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The Legal Community of Mankind, by Walter Schiffer

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BOOK REVIEW

The LEGAL COMMUNITY OF MANKIND. By Walter Schiffer. New York: Columbia University Press, 1954. Pp. 367. \$5.50.

Very little of a fundamental nature has been written about international organization. The literature, although voluminous, is for the most part hortatory or merely descriptive. This book by Walter Schiffer is a notable exception. An analytical critique of the League of Nations and the closely similar United Nations, it is a major work which will have to be taken into account by those who endeavor to form significant judgments about these institutions. *The Legal Community of Mankind* is published posthumously as Walter Schiffer died in 1949. Born and educated in Germany and until 1933 a judge in the German judicial administration, he was a research fellow at the Geneva Research Center from 1937 to 1941, when he came to the United States. He completed writing the present book while associated with the Institute for Advanced Study.

The treatment of the League—for the League rather than its successor receives the main attention—is not in terms of its constitutional structure. The purpose is not to submit the provisions of the Covenant to a legal examination endeavoring to discover still different patterns of organization and procedure in the hope that ingenuity in these respects might be sufficient to meet the challenge of the times. This vein has already been thoroughly mined by the authors of the United Nations Charter, with results showing that the point of diminishing returns is soon reached. Schiffer's book is concerned with the assumptions about human relations underlying the League. A welcome turning to fundamentals, it succeeds in throwing some light on why international organization has not served in the intended way to meet the security needs of nations.

Schiffer is not satisfied with the usual explanation that it was not the League that failed but rather the member nations, who, failing to live up to their obligations, neglected to use the machinery for peace provided by the League. This, in Schiffer's view, is begging the question. He expresses his own judgment in the form of a paradox, "the League could be expected to work only if the conditions did not exist which appeared to make the existence of that organization necessary." (p. 282). The whole object of the book is to make plain the meaning of this assertion.

Schiffer considers the League to be a product of the "progressivist" thought of the nineteenth century, which assumed a natural harmony in human relations, the conditions of which could be discovered by rational men and whose attainment is in actual process of realization. The legal community of mankind was believed to rest in natural law, a law of reason standing outside and above the government made law of states. This conception, of course, is much older than the nineteenth century. In fact, the history of international law, which Schiffer treats with unusual perception, deals largely with the assertions and counter-assertions concerning the position of natural law in its make-up. Picking up this strand in Western legal thought in its medieval phase, Schiffer sees in the church a governmental institution whose object was to actualize the natural law in human society. But the church only corrupted itself in the attempt. And this Schiffer believes was an inescapable result because the essential moral character of the natural law cannot be directly translated into governmental practice. Schiffer is not cynical. He does not reject the quest for justice. He believes, however, in a division of labor between the moral philosopher and the politician. The ideals of the former, while they greatly influence the politician, are after all never wholly achievable and, insofar as they are approximated, must be approached by political means. And politics is a game, sometimes a dangerous one, of power, which, within our domestic communities, government and the mundane laws of government keep within tolerable limits.

The progressivists were persuaded that growing rationality and morality were gradually but surely leading to the realization of harmony in international affairs. This result would be finally achieved when certain conditions had been met: (1) the general acceptance of the democratic form of government, (2) the attainment of self-determination, and (3) the firm establishment of an unfettered international economy. Progress was the cardinal tenant of the progressivist creed, and these conditions, it was believed, accorded with the historical trend. When society at length had been freed of the arbitrary hindrances of the past, the natural harmony of interests would emerge. Then, public opinion, based on the thought and conscience of the emancipated individual, would constitute the governing force of the world.

Such, the author contends, was the rationale underlying the League. But, if this was a sound view of human relations and a reasonable expectation for the future, why, Schiffer asks, did the progressivists neglect to expose national government as an unnecessary evil? And, if government at the international level was superfluous, why should even

the League be regarded as serving any essential purpose? The very establishment of the League attested to the inadequacy of the progressivist assumptions about human relations, but the League was a weak and contradictory response to the challenge of international politics. It was an attempt "to deal with the problems arising from political divergencies between the states into which the world was divided, by methods the successful functioning of which presupposed an essential unity of purpose among the peoples of the world, and therefore the absence of political discord." (p. 283).

