GERMAN-AMERICAN MIGRATION AND THE BANCROFT NATURALIZATION TREATIES

1868-1910

by

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PREFACE

Following the March, 1969, dissertation instructions, I have used Kate L. Turabian's A Manual for Writers of Term Papers, Theses, and Dissertations. As this manual provides no guidance for the use of microfilmed documents, and as the greater part of my archival material was on microfilm, I was forced to make my own decision regarding the proper citation of this type of document. In the course of my research, I found that some of the pagination was damaged or illegible. As a result, and in order to avoid misleading the reader, I made an arbitrary choice which at least insures that the reader can find the material cited. I chose to use the basic designation suggested by the National Archives and then cited the microfilm series and reel number. As these reels are arranged in strictly chronological order, and as all my material is dated, the reader should have no difficulty in finding the original source material.

This dissertation would never have been completed without the kindness and assistance of a number of people. Foremost among these is my sponsor, Professor Louis L. Snyder, without whose active help and encouragement I might well have been tempted to give up such a demanding project at my aged and faced with illness in the family. I would also like to express my gratitude to Professors Hans Trefousse and William Shanahan, the second and third readers, for their thoughtful suggestions for improving the work. Numerous other members of the faculty of the

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I would also like to express my gratitude to the City University for providing me with financial assistance in the form of a University Fellowship for 1967-68 during a crucial point in my dissertation research. In addition, I would like to thank the personnel of the Manuscript Room of the Library of Congress, who provided invaluable help and guidance in the search for documentation, and the librarians of the John Olin Library at Cornell University, Ithaca, New York for their kindness. The reference librarians at the National Archives in Washington, the New York Public Library and at Columbia University Library were most helpful and saved me many hours of fruitless search. I would like to thank my husband for his constant, unflagging encouragement and help even at the sacrifice of his own health and comfort.

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INTRODUCTION

The American colonies, prior to independence, were already heavily dependent upon the German principalities, as well as upon the mother country, as sources of desirable and much-needed colonists.[1] After independence, the general European doctrine, "once a subject, always a subject"--especially as applied by the British--interfered sharply with the new nation's desire to have its loyal first generation citizens left undisturbed. This conflict of interest between America and Great Britain was partially responsible for the War of 1812. The war, however, only resolved a portion of the problem. After its conclusion, naturalized Americans were safe from seizure at sea, but the more general right of expatriation and change of allegiance was still not established. As a result, if naturalized Americans ventured back to the land of their birth, Great Britain, they exposed themselves to possible arrest and imprisonment.

The problem with respect to the second largest source of immigrants--the German states--was somewhat different from that relating to Great Britain. These states, like Great Britain, did not recognize the right of free expatriation and change of nationality. In addition, they demanded some form of military service from all their able-bodied, male subjects. As a result of non-

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[1] Fritz Joseephy, Die deutsche Überseeische Auswanderung seit 1871 (Berlin: 1912), pp. 16-18, states that 50,000 Germans emigrated to America between 1683 and 1690 alone, and estimates the German population of Pennsylvania in 1750 to have been 100,000, or half of the total population of that state.

recognition of the principle of change of nationality, then, the government of a naturalized American citizen's country of birth continued to regard the migrant as owing military service to his home state. Thus, if a naturalized American citizen who had left his German homeland prior to becoming liable for military service or before having performed such service returned to the country of his birth, he not only risked arrest, he also risked being forced into service and being made to serve out his full term of duty.

This treatment of naturalized American citizens caused much bitterness among German-Americans in the United States. It also gave rise to increasing concern on the part of the United States government about the possible future consequences of such treatment of naturalized American citizens. The American government feared that the fact that a young migrant would thus be cut off from family and friends back in his German homeland for most of his adult life might hamper emigration to the United States. That this source of manpower was extremely important to the country is evident from the immigration figures. About 7.5 million immigrants came to the United States between 1820 and 1870. Of these, 2.4 million, or about one-third of the total, were Germans. The major portion of these Germans came after the revolution of 1848.[2]

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[2] Ibid., p. 21 and table appended to the end of the book. The table shows 215,009 immigrants from Germany entering the United States in 1854, the largest single year's migration except for 1882, when 250,630 Germans entered the United States.

With the exception of extradition treaties with various German states, only one general treaty existed between the United States and a German state: the Treaty of Commerce and Navigation, concluded with Prussia in 1828.[3] While the United States had extended the scope of that treaty as American territory expanded, the treaty proved inadequate for the settlement of Prusso-American differences arising out of disputes over the status of naturalized American citizens of Prussian origin with respect to liability for Prussian military service.[4] The frequency with which such differences arose increased sharply in the period immediately preceding the Civil War and following the heavy wave of Prussian emigration to America following the 1848 revolution. The American Civil War interrupted all efforts to arrive at an amicable settlement with Prussia. However, at its conclusion, the government of the newly strengthened United States renewed its efforts to arrive at a settlement of the question, not only with Prussia, but with the other German states as well.

The anticipated population needs of the American frontier could be met most satisfactorily through the continued inflow of easily assimilable

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3 William M. Malloy (ed.), Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers, 1776-1907 (Washington, D.C.: 1910), II, pp. 1496-1501, cited hereafter as: Malloy, Treaties.

4 Ibid., p. 1496. Article I of this treaty states only: "They [Americans or Prussians] shall be at liberty, to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing."

migrants from both Britain and Germany. Not only did they blend easily into American life, but these migrants came predominantly from rural areas and, therefore, possessed some knowledge of farming and handicrafts. They were, thus, ideally suited for pioneer life. As much of the future development of the United States depended upon a continued and unhampered flow of immigrants from Europe, it was of primary importance to America that it obtain European recognition of the right of free expatriation and change of allegiance. Such recognition was also personally important to the 5.5 million--over ten per cent of the total United States population--foreign-born men and women then living in the United States.[5]

The immediate post-Civil War period seemed to offer good prospects for negotiating an agreement on the subject with Prussia. Prussia had just emerged victoriously from a war--fought with Austria as its ally--against Denmark which had alienated Britain from her. Thus, Prussia was at least not averse to seeking new friendships. Prussian emigration to the United States had resumed strongly after the Civil War, and was continuing to rise. There was, then, an increasing point of interest if not a growing common tie, between the two countries. Otto von Bismarck-Schoenhausen, the Prussian Ministerpraesident, must have come to a conclusion similar to that of the United States government with respect to

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5 Historical Statistics of the United States (Washington, D. C.: 1960), pp. 7-9. The tables show the estimated total population of the United States in 1870 to be just under 40 million, of which 5.5 million were foreign-born. By 1880, the United States population had risen to just over 50 million, of which 6.5 million were foreign-born; 1890 showed a population of 63 million, of which 9.6 million were foreign-born; by 1900 the population was 76 million with 10.2 million foreign-born; and 1910 showed a population of 92.5 million of which 13.3 million were foreign-born.

the desirability of a settlement concerning the military duty question affecting former Prussians who had become United States citizens. Negotiations between the two countries were resumed in 1866. They were briefly interrupted by the Austro-Prussian war, and, later, by the death in 1867 of the American minister to Prussia in Berlin, Joseph A. Wright.[6] However, the United States' efforts were finally crowned with success when the first naturalization treaty in the history of that country was signed with the North German Confederation on February 22, 1868.[7] Four more treaties, one each with the South German states of Bavaria, Baden, Württemberg, and Hesse, followed throughout the year 1868.[8]

The first of these naturalization treaties justly has been called a fundamental breakthrough in international law in that it constituted the first formal recognition by a European power of the principle of expatriation and change of allegiance. That is, a recognition that a man had a right to leave his home country and assume a new nationality and that this nationality would then be recognized by the country whose subject he had been up to that date. The five naturalization treaties concluded now

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6 Letter, American Legation to Department of State, May 13, 1867, reported Joseph A. Wright's death which had occurred on May 11, 1867. MS Despatches from United States Ministers to the German States and Germany (National Archives, Washington, D. C.), Microfilm Series - 44, hereafter referred to as: MS Dispatches, Germany, M-44.

7 Malloy, Treaties, II, p. 1298. Eventually, the United States signed twenty bilateral naturalization treaties.

8 Ibid., I, pp. 53-55 (Baden); pp. 60-63 (Bavaria); pp. 949-951 (Hesse); II, pp. 1298-1299 (North German Confederation); pp. 1895-1898 (Württemberg).

covered all German territory--with the exception of Austria--of that time. Any questions with respect to emigration or immigration arising thereafter between the United States and these German states should have been susceptible of amicable settlement on the basis of these treaties.

That this was not so is attested to by the fact that about five hundred controversial cases, involving differences of interpretation or opinion between the United States and the German states, signatories to these naturalization treaties, arose between 1868 and 1910. The purpose of this dissertation is to analyze the role of these so-called Bancroft naturalization treaties as a contributing source of those differences.

CHAPTER I

SETTING THE STAGE

Introduction. Beginning with the second quarter of the nineteenth century,[1] as immigration from Europe increased, the United States became increasingly preoccupied with the problem of protecting its naturalized citizens abroad. The War of 1812 with Britain settled only a very small part of the problem. Britain abstained from seizing suspected former subjects on the high seas; still, the law of "once a subject, always a subject" prevailed. No major European power as yet recognized the right of expatriation and change of allegiance, although most of them were not, at that time, opposed to emigration as such. They accepted it as a form of disposing of surplus population and thus relieving the mother country from potential economic burdens. For the same reasons, however, they were not eager to see any former migrants return, lest they should become a burden to their commune if they were poor, or aged, or both.

Until the last decade of the nineteenth century, two areas provided the major portion of migrants to the United States: Great Britain (Ireland) and the various states and principalities of Germany. In the case of the Irish, Britain arrested many of those venturing to return to their former

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[1] The figure of 20,000 immigrants a year from Germany was exceeded in 1836 for the first time in the nineteenth century, and stayed well above that number except for a few years; from 1846 on it was above 50,000 a year, reaching 215,009 in 1854, the highest figure before the Civil War. Cf. table I, appended to text in Joseephy, Die deutsche Auswanderung.

homes out of fear of Fenian agitators. The immigrants from the German states faced a different problem. Their former home states all demanded some form of military service from their young, able-bodied men. If a a male from a German state left his home as a child or at any time before being called up, he was considered to have evaded his duty to his native state. If he later came back, he was arrested, forcibly inducted into the military service, and kept there until his term of liability expired. Even if the young man himself did not venture back, any property he might inherit in his home state would be attached to force payment of a fine imposed in his absence because of his failure to present himself for military service when called. As a result of this practice, no former German male could dare to visit his old home before reaching the age of forty-five, an age when all military obligation ceased.

As a consequence of massive German emigration to the United States following the revolution of 1848, the question of liability to home state military duty on the part of naturalized Americans became acute just before the Civil War.[2] It was only natural that some of these immigrants should wish to return to their old homes from time to time to visit family and friends, and that many of these might still be of military age. Yet, under existing conditions, they could not do so without risking arrest and forcible induction into the military service of their native German state. All attempts at effective protection of such naturalized citizens failed,

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2 Ibid., table I, shows that slightly over 1.2 million Germans came to the United States between 1848 and 1861.

the American minister's remonstrances would be listened to politely, but little or no action resulted. As immigration from Great Britain (Ireland) and the German states continued to lead that from all other countries, and the United States did not want to risk the loss of this particularly desirable class of immigrants, the problem of obtaining recognition of the right of expatriation and naturalization became increasingly pressing.[3]

All efforts were, naturally, suspended during the Civil War.[4] When that conflict ended, however, the newly strengthened Union sought to obtain accommodation from both Great Britain and Prussia, the largest German state. It was hoped that once Prussia conceded the desired recognition, the other German states would follow her lead. Of the two powers concerned, Prussia, as the weaker of the two, offered the best prospects for success. Again, the United States hoped that Great Britain could be persuaded to follow Prussia's lead.

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3 The American minister in Berlin, Joseph A. Wright, thought that German immigration into the United States could even be increased: letter, Wright to Seward, March 7, 1866, U. S., Papers Relating to the Foreign Relations of the United States, 1866 (Washington, D. C.: 1866), p.9, hereafter cited as: F. R. 1866: "I estimate the German emigration this year at 150,000. If the opinions - concessions, as they understand it, expressed by Count Bismarck in his confidential note of 5th January 1866, respecting our returning adopted citizens, could be made public, with assurance that they would be faithfully kept and carried out by the Prussian government, it would, in my opinion, increase the emigration twenty percent."

4 Letter, Seward to Bancroft, August 22, 1867, F. R. 1867, I, p. 583: "The question is one which has been ripening for very serious discussion when the breaking out of the Civil War in this country obliged us to forego every form of debate which was likely to produce hostility or even irritation abroad."

After the Civil War, the American minister in Berlin, Joseph A. Wright,[5] clearly recognized the need and did his utmost to reach an agreement.[6] By that time, Count Otto von Bismarck-Schönhausen, the Minister-President of Prussia, had also become convinced that some accommodation was necessary. His first offer already represented a major concession. He suggested that, if an emigrant left before his seventeenth year and absented himself from Prussia for more than seven years, this would release him from all military obligation to that country.

This concession was not deemed enough by Secretary of State William H. Seward. He wrote to Wright in February, 1866 that he would not consent to any qualification by a foreign government of American citizenship, and instructed Wright to transmit this opinion to Bismarck.[7] Wright reported on an interview with Bismarck during which he had carried out Seward's instructions. Bismarck, he wrote, had hinted at a further concession

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5 Biographical Directory of the American Congress 1774-1961 (Washington, D. C.: 1961), p. 1852. Joseph A. Wright, a former Congressman, Senator, and Governor of Indiana was Envoy Extraordinary and Minister Plenipotentiary to Prussia from 1857 to 1861, and again from 1865 to his death in Berlin on May 11, 1867.

6 Friedrich Kapp, who had spent twenty years in the United States and who was at that time a member of the German Reichstag, in his article series "Der deutsch-amerikanische Vertrag vom 22. Februar 1868," Annalen des deutschen Reiches, XXXV (Heft 5, 1875), p. 531, credits Wright with tireless energy in promoting his goal: an agreement. Kapp claimed that Wright returned to the attack again and again, and that only his untimely death prevented an agreement already in the spring of 1867.

7 Letter, Seward to Wright, February 19, 1866, U. S., MS Diplomatic Instructions of the Department of State 1801-1906, Germany (National Archives, Washington, D. C.), Microfilm Series - 77, reel no. 65, hereafter referred to as: MS Instructions, Germany, M-77.

to exempt from all military obligations former Prussians who had left even after reaching their seventeenth year, provided that they had absented themselves from Prussia for seven years or more.[8] Wright reported that Bismarck had expressed surprise at the American position and "remarked upon the impossibility of Prussia changing her laws on the subject of military duty."[9] Bismarck added that further to relax the stringency of these laws in favor of American emigrants

> beyond the concessions, (as he termed them, alluding to his protocol proposals,) would not only amount to the practical abrogation of said statutes in the case of all that had emigrated to the United States, or intended to do so in the near future, but would be actually offering a sort of emigration premium to able-bodied men who attained the age when they might be called out for active service in the army.[10]

Wright advocated accepting Bismarck's second offer of:

> 1st, exemption to all who leave before attaining the age of seventeen; 2nd, exemption to all others who have been absent from Prussia seven years - they would release from military service nine out of ten of the returning Prussians, and include nearly every case that has come under my observation during a residence of five years at this post.[11]

Wright then asked whether it would be possible to accept the proposal "without renouncing or impairing the principles vindicated at all times by the United States ?"[12] As Prussian law required an

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8 Letter, Wright to Seward, March 21, 1866, F. R. 1866, p. 10.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

absence of ten years for loss of citizenship, Bismarck's proposal represented a major concession, and accord seemed near. Then came Prussia's war with Austria, which again delayed agreement. Wright died on May 11, 1867, and President Andrew Johnson, obviously concerned about the continuing delay in reaching settlement on the question, lost no time in appointing the historian George Bancroft to succeed Wright on May 15, 1867.[13]

The appointment was timely for the political climate seemed to favor a rapid accord as Bismarck was now ready to negotiate a settlement. Prussia's rapid victory over Austria in 1866 had increased apprehension in Europe over the former's rapid rise to power. Great Britain had been alienated by the Danish war of 1864 and the rest of Europe was now suspicious and fearful as to Prussian motives and intentions. The North German Confederation had been formed in the wake of the Austro-Prussian war and Bismarck wanted and needed friends for that Confederation. He correctly judged the strengthened American Union to be a rising world power; therefore, its friendship seemed desirable.[14] He knew that the

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13 Letter, President Andrew Johnson to George Bancroft, May 15, 1867, appointing him Envoy Extraordinary and Minister Plenipotentiary to Prussia, MS Instructions, Germany, M-77, reel no. 65.

14 Carl Schurz, Reminiscences (New York: 1908), III, p. 277. Schurz, recording a personal interview he had with Bismarck in January, 1868, quotes Bismarck as having said to him: "Prussia is and will steadily be by tradition as well as by well-understood interest, the firm friend of your republic, notwithstanding her monarchical and aristocratic sympathies. You may always count upon that."

surest way to obtain that friendship was to settle the long-standing differences over the naturalization in America of former subjects of the states making up the North German Confederation.

The North German Confederation was still inclined toward free-trade ideas,[15] hence receptive to the concepts of economic liberalism. These concepts viewed government regulation, including the regulation of migration with suspicion. Thus, emigration, if not desirable as a means of ridding the country of surplus population, should at least be permitted in the interests of economic and social freedom. While some quarters--namely the military--regretted the loss of young, able-bodied men, this loss did not at that time appear to be serious enough to warrant sacrificing an agreement that would further the friendship and understanding of the United States for the North German Confederation.

George Bancroft, the new American minister to Prussia, saw his primary mission as the establishment of the right of German-Americans to renounce their old allegiance and to "accept an exclusive American citizenship."[16] He attempted to assume for himself all the credit for

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15 At that time, one of the men who had the greatest influence on Bismarck was Rudolf von Delbrück (President of the Chancellery of the North German Confederation from 1867, and President of the Reich's Chancellery 1871-76). Delbrück was the leading free trader of the time in Prussia. He refused to accept Bismarck's move toward protection and resigned his office in 1876 rather than to compromise his principles. See: Heinrich von Poschinger, Fürst Bismarck als Volkswirth, I (Berlin: 1889), pp. 35-41.

16 M. A. De Wolfe Howe, The Life and Letters of George Bancroft, II (New York: 1908), p. 257, hereafter cited as: Howe, George Bancroft.

achieving the naturalization treaties that bear his name,[17] but the records of the foreign relations of the United States show that his predecessor, Joseph A. Wright, had laid the groundwork with Bismarck and had obtained the first fundamental concessions from him. Bancroft concluded the actual treaties and thereby achieved formal German recognition of American citizenship for former North Germans who had emigrated to the United States,[18] resided there for a minimum of five years, and had been duly naturalized.

It is true that he obtained a reduction of the term of absence from seven to five years (conforming to the normal American naturalization requirement); but in return, he had added the two-year residence limitation clause contained in article IV of the first and three of the subsequent four treaties:

> If a German naturalized in America renews his residence in North Germany, without intent to return to America, he shall be held to have renounced his naturalization in the United States....The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.[19]

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17 Letter, Bancroft to Fish, May 8, 1873, F. R. 1873, I, p. 285: "Taking advantage of the welcome heartily extended to a newcomer... I devoted myself immediately to this subject....I had in view for them [German-Americans] absolute and total relief from the burdens which hung so heavily upon them, and to establish for them the complete and unqualified rights as American citizens to visit or inhabit their native country free from all solicitude on the subject of military service."

18 The major concessions later incorporated into articles I and II of the treaties, which recognized American citizenship status after a fixed time, exempted from prosecution all who had emigrated with or without permission to do so (if not deserters) were already formulated in Bismarck's 1866 proposals.

19 Malloy, Treaties, II, p. 1299.

However, it might well have been preferable to leave the time needed for total expatriation at seven years rather than introduce this qualification. The insertion of the two-year limit on the returnee's sojourn was much too high a price to pay for reducing the expatriation term by two years. The consequence of the limitations of residence abroad by naturalized citizens plagued all naturalized citizens of the United States for almost one hundred hears.

While it is true that the seven-year absence clause did introduce a qualification on American citizenship in the sense that normal naturalization procedure required a residence of only five years--even less in some cases--reduction of the required time of absence still left a qualification. Under certain circumstances it has been possible to acquire American citizenship in a shorter time than five years,[20] but the Germans refused to accept this further reduction and insisted on the full five years' absence as a condition for their recognition of American citizenship. Article I of all five German treaties stipulated that:

> Citizens of the North German Confederation [substitute Bavaria, Baden, Hesse, Wuerttemberg], who become naturalized citizens of America and shall have resided uninterruptedly within the United States for five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.[21]

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20 During the Civil War, legislation was introduced to grant citizenship in fewer than five years to persons who had served in the Union forces. This practice continues to this day for veterans.

21 Malloy, Treaties, II, p. 1298, see also: ibid., I, pp. 53-54 for Baden, p. 61 for Bavaria, pp. 949-950 for Hesse, and ibid., II, p. 1896 for Wuerttemberg.

These terms precluded a return to Germany before the five-year period had elapsed by a number of veterans of the American Civil War of German who had acquired citizenship by reason of their service in the Union army.

However, the clause concerning the two-year limit upon return to Germany really opened Pandora's box. This, as the ratification debate in the Reichstag of the North German Confederation showed, opened up the possibility of questioning the nationality of such a returning former German, Mr. Bancroft's protestations to the contrary.[22] The German authorities could interpret the matter of the citizenship of former Germans in any way they wished within Germany, as these naturalized American citizens would be residing on German territory and within the jurisdiction of local German authorities.

The most important point was that, for the first time in the seventy-nine years' existence of the American republic, a qualification had been introduced for American citizenship. Until that time, except for the requirement of native birth with respect to eligibility for the Presidency of the United States, contained in Article II, paragraph 1 of the Constitution, no distinction had been drawn between native-born and naturalized citizens. The naturalization treaty with the North German Confederation,

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22 Letter, Bancroft to Seward, April 3, 1868, F. R. 1868, II, p. 50. Bancroft maintained that the Germans could not bestow his old nationality back upon a former citizen without the express consent of the United States government. He added: "That no doubt might exist of the correctness of my interpretation of our treaty, as communicated to you in my dispatch of February 22, I left a copy of that dispatch at the Foreign Office, and no objection whatever was made to its contents."

and three of the four subsequent treaties signed with other German states, introduced such a qualification. From these treaties, which upon ratification became part of the law of the United States, the two-year limit for residence in the country of origin was transferred to United States domestic legislation in the 1907 Nationality Act,[23] the Nationality Act of 1940,[24] and finally to the Immigration and Naturalization Act of 1952 (McCarran Act).[25] Thus, a provision which was carelessly inserted into a treaty with a foreign power and which was not eliminated by the ratification machinery resulted in second-class citizenship status for naturalized American citizens for almost one hundred years. It was finally declared unconstitutional by a 1964 Supreme Court decision.[26]

The Political Climate in the United States at the Time of the Bancroft Treaty Negotiations

In view of the fundamental nature of the first naturalization treaty the United States ever concluded with a foreign power, it is important to evaluate the circumstances surrounding the treaty negotiations. Much depended upon the successful conclusion of such a treaty--not only for Americans of German origin, but also for naturalized Americans of whatever

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23 34 Stat 1228.

24 54 Stat 1137, 1170, extended the two-year limit on residence in country or origin to three.

25 66 Stat 163, 170, 269. This act modified the freedom of residence even further in that it did not even "require uninterrupted physical presence in a foreign state" to cause loss of citizenship.

26 Schneider v. Rusk, Secretary of State, 377 U. S. 163 (1964).

national origin. The whole question of the status of naturalized American citizens with respect to former nationality and duties arising from past allegiance required settlement. Great Britain was watching the negotiations in Berlin and had professed herself willing to conclude an arrangement based upon the terms agreed upon between the United States and the North German Confederation.[27]

In view of the fact that so much depended upon the outcome of these negotiations, it is truly regrettable that the circumstances in America during the final stages of negotiations were so inauspicious. By early 1868, internal strife was reaching its culmination. Not only were the North and South divided as a result of the Civil War and Reconstruction then in progress; but a further bitter struggle had developed between the executive branch of the government, headed by a former Democrat, President Andrew Johnson, and the legislative branch, dominated by radical Republican elements. The details of these differences have no direct bearing upon the treaty negotiations. Indirectly, however, they must be held at least partially responsible for the lack of thought and care given to the formulation, conclusion, and ratification of the five naturalization treaties concluded with German states.

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27 Letter, Bancroft to Seward, January 23, 1868, F. R. 1868, II, p. 42: "Count Bismarck informs me that the British government has inquired of him as to the answer the Prussian government would make to the American government on the subject of naturalization. In reply he informed them of the intention of his government to come to an understanding with that of America, according to its request. The remarks of Count Bismarck implied that the British government is inclined to follow the example of the Prussian, and that settlement of the question here will be virtually a settlement for Great Britain."

The year 1868 was an election year, both presidential and congressional. Each political party stood to gain votes in these elections if it could point to a tangible achievement such as a treaty protecting the rights of naturalized American citizens abroad. It is for this reason that the treaty was negotiated with utmost speed and everyone concerned strove for rapid ratification, hoping thus to claim the achievement for his own party. Bancroft and Johnson were hoping to retain the vote of the Irish-Americans for the Democratic party as well as recapturing that of the German-Americans which had been alienated as a result of the slavery issue. Secretary of State William H. Seward was caught between the Johnson administration and a Senate hostile to it. He needed the President for his foreign policy plans. At the same time, he had to cultivate the Senate which would have to ratify any projected treaty.[28] Charles Sumner, the Chairman of the Senate Committee on Foreign Relations, a prominent Republican, hoped to retain the German-American vote for his party and to benefit if any Irish-American votes were lost to the Democrats. As a result, clarity and precision in the treaty itself, and careful scrutiny with respect to possible ramifications of treaty provisions were lost. Worst of all, the rights of naturalized Americans were ultimately sacrificed to political expediency.

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28 Glyndon G. Van Deusen, William Henry Seward (New York: 1967), p. 449: "Seward was a prey of conflicting emotions as battle raged between the White House and Capitol Hill. He had ambitious plans in the field of foreign relations, and for these he needed the support of both President and Congress. If he lost that of the former, he would be dismissed. If he could not get along with the latter, his projects could be wrecked by attacks upon himself and upon his ministers and consuls abroad, and by the Senate's rejection of treaties."

George Bancroft, the American negotiator, together with his German counterpart, Bernhard König, formulated the text of the treaty. It has been alleged that Bancroft offered the clause concerning the two-year residence restriction to the Germans gratuitously.[29] According to a draft text that he transmitted to König, Bancroft inserted the clause but left the number of years blank. It was König who inserted the two-year limit in his counterproposal.[30] He also reformulated that clause. It is just possible that, if Bancroft's original text had been accepted in the final version, it might have been questioned during the Senate ratification debate.[31]

Parallel with his official correspondence with Seward, Bancroft kept up a private correspondence with President Johnson on the treaty matter. On one occasion, he asked the President for added, special powers; his stated reason being that he would like at the same time to settle other pending questions.[32] This leads to a suspicion, however,

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29 New-Yorker Staatszeitung, March 8, 1873. In a discussion of the possibility of amending the existing naturalization treaties, the paper mentioned that the two-year sojourn clause of article IV was to be incorporated into the new arrangement. In connection with this assertion, the paper claimed that when Bismarck had been told of German-American opposition to this clause in the first treaty, he had replied that this clause had not been inserted in response to German demands but at the insistence of the American negotiator.

30 Letter, Bancroft to Seward, February 14, 1868, inclosure no. 1, F.R. 1868, II, pp. 44-46.

31 Ibid., p. 46: "A naturalized citizen returning to his native country with intent to resume his domicile therein and proving his intention by a continuous residence of ____ shall not be entitled to the interposition respectively of the United States and of North Germany."

32 Letter, Bancroft to Johnson, January 24, 1868, Andrew Johnson Papers (Library of Congress, Washington, D. C.), microfilm reel no. 27: "In the official letter of today, I have asked for formal powers which are given when a treaty is made, and I have asked that Mr. Seward form the powers in pretty general terms....I wish you to be fully persuaded, that I will not hazard the settlement of the military question by any zeal to settle other questions."

that he might have offered even wider concessions to the Germans, had they asked for them, in order to expedite the treaty. Even though Bancroft was not a lawyer, he must have been aware of the possible ramifications of a clause such as this inserted in a formal treaty. His own explanation is given in a letter accompanying the treaty:

> The fourth article is intended to prevent insincerity in the transfer of allegiance. A German naturalized in America and returning to Germany for two years does not necessarily renounce his American citizenship; only he may be called upon to declare his purpose explicitly.[33]

He must, however, have had some uneasiness and some second thoughts about possible interpretations of the treaty. He left a copy of his own letter to Seward of February 22, 1868, at the German Foreign Ministry "that no doubt may exist of the correctness of my interpretation of our treaty with North Germany."[34] He claimed as proof that his own interpretation of the treaty was correct, the fact that the Germans had not protested the views therein.[35]

Some doubt persisted. Bancroft, after attending the debate in the North German Reichstag which preceded German ratification of the treaty, reported on this debate to the Department of State. He had also seen the committee report, prepared by a joint commission of several German

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33 Letter, Bancroft to Seward, February 22, 1868, F. R. 1868, II, p. 48.

34 Letter, Bancroft to Seward, April 3, 1868, F. R. 1868, II, p. 50.

35 Ibid.

government departments in anticipation of the debate.[36] In his letter to Seward, Bancroft called this report "not well digested," and felt himself compelled to add:

> On the fourth article I will add a few words. The American law extracts from the citizen who becomes naturalized a perpetual renunciation, by oath, of his former nationality. Hitherto the Prussian government has made no formal recognition of our naturalization laws, but now that it becomes bound by treaty to respect them, it could not have restored to the returning American-German to his German citizenship had not the consent of the United States to them been given, as it is given, by the fourth article of this treaty.[37]

In a comment on article IV of the treaty, the German report had noted that the citizenship of returning Germans was to be decided according to internal [German] law. German law, the report alleged, sometimes recognized dual citizenship and, therefore, could regard duties arising from German citizenship as suspended during the person's absence and naturalization in America.[38] Bancroft neglected to report these very important views voiced in his own report to the Department of State, a grave oversight in view of later events. It was precisely this interpretation that the Germans put upon this clause of article IV of the treaties after 1880.

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36 The report was entitled "Bericht der vereinigten Ausschuesse fuer das Landheer und die Festungen und fuer Justizwesen ueber den Vertrag mit den Vereinigten Staaten von Amerika vom 22. Februar 1868 im Betreff der Staatsangehoerigkeit der Eingewanderten," cited hereafter as "United Commissions Report," it was reproduced in full in Charles Munde, The Bancroft Naturalization Treaties (New York, Philadelphia, St. Louis: 1868), pp. 5-10, hereafter cited as: Munde, Bancroft Treaties.

37 Letter, Bancroft to Seward, April 3, 1868, F. R. 1868, II, pp. 52-53.

38 "United Commissions Report," Munde, Bancroft Treaties, pp. 8-9: "Die Frage ueber die Staatsangehoerigkeit dergestalt Zurueckgekehrter ist wieder nach der inneren Gesetzgebung zu entscheiden, durch welche bekanntlich mehrfach die Zulaessigkeit eines doppelten Unterthanenverhaeltnisses anerkannt wird....kehrt er zurueck, so leben seine alten Unterthanenrechte wieder auf, und mit den Rechten auch die Pflichten."

Moreover, the letter of April 3, 1868 shows that Bancroft was very well aware of the qualifications of American citizenship contained in article IV. He stated that in this article, the United States government gives its consent to the restoration of German citizenship. No such consent could or would ever be given by the United States government in the case of a native-born citizen who resided in a foreign country for two years. Therefore, it can only be assumed that Bancroft fully intended the qualification and that it was not an oversight resulting from the haste with which the treaty was formulated.

Once the treaty was signed, Bancroft was determined to get it ratified as quickly as possible. He may have feared that it would be held up indefinitely by the impeachment proceedings then in progress against the President.[39] He urged speed upon the President, the Secretary of State, and individual members of the Senate. In the case of the latter, he even tried to use pressure.[40] Bancroft's insistence on utmost speed in the process of ratification, despite the fact that article VI of the treaty explicitly permitted a delay of six months for the exchange of ratifi-

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39 Two days after the signing of the treaty in Berlin, on February 24, 1868, the House voted to impeach the President of the United States before the Senate. See, Henry Steele Commager (ed.), Documents of American History, I (New York: 1963), p. 493.

40 U. S., Congressional Globe and Appendix, 40th Cong., 2d Sess., 1868, V, p. 4331. During the debate on the Bill on the Rights of Citizens Abroad (HR 768) on July 22, 1868, Senator Conness accused Senator Sumner of having in his hand a letter from Bancroft saying: "Confirm the treaty if you want these men out of prison."

cations,[41] can only be interpreted in the light of political expediency.

The man was in a position to determine the acceptability of the treaty, Secretary of State William H. Seward, must bear blame for the fact that the treaty was passed in the form negotiated by Bancroft. Seward wrote Bancroft March 7, 1868, shortly before the actual treaty arrived in Washington:

> The President believes that the treaty, in the form it is understood to have been adopted, will prove satisfactory, but a definite expression of his views is reserved until the arrival of the treaty, which even now is due. In the meantime I have pleasure in assuring you of his commendation and felicitation.[42]

He could have sent the treaty back to Bancroft to have an effort made to remove the qualifying clauses. It is curious to note that an influential newspaper, generally thought to reflect accurately Seward's views, had expressed severe reservations about the treaty shortly after its conclusion.[43] Yet, within two weeks, that same paper dropped these reservations and applauded Seward's recommendation for speedy passage.[44]

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41 Malloy, Treaties, II, p. 1299. Article VI closed with "and the ratifications shall be exchanged at Berlin within six months from the date thereof."

42 Letter, Seward to Bancroft, March 7, 1868, MS Instructions, Germany, M-77, reel no. 65.

43 The New York Times, February 27, 1868, in an editorial entitled "Our German Treaty," ended its comments on the treaty provisions with: "We are inclined to think that Mr. Bancroft's treaty was not negotiated under instructions from the State Department, and it will not pass the Senate without scrutiny. Perhaps Mr. Bancroft will have to try again."

44 Ibid., March 13, 1868: "The President has just sent to the Senate for ratification the treaty negotiated....Simultaneous with its presentation, Secretary Seward made his appearance on the floor of the Senate, urging its ratification, and offering what we fancy are very conclusive reasons why it should be accepted promptly."

Seward had opposed adamantly any qualification of American citizenship in a letter of instruction written to Bancroft's predecessor in Berlin only two years before the naturalization treaty was concluded.[45] Yet, in 1868, he no longer voiced any reservations on the subject. He endorsed the treaty without changing a word. He submitted it to the President, and then to the Senate, all within twenty-four hours of receipt.[46] He certainly could not have studied it carefully himself,[47] and it is hard to understand why the opinion of the Attorney-General of the United States was not sought in a matter involving the rights of American citizens. The records show that the Attorney-General was consulted on at least one other occasion when a question concerning the rights or status of an American citizen were involved.[48] The fundamental nature of the treaty would have warranted a few days' delay in order to allow for verification by the top legal officer of the nation. This especially, in view of the fact that citizenship law was still in the process of evolution in the nineteenth century.

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45 Letter, Seward to Wright, February 19, 1866, MS Instructions, Germany, M-77, reel no. 65.

46 Letter, Seward to Bancroft, repeating text of cable sent: "Received, approved, submitted to Senate." MS Instructions, Germany, M-77, reel no. 65.

47 Van Deusen, Seward, p. 371, said: "Beset by jealousy and criticism, oppressed by multifarious duties, often overworked, there were occasions on which Seward acted hastily without regard for the forms and requirements of law."

48 An opinion was solicited and received by the Department of State in the case of Arthur Steinkauler, who had been born in America of German parents, but had returned to Germany with them as an infant: "Opinion of the Attorney-General," June 25, 1875, printed in F. R. 1875, I, pp. 564-565.

At that time, the Senate was dominated by Republicans. Senator Charles Sumner of Massachussetts, a Republican, was chairman of the Senate Committee on Foreign Relations.[49] Notwithstanding his own party's official stand against qualification of citizenship,[50] Senator Sumner endorsed the treaty. Among the Senator's friends were some prominent German-Americans whom he might have consulted, as he did on other occasions, for their opinions.[51] Foremost among them was Carl Schurz. Curiously, Schurz did not take any active interest in the formulation of the treaty, despite the fact that the matter with which it dealt was considered to be of primary importance to German-Americans.[52]

Senator Sumner considered himself a champion of naturalized Americans and claimed to have gone against the dictates of political expediency in

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49 All members of that committee at the time were Republicans, they were: Sumner (chairman), Cameron, Fessenden, Harlan, Johnson, Morton and Patterson. Committee lists, U. S., Index to Executive Documents, Senate, II, 40th Cong. 2d. Sess., 1868.

50 Two months after passage of the first naturalization treaty, the Republican national convention's platform still formally opposed any qualification of citizenship for naturalized citizens. The New York Times, May 22, 1868: "9. The doctrine of Great Britain and other European powers, that because a man is once a subject, he is always so, must be resisted at every hazard by the United States....Naturalized citizens are entitled to the protection of all their rights of citizenship as though they were native-born."

51 One such prominent German-American was the publicist Francis Lieber, whom Sumner often consulted. Sumner wrote to Lieber on March 22, 1868: "You will like the German treaty. To my mind it is essentially just.... The treaty was carried, after debate, by thirty-nine to eight." Edward L. Pierce, Memoir and Letters of Charles Sumner, IV (Boston: 1893), p. 344, hereafter cited as: Pierce, Sumner Memoir.

52 The exchange of correspondence, Sumner to Schurz, November 26 and December 12, 1867, and February 17, 1868; and Schurz to Sumner, February 15, 1868 shows no mention of the subject. Carl Schurz Papers (Library of Congress, Washington, D. C.), container 176, hereafter cited as: Schurz Papers. Schurz was in Germany during the winter of 1867-68, and even had a personal interview there with Bismarck.

championing them against the "Know-Nothings."[53] Yet, he, too, seems to have been motivated by political expediency in rushing the first naturalization treaty through the Senate before the Republican national convention in the hope of capturing the German-American vote. His specific thoughts on the clause in article IV containing the two-year residence qualification on American citizenship are recorded in a letter he wrote to Dr. Charles Munde, a naturalized citizen, then residing in Würzburg, Bavaria. Munde had written Senator Sumner as soon as he had been able to obtain the text of the treaty concluded with the North German Confederation protesting the very fact that this treaty relegated naturalized citizens to second-class status. Senator Sumner replied:

> The object of naturalization is to give to foreigners who intend to reside here permanently, to cast their lot with us, the rights of our citizens. I think it is too much to suppose that it was intended to relieve the citizens of other countries from the performance of the duties, which their governments see fit to impose upon them....The clause you speak of was intended to guard against fraudulent naturalization...and as we looked at the matter here, it seemed a salutary provision. The two years' residence is only prima facie evidence of an intention to remain, and may be rebutted by proof to the contrary.[54]

The first naturalization treaty was ratified by the Senate on March 26, 1868, barely two weeks after it reached Seward.[55] As there had been a

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53 Sumner mentioned this in a Senate debate on the Bill Concerning the Rights of Americans Abroad, July 22, 1868, quoting from a speech he had delivered at Faneuil Hall in Boston on November 2, 1855. U. S., Congressional Globe and Appendix, 40th Cong., 2d Sess., 1868, XXXIX, Part 5, p. 4332.

54 Letter, Sumner to Munde, July 8, 1868, reproduced in Munde, Bancroft Treaties, p. 89.

55 Malloy, Treaties, II, p. 1298.

provision for a delay of up to six months for ratification after passage,[56] there was no need for this inordinate speed. All parties concerned would have had ample time to consider the treaty in all its aspects and to reflect on the possible impact on American citizens. As time was available and considering the fundamental importance of the treaty, greater care should have been taken: first, in the initial formulation of the treaty, and second, by the three parties (the Secretary of State, the President, and the Senate of the United States) concerned with passing on it before it became the law of the land.

This first treaty would formally, and for the first time, recognize the right of free expatriation and change of allegiance. For this reason and because it was recognized as a possible pattern for a number of future treaties to be concluded on the same subject, it should have merited the undivided attention of all parties concerned regardless of current political considerations. Four more treaties, one each with the German states of Bavaria (May, 1868), Baden (July, 1868), Wuerttemberg (July, 1868), and Hesse (August, 1868), were concluded and ratified during 1868 and early 1869. All but the Baden treaty contained the two-year residence clause qualifying American citizenship.[57]

It is especially surprising that neither the Secretary of State, nor the President, nor the Senate took into account, in ratifying the

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56 Ibid., p. 1299.

57 Ibid., I, pp. 53, 60, 949; II, pp. 1895, 1289.

the treaty, two pieces of legislation then pending. The first and foremost of these was the Fourteenth Amendment to the United States Constitution which had been proposed and passed in June, 1866 and which was then very close to ratification by the required number of states.[58] The first section of this Amendment read:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States....[59]

Initially, Seward had seconded President Johnson's opposition to this amendment. However, after some changes "which left substantially untouched what eventually became the vital first and second sections of the amendment,"[60] he changed his mind and supported it.[61]

In addition to the Fourteenth Amendment, another bill, sponsored by the chairman of the House Committee on Foreign Affairs, Representative N. P. Banks of Massachussetts, was then pending. This bill provided for the specific protection of Americans abroad. The bill had first come up for consideration in January, 1868, before the signing of the first naturalization treaty, but was only passed on April 20, 1868. Senator Sumner,

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58 It was declared ratified on July 28, 1868, see Commager, Documents, I, p. 147.

59 Ibid.

60 Van Deusen, Seward, p. 451.

61 Ibid. Van Deusen said: "The New York Times, which reflected Seward's opinions more closely than any other newspaper, declared that if Congress would accept this proposal [the Fourteenth Amendment] as its answer to the reconstruction problem, the prospects of party peace and national unity would be wonderfully enhanced."

as chairman of the Senate Committee on Foreign Relations, held it up for two months because he disapproved of the provisions for retaliatory measures contained in the bill.[62] It was passed by the Senate, amended to tone down the retaliatory measures, on July 25, and by the House, as amended, on July 27, 1868.[63] Although Sumner disapproved of certain aspects of the bill, he did endorse that part which assured the rights of naturalized citizens abroad and which read:

> Sect. I. Be it enacted....That any declaration, instruction, opinion, order or decisions of any officer of the Government, which denies, restricts or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government.
> Sect. II. And be it further enacted, that all naturalized citizens of the United States, which in foreign states, shall be entitled and shall receive from this Government the same protection of person and property that is accorded to native born citizens in the like situation and circumstances.[64]

While the Banks bill was primarily intended as protection for American citizens of British (Irish) origin, it reflected the climate of opinion then prevailing in America.[65] Its provisions actually contradicted the

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62 Pierce, Sumner Memoir, IV, p. 346. The bill passed in the Senate 30:7.

63 U. S., Congressional Globe and Appendix, XXXIX, Part 5, p. 4446. It is interesting to note the vote on this bill by three future Secretaries of State then serving in the Senate: John Sherman was the only one to vote for it; Thomas F. Bayard and Frederick T. Frelinghuysen abstained and were recorded as absent, as was Senator Sumner, who disapproved of the bill even as amended.

64 Ibid., p. 4205.

65 Pierce, Sumner Memoir, IV, pp. 344-45, described the attitude of the sponsor of the bill, Representative N. P. Banks: " He had been a conspicuous "Know-Nothing," and was elected to Congress in 1854 by that secret order....He had now swung to the opposite extreme. He seemed bent, in order to suit what he thought the passion of the hour, on breaking down our neutrality system....Sumner was obliged in the Senate to watch and counteract the House comittee acting under Banks' leadership."

wording of the Bancroft treaties, as did those of the Fourteenth Amendment, as no native-born American's citizenship could have been called into question after two years' residence abroad. It is possible that Secretary of State Seward objected to some of the provisions of the Banks bill[66] because they might embroil the United States in endless controversies with foreign powers. However, given the mood of the country and considering the large majority the Republican party had in both Houses of Congress, the bill was bound to pass. The only provisions of the bill to which a number of Congressmen and Senators objected were those giving the President discretionary powers of retaliation, not the ones which described the rights of naturalized citizens.

Foreign Policy of the North German Confederation at the Time of the Treaty Negotiations

After two victorious wars (against Denmark in 1864, and Austria in 1866), Prussia had become the strongest German state. The North German Confederation, formed in the wake of the war against Austria, was emerging under Prussian leadership as a major European power. Bismarck, as Minister-President of Prussia and Chancellor of the North German Confederation, foresaw complete German unification under the leadership of Prussia. Only

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66 Ibid., p. 347: "The Senate rejected the House retaliatory provisions...but yielded to the clamor far enough to insert Williams' amendment requiring the President 'whenever an American citizen was unjustly deprived of his liberty by a foreign government, to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate a release,'" Sumner opposed this amendment as conferring undefined powers, even those of reprisal. Seward may well have done so, too.

South Germany had remained apart and was still inclined toward Austria. With Austria's defeat in 1866, Prussian hegemony in Germany seemed almost assured. Bismarck foresaw a possible future conflict with France and, if that war were won, complete German unification in the wake of it. Therefore, if war with France was inevitable, he wanted it as soon as possible, in any event before the Prussian victory of 1866 would be forgotten by the South German states.[67]

With a possible conflict with France in view, Bismarck was looking for friends for Prussia, and the United States, itself an emerging world power, seemed to offer good prospects for such a friendship. Stolberg-Wernigerode described the situation as follows:

> Bismarck's American policy may be expressed in a few words: it was his desire to maintain as friendly relations as possible....He was not willing to burden the overloaded vehicle of European politics by adding American animosity. During the years preceding the establishment of the German Reich, he valued the good will of the United States most highly. He made it a point to use the German element in America as a link.[68]

In order to win over the German element in America to his plans it was necessary to eliminate the greatest grievance that German-Americans had against the old homeland: the German claims for military service on the

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67 Otto von Bismarck, Gedanken und Erinnerungen, II (Stuttgart: 1898), pp. 88-89: "In view of the attitude of France, our national sense of honor compelled us, in my opinion, to go to war, and if we did not act according to the demands of this feeling we should lose, when on the way to completion of our national development, the entire impetus gained in 1866, while the German national feelings south of the Main, aroused by our military successes in 1866 and shown by the readiness of the Southern states to enter alliances, would grow cold again."

68 Otto zu Stolberg-Wernigerode, Germany and the United States During the Era of Bismarck (Reading, Pa.: 1937), p. 92.

part of naturalized American citizens of German origin. This was perhaps the factor that weighed most heavily with Bismarck in favor of an early agreement with the United States on the subject.

In his effort to win over the German element in the United States, Bismarck also used prominent German-Americans. Carl Schurz, an 1848 revolutionary who had emigrated to the United States, was graciously received by Bismarck when he returned to Germany for the first time in the winter of 1867-68.[69] At that time, Bismarck told Schurz that he thought war with France would come within two years.[70] In his talk with Schurz, Bismarck expressed concern about the American domestic situation. This was in January, 1868, and Bismarck asked Schurz whether an impeachment and possible conviction of President Johnson would affect the internal stability of the United States. Schurz assured him that it would not do so, and Bismarck seemed relieved to hear this.[71] Within a month of this conversation, North Germany signed the first naturalization treaty with the United States.

While Bismarck can be credited with being the force behind German willingness to negotiate the treaty, the general atmosphere in Germany was favorable to the attainment of such an agreement. This is evident from the

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69 Carl Schurz, Reminiscences, III, pp. 263-280.

70 Ibid., p. 274. Schurz quoted Bismarck: "My calculation is that the crisis will come in about two years. We have to be ready, of course, and we are. We shall win, and the result will be just the contrary of what Napoleon aims at--the total unification of Germany outside of Austria, and probably Napoleon's downfall."

71 Ibid., p. 276.

record of the ratification debate which took place in the North German Reichstag on April 2, 1868. It is true that the treaty had already been and ratified (in record time) by the United States and that the cabled news of this ratification had reached North Germany by the time of the debate. However, the generally friendly spirit toward the United States was an element in the rapid North German ratification.

