete and profit therefrom. Law will also have to keep pace. It really has become vital to abandon those principles of the past which produce naught but repetitive, fruitless, suicidal strife. Of course, the willingness to fight and die for beliefs is always basic, but there must also be an idealistic inspiration before that is possible.

To grasp that last concept, it would help to study and understand the feelings and great sacrifices of patrician and plebeian youth during the virility of the Greek City States and the Roman Republic, as well as those of the youth of the Jews, during their fighting years highlighted by Joshua, David and the Maccabees, as reborn in Israel today, and of American young people from the early pioneer days through World War II. Such voluntary and unselfish offerings, for the commonweal, of lives and all else precious measure the formative strength of a Society and shape its future. Because these attitudes are lacking in the United States today, this country needs a renaissance of meaningful motivation and philosophy. Common Markets, their regional economic cooperation and subsequent social and political unions, will make this possible in the extraordinarily complex, superscientific world in which we now live. Even supposedly materialistic industrialists sense the deep unrest and desperate urgency for drastic change, as witness what the Board Chairman of North American Rockwell Corporation said when he received an honorary degree in 1967:

> [T]hey (men and women in college today) need "know-why" as well as "know-how." . . . Our lives are changing at a rapid, sometimes frightening rate. . . . I think of the story of the American hunter who was in search of big game in West Africa. He was getting close to his prey when his hard-running native guides suddenly sat down to rest. The American protested to their leader. He threatened, pleaded, offered bribes -- but the natives wouldn't budge.
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> "But why," he asked the leader, "why must they stop now?"

> The leader replied, "The men say they have hurried too fast. Their bodies have run off and left their souls behind. They must wait now for their souls to catch up."
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> It seems to me that this could be happening to us today. We may be running so fast that our technology is outrunning our souls. We have traveled fast and far in advancing our technology, our physical output, and our material well-being. We have developed the most productive form of society that man has ever enjoyed. We have taken long strides into the unknown and have extended man's control over his environment. But, has the swiftness of our material achievement outrun our moral and spiritual capacity?

During the transitional times ahead of us, there is one economic pogo stick available to use for jumping over artifical national fences. It is designed to minimize the defensiveness of nationalistic economies and even the suspicions of differing ideologies. This seemingly impossible device is that of franchising on an international scale. In franchising, which is an alternative to the orthodox system of marketing and distribution, the franchisor exchanges a trademark or tradename and a salable product or service, with skilled management know-how, for the outlet of the franchised distributor or retailer. The franchisor retains control over the common enterprise franchise system and receives, in addition to the customary initial franchise fee, continuing payments from the franchisee, based on his sales or other operations and for probable purchases of inventory or other goods.

Franchising in the economy has given rise to much new law, including antitrust, principal and agent, trademark and tradename protection, taxation, rules of disclosure, liability of the celebrity in the celebrity-named franchisor, arbitration, antifraud, and the franchise agreement as an investment contract security under Federal and State Securities Acts. Much has been written on these subjects and programs are being constantly given by Bar Associations, Continuing Legal Education Organizations, Franchisor Groups, and Law Schools.[7]

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[7]There are a number of good publications, workshop seminars, and programs on franchising and related subjects offered from time to time by: American Law Institute --

Suffice it to say that the law of franchising in the United States is still actively growing, whereas, in other countries and in the EEC, it is in an embryonic stage.

The David and Goliath symbiosis found in franchising lends itself to the big business franchisor funneling his skills and knowledge to the small entrepreneur franchisee, who risks his own capital and labor in his franchise, whereas the franchisor in selling franchises does not dilute his ownership or hazard losing control to a lender. It becomes immediately apparent what this means internationally. Sensitive nationalism will not have to fear or face the intrusion of strange, mammoth multinational corporations protected by another national power, which will make extremely important decisions affecting the local nation's economic and social welfare. The franchisee will own his business, subject to the payment of royalties or fees for the continuing advice, know-how, and special skills of the foreign franchisor. Of course, international franchising is not adaptable to all business done across national frontiers, but, where it can be used, it is a convenient and face-saving tool for international trade. Also, there will be a start on the right road toward a less tense economic transnational unity.

