

REVIEW AND COMMENT

Louis D. Brandeis: Why Liberalism Failed

MR. JUSTICE BRANDEIS' approach is fundamentally ethical.¹ At his best, he is sheer Rotarian. At his worst, he is the philosophic humanitarian outlining a social-democratic future that is nonetheless utopian because it seems so sane and practical. One of the advantages of this collection from his writings is that it contains much poor material, stray bits piously gathered up by scholarly White Wings along the trail of a great career. In it our Homer nods, and in nodding reveals depths unsuspected beneath the protective formalism of expressions from the bench. One of the difficulties in evaluating a member of the Supreme Court is that elevation to it is a sort of apotheosis, a withdrawal from life, like taking holy orders or being gathered to one's fathers. The *de mortuis nil nisi bonum* applies with almost equal force to the reverend justices, interpreting the Law and the Prophets in some never-land 'twixt heaven and earth. The bench is a bourne whence no man but Charles Evans Hughes returns, and the hollow grandeur of the judicial mausoleum often provides Olympian overtones hardly merited by the actual words spoken. Fortunately Osmond K. Fraenkel and Clarence M. Lewis present Mr. Justice Brandeis both Before and After. The effect is to provide a glimpse of the seer in his intellectual underwear.

An example: In 1913 The Times Annalist sent an interviewer to speak with Mr. Brandeis. His legal sling-shot and journalistic pebbles had already brought howls of rage from the Goliaths of American railroading, insurance and finance. The public wanted the radical young David's views on social progress. "When men begin to think as hard, as intensely, about their social problems," Mr. Brandeis told his interviewer, "as they have thought about automobiles, aeroplanes and wireless telegraphy, nothing will be socially impossible. Many things which have seemed inevitable will be seen to have been quite unnecessary." "Putting thought upon social problems," the interviewer suggested, "does not pay so well as putting it upon automobiles and aeroplanes." Messrs. Fraenkel and Lewis saved Mr. Brandeis' reply for posterity:

"No," Mr. Brandeis says, slowly, "that isn't it. Think of the great work that has been done in the world by men who had no thought of money reward. No, money is not worth a great man's time. It is unworthy of greatness to strive for that alone. What then? Power? That isn't

much better, if you mean the kind of power which springs from money. Is it the game? You hear that nowadays—the game! It sounds too frivolous. To me the word is Service. Money-making will become incidental to Service. The man of the future will think more of giving Service than of making money, no matter what particular kind of Service it happens to be. . . . That will be the spirit of business in the future."

The same intellectual motif reappears, though less obviously, throughout the pattern of Mr. Justice Brandeis' social conceptions. Democracy is "trust in the moral instinct of the people." Again, "It substitutes self-restraint for external restraint. . . . It is possible only where the process of perfecting the individual is pursued. . . . Hence the industrial struggle is essentially an affair of the church and its imperative task." But Mr. Brandeis was no mere sermonizer. In an address before the Ethical Culture Society at Boston in 1912, he could describe the life of the steel worker in the Pittsburgh area as "so inhuman as to make our former Negro slavery infinitely preferable." He asked his audience, "Can this contradiction—our grand political liberty and this industrial slavery—long coexist? Either political liberty will be extinguished or industrial liberty must be restored." He could put his finger on the heart of the problem. The "main objection," he wrote, "to the very large corporation is that it makes possible—and in many cases makes inevitable—the exercise of industrial absolutism." One of the finest embodiments of the humanitarianism of the small propertied classes in a period when a still expanding capitalism allowed play to pity for the underdog, Mr. Brandeis could not take the next step and recognize that the institution of private property itself made the large corporation inevitable, nor see that a peaceful surrender of power was unlikely. "In my judgment," Mr. Brandeis could tell an interviewer for La Follette's Weekly in 1913, "we are going through the following stages: we already have had industrial despotism. With the recognition of the unions, this is changing into a constitutional monarchy, with well-defined limitations placed about the employer's formerly autocratic power. Next comes profit-sharing. This, however, is to be only a transitional, halfway stage. Following upon it will come the sharing of responsibility, as well as profits. The eventual outcome promises to be full-grown industrial democracy. As to this last step the Socialists have furnished us with an ideal full of suggestion."

