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Following the Spirit of the Law: Col. Eberhard P. Deutsch and the Legal Division of United States Forces Austria, 1945-1946

Peter J. Casey
University of New Orleans, pjcasey@uno.edu

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Following the Spirit of the Law: Col. Eberhard P. Deutsch and the Legal Division of United
States Forces Austria, 1945-1946

A Thesis

Submitted to the Graduate Faculty of the
University of New Orleans
in partial fulfillment of the
requirements for the degree of

Master of Arts
in
History

by

Peter J. Casey

BA, Franciscan University of Steubenville, 2015

May 2017

Dedication

To my wife, Ginny.

Acknowledgements

This thesis would not have been possible without the influence, support, and guidance of many people. First, the members of the Department of History at Franciscan University of Steubenville, especially Dr. Robert C. Doyle, are responsible for fostering my love of history. I am forever grateful for the countless unscheduled visits to “Doc’s” office to discuss life and share many laughs. As I pursued graduate studies at the University of New Orleans, I was instructed by scholars of the highest degree: Dr. Günter Bischof, Dr. Allan R. Millett, and Dr. Jim Mokhiber worked tirelessly to widen the scope and deepen my knowledge of transnational, diplomatic, and military history. These professors, along with Dr. Marc Landry, provided invaluable guidance and suggestions as I revised this thesis. I must also thank the University of New Orleans Department of History and the Richard Williamson Family for a generous grant that allowed me to research at the National Archives in College Park, Maryland for one week in May 2016.

I also owe an immense debt of gratitude to the attorneys and staff of Deutsch Kerrigan LLP. As I contemplated pursuing law school in the summer of 2013, one of the firm’s partners, Mr. Kermit (Tré) Roux III, was gracious enough to let one of his former Jesuit High School swimmers accompany him to depositions and court hearings. He introduced me to the firm and the story of Col. Eberhard P. Deutsch, which sparked the idea for this thesis. As I began to gather primary source materials, Dr. Bischof introduced me to Mr. Philip Lorio, of counsel to Deutsch Kerrigan and the current Honorary Austrian Consul for Louisiana and Mississippi. I cannot express the extent of my gratitude to Mr. Lorio and his assistant, Ms. Monica Kindscher, for making the primary materials of Colonel Deutsch available for my personal use—even to the extent of copying his entire journal for the year 1945.

Lastly, and most importantly, I would like to express my deepest appreciation to God, my family and friends, and my wife Ginny. I have been the beneficiary of incredible generosity and self-sacrifice on the part of my parents and my wife, and without them this project would not have been completed.

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Abstract

As World War II neared its end in Europe, the Allied powers faced a difficult situation with the occupied nation of Austria. Considering the complicated Austrian relationship with Nazism, the Allies had to decide how the nation would be liberated, occupied, and rehabilitated. Almost instantaneously, the United States, Great Britain, and France became at odds with a vengeful Soviet Union seeking to build a defensive shield of Communist European client states that included Austria. This study will show that as the head of the American Legal Division, Col. Eberhard P. Deutsch, United States Army, was instrumental in the reformation of occupied Austria's legal system. It will also address the alleged role he played in the modification of the Second Control Agreement of 1946, the summer quadripartite conference that allowed the Austrian government greater opportunities for self-determination.

Keywords: Eberhard P. Deutsch; Austria (1945-1955); Second Control Agreement (1946);
military history; diplomatic history; legal history

Introduction

On June 15, 1945, the Hungarian vessel *Lehel* was discovered in possession of five to two hundred million dollars' worth (valued in 1945 currency) of opioid narcotics in the Danube River near Linz, Austria. In a written statement Technical Sergeant William A. Summers of the 337th Harbor Craft Co., U.S. Army, stated that he was searching cargo holds of a number of vessels in the river when the captain of the *Lehel* refused inspection, claiming that he was not in possession of any cargo. When T/Sgt. Summers threatened to break the locks, the captain produced the keys and members of the civilian appraisal team confirmed that the contents were indeed narcotics. To complicate matters, the Hungarian ship, having fled Budapest from the approaching Soviet army for fear of their supplies being confiscated, was stuck in the river near Linz and, therefore, extremely close to the border between the American Soviet zones of the occupied nation of Austria.¹

Col. Eberhard P. Deutsch, Chief of the Legal Division of United States Forces Austria, was responsible for overseeing an investigation and informing his superiors of his findings. In a report dated June 30, 1945, he discovered that a Hungarian Corporation, Alkaloida, located 250 miles from Budapest, sent its critical manufacturing personnel, machinery, and as much of its supplies as possible on a refugee train out of Hungary in September 1944 as the Germans were retreating and destroying manufacturing facilities. The company resumed operations in the capital city of Budapest until January 1945 when the Russian advance was approaching; this time, the company took the same personnel and equipment on a vessel on the Danube to Melk, Austria. Yet again in April 1945, as the Russians were nearing that city, Alkaloida's crew and supplies boarded the *Lehel* and ultimately docked on the south bank of the Danube near Linz.

¹ Box 14; Legal Division, Administrative Branch, General Records, 1945-1950; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of United States Occupation Headquarters, World War II, Record Group 260 [RG 260]; National Archives at College Park, College Park, MD [NACP].

Colonel Deutsch discovered that Alkaloida was properly registered under international law—specifically the Geneva Convention on Narcotics—for the patents of its product; and due to the valuable nature of the cargo, the ship’s captain and crew were not informed about the contents. Recognizing that the company was involved in legitimate business and remained in conformity with international law, Deutsch affirmed that the property was now in control of the Allied Military Government and requested that the Supreme Headquarters Allied Expeditionary Force (SHAEF) send its narcotics expert to advise the military government on the subsequent appropriate procedures.²

In the middle of this case, and on the same day this report was drafted, Deutsch was busy in Salzburg with a number of other duties: he chaired a meeting on the creation of military courts, developed a case against an Austrian who was a specialist at removing S.S. tattoo runes, held a conference concerning a Russian shot by the Austrian police, dictated commendation certificates for men under his command during the Sicily campaign, formally approved the use of a radio service in the Merchant Marine, translated a document concerning a proposal for proportional elections, played bridge, and enjoyed various alcoholic drinks with his colleagues while hosting a musical party until 11:30 p.m.³ This combination of incredibly diverse tasks and experiences are but a few examples of the immense number of responsibilities Deutsch faced during his time as both the head of the American Legal Division in Austria and the Chairman of the Allied Legal Council (a revolving position), the quadripartite representatives of the four nations’ top legal authorities, for parts of 1945 and 1946. Formerly an infantry officer, Deutsch

² Ibid.

³ Eberhard P. Deutsch Diary, 30 June 1945, Eberhard P. Deutsch Papers, private collection of Deutsch Kerrigan LLP, New Orleans Louisiana (hereafter cited as Deutsch Papers). Deutsch’s diary is a collection of brief daily writings that detail what Deutsch did, saw, ate, and drank that day; where he woke up; and what times he woke up and went to bed. The entries are written matter-of-factly and very rarely offer explanations or elaboration. For instance, the entry from 30 June 1945 offers no further information as to the significance of any of the activities Colonel Deutsch completed that day.

was given a dramatic change of assignment in early 1945 that revived his professional life outside of the military, which was the practice of law. His assignments varied from seemingly insignificant tasks to international meetings and conferences, often changing at a moment's notice.

By examining the personal writings of Col. Eberhard P. Deutsch, the varied documents and articles contained in the Eberhard P. Deutsch Papers of Deutsch Kerrigan LLP, and official occupation records from the National Archives and Records Administration at College Park, Maryland, this paper will use Deutsch's story to examine the history of occupied Austria from 1945 to the summer of 1946. Specifically, it seeks to assess of Deutsch's role in restoring, compiling, and promulgating laws and ordinances in an effort to reconstruct the Austrian legal system. It will also offer fresh insight into the historiographical debate regarding the origins of and amendments to the Second Control Agreement, a crucial pact signed by the quadripartite powers in June of 1946 that provided an avenue toward Austrian self-determination. Ultimately, this paper will show that, despite some myths surrounding his exploits, Col. Eberhard P. Deutsch was indeed a pivotal player in both the legal reconstruction of Austria and the legal instruction of the American occupying forces.

Eberhard P. Deutsch, the Lawyer-Soldier

A special-featured obituary in the *New York Times* dated January 17, 1980, attempts to briefly tell the story of Deutsch's storied life. Passing away at the age of eighty-two the previous day, Eberhard P. Deutsch had risen to prominence in New Orleans as an attorney after he studied law at Tulane and Loyola Universities, established the firm Deutsch, Kerrigan & Stiles⁴, served in both World Wars, successfully fought Huey Long on newspaper taxes, argued cases in front of

⁴ Today, the firm is known as Deutsch Kerrigan, LLP. See *Biz New Orleans*, "Deutsch, Kerrigan & Stiles Completes Firm Rebranding, New Website," BizNewOrleans.com, <http://www.bizneworleans.com/October-2015/Deutsch-Kerrigan-Stiles-Completes-Firm-Rebranding-New-Website/> (accessed January 27, 2017).

the United States Supreme Court, served as chairman on multiple American Bar Association committees, worked as the former editor of the legal journal *The International Lawyer*, and published two books on international law.⁵ A larger-than-life figure, Deutsch developed the reputation of striving for excellence in all that he did; recalling Deutsch's legal acumen and the way in which he "demanded the utmost clarity and precision of the firm's lawyers," the firm's website features a brief story from 1951 when Deutsch "countered an opposing 1,450-page brief with 11 pages of tightly reasoned argument" to successfully argue a case before the U.S. Supreme Court.⁶

Deutsch's inseparability from the law and the extent of his legal success cannot be overstated, as seen in an excerpted document circulated by his firm in 1995. The author uses the image of two complete sets of specially printed U.S. Supreme Court decisions and the U.S. Code Annotated that Deutsch kept in both his New York apartment overlooking Central Park and his residence in New Orleans atop the Pontchartrain Hotel to give a bold image of Deutsch's love and respect for the law. Eberhard P. Deutsch was a member of over 100 clubs and professional organizations, primarily legal societies. He became such an expert on international law that he was selected as an advisor to the U.S. State Department on the development of the Vienna Convention on the Law of Treaties in 1969, on which he wrote an article featured in the *Notre Dame Lawyer*.⁷ Moreover, Deutsch was an early advocate for the International Court of Justice and believed the institution could be altered to better handle various disputes among nations. In his 1977 book *An International Rule of Law*, Deutsch presented the summation of his years of international law expertise and proposed a complete revision of the court's charter. Deutsch

⁵ The *New York Times*, "E.P. Deutsch, a Louisiana Lawyer," *New York Times (1923-Current File)*, Jan 18, 1980, <http://ezproxy.uno.edu/login?url=http://search.proquest.com/docview/121288730?accountid=26352>.