Since politics cannot be divested of its mundane qualities, the progressive thinker who saw future international relations divested of the importunities of politics was under the illusion that

. . . peace and order could be guaranteed without any important change of existing conditions. The thinker who held this opinion expected that the increased reasonableness of mankind would guarantee the success of world organization. Since generally he regarded himself as reasonable enough, he hoped that the others would rise to his level of wisdom. His reasonableness was based on his satisfaction with his and his particular community's general situation; he, therefore, hoped that the others eventually would share his viewpoint and that then he would be able to enjoy peace and security under the same conditions which had prevailed before the organization was established. In order to bring about the ideal situation, it seemed sufficient by teaching and preaching to convince the others of the advantages which they would derive from its realization. It appeared possible, therefore, to avoid the material and moral risks which ordinarily result from the necessity of reaching political decisions and engaging in political activity designed to bring about concrete improvements of political and social conditions. Thus, it may be said that the idea that everything could be obtained for nothing was an important element of the pattern of thought which shaped the League of Nations and the United Nations idea. (p. 301).

Schiffer has caught in this passage—the concluding one of the book—a characteristic feature of the nineteenth century outlook of the Western democracies. That much of it survived the first World War and was reflected in the League of Nations cannot be denied.

Much of Schiffer's argument looks in the direction of a world state, and the concluding chapter, a brilliant essay on international politics, is partly devoted to that subject. His main point is that a world state can-

not, any more than the League or the United Nations, escape the fact that the maintenance of peace is essentially a political problem involving clashes of interest and the difficult adjustments which are inescapable if violence is to be avoided. The constitutional framework within which the process takes place is one factor making for war or peace. Schiffer certainly feels that, theoretically at least, a world government is more promising of results than an organization of independent states. But he is keenly aware of the vast difficulties which would be encountered by any attempt to create a universal state. Could such a goal be reached, he asks, without involving mankind in a general struggle in which it may be exposed to the use of the same destructive weapons which seem to make the preservation of peace imperative? Moreover, if a world state were successfully created by the liberal-democratic peoples in the world, how long could it preserve its distinct character under the strain of ruling the masses of other peoples outside the Western tradition? But, quite independently of the question as to the effect of any particular type of constitutional arrangement on the international political process, Schiffer always returns to his point of main emphasis—that finally it is the concrete social, economic, or power adjustment which makes the difference between war and peace.

In consideration of the improbability of achieving an acceptable and efficacious world state, it is suggested that we look at the existing pattern of world organization from a different point of view than that of Schiffer. Even though we agree with him in holding naive the progressivist philosophy which gave birth to the League and the United Nations, can we, after making allowance for the exaggerated expectations of a new era of cooperation and security radically unlike the old, justifiably conclude that the League and United Nations are quite irrelevant to the times? A less exalted view of these institutions might see them as a continuation and elaboration of the already established diplomatic pattern of international politics. As such, they may stir neither the adulation nor the hostility which in their other guise they have so frequently evoked, but still they may not lack utility. Schiffer, concerned with philosophical origins, does not explore this question. Yet he gives a main clue to its answer when he says in passing that he is not suggesting that the United Nations can have no importance. On the contrary, "it would be quite possible for a member state or a group of member states to use that organization for their particular political purposes, which might include the maintenance of the peace of the world. But such a political use of the organization obviously would not correspond to its ideal purpose." (p. 291). This, of course, is precisely what has

happened. An adequate estimate of the United Nations, therefore, would require an examination of the use being made of it by the free world, and particularly the United States, in the East-West conflict. Is it, for example, being turned to better advantage in the struggle of the established democracies against the Soviet Union than the League was against the demands of fascist Germany and Italy? Admittedly, to view the United Nations as a coalition is strangely incongruous when one considers the original assumption of a legal community of mankind based, not on the authority of government, but on faith in the ascendancy of rationality and morality. But it is not at all uncommon for political institutions to take on a form and character different from that envisioned by its founders.

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