the consumer of its products rather than by the insurer of the wrongdoer. It may be suspected that the growth of accident liability insurance will focus increasing attention on these problems.

W. L. MORISON*

The Law of State Succession, by D. P. O'Connell, *Cambridge Studies in International and Comparative Law*, Number V, Cambridge University Press, 1956, xl and 435 pp., with Tables of Cases, Treaties and Statutory Instruments, Appendix, Bibliography and Index. (£3/4/9 in Australia).

This new work on the principles of international law governing succession somehow falls short of the expectations aroused by the author's earlier articles on certain topics of succession in the *British Year Book of International Law*.

First and foremost, this is not, as anticipated, a complete and comprehensive monograph on Succession. The actual text written by the author amounts to but 280 pages. The subject can be dealt with fully and adequately only in a volume or volumes of not less than double this size.

Second, even within the limits of what the author has tackled, there are serious deficiencies, if not gaps. Chapter IV, dealing with the problem of succession affecting multipartite treaties and membership of international organisations, merely touches the surface; indeed the actual length of the Chapter is only six pages. There is no evidence in this Chapter of utilisation of the important material contained in Dr. C. W. Jenks' fundamental article "State Succession in respect of Law-Making Treaties".[1] It is surprising that Dr. Jenks' article is not even cited. Another example of inadequacy is that of the two Chapters, Chapter XVII and Chapter XVIII, dealing with the effect of changes of sovereignty over territory on the nationality of the inhabitants. The author does not, apart from other matters, even deal with the point made by several writers on the topic that the predecessor State is under a duty to withhold its nationality from inhabitants in the territory of the successor State.

Furthermore, having regard to the fact that this is a new treatise published in 1956, it is not unreasonable to wonder why a special Chapter was not included, dealing with succession as between international organisations.[2]

In this connection, it is fair to say that the scope of the book appears restricted to the consideration of successor entities who are States, irrespective of whether the predecessor be a State or a dependent or semi-dependent non-State entity. So much is indicated by the title "State Succession", although in the first sentence of his Preface, the author says that the object of the book is "to inquire into the legal principles governing the consequences of change of sovereignty". But the author hardly treats the other or reverse aspect of change of sovereignty, that is to say, where the predecessor is a State and the successor is a non-State entity, dependent or semi-dependent.

Two other general matters may be referred to.

The author has not adopted a uniform method of treatment and arrangement. The book is divided into four Parts. In Part I, the topic of succession as to treaties is considered; this is more or less on orthodox lines. However in Part II, there is a switch; succession as to private law obligations, concessions, contracts, debts, pensions, &c., is treated as a particular application of the general doctrine of acquired rights. In Parts III and IV, there is another

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[1] *British Year Book of International Law* (1952).

[2] I.C.J. Reports (1950) 79.

switch, and the problem of succession as to public and private property, legal and administrative machinery, nationality, &c., is treated from the standpoint, (the standpoint adopted in fact by Professor Kelsen in his Hague lectures), of "the effects of change of sovereignty" over the absorbed territory. However, if not logically satisfactory, it must be conceded that this treatment and arrangement are effective.

The other general matter is that in many Chapters, the author does not clearly state his views and conclusions. In effect, to find out what such views and conclusions are, one must turn to the code or digest of Rules of Succession, prepared by him, appearing at the end of his text.[3] This is not practically convenient, if the book is to be consulted or used as a work of authority.

It must nevertheless be acknowledged that this is the best and most useful treatise on the subject of Succession in international law. Its particular merits are:— (1) that the practice and case-law are exhaustively and minutely considered; (2) that it is up to date; (3) that the treatment of the doctrine of acquired rights is, beyond comparison, the best in the post-war literature of international law. The present reviewer has found it to be a veritable mine of useful information on many significant points; for example, the conduct or attitude of the successor State as indicating whether or not succession has taken place,[4] succession and extradition treaties,[5] succession to an obligation as to arrears of interest on a debt[6] and service and non-service pensions.[7]

One feature of the book may appeal to readers if not to the reviewers; in the appendix, as illustrating the British practice and official attitudes on succession matters, are reproduced 74 British Law Officers' Opinions and Foreign Office Memoranda dating from 1823 to 1901. However, with all due respect to Dr. O'Connell and the Editors of the *Cambridge Studies in International and Comparative Law*, the value of this material is problematical. Careful perusal did not disclose one novel or significant statement on the subject of succession. In a sense the value of these minutes and epistles is to provide a colourful background to the nineteenth century diplomatic controversies to which they relate.