⁶ Deutsch Kerrigan LLP, "History," deutschkerrigan.com, <http://www.deutschkerrigan.com/firm/history> (accessed January 27, 2017).

⁷ See Eberhard P. Deutsch, "Vienna Convention on the Law of Treaties," *Notre Dame Lawyer* 47, no. 2 (1971): 297-303, Deutsch Papers.

received such high praise for his writing that many elected officials—including Sen. Russell B. Long, who also consulted Deutsch for matters relating to the U.S. Senate and the ratification of treaties—believed the book could revitalize and strengthen the court’s jurisdiction and effectiveness without forcing unnecessary surrender of state sovereignty.⁸

In addition to his local, domestic, and international recognition and achievements in the study and practice of law, Deutsch was also a highly decorated veteran of the United States Army. In World War I, he enlisted in the First Illinois Cavalry and achieved officer status by the end of the war. In the Second World War, he began as a major of infantry and ultimately achieved the rank of colonel. He fought and participated in twelve significant engagements, including an airdrop behind enemy lines at Normandy as well as the invasion of Sicily.⁹ As the war was nearing its end, Deutsch was reassigned to serve as the legal advisor to Gen. Mark Wayne Clark, commander of the 15th Army Group and the future American High Commissioner of occupied Austria. He went on to serve in multifaceted roles as both the head of the American Legal Division as well as the rotating chair of the Allied Legal Division, the main legal body for the quadripartite powers. By the end of his military career, he had received sixteen American military decorations, including the Silver Star, Legion of Merit (given in 1946 for his service in Austria), Bronze Star, Army Commendation Medal, and Purple Heart; three French awards, including the Order of Lafayette; and, perhaps most significantly, the Austrian Gold Cross of Merit, given in 1967 in recognition of his role in working toward a legal rehabilitation of Austria.¹⁰ After the war, Deutsch served as Civilian Aide to the Secretary of the Army for

⁸ See Eberhard P. Deutsch, *An International Rule of Law* (Charlottesville, VA: University of Virginia Press, 1977) and Max Chopnik, “Eberhard P. Deutsch” in the *Journal of the Association of the Bar of New York City*, Deutsch Papers.

⁹ Biography of Eberhard P. Deutsch, Deutsch Papers and *The New York Times*, “E.P. Deutsch, a Louisiana Lawyer,” *New York Times (1923-Current File)*, Jan 18, 1980, <http://ezproxy.uno.edu/login?url=http://search.proquest.com/docview/121288730?accountid=26352>.

¹⁰ Biography of Eberhard P. Deutsch, Deutsch Papers.

Louisiana from 1964 to 1978, Chairman of the Board of Visitors of the U.S. Army's Judge Advocate General School from 1967 to 1977, a special consultant to the White House on Powers of the President as Commander in Chief for four years, and the Honorary Austrian Consulate for Louisiana and Mississippi from 1964 to 1974/1975.¹¹

Both the international and local legal communities recognize Deutsch's highly impressive record of achievement and his contributions to international law. However, his accomplishments during his time in the military—particularly in Austria—are not known by either the wider public interested in World War II history or scholars of military and legal history. This lack of knowledge on Deutsch and his Austrian achievements can be attributed to two macro-level factors. First, his military accomplishments may appear to be just another story of one of the roughly twelve million American servicemen who fought in World War II, hundreds of thousands of which served in the occupation of defeated enemies.¹² With countless stories of heroism, escape from captivity, self-sacrifice, bravery, victories and tragic defeats, an attorney's life—with a popular perception of the profession reduced to writing documents and conducting odious meetings—does not make the same mass appeal as do popular histories like *Band of Brothers* or personal stories from monumental events such as Pearl Harbor and D-Day. Second, military history scholars have largely avoided or have chosen not to use legal documents as primary sources, possibly out of a concern that a lack of legal education or training would make such documents inaccessible. While scholars of various disciplines have begun to explore the true breadth of war and violence through subjects such as medicine, environment, psychology, and gender, historians have largely confined military legal history to those of Judge Advocate

¹¹ Ibid. and Max Chopnik, "Eberhard P. Deutsch" in the *Journal of the Association of the Bar of New York City*, Deutsch Papers.

¹² For a simplified yet thorough breakdown of statistics concerning U.S. service personnel during World War II, see National World War II Museum, "By the Numbers: U.S. Military," [nationalww2museum.org, http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ww2-by-the-numbers/us-military.html](http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ww2-by-the-numbers/us-military.html) (accessed January 27, 2017).

General personnel in the various branches, emphasize prominent trials, or focus on the laws or rules governing armies and warfare in general and the prosecution of those accused of war crimes. However, international history has a record of embracing legal history—and some scholars are increasingly advocating for the merits of legal analyses of history and the use of various legal sources.¹³

Deutsch's story adds three invaluable features to the study of the Second World War and the postwar period. First, as a microhistory, Deutsch's story not only contains fascinating elements of diplomatic, military, and legal history but also opens the door to deeper transnational histories of World War II on an individual level. A bilingual son of German-speaking immigrants whose father was a rabbi, Deutsch fought all across Europe as an infantry officer. He traveled to France, Italy, England, and Austria in matters pertaining to postwar Austria, and later traveled the globe as a scholar of international law. Both the wartime fighting and postwar legal work transcended national boundaries, allowing the study of Deutsch's work to break out of a traditional historical mold. Additionally, the soldier-lawyer dimension of Deutsch's military career, combined with the influence of Judaism, adds a new dimension to traditional narratives of American soldiers; according to the Jewish Virtual Library and the Bureau of War records, 4.23 percent of U.S. military servicemen and women were Jewish. Deutsch was one of this roughly half a million.¹⁴ While Deutsch never once mentioned anything pertaining to faith in his diary, his family background, primarily his family's faith and place or origin, must have affected his

¹³ Mary L. Dudziak, "Legal history as foreign relations history" in Frank Costigliola and Michael J. Hogan, eds., *Explaining the History of American Foreign Relations* 3rd ed. (New York: Cambridge University Press, 2016), 135-150.

¹⁴ Jewish Virtual Library, "Statistics on Jewish American Soldiers," [jewishvirtuallibrary.org](http://www.jewishvirtuallibrary.org/statistics-on-jewish-american-soldiers-in-world-war-ii), <http://www.jewishvirtuallibrary.org/statistics-on-jewish-american-soldiers-in-world-war-ii> (accessed February 22, 2017).

time in the military during World War II especially in Austria, his parents' homeland.¹⁵ In 1946, Deutsch exchanged multiple letters with Nehemiah Robinson of the World Jewish Congress regarding the grievances of Austrian Jews. Deutsch appears to have been a point of contact between American Jewish communities and the U.S. military. Some letters from Mark Clark to the World Jewish Congress mentioned that his subordinates were keeping a close eye on Jewish restitution measures. While no personal or previous connection is disclosed in the correspondence, Robinson trusted Deutsch's "profound sense of justice" and relied on the Colonel's advice and expertise regarding pieces of Austrian legislation that would affect Jews, particularly in regards to restitution laws.¹⁶

Second, Deutsch's story works to widen and diversify the largely confined legal histories of the Second World War, especially in the study of postwar Austria. The two primary war crimes trials, the International Military Tribunal in Nuremburg and the International Military Tribunal for the Far East, have received the bulk of World War II scholarship on issues of law and justice.¹⁷ One work, however, breaks this model with no mention of Deutsch and little

¹⁵ Eberhard Deutsch's father, Dr. Gotthard Ezekiel Deutsch, was a rabbi, professor of religion and law, an expert on Jewish biblical history, and a prolific author in multiple languages. He was born in Kanitz the province of Moravia, Austria (present-day southeast Czech Republic) in 1859 and immigrated to the United States in 1891 after accepting a position in Jewish history and philosophy at Hebrew Union College in Cincinnati, OH. Eberhard was born in Cincinnati in 1897; his older brother, Herman, who was born in Europe, ended up in New Orleans as a newspaper reporter and presumably started a pattern of chain migration that brought his brother to the south; both Tulane University and the University of New Orleans hold some of Herman's papers from his professional career. Interestingly, considering Eberhard's service in World War I, Gotthard spoke out against America's wartime role and found himself the target of anti-German sentiment in 1917. See C.E. Lindgren, "Gotthard Deutsch," *American National Biography (From Oxford University Press)* (2010): *Research Starters*, EBSCOhost (accessed March 3, 2017).