From the standpoint of the international franchisor, he is freed from worry over the security of an investment in a foreign country, because that has been reduced to a minimum by the very nature of franchising. He also removes himself from concern over balance of payment problems and accompanying

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American Bar Association Joint Committee on Continuing Legal Education; Boston College Center For The Study of Franchise Distribution (Newton, Mass.); Continental Franchise Review (Denver, Colo.); Institute for Continuing Legal Education (U. Mich. L. School); International Franchise Association (Chicago); Massachusetts Continuing Legal Education (Springfield, Mass.); Practising Law Institute (N. Y. C.); and Vanderbilt Law School (Nashville, Tenn.). Goodwin, Franchising In the Economy: The Franchise Agreement As A Security Under Securities Acts, Including 10b-5 Considerations, 24 BUS. LAW. 1311 (1969), and Goodwin, The Name Of The Franchising Game Is: The Franchise Fee, The Celebrity or Basic Operations, 5 BUS. LAW. _____ (July 1970), both contain fairly complete collections of pertinent authorities.

controls over investments to be made in foreign countries, as well as from most international exchange, currency, and monetary difficulties. Usually, payments, comparable to those made by the franchisee to the franchisor, are permitted despite monetary, exchange, or currency restrictions. The Communist countries, especially in Eastern Europe, would eagerly welcome the benefits of foreign capitalist techniques, expertise, and management fertilizing the independence of domestic small businessmen. This would be particularly true of a National Communist country like Yugoslavia, which seeks to encourage reasonable profits for the small "mom and pop" entrepreneur. More remarkable, even, was the accomplishment of Hertz International in establishing its rent-a-car franchise system in Soviet Russia during the Spring of 1969.

Of course, there will be some trouble in the legal enforcement of rights for the franchisor when he ventures forth internationally, except to the extent of the reasonably good protection given him by his international trademark or tradename, as provided by many treaties and most municipal law. In any event, the best protection that the franchisor has is in the reciprocity of his help and service, including all new developments in know-how, with the continuing royalties or fees payable to him by the franchisee. Furthermore, there can also be a very substantial initial franchise fee paid to the franchisor, with a reasonable part thereof in escrow as an advance against continuing payments by the franchisee. Financing the franchise fee may be troublesome, but the ingenuity of business and law will be able to cope with that problem.

It is true that the United States Federal Courts are becoming more inclined to the extraterritorial application of federal antitrust and securities law.[8] This may or may not

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[8] See Bloch, Extraterritorial Jurisdiction of U.S. Courts in Sherman Act Cases, 54 A.B.A.J. 781 (1968); Sproul, United States Antitrust Laws and Foreign Joint Ventures, 54 A.B.A.J. 889 (1968); Stevenson, The SEC and International Law, 63 AM. J. INT'L L. 278 (1969); Recent Decisions, Extraterritorial Application of The Securities Exchange Act of 1934, 1 L. & POLICY IN INT'L BUS. 168 (1969), discussing Schoenbaum v. Firstbrook, 405 F.2d 200 (2d Cir. 1968) (panel), aff'd, 405 F.2d 215 (2d Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969). See also the interesting antitrust litigation of L. C. O'Neil Trucks Pty. Ltd. (Sydney, Australia) v. Pacific Car and Foundry Co. (Renton, Wash., U. S. A.),

be too helpful, because it will operate primarily in favor of those seeking relief in the federal courts of the United States. The extent of the foreign judicial recognition of such decrees and decisions is debatable and doubtful, particularly when public policy may differ greatly. Again, this underscores the importance of an effective supranational law in supranational Courts with fiats that will be respected and obeyed in a Supranational Society.

International franchising can only ease, but never cure, the insuperable suffering which unreasonable nationalism is thrusting upon the people of this world. When we realize that we now have the ability for practically instantaneous, total destruction, mankind must try then, and as soon as possible, to isolate and immunize the deplorable, fatal illness of arrant nationalism, in the interest of a twenty-first century world of regional Common Market Economic Communities. This will result in transnational social and political unions, which, when well-buttressed by supranational law, will have much stronger foundations than narrow nationalism.

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brought by the plaintiff in the federal District Court for Hawaii, under the foreign commerce provisions of the Sherman and Clayton Acts, and based on an alleged conspiracy of the defendant manufacturer-franchisor of trucks with its Melbourne (Australia) franchisee to deprive plaintiff-franchisee of his Sydney franchise, for which the latter asked treble damages totalling over $8 million. Plaintiff's Sydney solicitor sought the jurisdiction of the U.S. Federal Courts because U.S. antitrust law afforded greater protection than the Australian Federal Trade Practices Act, which strictly limits the liability of, and damages payable by, a culpable defendant. The litigation is described in The Australian Financial Review, Jan. 13, 1969, at 2, col. 3, with an amusing sketch of the U.S. Supreme Court Building in Washington, D. C., captioned: "U.S. Supreme Court. . . final arbiter for Australian trade practices problems?" The District Court for Hawaii denied a motion by the defendant for change of venue to the Western District of Washington, 278 F. Supp. 839 (D. Hawaii 1967) (Pence, J.) But the Court of Appeals issued a writ of mandamus, on the petition of the defendant, directing District Court Judge Pence to vacate the order denying change of venue and to entertain anew petitioner's motion in that regard. Pacific Car and Foundry Co. v. Pence, 403 F.2d 949 (9th Cir. 1968). It seems that Judge Pence, after the case was sent back to Hawaii, decided that the Western District of Washington was also an inconvenient or improper forum and assigned the case to the Northern District of California, where it is still pending.