The treaty was introduced by a Bremen industrialist, Representative Hermann Heinrich Meier, who spoke at some length about the new principle of international law introduced by the treaty. He sketched the background for it and recalled the difficulties which had arisen between the United States and North Germany with respect to returning former Germans. Meier specifically thanked Bismarck for his support and for being farsighted enough to prevent further differences in the future as a result of the great number of North Germans who had recently gone to the United States, and the many more who were likely to go there.[72] Meier touched upon a matter which was to play an important role in the future interpretation of all the naturalization treaties. He remarked that, while the report accompanying the treaty[73] stated that the principle of dual nationality would not be affected, he would like to point out that the United States had always adhered, in the past, to the principle that anyone who is a

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72 North Germany, Stenographische Berichte ueber die Verhandlungen des Norddeutschen Bundes, I. Legislatur-Periode, 1868, I, 6th Session, April 2, 1868, p. 41, hereafter cited as: North Germany, Stenographische Berichte.

73 "United Commissions Report," Munde, Bancroft Treaties, pp. 5-10.

citizen of the United States cannot, at the same time, be a citizen of any other state, and that the United States citizenship oath required the new citizen to renounce all previous allegiances. Meier stressed this point, he said, because he wanted to avoid any future misunderstandings.[74]

The next speaker, Representative Rudolf Schleiden, who was co-sponsor of the treaty and who had spent many years in the United States as a representative of the city of Bremen, described the bonds of friendship which still united German-Americans with the old fatherland. He thanked the government of North Germany for eliminating, by means of this treaty, a point of friction which might trouble German-American relations in the future. He asserted that these differences had, in the past, brought the two nations to the verge of rupture.[75] Schleiden, too, went over the history of the differences which had led up to the present treaty, but disagreed with Meier on several points. In particular, he asserted that America's policy of disputing North Germany's right to demand military service from returning former subjects who had been naturalized in America was a new policy which had only started with the Administration of President Buchanan. It had first been voiced, he claimed, by Secretary of State Lewis Cass in 1859.[76] This had been a period of ever increasing German emigration to America--Schleiden avoided relating this rise to the aftermath of the 1848 revolution--and a time when naturalized Americans of

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74 North Germany, Stenographische Berichte, I. Legislaturperiode, 1868, I, p. 41.

75 Ibid.

76 Ibid.

German birth had started to complain about their treatment upon return to their former homes.[77] Schleiden added:

> The treaty, although I recommend it to you warmly, has not been worded as precisely as one would wish. I therefore think it my duty to explain the contents of the several articles to you to correct me if I do not state the contents correctly and if the Gentlemen should not be convinced that the American government shares my views of the interpretation, they should see to it that at the exchange of ratifications a protocol is added to clarify these views.[78]

Schleiden then proceeded to discuss the treaty, article by article, giving his own views on each of them. He concluded that, even though some criticism could be voiced on the wording of certain passages, the overall gain represented by the treaty outweighed all other considerations. He recommended passage because the treaty would permit the close relations then existing between the two countries to develop further and in a manner beneficial to both.[79]

In the discussion which followed, the representative of the Federal Council, Privy Councillor Bernhard König, warned against reading more into the treaty than it actually contained. The same theme was taken up by Representative Wilhelm Loewe who, although recommending passage for the treaty, asked for clarification of several points contained in it. It is interesting to note that the questions asked by several of the Reichstag deputies with respect to the treaty were questions that really should have been asked by Americans in the United States Senate at the time of treaty ratification.

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77 Ibid., p. 41

78 Ibid., p. 42. Unfortunately, this suggestion was never carried out by North Germany. It might have prevented much misunderstanding. Both Bavaria and Wuerttemberg followed Schleiden's suggestion.

79 Ibid., p. 43.

One of these questions concerned the status of Germans, naturalized in America, who returned to Germany and stayed there longer than the two years permitted by article IV of the treaty.[80] In this regard, Representative Loewe referred to the report accompanying the treaty and asked what was meant by the term "revival of subject rights" (Wiederaufleben der Unterthanenrechte), used in connection with an explanation of the two-year clause in article IV of the treaty. Loewe pointed out that Prussian law, because of the fear of claims against the poor relief fund, divested any Prussian of all rights after an absence of ten years. However, Loewe feared that the interpretation with respect to duties might be quite different.[81] In particular, he asked the government representative to clarify the duty status of the former German with respect to military service. He noted with pleasure that no claims for such service would be made against a former German simply as a result of his emigration, but asked whether old claims would be revived after the sojourn extended beyond the two years permitted under article IV.[82] Despite these reservations, however, Loewe warmly recommended passage of the treaty because, in his opinion, it would assure his nation the continuing respect and affection of millions of

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80 An 1874 report from the American Legation in Berlin to the Department of State estimated the annual flow of United States citizens to Germany at approximately 15,000. Of these 13,000 returned during the same season, 1,500 stayed longer, but their stay was still temporary, 500 approximately, stayed permanently in Germany. See: letter, Davis to Fish, November 2, 1874, I, F. R. 1875, p. 485. During that same year 1874, 87,291 Germans emigrated to the United States. See: Joseephy, Die deutsche Auswanderung, table I.

81 North Germany, Stenographische Berichte, I, p. 44.

82 Ibid.

German-Americans across the ocean.[83]

At this point, Bismarck rose to speak about the treaty. He remarked that even those members who always criticized government proposals as a matter of course had to recognize how difficult it would be to alter now a treaty such as this one. He disputed Schleiden's assertion that the treaty was imperfectly worded, caliming that the practical purpose of the treaty was quite clear. In answer to Loewe's criticism of the treaty, Bismarck said that, as he understood the criticism, Loewe feared that "someone who had spent five years in America and had been naturalized there might, upon return, be called upon to perform military service in North Germany."[84] Bismarck claimed that this would be impossible because, if North Germany recognized such a person as an American citizen, it followed that he could not be called upon to perform military service in North Germany. He also denied Schleiden's intimations that there were differences between the German and English texts of the treaty, ascribing any discrepancies to the peculiarities of the respective languages. Bismarck concluded his expesotion with:

> I therefore ask you to give your consent to the treaty as it stands, and not to doubt the friendly and conciliatory manner in which it will be handled; and to be assured of the bonds which unite our Union with their Union, bonds of blood and friendship due to the fact that no other country outside of Germany contains so many Germans--even German-born people--who have kept their old attachment to their old home.[85]

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83 Ibid.

84 Ibid., pp. 44-45.

85 Ibid., p. 45.

Despite Bismarck's assurances, doubts about the treaty remained in the minds of some of the deputies. One of the skeptics was Representative Edouard Lasker.[86] Lasker asked for further clarification on the part of the government of article IV of the treaty. He stated that the debate, so far, had confirmed a naturalized American's exemption from German military service upon return only for the first two years of his sojourn. After that time, the "United Commissions Report"--not the treaty itself--raised some questions on the subject.[87]

Lasker reminded the deputies that this treaty would be an important part of public law and that it would be well, therefore, not to leave any parts of it unclarified. He went on to say that the explanation given by Bismarck had not cleared up his own doubts completely. He discussed the "United Commissions Report" at some length and added that, as he understood it, under German law (which permitted dual citizenship), the German citizenship of persons emigrating to the United States and acquiring American citizenship there would only be suspended during their absence. When these same persons returned home, however, they would not have to acquire North German citizenship anew, rather their old citizenship would be reactivated

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86 Edouard Lasker, a noted parliamentarian, was a member of the North German Reichstag and then a member of the imperial Reichstag until his death in New York city in 1884. He was an advocate of strengthening the power of parliament, a move which Bismarck strenuously opposed. He was a co-founder of the National Liberal Party in Germany. Bismarck's enmity transcended Lasker's death in that he refused to transmit to the Reichstag a resolution of condolence voted by the American House of Representatives and given to him by the United States Minister, Aaron A. Sargent, whose transfer from Berlin resulted from this incident. See: Louis L. Snyder, "Bismarck and the Lasker Resolution, 1884," The Review of Politics, XXIX (January, 1967), pp. 41-64.

87 North Germany, Stenographische Berichte, 1868, I, p. 45.

when they lost their acquired citizenship by exceeding the limit of two years permitted by article IV. As the "United Commissions Report" seemed to contradict the statements made by government representatives during the debate, Lasker asked for further clarification.[88]

The questions asked by Representatives Lasker and Loewe during this debate are the very ones the Americans might have asked before ratifying the naturalization treaty. In the light of later events, Lasker's words seem prophetic. When German policy toward the naturalization treaties changed under the Reich and emigration once more became suspect, the construction put upon the treaties by the "United Commissions Report" was the very one that the German Foreign Ministry used. This was at a time when the foreign policy of the Reich was still guided by Bismarck--the same Bismarck whose answer to Lasker was taken on the surface as a refutation of Lasker's contention that old, not new, military duties might be revived:

> I am of the opinion that, according to the meaning of the treaty, he who returns voluntarily to North Germany is in the position of a voluntary immigrant. If this voluntary immigrant is still of an age designated as liable to military duty in North Germany, then as a North German citizen those duties will evolve upon him which evolve upon North German citizens of the same age.[89]

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88 Ibid. Lasker added that any naturalized American of German birth who read only the treaty alone without the "United Commissions Report" would be misled. The treaty text gave no explanation, but the report left no doubt as to German legal opinion on the matter. Lasker called the suspended citizenship jus postliminii and affirmed its existence in public law.

89 Ibid., p. 46.

While Bismarck earned applause for this statement, he had, in fact, carefully avoided giving an answer to the actual question: what would happen to the returnee after the two-year period of grace allowed him by the treaties had elapsed. Thereupon, Representative Loewe, who had started this whole line of questioning, still unconvinced, asked Bismarck directly whether he had understood the Chancellor correctly in assuming that there could be no prosecution when a returnee ceased to be an American citizen, because of unauthorized emigration or because of old obligations of military service.[90] Bismarck then replied: "I give the declaration required by the previous speaker."[91] This assurance of Bismarck's was taken as a guarantee of immunity from military duty until such time as German citizenship was re-established. But the time for this reassumption was never clarified during the debate. In 1873, George Bancroft assumed the same immunity, and even quoted Bismarck's words when Secretary of State Hamilton Fish criticized the treaties point by point.[92]

Yet, Bancroft had read the "United Commissions Report" and had been present during the Reichstag debate. Unfortunately, he did not quote the rest of Bismarck's answering sentence:

> ...and I could almost express it in a way that we would treat the five years' absence in America, in conjunction with the acquisition of American citizenship as a fulfillment of the military duty toward the North German Confederation (laughter), if the new American citizen does not incur through timely return a new obligation of military duty [italics mine] toward the North German Confederation.[93]

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90 Ibid., p. 46.

91 Ibid.

92 Letter, Bancroft to Fish, May 8, 1873, F. R. 1873, I, pp. 288-289.

93 North Germany, Stenographische Berichte, 1868, I, p. 46.

It is the second half of this reply that contains the key to the later German interpretation of the treaties when it is taken in conjunction with Bismarck's earlier statement regarding the status of the voluntary immigrant. In the light of later German actions, Bismarck's words took on an ominous meaning. Lasker's fears proved to have been fully justified. Bancroft was remiss in failing to report the full debate at any time and by not transmitting a copy of the "United Commissions Report" to the Department of State.[94] In his eagerness to obtain a naturalization treaty, Bancroft ignored these clear warnings with respect to possible later interpretation of his treaty.

In 1868, Bismarck was anxious to obtain the naturalization treaty. Yet, the ambiguity of language must have suited him even at that time. It left him free, should he desire to do so, to reclaim former Germans who tried to live in Germany for any length of time under the protection of naturalized American citizenship. The duration of the treaty was originally set at ten years with, in the absence of specific terminating action, automatic extension.[95] As Bismarck anticipated the complete unification of Germany under the leadership of Prussia in the not too

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94 Bancroft made two references to the Reichstag debate, one in his letter of April 3, 1868 to Seward, F. R. 1868, II, pp.50-51; and one in his letter to Fish of May 8, 1873, F. R. 1873, I, pp. 288-289, defending himself against Fish's criticism of the treaties. He never transmitted the full text of the ratification debate to the Department of State. Quite the contrary, on both occasions he quoted only parts of statements to support his own arguments. Similarly, he never transmitted the "United Commissions Report." This must have been available, as a contemporary, Charles Munde, reproduced it in full in his own work on the treaties, The Bancroft Naturalization Treaties, published in 1868. Bancroft referred to this significant report only in passing in his letter to Seward of Arpil 3, 1868, F.R. 1868, II, p. 50, and called it "not well digested."

95 Malloy, Treaties, II, p. 1299, article V.

distant future, it is quite possible that he wanted to be free to terminate a treaty that might, by then, have outlived its usefulness to Germany. In any event, he never terminated the treaty of his own accord, although he may have hoped that the United States would do so. This would have removed him from the onus of blame for the termination while relieving him from the formal necessity of token adherence to a compact he no longer considered important.

Conclusion. The 1868 Bancroft naturalization treaties were concluded because both the United States and the German states considered them indispensable for continued mutual good relations. They remained in force after the mid-1880's only because neither side wanted to antagonize the other more than necessary, given their differences over other matters. Domestically, the Americans, ever conscious of the German-American voters, did not want to anger them unnecessarily by such a move. The Germans, similarly, may also have hesitated to antagonize further both the German-Americans and the United States. This, despite the fact that they found the treaties objectionable domestically in that they exempted men whom the Germans considered their subjects from military service.

It has been asserted that Bismarck had always been against emigration.[96] He, himself claimed that he did not concern himself with these matters, but left them to others during the earlier part of his Chancellorship of

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96 Maximilian von Hagen, "Bismarck's Stellung zum Auswanderungsproblem," Die Grenzboten, Vol. 72 (January 1, 1913), p. 24. The article claimed that Bismarck paid no attention as long as he had Rudolf von Delbrück as his chief advisor; that he only took an interest in such matters after Delbrück's resignation in 1876.

the German Reich:

> I am not, in general, in favor of emigration, especially not of the morbid promotion of emigration we indulged in during the first years of the German Reich--with my endorsement, I admit, but I paid no attention to the matter at the time.[97]

Bismarck was well aware, however, of the rising number of Germans who left their homeland for America. It appears rather that his position on emigration changed in connection with his more general change during the second half of the 1870's from free trade leanings (under the influence of Rudolf von Delbrück) to protectionism. That change was the result, not the cause, of the alliance he forged between agrarians and industrialists in order to gain support from both factions for his fiscal reform within Germany. In the course of that more general change his ideas with respect to emigration--seen as a drain of young, able-bodied manpower--also changed.

The agrarians had demanded regulation and control (prevention) of emigration as early as 1872.[98] The industrialists joined in this demand ten years later when their factories were clamoring for cheap labor. During the 1880's also, the colonial societies began to press for regulation, as well as for specific governmental direction, of emigration from

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97 Horst Kohl (ed.), Die Reden des Ministerpraesidenten und Reichskanzler Fürsten von Bismarck, 1881-85, X (Stuttgart: 1894), p. 208, extract from speech delivered in the Reichstag session of June 26, 1884, hereafter cited as: Kohl, Bismarck-Reden.

98 Letter, Bancroft to Fish, May 14, 1872, F. R. 1872, pp. 189-190. In this letter, Bancroft reported on the proceedings of the Pomeranian Agricultural Society. This society passed a resolution: "To recommend greater stringency in the police laws regulating emigration."

Germany.[99] Bismarck needed the support of all these groups, both for his domestic and for his foreign policy aims.

No emigration regulation bill was passed during his tenure as German Chancellor.[100] He did change his mind with respect to the benefits deriving from the Bancroft naturalization treaties, however. After the death of Bernhard von Bülow, his Secretary of State for Foreign Affairs, whose successors were permitted much less freedom of action by Bismarck, the narrowing of the scope of the treaties began. The coincidence of the death of the Secretary of State for Foreign Affairs with that of treaty restriction was largely accidental. It happened to come at a time when the ten years initially stipulated by article V for the duration of the treaty ran out. Bismarck may have regarded this ten-year span as the maximum time he would permit them to function fully. In any case, they were narrowed thereafter step by step. By the time Bismarck left office in 1890, very few benefits from the original treaties remained in force. The Bancroft treaties had served their purpose in his eyes: to win the friendship of the United States during the formative years of the German empire.

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99 Germany, Stenographische Berichte, IV. Legislatur-Periode, 1881, I, p. 452. The session of March 21, 1881 brought forth comments on a report of the Emigration Commissioner for Germany. Representative Joseph Lingens, a Catholic from Cologne, quoted from the Munich Politische Blaetter to support his advocation of German emigration to the Danube basin and away from America: "It is there that we should direct our stream of emigrants because these emigrants would stay in touch with the fatherland and will smooth the way for our products."

100 Several attempts were made to obtain passage for emigration regulation bills, however, a comprehensive bill was only passed on May 19, 1897. Germany, Stenographische Berichte, IX. Legislatur-Periode, 1895-97, VIII, p. 5940.

That friendship endured during the 1880's despite the narrowing of the naturalization treaties which, in turn affected adversely the lives of many German-Americans who returned to Germany during that period. It endured despite the fact that, what Bismarck at the time of ratification had called the real and practical purpose of the treaty--to protect newly naturalized Americans from military duty claims in Germany upon their return,[101] was rapidly being destroyed.

The friendship gradually eroded as a result of commercial rivalries brought on by the transportation revolution and as a consequence of differences between the two countries resulting from clashing imperialist designs. The low point before World War I was reached just prior and during the Spanish-American War.[102] After that time, the relations between the two countries improved briefly as a result of concerted efforts on the part of Theodore Roosevelt and William II. However, the signing of the Bancroft treaties in 1868 represented the summit in amicable relations between the two countries.

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101 North Germany, Stenographische Berichte, 1868, I, p. 44. Bismarck said: "Hier erklaeren wir aber, dass unter diesen Bedingung wir den Betreffenden als amerikanischen Buerger anerkennen, ihn also zum preussischen oder norddeutschen Militairsdienst nicht heranziehen koennen. Das ist der Hauptzweck des Vertrages."

102 Bernhard von Bülow, the younger, later Secretary of State for Foreign Affairs and German Chancellor, asserted that William II and the German people as a whole supported Spain in that war, even if Germany was officially neutral: "Ich habe zwar schon erwaehnt, dass Wilhelm II mit seinen Sympathien...ganz auf spanischer Seite stand, teils aus Abneigung gegen die republikanische Staatsform in Amerika....Wilhelm machte aus seinem Herzen um so weniger eine Mördergrube, als er wusste, dass die grosse Mehrheit des deutschen Volkes ebenso dachte und fühlte wie er....Es gelang mir, mit Unterstützung aller Parteien des Reichstages wie des ausgezeichneten amerikanischen Botschafters in Berlin, Mr. White, nach und nach diese deutsch-amerikanische Spannung beizulegen." Bernhard von Bülow, Denkwürdigkeiten, I (Berlin: 1930), pp. 219-220.

CHAPTER II

THE TREATIES

Introduction. The treaty between the United States and the North German Confederation (see appendix) represented the first naturalization treaty ever signed between the United States and a foreign power. Its signature in 1868 led to similar agreements with other German states. Treaties with Bavaria, Baden, Württemberg, and Hesse, followed in that order.[1] The complete text of the North German treaty is provided because it was the first--and, therefore, fundamental--treaty and because its provisions covered the largest single portion of German territory. It was also more important than the other treaties in that it involved the state that was, within three years of the conclusion of these treaties, to assume the leadership of Germany. With the unification of Germany, th Chancellor of the North German Confederation became the Chancellor of the newly formed Reich and, as such was the man primarily responsible for administering the treaties. In view of these facts, this first treaty assumed an added importance. It was, therefore, especially regrettable that the agreement arrived at was not formulated with greater care, and was ratified too hastily without thorough scrutiny. The result was an ambiguously worded document which lent itself to varying interpretations.

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[1] Malloy, Treaties, I, pp. 53-55, 60-63, 949-951; II, pp. 1298-1299, pp. 1895-1898.

The formation of the German Reich in 1871 brought about other complications with respect to administration of the treaties. The wording of some of the articles differed among the five treaties. Two signatory states--Bavaria and Wuerttemberg--had added clarifying protocols to their agreements with the United States. As a result of the Franco-Prussian war, two provinces, known under German rule as the Reichsland of Alsace-Lorraine, were ceded by France to the newly formed German empire. Formally, the two provinces added to Germany were not covered by any German-American naturalization agreement; however, the North German treaty was tacitly applied by the Reich to that territory for a period of eight years. Then, suddenly and without warning, the Reich categorically denied that any naturalization treaty applied to Alsace-Lorraine.

This and other difficulties could have been avoided had a new treaty, covering the whole territory of the new empire, been negotiated immediately upon the formation of the Reich. Alternatively, some formal agreement might have been reached to extend the North German treaty to the entire territory of the empire. Neither of the two alternatives was followed at that time. Instead, the North German treaty served only as a general basis for the administration of the treaties. In addition to this, the German Foreign Ministry applied any provisions from the four other treaties as well as from the two protocols--whenever that seemed to offer some advantages to Germany. In effect, the Reich claimed all the concessions made to individual states in bi-lateral agreements without, in return, granting those made to the United States in return by the individual German states.

For example, the Reich wished to extend to its whole territory the age limitation imposed by the Bavarian Protocol upon returning male naturalized Americans;[2] and, in due time, it did adopt the version of article IV contained in the Baden treaty. Unlike the other four treaties, the Baden version of article IV did not guarantee the two-year right of sojourn to returning migrants.[3] At the same time, the Reich did not honor the provisions for reassumption of citizenship contained in the Bavarian and Wuerttemberg Protocols,[4] nor the definitions with respect to freedom from punishment incorporated in those same protocols in clarification of article II of the treaties.[5]

This practice on the part of the Germans of selecting provisions from the various treaties and protocols so as to best suit their purposes in individual cases led to much bitterness and to a number of disputes between the two nations concerning the wording and the intent of the treaty provisions. The present chapter will examnine these differences both in the

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2 Malloy, Treaties, I, p. 63. The protocol codicil to article IV forbade males who had emigrated before serving their military obligation in Bavaria settling again permanently in Bavaria before reaching the age of thirty-two.

3 Ibid., p. 54.

4 Ibid. Baden guaranteed the naturalized American "shall not on his return to his original country be constrained to resume his former citizenship." Ibid., p. 63. The Bavarian Protocol stated that the returning former citizen had to apply for his Bavarian citizenship anew "exactly like any other alien."
Ibid., II, p. 1898. The Wuerttemberg Protocol was even more liberal: "The emigrant so returning, is authorized to acquire the citizenship of his former country in the same manner as other aliens...yet it is left to his own free will whether he will adopt...or will preserve the citizenship of his adoption."

5 Ibid., I, pp. 54 and 62.

wording of the treaties and in the content of the protocols so as to provide a basis for later, more detailed, examination of the disagreements which arose over interpretation of the treaties.

Variations in Treaty Provisions

Article I: Naturalization Recognized

This article defined the requirements set by the German states for recognition of the adoption of American citizenship by their former subjects. An absence of five years, combined with naturalization in the United States, was required for this recognition. Beginning during the Civil War, the United States had started to grant citizenship with shorter residence to men who served in the Union army rather than requiring them to wait for the five years specified in the statute for normal immigrants. The German states refused to recognize this type of citizenship grant to their former subjects until those subjects had resided in the United States for the full five years normally required.[6]

Article I was worded so ambiguously that, initially, the impression was left that a residence of five years was necessary in addition to naturalization. The wording "who become naturalized in the United States of America and [italics mine] shall have resided uninterruptedly within the

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6 Malloy, Treaties, I, p. 62 (Bavaria): "Inasmuch as the copulative 'and' is made use of, it follows, of course, that not the naturalization alone, but an additional five years' uninterrupted residence is required, before a person can be regarded as coming within the treaty...."

United States for five years...."[7] lent itself to this interpretation. No clarifying protocol was added either to the North German or the Hesse treaties, but both Bavaria and Wuerttemberg appended protocols to their agreements with the United States.[8] Baden, the third state to sign a naturalization treaty with the United States, worded article I in such a way that no doubts could possibly arise:

> Citizens of the Grand Duchy of Baden, who have resided uninterruptedly within the United States of America five years, and before, during, or after that time, have become or shall become naturalized citizens of the United States, shall be held by Baden to be American citizens, and shall be treated as such.[9]

In actual fact, however, despite the lack of clarity in the formulation of this article in two of the five treaties, only one instance is recorded in the archives of a German state requiring certification of five years' residence in the United States in addition to the normally required proof of American citizenship.[10]

Article II: Punishment for Offenses Prior to Naturalization

This article was designed to clarify the status of former German subjects with respect to liability for punishment for acts committed

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7 Ibid. The passage quote above continues: "...but it is by no means requisite that the five years' residence should take place after the naturalization." Ibid., II, p. 1897. Wuerttemberg's Protocol said: "...but it is by no means requisite, that the five years residence should take place after naturalization."

8 For pertinent passages, see footnotes 7 and 8 above.

9 Ibid., I, pp. 53-54.

10 The government of Wuerttemberg refused to accept the passport of Friedrich Seifried as proof of American citizenship in 1895. Letter, Minister Theodore Runyon to Secretary of State Richard Olney, December 24, 1895, F. R. 1896, p. 519.

through (or after, when the individual did not appear for military induction) emigration. Despite the fact that the text made this liability to (or exemption from) punishment clear in all cases, three of the German states nevertheless felt a need to elaborate on the point.

Baden achieved this elaboration by a careful wording of the article itself so as to specify who was liable to punishment and who was exempt:

> In particular, a former Badener who, under the first article, is to be held an American citizen, is liable to trial and punishment according to the laws of Baden for non-fulfillment of military duty-
> 1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.
> 2. If he has emigrated whilst he stood in service under the flag, or had leave of absence for a limited time.
> 3. If, having a leave of absence for an unlimited time or, belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.[11]

The four other German states used the wording for article II quoted under the North German Confederation treaty text.[12] Still, two of these states--Bavaria and Wuerttemberg--elaborated on the treaty text in the protocols appended to their treaties at the time of signature. In her protocol, Bavaria, in contrast to the attitude of Baden, stressed the exemption from punishment:

> It is expressly agreed that a person who, under the first article is to be held as an adopted citizen of the other State, on his return to his original country cannot be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship.[13]

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11 Malloy, Treaties, I, p. 54.

12 Ibid., I, p. 61, p. 950; II, p. 1896.

13 Ibid., I, p. 62.

Bavaria was also the only state which explicitly guaranteed immunity from punishment for the act of emigration even after possible loss of American citizenship. In return, she demanded the concession that no former male Bavarian, who had emigrated before he had performed his military duty, would be allowed to settle again permanently in Bavaria before he had reached the age of thirty-two.[14]

Wuerttemberg adopted in her protocol a middle ground which assured immunity for all but two categories of emigrants:

> On the side of Wurtemberg [sic], it is agreed that all former Wurtembergers, who under the first article of this treaty are to be held as American citizens may, whether they have emigrated before or after the age of liability to military service, return to their original country, free from military duties and penalties and with a claim to the delivery of property which may have been sequestered, with the exception of those Wurtemberg emigrants liable to military duty who have taken to flight
> (1) After their enrolment in the active army and before their discharge from same, or
> (2) After they (a) have been called into service with the class of their age or on occasions of placing the military force on a war footing, or (b) have been present at a muster and been designated as a part of the contingent.[15]

It should be noted that Wuerttemberg was the only state that specifically guaranteed the property rights of emigrants. In fact, during the first ten years of the existence of the treaties, these rights were automatically granted to all former Germans to whom the treaties were considered to apply. After that time, fines and sequestration of property were first

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[14] Ibid., I, p. 63.

[15] Ibid., II, pp. 1897-1898.

upheld against all natives of Alsace-Lorraine and, gradually, against other naturalized Americans of German origin as well.[16]

Despite the apparent clarity of article II, doubts already arose in the North German Reichstag at the time of treaty ratification as to the possible effects and scope of this article. As article III dealt with the question of extradition of criminals, article II was obviously intended to protect those former Germans who had transgressed against military service laws through emigration. Privy Councillor Bernhard König, who co-signed this first Bancroft treaty, confirmed that article II was destined to regulate precisely this type of offense: "...a German, who has spent five years in America and has acquired citizenship there will not be subject to investigation and punishment for unauthorized emigration."[17]

Until the conclusion of this first naturalization treaty, the German states had passed judgment in absentia against men who had not presented themselves for induction into the military service when called.[18] Upon their return, and based upon these judgments passed during their absence in America, former Germans were then subject to fines, sequestration of property, imprisonment, or forcible induction into the military service.

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16 The Germans sometimes suggested a petition directly to the Kaiser for remission of such fines. As these fines were illegal, this was a clear attempt at harassment to discourage the return of military age men. Cf. Paul Friedlaender case, F. R. 1901, Annex, pp. 180-184.

17 North Germany, Stenographische Berichte, 1868, I, p. 43.

18 This type of judgment was automatic. Two ministerial decrees issued in July, 1868 by the North German Confederation (F. R. 1880, pp. 443-444), in implementation of the naturalization treaties, informed local authorities of the immunities granted naturalized Americans in these treaties, and instructed them to refrain from prosecution, or to suspend or annul sentences already passed. These decrees were, generally, ignored, and intervention by the American legation was necessary in almost every case to obtain compliance.

During the ratification debate in the North German Reichstag, the degree of immunity from punishment granted by article II was immediately questioned. The co-referee, Representative Rudolf Schleiden, sought to calm the apprehensions of some members regarding possible reprisals against returning former Germans by pointing out that the key to article II lay in the two words "before emigration." According to Schleiden, this wording supposedly precluded punishment for any acts committed through the act of emigration itself.[19]

In connection with the discussion of article II of the North German treaty, Bismarck (in the exchange cited on pp. 40-41), gave what was then taken to be an assurance that, even after they might have lost their American citizenship, former Germans could still not be punished for acts committed through emigration. In actual practice, the German Reich, despite explicit guarantees in three of the five treaties with respect to re-assumption of citizenship,[20] soon took the stand expressed in the "United Commissions Report."[21] This stand was that a German's native citizenship was simply held in abeyance during his absence and that his native state

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19 North Germany, Stenographische Berichte, 1868, I, p. 43.

20 Malloy, Treaties, I, p.62: Bavaria's Protocol appended to the treaty gave an express guarantee against punishment under article II even if the former Bavarian had lost his American citizenship.
Ibid., II, pp. 1897-1898: Wuerttemberg gave a similar guarantee in her Protocol.
Ibid., I, p. 54: Baden incorporated a guarantee against punishment directly into her article II of the treaty.

21 For the complete text, see Munde, Bancroft Treaties, pp. 5-10. For a discussion of its contents, see pp. 20-23 supra. The text of this report was never transmitted to the Department of State.

could reclaim him as soon as--according to German law--a sojourn exceeding the two years permitted him under the treaty in his state of origin had resulted in the loss of his adopted American citizenship.[22]

The only protection that the United States could accord a naturalized citizen in such cases was that devised by Bancroft: to give the person in question a passport good only for return to America.[23] If the individual stayed on in his native German state beyond the allowed two-year period, the local authorities reclaimed him and he was subject to all German laws as a German--in particular, to that requiring him to perform military service.

This practice was contrary to the ideas expressed by Bismarck during the 1868 treaty ratification debate in the North German Reichstag. But Bismarck also changed his attitude towards emigration. In 1884, he voiced his contempt of Germans who emigrated:

> I am fighting against promotion of emigration; a German who discards his fatherland like an old coat is no longer a German; I take no further interest in him from a national point of view.[24]

While he could not actually prevent emigration, he saw no point in treating returning emigrants with any special consideration.

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22 For details, see p. 22 supra.

23 The first such case, which will be discussed in detail later, was that of Mentheim Cohn in 1874. Cohn was summoned for Prussian military service shortly after his two-year period of grace was up. Bancroft gave him a passport to enable him to return to America. Letter, Bancroft to Fish, June 29, 1874, F. R. 1874, p. 447.

24 Kohl, Bismarck-Reden, X, p. 208, extract from a speech delivered by Bismarck in the Reichstag session of June 26, 1884.

For the first ten years of the treaties' duration, the Reich's Foreign Ministry, under the leadership of Bernhard von Bülow, generally administered the treaties fairly. Nevertheless, forceful intervention by the American legation was often necessary in order to obtain justice in individual cases. After the first ten years, the German authorities sought to restrict the scope of the treaties more and more.

At the time of signature, article II was considered to be the principal achievement of the treaties, together with article I, which granted official recognition to American citizenship. With the formation of the Reich, the whole German attitude toward the spirit of the treaties changed. The concessions granted to the United States by the treaties were regretted and, as a result, articles I, II and IV were effectively nullified by the Germans through the use of expulsion. Naturalized Americans of German origin were expelled within weeks or months of their arrival in their home state. Thus, the principle of recognition of American citizenship was preserved while the main purpose of the treaties was thwarted. In fact, the practice of expulsion--for no other reason than that the Germans considered the presence of such former Germans as a nuisance--violated both the spirit and the letter of article II of the treaties. This article had been specifically inserted in the treaties to grant immunity from punishment for unauthorized emigration.

In 1885, Secretary of State Thomas F. Bayard noted the Germans' increasing use of the practice of expulsion as a means of preventing the return of military-age men who had acquired American citizenship:

> That a good and sufficient ground for such expulsion is to be found in the purpose on the part of an emigrant to avoid military duty by emigration, the sufficient proof of which purpose for the German Government is the fact that the emigrant demanded an official permit to leave his native land.[25]

Bayard urged the American minister (George H. Pendleton) to lodge a strong protest against this practice. However, the Germans claimed that the right of expelling aliens who endangered the security of the state was an absolute right under international law and, therefore, unaffected by any treaty. Their view prevailed. The only benefit which remained thereafter of article II was cynically pointed out by the German minister in Washington, Friedrich von Alvensleben, to Secretary of State Bayard:

> Yet even persons liable to military duty, who have emigrated notoriously for the purpose of evading military duty, are better off now than they were before the conclusion of the treaties ...since now, provided that they do not expressly or tacitly renounce their American naturalization, they suffer expulsion only and can not be punished or compelled to serve in the standing army or navy.[26]

While expulsion was perhaps preferable to forcible induction or prison, it still constituted a great hardship for many naturalized Americans of German origin. Often, a man had saved for years in order to take his family back to his place of birth for an extended visit. When he arrived there, he found that the authorities of his home state would permit him to remain only a short time. As a result, he had in-

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25 Letter, Bayard to Pendleton, March 12, 1886, MS Instructions, Germany, M-77, reel no. 68.

26 Letter, von Alvensleben to Bayard, July 8, 1886, F.R. 1886, p. 418.

curred the expense of a trip he had thought would last months, maybe a year, only to find that he had to leave again almost upon arrival. Thus, article II had, in practice, ceased to fulfil the purpose for which it had been created: to permit German-Americans to visit their old homes without fear of prosecution or reprisals.

Article III: Extradition

This article was identically worded in all treaties. It simply extended existing treaties of extradition for the mutual delivery of criminals and fugitives from justice to all territories covered by the treaties. No controversies over this article arose during the period covered by this dissertation. However, the refusal of the United States to extend the application of any of these treaties of extradition to the Reichsland of Alsace-Lorraine might have contributed indirectly to the about-face of the German government in 1879-80 regarding the application of the Bancroft treaties to that area. No formal mention of this was ever made in the correspondence, but it has been advanced by at least one source as a reason for the German shift.[27]

Article IV: Renunciation of Naturalization

This article, together with article II, gave rise to most frequent differences of opinion with respect to interpretation of the treaties. The article, identically worded in four of the five treaties, gave rise

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[27] Friedrich Kapp, "Der deutsch-amerikanische Vertrag vom 22. Februar 1868," Annalen des deutschen Reiches, XXXVI (January, 1875), p. 216. Kapp added that the Americans had hinted that they would demand additional concessions in the naturalization treaties to accede to German demands for an extension of extradition agreements to Alsace-Lorraine.

to considerable confusion as to its intent and meaning. The ambiguous wording--whether intentional or not--left the determination of its actual meaning up to the individual interpreting it at any given time:

> If a German [Bavarian, Wuerttemberger, Hessian] naturalized in America renews his residence in North Germany [Bavaria, Wuerttemberg, Hesse] without the intent to return to America, he shall be held to have renounced his naturalization in the United States ....The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.[28]

Shortly after the conclusion of the treaties, the question arose as to when the intent not to return could be assumed. On this point, the two nations already held diametrically opposed views. The Germans considered the two-year residence clause mandatory; that is, they read "may be held to exist" as "shall be held to exist." The Americans, on the other hand, assumed that the person in question remained an American citizen unless he or she formally declared the intent of giving up the acuired citizenship.

An additional factor complicated relations with respect to article IV. The treaty with Baden did not contain the clause granting a two-year right of sojourn, rather it read:

> The emigrant from one State who, according to the first article is to be held as a citizen of the other State, shall not on his return to his original country be constrained to resume his former citizenship, yet if he shall of his own accord reqcquire it and renounce the citizenship obtained by naturalization, such a renunciation is allowed, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.[29]

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28 Malloy, Treaties, II, p. 1299; cf. also p. 1896 and ibid., I, pp. 61 and 950.

29 Ibid., I, p. 54.

While article II of the Baden treaty specified which citizens of Baden would be subject to punishment upon return, it did not provide--as some of the others did--for any procedures for reassumption of citizenship. This meant that an American citizen originating in Baden could be harassed almost from the day of his return. The wording of article IV also left the interpretation of this part of the treaty entirely up to the local authorities. Two cases will be discussed later which show how widely this interpretation differed within as short a period as six months.[30] The absence of the two-year right of sojourn in this treaty later led the German Reich to claim the same privileges for the entire territory of the empire and thus contributed greatly to the eventual nullification of the two-year right of sojourn.

A further complication with respect to this article was added by the Bavarian Protocol. This protocol furnished what was perhaps the principal basis for the progressive narrowing and nullification of the treaties. The right of expulsion, asserted by the German Reich as a means of preventing former male Germans of military age who had acquired American citizenship from settling in Germany for any length of time, was claimed under international law. However, the Bavarian Protocol had already clearly implied this right apart from any general principle of international law:

> If is agreed on both sides that the regulative powers granted to the two Governments respectively by their laws for protection

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30 The cases of Carl Ganzenmüller and Gustav Weil, which both occurred within a period of six months in 1878, will be discussed later. F. R. 1878, pp. 218-220 and 221.

> against resident aliens, whose residence endangers peace and order in the land, are not affected by the treaty.[31]

Germany later claimed that returning naturalized Americans who were still of military age would serve as a "bad example," and might encourage local youths to emigrate as a means of evading German military service. The United States, naturally, resented the term "undesirable alien" being applied to its adopted citizens abroad, so long as those citizens conducted themselves peaceably. However, Germany insisted on its right to expel them as a danger to the state and it was successful in imposing this claim.

While negotiations for the North German treaty were already in progress, Bavaria passed a new military service law.[32] This law prohibited former Bavarians who had not served their military duty from resettling in Bavaria before reaching the age of thirty-two. The provisions of this law were subsequently incorporated into the Bavarian Protocol. The passage quoted above continues:

> In particular the regulation contained in the second clause of the tenth article of the Bavarian military law of 30th January, 1868, according to which Bavarians emigrating from Bavaria before the fulfillment of their military duty cannot be admitted to a permanent residence in the land until they shall have become thirty-two years old, is not affected by the treaty....The above described emigrants are not forbidden to undertake a journey to Bavaria for a less period of time and for definite purposes.[33]

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31 Malloy, Treaties, I, p. 63.

32 Ibid. The Protocol comment on article IV mentioned this law and gave the date of passage as January 30, 1868.

33 Ibid.

The suspicion arises that the Bavarians passed this new military law in anticipation of incorporating its provisions in a naturalization treaty with the United States. Also, the Würzburg protest of naturalized Americans under the leadership of Carl Munde[34] made Bavaria, the second state to sign a naturalization treaty with the United States, aware of the deficiencies in the North German treaty. As a result of this protest, the Bavarians acted to protect themselves. They may also have taken the advice of co-referee Rudolf Schleiden, who, during the North German Reichstag ratification debate, advocated the addition of a clarifying protocol to the treaty.[35] The advice seems to have been sound. A later American minister commented on the fact that no case of dispute had arisen over the treaty with Bavaria.[36]

While the Bavarians were successful in protecting their own interests by means of a protocol addition to their treaty, they, and the Baden government by the omission of the two-year right of sojourn clause from their treaty, contributed greatly to the narrowing and final nullification of all naturalization treaties. In 1875, Minister J. C. Bancroft Davis advocated using the Bavarian treaty and protocol as a basis for a new treaty covering the whole empire, rather than the North German treaty. Referring to the

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34 Munde, Bancroft Treaties, pp. 78-81. Letter, Otto von Voelderndorff to Charles Munde, June 20, 1868, replying in detail to Munde's protest.

35 North Germany, Stenographische Berichte, 1868, I, p. 42.

36 Letter, Davis to Fish, February 12, 1875, MS Despatches, Germany, M-44, reel no. 24: "I have been struck with the fact that no case has arisen in Bavaria to call for interference of the Legation. Mr. Bancroft had noticed the same thing...he ascribes it to the fact that the Bavarian government does not permit the returning emigrant to establish himself permanently in Bavaria until the years of liability to military duty shall have come to an end."

smooth workings of the treaty with Bavaria, Davis claimed that the Bavarian emigrant had advantages other former Germans lacked. Even though he was not allowed to settle permanently in his former home until age thirty-two, he could, upon return, under the Protocol codicil to article II, claim immunity from punishment for the act of emigration even after he had lost his American citizenship.[37] Davis added:

> The returned Bavarian emigrant, under this provision, can claim exemption as a right, but the returning North German or Baden emigrant, on the contrary, can only claim it as a favor....If, therefore, we can secure throughout the Empire, the same rule which now prevails in Bavaria, we shall have succeeded in obtaining one of the ends to be sought for in the revision and consolidation of the Treaties.[38]

Unfortunately, no uniform rule for the treaties was ever adopted, nor was a new, modified treaty concluded.

Article V: Duration.

This article was also identical in all five treaties. It provided for the duration of the treaty: ten years with automatic renewal unless due notice of termination by either party was given. No differences arose over this article, nor were the treaties ever officially terminated.[39]

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37 Ibid. The letter continued: "It is expressly agreed that a person who, under the first article is to be held an adopted citizen of the other State, on his return to his original country cannot be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship."

38 Ibid.

39 They can be assumed to have been terminated by the "Treaty Restoring Friendly Relations," concluded between the United States and Germany on August 25, 1921, and proclaimed November 14, 1921. Malloy, Treaties, III, p. 2596. This treaty required specific re-activation of treaties considered still in force. A later listing of such treaties does not contain the Bancroft treaties.

Because, by 1900, the United States had accepted the narrowing and de facto nullification of the naturalization treaties, the Germans never saw a need for formal termination. The United States' needs, on the other hand, and, consequently immigration patterns to America had also changed by 1900 so that it, too, saw no reason to terminate the treaties. The goal that had led to their conclusion had been reached: a continued flow of German immigrants during the critical 1868-90 period had been achieved. The fact that the German narrowing of the treaties' application had not been able to stop this flow showed that the United States that there was really no further need for strenuous efforts on its part to obtain German adherence. After 1909, the pertinent correspondence was no longer published in the Papers Relating to the Foreign Relations of the United States, demonstrating that America had no further interest in the entire question.

Article VI: Ratification

This article established ratification procedures and provided for the exchange of such ratification within specified time periods.[40] No differences arose because no country took advantage of the delay granted to effect any change in the treaty provisions.

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[40] Malloy, Treaties, I, pp. 61-62 (Bavaria: one year); p. 55 (Baden: no time limit for completion); pp. 950-951 (Hesse: one year); ibid., II, p. 129 (North German Confederation: six months); p. 1897 (Wuerttemberg: one year).

Conclusion. This chapter has attempted to bring out variations in wording and provisions between the five naturalization treaties. As later chapters on the workings of the treaties will show, it was regrettable that these treaties were not uniform in text. It is true that the treaties were concluded in 1868 with five different sovereign states, and that these states united to form the German empire three years later. However, the movement toward German unification could definitely have been anticipated.[41] Even if achievement of this unification had taken longer than it actually did, it would have been safe to predict that differences between treaty provisions would lead to friction and jealousy. As in the case of commercial agreements, each German state was bound to demand in its treaty (or later) concessions at least equal to those granted others.

This was, in fact, what happened. In the name of the Reich, Bismarck demanded the Baden and Bavarian concessions. What he actually intended was to obtain them for North Germany (Prussia) whose treaty was not as favorable. However, he was not willing to grant to the United States the concessions which the other German states had made in return for this more favorable treatment. The differences and inequities were recognized in the United States. An 1885 House of Representatives Report reviewed the whole question and then suggested the use of the "Bavarian rule" as a

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[41] Carl Schurz, Reminiscences, III, p. 274. Schurz records an interview with Bismarck in January, 1868, during which Bismarck predicted war with France and German unification in the wake of such a war. He even predicted that this would happen within two years.

guide line for a new treaty.[42] Unfortunately, by 1885, the German government had already succeeded in considerably narrowing the treaties' applicability. As a result, the Germans were no longer interested or willing to conclude a new treaty; nor was there, by that time, any prospect for the passage of such a treaty in the Reichstag.

Again, regret must be voiced that the very first treaty with North Germany had not been formulated more carefully. Had this been the case, this first treaty could have then been used as a model for the four subsequent treaties. In this case, discrepancies in text might have been avoided, and the Germans as a unit would have had no opportunity to claim selectively the concessions granted to individual states in bi-lateral agreements. They might then have been more willing to conclude a new treaty covering the whole territory of the Reich. While the terms of such a treaty might have been less favorable to the United States than those of any one of the separate treaties, given the changed power position of Germany, this situation would have been preferable to the existence of five different agreements. Such a unified treaty would have been much easier to administer and might have saved much bitterness and friction between the two nations.

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42 U. S., House of Representatives, Index to Committees, Report No. 2590, 48th Cong., 2d Sess. (1885), February 7, 1885.

CHAPTER III

THE FIRST REACTION TO THE TREATIES

Reaction in the United States to the Treaties

When the signature of the first Bancroft treaty was announced, a number of American newspapers printed the cabled news of that event. Among the newspapers that commented extensively on the event was The New York Times. The Times was at first critical of the treaty because of an error of fact in the cable transmission. At that time, it was believed that the Germans had inserted a clause making an emigration permit mandatory.[1] When this misunderstanding was cleared up, the Times, which was said to reflect most accurately the views of Secretary of State William H. Seward, gave its wholehearted support to the agreement.[2]

The German-American press had severe misgivings about the treaty, even after the correct text was known. The New-Yorker Staatszeitung, an independent paper with Democratic leanings, expressed hope for an

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1 The New York Times, February 27, 1868: "...that no Germans can come to this country except with the permission of their own Government...and it is equally clear that our wishes and interests will in precisely the opposite direction. That if any person whom the German Government does not wish to lose as a subject and to whome it refuses 'license to emigrate' should get over here and become naturalized, they will not be exempted from the obligation of military service in Prussia. But they will nevertheless be naturalized American citizens, and as such entitled to the protection of the American Government."

2 Ibid., March 13, 1868.

eventual Senate ratification of the treaty. However, it did not agree with either Bancroft or the North German government that the treaty represented such a great victory for the Americans. The Staatszeitung advised careful scrutiny and a full use of the six months' period of delay afforded for ratification. The paper particularly criticized the possible implications of article II with respect to freedom from punishment for transgressions against German military service laws. It asserted that if a man were duly recognized as an American citizen, he would eo ipso be exempt from any liability to German military law. The Staatszeitung also criticized the two-year limit for residence upon return to Germany imposed by article IV of the agreement. Overall, the paper claimed, the treaty would have to be worded more precisely to be acceptable and concluded: "As the wording stands now, the Prussian government would again be able to extract from it all its previous pretensions."[3]

The Taegliches Cincinnatier Volksblatt, after giving the treaty text, commented editorially on articles II and IV. It disputed that the treaty guaranteed "free emigration," as had been claimed by Bancroft. In discussing article II and its guarantee of freedom from punishment, the Volksblatt remarked that in North Germany (Prussia) it was regarded as a punishable offense (strafbare Handlung) to emigrate after a certain age, if military service had not been performed. The paper claimed that much would now depend upon how article II would be interpreted with respect to this point. If the migrant could be considered as having committed a pun-

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[3] New-Yorker Staatszeitung, March 18, 1868.

ishable offense before emigration, he could, upon return, still be put into a unit for refractory soldiers (Strafcompagnie) and made to serve his term.[4] In a later comment upon Senate ratification, the Volksblatt remarked that it appeared that the eight Senators who had voted against ratification of the treaty had not been as convinced by Bancroft's assurances of the friendly attitude of the German government as Senator Sumner had been.[5]

In the German-American press, the most violent opposition to the treaty came from the radical Boston weekly Der Pionier. It attacked the treaty in no fewer than four editorial articles.[6] It warned that the treaty represented a victory for Bismarck and not, as claimed by Bancroft, for the Americans. Like the Staatszeitung, the Pionier saw potential danger to German-Americans in the wording of article II. By making former Germans liable for offenses committed prior to emigration, the paper claimed that nothing would prevent the Germans from enacting new laws regarding military service according to which a man emigrating from Germany would then be criminally liable upon his return.[7] The Pionier went on to point

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4 Taegliches Cincinnatier Volksblatt, March 13, 1868.