¹⁶ Folder 1, Box 68, #337 thru #370; Legal Division, Administrative Branch, General Records, 1945-1950; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

¹⁷ For works on the Tokyo War Crimes Trials, see Arnold C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: Morrow, 1987); Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, MA : Harvard University Press, 2008); Richard H. Minear, *Victor's Justice: The Tokyo War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971). For writings on Nuremburg, see Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (London: Bloomsbury, 1993). Many writings speak to the controversy surrounding the legacy of these trials, particularly accusing the prosecutors of enacting a "victor's justice" on the defeated populations; see Danilo Zolo, *Victor's*

mention of Austria. Thomas J. Shaw's *World War II Law and Lawyers: Issues, Cases, and Characters* provides profiles of prominent attorneys, political officials, and military officers with a well-written legal history of World War II, covering all theaters of the war in varying degrees. In the case of Austria, though, Shaw's coverage of issues prior to the end of the war is far more thorough than his discussion of postwar problems, concentrating briefly on the First Control Agreement and the State Treaty of 1955.¹⁸ These works aside, scholars have largely failed to take into account the complexity and importance of the *legal* reconstruction of nations. Court systems, constitutions or governing documents, and local laws and ordinances had important meaning for the defeated populations. Additionally, accounts of the day-to-day legal matters facing civilians in an occupied country—be it property rights, criminal cases, voting rights, or issues with prior membership with the oppressive regime—rarely, if ever, receive adequate attention. Deutsch's work as the inaugural head of the American Legal Division is centered on all of these issues of subsidiarity, or the laws affecting the most fundamental levels of Austrian society, while still containing elements of macro-level legal and diplomatic issues.¹⁹

Last, related to both the umbrella of wartime legal history and the particular emphasis on domestic laws, Deutsch's work from 1945 to the summer of 1946 engages a developing aspect of just war theory as well as wider discussions on occupations and the role of victorious armies.

Justice: From Nuremberg to Bagdad (New York: Verso Books, 2009). Scholars are beginning to depart from this traditional historical legal scholarship on World War II. For example, Harry N. Scheiber and Jane L. Scheiber's *Bayonets in Paradise: Martial Law in Hawai'i* (Honolulu, HI: University of Hawaii Press, 2016) is a mold-breaking study examining the extent of military control over the civilian population in Hawai'i.

¹⁸ Thomas J. Shaw, *World War II Law and Lawyers: Issues, Cases, and Characters* (Chicago, IL: American Bar Association, 2012), 281-292

¹⁹ Two works among the many writings of the postwar world provide good insight into the workings of occupations, particularly from the American perspective. See Susan L. Carruthers, *The Good Occupation* (Cambridge, MA: Harvard University Press, 2016) and David W. Ellwood, *The Shock of America* (New York: Oxford University Press, 2012). The occupations of Germany and Japan have received the bulk of scholarship on post-World War II occupation, but some scholars argue that Austria has been seen as a model even to the present-day challenges facing American forces in Iraq. See Günter Bischof, "The Post-World War II Allied Occupation of Austria: A Case Study in Successful Nation Building?" unpublished paper delivered at the Nobel Foundation, Moscow, 2011.

Based on the writings of Catholic intellectuals such as Augustine of Hippo and Thomas Aquinas, as well as secular sources such as the ancient Romans and the School of Salamanca, theorists in overlapping fields of philosophy, political science, and history have sought to address two fundamentals of warfare: appropriateness (when is the use of force justified?) and proportionality (how much force should be used?). As scholars have previously addressed *jus ad bellum* (just causes for engaging in war), *jus in bellum* (just conduct in war), they have failed to address the proper conduct of victors in allied nations. Thus, a new aspect of just war theory—that of *jus post bellum*—has emerged to address the appropriate and proportional means a victor nation should employ to occupy and rehabilitate the vanquished.²⁰ Deutsch’s responsibilities for rehabilitation and just treatment of Austria and its citizens in legal matters can serve as a historical case study in which just war scholars can critically examine the conduct of an occupying force during a conflict that some consider the last truly just conflict fought by the United States.²¹

Understanding the Context: The Occupation of Austria

Prior to the defeat of the Axis powers in Europe, the Allies convened many times to discuss the appropriate ways to govern and occupy the enemy nations upon their defeat.

²⁰ Michael Walzer, considered by many to be an authority on just war theory, mentions the necessity to consider postwar problems in *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977). For more detailed discussions on this new aspect of just war theory, see Gary J. Bass, “Jus Post Bellum,” *Philosophy & Public Affairs* 32, no. 4 (2004): 384-412; Alex J. Bellamy, “The Responsibilities of Victory: ‘Jus Post Bellum’ and the Just War,” *Review of International Studies* 34, no. 4 (2008): 601-625; Mark Evans, “Moral Responsibilities and the Conflicting Demands of Jus Post Bellum,” *Ethics & International Affairs* 23, no. 2 (2009): 147-164; Louis V. Iasiello, “Just Post Bellum,” *Naval War College Review* 57, no. 3 (2004): 33-52; and Doug McCready, “Ending the War Right: *Jus Post Bellum* and the Just War Tradition,” *Journal of Military Ethics* 8, no. 1 (2009).

²¹ It should be noted, however, that the framework of *jus post bellum* contains some problematic elements. First, given the changing nature of warfare since the end of the Second World War, the attempt to lay out certain set principles of *jus post bellum* is largely confined to the nation-state model. Second, both scholars and military officials directly involved with post-war operations appear to have a different understanding of the nature of justice. While the quest to define commonly accepted and universally applicable principles of *jus post bellum* appears to be a futile effort, strictly subjective understandings of justice will only perpetuate varying opinions on every aspect of just war theory and will not move scholars any closer to agreeing upon some principles of right conduct before, during, or after a war. Lastly, these scholars are vigorously disagreeing on the conflicting benefits and disadvantages of conducting war crimes trials and executions as a means of providing retributive justice.

Originating from the pursuit of an unconditional surrender promulgated at the Casablanca Conference, the Allies became confident by the end of 1943 that the tide was turning against the Nazi regime. Building upon the eight points agreed upon by Churchill and Roosevelt in the Atlantic Charter of 1941, particularly points three (“the right of all peoples to choose the form of government under which they will live...to see sovereign rights and self government restored to those who have been forcibly deprived of them”) and six (“after the final destruction of the Nazi tyranny...to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries”), Roosevelt, Churchill, and Stalin asserted that despite the Axis attempts to sow seeds of disunity among the Allies, the United States, Great Britain, and the Soviet Union would only accept an unconditional surrender from Germany and Japan; they also noted that they “[meant] no harm to the common people of the Axis nations” but sought to “impose punishment and retribution in full” upon those found guilty.²²

With respect to Germany, the Allied nations knew that Berlin must be taken, the government dismantled, and the military defeated. In the occupation of Austria and the planning that preceded it, however, the Allies faced a difficult and complex situation: what was the nature of Austria’s relationship to National Socialism; and, depending on the degree of complicity, how then should the nation and citizens be treated? The Moscow Declaration of 1943 solidified a belief in Austrian innocence by declaring the nation the first “victim” of Nazism and vowing decisive action: “The governments of the United Kingdom, the Soviet Union, and the United States of America are agreed that Austria, the first free country to fall a victim to Hitlerite

²² Avalon Project of Yale Law School, “Atlantic Charter,” avalon.law.yale.edu, <http://avalon.law.yale.edu/wwii/atlantic.asp> (accessed March 4, 2017); Avalon Project of Yale Law School, “Casablanca Conference 1943,” avalon.law.yale.edu, <http://avalon.law.yale.edu/wwii/casablan.asp> (accessed March 4, 2017).

aggression, shall be liberated from German domination.” More importantly, the three nations vowed to restore Austria as “free and independent”:

[Great Britain, the Soviet Union, and the United States] regard the annexation imposed on Austria by Germany on March 15, 1938, as null and void. They consider themselves as in no way bound by any charges effected in Austria since that date. They declare that they wish to see re-established a free and independent Austria and thereby to open the way for the Austrian people themselves, as well as those neighboring States which will be faced with similar problems, to find that political and economic security which is the only basis for lasting peace. Austria is reminded, however that she has a responsibility, which she cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation.²³

Although the view that the Allies pledged to free Austria from German captivity has become the commonly accepted narrative, some scholars disagree with this assumption. In *Austria in WWII: An Anglo-American Dilemma*, Robert H. Keyserlingk argues that both the United States and Great Britain had originally recognized the Anschluss and used the Moscow Declaration as a means of conjuring up internal support for the Allies within Austria, all the while doubting the viability of a free and independent Austrian state. Keyserlingk describes the Austrian problem through a balance-of-power framework, noting that Austrian instability since the Versailles Treaty after World War I continually threatened the international community; in response, he argues, the Allies sought to create a Danubian federation—a brainchild of the British that would be enforced by American strength.²⁴ Believing the Allies sought to create a more stable Austrian state, Keyserlingk posits that “positive Anglo-American attitudes towards post-Anschluss Austria certainly seemed to offer immediate postwar political rewards for the Western Allies and Austrians” by allowing “the Anglo-Americans to establish the legitimacy of their occupation presence in Austria, and to justify their postwar support for an independent

²³ Avalon Project of Yale Law School, “Moscow Conference; October 1943,” [avalon.law.yale.edu, http://avalon.law.yale.edu/wwii/moscow.asp](http://avalon.law.yale.edu/wwii/moscow.asp) (accessed February 22, 2017).

²⁴ Robert H. Keyserlingk, *Austria in WWII: An Anglo-American Dilemma* (Montreal, Quebec: McGill-Queen’s University Press, 1988), 185-189.