Coming to particular matters, the present reviewer cannot agree with several of the views adopted by Dr. O'Connell. First, Dr. O'Connell has recourse to the distinction between "total" and "partial" succession in formulating principles of succession as to treaties, as to national debts, and as to service pensions. These categories, "total" and "partial", are meaningless, and Dr. O'Connell has to strain his material to make it fit. Also they are confusing. Second, the case of a protected entity surrendering its authority to deal with its external affairs to the protecting or suzerain State is treated as a case of succession; surely, this is not succession but a case of *cession* by treaty of certain *components* of sovereignty possessed by the protected entity. Third, Dr. O'Connell maintains as a general principle that quasi-independent States acquiring complete statehood inherit the bounty and burden of treaties formerly applicable to them in another right. Not only is this not necessarily so, but no uniform practice supports this contention. Fourth, there is the insistence throughout the book that an element of permanency is an essential characteristic of an acquired right. It is true that there is some authority for this view, but the principles of unjustified enrichment of the new sovereign and of doing equity to individuals, which Dr. O'Connell says constitute the *rationale* of the doctrine of acquired rights, could well be satisfied in the absence of an element of permanency in the threatened right. Fifth, Dr. O'Connell lays down that in the case of an extinction of a debtor State, "the legal relationship between it and the creditor disappears" and the successor State "is not subrogated in the debt relationships of its predecessor". Again, this is not supported by practice; and in principle, how could

[3] See pp. 275-280. [4] See pp. 34, 42, 44. [5] See pp. 39, 46, 47 and 48.
[6] See p. 192. [7] See Chapter XII.

there be such an invariable rule irrespective of all the circumstances, and possibly of overpowering considerations of justice ?

On a mere matter of terminology and language, also, the present reviewer cannot agree that the French expression "*droits acquis*" is inadequate properly to suggest the elements of the concept of acquired rights, or that the German expression "*Vermögensrecht*" is superior in that regard.

On some points of form, there is room for legitimate complaint. The Bibliography is inexplicably bad, listing review articles without the titles or page references; for example, the entry "Rosenne. In B.Y. (1950)". The Index is likewise deficient; it fails to list the names of all the authors who are cited in the text. Hence we look in vain for Kelsen, McNair, Mervyn Jones, Kaeckenbeeck, and others who have written on Succession, although the Index discriminates by listing Gidel, Hall, Keith, Sack, Vattel, Wade, &c.

A final verdict is that with considerable revision and amplification, this book could well be the monumental work on Succession which its author, Dr. O'Connell, is so clearly capable of producing.

J. G. STARKE*

The Rule Against Perpetuities by J. H. C. Morris, D.C.L. of Gray's Inn, Barrister-at-Law, Fellow of Magdalen College, Oxford, and W. Barton Leach, LL.B. of the Massachusetts Bar, Story Professor of Law, Harvard Law School. London, Stevens & Sons Ltd. 1956, Sydney, Law Book Company of Australasia Pty. Ltd. xlvii and 366 pp. (£3/8/9 in Australia).

This is a unique book in that it combines a detailed analysis of what the rule against perpetuities is, together with an advocacy of what the rule should become either by judicial statemanship in fields where this is still possible or legislative intervention where it is not. The two aspects are harmoniously linked together, the discussion of the aspects of the rule itself and its history indicating the opportunities which were missed and which it is hoped may be regained. However, the authors consider major amendment the possibilities of which were never adverted to by judges in the development of the rule.

It is also a book of considerable significance in that it marks another territory captured by an academic treatise from a field in which, previously, all treatises produced in England were the work of professional lawyers. It is, therefore, an example of a tendency for the responsibility for maintaining the orderly development of the common law to be transferred from the bench and bar to the academic lawyers. The multiplication of authority and the increasing complexity of the law has made the role of the textbook writer more and more important and he has become the guardian of the traditions of the common law. As the textbooks capable of performing this rule are almost always the product of the academic lawyer their importance in the administration of the law must increase. This book, together, of course, with Gray, must henceforth dominate decisions involving the Rule against Perpetuities and the lines of development where development is possible indicated by its authors must be weighed carefully by all judges responsible for deciding these matters.

The rationale of the rule against perpetuities has recently been considered by Professor Simes in *Public Policy and the Dead Hand* and the subject is considered again in this book.[1] The learned authors are unconvinced by many of Simes' justifications, and they suggest that the expansion of the powers of trustees by statute, the normal form of the well-drawn will, the Settled Lands Acts, and present-day taxation, have combined to render the economic

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[1] See also fourth Report of the U.K. Law Reform Committee, *Cmd.* 16 (1956).—Ed.