5 Ibid., March 30, 1868.

6 Der Pionier, March 4, 1868: "Die Rechte der Eingewanderten im Auslande, eine diplomatische Prellerei;" ibid., March 18, 1868: "Der amerikanisch-preussische Vertrag in Betreff der Naturalisierung;" ibid., April 1, 1868: "Der Bismarck-Bancroftsche Vertrag nochmals;" ibid., April 8, 1868: "Die Teutschen als Buerger zweiter Klasse."

7 Ibid., April 8, 1868.

out that the two-year clause incorporated into article IV of the treaty actually, and for the first time in American history, differentiated between the rights of native-born and those of naturalized citizens. In its view this, in effect, made second-class citizens out of the latter.[8] The Pionier further claimed that the treaty was violating the rights of naturalized citizens as reaffirmed by the Banks bill, which was then pending before the Senate.[9]

This bill put particular stress on the fact that there should be no differentiation between the protection afforded native-born and that given to naturalized citizens abroad so long as the naturalized citizens had not committed any crimes previous to immigration, for which they might be liable to punishment. The bill also recommended reprisals against all nations who might not recognize the right of expatriation and who would still treat naturalized American citizens as their own subjects. The Pionier commented on what it considered to be the unseemly haste with which ratification had been rushed through the Senate and ascribed this haste to Bismarck's fear that the Banks bill might become law before the treaty came up for consideration.[10] Apparently in an effort to prevent passage of the treaty, the Pionier had sent a copy of one of its editorials to Senator Sumner. The editorial did not arrive in Washington before

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8 Ibid.

9 Ibid.

10 Ibid., April 1, 1868. This was a particularly critical comment on the deficiencies of the treaties ("Der Bismarck-Bancroftsche Vertrag nochmals"). The paper claimed that ratification would damage fundamentally the honor of the United States; would betray the naturalized citizens rather than protect them; and would expose the republic to ridicule in the diplomatic world.

ratification, and probably would not have had any effect, given the radical slant of the newspaper. Nevertheless, Sumner did reply to the Pionier assuring its editor that he would personally see to it that the treaty would not be interpreted "in an inimical spirit"[11] by Germany.

The German-Americans then living in the United States were not alone in their objection to the wording of the treaty. Those residing in Germany had more immediate cause for concern. One such group of naturalized Americans of German birth then living in Würzburg, Bavaria, protested against the wording of the North German treaty. Perhaps, they hoped that the Bavarian treaty would be changed or amended as a result of their objections. They were led by Charles Munde, a physician formerly of Florence, Massachussetts, who composed a declaration of protest which read in part:

> We the United States citizens residing at Würzburg, and assembled in meeting, do hereby resolve:
> 1. That we know only of one kind of citizenship in the United States, and that by naturalization an alien is invested with all the rights and privileges of a native citizen, except his eligibility for the Presidency of the United States;
> 2. That, in consequence of our naturalization, we have a right to claim, on the part of our government, the same protection as the native citizens of the United States, living abroad, claim and receive, as long as we do not by our own free will and act renounce our naturalization, and return, from the condition of free and sovereign citizens, to that of subjects to any foreign potentate;
> 3. That we consider said fourth Article of Mr. Bancroft's Treaty, restricting our liberty to reside, as American citizens, in foreign countries as long as we choose, as an encroachment on our civil rights; that we most solemnly protest against this and against any further encroachments by treaty, or otherwise....

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[11] Ibid., April 8, 1868.

> 4. That the favorable interpretation of said fourth Article given by Mr. Bancroft in private and without any official authorization by either government, is almost in contradiction to the words of the Treaty itself, and necessarily fails to satisfy us, as we cannot understand why the article was admitted, if it was not intended to be valid.[12]

This protest was submitted to the Bavarian government and later withdrawn when the Bavarians added a protocol to their treaty. The Würzburg group then declared itself satisfied.[13] The fact of the protest and of its withdrawal were noted in Germany in both the Frankfurter Zeitung,[14] and in the Würzburger Anzeiger.[15] In America, the text of the protest was reproduced in full by the New-Yorker Demokrat,[16] with the notation that the paper had printed the text of the North German treaty, but had only later received news of the protest. The Demokrat added that, as the author of the protest was known to a large number of the paper's readers, they were printing it in full and gladly so because "we agree totally with the principles and views expressed in it."[17]

After the North German and Bavarian treaties had been concluded, Harper's Weekly published an article commenting on both treaties. Harper's

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12 Munde, Bancroft Treaties, p. 97.

13 Ibid., pp. 81-83, copy of letter, Charles Munde to Otto von Völderndorff, July 2, 1868. Privy Councillor Otto von Völderndorff co-signed the Bavarian-American treaty of naturalization with George Bancroft.

14 Frankfurter Zeitung, July 4, 1868.

15 Extract from Würzburger Anzeiger, July 3, 1868, reproduced in Munde, Bancroft Treaties, pp. 99-100.

16 New-Yorker Demokrat, July 25, 1868.

17 Ibid.

commended George Bancroft for his zeal but raised some important objections. The first criticism it levelled at the treaties was that neither one of them was explicit about what the paper considered a fundamental point:

> The point of differences is very plain, and the settlement to be satisfactory must be explicit. The German government claims military service of all born subjects, and deny that emigration evades that obligation. In a treaty upon the subject, therefore the important question is whether the governments concede that naturalization elsewhere vacates this claim. If this point is left to inference it must be assumed that the governments do not concede it. If it is not verbally expressed in the treaty, but depends upon the contempraneous interpretation of those who make the treaty, the suspicion is against it, and those concerned can not safely trust themselves to the treaty.[18]

The article then stated that the North German treaty was vague about this point, despite Bismarck's assurances to the contrary, and added: "But if there had been no question, they would not have spoken of doubts."[19]

Similarly, the article claimed that the just concluded Bavarian treaty was also open to this same question. Article I of the treaties seemed to clear that doubt, in that if a person was recognized as an American citizen, he would have to be treated as such. However, according to Harper's, article II, with its limitations, immediately clouded the issue: "Evasion of military duty by emigration is desertion, desertion is an act threatened with punishment, and it is not a crime which has become obsolete by Bavarian law."[20] Harper's assumed that article III provided for the treat-

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[18] Harper's Weekly, XII (No. 605, August 1, 1868), p. 483: "German Treaty."

[19] Ibid.

[20] Ibid.

ment of fugitive criminals, and that, therefore, article II evidently alluded to a particular (military) class of offenders, and concluded that a Bavarian returning to his former home after naturalization in America was not completely safe there.[21]

The magazine's second criticism was directed at the two-year limit of sojourn imposed by article IV in both treaties. It asked why a man could not reside abroad indefinitely: "When a man has chosen his country, with the consent of all governments concerned, why, upon the same principle, may he not continue to be a citizen of that country at his pleasure? This is a question we trust a future treaty will soon answer."[22]

Conclusion. On the whole, it can be said that the American press, while critical of certain provisions and aware of possible difficulties as a result of ambiguities, welcomed the treaties themselves. As German-Americans had been subject to harassment, imprisonment and compulsory military service upon return to their native land, and as this state of affairs had made it impossible for them to claim property in Germany due to them through inheritance, they welcomed the treaties. The German-American press accepted the treaties as a distinct improvement over the earlier state of affairs.

Despite some sharp criticism--and always excepting the position of the Boston Pionier-- a feeling of relief and satisfaction permeated the German-language articles on the treaties. Now, for the first time, the

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21 Ibid.

22 Ibid.

large number of Germans who had emigrated to America in the wake of the events of 1848 felt that they could go back to their former homes for a visit. They were no longer virtually cut off from families and friends as a result of their migration to America. The German-American press also foresaw a large additional migration from Germany to the United States as a consequence of the treaties, and welcomed the prospect of amicable relations between the two countries which the Bancroft treaties promised.

Reaction in Germany to the Treaties

The German press was restrained in its reception of the first naturalization treaty. Despite the fact that this treaty authorized greater freedom of movement between Germany and America than had been permitted in Germany itself prior to the formation of the North German Confederation. Generally, very little was noted beyond the fact that a treaty of naturalization had been concluded. As the treaty represented a fundamental change in legal concepts, it would have required a major program of reeducation of German public opinion to make such an agreement really acceptable to large segments of the German public. The old concept--based on feudal practice--"once a subject, always a subject," was still deeply ingrained in European thinking.

This reeducation program was never undertaken. The North German Chancellor, Otto von Bismarck, while desiring conclusion of the treaties as a means of cementing German-American friendship, preferred that a minimum of space in the news media be given to that first and fundamental treaty. He probably did not want to arouse the outright opposition of the conserva-

tive element of the population. The factions most adamantly opposed to any concessions which might deprive the country of able-bodied young men, which--in their opinion--were needed at home, were associated with the military establishment and the large landowners. These two classes were always closely interrelated in that the younger sons of the landed aristocracy (whose estates were entailed: Majoratsbesitz) provided the bulk of the officer corps in addition to the majority of those admitted to higher administrative careers.

At first, the newspapers representing these classes confined themselves to a mere acknowledgement of the conclusion of the treaty without extensive comment upon it. The Neue Preussische Zeitung (more commonly referred to as the Kreuzzeitung), a newspaper that could have been considered a spokesman for this conservative readership, simply carried a short notice about the ratification proceedings which had taken place in the North German Reichstag on the previous day. The Kreuzzeitung commented that the co-referee, Rudolf Schleiden "delivered a speech praising the North Americans, but believes that the North American government was not entitled to claim exemption from military service in Germany for those of its citizens who had voluntarily returned to their former homes. Even the legal authorities in America had recognized this fact."[23] Noting that the

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23 Neue Preussische Zeitung, April 3, 1868. The "legal authorities" referred to belonged to the period before Secretary of State Lewis Cass (1857-60). While the paper did not criticize the treaty outright, the attitude is disapproving.

treaty had been adopted almonst unanimously, the paper added: "Against it were only the Poles."[24]

In a comment on the Republican convention in Chicago, the Kreuzzeitung reported on June 3, 1868 that the Republicans had adopted several resolutions, including one in which:

> It declared itself for the protection of naturalized citizens in their rights, and disapproves of the theory adopted by Great Britain and a few countries, which is directed against the rights of free emigration."[25]

The paper made no comment on the resolution other than one concerning the way in which it was presented--the presentation implying a resentment of the criticism of such countries, including Prussia.

The Norddeutsche Allgemeine Zeitung, a newspaper said to have been the semi-official spokesman for the Prussian government, also reported on the Reichstag debate of April 2, 1868. It quoted excerpts from some speeches, especially those stresssing German-American friendship and gave Bismarck's support of the treaty due prominence. The paper refrained from any direct comment or criticism regarding the treaty provisions, stressing the treaty's contribution to future good relations between the United States and the North German Confederation.[26] Had Bismarck wished to engage in any clarification of or elaboration on the treaty, this newspaper would have provided him with the appropriate forum. Instead, it must be supposed that he saw the weaknesses and the possibilities for conflict present in the treaty, but

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24 Ibid.

25 Ibid., June 3, 1868.

26 Norddeutsche Allgemeine Zeitung, April 3, 1868.

preferred not to draw public attention to them. Again this leads to the suspicion that Bismarck saw the treaty as a means of temporarily solving a problem, and not as a convention of fundamental importance that would endure for a long time. Secretary of State Seward, too, seems to have seen the treaties in much the same light.

The Kölnische Zeitung commented that Prussia was seeking to maintain the good will of America by means of a treaty, that brought a solution to a problem which had been threatening to disrupt the relations between the two countries.[27] The Frankfurter Zeitung, in a comment on the treaty, printed an extract from a letter that George Bancroft was supposed to have written to a friend giving his interpretation of the treaty:

> The fourth article of the treaty between the United States and North Germany must be interpreted, first according to the purpose of the treaty, which is no other than to maintain friendly relations between the two nations, and secondly according to the clause which guarantees that naturalized North Germans will be treated as American citizens there. Every German-American who wishes to return to his North German citizenship can do this with permission of the King; otherwise and as a rule the naturalized American can live in Germany as an alien as long as he chooses without relinquishing his American citizenship through this; it will only be expected of him that he observes the laws of the country in which he has taken his domicile, and if he does not like these laws, he can go back to the country of his adoption or wherever he chooses to go.[28]

The paper then remarked that the honorable minister could not know how the treaty might be interpreted. He was only able to say how he would interpret the treaty, but he was totally incompetent to say how the Prussian

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27 Kölnische Zeitung, February 28, 1868.

28 Frankfurter Zeitung, April 28, 1868. The paper gave the date of the letter as April 14, 1868, but did not give the name of the recipient. It is difficult to understand how Bancroft could say that an American citizen of German origin could live in Germany indefinitely when he himself had inserted a clause into article IV of the treaty limiting the residence to two years upon return.

administration would interpret any given treaty clause. If Bancroft had really had the above interpretation in mind, the paper felt that he could not have expressed it in a more incomprehensible manner.[29]

The Allgemeine Zeitung, a newspaper then published in Augsburg, Bavaria, and regarded as pro-American, commented extensively editorially on the North German treaty after its ratification by the American Senate had become known. The paper began by commenting that the German enthusiasm for the treaty had cooled considerably after the text of the ratification debate in the North German Reichstag had become known. The reason for this cooling could be found in the explanation given to the Reichstag by Bismarck (and by other speakers) regarding certain provisions of the treaty. The Allgemeine Zeitung, however, welcomed the clarification with respect to one point: that an emigrant upon his return could neither be punished nor be put into military service as a result of "premature" emigration.[30]

On the other hand, the newspaper pointed out that the interpretation of article IV given by Bismarck and by other speakers in the course of that debate would never be acceptable in Bavaria. It asserted that if this interpretation was persistently held, it could lead within a very short time to very serious differences between the two countries. What the Allgemeine Zeitung was referring to here was that part of article IV which specified that a sojourn of two years in the country of the migrant's

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29 Ibid.

30 Allgemeine Zeitung (Augsburg), June 8, 1868.

origin could be interpreted as proof of the individual's intention to renounce his adopted citizenship. The paper quoted local public opinion as being hopeful that the German authorities would adhere to the permissive, not the obligatory, interpretation of this article, provided that they did receive positive proof to the contrary. That is, if the person affirmed that he (or she) intended to retain his (or her) American nationality. That such a declaration--whether through a formal statement or by means of a renewal of an American passport--should be accepted at face value by the German government in question. Otherwise, hundreds of older, wealthy, naturalized American citizens who now lived in Germany would be put into a very difficult position.[31]

The Allgemeine Zeitung asserted that all the speakers during the Reichstag ratification debate seemed to have interpreted the "could" of this clause as "must." The paper claimed that if this Prussian view prevailed, it would not represent a concession, but an insult to the United States. Such a mandatory interpretation could only be accepted in cases where the emigrant had demonstrated bad faith in naturalization, but not in normal cases. According to the paper, it had received information from good authority that this clause had been inserted into the treaty to prevent fraudulent emigration and naturalization. Its real purpose had been to prevent wealthy young men from acquiring American citizenship in order to return home and to enjoy, in Germany, a freedom from military service for the rest of their lives. In such cases, the mandatory interpretation could be accepted, but that in all others, the voluntary nature of this clause of article IV should prevail.[32]

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[31] Ibid.

[32] Ibid.

This article in the Allgemeine Zeitung advocated a dual interpretation of the treaties which can, in view of later events, be considered dangerous. This interpretation left it up to the German state in question to act toward returning emigrants in totally differing ways. That is, if bad faith were presumed, the emigrant could and should be treated with severity and article IV applied in a mandatory way. If he were presumed harmless, elderly, and wealthy, he would be granted the permissive interpretation of article IV and allowed to live undisturbed in Germany for the remaineder of his life without any questions being raised as to his continued American citizenship. In fact, the paper was prophetic, this variable and unpredictable treatment was applied after the first ten years' duration of the treaties. Only by then, the German authorities chose to regard any emigration on the part of a male citizen--even if he left as an infant with his family--as an act of bad faith.[33]

It is possible that the Allgemeine Zeitung was, at that time, voicing the opinion of the Bavarian government on the North German treaty. Bavaria subsequently formalized the differentiation between returning naturalized American citizens of Bavarian origin advocated in this article. A protocol codicil to article IV of the Bavarian treaty prohibited the return, before age thirty-two, of male former Bavarians who had not served their military duty there.[34] This eliminated the return of young, welathy men who might seek American citizenship to avoid such military duty. However, it left

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33 Several cases, to be treated in later chapters, will show that the Germans chose to interpret any male emigration in such a way. One example is that of Friedrich Schaaf, who left Hamburg with his family at the age of ten, F. R. 1901, p. 158.

34 Malloy, Treaties, I, p.63.

open the possibility that such men might return later in life to live and spend their wealth in Bavaria.

The Würzburg protest took place on June 20, 1868,[35] shortly before the signing of the Bavarian-American naturalization treaty was made public. The Bavarian co-signer of the treaty, Privy Councillor Otto von Völderndorff, who had received a copy of the protest, replied to the criticism voiced therein in a letter to Charles Munde. He pointed out that the Bavarian Protocol clearly gave a voluntary interpretation to the two-year sojourn clause of article IV.[36] The Bavarian Protocol comment to article IV read in part:

> On the contrary, the citizen naturalized abroad must first apply to be received back into his original country....But yet it is left to his own free choice, whether he will adopt that country; or will preserve the citizenship of the country of his adoption.[37]

The Würzburger Anzeiger, in a comment upon the Bavarian treaty, claimed that it had been assured by the leader of the Würzburg protest, Charles Munde, that the Bavarian Protocol had satisfied the doubts of the group on the subject of article IV of the treaty. Munde had claimed that the North German treaty left the question open as no protocol clarifying this point had been appended to this agreement.[38]

The Allgmeine Zeitung of Augsburg published a comment on both the North German and the Bavarian treaties on July 11, 1868.[39] In a long

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35 See pp. 73-74 supra on this protest.

36 Letter, Otto von Völderndorff to Charles Munde, June 29, 1868, reproduced in Munde, Bancroft Treaties, pp. 78-83.

37 Malloy, Treaties, I, p. 63.

38 Extract of Würzburger Anzeiger article, Munde, Bancroft Treaties, pp. 99-100

39 Beilage zur Allgemeinen Zeitung (Augsburg), July 11, 1868.

introductory passage, the paper commented on the various American citizenship laws, tracing them from 1790 to 1868,[40] and then doubted that any American citizen could, according to American law, unilaterally renounce his citizenship. The Allgemeine Zeitung then declared that no one could be deprived of American citizenship against his will and added that article IV of the naturalization treaties seemed to alter this commonly accepted principle of law in that a man could be presumed to have lost his citizenship after two years' residence in Bavaria. According to the paper, the treaties introduced a serious difference in legal standing between a native-born and a naturalized American citizen in that the native-born citizen could never be deprived of his citizenship, whereas, now, the naturalized citizen could.[41]

The Allgemeine Zeitung reminded its readers that the naturalization treaties were, according to the United States Constitution, part of the supreme law of the land. Yet, they violated both the Civil Rights Bill and a law, enacted in 1802, regulating the citizenship of children born to Americans abroad. The paper argued that this aspect of the treaties certainly would not be accepted by naturalized Americans then living in Germany. It went on to venture that the Court of Claims would be in session in October and that only this court could hear complaints raised against the Union, based on the reason of a treaty of state. This court would not adjudicate the case but would present its report to Congress

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40 Ibid. The first American naturalization law was enacted on March 26, 1799 in pursuance of Article I, Section 8, paragraph 4 of the United States Constitution.

41 Ibid.

which would include a proposed ruling. Such a case could then be brought to the Supreme Court upon appeal, according to a law enacted on March 3, 1863, if it posed an important principle of administrative law.[42]

It should be noted that, again, the Germans seemed to show more concern for the rights of naturalized American citizens than did the Americans themselves. If these treaties represented a clear violation of the United States Constitution, and the Schneider case in 1964 determined that such laws discriminating between native-born and naturalized citizens were, indeed, unconstitutional, why were they signed and ratified? Why did the Secretary of State, whose duty it would have been to protect the rights of all American citizens, fail to do so? Why did it take almost one hundred years for this constitutional violation to be recognized as such?

The Allgemeine Zeitung concluded its discussion of the treaties with a comment on the Bavarian Protocol. It asserted that the Protocol seemed to contradict that clause of article IV which permitted an assumption of loss of citizenship after two years, and came to the conclusion that:

> Through the text of this article the most definite principles of law are subverted [auf den Kopf gestellt]: first the assumption of a declaration stated upon the grounds of another declaration (the intent not to return), which cannot have any connection with the former, and then the assumption (that of two years' residence)....But if the contents of the protocol formulated the true meaning of the treaty, why should the text of the treaty state the direct contrary of its contents? We have, indeed never before encountered a similar case.[43]

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42 Ibid.

43 Ibid.

The paper concluded that, even if the naturalized American sojourning in Bavaria could, according to the Protocol, be presumed to be reasonably safe from an abridgement of his rights, one staying in North Germany under similar circumstances could not be deemed equally secure.[44]

Conclusion. Despite some criticism, the press in both Germany and America generally supported the naturalization treaties. It would have been understandable if the German-American press would have been most concerned with possible defects in the treaties, as the readers of these papers would have been the ones most affected by any agreement. In view of this, it is most surprising to find that the principal defects in the treaties should have been pointed out by a German newspaper[45] rather than by an American one. The only German-language newspaper in America that mounted a concerted attack on the treaties was the weekly Boston Pionier. However, this paper, founded by an 1848 refugee from Germany,[46] was too radical in nature to have a wide appeal or readership. Also, the Pionier was constantly at odds with the rest of the German-American press which it accused of supposedly pro-monarchist leanings and subservience to Bismarck. Even Senator Sumner, in whose home state the Pionier was published, did not feel obliged to take into account any opinions voiced in it or to listen to the appeal of its editor for rejection of the first naturalization treaty.

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44 Ibid. The paper pointed out that, according to the two-year clause in article IV, the United States could also refuse to recognize a naturalized American's citizenship after a two-year residence in his country of origin.

45 The Allgemeine Zeitung (Augsburg), July 11, 1868.

46 Dr. Karl Heinzen, founder and editor-in-chief. One of Heinzen's prime targets for criticism was Senator Sumner's friend, Carl Schurz, whom he only called "the German Senator."

Had the German-American press acted in concert to make a real effort to obtain a modification or revision of the first naturalization treaty, it is possible that both Seward and Sumner might have been persuaded to scrutinize it and subsequent treaties more carefully. At the very least, they might have insisted upon clarification of some of the passages open to controversial interpretation. Such action might even have resulted in a rewording of the treaties. However, as one German-American newspaper remarked on another occasion, the German-Americans could never agree on anything.[47] Yet, in 1868, they did agree that the condition of non-recognition of their American citizenship, acquired by naturalization, by their native German states had become intolerable. As 1868 was an election year, and both parties recognized the size of the vote represented by naturalized citizens--both of British (Irish) and German origin taken together--they both agreed that the solution to the problem of recognition of naturalization had become an absolute necessity. In Germany, Bismarck had come to the same conclusion. This coincidence of desires produced the hastily and imperfectly worded naturalization treaties of 1868. Thus, the urgency of facing the American voter on the one hand, and a possible desire to avoid too precise a wording which might offend some Reichs-

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47 Illinois Staatszeitung, December 12, 1877. Commenting on a new German-American teachers' seminar, founded at a German-American reunion in Baltimore, Maryland, the paper noted that "German-American 'national projects' have hitherto suffered a sad fate; enthusiasm has never been lacking for them, but certainly the daily help and the practical execution....The Germans' uniting for a common project, have generally suffered a fiasco. One must seek the explanation for this in their too strongly developed individualism...and they will probably never stick together unless forced to do so by Bismarck's 'policy of unity'--or through kicks and blows."

tag factions basically opposed to such a treaty, produced what will be shown to have been, in the long run, a highly unsatisfactory solution to the problem.

CHAPTER IV

THE HALCYON YEARS

Introduction. The conciliatory mood, present on both sides of the Atlantic, which had led to the negotiation and conclusion of the naturalization treaties in 1868, continued to prevail only for a short time thereafter. The treaties, hailed by the press in both countries as harbingers of future good relations between America and the German states, soon proved to have been anything but that. In part, the reason for this can be found in the United States' loss of interest in the issue after the election of 1868. In an immediate sense, however, the cause can be found in the changed conditions in Germany. The naturalization treaties represented the maximum concessions which a group of national states in need of friendship and support felt they could make. Implementation of the treaties was left to an empire very conscious of its new-found power and, possibly, less and less willing to concede an inch of what it considered to be the interests of German sovereignty.[1] The Franco-Prussian war of

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[1] To illustrate this changed attitude toward other nations, the example of the American minister to France can be cited. Minister Eli Washburne, who also took care of German interests in France during the Franco-Prussian war, complained bitterly to Secretary of State Hamilton Fish that official American mail was being held up consistently: "But I can say to you, unofficially, I am not at all satisfied with the treatment I have received, but I suppose it will have to be put up with. In the pride of her present power and her triumphs, Germany considers but little due to other nations." Letter, Washburne to Fish, January 21, 1871, in Hamilton Fish Papers (Library of Congress, Washington, D. C.), Box 345, hereafter cited as: Fish Papers.

1870-71 marked the beginning of a gradual change in official German attitudes, although this did not become apparent immediately. Thus, within three years after the conclusion of the Bancroft treaties, the underlying political situation had changed radically. This was bound to affect the administration and workings of the treaties.

On the other hand, having concluded the naturalization treaties, the Germans could not openly refuse to implement them during the first ten years stipulated as the initial duration period by the treaties themselves. On the whole, and despite some friction, the first nine years passed without major disagreements. This was due in large part to the earnest efforts of the German Secretary of State for Foreign Affairs, Bernhard von Bülow (the elder), who endeavored to administer them fairly and in a continuing spirit of amity. In the long run, it might have been more satisfactory for German-Americans had some major dispute over the treaties developed during that time. This period--certainly from the vantage point of hindsight--can be considered the only one during which a major modification or a new treaty might possibly have been achieved. Even then, such change would have been possible only at the price of major concessions on both sides and as the result of lengthy and complicated negotiations.

Several points can be made in support of this contention. First, the fact that Bismarck was, until 1876, still largely under the influence of his more liberal ministers,[2] and, perhaps, still receptive to policies

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[2] Foremost among these was Germany's leading proponent of free trade at that time, Rudolf von Delbrück, President of the Reich's Chancellery 1871-76, whose influence led to a series of liberal trade laws in Prussia and then in the Reich. Wilhelm Kosch (ed.), Biographisches Staatshandbuch (Bern: 1963), p. 232.

of unrestricted emigration. He only turned toward protection and commercial "warfare" after 1876. Second, while military influence on civilian affairs was growing throughout Germany in the wake of the formation of the Reich, it had not yet reached the prominence evident in the period after 1890. Secretary of State for Foreign Affairs Bernhard von Bülow was a moderate and conciliatory man. He also enjoyed the confidence of Bismarck and was able, on most occasions, to avoid having to yield to the military point of view. Third, the German empire had not yet been welded into a single cohesive entity. State separatism was still a strong factor in both domestic and foreign affairs. Prussian ideas on absolute obedience to the state were still being opposed in large segments of the country. Fourth, the Germans, even after the Franco-Prussian war, were not yet willing to forego the friendship of the United States as this country might, in the future, prove to be a counter-balance to British power.

Unfortunately, the American government did not appear to be very interested in solving the problem regarding the position of naturalized citizens in Germany at this time. Apparently, it believed that the naturalization treaties were working reasonably well and that any difficulties that might arise were capable of solution by means of the application of the treaties. This, as the present chapter will attempt to show, was a mistaken belief. The seeds of future trouble were already present in this first, the halcyon, period. As the end of the first ten-year period approached, the Germans must have studied the treaties very carefully and then proceeded to attack them systematically at their weakest points. As a result of this policy, they succeeded in narrowing the scope and appli-

cation of the treaties step by step. By contrast, the American ministers simply treated each case of dispute as an isolated event, unrelated to a general pattern.

The First Warnings

In the United States, the administration which had negotiated and concluded the Bancroft naturalization treaties went out in early 1869. President Ulysses S. Grant followed President Andrew Johnson. Hamilton Fish took over as Secretary of State from Elihu B. Washburne, who had held that office for only nine days (before resigning) after succeeding William H. Seward. However, George Bancroft remained as American minister in Berlin for six years following the conclusion of the treaties that bear his name. President Grant kept him there at the urging of influential friends.[3] Bancroft's outspoken partisanship for Prussia during the Franco-Prussian war made him persona gratissima in Berlin, even though this stand had not pleased Washington.[4] America was slowly recovering from the wounds of the Civil War and needed a period of calm in foreign affairs. As long as relations with Germany remained undisturbed by commercial and colonial rivalries, Washington and Berlin remained on friendly terms.

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3 Otto zu Stolberg-Wernigerode, Germany and the United States of America During the Era of Bismarck (Reading, Pa.: 1937), pp. 105-106, hereafter cited as: Stolberg-Wernigerode, Germany and the United States, records that when Bancroft's position in Berlin was threatened as a result of his pro-Prussian bias, John Lothrop Motley (then American minister in London) used his influence in favor of Bancroft with Adam Badeau (who had once been Grant's private secretary), and that Bancroft was retained in Berlin as a result of this intervention.

4 Letter, Fish to Bancroft, May 23, 1871, in Fish Papers, Box 345. Fish claimed that there were influences at work in Washington to recall Bancroft: "I have reason to believe that some interests are at work in behalf of someone or more who desire to be your successor...."

In 1873, after four years in office, Secretary of State Hamilton Fish reviewed the naturalization treaty situation with Germany and found a number of defects in the existing arrangements. He was disturbed that, as the result of the creation of the Reich and the addition of Alsace-Lorraine to German territory, the treaties were no longer co-extensive with the empire. He also foresaw difficulties in the administration of the existing agreements due to differences in wording and provisions. He wrote Bancroft a detailed letter critizing the treaties point by point. Bancroft, hurt by this criticism, tried to justify himself. He replied at some length, recounting the difficulties he had to face in obtaining them, and ended with:

> I am unable to find in the treaties of naturalization all the deficiencies which you suggested. On the contrary, I think the most important of them do not exist and the others are of no practical moment.[5]

This exchange had an adverse effect on the whole situation in that it caused the United States to miss what was perhaps one of the very few opportunities at rectification or amendment. Bancroft, as the result of this criticism, felt himself in need of proving that Fish's fears were unfounded and did nothing to remedy the situation. Fish, obviously, did not judge the whole question to be of sufficient importance to insist. As a result, no attempt was made at that time to come to an overall agreement with the new German Reich.

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[5] Letter, Bancroft to Fish, May 8, 1873, F. R. 1873, I, p. 284. The only point on which Bancroft conceded having any doubts was Alsace-Lorraine. In his official letter to Fish he claimed that the North German treaty covered this territory. However, in a confidential letter, written simultaneously with the official one, he advised obtaining a statement from the Germans that Alsace-Lorraine would be covered. Letter, Bancroft to Fish, May 8, 1873, MS Dispatches, Germany, M-44, roll no. 21.

A year before this exchange of correspondence between Fish and Bancroft took place, the first indirect attacks on the naturalization treaties occurred. In May 1872, Bancroft reported the rising opposition of the agrarians to the increase in migration from Germany to the United States.[6] The Pomeranian Agricultural Society had just passed a resolution requesting the government "to recommend a greater stringency in the police laws regulating emigration."[7] The German press, in general, also commented extensively on this booming emigration. Bancroft sent a statement to Washington which showed that the ports of Bremen, Hamburg, and Stettin alone had recorded a figure of 45,369 emigrants to the United States for the first four months of 1872.[8] During the year 1872, a total number of 141,109 Germans emigrated to America.[9]

The only year for which approximate figures to show the two-way flow of migration are available is 1874. The American minister, J. C. Bancroft Davis, reported to Washington that approximately 15,000 United States citizens arrived annually in Germany. Of these, about 13,000 returned to America within the same season. Only approximately 500, or three-and-one-third per cent of the 15,000 arriving annually remained in Germany

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6 Letter, Bancroft to Fish, May 14, 1872, F. R. 1872, pp. 189-190.

7 Ibid., p. 189.

8 Inclosure to Ibid., p. 190.

9 Joseephy, Die deutsche Auswanderung, table I appended to text.

permanently. On the other hand, 87,921 Germans emigrated to the United States during 1874,[10] so that the permanent rate of return to Germany was only six-tenths of one per cent of the migration from Germany to the United States.

As emigration from Germany to America continued to rise, reports reached Washington that the German government was instituting measures to stem this flow. Finally, the German minister in Washington, Kurd von Schlözer, wrote Fish: "A statement was published in July last by the American press to the effect that the German government was seeking to prevent emigration to the United States, and had adopted stringent measures for this purpose. These measures are entirely unknown to me."[11] This denial closed the matter at that time.

However, the attack on free emigration was renewed by the agrarians in 1873. Again, the parliamentary representatives of the landowners of Prussia asked the government to take stringent police measures against emigration. At that time, the German government was still opposed to such measures. Another twenty-three years passed before the combined forces of industry and agriculture (supported by the military establishment) obtained passage of a bill to serve this purpose.[12] In 1873,

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10 Ibid.

11 Letter, Schlözer to Fish, October 28, 1872, F. R. 1872, p. 194.

12 Numerous bills on the subject failed to pass the Reichstag until a comprehensive bill regulating emigration passed on May 19, 1897. Germany, Stenographische Berichte, IX. Legislaturperiode (1895-97), VIII, p. 5932.

the German Minister of the Interior expressed the position of his government thus:

> If we regard the principle of free change of domicile a just one, and apply it to a change of residence from one place to another in Germany, we cannot contest it where the change of domicile extends to emigration. Most of the propositions which have thus far been made cannot be reconciled with the existing laws. They violate the principle which lies at the foundation of the freedom of change of domicile.[13]

Yet, sentiments with regard to emigration were gradually beginning at that time to change in Germany. Above all, and as a consequence of the Franco-Prussian war, the German local authorities became more vigilant in their attempts to prevent evasion of German military service laws. As Germany still had a surplus of young men of military age during this period, these measures can only be ascribed to a possible fear of future French revanchism and future needs for a larger army. The concessions granted in the Bancroft treaties: immunity from punishment for infractions of the military laws through emigration, and the two-year right of sojourn upon return, were already resented by the German public. It was felt that these provisions actively encouraged young men to emigrate just before becoming liable to military service, to live only the minimum period required for citizenship in the United States, and then to return to Germany at a young age and to live there for extended periods without being vulnerable to military duty.

The German authorities sought to prevent this practice without violating the letter of the naturalization treaties. The best method to achieve this

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13 Letter, Bancroft to Fish, January 25, 1873, F. R. 1873, I, p. 276. This letter quoted excerpts from the Minister of the Interior's speech.

seemed to present itself through a compulsory interpretation of the two-year sojourn clause of article IV of four of the five naturalization treaties.

The Beginning of the Attack on the Treaties: Article IV

The Mentheim Cohn Case (1874). The first, clear warning of possible future German policy occurred while Bancroft was still in Berlin. This case showed that the Germans intended to interpret the two-year right of sojourn clause as mandatory, rather than in a permissive way, as Bancroft had claimed at the time of treaty signature. They would reclaim as a German subject, without a declaration of intention on his part, and without going through any re-naturalization formalities, a naturalized American of German origin who resided more than two years in his homeland. This was exactly the procedure which had been advocated by the "United Commissions Report" in 1868.[14]

Mentheim Cohn had spent about eight years in the United States and had been naturalized there. He subsequently returned to his native Flatow and married there. Shortly after his two-year period of grace (under article IV of the North German treaty) had expired, Cohn was summoned to appear for Prussian military duty. Bancroft objected to the construction the Germans had put on article IV despite the fact that he suspected Cohn of having made fraudulent use of his naturalization:

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[14] For a discussion of the report and its relevance to article IV, see pp. 21-22 supra. Representative Edouard Lasker had pointed this danger out during the North German Reichstag discussion. German law permitted a so-called "suspension of citizenship" during a person's absence, it also allowed dual citizenship (which the United States did not). As a result, German citizenship never ceased to exist, and immediately revived when the protection of foreign citizenship lapsed.

> But by this time the government threatened to seize the young man and put him into the army. To this I have demurred. It seems to me that we can never consent to put such a construction on the fourth article as this procedure would imply....The last half of the fourth article is permissive not mandatory.[15]

Bancroft gave Cohn a passport to enable him to return to the United States, and this ended the controversy at that time. Bancroft thought that the United States could thus test the sincerity of naturalized citizens as to their intentions of returning to their adopted country. He also believed that the Germans had now accepted his own construction of the relevant part of article IV. This was only partially true.

Secretary of Legation Nicholas Fish, in a letter to his father, Secretary of State Hamilton Fish, discussed the Cohn case, and stated that the North German treaty did not declare that an American citizen forfeited his citizenship by a continuous residence of two years in his former German home. He added: "At the time of the formation of the treaty the subject was fully discussed and such an interpretation was disavowed by all parties concerned in forming it."[16] Nicholas Fish enclosed a translation of Secretary of State Bernhard von Bülow's reply to him in the Cohn case. This reply does not actually and distinctly accept Bancroft's interpretation of the treaty, quite the contrary, Bülow was extremely cautious in his treatment of the subject:

> That he is in so far in accord with the views enunciated by Mr. Bancroft, that the Imperial Government intends to execute the treaty at all times with the greatest moderation and respects

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15 Letter, Bancroft to Fish, June 29, 1874, F. R. 1874, p. 447.

16 Letter, N. Fish to H. Fish, July 9, 1874, MS Dispatches, Germany, M-44, reel no. 23.

> for the rights of individuals. The undersigned, however, believes it to be his duty to call particular attention to this point, that the treatment of each case must depend entirely upon the circumstances of the same. In the case of Mendel Cohn, which gave rise to this discussion, the circumstances ascertained by the investigation, are of such a nature that they seem fully to justify the action of the Prussian Government toward him.[17]

This is a clear case of misunderstanding on the part of the American government. Nicholas Fish was, at the time, a very young man on his first assignment in the diplomatic service and can, perhaps, be excused if he did not devote sufficient care to the interpretation of this reply. His father, however, to whom a copy of this reply was sent, should have detected the danger signs inherent in the German position. Bülow was an extremely moderate man who was well disposed toward the United States. His evaluation of the Cohn case as one of fraudulent intent--in that Cohn left Germany at the age of sixteen-and-one-half and returned to marry and settle down at twenty-four-- is eminently fair,[18] but another passage of the letter may throw further light on the direction which German policy was even then taking:

> The Foreign Office will gladly endeavor, as far as it lies in its power, to procure of the Interior authorities the acceptance of the view of the American Government of the provisions of the treaty....Germans, who after having acquired naturalization in the United States, return to Germany to reside there permanently...while they withdrew themselves from the fulfillment of their duty of military service, at the expense of those, who with dutiful regard for the law, have fulfilled their obligations to the state....The

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17 Letter, Bülow to N. Fish, July 7, 1874, inclosure to letter, N. Fish to H. Fish, July 9, 1874, MS Dispatches, Germany, M-44, reel no. 23.

18 Ibid.

> undersigned believes he may indulge in the hope that these difficulties which might under circumstances endanger public order [italics mine], may also receive on the part of the American Government due consideration.[19]

The phrase, "endanger public order," presages the practice of expulsion which was adopted by the German government in the 1880's to circumvent the naturalization treaties. This letter was a clear warning that the Germans would adopt a narrower construction of the treaties if the United States did not refrain from giving support to cases considered to be without merit. Given the American system of government, the warning could not be heeded, because it would have created immediate adverse publicity with political implications. The Germans then proceeded to make their intent clearer. A press campaign followed in Germany.

In 1875, Bancroft's nephew and successor in Berlin, J. C. Bancroft Davis, transmitted to the Department of State an article which had appeared in the National-Zeitung the previous day. This article asserted that, according to section 11 of the military law of the empire, it was possible --under certain (unspecified) circumstances--to draw into military service former Germans who had again taken up residence in Germany. The paper claimed, however, that such persons would be notified first and thus given a chance to leave the country.[20] Davis expressed the opinion that the German government was behind this article, and welcomed the views expressed therein. He thought they would contribute to future smooth

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19 Ibid.

20 Letter, Davis to Fish, October 14, 1875, enclosing October 13, 1875, National-Zeitung article, MS Dispatches, Germany, M-44, reel no. 27.

workings of the treaties "as there has been a difference of opinion between the Foreign Office and the Chancellor's Office on the one side, and the Ministry of War and the Ministry of the Interior on the other side."[21]

Seven years after the conclusion of the naturalization treaties, the Germans were still inclined to be conciliatory on this point, but two future areas of conflict were delineated in this article. The first of these was the Germans' assertion that they could consider naturalized American citizens as German subjects after two years' residence in Germany, and this without any renunciation on the part of the person concerned. The second future point of conflict was the threat of expulsion as an alternative to reassumption of German citizenship and induction into the military service.

The Mathias Bamberg Case (1875). On the surface, the two-year right of sojourn for former Germans upon return to their former homes had seemed to represent a victory for the Americans. In practice, however, this right was accorded only reluctantly and often upon intervention of the American legation on the person's behalf only. The records of the Berlin legation show 125 such interventions during the first ten years of the treaties'

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21 Ibid. Davis had called at the German Foreign Office in order to inquire whether the views expressed in the National-Zeitung were, indeed, those of the government. He had been assured that they were. While this seemed to confirm the correctness of Bancroft's action in the Cohn case, it also introduced a new element: the threat of expulsion.

existence and listed 109 of these as "successfully concluded."[22]

In actual fact, the first German attack upon the two-year right of sojourn occurred in 1875, one year after the Cohn case. Mathias Bamberg had come to the United States in 1867, stayed there six years, had been naturalized, and then returned to Germany in 1873. In may 1875, shortly before his two-year period of grace was up, he was ordered to report for military duty in Germany, as we was regarded as a Prussian subject.[23] The American minister in Berlin, J. C. Bancroft Davis, remarked about the case:

> At this time he [Bamberg] had not been in Germany two years. Such proceedings, in the absence of any acts on his part amounting to forfeiture of naturalization under the treaty, would seem to be a departure from the rule laid down in the late circular of the German Government.[24]

Upon the intervention of the American legation, Bamberg was released with the stipulation that he leave Germany.[25]

Again, as in the Cohn case, the United States accepted a compromise solution. The American government failed to obtain a clear statement of intent or policy from the German government respecting the citizenship of naturalized Americans of German origin after two years' residence in

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22 In 1897, at the request of the Department of State, the United States embassy in Berlin compiled a set of tables showing cases which had required intervention under the treaties. The term "successfully concluded," used to annotate the cases, is extremely misleading. This meant only that some concessions were obtained, not that the persons in question were allowed to stay the full two years (even before 1878) permitted them under the treaties. Cf., tables, F. R. 1897, pp. 213-222.

23 Letter, H. Fish to N. Fish, January 7, 1876, MS, Instructions, Germany, M-77, reel no. 66.

24 Ibid.

25 Tables, F. R. 1897, p. 214.

Germany. In the Bamberg case, the Americans accepted in fact, if not in principle, a slight reduction of the two-year period. The importance of this does not lie in the extent of the reduction, but in the fact that the two-year term was no longer inviolate. Here begins a dual interpretation of the two-year clause of article IV. No action was taken against older, male naturalized Americans or against women. These were permitted an indefinite sojourn in Germany as long as they were solvent.

The Americans, too, began to resent naturalized Americans of German origin who returned to Germany to live there permanently. Davis, in 1874, complained that:

> Whole families live here for years, drawing their means of support from American investments, educating their children in German ideas, and spending here the income which otherwise would go to enrich the United States....It is estimated that at least three-quarters of the number are persons of German birth, who have been naturalized in the United States, and have returned to Germany to reside.... There is still another class of naturalized citizens residing in Germany, not so numberous as the others, but by no means insignificant, who have sought American citizenship solely for the purpose of avoiding the duties of citizenship here, and, having acquired it, have returned here without any intention of residing again in America, or of performing any of the duties of citizenship there.[26]

Davis claimed that as of the end of 1871, 14,263 Americans were residing in Germany, and that about 10,000 lived there indefinitely. He also estimated that about 500 Americans of German birth returned yearly to reside permanently in Germany.[27] This is not a very significant number, compared with the number of Germans who left each year for America.[28]

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26 Letter, Davis to Fish, November 2, 1874, F. R. 1875, I, p. 485.

27 Ibid.

28 Joseephy, Die Deutsche Auswanderung, table I: 1868: 122,677; 1869: 131,042; 1870: 118,225; 1871: 82,554; 1872: 141,109; 1873: 149,671; 1874: 87,921.

In June 1875, the legation issued a circular to consular offices in Germany for the purpose of guiding them in dealing with applications for protection and for passports. The circular discussed the implications of the two-year clause of article IV of four of the naturalization treaties, admonishing the consulates to be careful in their evaluation of the rights of such citizens who had overstayed the two-year limit set by the treaties;

> Consular officers must be careful, therefore, not to assume from this fact that a naturalized German has lost his acquired nationality. On the other hand it is unfortunately true that there are persons residing in Germany who have been naturalized in America for the sole purpose of returning here and taking up permanent abode....Such persons forget that citizenship is a privilege which calls for the Performance of duties. By their fraudulent conduct they affect injuriously the situation in Germany of bona fide naturalized American citizens who return here to visit their friends and relations, and thus innocent persons become exposed to unjust suspicion and sometimes to annoying treatment.[29]

Simultaneously with this circular, a table was compiled showing the length of residence in the United States, both before and after naturalization, as well as the length of residence in Germany after naturalization of Americans to whom passports had been issued.[30]

Intervention now Necessary (1876-77)

Toward the end of the first ten-year period specified for the duration of the naturalization treaties, German policy became much more direct in its attack on the two-year sojourn clause. The Germans were now intent upon discouraging the return of men of military age whom they deemed to have emigrated for the sole purpose of evading such duty. Two

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29 Circular, dated June 14, 1875, printed in F. R. 1876, p. 139

30 Table appended to ibid., p. 140.

cases taken from an 1877 military case report will illustrate the point. This report[31] comprised 86 cases, of which, according to a subsequent compilation transmitted to Washington, only a fraction required legation intervention with the German Foreign Ministry.[32]

The Joseph Heidt and Philip Stahlmann Cases (1877). Joseph Heidt, a native of Hanover, emigrated to the United States at the age of seventeen, resided there for five years, was naturalized, and then returned to Germany for a visit. Within a few months of his return, he was ordered either to report for military duty or to leave Germany within eight days. Upon his request, the legation interceded on his behalf with the German Foreign Ministry. As a result of this action, the legation received the Foreign Ministry's reply "that the measures taken for Heidt's enrolment had been desisted from, and those for his expulsion withdrawn."[33]

Philip Stahlmann, too, could prove American citizenship and a residence of more than five years in the United States. However, shortly after his arrival in Germany for a visit, his certificate of naturalization was taken from him by the local authorities and he was ordered to report for military duty. Stahlmann also appealed to the American legation for help. As a result of legation intervention, "he was at once dispensed from appearing for enrolment and his papers were returned."[34]

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31 Military Case report covering the period July 1, 1876 to June 30, 1877, inclosure to letter, Davis to Evarts, June 30, 1877, F. R. 1877, pp. 246-252

32 Ibid. See also, letter, N. Fish to Evarts, July 24, 1877, table showing only 11 interventions for 1876 and 4 for 1877, F. R. 1877, p. 257.

33 Letter, Davis to Evarts, containing military case report, F. R. 1877, p. 248

34 Ibid., pp. 251-252.

These two cases occurred eight years after the signing of the Bancroft treaties and the issuance of clear directives implementing these agreements by the German Ministries of the Interior and Justice.[35] The incidents show that the Germans were not very diligent in enforcing the naturalization treaties or in carrying out directives issued by their own central government. It is evident that there was great reluctance on the part of local authorities to accept the terms of the treaties. By 1876, it often took the energetic intervention of the United States legation to free a naturalized American citizen from forcible enrolment in the German military service, despite the fact that this was in clear violation of the naturalization treaties. While the Germans regretted the concessions which allowed young men to emigrate and then to return to reside in their old communities, they were still reluctant to violate the treaties openly. In the late 1870's, legation intervention could still obtain compliance with the treaty terms.

An Early Attack on Another Treaty Aspect: Article II

The Edward Grübel Case (1875). Simultaneously with their attack on the two-year right of sojourn vouchsafed by article IV, the Germans also sought to limit the immunity from punishment--and from military service as a result of this immunity--guaranteed by article II of all five treaties to the returning naturalized American. Edward Grübel was born in

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35 These directives, issued in July 1868, gave clear instructions for the implementation of the treaties to local authorities. For the text of these directives, see F. R. 1880, pp. 443-444.