Austria to be freed from Soviet control.”²⁵ Most importantly for the purposes of this paper, Keyserlingk raises what may be seen as the origin of a problem of memory for Austrians and World War II: “If, according to the Anglo-American historical view, Austria had not been an integral part of the Nazi Reich after 1938, but had become a submerged and forcibly occupied state later liberated by the Allies, Austrians as a whole might escape postwar moral and legal accountability for the noxious actions of the Nazi regime.”²⁶

Aside from the debate surrounding Allied treatment of Austria and the nature of the Anschluss, the problem of Austrian complicity with National Socialism remains at the forefront of Austrian memory of World War II to this day. Günter Bischof, an Austrian native, dispels the false claim of Austrian guiltlessness. He frames his discussion around a document produced in the summer of 1945 during the Second Austrian Republic, which stated that since Austria was invaded and occupied by Nazi Germany from March 1938 to May 1945, the nation could not be held responsible for crimes committed by their occupiers and thus would not be compelled to pay war reparations.²⁷ Although the remainder of his article traces the lineage of this false reality, he provides enlightening statistics pertaining to the large numbers of Austrian collaborators. Though the use of “People’s Courts,” thirty Austrians were executed for war crimes. Additionally, not only had 1.3 million Austrians served in Hitler’s army, but nearly 350,000 were also held in prisoner of war camps around the world.²⁸ These realities, when interwoven with the grim accounts of slaughtered Jews, other minority groups, and the Austrians who refused to collaborate, produce a set of very complex circumstances for the Allies. Bischof’s

²⁵ Ibid., 4-5.

²⁶ Ibid., 5.

²⁷ Günter Bischof, “Victims? Perpetrators? ‘Punching Bags’ of European Historical Memory? The Austrians and Their World War II Legacies,” *German Studies Review* 27, no. 1 (2004): 18.

²⁸ Ibid., 19.

Ph.D. dissertation title—*Between Responsibility and Rehabilitation*—concisely addresses the complex challenges posed to Allied occupation forces.²⁹

Allied planning for the occupation of Austria began long before 1945, and it largely proceeded with the assumption of Austrian innocence. In fact, though Deutsch's work pertaining to Austria began on January 1, 1945 as the war continued, he acknowledged that he was brought into the preexisting Allied planning group that had taken up residence in London.³⁰ In *Britain and the Occupation of Austria, 1943-1945*, Alice Hills not only notes that Austria was a secondary concern for the Allies in relation to Germany but also reveals that "British policy was based on sentiment and intent, rather than knowledge."³¹ Her work combines the inseparable but often conflicting interests of political figures and military officials—what she calls a "hybrid task"—who had differing understandings of occupation policy. Hills traces the origins of British policy to March 1943, seven months prior to the Moscow Declaration, when Sir Geoffrey Harrison, a German expert in the British Foreign Office, asserted that a temporary military government and occupation force would be necessary to prevent both Germany and Austria from falling into decay.³² Largely because of this early planning, Hill believes, the British were able to carry out a successful and efficient occupation of Austria despite a lack of knowledge of the internal workings of wartime Austria. Hill concludes that

There was some excellent wartime planning, though there was much that was inefficient, but it was prompted and shaped by the objectives to be achieved once the war ended: Austria was to be liberated and restored to independence by means of a military government and an Allied commission. Building on a sentimental acknowledgement of Austria's symbolic (not to say strategic) importance, British planners developed a policy on Austria's future which was then reconciled with those of her Allies and translated into practical requirements.³³

²⁹ See Günter Bischof, *Between Responsibility and Rehabilitation*, Ph.D. Thesis, Harvard University, 1990, 2 vol., photocopy, (Ann Arbor, MI: University Microfilms International, 1990).

³⁰ Eberhard P. Deutsch Diary, 1 January 1945, Deutsch Papers.

³¹ Alice Hills, *Britain and the Occupation of Austria, 1943-1945* (London: Macmillan, 2000), viii.

³² *Ibid.*, 4.

³³ *Ibid.*, 197.

From the American perspective, Donald R. Whitnah and Edgar L. Erickson chronicle the post-war planning processes in *The American Occupation of Austria: Planning and Early Years*. Beginning with the German Anschluss of Austria in 1938 and until the Moscow Declaration in the fall of 1943, the United States struggled to address the post-war planning for Austria because, like the other Allied nations, it considered Nazism to be a plague that had become deeply rooted in Austrian society.³⁴ At the same time, American officials were quick to abandon Austria by not taking a strong stance in the international arena, echoing Keyserlingk's point that America accepted the Anschluss: "Secretary of State Cordell Hull assailed Germany's use of force against Austria...but at the same time formally accepted the fact that Austria no longer existed as a nation."³⁵ It should be noted that Whitnah, who served as a combat engineer during World War II and as a merchandise control manager for the U.S. Army Exchange Service in Salzburg in the postwar years, favorably reviewed Keyserlingk's work and found his conclusions "provocative."³⁶ In December 1944, U.S. officials accepted a zone of occupation in Austria on equal terms with both the Soviet Union and Great Britain; by agreeing to tripartite control, the three governments began a process of contentious planning responsibilities. In late 1944, U.S. planning groups were established in both London and Caserta, Italy. As a move to bolster a diplomatic presence in the planning group, the State Department advocated for John G. Erhardt—with whom Deutsch would have many meetings in 1945—to be assigned as a political advisor to the future U.S. commanding general for Austria.³⁷

³⁴ Donald R. Whitnah and Edgar L. Erickson, *The American Occupation of Austria: Planning and Early Years* (Westport, CT: Greenwood Press, 1985), 3.

³⁵ *Ibid.*,

³⁶ University of Northern Iowa Rod Library, "Donald R. Whitnah," library.uni.edu, <https://www.library.uni.edu/collections/special-collections/biographical-sketches/donald-r-whitnah> (accessed March 6, 2017); Donald R. Whitnah, "Austria in WWII (Book Review)," *Canadian Journal of History* 24, no. 2 (1989): 285-286.

³⁷ Whitnah and Erickson, *The American Occupation of Austria*, 25-27.

As the occupation was carried out, eyewitness accounts describe first-hand encounters with the various difficulties facing the Allies. Gen. Mark W. Clark, who as the commander of the Fifth Army gained fame for liberating Rome in the summer of 1944, was named the American High Commissioner for Austria and placed in charge of all U.S. forces in Austria. Portions of his two memoirs, *Calculated Risk* and *From the Danube to the Yalu*, describe his experience in Austria and the difficulties he encountered. Clark is the essential Cold Warrior with a flair for the dramatic, immediately framing his encounters with the Soviets in the context of ideological struggle: “The peoples of the free nations won a glorious victory over the Axis powers in that war but instead of gaining One World of Peace they were immediately threatened with One World of War more terrible than before. New tyrants parading under the banner of communism leaped forward to try to fill the vacuum of power left when the old tyrants of fascism were overthrown.”³⁸ This lens helped shape his belief in a monolithic Communism, a force he believed he encountered in Korea from the summer of 1952 to 1953 after he “had two years of head-knocking with the Russians to teach [him] what it is that Communists respect: FORCE.”³⁹ Having been educated through a “full course in Soviet duplicity,” Clark also notes that “at Panmunjom, I found the Communists to be the same breed of bandits. They are ruthless in their exploitation of weakness; they stop, look and listen only when confronted with force.”⁴⁰

In mid-1945, Clark received word of his new appointment to Austria, first traveling to Chicago for a victory parade and to Brazil for an honoring of the Brazilian Expeditionary Force, a unit that fought with Clark in Italy.⁴¹ Arriving in Austria late in August 1945, Clark wrote that he anticipated challenges, but discovered that his greatest task was convincing the Russians, who

³⁸ Mark W. Clark, *From the Danube to the Yalu* (New York: Harper & Brothers Publishers, 1954), 4.

³⁹ *Ibid.*, 3.

⁴⁰ *Ibid.*, 3-4.

⁴¹ Mark W. Clark, *Calculated Risk* (New York: Harper & Brothers Publishers, 1950), 448-449.

had taken Vienna in April 1945 after the Vienna Offensive, to let the other Allies into the city: “They were busy looting Austria at the time and didn’t want to be bothered.”⁴² The Russians arrived first and entered their zone of occupation, which in part contained the country’s main region for food production, Lower Austria, in addition to Vienna. Clark notes that the Soviet zone was vitally important for feeding a hungry population, especially considering the Soviet track record of starving population groups like the Ukrainians. The zone contained ninety-six percent arable land and forty-three percent of all Austrian farmland which typically produced more than one-third of all wheat, half the total yield of rye and potatoes, and more than three-fourths of all sugar beets.⁴³ The subsequent food crisis became “the most urgent” as the Americans and British rushed to supply food to feed the Austrians in their respective zones. In response to this Soviet maneuver, Clark proposed the policy of refusing to take up residence in Vienna until an acceptable resolution could be made regarding food. “This course of action,” Clark said, “would force the Russians to accept full responsibility for the food shortage” and would compel them away from negative political repercussions. However, Clark was informed by Washington that such an action was too “rigid” and should not be taken.⁴⁴

This particular crisis is but one of the initial encounters between the Soviets and the Western Allies at the start of the Cold War, but it illustrates the effects of such a confrontation on multiple levels: balancing between the two emerging global superpowers, the United States and the Soviet Union; individual military and political leaders like Clark who were seeking to make policy decisions; and the local Austrian population, desperately in need of food, that will be affected by such policy decisions. It is into the midst of this this tumultuous international

⁴² Ibid., 452.

⁴³ Ibid., 454.

⁴⁴ Ibid., 456.

political scenario that Col. Eberhard P. Deutsch was tasked to serve his country by operating as the head of the American Legal Division of United States Forces Austria.

