

The weather report for the new volume: "Clear, with fresh but moderate winds." And from the old prophets, perhaps, "storms of protest."

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*The Good Society.* By Walter Lippmann. Boston: Little, Brown & Co., 1937. Pp. xxx, 390. \$3.00.

Since its first publication early last fall, Mr. Lippmann's book, *The Good Society*, has been the subject of a good deal of highly divergent comment. Within my own observation, the highest note of praise has been that struck by Mr. Horace J. Bridges, of the Chicago Ethical Society. "The work," says Mr. Bridges, "has stirred me to great enthusiasm. For twenty years I have been consciously waiting and longing for just such a book as this. . . . [It is] a work worthy to stand in the line of succession to the First Book of Hooker, to Milton's 'Areopagitica,' to Locke's 'Treatises on Civil Government,' to Burke and Adam Smith, and to John Stuart Mill."<sup>1</sup> In contrast to the enthusiasm of Mr. Bridges are the opinions of Mr. Lippmann's ex-brother socialists. From them has come a chorus of assertion and innuendo, that Mr. Lippmann has simply "sold out"; and even the relatively moderate Max Lerner, though absolving Mr. Lippmann of any conscious dishonesty, observes significantly that "Mr. Lippmann is a rich man; [that] his friends are the possessors of the earth; [and that] he is their prophet." His book is described as "a rationalization of the economic claims and political fears" of his friends, and he is accused of "fleeing to the Nirvana of political inaction."<sup>2</sup>

It does not seem to me that *The Good Society* itself gives much support to any of these views. It is, most decidedly, not a great book; it is rather dull, much below Mr. Lippmann's own standard as a piece of writing,<sup>3</sup> and confused and inconsistent in its substance almost from beginning to end. On the other hand, it seems to me equally certain that the book is not a plea for inaction, and, though confessedly a product of a period of personal bewilderment and wishful thinking on the part of its author, it is, I think, about as honest as tracts of its kind usually are.

"I began to write," says Mr. Lippmann, "in a mood of protest but without much hope." He has been "bewildered," he says, ever since the War. Yet his occupation forced him into daily comment upon critical events with no better guide to their meaning than his own "hastily improvised generalizations." His "predicament," was "not pleasant."<sup>4</sup> He speaks of "weariness" and "discouragement," of "the

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<sup>1</sup> Bridges, Mr. Walter Lippmann's "Good Society": An address to the Chicago Ethical Society (1937).

<sup>2</sup> Lerner, Lippmann Agonistes, *The Nation* (Nov. 27, 1937). See also Marshall, Columnists on Parade VI: Walter Lippmann, *The Nation* (April 23, 1938).

<sup>3</sup> Any one doubting this estimate should compare *The Good Society* with Mr. Lippmann's *Method of Freedom* of 1934, which dealt in a prefatory way with somewhat the same subject as his present book.

<sup>4</sup> It is hard to believe that Mr. Lippmann was aware of much "bewilderment," or that he felt his predicament "unpleasant," when he wrote his Preface to *Morals*. See, especially, chapters xii and xiii. The Preface to *Morals* was published in May 1929; the stock market crash, it will be remembered, came in October.

dismalness of the prospect" which prevailing social philosophies held forth; words like "intolerable" and "unendurable" appear again and again. But finally, he says, he saw that his own inner conflict simply reflected the great schism in the modern world outside; and things began then to become clear. He began to see that all the "unendurable" and "intolerable" things were not merely "intolerable" and "unendurable"; they were also mistaken; they were the inevitable results of certain "intellectual" errors made by liberal "thinkers" in the early part and middle of the nineteenth century. It is the "thinkers," it seems, who really determine the shape of things in the practical world; only it is about seventy-five years after they are dead and gone before they do so.<sup>5</sup> Recognizing this, Mr. Lippmann says that he expects to be attacked by the present-day world as a mossback and reactionary, and he also fears that the world of the present may perhaps not heed him, for "men may have to pass through a terrible ordeal before they find again the central truths they have forgotten." But that they will find these "truths" again, Mr. Lippmann entertains no doubt, "if only the ideas that have misled them are challenged and resisted."