Prussia in 1850. He emigrated to the United States in 1867, at the age of seventeen and before being called for military duty. He liven in America for seven years, was naturalized there, and returned to his former home for a visit with his parents just before Christmas of 1874. On January 5, 1875, and before the first month of his visit was up, he was condemned by the Land- und Stadtgericht of his home town to pay a fine or face immediate arrest for non-performance of military duty.[36] Minister J. C. Bancroft Davis, in reporting the case to the Department of State, wrote that Grübel had informed the court that he was a United States citizen and had even shown his passport in support of this contention. The court had answered "that it was unnecessary to produce a passport, as he was liable to fine irrespective of citizenship, and that he was at once to be committed to prison for non-payment of the fine."[37]

This time, both Davis and Fish saw the danger signs. After requesting and receiving instructions from Washington, Davis took up the matter with Bülow. He read to the latter extracts from Fish's letter of instruction, which had asked:

> Whether the unallowed emigration of a person of an age making him liable to military duty is of itself an offense by the law of Germany, or whether the issue of a notice to perform military service is requisite to constitute that offense.[38]

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36 Letter, Davis to Fish, January 11, 1875, F. R. 1875, I, pp. 489-490.

37 Ibid., p. 490. This action of the court was also in clear violation of the July 5, 1868 directive of the Minister of Justice, which read in part: "...that in conformity to the second article of the treaty the punishment incurred by punishable emigration is not to be brought to execution on occasion of a return of the emigrant to his original country if the returning emigrant has obtained naturalization in the other country in conformity to the first article of said treaty."

38 Letter, Davis to Fish, January 11, 1875, F. R. 1875, I, pp. 490.

Davis also asked Bülow about the nature of the court passing on such cases and was told that it was a partly military, partly civilian, court, and that the fact of naturalization would not be taken into account by such a court. Bülow claimed that the ultimate settlement of such cases rested jointly with the Minister of War and the Secretary of State for Foreign Affairs, who would decide any questions arising under the treaties.[39]

Curiously, in arguing the case with the Foreign Ministry, Davis did not refer to the instructions issued by the Ministers of Justice and of the Interior, issued on July 5 and 6, 1868, respectively. These documents gave explicit instructions to local authorities for the implementation of the naturalization treaty. The Minister of the Interior was even more specific than the Minister of Justice, in that no proceedings <u>at all</u> were to take place in such circumstances:

> In conformity with article II of this treaty, punishable action committed by unauthorized emigration...should not be made the ground for penal prosecution...punishment...even though already legally declared, should not be consummated if the person has acquired the right of citizenship in conformity to article I of said treaty. The royal government is therefore instructed in the cases indicated to abstain from recommending trial and punishment, and in general from every kind of prosecution.[40]

In addition, all local authorities were supposed to report each such case in detail to the central authorities.[41] This was never done, or even required. As a result, the Foreign Ministry had to investigate each case again separately, and this caused long delays and hardship for the persons concerned.

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39 <u>Ibid</u>.

40 <u>F. R. 1880</u>, p. 444.

41 <u>Ibid</u>.

It is strange that in a country like the German Reich, supposedly so intent upon observing and enforcing the letter of the law, that such explicit instructions on the part of two German ministries should be issued only to be ignored immediately; that seven years after their issuance, they should not have penetrated down to the local level. It is true that conscription laws were regional, and were administered by the local authorities of the German state in question. However, directives issued by the central government implementing international agreements had to be observed. As Secretary of State Bernhard von Bülow had told Minister J. C. Bancroft Davis in the Grübel case, the final settlement of any questions arising under the naturalization treaties rested jointly with the Minister of War and with the Secretary of State for Foreign Affairs.

In some instances, the violation of the naturalization treaty terms might have been a manifestation of independence on the part of individual states against the central authority of the Reich. However, the Grübel case occurred in Prussia, whose Ministers of the Interior and Justice had issued specific directives to implement the treaties. As these directives were ignored, one can only assume some tacit connivance on the part of the central government with such evasive action on the part of a state under its direct control.

Confiscation of Documents

One German practice that caused much delay and hardship to individuals was that of local authorities confiscating documents such as naturalization certificates. These confiscations deprived the individual of documentary proof needed to protest violations of the naturalization treaties and they

delayed investigation in many cases. New documentary proof had to be obtained from the United States, and the individual was often forced to sit in jail or to serve in the military forces while this proof was being sent to the United States legation to press his case. Minister J. C. Bancroft Davis protested this confiscation of documents and was successful in having this practice discontinued.[42]

The Germans Dispute American Citizenship of the Children of Emigrants

The German assumption that, after the two years' residence permitted by article IV in four of the five naturalization treaties had elapsed, the returnee again automatically became a German citizen, raised another difficult question. What was the nationality of the children of these reclaimed Germans? Differences arose between the United States and the Reich over which country's law--in case of conflict--should prevail in determining the nationality of such children. Some of the children were born in the United States before or after their parents' naturalization, others were born in Germany either before the parents' emigration or after their return. The Reich claimed them all as German citizens, if they had returned to Germany with their parents and had resided there since that time. In support of this contention, the Germans quoted their own law.

The Americans, on the other hand, claimed United States citizenship for any children born in the United States either before or after the naturalization of the parents. The Americans also accorded citizenship

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42 Letter, Davis to Evarts, July 28, 1877, MS Dispatches, Germany, M-44, reel no. 40.

to children of naturalized American citizens born in Germany either before their emigration to America or after their return if they could establish this claim in good faith. Such presumed American citizens were then given passports to travel to the United States in order to claim their citizenship. This practice prevailed despite the fact that most of these children had resided in Germany with their parents for most of their lives. They seldom spoke English, and only remembered their American citizenship claim when faced with the possibility of German military duty.

The Arthur Steinkauler Case: Beginning of the Dispute (1875). The first major incident in which the citizenship of the son of naturalized parents was at stake arose in 1875. Arthur Steinkauler had been born in St. Louis, Missouri, in 1855, where his parents resided at the time of his birth. In 1859, at the age of four, he returned to Germany with his parents and remained there until 1875. In that year, his father claimed American citizenship for Arthur while admitting that he, himself, had resumed his German citizenship. The father acted to claim United States citizenship for the son only when the latter received his call for German military service.[50] The legation in Berlin asked the Department of State for instructions and received an "Opinion of the Attorney-General" written by Edwards Pierrepont and transmitted by Fish:

> Under the treaty, and in harmony with American doctrine, it is clear that Steinkauler the father abandoned his naturalization in America....It is equally clear that the son, by birth, has American nationality, and hence has two nationalities, one natural, and the other acquired....There is no law of the United

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[49] Military Service Case Report, inclosure to letter, Davis to Fish August 23, 1875, F. R. 1875, I, p. 571.

> States under which his father or any other person can deprive him of his birthright....He can return to America at the age of twenty-one, and in due time, if the people elect, he can become President....While the Government of the United States, with jealous care, will protect its humblest citizen...it is not our duty to aid a young man of twenty years to escape from his military service...and when interrogated by the envoy of the American Government declines to suggest that he ever intends to return to United States and reclaim his nationality.[44]

Despite confirmation of his American nationality, Steinkauler refused to return to the United States, and the legation declined any further action on his behalf. Thus, as far as the Germans were concerned, the issue had not been resolved. The Americans, however, were satisfied that they had established their own claim that children born in the United States--regardless of whether the father was then a naturalized American citizen or not--were United States citizens by virtue of their birth. The Germans had tried to claim these children on the basis that, like Steinkauler's father, the fathers had returned to Germany with their minor children, had reassumed their German nationality, and that the children were German citizens according to German law governing the citizenship of minors.[45]

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[44] "Opinion of the Attorney-General," January 26, 1875, F. R. 1875, I, p. 565. The case is significant because the doctrine of "inalienable birthright" was laid down in it. Although Steinkauler refused to return, and the case was dropped, this opinion was quoted in the later Boisselier, Oppenheimer and Meyer cases to support American claims for United States citizenship for these men, which was, finally, accepted by the Germans.
Friedrich Kapp, an avowed and vociferous German foe of the Bancroft treaties, asked Carl Schurz to obtain a copy of this opinion for him. Kapp, basing his opinion on newspaper extracts of this document, judged Pierrepoint's view to have been wrong. Letter, Kapp to Schurz, August 27, 1875, in Schurz papers, correspondence file, Vol. 23.

[45] "Opinion of the Attorney-General," January 26, 1875, F. R. 1875, I, p. 565.

Unfortunately, rather than establish the American position, the Steinkauler case only served to alert the Germans to the future dangers of such claims. That is, if the Americans could claim native-born citizenship for all such children, the Bancroft treaties would not apply to them and they could, as a result of this, reside in Germany all their lives as native-born American citizens. The Steinkauler case must have strengthened the German resolve not to permit such young men to reside in Germany after they had reached the age of liability to military duty.[46]

In 1877, while the attack on the treaties was gradually beginning, Secretary of Legation Nicholas Fish commented on the smooth workings of the naturalization treaties. He claimed that legation records showed a marked decrease in case loads during the first six months of 1877, and added: "I gather from the above facts that the local authorities are now better informed as to the rights of our naturalized citizens, and that they may have learned, by experience in some cases, that those rights must be respected."[47] Fish praised Bülow for his handling of the cases and asserted that the Secretary of State had to contend with other departments of the German government, adding:

> That the emigrant liable to military duty is looked upon with a jealous eye in a country with so large a standing army is not unnatural; and the reported determination to prevent natives of North Schleswig, who shall have emigrated to Denmark before completing

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46 Steinkauler's case was the first to reach legation intervention stage. However, the Germans knew that there were a number of American-born children of former emigrants then living in Germany, the possibility existed that increasing numbers of such children would return to live in Germany. In claiming jurisdiction over them, the Germans sought to solve the problem in their favor.

47 Letter, N. Fish to Evarts, July 24, 1877, F. R. 1877, p. 257.

> their seventeenth year for the purpose of avoiding military duty in Prussia, from sojourning in Schleswig-Holstein without permission, shows that Prussia is not yet fully reconciled to free emigration [italics mine] in its broadest sense.[48]

Fish failed to note some of the danger signs properly. This curtailment of residence upon return to Germany of emigrants to Denmark portended a similar fate for those natives of Schleswig-Holstein who had gone to America.[49] Fish also remarked upon German jealousy with respect to the large number of Germans who had gone to America in the years 1871 and 1872. He held this large emigration responsible for stricter German enforcement of the naturalization treaties in 1875 and which, he felt, "in many cases appears to have led them to undue zeal in their endeavors."[50]

Fish also remarked that the legation had not yet had time to assess the future treatment of 1871-72 emigrants when they returned to Germany after naturalization in America. Based on the previous record, however, he voiced optimism that those who had emigrated and obtained American citizenship in good faith--that is, not with the intention of evading German military service--"will have nothing to fear on returning for a visit to his native place."[51] His optimism was proved wrong. Increasingly, Germany sought to prevent the return of military-age men, lest they serve

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48 Ibid., pp. 257-258.

49 In 1885, the Germans revived an 1841 ordinance in North Schleswig, which stated that "no foreigner can settle in any circuit in the district without official sanction, or even take up temporary residence without special permission." Inclosure to letter, Pendleton to Bayard, November 16, 1885, F. R. 1886, p. 311. On the basis of this ordinance the Germans then expelled naturalized Americans of Schleswig-Holstein origin upon their return to the area.

50 Letter, N. Fish to Evarts, July 24, 1877, F. R. 1877, p. 258.

51 Ibid.

as a "bad example" and induce other young men to follow their example to emigrate before becoming liable to military duty.

The Shape of Things to Come

For the future of the naturalization treaties it was most unfortunate that Minister J. C. Bancroft Davis left Berlin in the early fall of 1877. The new administration of President Rutherford B. Hayes had taken office in March of that year. The new Secretary of State, William B. Evarts, was regarded in Berlin as an able successor to Hamilton Fish.[52] Davis had at first agreed to stay on in Berlin for the following four years, but suddenly, in May 1877, he changed his mind and asked for his letters of recall.[53] A successor should have been appointed immediately in view of the fact that the naturalization treaties were then entering into the last year of the initial ten-year period stipulated for their duration. Because termination could have been requested by either party beginning with November 9, 1877,[54] this was a particularly delicate time in German-American relations. The Berlin legation was left in the hands of a Secretary of Legation until the spring of 1878, when Bayard Taylor, a distinguished literary figure, was appointed minister to Germany.

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52 This opinion stems from Carl Schurz. Letter, Schurz to Hayes, January 30, 1877, Schurz Papers, container no. 182. Schurz gave Hayes his choices for Cabinet posts. His first choice for Secretary of State was Evarts. Schurz claimed that Evarts was well enough versed in international affairs and well-regarded in European capitals.

53 Confidential letter, Davis to Evarts, May 7, 1877, in William B. Evarts Papers (Library of Congress, Washington, D. C.), correspondence file, Vol. 6.

54 Malloy, Treaties, II, p. 1299.

The seven months during which the legation in Berlin was left without a minister were crucial ones for the future of the Bancroft treaties. This, of all times, would have been the moment to attempt some form of consolidation or amendment. At all other times, the Germans could refuse to take action. These last six months of the first treaty period could have furnished the United States with an ideal time for insisting on a formal discussion of the whole question. The fact that the treaties specified the right of either party to raise the issue of termination provided an almost irrefutable reason for the United States to ask that the question of consolidation be opened. The Hayes administration was either not aware of the situation or did not deem it important enough to make a special effort.

Bayard Taylor was seventy-two years old and ailing when he assumed his post in Berlin,[55] and so was frequently absent from his duties. It was during his tenure that what was perhaps the most crucial case arose --a case which would determine much of future German policy. The case shows that, ten years after the conclusion of the naturalization treaties, the Germans were becoming increasingly reluctant to recognize American citizenship for ex-Germans and to grant the privileges guaranteed under normal international practice to the holders of such citizenship.

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55 Beilage zur Allgemeinen Zeitung (Augsburg), December 22, 1878. In an obituary of Bayard Taylor, the newspaper regretted that he had not had time to exert his influence on German-American relations because the minister "already arrived in Berlin a sick man and needed constant nursing care." The paper contended, that as a result of his illness, Taylor had been able to spend very little of his time in Berlin at the legation for business.

The Julius Bäumer Case (1878). Julius Bäumer received his discharge from Prussian allegiance prior to emigrating to the United States in 1868 at the age of twenty. He was naturalized in the United States in 1876 and, after an absence of nine years, returned to Germany in September of 1877 for the purpose of visiting his parents. As such a trip entailed considerable expense, he had planned to stay at his former home for six months. On December 12, 1877, fewer than three months after his arrival in Germany, he was summoned before the magistrate at Münster and told either to perform German military service or face expulsion.[56] He immediately appealed for help to the American legation in Berlin. The case then became the subject of an extensive exchange of correspondence between the legation and the German Foreign Ministry.

Minister Bayard Taylor was disturbed by the implications of the case and requested instructions from Washington. Acting Secretary of State William H. Seward replied:

> Assuming the facts to be correctly stated, the Department has reached the conclusion that the proceedings thus directed against Bäumer are unwarranted and illegal in contravention of the stipulations of the first article of the Treaty of May, 1868, between the North German Union and the United States and were, moreover, in want of harmony with those principles of comity which have always been extended by the United States and Germany to citizens of either country temporarily residing in the other.[57]

Seward further pointed out that the case was exceptional in that Bäumer had expressly obtained release from Prussian allegiance before departure

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56 Military Service Case Report, inclosure to letter, Everett to Evarts, March 21, 1879, F. R. 1879, p. 370. When the expulsion order was served on Bäumer, he was given only eight days to leave Germany.

57 Letter, Seward to Taylor, April 30, 1878, MS Instructions, Germany, M-44, reel no. 67.

and that, as a consequence, he owed that country no duties of citizenship. Seward then asked the legation to bring this particular fact to the notice of the Foreign Ministry in order to prevent the recurrence of such annoyances to United States citizens.[58]

During the controversy over Bäumer, Undersecretary of State Ernst von Philipsborn admitted the correctness of the facts, but asserted that the royal government at Münster had, after a few months (two to be precise), acted upon the assumption that it was not Bäumer's intention to return to America "but simply to evade the performance of German military duty."[59] This contention is not borne out by the facts of the case nor by the unseemly haste with which the local authorities acted to expel Bäumer when he did not agree to enter the army within one week. Evidently the Germans completely disregarded the two-year right of sojourn permitted under article IV of the naturalization treaty in question before questioning Bäumer's intentions about returning to America.

The Bäumer case represents a clear violation of both the letter and the spirit of the Bancroft treaties. The fact that an attempt was made to force Bäumer into the German army within three months of his arrival in Germany shows a disregard on the part of the Germans of their own

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58 Ibid.

59 Letter, von Philipsborn to Taylor, July 18, 1878, inclosure to letter, Taylor to Evarts, July 27, 1878, F. R. 1878, p. 228. The letter went on to assert the German sovereign right of expulsion, a claim also put forward in the parallel Carl Ganzenmüller (Baden) case. Both these claims, made simultaneously, and never used so forcefully before, by two separate German states, lead to the suspicion of a common base of origin: an imperial government department.

declaration of intention at the time of the ratification of the treaty now being applied to Bäumer: the North German treaty. As Secretary of State von Bülow was ailing at the time (he died the following year), the Bäumer case was being handled by an Assistant Secretary of State, who probably received his instructions directly from Bismarck.[60] Yet, in 1868, Bismarck had answered a question as to whether a naturalized American could, upon return, be called upon to perform military service in Prussia, thus:

> I can state that this fear is totally without foundation: we will not only act in a conciliatory manner, but the exact literal observance of the treaty [emphasis Bismarck's] forces us into it: we cannot draft into Prussian military service those whom we recognize as American citizens....This is the main purpose of the treaty.[61]

It is true that Bismarck, at the time, had stressed bona fide emigration and that the authorities in Münster presumed that Bäumer had come back to establish himself permanently in Germany. Unfortunately, Chapman Coleman, Taylor's Secretary of Legation, shared this view of Bäumer's intentions.[62] However, regardless of the opinion of either the German or

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60 Friedrich von Holstein stated that during Bülow's illness and after his death, the Vortragende Räte in the Foreign Ministry had direct access to Bismarck. Norman Rich and M. H. Fisher (eds.), The Holstein Papers, I, Memoir and Political Observations (Cambridge: 1955), pp. 61-62, hereafter cited as: Holstein Papers.

61 North Germany, Stenographische Berichte, 1868, I, pp. 44-45.

62 Letter, Coleman to Taylor, July 22, 1878, during one of Taylor's absences at a spa: "...though some day when we get hold of a little better case [than Bäumer's] we must contest their right to turn American citizens out on any pretense." The Bayard Taylor Papers (Noyes Rare Book Department, John Olin Library, Cornell University, Ithaca, N.Y.). The very casual treatment accorded to the Bäumer case shows the lack of understanding on the part of the American legation in Berlin of the principles involved in this case.

American authorities of the merits of the case, such a renunciation of citizenship could not be presumed after a stay of fewer than three months. After a sojourn of two years, such action on the part of local German authorities could have been expected, even though it was not the official position of the Americans, who maintained that a naturalized citizen retained his adopted citizenship unless he specivically renounced it.

The official German reply in the Bäumer case, forwarded to Washington by Coleman, showed very clearly the position the Germans were to take in the future. First, the expulsion order allowed Bäumer eight days to leave Germany; second, the Germans claimed that the naturalization treaty did not invalidate the right of a sovereign state, under international law, "from actuating measures of internal police or state policy, to refuse to foreigners the privilege of sojourn...."[63] Third, they said:

> The decision of this latter tribunal was especially influenced by the circumstances that in the city of Münster particularly, for some years past, not an inconsiderable number of persons liable to military duty who had been discharged from German and had acquired foreign and particularly also North American nationality, had returned to reside permanently. In view of that fact and this false state of things, which had become a general annoyance and a danger to public order, required a more severe application of the right of expulsion.[64]

Thus, it can be seen that this case contained all the elements which were to constitute German policy later. It also showed clearly the motivation for this policy.

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63 Letter, von Philipsborn to Taylor, July 18, 1878, inclosure to letter, Taylor to Evarts, July 27, 1878, F. R. 1878, p. 229.

64 Ibid.

Yet, at this time the Germans obviously still felt some compunctions about such open violations of the treaties. Philipsborn complained that Bäumer had not appealed the expulsion to the appropriate authorities or to the Foreign Office via the United States legation:[65]

> The undersigned does not hesitate to declare that, on the basis of such a complaint, the decree in question of the Royal Government at Münster, although its legality is beyond question, would have been canceled, in view of the circumstances that, in the decision of the case by the higher authorities, the existing conditions of a local nature would have been subordinated to the general point of view involved.[66]

This was a clear admission of error on the part of the Germans. The letter then added that the "Royal Minister of the Interior gladly holds himself in readiness to direct that Bäumer, in case he should return to Prussia, be permitted to sojourn for the period of two years on Prussian territory."[67]

This case seemed to represent a testing of American reaction to any curtailment of treaty rights. Had the United States pressed the Bäumer case, regardless of the fact that he had left Prussian territory, the Germans might not have attacked the two-year right of sojourn quite as openly as they did in the following years, and, in the end, have achieved nullification of the treaties by these means. The Bäumer case was the sixth instance, since 1868, of German use of expulsion to circumvent the two-year right of sojourn where men of military age were concerned. The

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65 Ibid., p. 228. Actually, Bäumer had requested and received a short extension of the expulsion order from the Münster authorities, but left Germany before the legation had time to intervene--having been refused any further concessions upon his own application to the Minister of the Interior. He probably had little faith in the legation's success.

66 Ibid., p. 229.

67 Ibid.

records of the legation show that five out of these six cases occurred after 1876, and all five were listed as having been successfully terminated.[68] The term "successful intervention" is misleading. This meant only that some concession had been obtained from the Germans in answer to legation intervention. Bäumer's case bears this same notation. Yet, even if he had not left Germany before the Foreign Ministry's final reply, he would have been allowed less than six months' sojourn in his old home.[69]

In view of the fundamental policy changes then in process, the fact that the American legation did not pursue the Bäumer case further was to prove very costly to all German-Americans returning to their former homes for a visit. The official exchange of correspondence in the Bäumer case was only published in December, 1878, after the death of Bayard Taylor. It gave rise to some comment in the German-American press. However, the tone of the criticism was mild because of the minister's death:

> The deceased Bayard Taylor has not unjustly been accused of lack of forcefulness in the Bäumer affair, which was a clear-cut breach of the treaty and for which satisfaction should have been demanded.[70]

Yet, some earlier publicity had prompted Bäumer's Congressman, Representative Lorenzo Brentano,[71] to submit a resolution to the House of Representatives

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68 Tables, recording legation intervention between 1868 and 1897, F. R. 1897, pp. 213-216. Of the six cases listed, only one (Stern), was permitted a sojourn of almost two years because of special family circumstances. None of the others were given their full two years, granted under article IV of the treaties. In fact, each man was given less and less time, beginning in 1875.

69 Letter, von Phlipsborn to Taylor, July 18, 1878, inclosure to letter, Taylor to Evarts, July 27, 1878, F. R. 1878, p. 229.

70 New-Yorker Staatszeitung, December 25, 1878.

71 3rd District, Illinois (Chicago).

on December 3, 1878. It was transmitted to the Committee on Foreign Affairs, and reported out by Representative Samuel S. Cox of New York on December 4, 1878, read, considered, and agreed to:

> Resolved that the President of the United States be requested to transmit to the House, if not incompatible with the public interest, all the papers and correspondence between this government and the government of the German Empire in reference to the expulsion from the whole territory of the German Empire of Julius Bäumer, a naturalized citizen of the United States and a resident of the city of Chicago, in the state of Illinois, while on a visit to his aged parents at Münster, Westphalia in the Kingdom of Prussia, by the Prussian Government, in violation of the treaty of May 1, 1828.[72]

The resolution was answered in writing by the President and the reply, together with a report on the case by the Secretary of State, was sent to the House. The Speaker laid both documents before the House, from there they were referred to the Committee on Foreign Affairs. Permission was given to print them if it were found necessary. Neither the text nor the report of the Secretary of State were reproduced. No further action was taken in the matter.[73] Some action on the part of the House--which would have indicated official American disapproval of German conduct-- might have prevented or delayed further attacks on the treaty rights of naturalized Americans in Germany. Instead, the German-American press criticized Representative Brentano for having mislead the public about the Bäumer case.[74]

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72 U. S., House of Representatives, Journal, 45th Cong., 3rd Sess., 1878, p. 42.

73 Ibid., p. 110.

74 New-Yorker Staatszeitung, December 25, 1878. Editorial entitled "Official Contributions to the Question of the Treatment of German-Americans in Germany." The editorial accused Brentano of having exaggerated the importance of the Bäumer case. Future events were to prove Brentano right and the Staatszeitung wrong. The Germans must have been encouraged by this editorial, and extended the procedure used in the Bäumer case.

In this connection, it is noteworthy that at least one German newspaper, favorably inclined toward American interests, saw the case in its true light. While criticizing agitation in the German-American press in favor of termination of the naturalization treaties, the Allgemeine Zeitung of Augsburg, Bavaria, that the Bäumer case had been responsible for this agitation. The paper reviewed the facts of the case and stressed that Bäumer had broken no laws in Germany, yet, he had been summarily expelled by a police order. The inference to be drawn from this action was that American citizenship was itself a crime and that, as a result of this view, every American citizen would now be regarded as a potential Danton or Marat. The Allgemeine then quoted from the Foreign Ministry's reply to Taylor, commenting that, according to this letter, Germany was entitled to disregard the provisions of an international agreement in the interests of internal security. The result of this would be the nullification of the naturalization treaties to a point where they would no longer provide any protection for German-Americans returning to Germany.[75]

In connection with the Bäumer case, the Allgemeine then discussed the advisability of amending the existing naturalization treaties. The paper compared the German-American treaties unfavorably with those concluded with other nations, especially the British-American treaty. This treaty guaranteed naturalized Americans of British (Irish) birth permanent

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75 Allgemeine Zeitung (Augsburg), January 28, 1879. The paper also asked what would happen if the Americans claimed reciprocal rights (on the issue of internal security), and proceeded to expel all German Social Democrats--both those already in America and those who would still go there? How would the Germans feel if they were all shipped back?

recognition of their acquired citizenship. The paper then asked: "How, then can the difference which deprives the German-American of similar rights be justified?"[76] Thus, at least one German newspaper saw what the Americans refused to see: the injustice committed in the naturalization treaties and the necessity for amending these treaties.

Misuse of Treaty Rights and Adverse Publicity

It was most unfortunate from the point of view of the development of American public opinion that the Bäumer case was overshadowed by another case which arose at about the same time and which received wider publicity in America. The case involved the acquisition of American citizenship primarily for the purpose of subsequent residence in Germany sheltered from German military obligations. However, it also created a special problem in that it occurred in Baden, the only German state which had not granted the two-year right of sojourn in article IV of its treaty with the United States. It had granted specific exemption from punishment under article II, stating that "the emigrant from the one State... shall not on his return to his original country be constrained to resume his former citizenship."[77] However, Baden did not stipulate any specific procedures for reassumption of citizenship. This lack of precision exposed the former citizen of Baden to the possibility of harassment or expulsion at any time after his return to his former home.

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[76] Ibid.

[77] Malloy, Treaties, I, p. 54.

The Carl Ganzenmüller Case (1878). Carl Ganzenmüller was born in 1851 in Sinsheim, Baden, and emigrated to the United States in 1869, at the age of eighteen and before performing military service. He was naturalized in the United States on July 12, 1875, and left his adopted country on July 17, five days after receiving American citizenship. He returned to his former home ostensibly for the purpose of taking care of his aged and ailing father. On April 11, 1878, after almost three years residence there, he was ordered to leave Baden or again become a citizen of the Grand Duchy, and subject to its military duty laws. He then appealed to the United States legation in Berlin for help.[78]

Minister Bayard Taylor, in reporting the case, pointed out that, in principle, the Grand Duchy of Baden had hitherto accepted the two-year right of sojourn guaranteed by the other four treaties. However, the reason given for the expulsion of Ganzenmüller was a different one. The right to expel Ganzenmüller had been based on article 4 of a law of sojourn (Aufenthaltsgesetz) enacted by Baden on May 5, 1870--that is, after the conclusion of naturalization treaty with the United States. This article read: "The Grand Ducal Ministry of the Interior may at any time decree the expulsion of foreigners as endangering the external or internal safety of the state."[79] Taylor claimed that this law had been enacted expressly for use against returning naturalized Americans:

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78 Letter, Taylor to Evarts, June 15, 1878, F. R. 1878, p. 217.

79 Ibid. Taylor asked permission of the Department of State to protest this ruling because of the principle involved and added: "Inasmuch as cases of a similar nature are multiplying with such rapidity as to tax the ability of the force of the legation to give them whole and fitting attention."

> The fact that this article is intended to apply to naturalized American citizens who may return temporarily to Baden, without regard to the term of their residence there, is singularly proven by the circumstances that the same local authorities in Sinsheim in Baden, have just ordered the expulsion of Gustav Weil, a naturalized American residing in Alabama, only four weeks after his return for a brief visit to his native place.[80]

Taylor recognized the danger of accepting the reasons given by the German government for these expulsions and wrote that "the direct inference from the ground taken by the German Government is that American citizenship is in itself dangerous, and if they were admitted, it might be made the occasion for the arbitrary expulsion of all German-Americans of a certain age who may desire to visit their former homes."[81] The American minister saw quite clearly what would happen if immediate measures to counter the stand of the Germans were not taken. He was especially incensed by the outrageous position the German Foreign Ministry took in its reply to the legation's intervention in the Ganzenmüller case:

> The possibility of expulsion under article 4 of the Baden law of June 1, 1870 is an indispensable supplement to the treaty hereinbefore mentioned, if the latter is to be abused as a means of evading military duty.[82]

Taylor immediately wrote to Bülow protesting this stand. He stated that Ganzenmüller had expressly declared that he was not renouncing his

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80 Ibid.

81 Ibid.

82 Memorial of the German Foreign Office on the case of Charles Ganzenmüller, undated, inclosure to ibid., p. 220. The co-ordinated action in two widely disparate areas: Räumer in Prussia and Ganzenmüller and Weil in Baden, lead to the suspicion that some secret directive from the Reich's Ministry of the Interior may have inspired this new policy. The Baden 1870 law of sojourn had been in effect for eight years without ever having been applied to naturalized Americans before.

adopted citizenship. Then Taylor went on to invoke articles II and IV of the naturalization treaties, claiming that the position of the German government violated both the letter and the spirit of these articles. He cited the particular provisions of article II of the Baden treaty which expressly exempted all former citizens of Baden from military service at any time after emigration, naturalization, and return, except for the three transgressions enumerated in that article. Ganzenmüller had committed none of these transgressions.[83] Taylor conceded that the Baden treaty did not provide for the two-year right of sojourn, but pointed to the recently protested Gustav Weil case. Weil, a former Badener, had expressly declared upon arrival that he intended to leave by September 1, 1878. His intention to visit only was clear. This had also taken place in Sinsheim. Taylor claimed that the Weil case showed that the ordinance "might equally be taken advantage of by the authorities to prohibit any residence whatever."[84] Unfortunately, Taylor's fears were proven correct by subsequent events, not only with respect to Baden but for all of Germany.

The Ganzenmüller case ended in disaster for the Americans. After complaining incessantly: about the slowness of American assistance to him; that it was his right to stay in Baden indefinitely; that the legation showed no regard for his wishes; that the special visit on his behalf of the American consul in Mannheim had done him no good--on the contrary; "that

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83 Letter, Taylor to Bülow, June 14, 1878, inclosure to letter, Taylor to Evarts, June 15, 1878, F. R. 1878, p. 221.

84 Ibid.

you thought the case of that Jew more important"[85] --that this action prejudiced his own case, etc. Finally, in a letter to the legation, dated June 12, 1878, Ganzenmüller demanded that his case now be solved within two days.[86] According to a later legation report on the case, Ganzenmüller applied for reassumption of his Baden citizenship the following day.[87] This closed the case for the American legation. No doubt, the Americans breathed a sigh of relief. The affair had dragged on for months only to embarrass finally and thoroughly the American consulate in Mannheim and the legation in Berlin.

In the long run, however, the Ganzenmüller affair proved to have been a complete victory for the Germans. The whole issue of flagrant violation of the naturalization treaties was obscured by the selfish act of an individual interested only in his own advantage. Contrary to normal procedure, Taylor wrote a detailed letter to the Department of State on this case after it was dropped, because he was concerned about its effect on future issues:

> I beg leave at present to ask your attention to this case as it involves a new claim on the part of a minor German state, and, since it apparently received the sanction of the imperial government, may actually annul treaty obligations, so far as that state is concerned.[88]

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85 Letter, Ganzenmüller to Legation of the United States, June 12, 1878, inclosure to letter, Taylor to Evarts, August 7, 1878, F. R. 1878, p. 231. The "Jew" referred to was Gustav Weil, who, as a result of Ganzenmüller's actions, was allowed only a few weeks' sojourn in Sinsheim, instead of the three years permitted to Ganzenmüller.

86 Ibid.

87 Military Case Report, undated, inclosure to letter, Everett to Evarts, March 21, 1879, F. R. 1879, pp. 369-370.

88 Letter, Taylor to Evarts, June 15, 1878, F. R. 1878, pp. 216-217.

This was precisely what the Germans had in mind. The next step, which came several years later--after the expulsion policy had been tested more extensively--was to claim this "Baden rule" for the entire empire. The Ganzenmüller affair was unfortunate in that, because of the humiliation suffered by the American legation at the outcome of the matter, Taylor did not act forcibly enough in the Bäumer case. The Germans were now acting systematically to attack the naturalization treaties.

It is possible to date a complete change of German attitude and policy toward the treaties from the Bäumer and Ganzenmüller cases, that is, from the year 1878. Secretary of State Bernhard von Bülow was ailing. During his prolonged absences from the office--beginning in the spring of 1878 to his death in the fall of 1879--several Under Secretaries were charged with the conduct of foreign relations. These were under the direct supervision of Bismarck.[89] By 1878, Bismarck had undergone a complete change of attitude toward the Bancroft treaties. He must have been resolved to liquidate them by means of a policy of progressive narrowing rather than by formal termination. If, as a result of this new policy, the United States chose to terminate the treaties formally, Bismarck would have been content to accede to this demand.

Bismarck may have been strengthened in his resolve to nullify the naturalization treaties by the comments in the German-American press on the Ganzenmüller case:

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89 See footnote no. 60 on page 121 supra for Friedrich von Holstein's confirmation of this fact.

> While the minister did his duty fully, he must have been unpleasantly surprised to find out that his protegé was not a bona fide citizen of the United States...in that he applied for his old citizenship the day after his last complaint...the less said by German-Americans about such cases the better....The Ganzenmüller case is that of only too many German-Americans...we have not the slightest sympathy with such fraudulent citizens [Bürgerschwindlern]...must not a minister be very adversely affected if proof of the type of Ganzenmüller's case is furnished him by the German government....However we have to say that if at any time German-Americans feel that they are not sufficiently protected in Germany, they have to thank above all those of their countrymen who have not acted in good faith.[90]

However, the article went on to say that the Ganzenmüller case did not absolve the American government from its obligation to see that the guaranteed two-year right of sojourn was respected.[91]

The Ganzenmüller and Bäumer cases had a curious aftermath. The German government--that is, Bismarck and Bülow--must have sensed that, despite the adverse publicity and the humiliation suffered by the Americans in the Ganzenmüller case, the time had not come yet to violate the naturalization treaties openly. While both cases were still in progress, Taylor attended a dinner party at which Bülow was present. He took this informal meeting as an occasion to complain to Bülow about the unfair handling of both cases by Bülow's subordinates. The American minister warned the German Secretary of State against the indicriminate use of expulsion against naturalized Americans and received the latter's assurances that the situation would be corrected.

Taylor reported to Washington that Bülow had told him that the local

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90 New-Yorker Staatszeitung, December 25, 1878, editorial "Official Contributions to the Question of the Treatment of German-Americans in Germany."

91 Ibid.

authorities had been very annoyed at the boasts of the returnees, and that his own reply to this had been: "I can understand that such conduct must be very offensive, but it is not criminal, and cannot possibly be made a reason for expulsion under the treaty."[92] According to Taylor, Bülow then suddenly turned toward him at the table and said that both the Baden cases (Ganzenmüller's and Weil's) would be settled "in accordance with <u>your</u> views."[93] He added: "I am especially desirous that every stipulation of the treaty should be strictly observed, and will do my best to prevent the recurrence of any difference of opinion."[94]

Both Taylor and Bülow were trying to settle any differences between the two countries in a spirit of good will and they deserve credit for this. Evidently, Bülow was acting in a conciliatory manner. He was still willing to challenge the combined opposition of the Ministers of the Interior, Justice, and War. His successors were no longer willing to do this. In view of this fact, and because Ganzenmüller's change of allegiance was, at that time, not yet known to the Americans, Taylor's request to the Department of State was a terrible mistake:[95]

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92 Confidential letter, Taylor to Evarts, June 29, 1878, MS Dispatches, Germany, M-44, reel no. 41.

93 <u>Ibid</u>.

94 <u>Ibid</u>.

95 The dinner party took place on June 28, 1878, <u>ibid</u>. It is possible (even probable) that Bülow already knew about Ganzenmüller's action, which took place June 13, 1878. Then, the whole conversation takes on a Machiavellian aspect--especially seen in the light of Taylor's request to Washington, made the next day, that no action be taken on Germany's open violation of the treaties. Bülow may have inspired this request in order to gain time for his government to test the new expulsion policy further, and to prevent any American alarm and premature action.

> It will not, therefore, be necessary for the Department of State to consider the question which has been raised by the action of the Ministry of Foreign Affairs, in appearing to support claims assumed by the Government of Baden.[96]

It would have been well to clarify the point completely at the moment when the Germans first officially used such an argument. Taylor, presuming that the action of the Baden government had been an isolated incident, did not wish to embarrass Bülow. However, as the Prussians were using similar tactics against Bäumer at this time, a clarification should have been requested. Pressed for an official statement, the Germans would have had to either reaffirm their adherence to the treaties or been forced to give formal notice of termination.

The Warning Becomes Clearer

Despite Bülow's assurances to Taylor, the new German policy was being put into effect step by step. Cases of clear harassment now became more frequent. One such incident which occurred shortly after Bülow's statement to Taylor that the practice of expulsion would be used only in extreme cases, shows that the Germans were determined to prevent long sojourns in Germany of naturalized Americans. The matter was complicated by the fact that the man in question was a native of Alsace-Lorraine. Here, too, a warning was overlooked by the Department of State, which was to affect future German policy with respect to natives from that province.

The Joseph Wackermann Case (1878). Joseph Wackermann emigrated to America at the age of sixteen, was naturalized there in 1877, and returned

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96 Confidential letter, Taylor to Evarts, June 29, 1878, MS Dispatches, Germany, M-44, reel no. 41.

to his former home for a visit during that same year. On May 14, 1878, less than a year after his arrival back, he was served by the local authorities with an expulsion order effective within two weeks. He appealed to the American legation for help, enclosing his papers and a certificate of good conduct issued by the local mayor.[97] The legation intervened on his behalf with the Foreign Ministry. The action resulted in a telegram to the local authorities instructing them to suspend action against Wackermann temporarily.

As was customary in most of these cases, the German government took its time to investigate--the suspicion arises that they delayed action in order to give the person in question what they considered a reasonable time for a visit. On August 23, 1878, the legation received the Foreign Ministry's reply "justifying the expulsion on the same grounds as taken in the case of Ganzenmüller, in that his example in returning after emigration was injurious to the young men of the place."[98] The legation again protested vigorously. On October 12, 1878, Taylor wrote Evarts about this case and the measures he had taken. He remarked that the decision had been made by Herr Joseph Maria von Radowitz in the absence of Bülow, and added:

> I am glad to learn that my action meets with your approval, because I feel sure that the grounds taken by Mr. von Philipsborn in the Bäumer case, and renewed by Mr. von Radowitz in that of Wackermann, are not in accordance with the policy of Mr. von Bülow, as they are not with the tenor of his declaration to me.[99]

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97 Military Case Report, undated, inclosure to letter, Everett to Evarts, March 21, 1879, F. R. 1879, pp. 370-371.

98 Ibid., p. 371.

99 Letter, Taylor to Evarts, October 12, 1878, MS Dispatches, Germany, M-44, reel no. 42.

However, Bülow must have approved the decision rendered by his subordinate. Wackermann left Germany for the United States in September. On January 24, 1879, the Foreign Ministry wrote the legation in response to Taylor's repeated protests that it was upholding the expulsion order against Wackermann "on the ground that the burgomaster who had granted the testimonial in Wackermann's favor was a near relative of his and did not state the truth...that Wackermann was dissipated, spending his time in taverns, perpretating wild mischief...and that he generally set a bad example to other youths of the place."[100] This was a reiteration of the reasons given in the Ganzenmüller case, and a clear indication of an emerging pattern. The local decisions from geographically disparate regions now seemed just like copies of a central plan.

Taylor, unfortunately, misjudged the extent of the danger threatening the treaties. He thought that the increased number of cases requiring legation intervention were due to disturbed conditions in Germany which caused Germans to look with suspicion at all foreigners.[101] He also blamed the increasing number of naturalized Americans then returning, who had left Germany in the wake of the 1870-71 war, claiming that "the latter, many of whom were actuated by purely personal and selfish motives, create the greatest trouble by casting suspicion upon those who have heartily and sincerely become American citizens."[102]

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100 Military Case Report, undated, inclosure to letter, Everett to Evarts, March 21, 1879, F. R. 1879, p. 371.

101 Letter, Taylor to Evarts, September 2, 1878, MS Dispatches, Germany, M-44, reel no. 42.

102 Ibid.

Conclusion. During the last six months of 1878, a period which marked the end of the first ten-year period stipulated for the duration of the naturalization treaties, fundamental changes in German policy toward these treaties first became evident. Already, beginning with the Cohn (1874) and Bamberg (1875) cases, a pattern of forced reassumption of German citizenship had been apparent. This pattern continued with the Grübel (1875) case which involved an attack on the immunity from punishment granted by article II of all five treaties. The harassment of individuals in order to discourage male, military age naturalized Americans from returning to Germany began in earnest with the Bäumer (1877-78), Ganzenmüller (1878), Weil (1878), and Wackermann (1878) cases.

The period 1876 through 1879 was one during which emigration to America dropped off sharply, falling from an average of over 120,000 per year in 1872-74 to about 30,000 yearly.[103] It was not until 1880 that emigration from Germany to America again increased markedly, reaching an all-time peak of over 230,000 in 1882 and remaining very high until 1893.[104]

The late 1870's were years of change in Germany. The Kulturkampf had ended, only to be replaced by the rise of social democracy. Germany,

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103 Joseephy, Die deutsche Auswanderung, table I appended to text: 1876: 31,934; 1877: 29,298; 1878: 29,313; 1879: 34,602.

104 Ibid. The figure for 1880 was 84,638, and rose to 250,630 in 1882. The last year with a very high emigration from Germany to America was 1892 with 119,168. After that time, emigration to America dropped off sharply, levelling off at about 30,000 a year until World War I. This change can be ascribed to a number of factors. Free or cheap land ceased to be available in America. German industrialization provided more jobs and opportunity for social mobility in Germany. Rising German nationalism caused emigration to America to be regarded with disfavor.

a stable country, measured by any standard of the time, considered her internal security to be threatened by the rise of the social democratic movement. October 9, 1878, saw the first laws enacted against this movement.[105] The first German policy changes regarding the Bancroft naturalization treaties must be judged against this background. They were probably triggered by the prospect of the return of increasing numbers of former Germans holding American citizenship, whom the Germans considered "polluted" with republican ideals.

The ever-increasing demands of the military establishment made Germany into an armed camp, fearful of both French revanchism and Russian power on her eastern borders. This created conditions which, in German eyes, made the naturalization treaties--concluded ten years earlier in an entirely different atmosphere--appear as a possible threat to the internal security of the country. The idea that German men who had emigrated without performing military service would be permitted to return and, protected by their American citizenship and the immunity guaranteed by treaty, to live unmolested in Germany while their contemporaries spent years serving their military duty, was repugnant to most Germans. These circumstances must have led to a determination on the part of the German government to narrow the scope and, eventually, to nullify a series of treaties which it considered a hindrance to German domestic policy. The end of the first ten-year treaty period seemed to provide an opportunity for a policy change.

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105 Norddeutsche Allgemeine Zeitung, October 20, 1878.

CHAPTER V

THE INTERMEDIATE YEARS

Introduction. The Americans failed to note or, if they perceived them, chose to ignore the policy changes regarding the naturalization treaties initiated by the Germans throughout the year 1878. Already, in the summer of 1877, the American minister in Berlin, J. C. Bancroft Davis, had advised his government that the time might now be propitious for starting discussions aimed at possible amendment or revision of the Bancroft treaties.[1] The new administration in Washington apparently did not view the situation with any sense of urgency. President Rutherford B. Hayes' statement on the subject in his annual message to Congress attests to this:

> Numerous questions in regard to passports, naturalization and exemption from military service have continued to arise in cases of emigrants from Germany who have returned to their native country. The provisions of the treaty of February 22, 1868, have proved to be ample and so judicious that the legation of the United States in Berlin has been able to adjust all claims arising under it not only without detriment to the amicable relations existing between the two governments, but it is believed without injury or injustice to any duly naturalized American citizen.[2]

Actually, Hayes' statement may even have encouraged the Germans to take stronger unilateral action. After Davis' departure in the fall of 1877, the Berlin legation remained without a minister trough the winter and early spring of 1877-78. This covered most of the crucial, final six

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1 Letter, Davis to Evarts, July 28, 1877, MS Dispatches, Germany, M-44, reel no. 40.

2 Message of the President, December 3, 1877, F. R. 1877, p. XI.

months of the initial ten-year treaty period. When a new minister, Bayard Taylor, was appointed in March 1878, he made no effort on his arrival in Berlin to start any discussions about the treaties. This would have been the moment to press the Germans on this matter. Their treatment of a number of naturalized American citizens who had returned to Germany during this period would have provided ample reason for the United States government to demand some clarification of the German position regarding the naturalization treaties.

Taylor, new at his job and already seriously ill, did not fully grasp the extent and importance of the increasingly frequent infringements upon the treaties then taking place. He saw these violations only as isolated infractions pepretated by local authorities. Thus, he failed to alert Washington to a slowly emerging pattern: a concerted movement toward narrowing the scope of the naturalization treaties. The primary object of this new German policy was to limit--or prevent, if possible--the return of men of German birth who were still of military duty age.

Yet, Taylor should have been alerted by the increasingly belligerent tone of the notes sent by Assistant Secretaries of State Ernst von Philipsborn and Josef Maria von Radowitz in reply to the minister's protests. Taylor did perceive a certain similarity in the explanations given by different German states--widely separated geographically--in justification of their violations of the treaties. This odd coincidence, along with the new tone of the Foreign Ministry, and the rising frequency of the occurrence, should have warned Taylor that a major change in German policy toward the Bancroft treaties was taking place.

At least some members of the United States Congress were aware of the alarming increase in German treaty violations. A House Resolution asking for the termination of the treaties, sponsored by Representatives Samuel S. Cox of New York and William M. Springer of Illinois, was referred to the House Committee on Foreign Affairs, but no further action was taken on it.[3]

Secretary of State William M. Evarts was either unaware of any threat to the rights of German-Americans or, did not judge these treaty encroachments serious enough for any action on his part.[4] Otherwise he would have seen to it that a successor was appointed to Taylor soon after the latter's death in December of 1878. Instead, the legation was again left without a minister for eight months. This inordinate length of time between appointments was criticized in the United States as representing an act of discourtesy to the Germans.[5] Actually, the Germans May have welcomed this period as providing an opportunity for them to implement their new policy. A Secretary of Legation's protests could be more easily disregarded than those of a minister. The Germans may have

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3 U. S., House of Representatives, Journal, 45th Cong., 3rd Sess., 1878, Resolutions No. 202 and 204 of December 3, 1878, pp. 28 and 32.

4 Carl Schurz, Secretary of the Interior and a close friend of Hayes, had been instrumental in the appointment of Evarts. Yet, he did not alert either Hayes or Evarts to the dangers threatening German-Americans in Germany upon return if the treaties were violated.

5 Letter Davis (then an Assistant Secretary of State) to Fish, March 21, 1879, in Fish Papers, container no. 123: "Is it not strange that no name goes in for Berlin?....It is not very curteous to the Germans to let the vacancy stand open so long. If Evarts consults me, I will hand him your list. Until he does, I suppose I had better not file it in the Department."

reasoned that, if they succeeded in their efforts to narrow the scope of the Bancroft treaties, the new American minister would be faced with a fait accompli and it would be difficult for him to reverse this trend.