Colonel Deutsch Goes to Austria

On January 1, 1945 Deutsch was in an army hospital near Versailles, France recovering from inflamed back muscles, kidney and prostate problems, sinus issues, and a digestive ailment. Writing his daily summary, he noted with surprise that on this first day of the New Year he received new orders to the “Austrian Mission.”⁴⁵ Though he continued to be hospitalized for a week, ultimately released on January 7, he remained very busy in spite of his physical maladies. He practiced his multilingual skills by writing lengthy letters in English and French (later documents also reveal his fluency in German); he read two books, both of which he found “not so hot” and “not interesting”; he censored mail; and he enjoyed various cocktails while lying in his hospital bed, including eggnog spiked with bourbon supplied by a Major Wimer.⁴⁶

From the time of his release from the hospital January 7 until June 13, 1945, Deutsch conducted all of his work outside of Austria, traveling to Paris, Troyes, London, and spending the bulk of his time in various parts of Italy—primarily Caserta and other suburbs of Naples, the location of the American planning group for Austria. In London on Friday January 19, Deutsch reported to Gen. Lester D. Flory, the U.S. deputy commander for Austria, and was formally given the assignment of Chief Legal Officer in Austria.⁴⁷ The next day, he was formally installed into his position and immediately began working: he met with Granville Sharp of the British Legal Division and began reading U.S. military handbooks so as to revise the legal and occupation sections in the following days.⁴⁸ On Tuesday January 23, Deutsch jotted a

⁴⁵ Eberhard P. Deutsch Diary, 1-4 January 1945, Deutsch Papers.

⁴⁶ *Ibid.*, 1-6 January 1945.

⁴⁷ *Ibid.*, 19 January 1945.

⁴⁸ *Ibid.*, 20-22 January 1945.

particularly interesting note in his diary: he “began thought on [the] question of [the] right to dismember [a] nation by conqueror under int. law.”⁴⁹

As Deutsch assumed command of the American Legal Division of Headquarters United States Forces Austria, he was given authority on an overwhelming number of completely different areas of law and public policy. Given the nature of his expertise, he was often called upon to answer questions from high-ranking officials outside of Austria. In one instance, the U.S. Military Government for Germany sent a memo from Gen. Lucius D. Clay dated November 2, 1945 asking “Under Austrian law as of 4 September 1945 was a religious ceremony effective to create a valid marriage without a Civil Ceremony.” Deutsch responded with an emphatic “NO!”⁵⁰

Deutsch had to balance his already many duties with the common administrative tasks facing any commanding officer: writing recommendations for promotions, requesting medals and commendations for men under his command, and completing weekly exercise reports as well as personnel sheets when necessary. Every week, Deutsch had to submit a standard memo verifying the physical condition of his men; as example, his final report read: “I certify to the best of my knowledge, during the week ending Friday 12 July 1946, all officers of this division participated in at least one half-day of exercise (four hours), except for the following officer(s).”⁵¹ Deutsch also wrote numerous recommendations for his staff to receive the Army Commendation Ribbon, Good Conduct Medal, Bronze Star, the American Theatre Campaign Medal, and the Legion of Merit. These tasks also show the degree to which Deutsch relied on the

⁴⁹ Ibid., 23 January 1945.

⁵⁰ Folder 40, Box 4; Legal Division, Administrative Branch, Records Relating to Military Government and Austrian Laws and Ordinances; United States Forces Austria. U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

⁵¹ Folder 2, Box 68, #337 thru #370; Legal Division, Administrative Branch, General Records, 1945-1950; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

assistance and work of the entire division staff to accomplish their goals. One of Deutsch's crucial assistants was Capt. Albert Loewy, who Deutsch nominated for the Legion of Merit in October of 1945.⁵² At that time, Loewy was the chief of the American Courts Branch who prepared more than sixty critical studies on the status of Austrian laws prior to 1938. From November 1944 to April 1945, he led the Research Unit for Austrian and German Law and provided Deutsch with the foundation from which to begin rectifying Austrian law. According to Deutsch, "Capt. Loewy's services in these phases of planning and initial occupation...laid the indispensable groundwork for reestablishing a sound system for local administration of justice in the US Zone of Austria."⁵³

Although Deutsch was responsible for advising occupation officials on a number of policy issues and had numerous personal responsibilities of his own as a commanding officer, three particularly important events—the publication of compiled laws and ordinances (known as *The Digest*), his organizing of a conference on legal matters for American servicemen, and his supposed contributions to the Second Control Agreement of 1946—truly highlight his legal skill and serve as case studies in assessing his service in rehabilitating Austria.

Compiling the Laws: The Digest

In September 1945, Deutsch published the fruit of the many hours of the Legal Division's labor during the previous months: "The Digest of Proclamations, Laws, and Ordinances of the Provisional State Government of Austria, prepared by the Legal Division of the United States

⁵² Dr. Loewy was an Austrian who had been imprisoned in Dachau and Buchenwald after the Anschluss in March of 1938. He was released and found his way to the United States via England in 1940 and was subsequently drafted into the U.S. Army. He had been educated at the University of Vienna Law School and became a vital asset to the American Legal Division. See Friedrich Stadler, ed., *Vertriebene Vernunft I: Emigration und Exil österreichischer Wissenschaft 1930-1940* (Vienna: Jugend und Volk, 1987), 294 and Interview with Albert Loewy, Archives of Austrian Contemporary History, #673, Institut fuer Zeitgeschichte, University of Vienna, courtesy of Dr. Oliver Rathkolb.

⁵³ Box 44, #200.6 thru #201.1; Legal Division, Administrative Branch, General Records; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

Allied Commission for Austria.”⁵⁴ This 111-page document is extraordinarily comprehensive, compiling the laws and decisions previously passed by the Austrian legislature. At the same time, it provides additional commentary on laws and ordinances passed to eliminate potential confusion and provide historical context—especially when references are made to laws that existed prior to the Anschluss. It is particularly noteworthy that the document, while prepared and compiled by the American Legal Division, was adopted by the Allied Council and used as an authoritative text on the status of Austrian laws to that date. Though the document is a clear sign of the Allied effort to work toward a free Austrian state, it includes a previous declaration that charged the Austrian people with “stamping out the last remnants of National Socialism” and encouraged them to “follow [the] government willingly in this spirit.”⁵⁵ Such a statement, in addition to laws such as the appointment of public administrators to monitor Austrian businesses and the creation of vetting procedures for judges and other public officials, exemplifies the way in which the occupation governed Austria as a “nation in tutelage.”⁵⁶

In the matter of constitutional law, all changes made by the Germans were repealed and “the ordinary federal laws” were restored as they existed on March 5, 1933; thus, the constitution of 1929 was reinstated as the governing document of the Provisional Government and a Judicial Transition Law was put on the books to remove all laws enacted since March 13, 1938, deemed “inconsistent with a free and independent Austrian state or with the fundamental concept of a true democracy.”⁵⁷ In the same respect, The Digest also made an initial step toward addressing

⁵⁴ Pg. 1, Folder 18, Box 2; Legal Division, Administrative Branch, Records Relating to Military Government and Austrian Laws and Ordinances; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

⁵⁵ *Ibid.*, pg. 3.

⁵⁶ *Ibid.*, 9, 30. The phrase “nation in tutelage” is taken from the title of an edited volume, Günter Bischof and Josef Leidenfrost, ed., *Die Bevormundete Nation: Österreich und die Alliierten, 1945-1949* (Innsbruck: Haymon, 1998).

⁵⁷ *Ibid.*, pgs. 4, 6.

the issue of property and possessions taken by German force and the repatriation of public property and also repealed the Nuremberg racial laws against Jews.⁵⁸

Aside from these monumental changes, The Digest also promulgated a number of laws enacted since late April of 1945 that affect various aspects of the state and public life. The Digest reaffirmed a law from June 12, 1945 that reinstated Austrian criminal law, giving the Austrian Ministry of Justice the authority to enforce the Austrian Criminal Code of May 27, 1852, and the Juvenile Court Law of July 18, 1928.⁵⁹ In light of such a monumental change, many of the other declarations may seem trivial; for instance, the document affirmed the laws of May 1, 1945, some of which prescribed a coat of arms, seal, and colors for the Austrian state.⁶⁰ However, such ordinances speak to the scope and depth of laws that govern and affect society from the top down. Deutsch's thoroughness, leadership, and knowledge of the law resulted in a finished code that provided clarity and understanding for the Allied powers as they proceeded in their occupation.

⁵⁸ Ibid., 10-11, 14.

⁵⁹ Ibid., 25.

⁶⁰ Ibid., pgs. 7, 8.



Figure 1. Photograph SC 208176, “LTC Eberhard P. Deutsch works in his office.” Vienna, Austria. 26 October 1945. National Archives and Records Administration at College Park, College Park, Maryland.