One of the "ideas" which have misled the men of the modern world, according to Mr. Lippmann, is *laissez faire*; the other (for it seems there are only two) is "authoritarian collectivism," or the belief that "the Good Society" is to be ushered in through "the coercive direction by government of the life and labor of the people." "I have sought," says Mr. Lippmann, "to examine this design of the future not only in its fascist and its communist embodiment but also in the gradual collectivism of democratic states, trying to determine whether a society can be planned and directed for the enjoyment of abundance in a state of peace. . . . I have come finally to see that such a social order is not even theoretically conceivable. . . . I realized at last that a directed society must be bellicose and poor. If it is not both bellicose and poor, it cannot be directed. I realized then that a prosperous and peaceable society must be free. If it is not free, it cannot be prosperous and peaceable. It took me some time after that to understand that this was no new discovery, but the basic truth which the liberals of the eighteenth century taught at the beginning of the modern era. . . . I seek to find out why the development of the liberal doctrine was arrested and why liberalism lost its influence on human affairs."

The answer that is given by Mr. Lippmann is that real and effective freedom in the economic sphere is not possible of attainment except through governmental regulation; that a policy of nonregulation is, quite literally, a complete impossibility; that the traditional liberal policy of *laissez faire* has therefore not been a policy of nonregulation, but a policy of continuing in effect the particular system of regulations, to which liberals had become used; that that particular system of regulations was not well calculated for the attainment of true economic freedom; that a program appropriate to that end would involve a great multitude of reforms and departures from *laissez faire*; that it would aim to break up, prevent, and minimize monopolies and collectivism of all kinds; and that it would, on the other hand, aim to maximize the number, and the freedom and intelligence, of all those individual choices of occupation, employment, expenditure, and investment, which, taken together, would

<sup>5</sup> Accepting, as I do, Mr. Lippmann's view that "Adam Smith would not have regarded the corporate capitalism of the nineteenth [or twentieth] century as the obvious and simple system of natural liberty, which he has imagined," the determination *à la* Smith seems considerably overdue.

constitute the sort of ideal free economy which Adam Smith had in mind when he wrote his *Wealth of Nations*. Mr. Lippmann thinks that Adam Smith's ideal free economy could still be brought about at the present day without any sacrifice of efficiency in production or distribution; he says that the technology of neither of these processes requires, for efficiency, as large business units as we now have; the technologically-required size of unit, he thinks, is never, in any industry, as large as the industry itself. From this he concludes, as I have said, that Adam Smith's ideal free society could, by properly conceived laws, be ushered in at the present day, without any sacrifice of efficiency.

Mr. Lippmann suggests a partial list of the reforms which he thinks necessary to accomplish the end which he has in mind. His list includes a liberal program of expenditure for education, public health, flood and drought control, water power development, conservation and improvement of natural resources, relief and re-education of the unemployed, and active measures for bringing new enterprises to regions abandoned by older enterprises; also, prohibition of holding companies; prevention of corporate accumulations beyond sinking-fund requirements; general renovation of corporation law to keep down and reduce the scale of business organizations; prohibition of monopolies and unfair trade practices, and abolition of all monopoly-producing privileges; control of money and credit to secure the equation of the rates of saving and investment and to stabilize the purchasing power of money; promotion of cooperative organizations among farmers, laborers, and consumers; measures for improving the bargaining positions of these groups; steeply graded income taxes, especially on unearned income, including the eventual expropriation of all unearned income now spent for private consumption—all this, and, presumably, much more, with a view to the diminishment of existing inequalities in income and inheritance among the American people.

The foregoing is, I believe, a fair summary of the most plausible and comprehensible part of the Lippmann book. It can be seen, I think, that there really is no ground for the charge that Mr. Lippmann is advocating a do-nothing policy; his program is too suggestive of various elements of the New Deal for any such conclusion; and as lately as February of last year, Mr. Lippmann, though expressing his opposition to President Roosevelt's Court Plan, stated in so many words that there were only a few items in the New Deal program that any man of liberal temper and progressive purposes would not approve.<sup>6</sup> The only item he then mentioned; other than the Court Plan, was the N.R.A. *in its general application*; as applied to demoralized industries, like coal mining, Mr. Lippmann said he approved it; and in the summer of 1934, he had thought it still, perhaps, too soon to say that the N.R.A., even in its general application, had failed to produce results commensurate with the effort it involved. He<sup>7</sup> did not approve it; but he gave no evidence of any such violent hatred as he now displays. So, although the "radically conservative program of liberal reform" which Mr. Lippmann sets forth in *The Good Society* is characterized in spots by a good deal of vagueness, there can be no doubt, if it is eked out by what he said in his *Method of Freedom* four years ago and in his Supreme Court pamphlet last year, as to just where Mr. Lippmann stands. So far as the *merits* of current American political issues are

<sup>6</sup> The Supreme Court, Independent or Controlled, p. 33.