The systematic German attack on the rights of German-Americans began with the 1878 abridgements of the two-year right of sojourn granted by article IV in four of the five treaties. It continued with progressive encroachments upon the guarantee to naturalized Americans of German birth of immunity from punishment upon return for emigration and military service, incorporated into article II of all five treaties. It ended with an open denial, by means of expulsion, of the two-year right of sojourn in 1886. This effectively nullified the rights guaranteed to German-Americans by the Bancroft naturalization treaties.

Initially, the attack on the treaties was triggered by German fear of internal unrest and an effort to avoid anything that might possibly contribute to internal dissatisfaction. While this unrest may have been relatively insignificant by European standards of the time, it was a cause for concern for the German public and the German government. In 1878, the German government reacted to the growing social democratic movement by enacting laws against it.[6] It was also becoming increasingly apparent that the "Germanization programs" for Schleswig-Holstein and Alsace-Lorraine had not been as effective as the Germans would have desired. To this must be added the German realization that increasing numbers of relatively young, male naturalized Americans, who had left

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[6] Norddeutsche Allgemeine Zeitung, October 20, 1878, reported the passage of such a law on October 19, 1878.

Germany in the great emigration waves following the 1870-71 Franco-Prussian war,[7] were about to return for the first time.

In view of the lack of success of the Germanization programs in Schleswig-Holstein and Alsace-Lorraine, the Germans looked with particular apprehension to the impending return of numbers of such naturalized Americans to those provinces. In German eyes, these German-Americans would further hinder their efforts at assimilation in the new provinces by describing American conditions and by encouraging other young men to emigrate. Such young men would thus escape German military service. As great hopes for achieving the Germanization of young men rested on this period of service, the German government feared the influence of naturalized Americans most in areas where it faced a continued challenge to its assimilation plans by continuing Danish (Schleswig-Holstein) and French (Alsace-Lorraine) nationalism.

Thus, the Germans saw the immediate problem regarding compliance with the naturalization treaties in the light of its implications for these particular areas. This led them to attack the treaties first in these regions. Alsace-Lorraine seemed to offer the best possibility for action as, technically, that province was not specifically covered by any of the five treaties. While the Germans had tacitly applied the North German treaty to the few cases arising in Alsace-Lorraine since 1871,[8] at least

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7 Joseephy, Die deutsche Auswanderung, table I, appended to text: 1870: 118,225; 1871: 82,554; 1872: 141,109; 1873: 149,671; 1874: 87,921.

8 Letter, White to Count Friedrich zu Limburg-Stirum, October 19, 1880, inclosure to letter, White to Evarts, November 1, 1880, F. R. 1880, p. 460.

one American Secretary of State had questioned the treaty's coverage of that territory.[9] No such claims of exemption could be made for Schleswig-Holstein.[10] This province had clearly been a part of the North German Confederation when the American-North German treaty of naturalization had been signed on February 22, 1868. Other means had to be devised to curtail or prevent the return of naturalized Americans to that area. The method used here was that of expulsion. This practice was first tried in the Bäumer case. When the case was dropped because of Bäumer's premature departure from Germany, the Americans never demanded a revocation of the expulsion order. This led the Germans to consider the possibilities such an approach might offer in the future prevention of extended sojourns by naturalized Americans.

The practice of denial of the two-year right of sojourn, coupled with the use of expulsion, was gradually expanded from Alsace-Lorraine and Schleswig-Holstein to the rest of the empire. At first, it was used only in carefully selected cases outside Alsace-Lorraine and Schleswig-Holstein. When the Americans did not counter this violation of the treaties by strong protests, it was put into general practice. Gradually, as the Germans persisted in their new policy and expanded its use, it came to be accepted by both sides. Thus, the United States, by failing to combat

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9 Letter, Fish to Bancroft, April 14, 1873, F. R. 1873, I, p. 280.

10 Schleswig had been administered by Prussia since the 1864 Danish war. The Austrians ceded their rights to Holstein in the wake of the Austro-Prussian war of 1866. It was in North Schleswig that Danish nationalism was still in evidence during this period.

these increasing treaty violations vigorously enough, acquiesced in the de facto nullification of the naturalization agreements. This state of affairs was reached by the late 1880's.

Factors Influencing Treaty Administration (1879-87)

The transportation revolution began to expose Europe to serious outside competition in the late 1870's when North American (as well as other) agricultural products began to pour in in great quantities. Bismarck's first protective tariff legislation was enacted in 1878.[11] At that time, no formal commercial treaty existed between Germany and the United States. The two nations were still operating on the basis of an old treaty of Prussian-American friendship,[12] and this situation led to frequent differences over commercial questions. However, the first serious commercial dispute between the two countries arose in 1880 when Germany enacted an ordinance that excluded most American pork products.[13] This so-called "pork dispute" lasted until 1891, and it strongly affected relations between the two nations. The situation was further complicated by the fact that Aaron A. Sargent--American minister to Germany from 1882 to 1884--was personally involved in the dispute. The Germans accused him of having

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11 Kohl, Bismarck-Reden, X, p. 368. Reichstag Session of January 8, 1885. In his speech, Bismarck referred to his 1878 first protective tariff.

12 Louis L. Snyder, "The American-German Pork Dispute 1879-1891," The Journal of Modern History, XVII (No. 1, March 1945), p. 17.

13 Ibid., p. 19.

written an article that appeared in the New-Yorker Handels-Zeitung which hinted that the German measures were not of a sanitary, but of a protectionist nature.[14] Bismarck, who had been on good personal term with the four previous ministers to Germany,[15] disliked Sargent (whom he deemed a "machine politician") as a result of this article and because he had presented a note of protest against the pork exclusion measures. This note contained a warning of possible American retaliation.[16]

Rising Colonialism. The commercial rivalries were aggravated by the consequences of rising German colonial aspirations. These were first expressed in the Reichstag in an 1880 discussion of a subvention for a private German firm operating in Samoa.[17] The year 1881 saw the first real attempt to obtain a law regulating the direction of emigration for purposes of German colonial development.[18] In March, 1882, Minister Aaron A. Sargent wrote to Secretary of State Frederick T. Frelinghuysen:

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14 Ibid., p. 23.

15 George Bancroft, J. C. Bancroft Davis, Bayard Taylor, and Andrew D. White.

16 Snyder, "Pork Dispute," p. 22. Sargent was finally transferred as a result of another controversy involving the transmission of a message of condolence, voted by the American House of Representatives, on the death in America of Reichstag member Albert Lasker. See Louis L. Snyder, "Bismarck and the Lasker Resolution, 1884," The Review of Politics, 29 (No. 1, January 1967), pp. 41-64.

17 Germany, Stenographische Berichte, 2d Session, 1880, p. 862, April 22, 1880.

18 Ibid., 1881, I, p. 457, March 23, 1881. This law did not pass; nor did subsequent ones until 1897.

> A remarkable agitation in Germany for months past has attracted my attention, and I have several times thought of laying the subject before you, with the arguments pro and con which are advanced....I refer to the matter of German colonization, which is strongly advocated on the one hand by influential statesmen, University Professors, Colonization Societies, and a large part of the press, and opposed by some incisive voices, perhaps less clamorous, but aided by the difficulties in the way of realizing the wishes of those who favor organized colonization.[19]

Sargent mentioned the historian Heinrich von Treitschke and the political economists, Professors Gustav Schmoller and Adolf Wagner, as supporting the colonization movement, and quoted the Norddeutsche Allgemeine in praising the excellent climate of Samoa.[20] The "Samoa question," which involved the United States and Germany in numerous differences, lasted from 1880 to 1899.[21]

The rising sentiment in Germany in favor of the acquisition of colonies also spurred movements to regulate emigration in order to direct it to areas considered to be of specific interest to Germany. This resulted in increasing opposition to emigration from Germany to the United States, as this was considered to be contrary to German national interests. There was also a movement to create commercial spheres of interest in South America which threatened to bring Germany into conflict with the

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19 Letter, Sargent to Frelinghuysen, March 12, 1882, MS Dispatches, Germany, M-44, reel no. 50.

20 Ibid. Sargent quoted Treitschke as having advocated the acquisition of land in Africa and South America in his lectures. Treitschke, according to Sargent, deplored the loss of young, able-bodied men, who represented an investment of about $2,000 in education to the German government. Sargent quoted Wagner and Schmoller as saying the same thing in their own lectures.

21 Alfred Vagts, Deutschland und die Vereinigten Staaten in der Weltpolitik, II, (New York: 1935), pp. 636-938.

United States Monroe Doctrine.[22]

German opposition to emigration to the United States was based on two major premises: neo-mercantilism and the drain it represented on the potential military manpower of the Reich. Both themes began to crop up increasingly in Reichstag debates, beginning with 1880.[23] With Bismarck's achievement of an alliance between agrarians and industrialists through his protective tariff policy, beginning in 1878, the forces in the Reichstag which opposed free emigration gained much strength. Bismarck yielded to the rising enthusiasm for colonial ventures only late in his tenure as Chancellor. He never gave his full support to legislation regulating emigration from Germany. It was not until 1897, seven years after he left office, that a comprehensive law governing emigration was enacted.

Failure of Treaty Renegotiations (1881-82). The only formal attempt at renegotiating the naturalization agreements took place during the years 1881 and 1882. It was an ill-fated attempt which failed, too complex to be dealt with in any detail here. It will be treated in chapter VIII in the context of the whole problem of treaty amendment. It is mentioned

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22 Germany, Stenographische Berichte, 1895-97, VIII, p. 5767, Session of May 6, 1897. Representative August Bebel (Social Democrat), in a speech opposing German colonial ventures, warned the Reichstag: "You may say that the mighty German Empire can easily cope with the governments of Brazil and Argentina. But, Gentlemen, behind both these governments are the United States, is the Monroe Doctrine of the United States. Have you failed to follow recent press comments in America on our proposed colonization ventures? They said: if the Germans think that the Monroe Doctrine is valid only for the English and maybe for the French, but not for the Germans, then they are really deceiving themselves."

23 Ibid., 1880, II, Session of April 22, 1880, p. 867.

at this time only because the failure of this attempt may have influenced the Germans to adopt finally and put into effect their new policy regarding the limitation of sojourn and the expulsion of military-age returning naturalized Americans. The failure of these negotiations may have crystallized the German decision not to consent to any modification of the treaties henceforth. Instead, a concerted effort would be made to narrow and eventually nullify them unilaterally, even if this action increased the danger of treaty abrogation on the part of the Americans.

American Resolutions to Terminate or Amend the Treaties. There was a growing awareness among American Congressmen with German-American constituents that the 1868 Bancroft treaties provided inadequate protection of German-Americans in Germany. As a result, the 1878-85 period saw the introduction of a number of Congressional resolutions aimed at terminating or amending these treaties. The first two such resolutions (H.Res. 202 and 204), both introduced on December 3, 1878, by Representatives Samuel S. Cox of New York and William M. Springer of Illinois,[24] respectively, were the result of the Bäumer expulsion. These were requests to terminate the treaties outright. Both were referred to the Committee on Foreign Affairs of the House of Representatives and died there.[25]

The next such resolution (H.Res. 106) was sponsored by Representative Peter V. Deuster of Wisconsin on January 29, 1883: "terminating the treaty of naturalization between the United States and the North German Union, &c.,

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24 U. S., House of Representatives, Journal, 45th Cong., 3rd Sess., H. Res. 202, p. 28; H. Res. 204, p. 32.

25 Ibid.

and providing for a treaty with the German empire,"[26] was referred to the House calendar after two readings, and ordered printed. This resolution also died there.[27] The Second Session of the same Congress brought about another version of this resolution, which was also tabled.[28] In 1885, Representative Deuster tried again. This time, the House Committee on Foreign Affairs, under his chairmanship, produced a comprehensive report on the whole situation (H. Report No. 2590) and then recommended the following text for a joint resolution:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and is hereby, requested to take the necessary steps toward negotiating a treaty with the German Empire, securing more liberal and just provisions in reference to the respective rights of citizens (native-born and naturalized) of the United States and the German Empire.[29]

The only result of the 1885 Congressional resolution seems to have been the following passage, included in President Grover Cleveland's annual message to Congress:

> The interpretation of our existing treaties of naturalization by Germany during the past year has attracted attention by reason of an apparent tendency on the part of the Imperial Government to extend the scope of residential restrictions to which returning naturalized citizens of German origin are asserted to be liable under the laws of the empire. The temperate and just attitude taken by this Government with regard to this class of questions will doubtless lead to a satisfactory understanding.[30]

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26 Ibid., 47th Cong., 1st Sess., p. 303.

27 Ibid.

28 Ibid., 2d Sess., p. 328.

29 U. S., House of Representatives, Index to the Report of Committees, 48th Cong., 2d Sess., I, p. 7, Report No. 2590 to accompany H. Res. 29.

30 James D. Richardson (ed.), A Compilation of Messages and Papers of the Presidents 1789-1897 (Washington, D. C.: 1898), VIII, p. 331, hereafter cited as: Richardson, Presidential Messages.

This very weak protest can only have encouraged the Germans in their intentions to limit the scope of the treaties. It may have given the final push for the decision to uphold the mass expulsion orders then pending for residents of the Island of Föhr in North Schleswig and, thus, to crystallize the policy of the general use of expulsion as a weapon against German-Americans who returned to the land of their birth.

The Beginnings of Real Harassment

Early in 1879, Chargé d'Affaires H. Sidney Everett wrote to Secretary of State William B. Evarts that he had "called His Excellency's [Bülow's] attention to the alarming character of the cases of fine or detention of naturalized Americans, on the grounds of evasion of military duty, no less than four having come to the knowledge of the legation since 23d October."[31] A case which arose early in 1879 will seve to illustrate the point Everett was trying to make.

The Alexander Kunz Case (1879). Alexander Kunz, a native of Frankfurt-on-Main, emigrated to America in 1870 at the age of thirty. He was naturalized there in 1878, married a German-American woman in America, and returned to Germany for a visit in December, 1878. On January 27, 1879, Kunz was arrested and put into prison on a charge of neglecting to appear for military duty, a charge for which he had been fined in absentia in 1874.[32] Apparently,

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31 Letter, Everett to Evarts, January 9, 1879, F. R. 1879, p. 359.

32 Military Case Report, undated, inclosure to letter, White to Evarts, October 18, 1880, F. R. 1880, p. 452.

the United States consul in Frankfurt did his best to obtain Kunz's release, but had to appeal to the Berlin legation for help when he was unsuccessful. After legation intervention, Kunz was finally released. His papers, however, were only returned to the legation five months after his release by the Foreign Ministry with the remark that Kunz had been pardoned by the emperor and that his fine had been remitted. The legation report on this case concluded:

> There seemed to be no reason why so summary and unusual a treatment should have been used in this case, which apparantly was a more favorable one than those of most of the returning naturalized Americans, inasmuch as Kunz had papers to show that previous to his emigration he had received his discharge from military service on the ground of disability, a fact which should have saved him from arrest as a deserter on his return.[33]

This case clearly demonstrates that the Germans were now openly resorting to tactics of harassment and intimidation in order to discourage the return of male, military-age emigrants. Kunz was thirty-eight years old upon return--hardly an age for induction into the military service in those days. The term "desertion," used by the legation report, seemed to indicate that this had been the charge against Kunz. The use of this term for emigration (not desertion) represented a violation of article II of all five naturalization treaties as he had: (1) obtained a discharge before leaving; (2) article II specified "actions committed before emigration," whereas his sentence had been pronounced in 1874, four years

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33 Ibid. Quite apart from the disability reason, article II of all the naturalization treaties and the circulars implementing the treaties should have prevented any prosecution or execution of a sentence against Kunz. The legation had not cited any of these documents.

after his departure and had resulted from his emigration not from any act prior to that. Both the use of the term desertion and the fact that any judgment pronounced in his absence was brought to execution was also in contravention of the instructions issued by the Ministers of Justice and Interior on July 5 and 6, respectively, 1868, to implement the naturalization treaties.[34]

A Dissenting View on the Military Duty Question from Germany

In 1879, the idea that considerations of state should supersede all others--even those involving individual rights--was not yet acceptable to a majority of Germans. There appeared in the Gegenwart of June, 1879, an article entitled "Naturalization in the United States contra Military Duty in Germany."[35] The article claimed to be a past assessment and a discussion of the possible future significance of this issue. The opinion expressed in it was, again, more favorable to German-American interests than the views generally expressed in the correspondence of the official representatives of the United States government.

The author of the article, a Mr. Schläger, started out by posing the question: "Does the individual live to serve the state or is the state here to serve the individual?"[36] He answered it by asserting that

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34 Both circulars were reproduced in F. R. 1880, pp. 443-444.

35 E. Schläger, "Naturalisierung in den Vereinigten Staaten contra Militaerdienst in Deutschland," Die Gegenwart, XV (No. 24, June 24, 1879), pp. 369-372.

36 Ibid., p. 369.

Germany adhered to the former and the United States to the latter view, and that this difference in points of view was reflected in their attitude toward the question of loss of old and acquisition of new citizenship. Schläger then traced the steps which led up to the recognition of expatriation and naturalization elsewhere, from feudal concepts through the 1791 Code Napoléon--where this principle was first recognized--to the demands of the American Secretary of State Lewis Cass in 1859 for the recognition of American naturalization from Prussia. He claimed that the 1859 American position had only represented an enlarged concept of the 1791 Code Napoléon's article 17.[37]

Schläger then ascribed the achievement of the 1868 naturalization treaties to a number of coinciding circumstances: Bismarck's desire for the friendship of the United States in order to pursue his own plans; to a German admiration for America arising out of the Union's Civil War victory; to a strong sentiment in the United States in favor of protecting naturalized Americans abroad in the wake of the 1867 arrest of several Fenians in Ireland. He then claimed that while the Germans had, hitherto --with the exception of one relapse in the Bäumer case--respected the provisions of article II of the treaties, this situation might change in the future.[38] That, if laws proposed by men like Kapp and von Martitz

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37 Ibid.

38 Ibid. Friedrich Kapp was a Reichstag member who opposed the naturalization treaties and wanted to terminate them. F. von Martitz was a professor of law at the University of Freiburg, who also opposed the treaties.

were enacted, the military service liability age might be extended from seven to twenty-two years. Schläger further asserted that the recent "sudden appearance of a restriction of sojourn,"[39] seemed to indicate a change in German policy. He questioned whether the prsence of about 11,000 Americans, of whom only a small number were young German-Americans, could, because of their freedom from military duty, have created such unrest among German youths as to cause the government to act against the treaties.

Schläger then cited an 1878 letter (in the Bäumer case), written by the German Foreign Ministry to the American legation in Berlin, which had categorically asserted the right of a state to expel foreigners at its own discretion. He claimed that this letter represented proof of the German state's position that it was aloof from the individual and above him, pursuing some mystical aim of its own. This, Schläger claimed, was the concept of the state that men like Kapp and von Martitz held. It was a concept that claimed the allegiance of men who had changed nationality. Such a concept had to be rejected, as it was opposed to the modern idea of the state based upon the consent of the governed, that is, of the "contract State" (Vertragsstaat). Schläger then contrasted the German view with the American and English concept of the state and came to the--erroneous, as it turned out--conclusion that, the American government would be constrained to protect its naturalized citizens on the same

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39 Ibid., p. 371

basis as the native-born ones, even if the treaties were terminated. He based his arguments in support of this view not only on a general assessment of the citizen's role in America, but also on the fact that the United States Congress had passed a law which made this protection mandatory.[40]

American-Born Sons of Emigrants

Mr. Schläger had misjudged the zeal with which the United States government would protect its naturalized citizens, especially the German-Americans.[41] However, some concern on the part of the United States government was evident in cases involving native-born Americans. This was true, even if these native-born Americans had returned to the country of their parents' origin early in life, and had resided there until they were threated with German military duty. Despite their lack of patriotism, these men were treated as native-born, not naturalized, citizens.

The Boisselier Brothers Case (1879-82). Richard W. and Casper D. Boisselier, for example, were born in the United States in 1852 and 1854, respectively, to a naturalized father of German origin. They returned to Germany with their father in 1856 and remained there until 1873 (Richard W.) and 1874 (Casper D.), when they returned to America, residing in St. Louis, Missouri thereafter. When the elder of the two brothers re-

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40 Ibid., p. 372. The law referred to was the "Bill for the Protection of Naturalized Citizens Abroad" (Banks Bill), passed in 1868.

41 The Illinois Staatszeitung, December 22, 1877, criticized the Hayes administration for its neglect of German-Americans in the distribution of offices both at home and abroad, quoting Representative Lorenzo Brentano of Illinois: "Hamilton Fish was hated as a 'Know-Nothing,' but Evarts... things are much worse under Hayes and Evarts than they have ever been under Fish. Grant at least granted the German-American element some place, now they are completely ignored."

ceived a summons from the German government to present himself for military duty in Germany, he appealed to the Department of State for help. Despite proof of his American citizenship, a fine of 3,150 marks was levied on both brothers, and their father's property in Germany was threatened with confiscation if the brothers did not present themselves for military service there by July 2, 1879.[42]

Upon legation intervention, the German Foreign Ministry stopped the proceedings against the brothers, but demanded evidence of the father's naturalization. This was furnished by means of an 1856 American passport. The legation then received notice "from the Foreign Office stating that the Boisselier brothers were acquitted and the fine against them removed by the circuit court of Schleswig, it having been found that they possessed no property."[43] This was an expedient used by the Germans to avoid admitting that the judgment had been imposed illegally. As this was a case involving former natives of Schleswig-Holstein, an admission of error would have been given only reluctantly. The case was then considered closed by the legation in Berlin. However, about a year later, the Department of State informed the legation that an article had appeared in a St. Louis, Missouri, newspaper asserting that the circuit court's voidance of the Boisselier brothers fine had been set aside.[44] The legation immediately

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42 Military Case Report, covering the period from October 1879, to December 1879, inclosure to letter, White to Evarts, October 18, 1880, F. R. 1880, pp. 454-455.

43 Ibid., p. 454.

44 Ibid., p. 455.

wrote the Foreign Ministry in this matter, but received only a verbal reply, reported to Washington on September 21, 1880, that the Foreign Ministry had claimed that it knew nothing "about alleged proceedings of the Schleswig-Holstein authorities with reference to the case of the brothers Boisselier."[45]

The case was still not solved, however. Another year and a half elapsed, before the new Secretary of State, Frederick T. Frelinghuysen, wrote to Minister Andrew D. White on February 12, 1882, asking him what action had been taken in this matter.[46] Apparently, the Boisselier brothers wanted to visit Germany and had asked the Department of State whether they could do so safely. Again, some time passed without a German reply. Aaron A. Sargent had been appointed to succeed White in Berlin. On June 7, 1882, Sargent reported to Washington that the Boisselier brothers had been discharged from German allegiance.[47]

On June 5, 1882, Sargent had written a confidential letter to the Secretary of State reviewing the Boisselier case before closing it. On that occasion, he remarked upon the fact that, until the final answer, the Germans had never replied in writing to any of the legation correspondence in the case.[48] Their disclaimer to White had been made verbally.

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45 Letter, White to Evarts, September 21, 1880, F. R. 1880, p. 448.

46 Letter, Frelinghuysen to Everett, February 15, 1882, MS Instructions, Germany, M-77, reel no. 68.

47 Letter, Sargent to Frelinghuysen, June 7, 1882, MS Dispatches, Germany, M-44, reel no. 49.

48 Confidential letter, Sargent to Frelinghuysen, June 5, 1882, MS Dispatches, Germany, M-44, reel no. 49.

According to Sargent, the Foreign Ministry had reacted to his requests in this case--and then so as to evade the fundamental issue--only when he had quoted from Frelinghuysen's instructions:

> I will thank you at the same time to convey to the Foreign Office an expression of the hope entertained by the President that the action of the Schleswig-Holstein authorities with regard to the matter in question, will be promptly disavowed by His Majesty's Government, if the representations on the subject which have been made to this Department shall be found to be correct.[49]

Referring to this passage, Sargent concluded that: "Although there is no case raised by the above letter of the Schleswig-Holstein Government, yet as the position taken in it involves, in a hypothetical case, a clear violation of the Bancroft Treaty; it would seem probable that the failure of the German Government to reply formally to the enquiries of the Department, was due to an indisposition on its part to answer questions in hypothetical cases."[50] Sargent's assessment of the situation--as was the case with his predecessors--seems to have been erroneous, but Sargent had not been in Berlin for a long time.[51] A more plausible explanation for the conduct of the Foreign Ministry in this case might be that it was particularly reluctant to interfere with any measures taken in Schleswig-

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49 Letter, Frelinghuysen to Everett, February 15, 1882, MS Instructions, Germany, M-77, reel no. 68.

50 Confidential letter, Sargent to Frelinghuysen, June 5, 1882, MS Dispatches, Germany, M-44, reel no. 49.

51 Sargents whole tenure in Berlin was marked by controversy. See pp. 146-147 supra, and Holstein-Papers, II, Diaries, p. 87, entry for February 22, 1884, claimed that Bismarck had attempted to have Sargent recalled in May, 1883 by giving instructions to the German Minister in Washington "to hint confidentially that Sargent was hardly the right person to maintain relations between the two countries on a cordial footing."

Holstein (or Alsace-Lorraine) to prevent the return of naturalized Americans.

Emerging Changes in German Policy

Influences at Work. It is necessary, at this point, to review the situation between the United States and Germany to show why Sargent's evaluation of German policy was wrong. Changes in the German attitude toward the naturalization treaties had already been apparent beginning in 1878. In December of that year, shortly before the death of Bayard Taylor, The New York Times had published an editorial on the subject. The paper reviewed the plight of the German-Americans before the conclusion of the 1868 Bancroft treaties, and claimed that "no very severe grievances were possible" under the treaties.[52] The Times then strongly advised against termination of the naturalization agreements, praising, instead, the men who had brought them about:

> They saw what some legislators today have failed to discover, that we are not in a position to go to war with Germany, no matter to what extent she presses her former citizens, and that a guarantee to observe certain equitable rules mutually agreed upon is all we can hope to obtain from a nation that bases its Government upon universal military service. If we lose what we now have, we shall gain nothing, but simply go back to the former condition of affairs.[53]

The Illinois Staatszeitung, in commenting upon the Ganzenmüller case, had said: "The treaty with Germany is, in our opinion, in need of fundamental

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52 The New York Times, December 18, 1878. The editorial added: "But the little trials are magnified, and it is intimated that we only have to break up the existing compact in order to secure a more liberal arrangement."

53 Ibid.

revision. However, we do not advocate a revision which would favor the activities of such 'citizens of two worlds' (Bürger zweier Welten) but one which would secure the rights of those who become citizens with the most honest motives."[54]

Such opinion as these, voiced in the American press, may have influenced the Germans' resolve to attack the treaties openly. Emigration from Germany to the United States was still rising--it reached its all-time peak in 1882.[55] Thus, the Germans were faced with the prospect of more and more naturalized Americans returning to flaunt their freedom from military service in front of their German contemporaries. This prospect, coupled with the apparent lack of sympathy in America for naturalized citizens who returned to the country of their birth, may have given the final impetus to a radical change of German policy.

Alsace-Lorraine: The Catalyst (1880)

Throughout the year 1879 to the death of Secretary of State Bernhard von Bülow, and thereafter to August 5, 1880, all legation interventions on behalf of naturalized American citizens from Alsace-Lorraine remained without reply from the Foreign Office. The year 1879 saw much debate in the German press on the future of the Reichsland of Alsace-Lorraine. On August 5, 1879, a new government was installed there, headed by General Edwin von Manteuffel.[56] It can be assumed that the Germans were now de-

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54 Illinois Staatszeitung, December 28, 1878.

55 Joseephy, Die deutsche Auswanderung, table I: 1882: 250,630.

56 New-Yorker Staatszeitung, August 5, 1879 (cabled news). The previous debate in the German press had centered around the degree of autonomy which should be granted to Alsace-Lorraine.

termined not to allow anything to interfere with their renewed efforts to "Germanize" this area. As the return of naturalized Americans to Alsace-Lorraine might have been deemed a hindrance to these efforts, it had to prevented. However, another year went by before the German decision to deny applicability of the Bancroft treaties to Alsace-Lorraine was communicated to the Americans in the John Schehr case.

Minister Andrew D. White may have precipitated this decision when, in protesting the expulsion of John Schehr on October 13, 1879, he referred to the circulars of the Ministers of Justice and of the Interior in support of his action.[57] It must be assumed that White's citing these circulars finally brought a German reply, because this case was neither the first nor the last such protest which had, to that date, remained without reply.

The John Schehr Case (1880). In its reply to White in the Schehr case on August 5, 1880, the German Foreign Ministry not only denied the applicability of the naturalization treaties to Alsace-Lorraine, but also asserted that Schehr was still a German subject. This assumption was based on the fact, as stated by the Foreign Ministry, that Schehr had neither received a discharge from German allegiance, nor had he been absent the ten years supposedly required for loss of citizenship under German law.[58] Five similar refusals, delivered by the Foreign Ministry

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57 Letter, White to von Philipsborn, October 13, 1879, inclosure to letter, White to Evarts, September 1, 1880, F. R. 1880, p. 443.

58 Letter, von Hohenlohe to White, August 5, 1880, inclosure to ibid., p. 444. Only part of White's letter to Evarts was printed, the part omitted contained the following passage: "I think that the Government and people are more than sensitive in regard to Alsace-Lorraine....The Alsace-Lorraine question crops up every day or two in public journals." MS Dispatches, Germany, M-44, reel no. 45.

during September and October, 1880, were all based on the same reasoning.[59]

In his reply to the Foreign Ministry refuting the Schehr decision, White cited nine previous decisions. Six out of nine had been favorable --seemingly or outrightly on the basis of the 1868 treaties. White pointed out that none of the men involved had been absent from Alsace-Lorraine the supposedly required ten years.[60] According to White, the one case which received an unfavorable decision, that of August Mêly, seemed to furnish the conclusive proof that the treaties did apply to Alsace-Lorraine. A letter sent to Mêly by the Kreisdirektor of Saarburg had stated "that the treaty concluded between Germany and America on the 22nd of February, 1868, applies also to all persons emigrating to America and returning thence who were born in Alsace-Lorraine."[61] White urged the Foreign Ministry to reconsider and to apply this treaty to the eleven cases then pending before it.[62]

It appears as if the case of John Schehr had been used by Germany to test the American position on the treaties. According to his own report, White was called to an interview with Count Friedrich Wilhelm zu Limburg-Stirum[63] on September 21, 1880 in order to discuss the Alsace-Lorraine

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59 All cited in letter, White to Blaine, June 1, 1881, F. R. 1881, p. 472: Michael Pacquet (September 26, 1880), the brothers Hess (September 29, 1880), Joseph Lauber (October 10, 1880), N.V. Gabriel (October 12, 1880).

60 Letter White to von Hohenlohe, August 28, 1880, inclosure to letter, White to Evarts, September 1, 1880, F. R. 1880, p. 445.

61 Quoted in ibid., p. 446.

62 Ibid., p.447.

63 Holstein Papers, I, Memoirs and Political Observations, p. 65. Holstein, in speaking of the period after September, 1880, said: "Bismarck's choice fell on Stirum....Stirum had no idea what his official duties entailed.... In the Political Division this task therefore fell to me."

question. He was told that while the "German government remain fully of of the opinion that the treaties of 1868 do not apply, but that the Government is ready to enter into negotiations regarding an additional treaty for Alsace-Lorraine.[64] Limburg-Stirum had added at the time that, as the United States derived the chief advantages from these treaties, the proposal for such negotiations should come from America.[65]

White realized that the change in German policy with regard to treaty applicability in Alsace-Lorraine was important. Yet, he only reported on the Schehr case three weeks after receiving the Foreign Ministry letter. It was only after his interview with Limburg-Stirum that he decided to ask for further instructions from Washington. This period between the Schehr decision and the final implementation of the new policy toward American citizens from Alsace-Lorraine seems to have been a crucial one. Probably, the Germans expected a prompter and more violent American reaction to this move. When this reaction did not come within six weeks, they correctly concluded that the United States would not oppose this new policy very strenuously, and that Germany could go ahead and implement it further.

Rising German Military Opposition to Emigration and Naturalization

The demands for recruits for the military services, rising from year to year, presented another problem. While there may have been an

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64 Letter, White to Evarts, September 21, 1880, F. R. 1880, p. 448.

65 Ibid.

actual surplus of young men available for military service,[66] the military authorities looked upon emigrants with increasing disfavor. This was especially true regarding emigrants who left just before becoming liable to such duty, and then returned home--at least on a lengthy visit--shortly after naturalization in America. Minister Andrew D. White reported this to Washington in 1880:

> The great emigration of able-bodied men to America has probably given the Government some apprehension, and it is certainly irritating the peasants remaining under the German flag, the latter considering emigration in the case of their former associates who return to Germany an evasion of duty in both countries.[67]

The local German authorities, especially, objected to the presence of naturalized Americans in their midst. They saw them as "bad examples" to the local youths in that they might encourage them to follow their example and emigrate to America. Thus, the rising tide of emigration to America alarmed the German government in that it threatened the manpower supply for agriculture, industry, and for the military services. To this may be added the lack of success of Germanization efforts in both Alsace-Lorraine and Schleswig-Holstein. These factors combined, in 1880, to bring about the policy change with regard to the naturalization treaties.

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66 The New-Yorker Staatszeitung, August 8, 1879, reported the number of recruits as follows: 1875-76: 139,855; 1876-77: 140,197; 1877-78: 142,937. Presumably, these were the number of men actually called up in each year.

67 Confidential part of letter, White to Evarts, September 1, 1880, MS Dispatches, Germany, M-44, reel no. 45.

Personnel Changes in the German Foreign Ministry. Final German policy decisions were at all times made by Bismarck, who kept a close eye on every department in the government, especially on the Foreign Ministry. The illness and death of Secretary of State for Foreign Affairs Bernhard von Bülow gave Bismarck a chance to implement his policy change toward the naturalization treaties in such a way that its true implication could be hidden behind a screen of personnel changes. That is, the direction and full scope of this change was masked by other, seemingly unrelated, changes. The personality of Bismarck suggests that this was deliberate on his part. During the illness and after the death of Bülow, Bismarck "tried out" a number of men in the Foreign Ministry by appointing them Acting Secretaries for varying periods of time. White commented on this in 1880:

> In addition to the difficulties in Alsace-Lorraine, I felt bound to make allowances for another cause of delay, namely the many changes which have taken place in the foreign office since my arrival. As you are aware, after the death of Mr. von Bülow, the duties of the ministry were sometimes discharged by Mr. von Philipsborn and sometimes by Mr. von Radowitz; but they were finally transferred to Prince von Hohenlohe-Schillingfürst, who, though ambassador in Paris, is now also minister of foreign affairs ad interim.[68]

Fewer than three weeks after the date of this letter, White reported that Hohenlohe-Schillingfürst had been replaced by Limburg-Stirum. He added Count Paul von Hatzfeldt was also being mentioned for the post.[69]

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68 Published part of letter, White to Evarts, September 1, 1880, F. R. 1880, p. 442.

69 Letter, White to Evarts, September 21, 1880, F. R. 1880, p. 448. According to Friedrich von Holstein, Limburg-Stirum held the job longer than initially planned, because Hohenlohe-Schillingfürst contracted typhus and never returned to his job. See Holstein Papers, II, Memoirs and Political Observations, p. 65.

This constant rotation of personnel in the German Foreign Ministry could and did give the Americans the impression that this was the cause of the conflicting decisions rendered in individual cases. The Americans apparently assumed that each official in question was either unfamiliar with the treaty terms or, with other decisions previously rendered in similar cases. They might also have assumed changing points of views, similar to the pattern of change in America with each new administration. In fact, some of the men who were appointed Acting Secretaries of State after Bülow's death had already served in that capacity during his frequent illnesses. These men had not acted on their own initiative then or later. Bismarck had certainly instructed them regarding his own wishes with respect to decisions to be rendered.[70]

The erratic and often conflicting decisions in Alsace-Lorraine cases may have served a deliberate purpose: to hint to the Americans that the German claim of non-applicability of the naturalization treaties to Alsace-Lorraine was not irrevocable. By contrast, the Americans may have interpreted them to mean that their own point of view on this matter--that the treaties did apply--might yet prevail. As a result, the opportunity for opening negotiations at this time was missed and, worse yet, no clear statement regarding the new German position on the treaties as a whole was obtained.

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70 Ibid., p. 62. Holstein claimed that the Vortragende Räte in the Foreign Ministry at that time reported directly to Bismarck, and received their instructions from him personally.

Progressive Nullification of the Treaties

Silence on the Precise Age of Military Liability. One of the great difficulties with the treaties--with the exception of the ones with Baden and Wuerttemberg, which both specified precisely when emigration became punishable--was the lack of precision as to when emigration became forbidden. Technically, the implication was that, until actually called up, a young man was free to emigrate. In practice, and as time went on, the Germans construed the treaties in such a way that any emigration by a male under the age of forty was suspect. This interpretation was clearly in contravention of articles I, II and IV of the treaties. However, the emphasis must be placed on article II, according to which even unauthorized emigration was not per se to provide a reason for punishment upon return.

In most cases, if the United States legation intervened, the imposed fines were eventually returned and, in the case of arrest, the men were finally released, but only to be expelled immediately. In German eyes, these men were guilty of a crime: that of evasion of military duty, and they were publicly humiliated upon their return, even if the fine that fine had to be returned and the judgment was later voided. It was hoped that the public disgrace would serve as a deterrent to others who might want to follow their example and emigrate.

By the early 1880's, the majority of cases required legation intervention to obtain adherence to the treaties. In an 1882 letter transmitting the annual military case report, Minister Aaron A. Sargent noted that these cases did not depict the true workload of the legation. He

claimed that many more cases of threatened or feared oppression on the part of local authorities were brought to the attention of the legation, but that:

> ...adverse action is often averted by certified copies of the treaty of 1868, and of the circular of the minister of justice, enjoining on local authorities observance of the treaty rights of naturalized Americans. These papers the legation furnishes; and they do excellent work in advising the local authorities of their duty in the premises.[71]

It is strange that the American legation should have to advise local German authorities of their duties. It would seem that this should have been the task of the Berlin central government, as it concerned agencies under its jurisdiction and not under that of the American legation.

Actually, by 1882, very few male emigrants of military age were allowed to stay the full two years stipulated by article IV of four of the five naturalization treaties.[72] In just three years, the lack of vigilance and forceful remonstrances against treaty violations on the part of the Americans had allowed the Germans to limit the right of sojourn considerably. Sargent, in a confidential letter to Washington, gave this explanation of the German action:

> Germany is so exceedingly military in all its tendencies that all, or most, propositions are judged from a military standpoint, both by the Government and by the people. This emigration and expatriation question saps directly the military force of the Empire; for the most vigorous men emigrate. Their names are called, when

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71 Letter, Sargent to Frelinghuysen, October 9, 1882, F. R. 1882, p. 186.

72 Report on Military cases, inclosure to ibid., pp. 186-191. Of 22 cases reported, only three had been allowed to stay two years, before being faced with expulsion or German military service. The three who were allowed to remain could demonstrate special family circumstances.

> the period arrives for service, and there is no response. The law imposes a fine in cases where there is failure to appear. The youth is in America....He returns, perhaps, and appears in his native village, and is arrested. Then comes a claim for his release as an American. His release is compelled, the fine has to be taken off...for two years he walks about his home, the object of envy, perhaps, of the youth of his age.[73]

This statement was actually a misrepresentation. Three days before he wrote this letter, Sargent had transmitted the annual military report. According to this report, only three cases out of twenty-two had been allowed to stay two years, and this only because of special circumstances.[74] The Secretary of State, who saw this report, did not instruct the American minister to protest the German narrowing of the treaties. The Germans, after what they must have considered a reasonable test period --about three years--must have come to the conclusion that the Americans had tacitly concurred in their narrowing of the scope of the treaties.

The William Brinck and Louis Lewin Cases (1881-82). The following two cases will show that Minister Aaron A. Sargent's letter, quoted above, did not present a true picture of the treaty situation. William Brinck, born in 1858 near Düsseldorf, emigrated to the United States in 1872 with his mother in order to join his father who had leaft Germany a year earlier. William was naturalized in the United States in 1876 as a minor when his father acquired American citizenship. He returned to Germany, together

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73 Confidential letter, Sargent to Frelinghuysen, October 12, 1882, MS Dispatches, Germany, M-44, reel no. 50.

74 Military case report, inclosure to letter, Sargent to Frelinghuysen, October 9, 1882, F. R. 1882, pp. 186-191. This report covered the period from June 30, 1881 to September 1, 1882, a fourteen-month period.

with his father, for a few weeks' visit in 1881.[75] William was arrested almost immediately upon his arrival in Germany by the local authorities, and hurried off to Cologne, where he was forcibly enrolled in the local infantry regiment. The American consulate in Barmen informed the legation in Berlin of the case, who, in turn, intervened on Brinck's behalf. He was released within three weeks, and the legation thought the case ended. But it was informed by the local consulate that, on July 28, 1881, four weeks after Brinck's release, a fine had been imposed upon him. Further intervention followed, and on September 3, 1881, after another six weeks of correspondence, the fine was annulled and returned.[76]

The case attracted wide attention in the German-American press.[77] It even drew a lengthy comment from The New York Times. This fact, together with forceful intervention by Brinck's Congressman and one Senator from his native state, seems to have expedited favorable treatment of the case. The Times called the German action in the Brinck case "an aggravated case of arbitrary interference of the German Government with the rights of naturalized American citizens."[78] The New-Yorker Staatszeitung gave, perhaps, the best picture of the German attitude:

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75 Ibid., p. 187.

76 Ibid.

77 To cite a few: the case was reported in the New-Yorker Staatszeitung, July 7, 1881; the Cincinnati Volksfreund, July 22, 1881; the Washingtoner Journal, July 18, 1881.

78 The New York Times, July 7, 1881. The Times reported that Congressman Buck and Senator Hawley, both from Connecticut, had written separate letters in the matter to the Secretary of State.

> The Brinck case is one of those which are especially suited for curing the German-Americans of their love of the land of their birth and to deter them from visiting it. But this seems to be the true purpose of the German authorities. The lower bureaucrats look upon every German-American with ferocious dislike, on the one hand because they cannot get him into their power; and on the other hand because they smell an individual in each and every one of them who might make propaganda to further increase the number of Germans who might then escape the power of these bureaucrats and martinets.[79]

Brinck had served four years in the Connecticut National Guard.[80] He had, therefore, occasion to compare the two military systems. He probably did the Germans more harm back in America through adverse propaganda than he might have, had he not been forced into the German army. No explanation was given by the Germans, by the legation, or by the Department of State as to why Brinck had been fined after his release. It can only be surmised that the Germans wanted to have a legal reason to re-arrest or expel him, should he be bold enough to return later for another visit.

The Brinck affair was a clear case of harassment as there was not the slightest hint or suspicion that the man might have wished to stay in Germany permanently. Brinck was employed by a Connecticut silk manufacturer as a skilled dyer. His own firm alerted both the Congressman and a Senator on his behalf.[81] He had been a boy of fourteen at the time of emigration. His father had been fifty, and had, presumably, served his German military duty term. No bad faith or draft evasion can be detected in his acts. Brinck was clearly the type of emigrant the Bancroft naturalization trea-

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79 New-Yorker Staatszeitung, July 7, 1881.

80 Ibid.

81 Ibid.

ties had been negotiated to protect. Yet, this case graphically illustrates how cavalierly the local German authorities were able to treat naturalized American citizens by 1881, in violation of both the spirit and the letter of the 1868 treaties.

The years 1881-82 marked the all-time peak of German emigration to the United States, and Germans of all classes were perturbed by this exodus. The New York Times, in commenting on this record German immigration, ascribed it to the miserable conditions of German laborers and artisans at home. The paper further claimed that this was the price that the Germans were now paying for their 1870-71 triumphs and for Bismarck's experiments in political economy.[82]

Another case, taken from the 1881-82 military case report, illustrates the rising opposition on the part of German local authorities to compliance with the naturalization treaty terms. Louis Lewin called in person at the Berlin legation to present his problem. He had been born in Prussia in 1856, emigrated to the United States at the age of seventeen in 1873, and had been naturalized there in 1882. He returned to Germany on a visit in May, 1882. On July 14, 1882, he was informed by the local authorities that he had either to pay the fine of 150 marks or face imprisonment. Upon his protest that he was an American citizen and, therefore, protected by the naturalization treaties, the local magistrate accepted security for his release. The legation advised him to return and to show the local authorities the decrees implementing the treaties which they furnished. Lewin

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[82] The New York Times, June 15, 1881.

then returned to Wreschen and, in the words of the legation:

> This course having been pursued by Lewin, but without any good effect, the local land court Judge remarking that the law had been changed, and that he would issue a warrant (Steckbrief) to arrest Lewin, if he were not found when wanted.[83]

Lewin again appealed to the legation for help, which, in tuern interceded with the German Foreign Ministry. However, despite this intervention, Lewin thought it advisable to return to the United States earlier than he had planned rather than remain and take his chances with the local authorities. The fine was eventually returned to him in America, and the legation--as customary in such cases--closed the file with the notation "intervention successful."[84]

The Lewin case shows the freedom with which the local authorities were permitted to violate the naturalization treaties. It also demonstrates that the German methods were successful. Lewin cut short his visit home and, therefore served German purposes by removing himself so as to avoid serving as an example for others who might wish to emigrate and return. The suspicion arises that these "local interpretations" of the treaties were, in fact, centrally inspired--perhaps by the Ministry of the Interior. In 1882, compliance with the treaties, that is, token compliance in the form of a few months' visit, could still be obtained through forceful legation intervention. Within a few years, the practice of wholesale expulsion was introduced as a means of hindering the return

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83 Military Case Report, undated, inclosure to letter, Sargent to Frelinghuysen, October 9, 1882, F. R. 1882, p. 192.

84 Ibid.

of naturalized Americans of military age. They were, by then, allowed only a few weeks' sojourn. Such a short stay was a luxury very few German-Americans could afford. The Germans were certainly aware of this fact and used it as a means of nullifying the principal benefits derived from the naturalization treaties by naturalized Americans.

Another Attack on Native-Born Americans

In 1882, increasingly successful in restricting the German-born Americans' right of sojourn upon return, the German government sought to limit that of another class of Americans. These were the young, American-born sons of such naturalized Americans who had returned, with their parents, to live permanently in Germany.[85] The Boisselier case had not fully resolved the difference of opinion between the United States and Germany on this matter. In 1882, another dispute arose, involving American-born children of naturalized American citizens who had returned to live permanently in Germany.

The Oppenheimer Brothers Case (1882). Shortly after the German reply in the Boisselier case, which had evaded the basic issue, another dispute developed involving the citizenship of the brothers Benny and Henry Oppenheimer. In discussing the case, Minister Aaron A. Sargent reviewed some of the issues which had arisen out of the Boisselier controversy. Sargent, in claiming American citizenship for the Boisselier brothers had, at first used both the fact of their American birth and the

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85 For the details of this case, see pp. 157-161 supra.

subsequent naturalization of their father to support his contention.[86] The Department of State, however, anticipating future disputes, had given Sargent different instructions:

> It is preferable in the opinion of the Department to rest the claim on the nativity of the claimants. Placing the citizenship on this ground at once, expresses in an unqualified manner the interpretation given by this Government to that provision of the Constitution which declares that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States."[87]

This change of argument was wise, because, shortly after this position was taken, the German Secretary of State for Foreign Affairs again inquired from Sargent on what basis American citizenship had been claimed for the Boisselier brothers: "Count Hatzfeldt asks if these sons became citizens by virtue of their birth of unnaturalized parents in America, or by virtue of the naturalization of the father subsequent to their birth."[88] Sargent then claimed citizenship for them on the basis of their American birth as he had been instructed to do. The Boisselier case was closed without any German concession to the American position. As the Boisselier brothers were, at the time, living in the United States not in Germany, the Germans refused to rule on a hypothetical case.

When the dispute over the nationality of the Oppenheimer brothers arose shortly thereafter, Sargent wrote Frelinghuysen:

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86 Letter, Frelinghuysen to Sargent, May 31, 1882, MS Instructions, Germany, M-77, reel no. 68.

87 Question by Hatzfeldt, quoted in letter, Sargent to Frelinghuysen, June 24, 1882, MS Dispatches, Germany, M-44, reel no. 49.