The Intersection of Law and Justice: Instructing American Servicemen

In addition to laws and ordinances that had to be rectified and reconciled with the Austrian constitution, Deutsch also had to address issues of justice and how they intersect with various levels of society. Of the many meetings Deutsch participated in, one in particular shows the grave decisions made or reaffirmed by officials during the American military occupation intertwined with ordinary judicial functions. On June 18, 1945, Deutsch gathered the military government officers—particularly the legal representatives and other interested parties—of the 101st Airborne Division, three infantry divisions (103rd, 65th, and 42nd), the 11th Armored

Division, and the 106th Cavalry Group in the *Landesgericht* Building, the headquarters of the Military Government, in Salzburg.⁶¹

This particular meeting, in which Deutsch presided, focused on a host of legal issues, including jurisdiction, guiding principles of law, courts and procedures, prisoners of war, spies, traitors, and war criminals, and how justice should be carried out for those found guilty of crimes. Deutsch began by briefing those present on the current legal situation in Austria. Because of the delegation of certain degrees of authority, each commander was responsible for carrying out occupation law as defined by the Rules of Land Warfare, a long-standing governing document of the U.S. military that also contains plans for occupations. Deutsch simplified the previously discussed issue of Austrian collaboration with Nazi Germany as well as the difficulties with the Soviet Union when he affirmed that “The heads of the nations, or, on our side, contend that we are to treat Austria as independent. Austria is to become free and independent regardless of what is being said under ‘rights of international law.’”⁶²

Deutsch knew the challenges such a complex situation facing the many men involved in the occupation. The depth and scope of topics discussed reveal his understanding of the many legal issues—however important or trivial—that American servicemen could encounter. He informed those gathered that a Military Government Handbook for Austria had been released, containing many of the laws and ordinances that would be governing Austria. Such a document, he warned, could only be used as a guide since “No one can write down all the rules and regulations to cover all situations.” More than trying to cover all of the laws or issues possible, Deutsch attempted to communicate the necessity for sound judgment and respect for the military

⁶¹ Pg. 1, Folder 1, Box 68, #337 thru #370; Legal Division, Administrative Branch, General Records, 1945-1950; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

⁶² *Ibid.*, pg. 2.

hierarchy before soldiers act upon feelings of retribution or on their subjective interpretations of justice.⁶³

Though the occupation proceeded with an assumption of Austrian innocence, occupation forces still faced the difficult tasks of addressing civilian collaborators, Austrian prisoners held before the war officially ended, and suspected war criminals. First, for civilian internees, Deutsch affirmed that the Counter Intelligence and Public Safety branches of the occupation regime had primary jurisdiction and that a board formed in Salzburg, comprised of legal officers and representatives of these two branches, had been efficient and successful and sorting out such cases.⁶⁴ Second, for prisoners already held, Deutsch affirmed the Public Safety branch's role in determining facts of the case but gives the legal officers the responsibility of releasing prisoners "if held longer than the sentence to which they would have been given had they been found guilty if tried."⁶⁵ Lastly, Deutsch acknowledged the "international and diplomatic complications" surrounding war criminals and began by dividing the crimes into two categories: those committed before the Allied occupation and those committed during or after the occupation. Having just returned from the War Crimes Conference in London, Deutsch revealed that many meetings—both open and secret—took place that did not result in a specific directive of how to carry out such trials. He noted that the German occupation forces, according to the daily papers he received, had made a decision of their own that could affect the Austrian occupation forces: "We may try war criminals if the crimes took place during the occupation by the allied forces, after occupation by our forces, or if their being at liberty will effect [sic] the security of our [sic] forces. We can't try persons for offenses committed prior to the time of our arrival--they are not

⁶³ Ibid., pg. 2-3.

⁶⁴ Ibid., pg. 3.

⁶⁵ Ibid., pg. 4.

subject to trial at this time under ““war crimes.””⁶⁶ When the time came and a system of justice was put in place, Deutsch said, the Americans must be ready to act quickly and efficiently since tensions over legal issues were arising: the Soviets refused to take part on the London War Crimes Conference and some were pushing to “try whole and complete organizations such as the S.S.”⁶⁷

Aside from these complex topics, Deutsch also addresses local functions of courts, juries, and the procedural issues, namely for carrying out the law on more routine cases. He clearly understood the value of restoring law in Austrian society and avoided trivializing cases that may seem insignificant in the context of rising quadripartite tensions. Deutsch informed those gathered that he was organizing a legal library to assist those responsible for various cases, also showing his understanding of the practicality of the law: “Everyone of our problems is a real one, a realistic one, and must be treated on that basis. They cannot be treated on a theoretical basis and hope to succeed.” With respect to the Austrian court system, Deutsch pushed for unanimity and consistency, informing the men that no Austrian courts will reopen until all can become operational at the same time; in the meantime, he began a process of vetting jurors, judges, notaries, and other necessary figures in the legal system since all had to take an oath—something not required for any other government position.⁶⁸

Deutsch also discussed the many procedures for military courts. His opening remarks in this segment are somewhat perplexing: Urging the officers to “Follow the ‘spirit of the law’” since governance of the population depends on them, he then said that the soldiers should “not assume that everyone has an assumption of innocence. We are dealing in the last analysis with enemies.” His statements seem at odds with the Moscow Declaration of 1943 when the Allied

⁶⁶ Ibid.

⁶⁷ Ibid., 5.

⁶⁸ Ibid., 6.

powers agreed upon a free and independent Austrian state that had been victimized by Nazi Germany. However, in the context of this meeting and the topics discussed, it is clear that he is referring to those who are accused of crimes and tried in military courts. Though he commented that guilty verdicts should be brought in for crimes committed and that “punishment is to be given as a deterrent to others,” he first stated that he and his men are all subject to the rules set up by the Supreme Commander—but promulgated and formed by the legal division—and urged the men to follow these rules; some of these included responsibly keeping records, ensuring that a defendant knows his rights (especially the right to petition), and not prosecuting those who could not be tried (such as those who have been given diplomatic immunity or war criminals as previously mentioned). Other rights and responsibilities were outlined, such as the defendant’s right to representation by an Allied officer when a death sentence is given or the accused’s right to not take the stand and testify. Policies like these worked to ensure the just treatment of Austrian citizens according to continental and military law.⁶⁹

Toward the end of the meeting during a question and answer session, Lt. Col. John Ritchie of the 65th Infantry Division posed a particularly sobering question to Deutsch: “In the event a death sentence is imposed, is the appropriate method of execution imposed by shooting or hanging.” Deutsch abruptly responded: “Through hanging.” More jarring, however, was a discussion of the treatment of children who have been found guilty of sabotage. For example, Ritchie claims his men have discovered fourteen year olds cutting telephone wires and was curious as to the proper treatment of juveniles. Deutsch responded:

You can treat a child of 16 as an adult if you so desire. You should conduct that case as you would with any adult. Question his parents and neighbors. Remember a lot of these children are acting entirely without fault of their own. They have had Nazi doctrines

⁶⁹ Ibid., 6-8.

drilled into them and in many cases they can be saved for humanity with the use of proper child psychology.⁷⁰

While these discussions appear to treat these serious issues of justice, life, and death stoically, it should be noted that Deutsch's role as the head of the Legal Division is first and foremost to interpret and apply existing military law. Above proposing or creating laws, Deutsch's primary role was to serve as an expert on international and military law to then guide the application of such law. Illustrated by his urging of reasonable action and sound judgment in this plethora of legal issues, Deutsch avoided promulgating his own ideas for a post-World War II Austrian society in favor of following the law set before him. He offered guidance to those who would be carrying it out on a daily basis. Though his remarks concerning the presumption of innocence can make one suspicious of his intentions, he showed clear restraint in the discussions of the various legal topics and even proposed why and how Austrian youths committing acts of sabotage might not have full mental or moral consent—thus seeking to offer them clemency and help in returning to a normal life. His urging of fair proceedings and true justice for Austrians accused of crimes speaks to a concerted effort to ensure that the American occupation of Austria remained just.

⁷⁰ Ibid., 12.



Figure 2. Photograph SC 240888, “General Mark W. Clark, right, congratulates Colonel Everhard [sic] P. Deutsch, after presenting him with the Legion for Merit.” Vienna, Austria. 5 March 1946. National Archives and Records Administration at College Park, College Park, Maryland.

A Historiographical Debate: Deutsch and the Second Control Agreement of 1946

The ideological struggle between the Soviet Union and the other Allied powers over influence in Austrian affairs became a persistent theme throughout the ten year Allied occupation from 1945 to 1955, as illustrated previously in the writings of Mark Clark. As the first year since the fall of the Third Reich was coming to a close, tensions between the Soviets and the West only grew stronger. After agreeing to reorganize the control mechanisms governing Austria after an initial control mechanism signed in July 1945, the four representatives of the Allied powers

signed the Second Control Agreement on June 28, 1946. The agreement, while initially submitted by the British, contained an amendment known as the “reverse veto.” Quite simply, the addition stated that if the Allied powers sought to veto legislation originating in the Austrian legislature—as the Soviet Union had done unreservedly during the previous year—all four powers would have to unanimously veto the proposed act. This fundamentally reshaped the ways in which Austria would be governed, and many observers remained perplexed as to why the Soviets would voluntarily agree to such a limitation on their influence. Today, scholars also debate the origins of this agreement with multiple persons from the British, French, and American armed forces claiming credit for the masterful wording. When considering Deutsch’s work in the previous year, particularly on the Austrian legal system, perhaps the crowning achievement of his time in Austria was this contribution to this new agreement; multiple sources speak to his responsibility for its creation. However, these sources are problematic because they cannot be verified by primary source materials other than interviews with Eberhard P. Deutsch and Dr. Albert Loewy. Though this debate goes on, Col. Eberhard P. Deutsch was not the sole author of this amendment. However, based on a marked-up draft of the agreement from February 1946, it appears that Deutsch edited the key paragraph known as the “reverse veto” to what became the final version.

As part of their pledge of a free and independent Austria at Moscow in 1943, the four allied powers recognized the need “to redefine the nature and extent of the authority of the Austrian Government and of the functions of the Allied organization and forces in Austria” in light of the July 1945 agreement.⁷¹ In *Austria: 1918-1972*, Elisabeth Barker notes that “The issue at stake was whether the Austrian government and parliament were to conduct the country’s

⁷¹ Pg. 1, Folder 27, Box 41, #072.1 thru #092.1; Legal Division, Administrative Branch, General Records, 1945-1950; United States Forces Austria, U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

affairs in a normal way, or whether they were to be the servants of the occupying powers, acting collectively or singly.”⁷² Devoting a chapter to the Second Control Agreement in her book, Barker provides an important account of how the Agreement came to pass.