Mr. Justice Brandeis, precisely because of his superior knowledge, vision and sympathy, typifies better than any other man in our time the crucial weakness of liberalism, the social philosophy of the lower middle class—

its failure to see that the fact of private property creates classes and sets in motion forces that make the reform of capitalism impossible. From this failure springs the contradiction involved in Mr. Justice Brandeis' treatment of business regulation, and from it springs the tragic development by which liberalism paves the way for its own destruction in fascism. Faced with the problem of big business menacing the small propertied class whose aspirations and fears he voices, Mr. Justice Brandeis finds himself on the horns of a dilemma. His dissent in *Liggett v. Lee* would turn back the clock of economic development, permitting the small business man to use the power of the State against the corporation. Mr. Justice Brandeis would deny to corporations the protection given "persons" against discriminatory legislation designed to destroy them. This, one of his most beautiful opinions, ends on a note of nostalgia for an earlier day before the rise of the great business combination had begun to destroy the free market and to chain the entrepreneur. Mr. Justice Brandeis ended his opinion:

There is a widespread belief that the existing unemployment is the result, in large part, of the gross inequality in the distribution of wealth and income which giant corporations have fostered; that by the control which the few have exerted through giant corporations individual initiative and effort are being paralyzed, creative power impaired and human happiness lessened; that the true prosperity of our past came not from big business, but through the courage, the energy, and the resourcefulness of small men; that only by releasing from corporate control the faculties of the unknown many, only by reopening to them the opportunities for leadership, can confidence in our future be restored and the existing misery be overcome; and that only through participation by the many in the responsibilities and determinations of business can Americans secure the moral and intellectual development which is essential to the maintenance of liberty.

That dissent, in March, 1933, called for revival of the free market. A year before, in the Oklahoma Ice Case dissent, Mr. Justice Brandeis had articulated the case for the "planned economy." The contradiction has grown all too familiar in other spheres. If the Brandeis opinion in *Liggett v. Lee* voices the same middle-class protest and nostalgia harnessed by the fascist demagogue, his opinion in the Oklahoma Ice Case puts forward for adoption the idea that underlies the Corporative State. "Increasingly," Mr. Justice Brandeis wrote, "doubt is expressed whether it is economically wise, or morally right, that men should be permitted to add to the producing facilities of an industry which is already suffering from overcapacity." If the state cannot thus freeze the economic status quo, it has a legal alternative which is also the economic alternative. "It is settled by unanimous decisions of this court that the due process clause

¹ *The Curse of Bigness*. Miscellaneous Papers of Justice Brandeis. Edited by Osmond K. Fraenkel. As arranged by Clarence M. Lewis. The Viking Press. \$3.50.

does not prevent a state or city from engaging in the business of supplying its inhabitants with articles in general use, when it is believed that they cannot be secured at reasonable prices from the private dealers." But this alternative is distasteful to Mr. Justice Brandeis, as to his class. "If states are denied the power to prevent the harmful entry of a few individuals into a business, they may thus, in effect, close it altogether to private enterprise." Mr. Justice Brandeis had seen the problem more clearly in 1915 when he told the U.S. Commission on Industrial Relations, ". . . it is one of the greatest economic errors to put any limitation upon production . . . we have not the power to produce more than there is a potential desire to consume."

"Remedial institutions," Mr. Justice Brandeis wrote in a letter to Robert W. Bruere in 1922, "are apt to fall under the control of the enemy and to become instruments of oppression." This was part of a plea to "seek for betterment within the broad lines of existing institutions" and a warning against believing "that you can find a universal remedy for evil conditions or immoral practices in effecting a fundamental change in society (as by State Socialism)." It serves more justly as a warning against liberal reform legislation. Mr. Justice Brandeis had seen the anti-trust laws used against the small business man and to stimulate the formation of greater business units than ever. He had seen the labor provisions of the Clayton Act turned against labor. Within two years of the time when the Supreme Court refused to allow Oklahoma to license and regulate the ice business, Mr. Justice Brandeis was to see the remedy proposed in his dissent given nationwide application through the N.R.A.—and to see the N.R.A. developing into the greatest weapon ever given big capital against little capital, and against worker and consumer. Hating the accompaniments of fascism as he must, the logic of his class position yet drives Mr. Justice Brandeis toward the Corporative State. The missing link in his thought, the missing link that is characteristic of liberalism, leads him to support one "remedial institution" after another. But this search for "betterment within the broad lines of existing institutions" can only place new "instruments of oppression" within "the control of the enemy." The social forces set in motion by the growing disequilibrium of economic power transform a State, based on property and contract to begin with, into an instrument of big capital. In the long run the only result of liberal reform is to increase the "instruments of oppression" which big capital can wield through the State. The Recovery program is the outstanding example.

Mr. Justice Brandeis illustrates the self-destructing tendencies of liberalism. Because of its class base, it seeks to preserve private property and is thereby driven toward the Corporative State. By its reforms, it only increases the power of a State that must increasingly be controlled by big capital. By taking an ethical position, by yearning for an

earlier capitalism, by focussing attention on the great corporation while ignoring the fact that the great corporation is itself an inevitable outgrowth of private property, it prepares the public mind for the slogans of the fascist demagogue. Liberalism serves another historic role as well, and this also is better exemplified by Mr. Justice Brandeis than by any other of our liberals. Liberalism makes its appearance on the world scene as the champion of the doctrine of natural rights.