> Allow me to say that I believe Count Hatzfeldt's purpose was not only a natural desire to obtain an answer which could explain the Oppenheimer case, but also be used by the German Government in discussing future cases. I therefore endeavored to leave no loopholes which might prejudice succeeding cases.[89]

Benny and Henry Oppenheimer, like the Boisselier brothers had been born in the United States in 1857 and 1859, respectively. They had been taken to Germany by their father in 1865 and had resided there ever since that time. On July 1, 1881, the elder son being twenty-four years old and the younger one twenty-two, they were informed by the Frankfurt authorities that they could no longer reside in Germany unless they became German citizens within fourteen days.[90]

The father then appealed to the American legation and, as a result of legation intervention, all proceedings were halted against the young men.[91] However, the Germans still refused to make a formal ruling on the principle of the matter. It was not until an 1884-85 case (Revermann) that they finally conceded to the United States government that such sons of former Germans, if born in the United States, were to be considered native-born American citizens to whom the Bancroft treaties did not apply.[92]

The Ferdinand Revermann Case (1884-85). Two years elapsed before another, similar, controversy arose. Henry J. Revermann had emigrated

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89 Letter, Sargent to Frelinghuysen, September 15, 1882, MS Dispatches, Germany, M-44, reel no. 49. He added: "Of course, every military case is to a greater or lesser degree an annoyance to Germany...and our exertions in such cases will be limited to sound considerations." This view seems--at least tacitly-- to support the German point of view.

90 Military Case Report, inclosure to letter, Sargent to Frelinghuysen, October 9, 1882, F. R. 1882, p. 188.

91 Ibid.

92 Military Case Report, inclosure, letter, Pendleton to Bayard, November 2, 1885, F. R. 1885, pp. 430-431.

from Germany to the United States in 1850, had been naturalized there in 1856, and had stayed there continuously until he returned permanently to Germany in 1871. Ferdinand Revermann, his son, was born in Naperville, Illinois, on October 17, 1860. He returned to Germany with his parents in 1871. In 1880, upon application, the Landrath in Münster had certified him as an American citizen, and struck his name from the military rolls.[93] However, shortly after that time, on October 11, 1880, Ferdinand Revermann was again summoned before the Landrath in Münster "and told that, by order of the Royal Government at Münster, he must either become naturalized in Germany or leave the country."[94] When Revermann protested this ruling, he was told that he now had to apply for naturalization within three days or be expelled. He declined to apply for German citizenship and asked for an extension of four weeks on the expulsion order. He was then informed that he had to leave by November 1, or be imprisoned.[95] At this point he appealed to the American legation for assistance.

As a result of legation intervention on his behalf, the Foreign Ministry apparently caused a stay in the execution of both the expulsion and arrest orders. However, the records yield no explanation as to why the case was allowed to remain in suspension for four years after that intervention. On December 24, 1884, the Americans finally received the Foreign Ministry's reply: "conceding the correctness of the statements

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93 Ibid., p. 430.

94 Ibid.

95 Ibid.

of facts made by the legation respecting Revermann's case, but declining to cause a change to be made in the measures taken against him."[96] Now, finally, after an interval of five years--since the beginning of the Boisselier case--the Germans decided to rule that:

> It was conceded that the sons of such persons [naturalized Americans who had resumed their German nationality] were American citizens, and that they could not be made to perform military service in Germany. International principles, however, permitted the refusal to such persons of sojourn in Germany, and the adoption of measures against them, as soon as such a course should seem requisite in the interest of public order.[97]

despite renewed American protests--made under instructions from the Department of State--the Germans insisted on their right of expulsion, and Ferdinand Revermann had to leave Germany in May, 1885.

This case, which began in 1880 and ended in 1885, was held in abeyance during the German-American arguments over the Boisselier and Oppenheimer brothers. During this five-year period, the medium of expulsion was still used cautiously and sparingly. This was, perhaps, in order to test long-range United States reaction to this method. When the American response proved to be much milder than had been anticipated--during two successive administrations--the Germans decided to make it a permanent part of their new policy toward the treaties. The primary goal of this new policy was to prevent the residence in Germany of military-age men holding American citizenship.

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96 Ibid.

97 Ibid.

The Beginning of the End of the Treaties

By 1885, the Germans were reluctant to grant returning young, naturalized American males permission to visit their former homes for as little time as a few months. To justify their increasing use of expulsion to prevent any extended sojourn, the Germans claimed that these young men were agitators and dangerous to the internal exurity of the empire. What they really meant was that, in their opinion, such men set a "bad example" to the German youths who had remained behind and had been obliged to serve long military tours of duty.

The First Mass Expulsions (Schleswig-Holstein). The use of this medium by the Germans to rid themselves of unwanted returning Americans reached a high-point in 1885. Of thirty-four expulsions between 1884 and 1887, eighteen had occurred during the calendar year 1885.[98] Thirty-two out of the total of thirty-four men thus expelled were of Schleswig-Holstein origin, one came from Alsace-Lorraine, and only one from the rest of the empire.[99] This demonstrates that the Germans were beginning to use this method chiefly in provinces which still resisted Germanization efforts. These areas may have provided a large number of emigrants to America.[100] Perhaps the young men did not want to spend years of their life in the German army and preferred to live and work elsewhere.

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98 Tables, showing cases which required legation intervention, 1868-97, F. R. 1897, pp. 211-219

99 Ibid.

100 Accurate statistics covering specific regions of Germany are not available.

In 1880, the Germans had proclaimed that the naturalization treaties did not cover Alsace-Lorraine. It is possible that naturalized Americans originating in that part of the country were reluctant to risk returning to their old homes without the protection of the treaties. During the early 1880's, German-Americans returning to other parts of the empire, were usually faced with a fine. Upon legation intervention, this fine was generally remitted and the men were allowed to stay a few months.[101] The records of the legation show that while the right of sojourn was gradually being restricted more and more, the Germans were not yet willing to proclaim a general policy of expulsion for the whole empire. However, this medium was used most frequently to prevent an influx of naturalized Americans to the two provinces whose natives had not completely accepted their German citizenship.

The Island of Föhr Expulsions (1885-86). The 1885-86 seems to have been the final testing period of the expulsion policy. When the Americans did not react forcefully to a series of mass expulsions of naturalized American citizens, the Germans, finally, felt free to assume that they could safely put this policy into general use against American citizens. In November, 1885, the Schleswig authorities revived an 1841 ordinance prohibiting the settlement of foreigners in that province.[102] As this

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101 Tables, recording legation interventions on behalf of naturalized citizens, 1868-97, F. R. 1897, pp. 211-219.

102 Translated extract from Preussische Zeitung, dated November 13, 1885, forwarded as inclosure to letter, Pendleton to Bayard, November 16, 1885, F. R. 1886, p. 311.

ordinance violated the terms of the Bancroft treaties, and was, presumably, superseded by them, the American minister should have protested this revival immediately.

Minister George H. Pendleton lodged no protest. Instead, he forwarded to the department an article which had appeared in the Staatsbürger Zeitung[103] on the supposed mass expulsions from the Island of Föhr:

> According to information from the island of Föhr, fifteen German-Americans have suddenly received the order to leave. This news was all the more calculated to excite great uneasiness among the ten thousand German-Americans who again live in Germany, because they see the numberous expulsions of the subjects of other nationalities....And it can be said in the most certain manner that there can be no question of a new system; but a fact which has happened occasionally for some years has attracted special attention because of the time at which it happened, and has been immoderately exaggerated.[104]

The article claimed that a check with the American legation had revealed only four cases that had, so far, required legation intervention. Pendleton, in transmitting the article, added: "It has no special significance except as showing the views taken by very many Germans of the power of expulsion, and its reasonable exercise in the given cases."[105]

How Pendleton could call such a concerted action against a group of

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103 The island of Föhr is located on the northern tip of Schleswig, very close to the Danish border. It can be assumed, that Danish nationalism had some influence in the area. This was, in fact, what the Germans claimed later in refusing to revoke the expulsion orders. See F. R. 1886, pp. 312-317.

104 Letter, Pendleton to Bayard, November 16, 1885, F. R. 1886, p. 311, inclosure no. 1, extract, Staatsbürger Zeitung of November 15, 1885.

105 Letter, Pendleton to Bayard, November 16, 1885, F. R. 1886, p. 310.

13 naturalized Americans from one area "nothing out of the ordinary," is hard to understand. Pendleton was new in Berlin, but the records of the legation would have shown that this was an unusual occurrence. The new Secretary of State, Thomas F. Bayard, voiced a different opinion. He noted thirteen cases of expulsion, all involving men from Schleswig-Holstein,[106] which had occurred in the period December, 1885-March, 1886. Of the thirteen men, eleven had emigrated before the age of eighteen, and nine of the thirteen had had permission to emigrate.[107] Thus, all of the men came under the protection of article II of the North German treaty. In addition, Bayard cited the German Constitution as giving the age of liability for military service as twenty, and added:

> The decisions of the Foreign Office given...do not appear to be consistent with those rendered in previous years in similar cases ...and it would seem as if there could be no more necessity of expulsion now than existed two years ago. The doctrine now laid down by the Foreign Office seems to embody two propositions. The German Government appears to claim <u>first</u> that any American whether he be native or naturalized may be expelled from Germany whenever in the opinion of the authorities the welfare of the State demands it; and <u>second</u> that a good and sufficient ground for such expulsion is to be found in the purpose on the part of the emigrant, to avoid military duty by emigration, the sufficient proof of which purpose for the German Government is the fact that the emigrant demanded an official permit to leave his native land.[108]

Bayard then cited pertinent passages from the 1868 North German naturalization treaty, from the treaty of 1828, and from the circulars of the Ministers of Justice and of the Interior of July 5 and 6, 1868, to

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106 Letter, Bayard to Pendleton, March 12, 1886, MS Instructions, Germany, M-77, reel no. 68.

107 <u>Ibid</u>.

108 <u>Ibid</u>.

refute the contentions the Germans had made in the Föhr cases. The exchange of correspondence on this matter between the Foreign Ministry and the American legation continued. The Germans refused to give in, claiming that the time allowed to one man, for instance, had been adequate in that: "A sufficient sojourn, one of more than two-and-one-half months, having been permitted him for a visit to his relations and for the purpose of attending to any business matter claiming his attention, it appears to be requisite in the interest of the state [italics mine] to carry into execution the expulsion decreed."[109]

Again, the American minister protested the ruling. The Foreign Ministry's replies became sharper with every protest.[110] Possibly, this exchange lead to the final demise of the naturalization treaties. The reasons now put forward by the Foreign Ministry were in direct contradiction to both the letter and the spirit of the treaties. This is also the first time that the Germans openly admitted the resons which lay behind these expulsions: the conviction that the men in question emigrated solely for the purpose of avoiding German military service:

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109 Letter, Herbert von Bismarck to Pendleton, December 23, 1885, inclosure to letter, Pendleton to Bayard, December 25, 1885, F. R. 1886, p. 313.

110 According to Holstein, Herbert von Bismarck took over the Foreign Ministry in the spring of 1885, first as Under Secretary of State, then as Secretary of State. Holstein Papers, I, Memoirs and Political Observations, p. 62. This might account for the distinctly sharper tone of Foreign Ministry communications throughout 1885 and for the German decision, late in 1885, to espouse the expulsion policy openly, regardless of American reaction to this. Herbert von Bismarck, backed by his father's support, must have brought about the final decision to nullify the naturalization treaties because he deemed them outdated and detrimental to German domestic policy.

> If such persons were permitted, after they have acquired American citizenship, and while appealing to this change of nationality, to sojourn again, according to their pleasure, unhindered, for a shorter or longer period, in their native land, furtherance would thereby be given to similar endeavors, and respect for those laws would be endangered upon which is based the general liability to military service, one of the most essential and important foundations of our state life.[111]

This, for the first time, was an exposition of the idea that the "reason of state" takes precedence over all other considerations, and that the claim to military service superseded all others--including the right of free expatriation conceded in the naturalization treaties. In other words, Germany was de facto reverting to her pre-1868 position of "once a subject, always a subject," denying the individual the free choice of domicile.

Reich Now Claims the "Bavarian Rule." In its reply to legation intervention on behalf of nine naturalized American citizens from Schleswig-Holstein, the Foreign Ministry proceeded to a further restriction of the naturalization treaties. It now claimed the concessions granted by the United States to Bavaria in the protocol appended to the treaty:

> Under Figure III, No. 1 of the final protocol of the Bavarian-American treaty, which agrees in all essential points with the treaty between the North-German Confederation and the United States, this is distinctly recognized, and thereby the North-German-American treaty, concluded at an earlier date, has, in a certain manner, received an authentic interpretation.[112]

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111 Letter, Herbert von Bismarck to Pendleton, January 6, 1886, inclosure to letter, Pendleton to Bayard, January 8, 1886, F. R. 1886, p. 316.

112 Ibid., pp. 316-317. By contrast, no mention is made of the Bavarian concession made in return for this restriction: that of freedom from punishment and exemption from military service upon return, regardless of whether the man loses his citizenship.

The "Figure III, No. 1," referred to was the codicil to article IV of the treaty, added in the Bavarian Protocol, which prohibited former Bavarians who had not served their military duty from returning permanently to Bavaria before reaching the age of thirty-two.[113] This new claim put forward by the Reich, coupled with the assertion of the absolute right of expulsion "when maturely-considered grounds of public welfare compel,"[114] effectively ended the benefits from the treaties for most German-Americans. After 1886, only the wealthy could permit themselves the luxury of a trip from the United States to Germany for a visit lasting a permitted maximum of four to six weeks.

Secretary of State Bayard recognized this fact when he commented that: "this would seem to put our relations with Germany on as regards naturalized Americans exactly the same footing as they were before the Bancroft Treaty of 1868, and to open the door to the same endless and unsatisfactory discussions as then took place."[115] However, he, too, did nothing beyond writing learned treatises on the subject to Pendleton, who, in turn, sent letters of protest to the German Foreign Ministry. In one such letter, Pendleton correctly summed up the whole sorry situation:

> The emigration is permitted, the return is permitted, the sojourn is permitted. How then can the recognition of these three permitted events be a furtherance of a reprehensible desire to evade military service? The very act of emigration involves the avoidance of military duty. There can be no emigration before the extreme limit

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113 Malloy, Treaties, I, p. 63.

114 Letter, Herbert von Bismarck to Pendleton, January 6, 1886, inclosure to letter, Pendleton to Bayard, January 8, 1886, F. R. 1886, p. 317.

115 Letter, Bayard to Pendleton, March 12, 1886, MS Instructions, Germany, M-77, reel no. 68.

> of age...which does not involve such avoidance....To describe the recognition of these rights...each guaranteed by the treaty, as such an encouragement on the part of the authorities of the effort to escape military service and to bring the law into disrespect seems to be inadmissible.[116]

Pendleton's four-page letter to Herbert von Bismarck was a masterpiece of American legal language, but it did not persuade the Germans to change their policy toward the treaties. By that time they had decided to disregard these agreements. The final proof of this can, perhaps be seen in the letter written by the German minister in Washington, Friedrich von Alvensleben, to Secretary of State Thomas F. Bayard on July 8, 1886. The German minister reiterated the absolute right of expulsion under international law, supposedly unimpaired by the treaties of 1828 and 1868: "Even if it be supposed that everything is legal, the mere stay of foreigners in the territory, may under certain circumstances become detrimental to public interest."[117] The letter then disputed the main concession granted by article IV of the naturalization treaties--the one that, according to Bancroft, had been inserted to assure the loyalty of naturalized Americans:

> Mr. Pendleton's statement, in his note of April 10, 1886, that both parties have hitherto been agreed concerning an interpretation of the treaty that recognizes the right of undisturbed sojourn for two years, is based upon a misapprehension. The Imperial Government has, on the contrary, always maintained the opposite view, as above stated, and has expressly maintained this position on several occasions; for instance, in the note of July 18, 1878, of the foreign office to the American legation in Berlin relative to the case of Baumer.[118]

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116 Letter, Pendleton to Herbert von Bismarck, April 10, 1886, inclosure to letter, Pendleton to Bayard, April 16, 1886, F. R. 1887, pp. 377-378.

117 Letter, von Alvensleben to Bayard, July 8, 1886, F. R. 1887, p. 417.

118 Ibid.

Conclusion. It is ironic to note that the Bäumer case, whose potential significance for future German-American relations had been recognized by some members of the United States Congress--if not by the Department of State--should have provided the epitaph for the Bancroft naturalization treaties. Due to its eagerness to close out unwelcome cases, the American legation in Berlin, with the support of the Department of State in Washington, had failed to obtain a correction of flagrant German misinterpretations of the treaties. By 1886, the Germans were hunting pretexts and precedents for their nullification attempts regarding the naturalization treaties. The Bäumer case provided such a precedent. The Germans, while still formally admitting the validity of the circulars issued by their own Ministers of Justice and of the Interior, now attempted to circumvent them by claiming:

> According to those orders, it is true there is to be no prosecution of persons showing that they have become naturalized in America, on account of the punishable act [sic] committed by them in that a judicial prosecution only [italics mine] is not admissible. Expulsion, however, resorted to in pursuance of a decision of the police authorities of the state, does not come in the purview of such prosecution, for expulsion is not a punishment in a judicial sense, but an administrative measure adopted by the state out of regard to its own safety and domestic policy.[119]

By this specious reasoning, all measures taken by the German government against naturalized American citizens were explained and legalized. From this point on, no argument put forward by the Americans, based on supposed rights under the naturalization treaties, was ever accepted or acknowledged by the Germans.

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119 Ibid.

The period 1879-87 can be described as one during which the Bancroft naturalization treaties were systematically attacked and narrowed in scope. The Germans, with increasing irritation, began to see in these agreements an impediment to their absolute jurisdiction within their own territory. A series of treaties which, on the basis of an acquired foreign nationality, permitted men--whom they regarded as Germans--to live in Germany untouched by that country's military duty laws, had to be eliminated or at least curtailed. Rising German nationalism and the growing consciousness of German military power made any foreign interference with domestic affairs--and the naturalization treaties were seen in that light--appear objectionable. Having tolerated the treaties during the first ten years, the Germans now resolved to limit their scope to the greatest extent possible.

The method devised for this, restriction of sojourn by means of the use of expulsion, was first tested in areas where the Germans were most sensitive to any show of hostility to their ideas--Schleswig-Holstein and Alsace-Lorraine. The migrant from these areas was presumed to have expressed his hostility through the act of emigration and was, therefore, particularly unwelcome on his return as an American citizen. When no concerted American opposition to a policy of expulsion was encountered, the Germans gradually expanded the area covered by this policy to include the rest of the empire. Thus, by 1887, the treaties afforded only a fraction of the privileges originally intended by the signatories for the protection of naturalized American citizens in Germany. Very little additional German effort was needed to nullify the treaties completely.

CHAPTER VI

THE YEARS OF RETROGRESSION

Introduction. The years from 1887 to 1904 represent a period of steady retreat from the principles of free emigration and change of allegiance, which found their expression in the 1868 Bancroft naturalization treaties. By 1887, the old spirit of amity and mutual respect, which had characterized the relations between the United States and Germany since that time, seemed to be on the wane. The primary reason for this deterioration of relations can be found in commerical rivalries, brought on by the transportation revolution and acerbated by a rising spirit of neo-mercantilism, present in both countries. Germany, self-conscious in her new-found position as a rising world power, disliked being reminded of her past history of weakness and fragmentation. The naturalization treaties appeared as a reminder of this powerless past.

By the late 1880's, and as a consequence of the consciousness of growing power, military considerations and "reason of state" seemed to be gaining the ascendancy in Germany. These priorities and their predominance over all other considerations were voiced in the replies sent by Secretary of State Herbert von Bismarck and by the German minister in Washington to American protests against the steadily rising violations of the Bancroft treaties.[1] Germany also felt that she now needed all her young, able-bodied

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[1] For excerpts of this correspondence, see pp. 188-190 supra.

men at home: for the military services and, after that, for agriculture and industry. As emigration from Germany to the United States continued to flow steadily during the 1880's,[2] this loss of manpower was increasingly resented by Germans of all classes who had stayed behind. According to the neo-mercantilist doctrine of the time, these men would only serve to bolster America's ability to rival German industry and agriculture.

During the mid-1880's, some resistance to the increasing demands of German military service seemed to have been developing in Germany. The New York Times cited an 1884 German Military Department report in support of the contention that the "growing disinclination on the part of the male population of Germany to undergo military training and service is seriously menacing the empire's military strength."[3] According to the same report, 14,702 men had been sentenced in one year alone for attempting to emigrate to avoid service; 14,178 cases of men accused of similar offenses were then pending, and, worse yet, the number of men who had failed to present themselves for enrolment amounted to 103,251.[4] Reports such as these may provide an explanation of why the Germans, in 1885-86, came to the decision to mount a concerted attack on the naturalization treaties.

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2 Joseephy, Die deutsche Auswanderung, table I: During the years 1880 to 1891, 1,537,608 Germans came to the United States.

3 The New York Times, July 6, 1884.

4 Ibid. According to the Times, this report caused wide consternation in Germany: "The publication of these facts in an official form has startled the general public and produced the greatest anxiety in the German War Office."

There may have been an additional factor, not related to internal German conditions, which helped to launch the final demise of the Bancroft treaties. The year 1885 saw the inauguration of the first Democratic administration in the United States since the Civil War. Perhaps, the Germans hoped to find ears more sympathetic to their attitude in those of President Grover Cleveland and his Secretary of State Thomas F. Bayard. This assumption seems to have been reasonable. President Cleveland, in his annual message to Congress, after the mass expulsions of naturalized Americans from Schleswig-Holstein, and after the German minister's official denial of the two-year right of sojourn guaranteed by the treaties, said:

> Cases have continued to occur in Germany giving rise to much correspondence in relation to the privileges of sojourn of our naturalized citizens of German origin revisiting the land of their birth, yet I am happy to state that our relations with that country have lost none of their accustomed cordiality.[5]

This statement must certainly have been taken by the Germans as an acquiescence in their policy. Cleveland's last message to Congress (during his first term) seemed to agree even more clearly with the Germans:

> The easy manner in which certificates of American citizenship can now be obtained has induced a class, unfortunately large, to avail themselves of the opportunity to become absolved from allegiance to their native land and yet by foreign residence to escape any just duty and contribution of service to the country of their purported adoption. Thus, while evading the

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[5] Richardson, Presidential Messages, VIII, p. 499. Message delivered December 6, 1886. Of course, the relations were cordial, the Americans had given in to the German interpretation of the treaties. They had even accepted an outright denial of the two-year right of sojourn, a clear violation of article IV of four of the five treaties.

> duties of citizenship to the United States they make prompt claim for its national protection and demand its intervention on their behalf. International complications of a serious nature arise, and the correspondence of the State Department discloses the great number and complexity of the questions which have been raised.[6]

The New York Times' comments on this message revealed that President Cleveland meant primarily the German-Americans with this allusion.[7] However, another passage in the same article provided the key to the apparent change in American attitude toward the treaties. Speaking of immigration, past and present, the Times said: "We then sorely needed and eagerly sought immigration which we no longer have occasion to solicit, and which we are inclined rather to discourage."[8] The Times was a Republican newspaper--although it had supported Cleveland for his first term--and it can be presumed that it voiced a feeling then prevalent among many Americans.

In actual fact, German immigration did not drop off sharply until after the panic and depression of 1893;[9] however, American interest in immigration from Europe for the purpose of populating the vast expanse of the West and to fill the gaps left by the Civil War was, by 1888,

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6 Ibid., p. 785, annual message of December 3, 1888.

7 The New York Times, December 4, 1888. The Times, at this time, advocated a ten-year residency requirement for American citizenship. This, according to the paper, would have eliminated most differences with Germany over military duty liability of naturalized American citizens.

8 Ibid.

9 Joseephy, Die deutsche Auswanderung, table I: 1893: 78,756; 1894: 53,989; after that, emigration dropped off to average about 30,000 a year to 1910. See also Edward C. Kirkland, A History of American Economic Life (New York: 1960), pp. 366, 400, 495 for economic conditions in America in 1893.

coming to an end. After almost twenty years, the Americans had lost interest in the Bancroft treaties. In part this was because the treaties were no longer contributing materially to the flow of emigrants from Germany to America--if, indeed, they ever had. Also, by the late 1880's, as the Times expressed it, America was no longer interested in a large inflow of immigrants of any nationality--especially those without skills or capital.

As the German resistance to the treaties grew, so did the workload of the Berlin legation in defending the treaty rights of German-Americans. The United States authorities, too, began to doubt the loyalty of naturalized citizens who returned to live in their country of origin. It was felt that American citizenship was a privilege that should be valued highly, not something used primarily for the purpose of living in Germany protected from the duties normally required of German citizens. As a result of this growing doubt, less and less effort was made by the legation and by the Department of State to uphold the rights of German-Americans in Germany. Thus, the Germans were able to nullify these naturalization treaties progressively without incurring the odium of formal termination. This would not have been possible without the tacit acquiescence of the United States. The cases cited for the 1887-1907 period will attempt to show how this nullification was accomplished.

The German Mood in the Late 1880's

The factors which had led the United States and Germany to conclude the naturalization treaties in 1868 were no longer present. For entirely different reasons, the two nations were no longer really interested in the continued functioning of these agreements. In fact, the Germans actively desired their termination and threatened to do so themselves if the Americans would not acquiesce in their own construction of the treaties:

> The political interest of the Empire in repressing abuses of the treaty, resorted to with the view of evading military duty, is so vital that, after past experience, the denunciation of the treaties of 1868 would become necessary to German interests, if the interpretation of the treaties, as set forth in Mr. Pendleton's note, should be accepted as final.[10]

After mid-1886, therefore, the Americans were squarely faced with the choice of (1) accepting the German construction of the treaties with its curtailment of sojourn and the general use of expulsion; or (2) either terminating the treaties themselves or facing termination by the Germans.

The Americans, in order to avoid incurring the wrath of German-Americans by terminating the treaties themselves, chose to accede to the German construction with its curtailments. They hoped thereby to salvage enough of the original concessions to assuage public criticism. In adopting this course, the Department of State may also have taken into account the views expressed in a House Committee report of 1885, which recommended against termination because such action would leave temporary

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10 Letter, von Alvensleben to Bayard, July 8, 1886, F. R. 1887, p. 417. The construction referred to was the insistence on the two-year right of sojourn, guaranteed by article IV of four of the five naturalization treaties. This right had been conceded by the Germans until the Bäumer case (1878) and, after American protests, thereafter until 1886 in some cases.

legitimate visitors to Germany without protection there:

> Your Committee do not think that our Government ought to protect such persons, who have no love for the country of their adoption, and use the title of American citizenship only for the purpose of living as Germans in Germany, without performing the duties required by the German law from the subjects of that country. It would be unreasonable to take away from bona fide naturalized American citizens, who returned to their original country temporarily and for a legitimate purpose, the privileges secured by the Bancroft treaties, merely because those treaties do not protect persons who acquire the right of American citizenship only for selfish and fraudulent purposes.[11]

The Germans probably read this committee report and were guided by it in their own policies. The report seemed to indicate--correctly as it turned out--that they could now proceed with the full-scale attack on the naturalization treaties without opposition from the Americans.

Within a short time after the issuance of this report, the German press attack upon the treaty began. On September 30, 1885, a notice appeared in the Vossische Zeitung in Berlin, which reported on a decree, issued on September 9 by the Minister of the Interior in conjunction with the Minister of War, which supposedly limited the sojourn of naturalized Americans of German origin in Germany to short visits. The length of this visit was to depend on the circumstances in each man's case. This new regulation was to be applied regardless of whether there might be a suspicion of evasion of military duty connected with his emigration.[12] The article added that, according to the new regulation, the person was to be expelled

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[11] U. S., House of Rpresentatives, Index to Reports of Committees, I, 48th Cong., 2d Sess., 1884-85, House Report No. 2590 to accompany H. Res. 39 of February 7, 1885, p. 6.

[12] Translated extract from Vossische Zeitung, September 30, 1885, inclosure to letter, Pendleton to Bayard, October 6, 1885, MS Dispatches, Germany, M-44, reel no. 58.

at once if he acted in a "provocative way" or stressed the fact of his exemption from military service. The article claimed further that, according to paragraph 11 of the Reich's military law, any such German-American who overstayed the two years permitted to him, could be inducted into the German military service if he were under the age of thirty-two. If he were older, he would be expelled forthwith.[13] In transmitting the clipping, Minister George H. Pendleton remarked that he had recently seen similar references to such a decree in the press, but that "diligent inquiry from private and semi-official sources had failed to throw any light on the facts stated in the article."[14] The fact that he made no official inquiries, despite the fact that the decree seemed to violate the naturalization treaties outright, supports the view that the Americans were uninterested in the continued fuctioning of these treaties.

One year later, Pendleton sent another newspaper clipping to Washington. This time it was from the semi-official Norddeutsche Allgemeine Zeitung. Again, the article reported on a new regulation pertaining to returning, naturalized Americans of German birth who had not served their military duty in Germany. This regulation had supposedly been issued by the

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13 Ibid. No explanation of the term "provocative way" was given. As for the two-year sojourn, it had long ceased to be permitted. The threat expressed in the article seems to have been one of even earlier induction.

14 Letter, Pendleton to Bayard, October 18, 1886, MS Dispatches, Germany, M-44, reel no. 61. Pendleton's search could not have been very thorough. If a newspaper unconnected with the government could obtain a copy of the decree, it would surely have been possible for Pendleton to obtain one also. As it concerned naturalized Americans, the Foreign Ministry would have had to affirm or deny the existence of this decree upon official inquiry.

Minister of the Interior. As in 1885, the naturalized American in question was to be allowed a short sojourn, but to be expelled if he behaved in any "provocative way."[15] Pendleton commented that the Norddeutsche Allgemeine Zeitung was considered the semi-official organ for the Prussian government and "especially of the Chancellor."[16] The American minister then discussed a similar decree, issued by the Royal Saxon government, and added:

> I fear the decree marks a new departure in the condurct of Saxony in this regard....The pretension to a right of sojourn under article IV of the Bancroft Treaty of 1868, seems to have been thought not worthy of mention. The article alludes to it only as affording, in the given case, ground for presumption of abandonment of naturalization in the United States, and the consequent obligation to perform military duty. The coincidence of views with those which have been lately put forward in the correspondence of the Imperial Foreign Office with this Legation would naturally lead to a suspicion as to the inspiration of this decree, even if no allusion has been made to the conclusions of the Royal Prussian Government.[17]

Apparently, the Reich's central government was, at this time, instructing the local governments to disregard the naturalization treaties. It was also preparing public opinion for a concerted attack on the treaties. Judging from the correspondence between the Foreign Ministry and the Berlin legation, and from the letter of the German minister in Washington threatening to terminate the treaties, the opening salvos had aready been fired.

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15 Norddeutsche Allgemeine Zeitung, evening edition, October 16, 1886, inclosure to letter, Pendleton to Bayard, October 16, 1886, MS Dispatches, Germany, M-44, reel no. 61.

16 Letter, Pendleton to Bayard, October 18, 1886, MS Dispatches, Germany, M-44, reel no. 61.

17 Ibid. Despite previous disclaimers, Pendleton now had to acknowledge that these articles had been inspired by the German government.

The 1880's saw a Germany increasingly centralized and ruled by a steadily growing bureaucracy that seemed to base its view of the public good on a mystical concept called "reason of state." Some Germans were becoming concerned with the effects of this concept on the rights of individuals. One of these was Theodor Barth, Reichstag deputy and editor-in-chief of Die Nation. In 1887, he wrote an article entitled "Public Criticism of Public Officials,"[18] in which he expressed his growing concern with the decisions, handed down in preceding years by German courts, involving criticism of public officials (Beamtenbeleidigung). Barth cited decisions which had involved insults to, for example, the Minister of Culture, the Minister for the Railroads, or even the Chancellor, which had then drawn critical articles from the liberal press. The authors of these articles had been sentenced to jail terms of several months.[19]

Barth asserted emphatically that these articles had not been instances of mischief or irresponsibility, but that they had represented attempts at sober criticism of the actions of public officials, undertaken in all seriousness and after due reflection. Barth commented that, in countries like England, France, Italy, and especially in the United States, these writers would have been virtually exempt from prosecution, whereas in Germany they were being prosecuted with increasing frequency.[20] He added

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18 Theodor Barth, "Die öffentliche Kritik and den Handlungen öffentlicher Beamter," Die Nation, V (No. 5, October 29, 1887), pp. 58-59.

19 Ibid.

20 Ibid. Barth also remarked that the severity of the sentences was also increasing.

that the legal interpretation of the term "Beamtenbeleidigung" was now being extended to cases in which it would have been unthinkable to apply such a term even a few years previously.[21]

Barth noted that the tendency to limit criticism of public officials through legal prosecution coincided with the parallel extension of the power of the state, and especially that of the police. He saw great danger ahead for individual rights in these two trends. He feared that the growing scope of official authority and the expanding number of officials would soon extend the power of the state into every sphere of German life. He asserted that the two policies were being pursued with organized deliveration. Barth warned that in any free society the only criticism possible--outside of parliament--was one voiced in public assembly and in the press. He claimed that as it was already very difficult in Germany to make any public official responsible for damage caused to a private individual, to surround the official with a mantle of infallibility would make it still more difficult to obtain private redress for official harm, and that the consequences of this for society would be serious.[22]

Barth's criticism was valid. The correspondence of the American legation shows that the Foreign Ministry was becoming more and more reluctant to tolerate any criticism--however valid--of its own decisions, or of those made by local authorities. The accession of William II in

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21 Ibid.

22 Ibid., p. 59.

1888--with his exaggerated ideas of the splendor and dignity of public office--only increased this trend. The tone of the German Foreign Ministry in replying to American protests against violations of the Bancroft treaties increased in sharpness. During this period, commercial rivalries between the United States and Germany continued.[23] As the United States, too, entered the ranks of imperialist nations, differences between the two countries developed over Samoa.[24]

These Samoan crises seriously disturbed what feelings of amity still remained between the two countries. In 1889, after the settlement of one such crisis, the Munich Allgemeine Zeitung reported a general satisfaction among German-Americans in the United States. According to the paper, this segment of the American population had been perturbed and had even feared an open rupture between the two countries. The Allgemeine added that while the greater part of the German-Americans had supported the United States government's stand, they had genuinely praised Bismarck's conciliatory move toward settlement of the differences.[25]

Another Attack on the Children of Naturalized Americans

In his first annual message to Congress in December, 1889, President Benjamin Harrison assured the nation that "the most cordial relations

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23 The "pork dispute," for example, continued until 1891. See Louis L. Snyder, "The American-German Pork Dispute 1879-1891," The Journal of Modern History, XVII (No. 1, March 1945), p. 28.

24 The first Samoan treaty was signed on April 12, 1890 in Berlin. See Vagts, Deutschland und die Vereinigten Staaten, I, p. 695.

25 Allgemeine Zeitung (Munich), evening edition, June 13, 1889.

existed between Germany and the United States."[26] He ascribed them to the German moderation in handling differences over returning naturalized Americans.[27] Actually, if such good relations existed between the two countries, it was due to the (temporary) settlement of the Samoan question and to the fact that the Americans no longer actively opposed the progressive nullification of the naturalization treaties. The Germans now mounted another attempt to claim the children of naturalized American citizens for themselves.

The John Haberacker Case (1891). The Haberacker case serves a dual purpose: to show that the Germans were now determined to bring the sons of naturalized Americans of German origin under their control, and to demonstrate how right Theodor Barth had been in his 1887 article. The Germans had come a long way toward the uncritical acceptance of even the most illogical actions on the part of public officials: such men were now truly wrapped in a mantle of infallibility. This was true even in Bavaria, which, ten years earlier, had still been very anti-centralization and anti-Prussian.

John Haberacker was born in Windheim, Bavaria, in 1869. His father died there in 1883 and John, one of several minor children, was brought to America by the widow that same year. John was fourteen years old at that time. The widow remarried in 1886 in America, her second husband

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[26] Annual message, delivered December 3, 1889, F. R. 1889, p. VIII.

[27] Ibid.

was a former Bavarian, but who had, by that time, held American citizenship for over thirty years.[28] In June 1890, the couple, accompanied by John, then aged twenty, returned to Bavaria for a visit. They left again in July, leaving John behind for what they thought was another two weeks' visit with his father's relatives. Immediately after their departure, John Haberacker was arrested and impressed into the Bavarian army.[29]

John's brother, through their Congressman, contacted the Department of State, which, in turn, caused the Berlin legation to intervene on Haberacker's behalf. Bavaria, curiously, then had recourse to section III of her protocol (which prohibited the return of males under age thirty-two who had not served their military duty), while simultaneously claiming Haberacker as a Bavarian subject and keeping him in the Bavarian army. How both claims could be maintained at the same time is hard to understand. But the case has another curious aspect. The correspondence over the case continued over a period of eighteen months. When, finally, the Germans could no longer have avoided releasing Haberacker, the Foreign Ministry admitted that he had "deserted on March 31, 1891 and that his whereabouts are unknown."[30] This "desertion" had taken place a full year

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28 Letter, Acting Secretary of State Wharton to Phelps, September 8, 1890, F. R. 1891, p. 496.

29 Ibid.

30 Letter, Phelps to Blaine, March 19, 1892, F. R. 1892, p. 199.

before it was finally admitted while, during all the intervening period, the exchange of correspondence between the embassy and the Foreign Ministry had continued.

Again, as so often before, the United States did not insist upon a ruling on the citizenship of such children of naturalized citizens. This was especially regrettable in the Haberacker case, as there was no suspicion of either fraud or of a permanent return to Germany. The final letter from the Foreign Ministry had insisted that the Bavarian government still claimed Haberacker as a Bavarian subject and that it categorically refused to discuss this matter any further.[31] The Americans never disputed the German contention--clearly untenable in this instance-- that Haberacker was still a German citizen. Formerly, the Germans had claimed minor children who had returned to live in Germany with their parents. Haberacker's father was dead, and he himself was permanently domiciled in the United States.

Instead, the embassy correspondence abounds with complaints that they could not get in touch with Haberacker. The Americans never considered that Haberacker might have been forbidden to communicate with anyone.[32]

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31 Letter, Phelps to Blaine, March 19, 1892, F. R. 1892, p. 199.

32 If Haberacker was held in detention, this was very probable. In 1885, Ernst Heitmüller, held in a Hanover jail had been forbidden "to write until he had spent one month in prison." Letter, Pendleton to Bayard, November 2, 1885, F. R. 1885, p. 432. This type of harassment was clearly destined to prevent the prisoner from communicating with the United States authorities. The local German authorities knew that they would, eventually, have to release the person in question. In order to postpone this, they tried to prevent contact with the consulate or the legation.

A formal inquiry, addressed to Haberacker's unit by the American consul in Nuremberg in January, 1891, produced a strangely evasive reply:

> Answered briefly by the respectful statement that Johann Haberacker (typesetter), born at Windheim, has on August 5, 1890, been mustered into the regiment (owing military duty), who might not otherwise be found for service when wanted unsicherer Dienstpflichtiger). Lindhamer, Colonel, Fourteenth Infantry Regiment.[33]

This reply neither answered the consul's questions, nor did it give any actual information on Haberacker's whereabouts at the time. In retrospect, it is possible that Haberacker had already departed. The American embassy never made any effort to find out what happened to Haberacker. Their whole conduct of this case supports the contention that, by 1890-91, they were not even interested in defending legitimate rights of naturalized Americans under the treaties. The German Foreign Ministry's final communication illustrates the lengths to which an imperial ministry would go to protect even the most absurd actions of a subordinate authority.

The Alfred Meyer Case (1899). Not satisfied with claiming the German-born children of naturalized Americans, the Germans now tried to reverse their own previous ruling in the Revermann case, which had conceded American citizenship to American-born children of such naturalized citizens.[34] In 1897, twelve years after the Revermann ruling, the Germans reopened the question in the case of Alfred Meyer. Meyer had been born in America, but

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[33] Letter, Lindhamer to Black (consul in Nuremberg), quoted in letter, Phelps to Wharton, January 31, 1891, F. R. 1891, pp. 503-504.

[34] Letter, Kasson to Frelinghuysen, January 6, 1885, F. R. 1885, p. 392.

had returned to Germany with his family at the age of five. Upon reaching military duty age, he was inducted into the German army. He tried to obtain his discharge on the basis of his American citizenship.[35] As his father's naturalization in America could not be proved--why it should ever have been required, given the Revermann ruling, is not clear--he finally appealed to the American embassy for help.

The embassy, as it had done in the Steinkauler, Boisselier, Oppenheimer and Revermann cases, based its claim of American citizenship for Alfred Meyer upon his American birth (Baltimore, Maryland). After protracted correspondence, and despite proof of their own previous ruling in a similar case, the Germans refused to recognize Meyer's American citizenship. Instead, they discharged Meyer from the army, after he had served nine months, claiming that he was "physically unfit for service."[36] This was clearly a subterfuge to avoid formal recognition of American citizenship, as such recognition would have made his discharge mandatory. Again, it appears that the Germans were willing to go to any lengths rather than to admit error on the part of any--even subordinate or local --German authority. This was the practice Theodor Barth had deplored so eloquently ten years previously.

The Americans accepted the German solution and closed the case, even though the individual involved was a native-born, rather than a naturalized, American citizen. While it was true that Meyer had expatriated

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35 Letter, Uhl to Sherman, March 19, 1897, F. R. 1897, pp. 194-195.

36 Ibid., p. 195.

himself and had not sought to make use of his American citizenship until called upon to perform his German military service, he was still considered a native-born American citizen. As such he could reside abroad an unlimited number of years--as many did--without any question as to his motives. Thus, not only did the Germans introduce a question of the motivation of emigration, but the Americans now questioned the motives of citizens who resided abroad for protracted periods. This, despite the official opinion voiced by one American minister to Germany:

> There are many naturalized Americans who reside for more than two years in Germany with the constant intent to return to the United States. They often carry on a business in both countries, beneficially increasing commercial relations between the two. These persons, however long residing in the original country...have always been regarded by the United States as still citizens of the country which they adopted.[37]

The Germans, too, were discriminating among naturalized American citizens. They actively sought to prevent the return of military-age men. Yet, they raised no questions whatsoever regarding the continued American citizenship of older naturalized Americans. These, if they had sufficient means to do so, could live for years in their old homes without ever being molested by the local authorities. The Americans never protested this discriminatory practice on the part of local German authorities. In fact, they never drew attention to it when protesting the treatment of military-age men.

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37 Letter, Kasson to Frelinghuysen, February 27, 1885, MS Dispatches, Germany, M-44, reel no. 55. This was a statement of the American official position with respect to naturalized citizens. The "Opinion of the Attorney-General," given in the Steinkauler case, clearly stated that no unilateral action could deprive a native-born United States citizen of his birthright. For this opinion, see F. R. 1875, I, p. 565.

Conflict Over Documentary Proof of Citizenship

In the 1890's, the Germans, in their eagerness to prevent the return of military-age naturalized Americans, resorted to another form of harassment. They now refused to accept passports as proof of American citizenship. This pointed up a problem wich had been introduced with the 1868 naturalization treaties: article I stipulated a residence of five-years in America, besides requiring proof of naturalization there. This amounted to de facto limitation of the soveignty of the United States, as American citizenship could be acquired legally upon shorter residence.[38] It also stressed another point of difference between the two countries: their diverse legal systems.

The Karl F. Seifried (1895) and George Kübler (1898) Cases. When Karl Friedrich Seifried returned to Wuerttemberg after an absence of fifteen years and naturalization in the United States, the government of that state refused to accept his American passport as proof of a five-year absence.[39] This meant, that according to article I of the Wuerttemberg treaty, his American citizenship was not recognized. The United States, on the other hand, refused to accept this questioning of Seifried's citizenship:

> This government can never consent to a course of action by a foreign government virtually amounting to the denial of the validity prima facie of our passports, nor to the recognition of a rule that the burden rests on their possessors to prove lawful possession and use, such a proposition subverts the sound rules of international law.[40]

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38 In the case of service in the United States army or navy. This rule was introduced during the Civil War and is still valid.

39 Letter, Runyon to Gresham, February 15, 1895, F. R. 1895, p. 515.

40 Letter, Uhl to Runyon, March 11, 1895, F. R. 1895, p. 516.

According to Anglo-American legal concepts this view was correct. However, under the German system the burden of proof rested upon Seifried. Therefore, the government of Wuerttemberg demanded certification of the passport by a German consul in the United States.[41] In addition, the 1868 naturalization treaties, once ratified, had to be considered part of the law of the United States. As these treaties qualified American citizenship in Germany, and Seifried was in Germany at the time, the Wuerttemberg authorities could legally require this additional proof.[42]

In the case of George Kübler the German authorities went one step further. Kübler had asked the United States embassy in Berlin to have his 1887 naturalization certificate certified by the German Consul General in New York in order to have some inherited property released to him and to have his name stricken from the German military lists. The German Foreign Ministry, upon being furnished the required documentation, now claimed that the German consul's certification was not sufficient proof. The embassy then had the naturalization certificate certified by the United States Secretary of State, the Secretary of State of the State of New York, and itself authenticated the document before the property was finally released.[43] Thereafter this cumbersome procedure

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41 Letter, Runyon to Gresham, February 15, 1895, F. R. 1895, p. 515.

42 This fact was admitted by the American Secretary of State. Letter, Olney to Jackson, February 13, 1895, F. R. 1895, p. 522: "We certainly could not question the competency of the German court to...pass upon proof of five years' total residence in the United States."

43 Letter, White to Hay, March 31, 1899, F. R. 1899, p. 316.

became common practice.[44]

The Germans obviously hoped that such requirements would serve as an additional discouragement for the return of naturalized emigrants. They may also have hoped that, given the time and effort required for intervention in each individual case, the United States authorities would finally tire of this procedure and just stop intervening on the basis of the naturalization treaties. This latter hope, however, was unrealistic because the American officials could not--even if they had wished to--choose this course, as it would have been politically impossible to justify. In general, by this time, the American personnel of the Berlin embassy sympathized with the German point of view. Officially, however, they had to continue to uphold the treaties.

American Acceptance of the German Construction of the Treaties

Three cases, all of which occurred in 1901, will serve to illustrate how far the United States had come, by the turn of the century, in acquiescing to the German point of view. By this time, the United States had joined the other imperialist nations in the pursuit of overseas conquests. The period leading up to and including the Spanish-American war had brought German-American relations to their lowest point of the century. The official position of the German Foreign Ministry and the government before and during that conflict had been one of carefully

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[44] Circular entitled "Formalities in Regard to Military Cases," inclosure to letter, Hill to Secretary of State, February 24, 1909, F. R. 1909, p. 269.

voiced neutrality.[45] However, both the Kaiser and most of the German press made no secret of their sympathies for Spain.

Just before the outbreak of the war, a newspaper which had formerly been extremely friendly to America wrote:

> The situation between Germany and America has entered in a new acute state. Ever since Germany's progress as an economic power which has resulted in mounting differences between the two countries, the conflict has been building up. Germany is now the best-hated country in the American press. Although that hatred is primarily directed against the most hated commercial adversary, it is beginning to spill over onto the political arena....Everything German is to be rejected.[46]

The new American ambassador, Andrew D. White, who arrived for a second tour in Germany in the summer of 1897, sixteen years after he had left it, wrote in his autobiography:

> At that time [1881] German feeling was decidedly friendly to the United States....But this had now changed. German feeling toward us had become generally adverse and, in some parts of the empire, bitterly hostile. The main cause of this was doubtless our protective policy....But this was not all. The real difficulties were greatly increased by fictitious causes of ill-feeling....At the time of my arrival, there were in all Germany but two newspapers of real importance friendly to the United States.[47]

White then went on to describe the situation during the Spanish-American war, when relations between the two countries deteriorated even further. He claimed that this anti-American feeling was general: "Nor was this

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[45] Bernhard von Bülow, Denkwürdigkeiten, I (Berlin: 1930), pp. 219-220: "I have already mentioned that Wilhelm II was with all his sympathies --it was his nature to take sides emotionally--on the side of Spain, partially because of his aversion to the republican form of government in America, partially because of personal friendship..."

[46] Allgemeine Zeitung (Munich), morning edition, January 25, 1898.

[47] Andrew Dickson White, Autobiography, II (New York: 1905), p. 144.

confined to the more ignorant. Men who stood high in the universities, men of the greatest amiability, who in former days had been the warmest friends of America, had now become our bitter opponents, and some of their expressions seemed to point to eventual war."[48]

White tried to reverse this trend. He went to Leipzig, Saxony, to deliver a speech on the occasion of the American Independence Day, July 4, 1898. That morning had brought new violent attacks on America in the German press, eager to claim victories for Spain. But the evening brought the news of the destruction of the Spanish fleet.[49] When American victory seemed assured, German public opinion changed and, suddenly, the Germans pretended that the Americans had always misunderstood both their tone and their motives.[50] White's efforts met with reasonable success because of his own personal popularity in Germany, and because President William McKinley's successor, Theodore Roosevelt, made a special effort to improve German-American relations.

The Spanish-American war also brought the Americans closer to the

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48 Ibid., p. 146.