In December of 1945, the British Foreign Office drafted a new machinery agreement that would give Austria “as much independence as is safe”; by February of 1946, however, a revised draft submitted by the British to the quadripartite powers contained a previously unseen amendment.⁷³ This section (Section A of Article 6) reads, with emphasis added:

All legislative measures, as defined by the Allied Council, and international agreements which the Austrian Government wishes to make except agreements with one of the 4 Powers, shall, before they take effect or are published in the State Gazette be submitted by the Austrian Government to the Allied Council. In the case of constitutional laws, the written approval of the Allied Council is required, before any such law may be published and put into effect. *In the case of all other legislative measures and international agreements it may be assumed that the Allied Council has given its approval if within thirty-one days of the time of receipt by the Allied Commission it has not informed the Austrian Government that it objects to a legislative measure or an international agreement.* Such legislative measure or international agreement may be then published and put into effect. The Austrian Government will inform the Allied Council of all international agreements entered into with one or more of the 4 Powers.⁷⁴

In this paragraph saturated with legal speak, the “reverse veto” was born: essentially, any piece of legislation, barring constitutional laws, would require a unanimous veto on the part of the United States, Great Britain, France, and the Soviet Union in order to be struck down.

Barker writes that the quadripartite powers bargained over the inclusion of this language. The Soviets conceded only after ensuring a veto exception for any unilateral agreements made between Austria and the Soviet Union. Moreover, there was limited discussion as to what qualified as a “constitutional law.” On May 31, 1945, the Allied Council Executive Committee

⁷² Elisabeth Barker, *Austria: 1918-1972* (Coral Gables, FL: University of Miami Press, 1973), 171.

⁷³ *Ibid.*, 171-172.

⁷⁴ A digitized version of the Second Control Agreement is provided by the Library of Congress at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000004-0079.pdf>. The scanned document is taken from Charles Irving Bevans, *Treaties and Other International Agreements of the United States of America, 1776-1949: Multilateral, 1946-1949* (Washington, D.C.: Department of State, 1968), 79-86.

decided that the Austrian government could all but decide what constitutional laws were; this process was permitted without objection by the Soviet Union.⁷⁵ This fatal mistake by the Soviets had lasting ramifications that ultimately included the creation of an Austrian state free from Soviet domination. The Soviets quickly realized their mistake: in 1949, U.S. Secretary of State Dean Acheson proposed a revised control agreement for Germany based on the Austrian model, and the Soviet Union rejected it outright. Additionally, the Soviets vetoed over 550 non-constitutional laws between 1946 and 1953 and used every available form of protest and disruption available.⁷⁶

While substantial scholarship on the Second Control Agreement has been excluded from many comprehensive accounts of post-World War II Austria, a number of works briefly mention the quadripartite conference. However, these works fail to discuss how the agreement was amended and ultimately passed. Writing a comprehensive history of the ten years of Allied occupation in Austria, Günter Bischof characterizes the agreement as one “which gave Austria considerably more room to maneuver in the international arena.”⁷⁷ *Austria Between East and West, 1945-1955*, William B. Bader’s history of the postwar Austrian occupation, uses an ideological history lens to analyze the years of occupation as the first years of the Cold War. Bader’s emphasis is not on the agreement itself; rather, he focuses on the ramifications of the agreement and how it went entirely against the ideological norm for the Soviet Union who saw vetoes as an integral part of their international diplomatic policy.⁷⁸

Like Bader, Rolf Steininger emphasizes the effect the Second Control Agreement had on quadripartite relations in *Austria, Germany, and the Cold War: From the Anschluss to the State*

⁷⁵ Barker, *Austria; 1918-1972*, 173.

⁷⁶ *Ibid.*, 175.

⁷⁷ Günter Bischof, *Austria in the First Cold War, 1945-55: The Leverage of the Weak* (New York: St. Martin’s Press, 1999), 72.

⁷⁸ William B. Bader, *Austria Between East and West, 1945-1955* (Stanford, CA: Stanford University Press, 1966), viii, 65.

Treaty, 1938-1955. Steininger's discussion of the agreement centers on the possible reasons for Soviet ratification: first, each country could now independently make bilateral treaties with Austria, which the Soviets would rely on as a new avenue for shaping communist policy; and second, it signaled the possibility for the quadripartite authorities to freely address the highly contentious issue of German property.⁷⁹ In *Russia and the Austrian State Treaty: A Case of Soviet Policy in Europe*, Swedish diplomat Sven Allard proposes a slightly different perspective: "Probably officials in Moscow and Austria did not realize the full significance of the concession. Unfamiliar with Western legal terminology, they did not understand the difference between fundamental law and other legislation."⁸⁰ Despite the possibility of a Soviet misstep, Allard adds that the Soviet prospects for gaining power in Austria "still appeared bright" as many Politburo officials expected the United States to enter a period of economic decline, leaving a newly independent capitalist Austria vulnerable without Capitalist support.⁸¹

Aside from these works, the writings *exclusively* on the agreement and its formulation are primarily based on British, Russian, and French perspectives—with an American one notably absent. In *Britain and the Occupation of Austria, 1943-1945*, Alice Hills includes substantial background details to the British creation of the Second Control Agreement; however, she does not include any material pertaining to the ratification of the agreement and the subsequent changes in policy.⁸² Two articles, "Anstelle des Staatsvertrages: Die UdSSR und das Zweite Kontrollabkommen 1946" by Wolfgang Mueller and Klaus Eisterer's "Frankreich und das Zweite Kontrollabkommen vom 28. Juni 1946" have yet to be translated from their original German. While Eisterer's piece examines the role France played in the conferences on the New

⁷⁹ Rolf Steininger, *Austria, Germany, and the Cold War: From the Anschluss to the State Treaty, 1938-1955* (New York: Berghahn Books, 2008), 52.

⁸⁰ Sven Allard, *Russia and the Austrian State Treaty: A Case Study of Soviet Policy in Europe* (University Park, PA: Pennsylvania State University Press, 1970), 100.

⁸¹ *Ibid.*, 101.

⁸² See Alice Hills, *Britain and the Occupation of Austria, 1943-1945* (London: Macmillan, 2000).

Control Agreement, Mueller's article is a groundbreaking study on the workings of the Soviet representatives in Austria.⁸³

Despite the work done on the Second Control Agreement as a whole, the issue of authorship of Article 6 remains contentious. Since the British Foreign Office took primary responsibility for the creation and submission of the entire agreement, most scholars have assumed British authorship for the entire agreement. This, however, fails to take into account the collaborative processes that occurred among the powers, primarily the work between the legal representatives of the United States and Great Britain as seen in Deutsch's diary. Considering the lasting ramifications of the agreement, one that many saw as an opening toward Austrian independence, many figures involved in the occupation had great incentive to claim credit of authorship. Elisabeth Barker writes that the Austrian Socialists, led by Karl Seitz, made "a considerably exaggerated claim" to authorship of the entire agreement because of their meetings with the British Foreign Office over concerns of Soviet domination in eastern Austria.⁸⁴ Aside from the Austrian Socialists, the British, French, and Americans—including Col. Eberhard P. Deutsch—claim responsibility for amending the document that led to Austrian freedom.

Despite the multitude of scholarly texts on postwar Austria and the simultaneously scant works exclusively on the Second Control Agreement of 1946, any written record of Deutsch's involvement in the Agreement can only be found in a select number of writings. Donald R. Whitnah and Edgar L. Erickson give a thorough yet brief summary of the situations surrounding the Agreement in *The American Occupation of Austria: Planning and Early Years*. Specifically, they believe that "Major credit for the legal stipulations involved in the New Control Agreement

⁸³ See Klaus Eisterer, "Frankreich und das Zweite Kontrollabkommen vom 28. Juni 1946" in Günter Bischof and Joseph Leidenfrost, eds. *Die bevormundete Nation: Österreich und die Alliierten 1945-1949* (Innsbruck: Haymon-Verlag, 1988), 187-215; and Wolfgang Mueller, "Anstelle des Staatsvertrages: Die UdSSR und das Zweite Kontrollabkommen 1946" in Manfred Rauchensteiner and Robert Kriechbaumer, eds., *Die Gunst des Augenblicks: Neuere Forschungen zu Staatsvertrag und Neutralität* (Vienna: Böhlau Verlag, 2005), 291-320.

⁸⁴ Barker, *Austria: 1918-1972*, 172.

must go to Colonel Deutsch of New Orleans, legal advisor to General Clark and an expert on civil law.”⁸⁵ Elaborating further, the authors note that

Deutsch guided the provisions through the Allied Legal Directorate on its way to passage by the Allied Council. Dr. Loewy, an assistant to Deutsch, seriously doubted the chances of the veto-in-reverse gaining Russian acceptance and believed that only the temporary absence of a key Soviet legal officer and the lack of pro-Russian legal advice from the Austrians at the time allowed the ultimate passage. Loewy contends that the eventual replacing of the Soviet secretary to the Allied Council and the head of the Russian Legal Division resulted from the Soviets’ belief that they had been tricked into the agreement.⁸⁶

Whitnah and Erickson had the good fortune of personally interviewing both Deutsch and Dr. Loewy in 1972 and 1970, respectively.⁸⁷ While these interviews clearly provided ample material on the complexity of the New Control Agreement for the authors, a lack of sufficient hard evidence fails to uphold the facts presented in the book. Additionally, the claims to Soviet ignorance on policy, while conceded as a possibility by Allard, contradict the writings on a logical Soviet policy by Barker and Steininger.

