

Conquest and Modern International Law (Book Review)

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appointed by the Director of the Administrative Office, and an adequate staff of assistants; (b) a system of full-time Referees, appointed by the United States District Judges for a six-year term at fixed salaries, and the abolition of the fee system; (c) the conducting of a nation-wide survey by the Director of the Administrative Office to determine whether or not such system is practicable throughout the country, and to report on the question of part-time Referees on a salary basis.

The Attorney General's Committee Report is a substantial contribution to the literature on the subject of bankruptcy, even though it excludes from consideration Corporate Reorganization (formerly Section 77B), Chapter X (new Corporate Reorganization) and Chapter XI (Arrangement) and Section 77 (Railroad Reorganization), topics recently considered and covered by the Chandler Act. A permanent home in the library of the Department of Justice has been found for the valuable material and data upon which the Report is based.

It is the reviewer's opinion that if the recommendations of the Report of the Attorney General's Committee embraced in H. R. 4394 now pending before Congress should be acted on favorably by that august body, much will be done to correct present evils and to restore public confidence in our bankruptcy system. The trend of the administration of bankruptcy is toward the direction of the Referees, and away from the Judges of the United States District Courts. The day is not far distant when Congress, awakened to the importance of this field of law, will create separate Courts of Bankruptcy presided over by United States Judges of Bankruptcy.

SAMUEL C. DUBERSTEIN.*

CONQUEST AND MODERN INTERNATIONAL LAW. By Matthew M. McMahon.
Washington, D. C.: Catholic University of America, 1940, pp. vi, 233.

This book was completed in April, 1939, about four months before the outbreak of the existing European hostilities. Had it been written as a brief, it would have been ample to demonstrate the illegality of Hitler's activities during the past year and a half. It is clear, however, that the author had no such intention, as he could not possibly have anticipated the complete denunciation of the fundamental principles of international law that has taken place in the modern European struggle.

One reads this book with the feeling that it concerns nations of another planet because on every page principles are enunciated which are daily being violated in our current international life.

But it is not to be supposed that volumes of this character are, therefore, without practical significance. The theoretical development of international law is of enormous materiality in the furtherance of our civilization. Modern private law on its theoretical side had a great development during a period when force ruled the world of private affairs, as it does now of international

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affairs. The common law itself got its first start during a period of lawlessness, and even in our own day, we are not unfamiliar with occasional lapses in practical life from the application of juristic principles. Yet as the study of jurisprudence is a potent force in the development of civilization, so the study of international law remains a necessary element in the development of the society of nations which must ultimately emerge from our chaotic conditions if civilization is to survive.

This volume deals largely with the rights of nations resulting from the acquisition of territory by conquest. Recognizing as it does that conquest has been in the past and is still considered one of the proper modes of obtaining title to territory, the author nevertheless points out that essential limitations on this right are gradually being imposed upon it. Thus, the right of conquest runs squarely into the opposite right of independence and freedom from interference or control by other states, which every nation, large and small, enjoys under the law. These conflicting rights cannot be reconciled except by the realization that conquest itself, as a method of acquisition of territory, can be recognized only to a very limited extent; for example, to the extent that self-help is recognized at common law.

The acquisition of titles by tortious feoffment was well known in the old common law, but a tortious feoffment is not an illustration of self-help. Self-help is permissible only where the object taken is clearly the property of the self-helper, or perhaps *res nullius*. A tortious feoffment is another thing. The realization in modern law that a tortious feoffment can never be a method of acquiring title is a positive recognition that claims to property must be decided on legal principles. Nevertheless, self-help is still part of our law and obtains where no legal injury to others can interfere with it.

So it is with the doctrine of conquest. Conquest is available as a method of securing territory with respect to lands over which there is no rival jurisdiction or of asserting the clear rights which are being withheld from the conquering nation. But the right of conquest as a method of acquiring territory and depriving sovereigns of established rights must, in this author's view, be regarded as practically non-existent.

The legal concept which put an end to the free growth of the notion that conquest is another present method of acquiring territory, is the principle of the sanctity of treaties. Just as in private law it would be inconceivable that any security of transaction could long continue without a keen and deep recognition of the sanctity of contract, so too in international law the sanctity of treaties is the *sine qua non* of further juristic development. No permanent society of nations can hope to exist without deep respect for this principle. And the establishment of this principle is all that is required to limit the scope of the doctrine of conquest. At any rate, such is the thesis of this book.

Eminently readable and closely reasoned, this book provides an interesting and instructive discourse on a very momentous subject. The author has the art of robbing international law of much of its mystery and of making plain what must appear to the tyro in international law as being esoteric and confused.

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