But the work of the great contemporary liberals on our bench has been aimed at the limitation of the rights which liberalism once espoused as absolute. The doctrine of natural rights, giving free rein to the capitalist, led inevitably to the emergence of big business despotism. But the attack on the doctrine, aimed to curb big business, results in entrenching its power more securely than ever by increasing the power of the State at a time when big business, high finance and the State finally merge into one inextricable whole. The democratic aspects of the State, the one peaceful vent for mass opinion, are curtailed more and more, while the strong man makes his appearance.

In such a period, the weakening of the doctrine of natural rights becomes a legal instrument not to curtail the rights of property but to curtail personal rights and the rights of the small business man and the working class.

"Unlicensed liberty," Mr. Justice Brandeis once wrote, "leads necessarily to despotism and oligarchy." But *licensed* liberty, whether under the Roosevelt program or under a completely fascist State, leads just as surely to despotism and oligarchy. There is no escape from the dilemma within the confines of capitalism. If the State has power to curtail the rights

of property, it has legal justification to curtail other "natural rights," personal rights, workers' rights. And within the framework of a propertied society, where property controls the State, and the State itself has been erected to safeguard property, will not this power be used against labor rather than against capital? "Labor," Mr. Justice Brandeis said in 1913, "cannot on any terms surrender the right to strike . . . I do not approve even of compulsory investigation." Yet in 1926 Mr. Justice Brandeis wrote a Supreme Court decision which held that the right to strike was not an absolute right.

Mr. Justice Brandeis' vision and his blindness are alike summed up in a single passage from his testimony in 1915 before the United States Commission on Industrial Relations. "I think all of our human experience shows," he said, "that no one with absolute power can be trusted to give it up even in part. That has been the experience with political absolutism; it must prove the same with industrial absolutism. Industrial democracy will not come by gift. It has got to be won by those who desire it." So far, so good. But what is the solution? Mr. Brandeis continued, "And if the situation is such that a voluntary organization like a labor union is powerless to bring about the democratization of a business, I think we have in this fact some proof that the employing organization is larger than is consistent with the public interest. I mean by larger, is more powerful, has a financial interest too great to be useful to the State; and the State must in some way come to the aid of the workingmen if democratization is to be secured." So now we have Section 7A. Ask in Toledo. Ask in Akron. Ask in San Francisco or Minneapolis about that "aid."

ROGER BROOKS.

Two Worlds

I CHANGE WORLDS, by Anna Louise Strong. Henry Holt & Co. \$3.

SEVERAL months ago on her recent visit to her native U. S. A. I saw Anna Louise Strong among a group of liberals to whom she was describing recent events in the Soviet Union. Probably, in point of years, she was the oldest person there, but in the matter of energy and alertness she was easily the youngest. The rest by contrast looked peculiarly slow and faded. Partly, no doubt, this was due to her own sheer physical wholesomeness and vivacity; but it must have been due much more to the world she had changed to and whose youth she reflected.

The bulk of her autobiography is the story of the twelve years during which this change took place. Twelve years is a long time, especially in a revolutionary era, and one of Miss Strong's purposes in writing this book is, by the guiding illuminations her experiences can furnish, to shorten the period for others.

Within these dozen years, however, much has happened to hang stronger and more direct lights over the entire contemporary scene than

one individual life can furnish. Today few of those who are alert and active-minded enough to change of their own will—the passive will find change forced upon them—will need or be given so many years to make the change. For lingering crisis allows no one to preserve any illusions as to the health of capitalism; in America the New Deal devices have, one by one, revealed their nature and confirmed the Communist indictment that every capitalist government legislates always in the interests of its capitalists; fascism indicates to what lengths of deceit and violence capitalism will go to keep power; and the quick curtailment of education and other social services and the rapid abandonment of art patronage by the rich indicates in what unsafe hands culture is under capitalism. Therefore Miss Strong's experiences, as a personal record, have only a limited immediate relevance. Her book, however, is of the greatest importance, in other directions. Since she deals almost simultaneously with the two opposed worlds, the capitalist and communist, since she has experienced the best and the

worst of both, her book permits a comparative view that, so far as I know, no other book has yet furnished us.