However, an obscure additional source corroborates the material found in *The American Occupation of Austria*. Alwyn V. Freeman’s “Why the Soviet Union Permitted Austria to Be Free: A Long-Standing Mystery Solved,” appeared in *International Lawyer*—the same journal of which Deutsch served as editor—two years before Deutsch passed away. Beginning with the Moscow Declaration of 1943, which had committed the Allied powers to a free and independent Austria, Freeman reconstructs a timeline of international contention in Europe. The Soviets, Freeman notes, were attempting to strong-arm their way into Eastern Europe: with the treaties with Hungary and Romania, the Soviets were able to occupy those nations while “draining

⁸⁵ Donald R. Whitnah and Edgar L. Erickson, *The American Occupation of Austria: Planning and Early Years* (Westport, CT: Greenwood Press, 1985), 209-210.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, 310.

Austria of virtually every substantial asset it could lay its hands on.”⁸⁸ With this new power dynamic, it did not seem likely that the USSR would relent with respect to Austria.

As the quadripartite powers agreed to make changes to the control mechanisms for Austria, the Soviet Union, Freeman writes, was primarily concerned with an affirmation of its right to remain in Austria. “This was indispensable to the retention of their occupying forces in Yugoslavia, Hungary, and Romania.”⁸⁹ Deutsch realized the limitation of these aims and therefore proposed the idea of the “reverse veto.” As long as the spirit of cooperation was preserved among the four powers, Deutsch told the Soviet representatives, the Soviet Union would continue to be permitted to maintain a military presence in Austria. By a brilliantly deceptive act, Deutsch supposedly used his legal acumen to write an agreement that the Soviet representatives could not refuse. “The result was that while the principle of unanimity so important to the Russian military was maintained, the Western Powers had complete control of Austrian legislation.”⁹⁰ Freeman has a differing take on the Soviet aims than does Steininger: “Clearly, the Russians simply did not know what they were getting into.”⁹¹

Freeman concludes Deutsch’s tale with a climactic moment: on March 2, 1967, Dr. Ernst Lemberger, Austrian Ambassador to the United States, conferred upon Eberhard P. Deutsch the Austrian Gold Badge of Merit on behalf of the President of Austria. During the presentation, he noted Deutsch’s achievements with the Second Control Agreement: “The entire reconstruction of our law system and the whole legal basis of Austria’s economic reconstruction after the war was possible only by the above-mentioned agreement, and so Colonel Deutsch really laid the

⁸⁸ Alwyn V. Freeman, “Why the Soviet Union Permitted Austria to Be Free: A Long-Standing Mystery Solved,” *International Lawyer* 12, no. 4 (1978): 863-864.

⁸⁹ *Ibid.*, 866.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

foundation stone for the reconstruction of Austria.”⁹² Other than the statement by Amb. Lemberger, taken from an article in the *Times-Picayune*, the other information came from personal interviews with Deutsch.

Freeman’s article became a widely accepted source on Deutsch’s claim to authorship of the reverse veto, going on to influence Birgit Schwarz’s “Eberhard P. Deutsch: How an American of Austrian Descent Brought About the Reconstruction of the Austrian Republic” which appeared in *Austrian Information*, the official publication of the Austrian Press and Information Service in the United States. The article, published in 1996, is primarily a summary of the biography of Eberhard P. Deutsch (previously cited) and Freeman’s article, with some exceptions. Most importantly, Schwarz quotes Deutsch’s son, Brunswick, as noting that his father was ““moved by the idea of reconstituting the Austrian identity”” and aspired ““to make sure that Austria would become free from Germany again.””⁹³ Another *Austrian Information* article contained in the Deutsch papers, penned by Walter R. Roberts, provides a brief history of the Second Control Agreement but does not mention Deutsch. Roberts, who is described as “a member of the American delegation to the Austrian treaty talks,” provides the same background information found in accounts such as Barker’s with one main exception. He believes the Soviet Union failed to support the Communist party in Austria as it had done in other Eastern European countries. After the Communists fared poorly in elections, the Soviets agreed to a revised agreement—one Roberts says was submitted by both the British and the Americans.⁹⁴

These sources, which are essentially products of the same oral history tradition, are upholding the legend of Eberhard Deutsch and his impact on the Second Control Agreement

⁹² *Ibid.*, 867.

⁹³ Birgit Schwarz, “Eberhard P. Deutsch: How an American of Austrian Descent Brought About the Reconstruction of the Austrian Republic,” *Austrian Information* 49, no. 5 (1996): 5, Deutsch Papers.

⁹⁴ Walter A. Roberts, “The Role of Eberhard P. Deutsch; A Comment,” *Austrian Information* 49, no. 11 (1996): 7, Deutsch Papers.

based on interviews with Eberhard Deutsch. However, in a document from the Legal Division records at the National Archives, it appears that Deutsch's true role has been discovered. The revised Article 6 Section A reads, with hand-written modifications (original words struck through and additions in parentheses):

All legislative measures, as defined by the Allied Council, and international agreements which the Austrian Government wishes to make except agreements with one of the 4 Powers, shall, before they take effect or are published in the State Gazette be submitted by the Austrian Government to the Allied Council. ~~¶~~ (In) the case of constitutional laws ~~are considered~~, the written approval of the Allied Council is required, before any such law may be published and put into effect. In the case of all other laws (legislative measures and international agreements) it may be assumed that the Allied Council has given its approval if within thirty-one days of the time of receipt by the Allied Commission it has not informed the Austrian Government that it objects to a legislative measure or an international agreement. (Such) legislative measure or international agreement may be (then) published and put into effect. The Austrian Government will inform the Allied Council of all international agreements entered into with one or more of the 4 Powers.⁹⁵

In the document, these changes are made in what is Deutsch's handwriting when compared to his other marked-up documents from the National Archives; this script does not, however, match Deutsch's printed handwriting as seen in his diary.⁹⁶ It is now clear that the claim to authorship seen in previous sources stems from his true role in the editing and advising process, particularly the inclusion of the phrase "legislative measures and international agreements." Until other documents prove otherwise, it is clear that Col. Eberhard P. Deutsch did not write the Second Control Agreement or the reverse veto, but he was involved in the revision process of the Agreement, a feat that some may believe deserves the same amount of recognition.

⁹⁵ Pg. 23, Folder 3, Box 1; Legal Division, Administrative Branch, Records Relating to Military Government and Austrian Laws and Ordinances; United States Forces Austria. U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

⁹⁶ See Appendix A for an original photograph of the document.

Conclusion

With the signing of the Austrian State Treaty in 1955, the goal of a free and independent Austria envisioned at Moscow in 1943 had finally come to fruition. Though the Allied occupation of Austria lasted ten years, the first years of initial encounters with the Soviets, a food crisis, and the various other challenges originally facing the occupation forces were undoubtedly some of the most important times in the entirety of the occupation. In this process, Col. Eberhard P. Deutsch was an instrumental figure in restoring Austria's legal basis for the restoration of independence and a just society based on the rule of law. His background—an infantry soldier, an international and civil law attorney, and the son of a Jewish German-speaking immigrant from Moravia—provides the basis for a fresh look at the initial occupation of Austria, synthesizing legal, diplomatic, and military histories into microhistory form.

Deutsch's knowledge of European law, diligence, leadership, and loyalty to the ideals of justice provided a legal framework from which the Americans, as well as the other Allied powers, could proceed in the occupation. In his time as the head of the American Legal Division, Deutsch displayed his integrity and respect for the law that resulted in a just application of existing military occupation policy. Regardless of opinions on the appropriateness of certain provisions of the occupation and military laws, especially with respect to grave issues such as execution for certain crimes, it is evident that Deutsch sought to act on the basis of logic and jurisprudence, not emotion. In relation to just war theory, particularly just conduct after war (*jus post bellum*), Deutsch's work speaks to the importance of avoiding retribution and allowing legislative and legal systems the resources and stability they need to work effectively. When contrasted with Soviet aggression in food supplies and extraction of resources, Deutsch's efforts to maintain order and to form the legal minds and consciences of the men under his command to

enable them to make proper and ethical decisions in the field highlight the ways in which he worked toward respecting the local population and the laws that governed them.

Finally, at this time, no documents completely support the claim that Col. Eberhard P. Deutsch authored either the entire Second Control Agreement or the “reverse veto” despite the fanfare of the oral history tradition surrounding this claim. It is clear, however, that he was deeply involved in the negotiating and revising process in early 1946. It is very possible that his contributions were a determining factor in the Agreement’s success at keeping the Soviet Union at a distance in determining Austrian affairs during the occupation period, but that debate involves an entirely separate question.

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Appendix A

Text of the edited "reverse veto." Pg. 23, Folder 3, Box 1; Legal Division, Administrative Branch, Records Relating to Military Government and Austrian Laws and Ordinances; United States Forces Austria. U.S. Allied Command Austria (USACA) Section; Records of the United States Occupation Headquarters, World War II; RG 260; NACP.

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(a) All legislative measures, as defined by the Allied Council, and international agreements which the Austrian Government wishes to make except agreements with one of the ^{*Constitutional*} 4 powers, shall, before they take effect or are published in the State Gazette be submitted by the Austrian Government to the Allied Council. ^{*In the case of*} ~~if~~ constitutional laws, ~~are considered~~, the written approval of the Allied Council is required. In the case of ^{*legislative measures and international agreements*} all other laws it may be assumed that the Allied Council has given its approval if within thirty-one days of the time of receipt by the Allied Commission it has not informed the Austrian Government that it objects to a legislative measure or an international agreement. ^{*Such*} ~~and the~~ legislative measure or international agreement may be published and put into effect. The Austrian Government will inform the Allied Council of all international agreements entered into with ~~one or more~~ of the 4 powers.

Vita

Peter Joseph Casey is the graduate assistant for the Dwight D. Eisenhower Center for American Studies and a candidate for MA in history at the University of New Orleans. After graduating from Jesuit High School of New Orleans in 2011, Peter received his BA in history from Franciscan University of Steubenville in 2015. He currently resides in New Orleans with his wife, Ginny, and daughter, Magdalen Nora.