awakened people can obtain the kind of federal action outlined above. The legal profession, however, can and should familiarize both itself and the lay public with the ample powers which the Constitution gives the federal government to halt practices which form an important part of the structure whereby civil rights are denied to many of our fellow-citizens.

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Recognition in International Law. By H. Lauterpacht. Cambridge: The University Press, 1947. Pp. xix, 142. $5.50.

This is probably the most exhaustive study of recognition ever published. It is first of all to be noticed that recognition presupposes a congeries of independent states with no superstate in existence. Acknowledgment of the impossibility of a superstate, in which the author had great faith, must have caused him some regret. The work is divided into four parts. Part I discusses the legal nature of recognition and whether it fulfils a declaratory function, as the Institute of International Law supposes, or a constitutive function, as most authors assume. The author leans toward the constitutive view, since no state can have international intercourse without prior recognition. As a matter of fact, it is believed that while recognition is constitutive in that sense, it is also declaratory in assuming the prior existence of the state recognized. The reviewer would go further than the author in insisting upon its legal characteristic. There is responsibility not only to the parent state for premature recognition, but to the new state for tardy recognition. The fact that recognition is both legal and political at the same time should not cause astonishment, for that is true of many international acts. The reason why the legal characteristic has been overlooked is that few cases are known in which responsibility has been claimed, it being difficult to put a money value on such a delinquency. But that there is a duty to recognize a new state, regardless of one's wishes in the matter, cannot be doubted.

Part II deals with the special problems raised by the question of recognizing new governments in existing states. While to some extent the tests for recognizing new states are applicable, some additional problems are raised. The author indicates his allegiance to collective security in the sense that he would have recognition collectivized. It is undoubtedly true that one of the difficulties is that the new state or government exists or acts for more than the specific number of recognizing states. The question always arises whether a non-recognizing state is bound.

Part III deals with the recognition of belligerency and insurgency and the special problems created by those phenomena. Is recognition due the insurgent state or due the recognizing state? Who can claim it as a matter of duty? We are inclined to follow the author in his predilection for duty to both the insurgent and the recognizing state, the latter of which, as a general rule, must have some maritime interests involved. The author pays inadequate attention to the revolution created by Woodrow Wilson's pursuit of Huerta, whom he drove out of Mexico in execution of his quixotic idea that he could make the change of governments in Latin America constitutional. Only a person obsessed with the notion that he could improve international relations—and

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Woodrow Wilson knew very little about history—could inspire the notions that actuated him. The United States had no difficulty in insisting later that Huerta's government was a de facto government of Mexico.

Part IV deals with certain other problems of recognition. When the author speaks of de facto recognition he means recognition of a de facto government, and therefore does not squarely oppose Baty, who denied that there was such a thing as de facto recognition.[1] In this part the author also deals with the withdrawal of recognition and conditional recognition, implied recognition, and the sanction known as non-recognition. The author agrees that recognition cannot imply an approval of the state, government, or party recognized, or non-recognition, disapproval.

Exception must be taken to chapter X of the author's voluminous work, where he approves the British decision in *Luther v. Sagor* and the many decisions of the New York Court of Appeals refusing to give effect to Soviet decrees because the Soviets were not recognized by this country until 1933. The error with respect to the latter stems from the fact that recognition had nothing to do with the case, as the New York Court of Appeals itself admitted in its more recent decisions not noted by the author. It was not lack of recognition which constituted a legal reason for refusing to give effect to Soviet decrees, but the fact that confiscation was contrary to the public policy of the forum. For that reason the courts refused to give confiscation extraterritorial effect, which would have been true and was true even after the Soviets were recognized. The opinion in *Luther v. Sagor* was erroneous because the Soviets were a de facto government of Russia, and that was all that was necessary in order to give effect to Soviet decrees acting upon property in Russia. The author confuses the relation in this respect, so that the chapter is somewhat jaundiced.

It has always been the reviewer's opinion that recognition of a government de facto had reference to constitutional law. The author believes that the characterization is one made by international law. De facto is a term of opprobrium not used in the sense of "provisional," but designed to indicate that the government achieved success by force and not by other means.

Americans have dealt considerably with the subjects touched upon by the learned author. His publication of opinions of the Law Officers of the Crown following chapters VI, XIV, XV, and XVIII, would alone make the book an important contribution, but the study itself evokes admiration and will exert influence upon the much discussed and disputed subject.

I cannot imagine why the author insists, in the chapter on "implied" recognition, on intention as an element of determination, since the making of a treaty with a country implies recognition in disregard of intention. Intention is irrelevant, because the term "implied" means recognition inferred from conduct. John Bassett Moore thought the Soviets were impliedly recognized by the United States because both countries became signatories of the vague Kellogg Pact. This the author fails to discuss, so far as we can find.

The book might have been better off if the last chapter, "The Principle of Non-Recognition," had been omitted. Here, if we understand him at all, the anthor contradicts much of what he had to say in the first twenty chapters. He speaks of the League as if the Covenant were a still existing law. This symbol of peace-making, which had

[1] See Baty, So-called "De Facto" Recognition, 31 Yale L.J. 469 (1922).

as its main purpose the nailing down of the Treaty of Versailles, is viewed by the author as moral uplift. All the well-known tests of emotional morality seem to find reflection in the last pages. International law is not a moral science, but is designed to produce stability. Non-recognition as a sanction helps to unsettle and is responsible in part for the present status of international relations. It is too bad that a law book is marred by this dedication to moral uplift. The League is dead, and I am inclined to believe that UN is little improvement.

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