<sup>7</sup> The Method of Freedom, p. 70. His approval of the A.A.A. is somewhat qualified Cf. Method of Freedom, p. 70, with The Good Society, p. 115.

concerned, Mr. Lippmann approves, *in general*, of the New Deal. There is, then, so far as I can see, no warrant whatsoever for the charge that Mr. Lippmann has sold out to the vested interests.

Nevertheless, it is, I think, impossible to read *The Good Society* without gaining the impression that the book is a bitter attack on President Roosevelt and the New Deal. It will, therefore be interesting to note briefly some of the means by which this impression is produced.

Mr. Lippmann starts out with an attack on what he calls "the providential state" and "the collectivist movement." His argument is directed against what may be called "total planning"—*i.e.*, a system whereunder the government would conscript the national resources of men and materials, determine the types of productive and distributive activity in which the nation should engage, allocate the national resources among these activities, and ration the resulting goods and services among the citizenry. Under such a system, individual choices of occupation or of modes of consumption would not exist. Mr. Lippmann implies, if he does not assert, that systems having these characteristics are now to be found functioning in Russia, Italy, and Germany. How far that is true, I am not prepared to say. At any rate, Mr. Lippmann says, or implies, that it is because these systems do involve the conscription of men and materials, the coercive allocation of these, and the rationing of the resulting product, that there is so much violence and tyranny in the countries mentioned. Violence and tyranny, he thinks, are inevitable consequences of systems such as they possess.

Now, the reader of this review may wonder just what all this has to do with the United States, since there is not, so far as I am aware, any considerable body of persons in this country who desire to emulate the violent methods of the countries just mentioned, or even to inaugurate, without violence, the sort of totally planned economy which Mr. Lippmann describes. But Mr. Lippmann says that practically every one but himself and a few other "isolated thinkers" really do desire to inaugurate such an economy, albeit by gradual and pacific methods; or else they desire to do other things, of which the inevitable and result will be the same. And in either case, Mr. Lippmann tells us, the inescapable consequences will be violence, tyranny, poverty, and war.

The persons who entertain these dreadful desires, Mr. Lippmann terms "gradual collectivists." They include, besides New Dealers, such diverse groups as Old Guard Republicans, "democratic socialist intellectuals," tariff beneficiaries, labor unions large corporations, and doubtless many others. There is little attempt at analysis or demonstration; rather, these oddly assorted groups appear and reappear in the discussion as horrible examples of the single thing, *collectivism*, which Mr. Lippmann seems so passionately to hate and fear. And there is one remarkable passage in which, after asserting that all "the active contenders for power in the modern world" are "fundamentally lawless," in that "they are all in rebellion against the moral heritage of western society," Mr. Lippmann pauses to assure the reader that he is "not oblivious of the differences which distinguish" these contending groups. He is aware, he says, of "the existence of sub-species: that there is a Second International, a Third under Stalin, and a Fourth under Trotzky; that Italian fascism and German nationalism have a somewhat different complexion; that Old Guard Republicanism in the United States, with its patronage of corporate collectivism, serves other interests than

the collectivism of the New Deal." And then he goes on: "There are also important differences between lions and tigers, even between African and Indian lions. But from the point of view of, let us say, a goat or a lamb, the common characteristics of all the great carnivores are more significant than their differences." Abstracted from its context, this whole passage sounds silly and ridiculous; but read in passing, it may, I suppose, pass muster with some simple and unwary minds.