49 Ibid., p. 149.

50 The New York Times, September 11, 1898, reported a sudden change of tone and attitude on the part of German newspapers, which now expressed surprise at American indignation: "The indignation of all good Americans at the attitude of the German people as a whole is, of course eminently natural...as we have been obliged to read the constant venemous attacks of the German newspapers and the insulting remarks of private individuals." The Times added that "many of them are gradually changing their tone without attempting to explain why." For the German position, which claimed that the whole misunderstanding had been the work of British journalists, see: Allgemeine Zeitung (Munich), July 14, 1898; Norddeutsche Allgemeine Zeitung, July 9, 1898; Neue Preussische Zeitung (Kreuzzeitung), July 7, 1898.

German point of view regarding naturalized citizens who went back to their country of origin. White, for example, generally shared the German point of view, as did his Secretary of Legation, John B. Jackson.[51] The German position, by 1901, can be seen from the Foreign Ministry's conduct of the following three cases. It will be remembered that the rights of naturalized American citizens were guaranteed by an international agreement, and that this agreement was, at least nominally, still in force.

The Max Friedrich Schaaf Case (1901). Max Friedrich Schaaf was born in Leipzig in 1872, emigrated to America with his family at the age of ten in 1882, and, as a minor, was naturalized with his father in 1899. He returned to Germany on a visit the following year.[52] Schaaf was served with an expulsion order on December 11, 1900, and was given fourteen days to leave the city of Hamburg. Ambassador Andrew D. White reported the case to Washington, stating that he had been informed by the Foreign Ministry that, due to the embassy's interest in the case, Schaaf would be allowed to stay until April, 1901, but that the order of expulsion would then be allowed to go into effect because the Senate of the "Free Hanse City" assumed that Schaaf had emigrated to evade military service.[53]

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51 White, Autobiography, II, p. 171, speaking of his work granting passports said: "There are always a considerable number of persons, who, having left Europe just in time to escape military service, have stayed in America long enough to acquire American citizenship, and then, having returned to their native country, seek to enjoy the advantages of both countries while discharging the duties of neither." John B. Jackson's views will be made clear in the correspondence on the three cases which follow.

52 Letter, White to Hay, January 17, 1901, F. R. 1901, p. 158.

53 Ibid. Judging from his letter, White seemed to accept the German position.

Secretary of State John Hay did not agree with the German opinion. He wrote to White that "the German contention in this case appears to be extreme and even scarcely reasonable, as Mr. Schaaf emigrated in his father's care when he was only ten years old."[54] Hay also alluded to previous similar contentions on the part of the Germans in other cases by adding:

> This Government would much regret if this case, and others which have within the past two years been reported to your embassy, and the consulates in Germany, should indicate a purpose to hold all American citizens of German origin, who emigrated during minority, amenable to the imputation of intention to evade military service, no matter what their age may have been at the time of emigration ....The application of this exceptional procedure to all minor emigrants would not be in consonance with the spirit and intent of existing conventions of naturalization between the two countries.[55]

In his reply to this letter, White claimed that the German authorities now would not even enter into a discussion of such cases, and that the age at the time of emigration was no longer taken into account. The Prussian authorities, for instance, contended that no former German would be permitted either an extended visit or to settle in that country while he was still of an age when other Prussians had to serve in the military forces. White added: "They consider the provisions of the Bancroft treaties are sufficiently complied with if the person in question is allowed to visit his former home and to remain there a few weeks."[56]

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54 Letter, Hay to White, February 5, 1901, F. R. 1901, pp. 158-159.

55 Ibid., p. 159.

56 Letter, White to Hay, February 16, 1901, F. R. 1901, p. 159.

The Albert Ehrenström Case (1901). The same position with regard to motivation of emigration as in the Schaaf case was taken by the Germans in a second 1901 controversy. Albert Ehrenström emigrated to the United States with his parents at the age of thirteen, was naturalized there, and returned to Germany on a visit in 1901. He was served with an expulsion order almost as soon as he arrived.[57] The American consular clerk in Frankfurt reported the matter to the Department of State, adding:

> In every case which I have reported to the embassy it has succeeded in obtaining for the person permission to extend his visit two or three weeks, but in each instance the American citizen has informed me that he would not have gone to the expense of the journey if he had been cognizant of the fact that he could be expelled by order of an official having local authority, no matter how peaceably he might conduct himself.[58]

The clerk presumed from a number of recent cases he had witnessed "that a general order has recently been issued by the Prussian Government restricting for our naturalized citizens of German birth the right of temporary sojourn in Prussia, thus discriminating between our native and our naturalized citizens in what seems to me direct violation of the protocols appended to the convention of February 22, 1868."[59] In substantiation of his contention, the consular clerk enclosed a clipping from the Frankfurt Kleine Presse of March 20, 1901.[60] The language

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57 Letter, Murphy (Frankfurt) to Hill, January 11, 1901, F. R. 1901, p. 176.

58 Ibid.

59 Ibid.

60 Inclosure to ibid: "Military. By higher authority the attention of police and municipal officials has been called to the following: Persons who, before fulfilling their military obligations or for the purpose of avoiding the same, have emigrated to the United States of America, and there acquired American citizenship, will be permitted to remain in Germany only for a period of weeks or months according to the circumstances of each case, but they will not be permitted to settle permanently in Germany."

of this newspaper extract almost duplicated that of the order issued to expel Albert Ehrenström, which read:

> Answer to letter of December 12, 1900:
> The order to Albert Ehrenström to leave Prussian territory before February 1, 1901, is based upon an instruction from a higher [sic] source under which Germans formerly liable for military service who return to Germany after having acquired American citizenship are to be permitted to remain only for a short time, which is to be measured by the circumstances and purposes of their sojourn. The period allowed in the above-mentioned case appears to be sufficient.[61]

This letter to Ehrenström shows that local authorities were given the power to administer a treaty which had been concluded between North Germany and a foreign state, indeed a strange way to honor a foreign commitment. The Department of State was somewhat perturbed by the case and wrote to the embassy urging some action. In reply, White sent to Secretary of State Hay a report which his Secretary of Embassy, John B. Jackson, had made to him. In view of the fact that the local authorities had openly stated that they were acting specifically against naturalized American citizens, Jackson's report reads strangely:

> After more than ten years' experience at this post...I feel at liberty to say with positiveness that there is no intention on the part of the Prussian government to discriminate against American citizens.[62]

This sentence seemed to stand in direct contradiction to the order expelling Ehrenström. In the same report, Jackson also seemed to contradict is own

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61 Letter, Royal Police Presidium, Magdeburg, to United States Consulate, Frankfurt, December 21, 1900, inclosure to letter, Murphy to Hill, January 11, 1901, F. R. 1901, p. 176.

62 Report, Jackson to White, May 4, 1901, inclosure to letter, White to Hay, May 4, 1901, F. R. 1901, p. 177. Jackson's pro-German sympathies can be seen from this report. Maybe the two-year limit on foreign residence should have been applied to him also. Instead, he became United States ambassador to Greece a short time after this.

earlier statement with the remark:

> The general rule is to make it unpleasant for all persons of German birth who have evaded military service in their native country, whether their emigration took place for the purpose of evading such service or not, upon their return to Germany after having acquired another nationality.[63]

As the nationality acquired was, in the great majority of cases, American, and as the Germans had stated their determination to discriminate against naturalized Americans outright both in the press and in the Ehrenström answer, Jackson's statement that no discrimination existed is hard to understand. Some doubt arises as to whether Jackson was truly representing all Americans in Germany.

The Secretary of Embassy further dismissed the letter of the Frankfurt consular clerk and its allusions to the violations of the naturalization treaties with equal disdain. Citing the Ehrenström case he said:

> With regard to the order in the case of Albert Ehrenström...and to the recent general order, I have to state that I have been informed by the Prussian ministry of the interior that attention has merely been called to what has been in practice for a long time.[64]

This statement constituted a rather sad epitaph to a series of treaties that had been concluded to protect naturalized American citizens of German birth upon their return to Germany. It marked the de facto abrogation of the treaties. No effort was made by the Americans to dispute the German action, no protest was lodged--except in the letter from Hay to White. The situation was now almost back to where it had been in 1867, the only difference being that now the American representatives in Berlin were

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63 Ibid., p. 178.

64 Ibid., p. 178. Neither White nor Jackson heeded the instructions of the Secretary of State to take some action in this case.

indifferent to the fate of naturalized American citizens, whereas in 1867, they had not been.

The Paul Friedländer Case (1901). The case of Paul Friedländer illustrates just how far this indifference had gone. Friedländer had emigrated (with official permission) to the United States, had resided there the required five years, and had been naturalized in Chicago in 1897. Three years later, in 1900, his mother, who still lived in Potsdam, was called upon to pay a fine for his "unauthorized emigration."[65] Her contention that Paul was an American citizen did no good with the local authorities. Friedländer himself finally applied to the American embassy for help, as he intended to visit Germany in 1901 and did not want to be faced with a fine or, with the alternative of a prison sentence. The embassy intervened and was advised by the German Foreign Ministry "that Friedländer petition the Emperor directly in order that judgment against him might be set aside before his return to Germany, and suggesting that, in order to expedite matters, the embassy should support such a petition when made."[66]

The embassy, according to its own statement, again intervened requesting reconsideration because "Friedländer's offense had merely been

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65 Letter, White to Hay, July 10, 1901, p. 180. In this letter, White said in one paragraph that Friedländer had had permission to emigrate and, in another that his "offense was merely emigrating without permission," a contradiction that Assistant Secretary of State David J. Hill pointed out in his reply of July 26, 1901, F. R. 1901, p. 182. This merely illustrates the lack of interest on the part of the embassy in such cases of severe violation of the treaty rights of naturalized Americans.

66 Letter, White to Hay, July 10, 1901, F. R. 1901, p. 181.

emigration without permission, and not desertion."[67] Here is a flagrant example of disregard of the rights of a citizen by his own embassy. Friedländer had had permission to emigrate. He was, therefore, not even guilty of "unauthorized emigration." The embassy, in its letter to the Foreign Ministry, had erroneously quoted the circular issued by the Minister of Justice in 1868 granting immunity from punishment under article II of the North German treaty. The Germans, as they had often done previously, did an about-face and now claimed that this circular was not effective unless the person in question was present in Germany.[68] It then, again, recommended a petition for clemency as the best way to end this case and to avoid trouble.

At this point, White asked for instructions from Washington before replying to the Germans. He did, however, write to Friedländer that, "while the embassy holds that he is entitled to visit Germany without molestation under the terms of the treaty itself, and that no pardon is necessary, it might enable him to avoid possible trouble if he acted upon this advice [petition]."[69] It is a revelation to read the letter from White to Hay on this case. First, the embassy need not even have

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67 Ibid.

68 Ibid. This was incorrect, as a quick check of the embassy records would have revealed. Regardsless of whether the emigration had been authorized or unauthorized, the Germans had, in numerous cases, remitted fines or releasded attached or inherited property of naturalized Americans of German birth without their actual presence in Germany. The Military Case Report, June 30, 1877, F. R. 1877, pp. 247-252 alone, contained six such refunds alone, made without the person's presence in Germany.

69 Letter, White to Hay, July 10, 1901, F. R. 1901, p. 181.

engaged in a dialogue with the Germans, as Friedländer had emigrated with official permission, and only needed to be accorded his rights. These rights would have been violated even if he had left without permission, provided that he was not a deserter--which even the Germans admitted he was not. Refunds had, until then, been made upon application of the embassy for men then residing in the United States. Second, the fact that the American embassy should advise a naturalized American citizen of German birth, who obviously wished to make a bona fide visit to his mother--a visit to which he was entitled under a treaty still officially in force--that he should take the advice of the Germans and apply for clemency from the emperor to "avoid trouble," is incomprehensible. There was no suspicion of fraud. Friedländer was still in the United States, and was only trying to arrange for a legal visit. He had even renewed his German passport at the local German consulate up to the time of his naturalization.[70] Thus, the Germans must have thought him a citizen in good standing up to the time of his naturalization.

Ambassador White, in his letter to Secretary of State Hay, stated that, without further instructions, he would not support a petition such as the one advised by the Germans for Friedländer:

> As by doing so it might be considered that the embassy admitted the correctness of the position now taken by the foreign office. If it is necessary for Friedlander to send in a petition in order to secure such rights as would appear to be his [sic] under the treaty, there is no reason why the same course should not be

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70 Ibid., p. 180.

> followed by every American citizen of German origin who desires to visit his former home, and this, under existing circumstances, the embassy is not prepared to admit.[71]

The formal position taken by White in his letter is correct. The German intent was probably just the one suspected by White. However, the letter reads like a press release to quiet German-American fears.

By advising Friedländer to petition the emperor--an advice that was assuredly related to the Germans--instead of insisting upon his treaty rights with the Foreign Ministry, White acquiesced in the de facto abrogation of the naturalization treaties and the rights granted to German-Americans in Germany. Assistant Secretary of State (and later ambassador to Germany) David J. Hill also concurred in this when he wrote to White that Friedländer should seek redress through the courts, as "a pardon would be inappropriate as implying guilt which is shown not to exist in fact, yet if this is the only way the Emperor can lawfully proceed, the proceeding should be accompanied by you with this interpretation."[72] A quick check through the records of the Department of State would have revealed innumerable precedents of fine remission without petition. Thus, the emperor's pardon was not required in Friedländer's case. As no further action was taken, the United States, once again, demonstrated its indifference to the legitimate rights of naturalized citizens. The Germans had achieved a final victory. By refusing to remove Friedländer's fine and to permit his unmolested return to Germany except by means of a "pardon from the emperor" for a crime he had not committed, they wiped out the last

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71 Ibid., p. 181.

72 Letter, Hill to White, July 26, 1901, F. R. 1901, p. 183.

benefits remaining to German-Americans from the Bancroft naturalization treaties.

Conclusion. Just prior to the Friedländer case, the United States had issued a circular entitled "Liability of Naturalized Citizens of the United States under Military and Expatriation Laws of their Native Country."[73] The circular which purported to be "correct, yet not to be considered official,"[74] claimed that all German subjects were liable to military duty "from the time they had completed their seventeenth year until their forty-fifth year."[75] The circular warned former Germans that they would be permitted to visit Germany only for very short periods of time if they had not served their military duty there, and that it was not safe for any man who had been expelled once to return unless he was past the age of thirty-one.[76]

The circular then quoted from the naturalization treaties--why, is a mystery, as these treaties' exemption from punishment for (authorized or unauthorized) emigration were no longer observed. Emigrants from Alsace-Lorraine were advised that: "Alsace-Lorraine having become a part of Germany since our naturalization treaties with the other German states were negotiated, American citizens, natives of that province, under existing circumstances, may be subjected to inconveniences and possible detention by the German authorities if they return without having sought and obtained

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73 Dated January 23, 1901, printed in F. R. 1901, pp. 160-161.

74 Ibid., p. 160.

75 Ibid.

76 Ibid.

permission to do so from the imperial governor at Strassburg."[77] The circular further advised that the Wuerttemberg authorities required a certificate proving five years' residence in America in addition to proof of citizenship.[78]

This circular can be said to have constituted the true end of the Bancroft naturalization treaties. The Friedländer case merely confirmed that they were, indeed, dead. After fourteen years of open assault, which had followed upon nine years of indirect attack, the nullification of the treaties had been achieved. The Germans had accomplished what they had set out to do: to prevent the effective return to Germany of former Germans who had emigrated to America and had been naturalized there. Thus, these German-Americans would be unable to flaunt their freedom from military service before their German contemporaries. As the circular had stated, Germans, at that time, were liable to military duty until age forty-five. This meant that the German government had succeeded in preventing any naturalized Americans from returning to their former German homes before reaching that age. In effect, it left naturalized Americans of German birth where they had been before 1868: unable to Germany before late middle age. If they attempted a visit before reaching

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77 Ibid., p. 161. Yet, at the same time, the United States was still officially claiming applicability of the treaties to Alsace-Lorraine in all correspondence with the Germans. The last recorded such claim appears in letter, Tower to Minister of Foreign Affairs, March 15, 1907, F. R. 1907, p. 513.

78 Circular, dated January 2, 1901, F. R. 1901, p. 161.

that age, they were liable to immediate expulsion. As this expulsion was left to the discretion of local authorities, who were also the first ones to become aware of the presence of such German-Americans, the returning male American had at best several weeks of sojourn before being summarily evicted.

The United States, through lack of interest and--it must be admitted--sympathy for the German point of view, had permitted the gradual nullification of a series of treaties which it had once so ardently desired and had worked so hard to attain. American domestic needs no longer required continuation of those agreements. However, as their termination would have stirred political trouble for any administration, they were never formally revoked. Instead, a minimum of correspondence--which, after 1901, cannot even be called protest--was kept up in order to disarm in advance any momentary public outcry which might occur over a specific case that attracted the notice of the press. So long as public opinion remained silent, the United States authorities preferred henceforth to ignore the existence of the Bancroft naturalization treaties.

CHAPTER VII

AMERICAN ATTEMPTS TO REVISE THE NATURALIZATION TREATIES

Introduction. The 1868 naturalization treaties between the United States on the one hand, and the North German Confederation, Baden, Bavaria, Wuerttemberg, and Hesse on the other--then constituting all German territory except for Austria-- came about through a very unusual set of circumstances. Both American and German domestic conditions proved auspicious, and internationally, the United States was just beginning to gain recognition as a potential world power. A later minister to Germany, Aaron A. Sargent, summed up the situation surrounding the first treaty with the North German Confederation as follows:

> The treaty of 1868 was negotiated under peculiar circumstances, by which Germany was induced to grant at that time more than its ordinary policy or interests would concede. It had just finished the war with South Germany and Austria, and was preparing for a great and foreseen war with France; which came soon after. It needed foreign sympathy, which it could get from few directions. England was somewhat alienated by the Danish war; Russia is always an unreliable friend to the Germanic Powers; the wounds inflicted by the war of 1866 on its antagonists, notably Austria, were still sore ....The sympathy and goodwill of a nation of forty million was not to be thrown away in such a condition of things; and it is not yet definitely settled in the European mind that the day may not come when America will use its great physical and moral forces to influence events in this hemisphere.[1]

Yet, by 1871, scarcely three years after the conclusion of the Bancroft treaties, all these circumstances had changed radically. Germany's power position in Europe had improved immeasurably. This made her regret the concessions she had made to the United States in 1868. Emigration to

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1 Confidential letter, Sargent to Frelinghuysen, October 12, 1882, MS Dispatches, Germany, M-44, reel no. 50.

America was large and still rising,[2] and objections were beginning to be voiced within Germany against this emigration.[3] In the United States, the situation of naturalized Americans, now regulated by treaties with both the German States and with Great Britain, was no longer a great factor in the coming elections. As article V of all five naturalization treaties stipulated an initial treaty duration period of ten years, the agreements were binding until 1878. The first possibility for giving termination notice was set for November 9, 1877.[4] Thus, the German Foreign Ministry was faced with a difficult situation: how to administer the treaties fairly in the face of rising opposition to them on the part of both the Ministers of Interior and War, not to speak of the Governor of Alsace-Lorraine and a generally increasing public opposition.

Secretary of State for Foreign Affairs Bernhard von Bülow maintained a conciliatory air, personally smoothing over any difficulties which arose out of the petty actions of local officials. As a result of this policy, and of the amicable relations he maintained with three successive American ministers: George Bancroft, J. C. Bancroft Davis, and Bayard Taylor, no serious disputes arose between the two countries arose until the very end of the treaties' first ten-year period.

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2 Joseephy, Die deutsche Auswanderung, table I: 1871: 82,554; 1872: 141,109; and 1873: 149, 671.

3 Letter, Bancroft to Fish, May 14, 1872, F. R. 1872, pp. 189-190. In 1872, the agrarians, through their parliamentary representatives, were beginning to voice strong opposition to free emigration in the wake of a steadily rising exodus to America.

4 Malloy, Treaties, I, pp. 55, 61, 950; ibid., II, pp. 1299, 1896.

Bülow's death coincided with a time of general policy reassessment by the Germans with regard to the naturalization treaties. It may well have been that Bismarck had decided that ten years was the utmost he would concede to the life of the naturalization treaties. Seen from the German point of view, the treaties threatened the escalating demands of the German military establishment, and of agriculture and industry. They might tend to encourage increasing numbers of young men to emigrate. This would deprive Germany not only of their period of military service, but of their later, adult labor as well. Bismarck was then also faced with the possible return of thousands of naturalized Americans of German birth who had left home in the wake of the Franco-Prussian war. These men would enjoy freedom from German military duty as a result of their change of nationality. As a result, they might anger their German contemporaries and arose the animosity of local officials. This latter would tend to contribute further to difficulties already encountered by imperial efforts at centralization. Taking all these considerations into account, the Reich, in 1879, decided to launch a concerted effort to narrow the scope of the naturalization treaties.

Unfortunately, no specific event occurred in the United States to draw attention to the fact that the naturalization treaties needed revising following the formation of the German empire. No domestic issue or case arose which might have drawn attention to the fact that the establishment of the Reich had altered German-American relations with respect to the Bancroft treaties. Secretary of State Hamilton Fish fully appreciated the changed situation resulting from the Franco-Prussian war. However, he

saw no necessity for raising any questions regarding the naturalization treaties during his first term of office. By that time, the most auspicious moment for a possible revision--simultaneously with the creation of the empire--had already passed.

First Attempts at Treaty Revision (1873-1880).

In 1873, a controversy arose between the United States and Germany over the citizenship status of a naturalized American from Alsace-Lorraine. In connection with this, Fish drew Bancroft's attention to the fact that none of the naturalization treaties covered Alsace-Lorraine "which forms an integral part of the Empire and from which there has long been a large and valuable emigration to the United States, whose status deserves recognition and protection."[5] As this opinion was voiced in the course of a long, critical, and not very tactful letter, Bancroft, stung by what he considered unfair criticism of both the treaties and, therefore, himself as their negotiator, reacted negatively. Fish had suggested negotiating a new treaty, uniform in its provision and co-extensive with the boundaries of the new Reich.[6] Bancroft advised against touching the treaties. In his official letter, he claimed that the treaty with North

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5 Letter, Fish to Bancroft, April 14, 1873, F. R. 1873, I, p. 280.

6 Ibid. Fish, aware of Bancroft's weak point--vanity-- could, perhaps have used a more tactful approach to treaty amendment. Allan Nevins, Hamilton Fish (New York: 1936), p. 605, in describing events following an investigation of American arms sales to France during the Franco-Prussian war, remarked that it had, after all, accomplished something: it had given Bancroft an opportunity to plume his vanity.

Germany would cover Alsace-Lorraine.

However, in a separate and confidential letter to Fish, Bancroft suggested a different solution to the problem:

> Alsace and Lorraine having been annexed to the German Empire by treaty with France, I hold that the naturalization treaty ratified with the North German Government holds good with regard to both of them, yet as the North German Union was already merged in the German Empire before the cession of the two provinces was completed, it may be better to obtain from the German Government, in some written form that shall perfectly bind the Government, an acknowledgement that the naturalization treaties shall equally extend to emigrants from Alsace and Lorraine.[7]

Fish did not accept Bancroft's solution to the problem, saying "meanwhile it is not wise to take half-way measures as to Alsace and Lorraine."[8] Fish wanted a whole new treaty covering the empire. Bancroft, alienated by criticism of his treaties, and judging the timing for a new treaty to be inauspicious, took no action. Fish, it appears, did not consider the problem serious enough to insist on Bancroft's attempting treaty negotiations. Thus, unfortunately, the matter was dropped.

While Fish's solution might have been preferable, a German declaration including Alsace-Lorraine under the treaty provisions, might have averted many complications later. It is possible, that the Germans might even have been thwarted in their indirect attack on the naturalization treaties. This attack was launched with their declaration that Alsace-Lorraine was not covered by the naturalization treaties. Without this claim, they would

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7 Confidential letter, Bancroft to Fish, May 8, 1873, MS Dispatches, Germany, M-44, reel no. 21.

8 Letter, Fish to Bancroft, June 4, 1873, F. R. 1873, I, p. 293.

have had to ask for outright termination of the treaties or, consent to negotiate a new one.

The question of treaty revision was, throughout the forty-two year period covered by this study, closely linked to the differences over Alsace-Lorraine. It was always a dispute with Germany over a naturalized citizen originating in that territory that brought about a new American effort to arrive at an overall solution. In retrospect, therefore, the declaration suggested by Bancroft in 1873, would have served the interests of the United States much better than no treaty coverage at all. By 1873, not enough time had elapsed since annexation for the Germans to feel sensitive on the subject of Alsace-Lorraine. Later, when their Germanization policies there proved ineffective, any accommodation would have been much more difficult to achieve.

The Alsace-Lorraine issue eventually brought down the whole treaty structure, as it was there that the first wedge was applied: the denial that any naturalization treaty applied. From there, the limitation of the sojourn of naturalized Americans--by means of expulsion--was extended to Schleswig-Holstein and, eventually, to the whole empire. Before this took place, the first real attempt at treaty revision was made by the United States.

The 1875-77 American Feelers

In the first half of 1875, several events took place which could have influenced the subsequent negative outcome of German-American exchanges on the subject of treaty amendment. Two widely publicized articles appeared in Germany attacking the naturalization treaties and advocating their

speedy termination. The author of the first article, Friedrich Kapp, a Reichstag deputy who had spent twenty years in the United States and was--by Germans if not by Americans--regarded as an expert on American affairs. In two articles entitled "The German-American Treaty of February 22, 1868,"[9] Kapp launched a violent attack on the treaties.

He accused the 1868 German government for having been duped by the Americans into making concessions which were detrimental to German sovereignty. Kapp cited the example of a boy who had left Germany at age sixteen-and-one-half and had returned there at age twenty-one without the obligation to perform German military duty, a service required of all his contemporaries then living in Germany.[10] Kapp's avowed purpose in attacking the naturalization treaties at such length was to prepare public opinion in Germany in order to achieve termination of the treaties at the first opportunity: in November of 1877.[11]

Simultaneously with Kapp's attack, another article, entitled "The Rights of Citizenship in International Relations,"[12] appeared. Its author was a professor of law at the University of Freiburg, F. von Martitz. Like Kapp, von Martitz attacked the treaties because he deemed them injurious to German interests. His special target was the supposedly permissive in-

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9 Friedrich Kapp, "Der deutsch-amerikanische Vertrag vom 22. February 1868," Preussische Jahrbücher, 35 (no. 5, 1875), pp. 509-534; (No. 6, 1875), pp. 660-683; ibid., 36 (No. 12, 1875), pp. 189-228.

10 Ibid., p. 217

11 Ibid., p. 228.

12 F. von Martitz, "Das Recht der Staatsangehörigkeit im internationalen Verkehr," Annalen des Deutschen Reichs, VIII (Leipzig: 1875) pp. 1114-1129.

pretation of the nationality of a returning German after he had resided in Germany for two years after his return. He also discussed the nationality of children--both German and American-born--of naturalized American citizens. Like the German government at a later date, he came to the conclusion that these children, at least the American-born among them, would have native American citizenship and, therefore, would escape the two-year residence limitation imposed by the treaties.

Professor von Martitz also anticipated the possibility of using expulsion as a means to rid Germany of the offensive presence of such individuals. Contrary to the German government, after an extensive discussion of this possibility, he rejected it. His reasons were that it would only be possible to prove the fraudulent use of citizenship in a very few exceptional cases. Like Kapp, von Martitz urged termination of the treaties, but on the grounds that these treaties were in conflict with existing military laws.[13]

Minister J. C. Bancroft Davis took note of the opposition to the naturalization treaties voiced in the press but claimed that, if the "Bavarian rule"--that is, the prohibition for the return of men under the age of thirty-two who had not yet fulfilled their military obligation--were

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13 Ibid., p. 1125: "Das öfters beregte Mittel der polizeilichen Ausweisung muss ja versagen, da eine solche zulässiger Weise doch nur bei Expatriationen in fraudem legis verfügt werden könnte, der Nachweis doloser Absicht aber bloss ausnahmsweise, in eclatanten Fällen zu führen sein wird." The military laws von Martitz mentioned were passed in 1871, after the formation of the empire. Had this line of argument been pursued by both countries, complications under international law would have ensued. This might have forced the Germans into concluding a new treaty or terminating the existing ones.

offered to the Germans, this concession might make a new agreement more palatable to them.[14] In a private interview, Davis sounded Bülow out, who claimed to be in favor of treaty revision. The Secretary of State assured Davis that he would consult on the subject with his colleagues who had negotiated the treaty.[15] However, despite this professed German willingness to consider negotiations, none followed. There the matter rested for two years.

Then, in 1877, in the wake of two cases involving naturalized citizens from Alsace-Lorraine, the whole question was reopened. In July, 1877, Davis wrote to Secretary of State William M. Evarts:

> If you feel disposed to open negotiations at Washington for a new general Treaty with the German Empire, in order to unify the several Treaties of Naturalization, Extradition, International Commerce, etc., it is my impression that you will find this Government disposed to treat with you. During the earlier portion of my mission it was indisposed to treat, because new elections for the Reichstag and Landtag were about to take place. At a later day when I think it would have been disposed to negotiation, the violent attacks upon the then Administration in Congress weakened it abroad, and I made no advances, being confident that they would not be responded to. The present seems to be a more favorable moment.[16]

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14 Letter, Davis to Fish, February 12, 1875, MS Dispatches, Germany, M-44, reel no. 22. Davis said: "If these provisions could be extended over the Empire, many of the questions which now arise between the Legation and the Foreign Office would be done away with."
Letter, Davis to Fish, February 28, 1876, MS Dispatches, Germany, M-44, reel no. 30, gives Davis' evaluation of Kapp's articles: "Those who knew Mr. Kapp in America may not be disposed to attach much importance to what he says; but in Berlin he has influence--mainly from the fact that he has lived in America,--and people take him at his own estimate of himself as an authority on American affairs."

15 Letter, Davis to Fish, February 12, 1875, MS Dispatches, Germany, M-44, reel no. 22.

16 Letter, Davis to Evarts, July 28, 1877, MS Dispatches, Germany, M-44, reel no. 40.

Having received Evarts' permission to proceed, Davis sounded out Bülow in a private interview shortly before leaving Berlin. Having informed the Secretary of State that America was interested in amending the treaties, the latter replied "that he was extremely satisfied to receive such intelligence, and should lose not time at communicating it to Prince Bismarck."[17]

In a confidential letter which Davis addressed to Evarts right after his official report on the interview, he added: "I have not attempted to describe the warmth of manner which he [Bülow] showed at the suggestion of negotiations in Washington. Nothing could exceed it."[18] It should be mentioned here that the Germans had, for years, been most anxious to conclude a new extradition treaty, but that up to 1877, no progress had been made by them on the subject.[19] Kapp, in his article, had criticized the fact that no extradition agreement existed for Alsace-Lorraine. The combination of these two circumstances might well have served as a point

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17 Memorandum of an Interview between Mr. Davis and Mr. von Bülow at the Foreign Office, September 14, 1877, MS Dispatches, Germany, M-44, reel no. 40. During the course of the interview, the two men discussed Kapp's agitation against the treaties. Davis told Bülow that Carl Schurz had told him in 1875 that this opposition could be modified or even eliminated if some agreement could be concluded which would permit Germans to inherit real estate in the United States.

18 Confidential letter, Davis to Evarts, September 16, 1877, MS Dispatches, Germany, M-44, reel no. 40. Davis wrote: "In fact, before I left he [Bülow] seemed to have conceeded that Kapp could be quieted by an inheritance clause in the new treaty."

19 The diary of Hamilton Fish, Fish Papers, Box 317: 1872-73, contains references to both an emigrant and an extradition treaty desired by the Germans. Fish noted visits by the German minister in this matter on April 18, June 27, and July 27, 1872. Also for December, 1874 and January, 1876. In addition, an entry for May 6, 1875: "Schlözer asked what was being done about the Extradition Treaty. I tell him I believe Mr. Davis has had some conversations with the Minister of Foreign Affairs on the subject as well as with respect to the Naturalization Treaty."

of departure for bargaining with Germany for a treaty combining both naturalization and extradition.

Unfortunately, Davis left Berlin shortly after this interview with Bülow. However, he returned to Washington to accept the post of an Assistant Secretary of State and could well have been entrusted by Evarts with the task of preparing a preliminary agreement with the German minister there. Nothing was done, however, and another opportunity--perhaps the last real one--was lost to make an attempt at treaty revision. Thus, the final year of the initial ten-year treaty period passed. A year that could have provided an opportunity to compel the Germans to reopen this matter, as the possibility of treaty termination could have provided a pretext for negotiations.

Instead, the legation in Berlin remained in the hands of Secretary of Legation for six months. Then a new minister, Bayard Taylor, arrived. However, as we have seen, Taylor was seventy-two years old and ailing. He hardly had time to acquaint himself with legation matters before he died in December, 1878. Following his death, again, the legation was left without a minister for over seven months. By the time the new minister, Andrew D. White, arrived in Berlin in May, 1879, the opportunity had passed. By mid-1879, fundamental decisions with respect to the adoption of a new policy toward the naturalization treaties had been made. The whole German attitude in this matter had changed.

This may have been partially in response to American behavior. The fact that the United States had not responded with alacrity to Bülow's encouragement may have offended the Germans. The Germans had always felt,

that as all the advantages derived from the naturalization treaties were on the side of the Americans, any proposals should come from them. No doubt, as Davis had suggested, the Germans expected to be offered some concessions as an added inducement: the least of which would have been the "Bavarian rule." Also, at the end of 1878, the House of Representatives of the United States had seen two resolutions asking for treaty termination.[20] This may have indicated an American disinterest in the continued existence of the naturalization treaties to Germany. It may well have encouraged the Germans to change their policy of compliance into one of indirect attack on and of narrowing the scope of these agreements.

German Denial of Treaty Applicability to Alsace-Lorraine

The American attitude during 1877 and 1878, as well as internal German events during 1878 and 1879,[21] may have brought about the final German decision to attack the Bancroft treaties. As Alsace-Lorraine was the Achilles heel in the treaty structure as well as being the most sensitive point of German public opinion during those years, the attack was launched there in 1880. Still other considerations may have contributed to the timing of this attack. The 1870's had brought a rising number of Germans to America in the wake of the Franco-Prussian war. Their return could be anticipated during the 1880's. The steady and still growing stream of

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[20] H. Res. 202 and 204. For a discussion of this, see pp. 141-142 supra.

[21] First Socialist Law passed in 1878, a new government installed in Alsace-Lorraine in August, 1879, after much debate on the matter. See pp. 162-163 supra.

emigrants from Germany to America[22] may, thus, have been a factor in the German decision to act against the treaties in 1880. The envisaged return of thousands of military-age men each year--whose presence would, in German opinion, only encourage others to follow their example and use migration as a means of avoiding military service--threatened the recruiting program of the empire.

Public opinion was also turning against the treaties. While some of the articles attacking these agreements may have been inspired by the German government, they still reflected German opinion on the subject. The agrarians' opposition to free emigration had started in the early 1870's. Now, as a result of the transportation revolution, commercial rivalries prompted a general German opposition to emigration to the United States. In German public opinion--inspired by neo-mercantilist newspaper articles--this emigration would only serve to bolster America's competitive capacity.

By 1880, three years had passed since Minister J. C. Bancroft Davis had reported a German receptiveness to the idea of treaty renegotiation. During that period, the United States had made no move whatsoever to prepare proposals for negotiation or exhibited any real interest in the matter. The Germans must have concluded from this that the Americans were no longer really interested in the continued smooth functioning of the original treaties. During these three years, German resolve to limit

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22 Joseephy, Die deutsche Auswanderung, table I. The alltime peak of German emigration to America was reached between 1881 and 1885.

severely--if not prevent--the return of military-age naturalized Americans had hardened. It would now have required an American negotiator of unusual skill, armed with an extensive knowledge of corrent public opinion and internal conditions in Germany, to bring about an amendment of these agreements that would have met with approval in both countries. Such a negotiator would have been available in the person of Assistant Secretary of State (and former minister to Germany) J. C. Bancroft Davis. However, the United States did not chose to avail itself of his services.

In August, 1880, the Germans--suddenly and without warning-- declared that the naturalization treaties did not apply to Alsace-Lorraine. Cases involving naturalized Americans from that province had been accumulating at the German Foreign Ministry for eighteen months. No reply whatsoever had been received during that time to correspondence on these cases. Then, in a series of adverse decisions rendered, the German government denied treaty applicability to that area. At the same time, however, the Germans hinted that this decision might not be irrevocable.[23] This should have prompted the United States to act with alacrity to salvage what it could from the Bancroft treaties. At that time, prompt action might still have resulted in a new agreement.

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[23] Letter, White to Evarts, September 21, 1880, F. R. 1880, p. 448. In this letter, White reported on an interview he had on that day with Secretary of State Friedrich-Wilhelm zu Limburg-Stirum in the wake of the German decision on Alsace-Lorraine in the John Schehr case (see pp. 163-165 supra). White said: "He replied that this was a matter which he must reserve, but intimated that there is another way out of the difficulty, by which I understood him to mean that there might be a direct interposition on their behalf from the central governmental authority."

Such a new agreement could probably have been accomplished only at the price of major American concessions. The "Bavarian rule," for example, might, by now, have been deemed insufficient by the Germans. The Americans continued to protest, on the basis of sound precedent according to Anglo-Saxon legal concepts, that the treaties did apply to Alsace-Lorraine. However, the Germans were now resolved to prevent the return of military-age naturalized Americans to that area. These Americans would, in German opinion, only disrupt Germanization efforts then in progress in Alsace-Lorraine under a new system of administration,[24] and encourage increased emigration from this province. As the Americans did not put forward any new proposals or concessions, the Germans resolved to extend their new policy of restriction from Alsace-Lorraine, via Schleswig-Holstein, to the rest of the empire.

In view of the haphazard manner in which this whole matter was handled by the Americans, the suspicion arises that the United States only feigned concern over naturalized citizens from Alsace-Lorraine. Whenever a case involving a native of that province arose, a show of effort was made, and

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[24] Throughout the year 1879, while no German decisions involving this province were rendered regarding naturalized Americans, the Alsace-Lorraine question, that is, what type of government the Reichsland should have, was discussed daily in the German press. The Allgemeine Zeitung (Augsburg), of March 9, 1879, claimed that the legal status (staatsrechtliche Stellung) and the organization of Alsace-Lorraine was still not clear despite eight years of debate on the subject. The paper also deplored the Prussian tendency of treating the Reichsland as a "Prussian province," and doubted that the autonomists would win out over Prussian opposition. Ibid., April 2, 1879, gave a description of the probable governmental setup of the province under a Statthalter, and this was put into effect in August, 1879. The Germans probably held up decisions with respect to naturalized Americans from that province for another year to evaluate the workings of the new system.

the possibility of treaty revision discussed. It seems probable that the concessions which would have had to have been offered to the Germans in return for a new agreement were deemed politically more detrimental at home than the occasional outcry in the press over a case of individual hardship involving a naturalized American of German birth. In American eyes, it appeared preferable to let matters continue as before.

The Abortive Protocol of 1881

The advent of a new administration under President James Garfield, and the appointment of James G. Blaine as Secretary of State, seemed to bring about an American change of heart regarding the naturalization treaties. Unfortunately, the new administration did not use the man who might--aside from Davis--have brought about an amicable settlement of the question: Andrew D. White. The American minister was personally popular and respected in Germany, he knew the Germans intimately and had many friends in parliament and in the government of Germany. He was ideally suited to conduct such delicate negotiations. On March 14, 1881, shortly before he left Berlin, he reminded the Department of State once again that the Germans were still waiting for American proposals on Alsace-Lorraine.[25] Washington, again, did not respond, and waited until White had left Berlin. Then, Blaine instructed Chargé d'Affaires H. Sidney

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25 Letter, White to Blaine, March 14, 1881, F. R. 1881, p. 464: "The vexed question of citizenship in Alsace-Lorraine remains in statu quo waiting for the American Government to propose a supplementary treaty regulating it." Seven months had elapsed since White had reported the John Schehr case to Washington, and the German suggestion that negotiations be started over this matter.

Everett to start preliminary negotiations.

When these negotiations did not progress, the Secretary of State decided to try to resolve the Alsace-Lorraine question himself, late in 1881.[26] At that time, the solution would have required much tact and patience. It would also have necessitated a knowledge of current German affairs and conditions. Blaine had none of the qualifications necessary for this task. It was, therefore, particularly regrettable that he took it upon himself to draft the protocol proposal in Washington, together with the German minister, Kurd von Schlözer. Also, either Schlözer had not received proper instructions from Berlin--an unlikely event--or Blaine proved totally insensitive to hints dropped by Schlözer during the procedure. Whatever the reasons, the draft proposal proved to be totally unacceptable in Berlin.

The protocol reached Berlin in December, 1881, and Blaine repeatedly urged Everett to press the Foreign Ministry on the issue. He even requested Everett to see Bismarck in the matter. This revealed Blaine's appalling ignorance in matters of protocol. Chargé d'Affaires Everett did not even have minister's rank, when the envoy of a major country generally held ambassadorial rank.[27] His reply to Blaine showed his

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26 Letter, J. C. Bancroft Davis to Fish, December 5, 1881, Fish Papers, contained no. 134, throws an interesting light on conditions in the Department of State at that time. Davis wrote: "It is difficult to get anything done in the Department. Evarts demoralized it by neglect; and Blaine is charged with having demoralized it in a worse way. The Secretary does not feel at home, and is distrustful and hates to make up his mind."

27 Bancroft recommended against raising the American legation to embassy status after the formation of the empire. This put the American representative, a minister, automatically below that of every other major country. The legation was only raised to embassy status in 1893.

predicament:

> The Prince being officially inaccessible for foreign affairs even to the Ambassador unless by his own wish, but exercizing an oracular controlling influence in the background, which greatly delays negotiations.[28]

Everett added that anyone below the rank of ambassador was normally shunted off to a Direktor in the Foreign Ministry and was not even able to see the Secretary of State himself.[29] The chief reason why the draft protocol proved unacceptable to the Germans was the use of the term "annexation" in connection with Alsace-Lorraine. In fact, the protocol made allusion to "future annexations."[30] Also, the Americans had merely wished to extend the existing treaties without offering any concessions to the Germans. As the Germans claimed that the advantages derived from these treaties were completely on the American side, some gesture would have been required to achieve their extension to Alsace-Lorraine.

President Chester A. Arthur succeeded James A. Garfield in September, 1881, when the latter died as the result of gunshot wounds sustained from an assassin's bullet. President Arthur appointed Frederick T. Frelinghuysen to succeed James G. Blaine as Secretary of State in December, 1881. The

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28 Letter, Everett to Secretary of State, January 21, 1882, MS Dispatches, Germany, M-44, reel no. 48.

29 Ibid.

30 Letter, Everett to Secretary of State, December 28, 1881, MS Dispatches, Germany, M-44, reel no. 48. The Germans refused to allow the term "annexation." They also objected to the reference regarding future annexations, as Everett said: "which necessarily implies taking territory from some of the surrounding nations."

new Secretary of State took up the Alsace-Lorraine protocol question in January, 1882. At that time, despite strong indications to the contrary,[31] Everett still reported that he had hopes for an amicable solution. He claimed that Bismarck was said to be anxious to come to an agreement, and reported that he had been assured that the Chancellor himself would obtain the consent of the Governor of Alsace-Lorraine.[32]

Everett repeated the reasons why the draft protocol had been unacceptable to the Germans, and added:

> This agreement, if acceptable to the American Government, can be signed either here or at Washington before being referred to the Reichstag, but I understand that it is the wish of this Government that the negotiations should be as far as possible concluded here in order to forestall the opposition which is anticipated from certain parties in the Reichstag if the document emanated from Washington.[33]

Everett then expressed hope that the document would pass the Reichstag during the coming session. Actually, Everett had misread the situation completely. The German authorities had been stalling and probably had no intention of submitting anything of such an explosive nature to the Reichstag so as to expose themselves to opposition criticism.

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31 Letter, Everett to Frelinghuysen, January 21, 1882, MS Dispatches, Germany, M-44, reel no. 48. Everett reported on an interview he had with Acting Secretary of State, Count Paul von Hatzfeldt, which he had requested upon receiving no answer to his note. Hatzfeldt "had apparently never seen my note, or had forgotten it....As regards the negotiations, His Excellency said that instructions had been sent to Washington, and apparently, did not, therefore, think it necessary to have the matter discussed here." Everett complained about the "stereotyped diplomatic methods still too prevalent here." He seems to have misread the German message, which represented a polite brushoff.

32 Letter, Everett to Frelinghuysen, January 30, 1882, MS Dispatches, Germany, M-44, reel no. 48.

33 Ibid.

Some doubts arise as to the actual sincerity of the German wish to come to an agreement over Alsace-Lorraine. The opinion that the Germans were reluctant to submit any agreement that would have limited their power in Alsace-Lorraine, especially one concluded with a foreign government, to the Reichstag was borne out by subsequent events. When White's successor, Aaron A. Sargent, reached his new post in Berlin in May of 1882,[34] he was instructed to sound out the German government on the prospects for a new naturalization treaty. He reported on the German reaction in October, 1882. He argued that however illiberal the naturalization treaties might appear to American eyes, the Germans regarded them as favoring the Americans, and added:

> I am impressed with the belief that, even if the Government were willing to negotiate a treaty on the principles desired; it could not procure its ratification by the Reichstag. I have reason to believe that such a projet of treaty, would meet with violent opposition, partly from general prejudice, against the United States on the part of influential leaders of opinion and debate, and partly from a belief that the treaty should be terminated or restricted, rather than enlarged.[35]

The report by Sargent was acknowledged by Assistant Secretary of State

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34 Letter, Frelinghuysen to Sargent, May 31, 1882, MS Instructions, Germany, M-77, reel no. 68. Sargent's appointment to the Berlin post had come in for extensive criticism in the American press. See New-Yorker Staatszeitung, March 10, 1882. One of the reasons for this was that Roscoe Conkling was mentioned for a vacancy on the Supreme Court at the same time. Conkling refused the appointment, but Sargent's reputation suffered as a result of this. Bismarck labelled him a "machine politician," and this opinion did not make his task in Berlin easier, as he had been discredited before he reached his post.

35 Letter, Sargent to Frelinghuysen, October 12, 1882, MS Dispatches, Germany, M-44, reel no. 49.

J. C. Bancroft Davis with the remark "read with interest."[36] This ended the only formal attempt at treaty renegotiation or amendment undertaken during the existence of the naturalization treaties.

Continued American Revision Attempts and Failures

A few days after Davis' letter to Sargent, the Committee on Foreign Affairs of the United States House of Representatives submitted a report on an 1882 resolution (H. Res. 106) to terminate the treaties.[37] This report recommended a substitute Joint Resolution, which read:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the President of the United States be, and he is hereby, requested to take the necessary steps toward negotiating a treaty with the German Empire securing more liberal and just provisions in reference to respective rights of citizens--native-born or naturalized--of the United States and the German Empire.[38]

The report explained that this substitute resolution was being offered for the previous one because "an effort might properly be made with the object of negotiating a new treaty which would of itself operate as a termination of the present one without such formal notice being now given."[39] This was done, presumably, to protect naturalized citizens of German origin in the interim period while the new treaty was being negotiated. However, no action resulted from this report.

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36 Letter, Davis to Sargent, January 23, 1883, MS Instructions, Germany, M-77, reel no. 68.

37 U. S., House of Representatives, Index to Committees, H. Res.329, Report No. 1893, 47th Cong., 2d Sess., 1882-83, pp. 1-2.

38 Ibid., p. 1.

39 Ibid., p. 2.

By 1883, the new policy of the German government toward the naturalization treaties had become firmly established. The abortive attempts at arriving at some solution for Alsace-Lorraine had shown that the Germans were extremely reluctant--if not unwilling--to enter into any agreement which would, in their opinion, limit their sovereignty. That is, to be bound by a treaty which would force them to treat former Germans, even though they may be naturalized Americans, with any special consideration within the limits of their own empire. While they still formally recognized the American citizenship of such ex-Germans, this recognition was now severely limited by the use of expulsion.

Two years later, the German narrowing of the scope of these treaties had caused enough concern in America for President Grover Cleveland to refer to it in his annual message to Congress:

> The interpretation of our existing treaties of naturalization by Germany during the past year has attracted attention by reason of an apparent tendency on the part of the Imperial Government to extend the scope of residential restrictions to which returning naturalized citizens of German origin are asserted to be liable under the laws of the Empire.[40]

However the President added that the temperate attitude taken by his own government would "lead to a satisfactory understanding."[41] This temperate stand, unfortunately, only encouraged the Germans to proceed further in their narrowing of the treaties, as they took it as a sign of American dis-

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[40] Richardson, Presidential Messages, VIII, p. 331, Annual Message, dated December 8, 1885.

[41] Ibid.

interest in the treaties.