The conclusion one comes to inescapably is this: that in the Soviet system human energy is productive; whereas under capitalism it is wasted or perverted. We have of course observed in contemporary American life, crop destruction, forced under-consumption, the suppression of scientific advances. We have less frequently seen comments upon the perversion of human achievements because these perversions have been almost taken for granted. The commercialization of radio is one instance; but a subtler instance is the seizure by exploiters of pornography, by the Macfaddens and other magazine publishers, of the literary liberties fought for and won by courageous and persistent writers like Dreiser, Dos Passos and Anderson. Another instance is the Lindbergh episode. When Lindbergh's heroism became an instrument in the hands of an aviation company, it lost its social values; he was no longer a people's hero. Today there is even to be noted an undercurrent of hostility to him. And somehow the kidnaping and death of his child fits in the dark picture. It was another and illegal attempt to profit on this act of heroism. It is part of the pattern. Compare with this the social acceptance and use of the Soviet Chelyushkin heroes and the difference at once becomes clear. The qualities of the Soviet system are such as to make a social and progressive good of all human achievements, and by an act of heroism the hero is bound closer to the people, not estranged from them.

Unquestionably it is the realization of this that kept Miss Strong close to the Soviet world in spite of disappointments and personal frustrations. She arrived in Russia in the worst years of the 1922 famine as an American relief worker; she saw what appeared a dissolution of socialism in the NEP period; she saw the disorganization and exhaustion that followed the first overwhelming drive of collectivization; yet, somehow, in this system even the mistakes and the errors were useful. Some of her own undertakings in Russia, her John Reed colony for homeless youngsters, an enterprise for the establishment of American workshops, her initiation of an English newspaper in Moscow, all failed in their first intentions, yet all became successes beyond her first intentions. In this social system orientated toward the common good and caught in what is obviously one of the strongest creative currents in human history, nothing is wasted.

What happened to her American efforts? At her very first job, on a religious publication, her youthful enthusiasm was callously exploited. She was discharged, because it was a policy of the magazine to staff its office with ambitious and talented young people who would be kept until all that could be gotten out of them at low pay had been extracted. As the victim of a similar dodge, I can understand the bitter memory it left in Miss Strong's mind. Later she organized child-welfare exhibits which, in the newer Western

cities became foci of social change; but competing and more "practical" exhibits by the heavily endowed Russell Sage Foundation reduced the movement to innocuousness. She became active in the labor movement in Seattle, a successful labor editor, without however understanding the reality of the class struggle. And because of this lack of understanding it was not till long afterwards, in Russia, that she arrived at a mature knowledge of the event in which she had taken a leading part, the Seattle general strike. Then, at last, she understood the confusion of the leaders: then she realized the role of the government in Washington, which, merely by transferring its construction orders to other cities, did most to break up labor strength in Seattle. Thus, one by one, in her capitalist homeland, all her successes became defeats.

A second achievement of *I Change Worlds* is to give a sense of the democracy in Russian life, more tangibly than it has been given in any other book I have read. The two outward signs of Russian life are first devotion and obedience, commonly translated by hostile observers as tyranny; and the enormous amount of committees and meetings which are often translated, even by friendly observers, as inefficiency. The discussions seem endless, while the decisions are unrecordable, existing in implications. But as a result of these seeming, endless conferences, this untiring march of meetings from the factories and fields to the council chambers in the Kremlin, the collective will is slowly discovered and then applied, and it is obeyed gladly because it is the collective will. In a sense impossible in any other political system yet developed, the Soviet citizen enacts his own decision, and enjoys the completest democracy yet evolved.

Another achievement of *I Change Worlds* is its frank illustration of the psychology of the liberal, especially of the liberal of the

author's generation. It explains the twelve years experience needed to turn her into a Communist; and the vacillations of such of her contemporaries as Dreiser, Anderson and others who have come close to the revolutionary movement, then unaccountably veered away, who exhibited toward it astonishing alternations of arrogance and humility.

Miss Strong achieved a personal efficiency which gave her an illusion of freedom. Like Dreiser, who made his living when he needed to as a journalist and as an editor, like Anderson who made his living when he needed to by running a factory, writing advertising copy and editing country newspapers, Miss Strong could turn at will to lecturing, organizing, writing, social work. It gave them an illusion of economic powers, an illusion of success. At one time, in a moment of humility, Miss Strong declared that her greatest ambition was to be "used" to the full extent of her powers. There is of course egotism in such a declaration, an intimation that she has special powers that can be used. The passive quality of such an offering did not occur to her until, soaked in Russian experience, she realized that it is better to act than to give. When liberals so identify themselves with the revolutionary movement that they feel actors in it, not people coming to it with gifts, then they become revolutionists; then the hesitations and the doubts disappear. Their solitary independence, a rare enough achievement in the capitalist system, but decreasingly possible in that system, can then become a collective value.

I have indicated, I hope, the more important values of Miss Strong's book. It remains to be added that the writing is vivid, though at times her ardor drops into sentimentality; and that in the range of her experiences and equally in their intensity her book is one of the most absorbing autobiographical records of our time.

ISIDOR SCHNEIDER.

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