The reader of this review may find it difficult to believe that the technique I have described can have been adopted by Mr. Lippmann, or that this lion-and-tiger passage can have been penned by him, without some conscious intellectual dishonesty on his part; but in fairness to Mr. Lippmann, it should, I think, be remembered that men who are emotionally overwrought do frequently adopt such tactics and write such passages in assuaging their own doubts; and in such cases, they may offer their product to the public in entire good faith. The writers in such cases simply think words, not things, thereby disregarding a wise admonition of the late Justice Holmes; their words bridge for them the chasms of reality; and they get safely to the intellectual destination for which they yearn. It is, I think, a great mistake to assume a consciously dishonest motive in such cases. Candor in discourse is not a simple thing which any one may have: it is a difficult art, in which a radical and *ever-present* skepticism is the most important element.

Now, I daresay it will have occurred to the reader that most of Mr. Lippmann's "gradual collectivists" are not *gradual* collectivists (if collectivists at all), but *partial* collectivists. And such a category would include practically every one; for we have, all of us, always been collective about some things; the mails, for example, and the highways. And while it may be that our highways, for example, lag in development behind the cars that travel over them, few would assert, I think, that our present highway system could have been developed upon any other than a collective basis. The obvious fact is that whether we shall be collective or non-collective about any particular activity is a matter of choice in the light of the pros and cons of the particular case. Even Mr. Lippmann is collectivist about "schools, hospitals, recreation centers, and all manner of social services"; and if there is something in the "essence" of a social service that limits this collectivism of Mr. Lippmann, that "essence" escapes me. Mr. Lippmann says that "the great difference between public works and social services undertaken in a liberal regime and those undertaken in an authoritarian is this: in the liberal regime the sovereign, that is to say the people through its representatives, thinks of itself as chartering public enterprises; in an authoritarian regime the public enterprises are regarded as the right hand of the sovereign and filled with his majesty." Now, this talk of "the people's thinking about itself through its representatives" and of "public enterprises' being filled with his, that is to say the people's, majesty" is a nice lot of language; but what does it mean? Obviously, it *means* nothing; the function of such language is to evoke emotion, not to communicate thought.

Mr. Lippmann's treatment of the President himself is much the same as his treatment of the New Deal, though, as a matter of fact, Mr. Roosevelt is mentioned in *The Good Society* only three times. One of these three references (on page 26) is comparatively innocuous, though it does carry a possible implication that Mr. Roosevelt is engaged in attempting all the damnable collectivistic things of which Mr. Lippmann disapproves. The second reference to the President (page 10) attempts to identify him with Louis XIV of France and certain bloody tyrannies practiced in that country

under that monarch. The third reference to the President (on page 8) consists of a statement that he once said "that the liberal conception of the state belongs to a 'horse and buggy' era." The citation is to the President's press interview of May 31, 1935, following the Supreme Court's N.R.A. decision. If one may rely on the report of that interview in *The New York Times*,<sup>8</sup> Mr. Lippmann's statement is without foundation. It appears from that report that Mr. Roosevelt's actual statement was that "the N.R.A. decision had deprived the government of all control over economic and social conditions by interpreting the interstate commerce clause in the light of the 'horse-and-buggy' days of 1789, when it was written." He said that the decision had presented the country with a problem which was independent of the question of turning to the left or the right. "Over the next ten years," said the President, "the country must decide whether it will relegate to the states control over national economic conditions, and over social and working conditions, regardless of whether those conditions have a definite bearing on conditions outside the different states." Thus, the Roosevelt statement related only to the distribution of power between state and nation; it had nothing to do with "the liberal conception of the state"; and Mr. Lippmann's statement that it did have, is, as I have said, unfounded. In pointing out this fact, I wish again to say that I do not mean to accuse Mr. Lippmann of intentional misrepresentation: he probably did not trouble to look the matter up, and his emotions did the rest; but the fact of the misrepresentation remains.

Now, what is the explanation of this pervasive inconsistency in Mr. Lippmann's book and of his bitter hostility toward the New Deal and the President? Those who were readers of Mr. Lippmann's newspaper "column" in the days "before Chicago" will remember that Mr. Lippmann was not, even then, over-cordial toward the President. Thus, on one occasion, I remember, he referred to Mr. Roosevelt as "a pleasant and affable man who, without any important qualification for the office, would very much like to be President."<sup>9</sup> Persons who recollect this old attitude of Mr. Lippmann's may be tempted to think that Mr. Lippmann has simply been bedeviled by a personal dislike; but, again, I think this would be unjust to Mr. Lippmann, for, as I have said, in his *Method of Freedom*, in 1934, he wrote of much the same subjects that he treats in *The Good Society*, but in a very different spirit. The explanation must, then, be something that has occurred since the early part of 1934; and since Mr. Lippmann apparently approved, in the early part of 1937, of all of the New Deal except the Court Plan and the N.R.A. in its general application, the available evidence would seem to point pretty clearly to the Court Plan as the cause in question.