At this time, the House Committee on Foreign Affairs was again considering the whole question of the naturalization treaties. In its report, the difference in wording of the various articles, the actual working of the treaties, their advantages and disadvantages, were set forth at some length.[42] The report also acknowledged that the suppesed reciprocity of the treaties was reciprocity in form only, and that the advantage lay almost solely on the side of the United States. The report called the treaties "a great achievement of American diplomacy."[43] Like the 1883 report, it recommended against terminating the treaties--which, the report claimed, would be readily accepted in Germany--as recommended by Representative Samuel S. Cox's resolution. It then again recommended the negotiation of a new treaty and passed a resolution to that effect identical with the 1883 resolution.[44]

There was one difference, however. The Committee recommended that the new treaty might also incorporate "such modifications as may secure a more full and satisfactory protection of the rights of American citizens abroad."[45] This meant, as the text of the report shows, that the United

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42 U. S., House of Representatives, Index to Committee Reports, I, Report No. 2590 to accompany H. Res. 39 of February 7, 1885, 48th Cong., 2d Sess., 1884-85, pp. 1-7.

43 Ibid., p. 5.

44 Ibid., p. 7.

45 Ibid.

States would have been willing to concede the rule established in the Bavarian Protocol. This protocol established an age limit of thirty-two for any male, returning Bavarian who had emigrated without first performing his military duty in Bavaria. In return, America demanded freedom from prosecution for unauthorized emigration, even after the naturalized American had lost his acquired citizenship. Both these rules were to be incorporated into a newly formulated article IV of the proposed treaty:

> If a German, who, without the consent of the Government of his native state, has emigrated, owing military service to his native state at the time of such emigration, and who has been naturalized as an American citizen...shall resume his residence in Germany, and shall there reside longer than two years he may be held not to have the intention to return....Provided, that he has not yet consummated the thirty-first year of his age...and provided further, that in such cases no prosecution for unauthorized emigration shall take place even if the emigrant shall have ceased to be an American citizen.[46]

This version of article IV shows that the United States had come to accept the German view that men of military age who envisaged an early return to their former homes had emigrated solely in order to avoid military duty there. But in return for this concession, the Americans wanted an affirmation the American contention that two years' residence in Germany did not, per se as the Germans assumed, mean the automatic loss of American and the immediate resumption of German citizenship.

As in the past, no further action was taken by either side. In 1887, a case arising involving a native of Alsace-Lorraine again brought up the question of treaty applicability, or non-applicability, in that province.

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46 Ibid., p. 6. The wording of this article is an attempt at clearer formulation of its terms than was done by Bancroft. However, it still leaves open the question of return of men who had had permission to emigrate. The Germans regarded these men with even greater suspicion regarding intent to evade military service than the others.

Both sides reiterated their respective positions, and again the desirability of a completely new treaty covering the whole empire was suggested by the Department of State.[47] As had been the case on previous occasions, the Germans failed to respond to American overtures.

Last American Attempts to Arrive at a Solution

Nine years elapsed before, in 1895, the question of a new treaty arose anew. As in the past, a case from Alsace-Lorraine, that of Emil Kaufmann, who was arrested and imprisoned for evading military duty in Germany, raised the issue. The Germans reiterated that the naturalization treaties did not apply, and that, as a consequence, Kaufmann was still a German subject.[48] During the period between 1887 and 1895, the German government had continued to take this stand, but no formal contestation had been made by the United States.[49] In his review of the Alsace-Lorraine situation in 1896, Secretary of State Richard Olney admitted that the position of the United States on this question had not been uniform, but asserted that the German attitude had been equally contradictory in rendering the various decisions in individual cases.[50]

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47 Letter, Bayard to Pendleton, June 28, 1887, MS Instructions, Germany, M-77, reel no. 69.

48 Letter, Wolfram von Rotenhan to Runyon, January 25, 1896, inclosure to letter, Jackson to Olney, January 29, 1896, F. R. 1896, pp. 186-187.

49 Letter, Olney to Jackson, March 3, 1896, F. R. 1896, p. 190.

50 Ibid., p. 191. Olney cited several conflicting decisions rendered by the Germans in cases where the circumstances were similar, to make his point.

Olney then informed Secretary of Legation John B. Jackson (who had temporary charge of the embassy), that the newly appointed ambassador, Edwin F. Uhl, would soon arrive in Berlin and:

> Would make an examination of the general question, with a view to ascertaining whether the difficulties which Mr. Bancroft discerned in 1873 in the way of negotiating a general treaty of naturalization embracing the whole German Empire still exist, or if existent, are removable.[51]

The Americans continued to hope that the problem would solve itself. Olney asserted that no formal move had been made to review the question "owing to the prospect of an early incorporation of Alsace and Lorraine into the Empire."[52] Because of this hope, Olney was not then prepared to make a stand. However, he pointed out the peculiar position allotted to Alsace-Lorraine in the international community as a result of the German stand:

> ...under which that territory seems to have the remarkable status of an independent State, belonging to an Empire, controlled as to its internal affairs by the legislation of the Imperial Parliament and yet not represented therein, nor responsible for its conduct as an independent State toward other Powers....As those provinces now stand and have stood for years, they seem to enjoy a strangely admixed privilege of autonomy, protective control, and international irresponsibility.[53]

Jackson, in his reply to Olney's instructions to explore possible

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51 Ibid.

52 Ibid.

53 Ibid., pp. 191-192. If Olney's description of the status of Alsace-Lorraine was correct, it seems incomprehensible why the United States had not, long before this, pressed for a German clarification of that province's position under international law. Other matters of conflict could have arisen, such as the arrest or detention of a native-born American citizen. As Alsace-Lorraine had no separate, legal representation abroad, the question was of considerable importance.

remedies to this situation, cautioned that "the prospect of the incorporation of Alsace-Lorraine as a part of the territorial domain of one or more of the present constituents of the Empire, is very vague and distant."[54] Jackson pointed out, however, that the German government had always considered the 1828 American treaty with Prussia applicable to the whole empire, although it had been made with just one state. He added that since the Bancroft treaties applied to all German territory except to Alsace-Lorraine, it should be possible to either extend one of the treaties to that province or to make a new one for the whole empire.[55] Again, as in the past, no action resulted. American citizens from that province continued to be exposed to the whims of local magistrates. Their cases were decided individually and according to whatever view the current German Secretary of State for Foreign Affairs took on the subject.

Ambassador Edwin F. Uhl assumed his post in the spring of 1896, but it was not until over a year later, when he was about to leave again, that he reported to Washington on the results of his inquiries into the possibility of a new naturalization treaty. The report was in connection with another incident involving an American citizen from Alsace-Lorraine.[56] Uhl wrote that he had spoken to the Imperial Secretary of State in December of 1896 about the possibility of negotiating a new treaty. He claimed that the latter had seemed to be favorably disposed toward such an

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54 Letter, Jackson to Olney, March 21, 1896, F.R. 1896, p. 192.

55 Ibid.

56 Letter, Uhl to Sherman, June 7, 1897, MS Dispatches, Germany, M-44, reel no. 82. This letter was on the Jonas Lippmann case.

idea. However, nothing was done about it. When Uhl mentioned the subject again to the Secretary of State, the latter claimed that he had not had sufficient time to consider the question.[57] As six months had elapsed since the first American approach, the evasive reply indicated that the Germans were not really disposed to negotiate.

The Americans made another attempt in 1899, in the wake of another case from Alsace-Lorraine, but met with an equal lack of response from the Germans. Then, five more years went by without any mention of treaty amendment or renegotiation. This, despite the fact that between 1898 and 1903, five additional cases of dispute involving naturalized American citizens from Alsace-Lorraine had arisen.[58]

In 1903, the Germans again officially and categorically denied the applicability of any naturalization treaty to Alsace-Lorraine.[59] They repeated this denial in 1904 in another exchange of correspondence involving a native of Alsace-Lorraine.[60] This probably prompted the United States to approach the Germans again on the subject of treaty revision.

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57 Ibid.

58 In each case, after embassy intervention, the man in question was permitted to visit his former home for a few weeks. Actually, this treatment was about equal to that now accorded naturalized Americans originating in other parts of Germany supposedly covered by the treaties: Emile Bertrand was allowed two weeks, F. R. 1899, p. 316; Lawrence Metzger was permitted six weeks, F. R. 1900, p. 517; Sylvester Balz was allowed six weeks, F. R. 1901, p. 167; Henry Kaufmann was permitted three weeks, ibid., p. 168; Louis Wiess was allowed six weeks, ibid., p. 169.

59 Letter, Tower to Hay, June 5, 1903, F. R. 1903, p. 443, in the case of Jacob Roos. However, beginning with this case, the Germans took a more intransigent position: Roos, then living in the United States, was not permitted to return for a visit without paying a fine first.

60 Letter, Tower to Hay, April 5, 1904, F. R. 1904, p. 317, in the case of Emil Vibert. He, too, was not allowed to return without fine.

Ambassador Tower reported on this attempt to Washington:

> I judge from the conversation which I had with Doctor von Mühlberg that if the Government of the United States wishes to open negotiations, the Imperial German Government would be inclined so to extend the provisions of the naturalization treaties with the United States that they should apply also to the province of the Reichsland.[61]

It was not possible to ascertain the reaction of the Department of State to this suggestion as no reply was published in the Papers Relating to the Foreign Relations of the United States, nor are correspondence files available for the period after August 1903. However, on the occasion of another Alsace-Lorraine case in 1906, the Germans again indicated that they might be willing to extend the naturalization treaties.[62] Again, no negotiations resulted.

A new United States naturalization law, which transferred the sole authority to grant naturalization to the federal government, went into effect on January 1, 1907. Shortly thereafter, the Department of State took the initiative and instructed the American ambassador in Berlin to open negotiations for an extension of the existing naturalization treaties to Alsace-Lorraine:

> So far as Germany is concerned, the negotiations which you are instructed to open relate only to the point of an extension of the treaty provisions which now cover all the Empire, except, as the German Government insists, the imperial territory (Reichsland) of Alsace-Lorraine....This Government adverts with satisfaction to the intimations conveyed to you last summer by the German foreign office that overtures for such negotiations should not be untimely.[63]

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61 Letter, Tower to Hay, May 27, 1904, F. R. 1904, p. 321.

62 Letter, Adee to Tower, September 21, 1906, F. R. 1906, p. 653.

63 Letter, Bacon to Tower, February 27, 1907, F. R. 1907, p. 511.

According to the letter of instruction, the reasons which prompted this new attempt to secure inclusion of naturalized citizens from Alsace-Lorraine in the naturalization treaties was the unfavorable publicity given to incidents involving such citizens. The Department of State contended that such adverse publicty might have a detrimental effect on German-American relations.[64]

As the Germans did not respond to these renewed overtures, despite their previous assurances of willingness to negotiate,[65] the Americans made another attempt to obtain treaty extension--or some settlement to regulate the status of citizens from Alsace-Lorraine--in 1908. As far as is ascertainiable, no German response resulted.[66]

Conclusion. It can be seen from the foregoing discussion, the naturalization treaties were never amended or was a new treaty, covering the whole empire, ever achieved. The only concrete attempt--the abortive 1881 draft protocol--ended in failure. It is clear that neither the United States nor Germany deemed the issue of sufficient importance to press for a solution. By 1873, the Germans, now united into a powerful empire, already seem to have regretted the concessions granted to the

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64 Ibid., pp. 511-512.

65 Letter, Bacon to Tower, April 14, 1908, F. R. 1908, pp. 376-377.

66 Letter, Tower to Secretary of State, March 15, 1907, F. R. 1907, pp. 512-513. Transmitted with this letter was a copy of one Tower addressed to the German Foreign Ministry on the subject of treaty extension to Alsace-Lorraine. No reply was ever printed. On April 14, 1908, the Acting Secretary of State sent Tower a reminder, see F. R. 1908, pp. 376-377. Tower sent another note to the Foreign Ministry on April 30, 1908, F. R. 1908, p. 377, which, again, remained unanswered.

United States in the 1868 treaties. They were, however, unable to terminate the treaties formally until November, 1877. Later, such a move might have resulted in too much adverse publicity on both sides of the Atlantic. Thus, the Germans contented themselves with narrowing the treaties more and more as time went on. They gradually abolished the privileges granted: immunity from punishment for unauthorized emigration, and the two-year right of sojourn upon return. In the end, only the formal acknowledgement of United States citizenship after naturalization in America and a five-year residence there--except for citizens from Alsace-Lorraine --remained, and the right, granted only at the discretion of the German government, to visit Germany for a few weeks.

This discriminatory interpretation of the naturalization treaties with respect to military-age men was only one aspect of the treaty situation. The Germans never questioned the American citizenship of older, financially solvent, naturalized citizens, who were allowed to reside in Germany for decades in retirement. The records show only one case in forty-two years of a man over forty-five who was ever expelled in the same manner as men of military-age.[67] It is true that the United States held

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67 Letter, Sargent to Frelinghuysen, March 29, 1884, F. R. 1884, p. 194. Dr. G. W. Geist, aged forty-seven, a dentist practicing in Germany, and an American Civil War veteran, was summarily expelled in 1884. He had resided in Germany for twelve years at that time. The Germans gave no reason for this action, and the expulsion order was not revoked even after the American legation intervened with the German Foreign Ministry on his behalf. This is the only case of this type of expulsion on record.

naturalized citizens who expatriated themselves in contempt, but they honored the permissive nature of the two-year sojourn clause of article IV of the treaties, and did not deny them American citizenship. Because of this permissive interpretation of article IV, they never protested the discriminatory way in which the Germans were admininistering the naturalization treaties with regard to military-age men. It can only be surmised that they did not want to jeopardize the continued residence in Germany of older naturalized citizens by such a move.[68]

The United States, while constantly called upon to intervene in order to protect the rights of its naturalized citizens under the Bancroft treaties, refused to accept the fact that a new treaty covering the whole empire could not be obtained on the same basis as the 1868 treaties. At the very least, America would have had to offer the Germans a concession in the form of a clause limiting the return of military-age men similar to the one inserted into the Bavarian Protocol. The 1885 House Report proved that at least some members of Congress were aware of that fact.[69]

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68 Letter, Davis to Fish, November 2, 1874, F. R. 1875, I, p. 485, records the American minister's view of expatriates: "Whole families live here for years, drawing their means of support from American investments, educating their children in German ideas, and spending here the income which otherwise would go to enrich the United States." Letter, Sargent to Frelinghuysen, January 22, 1883, F. R. 1883, p. 331, represents the views of another American minister then years later: "But the right of an unlimited residence away from their country by citizens of either nation who at the same time demand constant protection from their Government, is undesirable....These persons are Americans only in name. They have children born here who arrive at manhood without ever having seen America, and speak its language, if at all, with a strange accent. They avoid the society of Americans usually, are contemners of American institutions, despise its simplicty..."

69 U. S., House of Representatives, Index to Committee Reports, I, Report No. 2590 to accompany H. Res. 39, February 7, 1885, 48th Cong., 2d Sess., 1885, pp. 1-7.

By that time, however, the chances of obtaining a new treaty covering the whole German empire were minimal.

Secretary of State Hamilton Fish, in 1873, missed the best chance of extending the treaties to Alsace-Lorraine by means of a simple, binding declaration on the part of the Reich's government. The second attempt, in 1881-82, to solve the Alsace-Lorraine question by means of an American-German protocol, failed because of American ineptness and German reluctance. At any rate, by that time, the Alsace-Lorraine question had become so delicate an issue that only a Talleyrand could have produced a protocol worded to suit the Germans. From the record, it is not entirely clear whether the Germans were really, after 1879-80, willing to conclude an arrangement subjecting the Reichsland to the provisions of a treaty with a foreign power.

In 1881-82, it is doubtful whether the United States would have risked pressing the issue. Commercial relations between the two countries were strained because of the "pork controversy." Rather than embitter the atmosphere further, the United States allowed Germany to narrow the naturalization treaties down to the point of de facto nullification without resorting to formal termination. Perhaps, the United States did not want to risk a further deterioration of German-American relations over the rights of citizens whose loyalty often appeared doubtful. As long as Germany continued a token adherence to the treaties by allowing naturalized American citizens of German origin to visit their former homes for a few weeks at a time, no formal termination of the treaties was envisaged.

It is very difficult to understand, however, why no concerted effort

was made immediately after the Annexation of Alsace-Lorraine to protect American citizens there. Perhaps some quiet pressure and publicity might have induced the Germans to come to an arrangement. To the death of Bülow in 1879, and before the new policy of non-applicability of the treaties had become firmly established, this method might have been successful. The last year of the initial ten-year treaty period would have furnished the best reason--after the 1871 formation of the empire--for raising the Alsace-Lorraine question. It was most unfortunate that the American legation was almost constantly in the hands of a Chargé d'Affaires during the 1877-79 period. A minister might have pressed the issue of the accumulating Alsace-Lorraine cases more vigorously, and forced the Germans into some response before 1880.

After the policy of non-applicability had become established, and given the intransigence of the German authorities in general, and that of the Governor of Alsace-Lorraine in particular, it is doubtful whether any satisfactory settlement could have been achieved after that time. While it is true that, up to 1906, the Germans--but always only verbally, never in writing--professed themselves willing to negotiate the Alsace-Lorraine question, they never responded positively to any American ambassador's suggestions. However, given the fact that the Americans wanted an agreement, they might have drafted a proposal themselves, and submitted it to the Germans. But such a proposal would have had to have contained some concessions to the Germans, and this was politically unpalatable to the Americans.

The fact that the Americans never made such a draft proposal must have convinced the Germans that the Americans were not really anxious or interested in negotiating a settelement on the basis of quid pro quo. The concessions granted in 1868, and considered to be entirely one-sided by the Germans, were not a realistic point of departure for new negotiations. It is also extremely doubtful whether any settlement which would have satisfied American public opinion could ever have been achieved after the formation of the German empire. In 1873 already, Bancroft had claimed that no treaty removing men of German birth from German military laws could pass the Reichstag.[70] Sargent was even more emphatic on the subject in 1882.[71] After that date, with German-American relations troubled by commercial and colonial rivalries, with German consciousness of world power constantly rising, no limitation on German sovereignty--real or imagined--would have been possible.

In America, with German immigration on the wane and the need for immigrants passed, and with the German-American community disunited and politically fragmented, the necessary incentive for a new treaty was lacking. The only time the German-Americans proved to be a powerful factor in an election--a group to be courted--was in 1868, in the first post-Civil War election. The reason the treaty with Germany was then so assiduously promoted had an additional and unavowed motive: to hold

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70 Letter, Bancroft to Fish, May 8, 1873, F. R. 1873, I, p. 289.

71 Letter, Sargent to Frelinghuysen, October 12, 1882, MS Dispatches, Germany, M-44, reel no. 49.

out the hope for a similar solution for other naturalized American citizens who wielded a far greater political power: the Irish-Americans.[72]

The combination of the two factors brought about the 1868 treaties. After that date, with the Irish-Americans satisfied by an 1870 treaty with Great Britain which protected their rights far better and more effectively than did the German treaties,[73] no new developments took place which might have triggered concerted action for a new German treaty. While neither side deemed it politically desirable to terminate the naturalization treaties, the Germans would not have hesitated to do so if the Americans had failed to yield to the German construction of the treaties.[74] As the Germans obtained all their goals without revocation, they saw no need to antagonize the German-Americans living in the United States by such an action. Instead, with their effective nullification, the Bancroft naturalization treaties just faded into the background with the approach of World War I.[75]

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72 Howe, George Bancroft, II, p. 258. Bancroft was aware of this added pressure to help him achieve a German-American treaty. Howe said: "The British Minister kept watch over the negotiations, with the determination to abide by the result of the treaty."

73 Malloy, Treaties, I, p. 692. The American-British Naturalization Convention of May 13, 1870, set (a) no residence length for recognition of naturalization in Britain; (b) guaranteed former British subjects the unconditional recognition of American naturalization, with no limit on their sojourn upon return to Britain.

74 Letter, von Alvensleben to Bayard, July 8, 1886, F. R. 1887, p. 417, threatened such termination unless America agreed to the German construction.

75 The Treaty Restoring Friendly Relations of August, 1921, Malloy, Treaties, III, pp. 2596-2599, can be read as an abrogation of the Bancroft treaties, as all treaties considered still in force, at that time, required re-activation.

CHAPTER VIII

CONCLUSION

> In 1868 the Bancroft treaty was negotiated with the North German Confederation. It provided that each country would recognize naturalization of its native-born citizens by the other country. It further provided that "if a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization....The intent not to return may be held to exist when a person naturalized in the one country resides more than two years in the other country." The United States has similar rights under existing treaties with twenty countries. All of these rights will be stricken by the decision today.[1]

The above words were written in May of 1964 by Mr. Justice Clark in his dissent to the United States Supreme Court decision in the case of Schneider v. Rusk, Secretary of State,[2] a decision which struck down the limitations imposed upon naturalized American citizens' residence abroad. This ended almost a century of discrimination and second-class citizenship for naturalized Americans which had resulted from the 1868 Bancroft naturalization treaties. The treaties had been concluded--to quote the opinion of a contemporary--"more in the interest of demagogism

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1 Schneider v. Rusk, Secretary of State, 377 U. S. 163 (1964). The appellant, born in Germany, came to the United States as a child. After naturalization, she resided in America until graduation from college, then married a German national. She had lived in Germany for eight years when a passport was denied her by the Department of State, claiming that she had lost her citizenship according to para.352 (a)(1) of the Immigration and Naturalization Act of 1952 (McCarran Act).

2 Ibid.

at home than of international comity."[3] They came about through an extraordinary coincidence of circumstances, both domestic and international, disturbed German-American relations for over forty years, and plagued all naturalized American citizens for almost a century.

Legal Implications of the Treaties for the United States

In 1868, American domestic political conditions made it desirable that some arrangement regarding foreign recognition of naturalization in the United States be concluded. The North German Confederation, the largest of the German states--who, together with Great Britain (Ireland), furnished the greatest number of immigrants to the United States at that time--seemed to offer the best possibility for reaching such a breakthrough agreement. When the naturalization treaty was concluded, after too hasty negotiation and ratification, its true scope and possible ramifications were not sufficiently realized by either of the contracting parties.

In America, the treaty represented a significant departure from current American thought and practice. At that time, the admonition in President George Washington's farewell address to shun foreign entangle-

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[3] J. T. P. (identifiable as the Reverend J. P. Thompson, D. D., then a resident of Berlin since 1866), "Shall I Be Expatriated," The Nation, XX (No. 514, May 6, 1875), p. 311. The article attacked a bill, "Judge Hoar's Bill," then pending before Congress, which advocated expatriation for all American citizens, whether native-born or naturalized, after a foreign residence of two years. The author of this article protested vehemently against this bill. He was later (in 1879) proposed to President Rutherford B. Hayes as a possible candidate for the post of minister to Germany by the Reverend Henry Ward Beecher. Papers of Rutherford B. Hayes (Library of Congress, Washington, D. C.), Correspondence file, 1856-79.

ments was still a prevalent American doctrine. In addition, the United States Constitution declared that foreign treaties, once ratified with the advice and consent of the Senate, become part of the law of the land. Had the leading American statesmen of the day heeded both these admonitions and considered them together, they might have hesitated before--and possibly even refrained from--concluding, for reasons of domestic expediency, a series of treaties which seriously limited the rights of a large segment of their country's population. Or, having once concluded the treaties and then realized the consequences, they might have terminated them at the earliest possible moment regardless of domestic repercussions. Actually, the political repercussions would not have been too serious, as the German-Americans never proved to be a powerful political factor in American domestic affairs after 1868.

The United States and Prussia had been on the verge of concluding an agreement in 1866 to exempt German-Americans from the obligation of German military service. At that time, the Austro-Prussian war intervened. Then, in 1867, the American minister, Joseph A. Wright, died in Berlin, and two more years elapsed before the naturalization treaties were signed. This two-year lapse of time should have afforded Secretary of State William H. Seward ample time to reflect upon his own wishes regarding the nature of the agreement desired, and to reconcile the terms with the restrictions laid down by the United States Constitution.

In 1866, Seward had still opposed any agreement which might have imposed a qualification upon American citizenship.[4] In itself, this in-

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[4] Letter, Seward to Wright, February 19, 1866, MS Instructions, Germany, M-77, reel no. 66.

dicates that he was probably conscious of the fact that the Constitution did not differentiate between native-born and naturalized citizens except with respect to eligibility for the office of the Presidency of the United States. As Seward had given Bancroft's predecessor firm instructions to avoid such qualifications, it is difficult to accept the idea that he forgot that his duties as Secretary of State entailed the obligation to protect the rights of all American citizens. Yet, the treaties concluded during his term of office sacrificed the rights of a large group of American citizens to the demands of political expediency. Seward was a lawyer and, as such, he cannot but have been aware of at least some of the consequences of his act of disregarding Constitutional safeguards. Nevertheless, he left the formulation of the treaties to Bancroft, who was not a lawyer and who, possibly, was unaware of the damage he was about to inflict upon a large segment of the population of America, present and future.

Role of the Treaties as a Stimulant for German-American Migration

It is apparent that one of the fundamental difficulties was that the United States, in its eagerness to receive immigrants, granted citizenship too easily and indiscriminately. However, it was then unwilling to make the effort to protect these naturalized citizens adequately abroad. In hindsight, it might have been preferable had the acquisition of United States citizenship been harder, but the protection of citizens then been practiced with more zeal. Yet, seen even in the light of the five-year residence requirement for citizenship, the United States derived great

benefit from the labor of these young, able-bodied migrants who stayed only a short time beyond the minimum of five years required for United States citizenship, before returning to their former homes. America, at that time, had access to capital resources from Europe,[5] but lacked skilled labor for industry, and especially for agriculture.

The middle of the nineteenth century asw some changes in Germany. An 1850 change in the law regulating the inheritance of copyholds (Erbpacht)[6] deprived a large segment of the agricultural population of the hope of ever acquiring control of sufficient land to feed their families. These skilled farmers had the choice, then, of moving to the cities where industry had not yet developed sufficiently to absorb them in large numbers, or of emigrating. On the other hand, America offered 160 acres of free land, and had none of the debilitating and constantly rising "class" taxes (Klassensteuern) then prevalent in Germany. The combination of these inducements proved strong enough to outweigh all other considerations. The benefits which had, supposedly, resulted from the Bancroft treaties remained a secondary consideration as a motivation for emigration.

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5 Edward C. Kirkland, A History of American Economic Life (New York: 1951), p. 363.

6 Kohl, Bismarck-Reden, IX, p. 337, speech by Bismarck in the Reichstag session of June 12, 1882. The Chancellor gave various reasons for German emigration, denying, as he always did, that overpopulation played any part in this emigration. He mentioned the "foolish abolition of the inheritance of copyholds of March 2, 1850," the Prussian class tax, as well as American protective tariffs.

The proof that the treaties were not a significant factor in inducing emigration from Germany to the United States can be seen in the fact that German emigration was very high following the 1848 revolution and the 1850 abolition of the right of inheriting copyholds; that is, before the conclusion of the Bancroft naturalization treaties. Then, several years of high emigration followed the Austro-Prussian war (also before the conclusion of the naturalization treaties)[7] and the Franco-Prussian war. But this wave of emigration was probably caused by the wars themselves and rooted in the peasants' fear of conscription and the continued possibility of new European wars.

The all-time peak of German emigration to the United States took place during the 1880's (up to 1893)[8] at a time when the naturalization treaties had been narrowed severely in scope and were approaching de facto nullification. These facts seem to furnish conclusive proof that the influence of the treaties on migration was minimal. German-American migration diminished sharply when free or cheap land was no longer available in America, and when the 1893 depression caused living conditions in America to deteriorate. Also, by that time, German industrialization had progressed sufficiently to provide adequate employment and to offer additional social

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7 Joseephy, Die deutsche Auswanderung, table I: Emigration to America was between 58,000 and 80,000 yearly in the 1848-52 period, then rose to 215,000 in 1854. Then, to 1866, the figure dropped sharply. From 1866-70, it exceeded 100,000, then dropped below that figure--except for two years: 1870-71, then dropped below 100,000 until 1881.

8 Ibid. Between 1881 and 1893, the number of Germans who emigrated to the United States was 1,685,693, the greatest number for any time period on record.

mobility at home.

In view of this overall pattern of migration, it would seem that Bismarck's 1866 compromise offer of: (1) freedom from punishment under German law for evasion of military duty for anyone who emigrated under the age of seventeen, and (2) the exemption from punishment of all others after an absence from Prussia of seven years,[9] would have sufficed to influence the German-American electorate in the desired fashion in 1868. This approach would have avoided limiting the rights of citizenship except for imposing a seven-year prohibition upon return to the migrant's country of origin. It would also have avoided the additional infringement upon United States (domestic) sovereignty involved in the German stipulation that they would recognize the acquired citizenship of their former subjects only if it were coupled with a five-year period of residence in America. As American citizenship could be obtained in special cases (service in the Union forces) on terms involving a shorter period of residence, this German stipulation imposed qualifications upon the recognition of citizenship which no sovereign nation should have accepted.

Role of the Treaties as a Precedent for the Anglo-American Convention

It has been contended that the German-American naturalization treaties were influential in inducing Great Britain to sign a similar convention with the United States. While it is true that the British government was

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9 Letter, Wright to Seward, March 21, 1866, F. R. 1866, p. 11. Wright added: "They would release from military service nine out of ten of the returning Prussians, and include nearly every case that has come under my observation during a residence of five years at this post."

watching the Berlin negotiations carefully, the old British rule "once a subject, always a subject"--rooted in feudal custom--was still in effect. This rule was only removed by an Act of Parliament on May 12, 1870. This Act provided that British citizenship would be lost with the acquisition of another citizenship.[10] The Anglo-American Naturalization Convention was signed in London on the next day.[11] It could not have been concluded without this Act of Parliament, and it would probably have followed that Act even without the German-American treaties, given the contemporary Anglo-American rapprochement stemming from common interests. While the existence of the Bancroft treaties may have been a factor leading to the passage of the required enabling legislation the fact remains that, given the volume of Irish-American migration and the increasing community of Anglo-American interests, some understanding between the two nations on this subject would have become necessary eventually.

Nevertheless, it is true that the Bancroft naturalization treaties accomplished an international breakthrough by obtaining, for the first time, recognition by a European power of the right of free expatriation and change of allegiance. However, this was accomplished at the sacrifice of American legal principles, and the cost can be said to have far outweighed the benefit. The American concept held that, while citizenship

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10 Great Britain, Statutes at Large, 33 Vict., c. 14 (1870), "An Act to Amend the Law Relating to the Legal Condition of Aliens and British Subjects."

11 Malloy, Treaties, I, p. 692. Anglo-American Naturalization Convention, signed in London, May 13, 1870.

was not eternal, it was capable of alternation only by an exercise of free will on the part of its possessor. Article IV in four of the five naturalization treaties (Baden being the exception) violated this concept.

Lack of Precision in the Wording of the Treaties

Given the differences between the legal systems of Germany and the United States, the treaties should have been much more precise and specific in their language on certain points. In the absence of machinery for arbitration in the case of disagreement, and no such machinery existed at the time, the lack of precision in the formulation of the treaties was bound to lead to differences over interpretation.[12] This was especially true because the interpretation of the naturalization treaties was left almost exclusively to the Germans. The naturalized citizens, whose rights were in dispute, were usually within the territorial jurisdiction of the Reich. Thus the German point of view usually prevailed, because, to quote The New York Times: "We are not in a position to go to war with Germany, no matter to what extent she presses her former citizens."[13]

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12 At least one American paper recognized this danger: Harper's Weekly, XII (No. 605, August 1, 1868), p. 483: "German Treaty." For a discussion of this, see pp. 74-76 supra. The article contended that the Germans, in fact, the Germans did not expressly renounce their claim of military service from emigrants, because it was never expressed in the treaties.

13 The New York Times, December 18, 1878. An editorial on the possibility of treaty termination or revision counselled "that nothing could be gained by threats, while much might be won by conciliatory treatment." The editorial added: "If we lose what we now have, we shall gain nothing, but simply go back to the former condition of affairs, a state much less endurable than the present."

Clarity of language should have been a major objective in drawing up any agreement between two nations destined to regulate such an important matter as the recognition of citizenship in order not to leave anything open to question. The fact that five treaties--which, in some cases, differed markedly from each other, both in language and in substance--were concluded was an additional factor which made equitable administration difficult. When the German Reich was formed, only three years after the conclusion of the naturalization treaties, these five sovereign German states joined that empire. As a result of this union, the imperial Foreign Ministry became the supreme German arbiter over all five treaties.

As general German hostility to the treaties increased, the non-inclusion of Alsace-Lorraine in the treaties became the means by which the first wedge was driven into the treaty structure. Eventually, this led to the collapse of the entire structure. But the differences between the treaties, compounded by the addition of two protocols granting special rights--espcecially those of the Bavarian Protocol which granted sizeable concessions as compared with the other treaties--would have had an adverse effect on the overall administration of the treaties in any case. As a result of these differing treaty provisions, the German Foreign Ministry took to choosing provisions from any and all treaties--much like selecting hors d'oeuvres off a tray--which best suited its own purpose: to minimize the treaties' domestic impact. On the other hand, the Foreign Ministry never granted to the United States any of the concessions made by individual German states in return for the insertion of certain special treaty

provisions.[14] This practice of one-sided selection of treaty provisions also contributed substantially to the defeat of the purpose of the treaties.

There is some indication that antisemitism--present if unavowed on the American as well as the German side--played some role in the German administration of the treaties. However, it was never officially admitted and the evidence is sufficiently ambiguous to make it impossible to apportion blame; if not, indeed, to prove the contention.[15] Nevertheless, there is room for strong suspicion.

The disdain with which both sides came to treat the 1868 naturalization treaties--the Germans violating them with impunity while the United States tacitly concurred--showed that it is dangerous to conclude an agreement that is unenforceable, particularly if it is also imprecise. Such an agreement can work moderately well only if both sides are willing to honor it. This was true of the naturalization treaties only up to 1878. When one or both partners become unwilling to honor an agreement,

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[14] Malloy, Treaties, I, pp. 62-63. In return for the age-limit of thirty-two for returnees who had not served their military duty in Bavaria, that state granted these naturalized Americans immunity from punishment for evasion of military duty even if they should be subsequently deprived of their acquired American citizenship.

[15] The term "Jew" was never used officially on the German side. It was used once, by Carl Ganzenmüller in a letter (which might have been inspired by the authorities in Baden) to the American legation, to complain against alleged preferential treatment given to Gustav Weil. The Baden government allowed Weil only three weeks back home, whereas Ganzenmüller was permitted three years. Minister Andrew D. White, in his Autobiography, I, p. 592, speaks of a "young Israelite" (unnamed, but identifiable from legation records as Aaron Weil) with contempt, because of his alleged misuse of American citizenship.

the cause of international law is better served by its speedy termination. Just as an unenforceable and disregarded domestic law is best repealed because it endangers a country's whole respect for its legal system, an international agreement that is violated, and whose continual violation is tolerated by the other contracting party, endangers international peace and security.

Rising German Opposition to German-American Migration

On the German side, the 1868 naturalization conventions must have been entered into with some reservations. It has been asserted that Bismarck saw in them only the relatively minor concession of reducing from ten years to five the period of absence required by Prussian law as a precondition for renunciation of Prussian citizenship.[16] However, he had claimed in his negotiations with Minister Joseph A. Wright that any concession beyond the freedom from punishment after an absence of seven years would put a "premium on emigration."[17] However, the Prussian government, presumably in an effort to rid the country of excess population, encouraged emigration until 1873 by granting railroad fare reductions to emigrants.[18] After that time, with the agrarians' opening attack on free

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16 E. Schläger, "Naturalisation in den Vereinigten Staaten contra Militärpflicht in Deutschland," Die Gegenwart, XV (No. 24, June 14, 1879), p. 370.

17 Letter, Wright to Seward, March 21, 1866, F. R. 1866, p. 10. Wright reported Bismarck as saying that anything beyond the concessions offered, "would be actually offering a sort of emigration premium to all able-bodied men."

18 Letter, von Schlözer to Fish, November 20, 1872, F. R. 1872, p. 195. The German minister denied that his government had adopted any measures to prevent emigration to America, but admitted that the reduced railway fares were about to cease. (The did cease on January 1, 1873).

emigration, the ever increasing demands of the German military establishment for recruits, and the need for cheap labor for Germany's growing industries, opposition to emigration rose steadily.

As the United States had been the prime target for German emigration, and as America was the growing commercial rival for Germany, hostility centered more and more on emigration to the United States. When, increasingly, Germany began to turn to protection under neo-mercantilist doctrines preached by leading political economists,[19] the feeling grew that continued large-scale amigration by young, able-bodied men to America had to be halted. Several attempts to introduce legislation designed to regulate emigration failed before a comprhensive bill was finally enacted in 1897.[20] Long before that time, however, the German press and public had, for a variety of reasons, become hostile to German-American migration.

Each German social group had its own reasons for this hostility: the agrarians opposed emigration because it deprived them of cheap farm labor, industry also wanted cheap labor, the Ministers of War and of the Interior opposed it because--in their eyes--it served as a mechanism for young men to evade German military laws. The proponents of colonial ventures wanted

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19 Letter, Sargent to Frelinghuysen, March 12, 1882, MS Dispatches, Germany, M-44, reel no. 50. The American minister stated that Professors Gustav Schmoller and Adolf Wagner, in their lectures, supported colonial ventures and opposed emigration to America as detrimental to German national and economic interests, as America was the leading commercial rival. These doctrines were probably inspired by the works of Friedrich List, especially his The National System of Political Economy, first published in Germany in 1841.

20 Germany, Stenographische Berichte, VIII (1895-97), p. 5940: "Gesetz über die Auswanderung," passed May 19, 1897 by a vote of 186:101 with three abstentions.

emigration strictly regulated and channelled to German colonies or, failing that, to commercial spheres of interest, such as certain regions of South America. They hoped that such emigrants would not lose their loyalty to the fatherland and that they would also help to provide a ready market for the growing output of German industry. This group, especially, looked upon the German-American expatriates with hostility. They saw in this emigration a device for gaining independence from Germany and often as a movement hostile to German aims. The industrialists, under neo-mercantilist doctrines, saw the loss of manpower, not only in terms of a loss of cheap labor, but also as a loss of German skills to the benefit of Germany's hated commercial rival.

All these groups saw the Bancroft naturalization treaties as an instrument through which a foreign power could interfere with German sovereignty within the territorial jurisdiction of Germany. Men of German birth, under the terms of these treaties, could emigrate, stay away a minimum number of years, then return to reside for months with impunity among their old associates who, at the same age, were forced to spend many years--the best years of their lives--in the military service of the state. The local authorities treated such returning naturalized Americans with increasing severity. They either jailed them on the basis of judgments rendered against them for evasion of military service during their absence in America, or expelled them within days or weeks of their return from America.

The German Foreign Ministry, increasingly under the sway of the spirit of militarism and state supremacy, did nothing on its own to enforce the observance of the treaties. When compelled to act by American embassy

intervention, it reluctantly granted the returning naturalized American a short extension of his visit. If he was in jail, his release was obtained, but he was expelled forthwith. Germany, in spirit at least never fully accepted the doctrine of free expatriation and change of allegiance. Her doctrine, despite the Bancroft naturalization treaties, remained "once a subject, always a subject."

United States Loss of Interest in the Treaties

The Americans, too, lost interest in the naturalization treaties shortly after their conclusion. The 1868 elections were over, and the stream of immigrants from Germany resumed in quantities sufficient to populate the American frontier and to fill America's need for agricultural and skilled craft labor. The German-Americans in America returned to their old political state of fragmentation and divided party loyalties. Their prominence as a political factor in the Civil War was shortlived, and without the indirect pressure of the Irish-Americans added to their claim for protection abroad, their complaints fell on deaf ears in later administrations.

Beginning in the 1880's, there was a movement in the United States to limit immigration.[21] The German-Americans complained bitterly that

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21 The New York Times, December 4, 1888. In an editorial entitled "The Naturalization Laws," the Times advocated not only raising residence requirements from five to ten years, but gave at least one reason for its position: "Finally, we then sorely needed and eagerly sought immigration which we no longer have occasion to solicit, and we are inclined rather to discourage." By 1888, the United States was no longer eager to receive thousands of unskilled immigrants or those who came without some capital.

they were not being given their fair share of offices both at home and abroad.[22] The American authorities looked with increasing distrust upon naturalized German-Americans who returned to Germany. They doubted the loyalty of these citizens and resented them because they left the United States to spend in Germany money earned in America--all the while avoiding both American taxes and German military service.[23] However, having once signed the naturalization treaties, successive American Secretaries of State and ministers in Berlin had to continue to intervene on behalf of naturalized citizens who appealed for protection under the terms of these treaties.

The Americans, too, began to espouse neo-mercantilist economic doctrines and entered the ranks of imperialist nations with the Spanish-American war. As a result, they found themselves more and more in sympathy with German views regarding disloyal citizens who resided abroad in order to evade duties at home.[24] In time, American protection of rights of naturalized citizens abroad became less than assiduous. This led to even

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22 Illinois Staatszeitung, December 29, 1877, claimed that the Republican press had, in recent times, carried many complaints about the treatment of German-Americans. According to this paper, Lincoln had realized their importance, as had Johnson and Grant, but that Grant's attitude toward the German-Americans had changed when they began to leave the Republican party in large numbers in 1872. It also claimed that Fish had issued orders that no man could represent the United States in his country of origin--an order supposedly aimed at former Germans. The Cincinnati Volksfreund of December 24, 1877, claimed that Hayes and Evarts were members of a secret nativist organization, otherwise their treatment of naturalized German-Americans could not be understood.

23 Letter, Sargent to Frelinghuysen, January 22, 1883, F. R. 1883, pp. 331-332.

24 Letter, Jackson to Hay, August 12, 1902, F. R. 1902, p. 441: "The embassy has consistently declined to intervene on behalf of persons who wish to make their permanent residence in Germany."

greater German encroachments on the rights granted to naturalized Americans under the Bancroft treaties. Given American political conditions, and an uncensored press free from the threat of prosecution under libel laws as those applied to protect the acts of public officials in Germany,[25] United States ministers had to continue to intervene simply to obtain token adherence to the treaties on the part of the Germans.

Consequences of the Treaties for Naturalized Americans

One of the worst features of the treaties was that, under article IV, they, in effect left it up to the Germans to determine who was an American citizen and who was not. This was an error resulting from Bancroft's leaving the final formulation of article IV to the Germans,[26] compounded by the fact that the treaties had not been altered by the Secretary of State nor amended by the Senate. Thus, the possessor of acquired citizenship was divested of his exclusive right of choosing whther or not he wished to retain this citizenship.

Under Anglo-Saxon legal concepts, the naturalization treaties established a precedent of limiting the foreign residence of naturalized citizens. This eventually led to the inclusion of similar residence limits into other naturalization treaties, and, finally, to their incorporation into

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25 For a discussion of this subject, see pp. 201-202 supra.

26 Letter, Bancroft to Seward, February 14, 1868, F. R. 1868, II, pp. 44-46. Bancroft, with this letter, transmitted the German counter-proposals to his for the treaty. The text shows that the German version prevailed. As the treaty was signed in Berlin on February 22, 1868, no State Department comment on these proposals was ever made.

domestic citizenship legislation. As citizenship law was, during the nineteenth century, still in a process of evolution, this was particularly significant. Such limits on foreign residence for naturalized United States citizens were incorporated into the Nationality Acts of 1906 and 1940, and then into the Immigration and Naturalization Act (McCarran Act) of 1952.[27] Thus, the Bancroft naturalization treaties led directly to the establishment of second-class citizenship status for naturalized Americans which lasted for ninety-six years.

Originally, the treaties had been intended to smooth German-American relations. They accomplished this goal only to a limited degree and for a very short timespan. Lack of clarity of language in the formulation of the treaties and in the provisions themselves led to friction within less than ten years of their conclusion. In addition, the formation of the German Reich, with its simultaneous addition of territory--Alsace-Lorraine--within three years of the conclusion of the naturalization treaties, substantially altered conditions surrounding the administration of these agreements. The Reich's Foreign Ministry was now obliged to administer five separate treaties differing in both wording and provisions. This would have complicated relations between the United States and Germany under any circumstances.

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27 Schneider v. Rusk, Secretary of State, 377 U. S. 163 (1964). Mr. Justice Clark, in his dissenting opinion, followed the chain of connections from this decision back to the beginning: the Bancroft naturalization treaty with the North German Confederation in 1868.

The fact that, beginning with the German empire and the resulting altered power-position of Germany, the naturalization treaties became irksome to the Germans did not help toward the smooth workings of the agreements. With the ascendancy of military considerations and the developing doctrine of the supremacy of "reason of state" in Germany came the de facto reversion to the never completely abandoned (at least in spirit) doctrine of "once a subject, always a subject." This made any limitation of German sovereignty--albeit by treaty--increasingly intolerable to both the government and to the German public. The result was a pressure to void the concessions granted by the naturalization treaties. This was achieved progressively and with only token resistance on the part of the Americans. The latter, because of domestic political repercussions which might have resulted from United States termination of the treaties, preferred, instead, to continue to violate their own Constitution.

By abridging the rights of one segment of the population of the United States vis-à-vis another, the United States authorities relegated naturalized Americans to the status of second-class citizens for almost a century. To quote Mr. Justice Douglas, rendering the majority decision in favor of Mrs. Schneider in the case of Schneider v. Rusk, Secretary of State: "Held by a majority of this Court that paragraph 352 (a)(1) is discriminating and therefore violative of due process under the Fifth Amendment to the Constitution, since no restriction against the length of foreign residence applies to native-born citizens, though some members

of that majority believe that Congress lacks constitutional power to effect involuntary divestiture of citizenship."[28] It took almost one hundred years before another German-born citizen of the United States, who was refused an American passport after prolonged residence in Germany, challenged this second-class citizenship status. A status that derived from a treaty that had been, supposedly, concluded to protect the rights of naturalized citizens abroad. Mr. Justice Douglas, in striking down the concept initiated in the first Bancroft naturalization treaty, said:

> We start from the premise that the rights of citizenship of the native-born and of the naturalized person are of the same dignity and are co-extensive, the only difference drawn by the Constitution is that only the "natural-born citizen is eligible to be President"...the rights of naturalized citiznes derive from satisfying, free of fraud, the requirements of Congress....The Constitution does not authorize Congress to enlarge or abridge those rights....A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. Living abroad, whether the citizen is naturalized or native-born, is no badge or lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance.[29]

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28 Schneider v. Rusk, Secretary of State, 377 U. S. 163 (1964). The paragraph 352 (a)(1) refers to the Immigration and Naturalization Act (McCarran Act) of 1952.

29 Ibid.

APPENDIX

NORTH GERMAN UNION [sic]

1868

Naturalization Convention

Concluded February 22, 1868; ratification advised by the Senate with Amendment March 26, 1868; ratified by the President March 30, 1868; ratifications exchanged May 9, 1868; proclaimed May 27, 1868.

Articles

The President of the United States of America and His Majesty the King of Prussia in the name of the North German Confederation, led by the wishes to regulate the citizenship of those persons who emigrate from the North German Confederation to the United States of America, and from the United States of America to the territory of the North German Confederation, have resolved to treat on this subject, and have for that purpose appointed Plenipotentiaries to conclude a convention, that is to say: the President of the United States of America, George Bancroft, Envoy Extraordinary and Minister Plenipotentiary from the said States near the King of Prussia and the North German Confederation; and His Majesty the King of Prussia, Bernhard König, Privy Councillor of Legation; who have agreed to and signed the following articles:

Article I

Citizens of the North German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America who become naturalized citizens of the North German Confederation, and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

This article shall apply as well to those already naturalized in either country as those hereafter naturalized.

Article II

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitations established by the laws of his original country.

Article III

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, the sixteenth day of June one thousand eight hundred and fifty-two, is hereby extended to all the States of the North German Confederation.

Article IV

If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

Article V

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given the other six months' previous notice of its intention to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

Article VI

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the King of Prussia, in the name of the North German Confederation; and the ratifications shall be exchanged at Berlin within six months from date thereof.

In faith whereof, the Plenipotentiaries have signed and sealed this convention.

Berlin, the 22nd of February, 1868

(Seal) George Bancroft

(Seal) Bernhard König

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Luciana Ranshofen-Wertheimer Meyer was born October 29, 1920 in Ranshofen, Austria. She received her secondary education in Switzerland and spent one semester, in 1938-39, at the University of London. She emigrated to the United States in 1946 and was married in Garden City, New York in 1947. She attended the Georgetown University School of Foreign Service in 1957-59. She was awarded a Bachelor of Science degree (International Affairs major) magna cum laude in 1959. She has studied at the City University of New York from the fall of 1964 to the present. She held a three-year National Defense Education Act Fellowship from 1964 to 1967 and a City University Fellowship in 1967-68.