

in terms of the assurance to each member of the community that the vital needs of its people would be taken into account in the formulation of general economic policies. It is to be hoped that the catastrophe that has come upon the world will enable us to see more clearly what the objectives of a future organization must be, so that strong measures to meet the primary need of the suppression of violence and the substitution of peaceful procedures will be accompanied by equally vigorous action looking to the improvement of the social and economic conditions that lead to acts of violence.

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LAW WITHOUT FORCE*

It is impossible in the space of a review to give an adequate critique of a book as important as Dr. Niemeyer's *Law Without Force*. The reviewer will, therefore, limit himself to indicating something of its nature and scope and to urging his colleagues to read it. Much of the book is written in the unhappy jargon of the sociologist, but the content repays the effort required to translate that jargon into the English language.

The purpose of the author is nothing less ambitious than "a conceptual renovation of international law"—a searching analysis of the function of that law in contemporary society and a suggested new orientation to the dilemma which he phrases aptly as "the unreality of international law and the unlawfulness of international reality." This task the author approaches with intelligence, with relentless honesty, and with a breadth of learning which permits him to tap the fields of jurisprudence, political philosophy, economics, sociology, psychology, and history for the guidance they may give in the erection of his conceptual structure.

His sections on the historical rôle or function of international law are most illuminating. International law—such as it then was—could be a reality for the precursors of Grotius because of the conception of a harmonious universe unified by God and because in fact "the church and the spiritual universality of religious institutions provided a social group which had international ramifications and whose influence succeeded in imposing certain limitations on the particular interests of national states." (pp. 77, 137.) With Grotius came a new conception of the state as both the subject and the creator of international law. The Roman law concepts of the person and his individual rights, and of society as a voluntary combination of persons, were attributed to the state and the international community, and flourished in the personalistic and atomistic thought of the 17th century (pp. 294, 139 ff.). But here, also, international law was a reality because the dynastic solidarity of the European balance of power system was strong enough "to carry the main

* *Law Without Force: The Function of Politics in International Law*. By Gerhart Niemeyer. Princeton: Princeton University Press; London: Humphrey Milford, 1941. pp. xiv, 408. Index. \$3.75. See *supra*, p. 524.

institutions of international law through the dangerous period in which the subjective viewpoint of the individual state had definitely gained ascendancy over religious universalism." (p. 77.) In a third period in which individualism manifested itself "in economics as free enterprise, in law as freedom of contract, in the state as parliamentarism and party-rule," and in international politics as nationalism and imperialism, it was "the international class of trading and manufacturing Bourgeoisie, with their world-wide range of intertwined interests and connections, who depended, for their very existence, on the restriction of state action by an international system of law." (pp. 60, 77.) In each of these three periods "the groups whose international solidarity of interests required a wider-than-state system of law were socially important enough to be able effectively to carry the idea and practice of a system of international law against the specific interests of national governments." (pp. 76-77.) Furthermore, in each period the social function of international law could be supported by an appeal to divine or natural law—in short, by an appeal to a moral basis of international law. Even the positivists had to import doctrines of universal morality to explain the obligatory force of international law. (pp. 158 ff., 167 ff.)

The breakdown of the present "historical form" of international law the author traces to the loss of social influence by those classes within the state "whose interests were inherently international," and to a conceptual error which persists in basing the obligation of international law on a common morality among nations at a time when the appeal to morality is ineffectual in international affairs. In sections on "the end of laissez-faire," state control over trade, "the politicization of social life," "freedom of action for governments," the author develops his thesis that, whether or not one approves it, the fact is "that this period is one of the organizational consolidation of society both in large territorial blocs of governmental units, and into functional and legal ascendancy of the government over the individual" (p. 96); and that the functional and moral bases on which international law was grounded are no longer adequate bases for a system of international law which must cope with the contemporary structure of world politics.

At some length Dr. Niemeyer demonstrates the sociological, philosophical, and practical inadequacy of atomistic and personalistic concepts and of legal formalism as an approach to international law. The attempt to base the theory of international law on the notion of the independent state with its sovereign will and on the "community of nations" was bound to fail. "From the notion of originally free and independent wills of originally separate persons to the idea of legal order there leads only one logical way: that of the voluntary submission of the individual person to common authority or to common rules." (p. 140.) But the socially cohesive forces which seemed for a time to permit the paradox of a "voluntaristic" system of law which was yet "obligatory" are disappearing. The current cry is for more "international organization." Yet behind the idea of international organi-

zation lies a mechanistic conception of the international community as composed of independent units which must voluntarily combine. Because the individual unit is regarded as more "real" than the international community, there is a "permanent and never ending attempt to decide the undecidable issue between the interest of the particular state . . . and the standard of the collectivity. . . . Thus in its very foundations, the present system of international law harbors insoluble antinomies: individual vs. community; nationalism vs. internationalism; isolationism vs. collectivism. The problems arising out of these antinomies can in themselves never be solved . . . but will simply become insignificant in the light of a changed outlook." (pp. 289-293.)

The common deficiency of previous sociological approaches to law—*e.g.*, those of Pound, Cardozo, Duguit, Ihering, and Tawney—"consists in the fact that they retain an individualistic or atomic conception of society. Against the background of such a conception, any theory explaining or criticizing the law in terms of social 'contexts' must take as its criterion of value the desires, intentions or needs of the concrete persons that 'compose' society." (p. 257.) But the criterion of legal order must be function, not purpose or interest.

Something of the flavor of Dr. Niemeyer's ideas may be garnered from the following scattered quotations: "It is not the separate existence of states that requires international rules and calls for international regulation: international law is needed in so far as there are problems of order and relationship transcending the single state, in so far as there is interrelatedness between nations." (p. 309.) "We have to realize that rules of order are contained in the structure of social relationships, and not in the command of authority. We have to learn to eliminate the notion that persons are the units of social reality, and have to focus our attention on the interpersonal contexts of which society really consists." (p. 400.) "The state is an organization, and like all organizations it consists not of men but of coördinate behavior. It is a structure of human acts, coördinated according to a plan and with a view to the attainment of certain functional ends." (p. 394.) "Law (and social order in general) is concerned only with relationships, and not with separate individuals or groups of individuals. Therefore the standards of legal order ought to be derived from the idea of interrelated and coördinated activities, and not from the idea of the independent existence of persons." (p. vii.)

An understanding of Dr. Niemeyer's thesis can be gained only from a perusal of his book. If the reviewer has been able to indicate something of its significance he will have fulfilled his present rôle. How much of Dr. Niemeyer's new approach can be accepted the reviewer is not yet prepared to say; but he will admit the challenging impact of this book on some of his most cherished convictions. Dr. Niemeyer himself disclaims any attempt in this volume to draft a program of international order or to develop the practical

implications of his thesis. His purpose is to indicate a new direction. "Not to one person but to an entire generation belongs the task of breaking the ground for a new structure of international law." Dr. Niemeyer's contribution is one which no serious student of international law can afford to ignore.

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