The only other possibility is the continuing failure of the Administration to enforce the anti-trust laws, or to do anything to strengthen these laws, or to revise systematically our whole system of corporation law. But unless Mr. Lippmann is totally ignorant of the sad judicial history of the Sherman Act and other federal anti-trust laws, he must be aware that there has been little reason to waste effort in seeking to enforce those laws before a court whose latest pronouncements have included decisions like *Appalachian Coals, Inc. v. United States*,<sup>10</sup> *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*<sup>11</sup> and *International Shoe Co. v. Federal Trade Commission*,<sup>12</sup> and as for really effective legislation in the corporation and monopoly field,

<sup>8</sup> For June 1, 1935.

<sup>9</sup> I speak from memory because I do not have *The New York Herald Tribune* for the period in question at hand.

<sup>10</sup> 288 U.S. 344 (1933).

<sup>11</sup> 291 U.S. 587 (1934).

<sup>12</sup> 280 U.S. 291 (1930).

no candid, competent, and informed person could possibly have thought, prior to the Supreme Court's capitulation in the Court fight, that such legislation had even a ghost of a chance against the Court's powers of invalidation and interpretation.

A matter of fact, the President's Court Plan is not even mentioned in *The Good Society*; instead, Mr. Lippmann criticizes the Court for abusing its powers.<sup>13</sup> So, if the Court Plan is at the bottom of Mr. Lippmann's bitterness toward the President and the New Deal, it appears that, for some strange reason, Mr. Lippmann was unwilling to discuss it.

Why this should be, one can only guess; but, at least, it is apparent that Mr. Lippmann, in writing *The Good Society*, was in another "unpleasant predicament." Most of the things that he wanted to urge should be done by the government, the New Deal was already trying—blunderingly, perhaps—to do; most of the things that the New Deal had done, he actually approved; yet he was passionately anti-New Deal and unwilling, or, perhaps, unable, to discuss the real basis of his opposition. In such a predicament, a man would be likely, it seems to me, to turn out just the sort of inconsistent and over-rhetorical wordiness that is found in *The Good Society*. And unless there was some such cause operative, it is impossible, I think, to conceive how a sincere and able man like Mr. Lippmann could ever have written so confused and confusing a book.

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Cases on International Law. By James Brown Scott and Walter H. E. Jaeger. St. Paul: West Publishing Co., 1937. Pp. lxxix, 1062. \$5.50.

Cases and Other Materials on International Law. Edited by Manley O. Hudson. 2nd edition. St. Paul: West Publishing Co., 1936. Pp. xl, 1440. \$6.50.

———. Shorter selection, 1937. Pp. xxxix, 622. \$5.00.

The Law of Nations: Cases, Documents, and Notes. Edited by Herbert W. Briggs. New York: F. S. Crofts & Co., 1938. Pp. xxix, 984. \$8.00.

In 1775 Benjamin Franklin wrote to Frederick Dumas that Vattel's treatise on international law "has been continually in the hands of the members of our Congress now sitting."<sup>1</sup> Ever since the establishment of the United States, rules of international law have been applied to countless instances of the external affairs of the country, and since the early days of the Union international law has been a subject of academic studies. None less than Chancellor Kent considered international law "an essential part of the education of an American lawyer." The international law which was taught in the law schools of the country at and after Kent's time was essentially based on Vattel and on other writers who, like Vattel, thought and wrote in terms of natural law. When the historical and the positivistic schools of law and their realistic successors became dominant, it was thought that international law deals more with that which ought to be rather than with that which is; international law lost ground in most law schools and became one of the social sciences.

This was the situation against which Professor James Brown Scott took a stand when he published his casebook in 1902.<sup>2</sup> Endeavoring to prove the legal character

<sup>13</sup> *The Good Society*, pp. 257 *et seq.*

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<sup>1</sup> See 32 *American Journal of International Law* 346 (1938).

<sup>2</sup> Scott, *Cases on International Law* (1902).