

# A Mind of One Piece: Brandeis and American Reform

## by Melvin I. Urofsky

(Scribners'; 210 pp.; \$10.00)

### William Berlin

Born a few years before the start of the Civil War, Louis Brandeis lived to within three months of American entry into World War II. He reached maturity during an era of rampant industrial expansion, and spent most of his active life grappling with the effects of industrial consolidation. He witnessed both the emergence of vigorous national government and the subordination of the individual to the principles of organization. Throughout this span, Brandeis championed the virtues of smallness and individuality. His life ended during a New Deal which he both admired and reprovved, and for which he was, to no small extent, responsible.

In one sense, Brandeis can be viewed as the model Progressive, spurred into public life by moral outrage at the corruption of government by business, by the violation of American standards of fair play. Yet Brandeis went further than most Progressives, not only in his activism but also in offering remedies to match his diagnoses of social ills. He was, by his own admission, a problem solver and social engineer who equated reform with correcting imbalances in society and men. (His early enchantment with Hoover reflected their affinity in this regard.) Ultimately, however, the palliatives he proposed were undercut by the limited range of his examination. If Brandeis' activism marked him as a "radical" to some industrial titans, his philosophical view was nevertheless tame. Criticism of basic institutions was of little interest to him. He was firmly committed to free enterprise. Like many other Progressives, he was a moderate if not conservative man.

Professor Urofsky's portrait of Brandeis highlights the coherence in

his approach to social problems. Brandeis had often been accused of inconsistency during his long public career, a result no doubt of the variety of his concerns and the variety of his enemies. Urofsky demonstrates very effectively the theme of Brandeis' life and thought: the attempt to relate older liberal values to twentieth-century reality. Urofsky brings to his task the sensitivities of an artist of history, a feeling for context as well as perspective. In the end, his work falls short of excellence because the skills employed are mainly photographic. The portrait shows the man on his own terms without questioning their validity or probing their source. Ironically, where Urofsky does criticize his subject it is for what he considers a serious, though rare, inconsistency.

Brandeis' roots were not unlike those of many of his countrymen. The son of Jewish immigrants from Bohemia, he was able to build upon those polarities of tradition and modernity, remembering and forgetting, which so many Americans have not been able to reconcile. He represented and applied older virtues when conditions and compromise were ruling them out of the lives of many of his fellows.

The key to Brandeis' success should be sought beyond his native brilliance and almost legendary memory. He was born into a family which was both a crucible of Old World liberalism and a vehicle into a New World of opportunity and advancement. The model of democratic man which Brandeis revered was straight out of his father's generation: the "old" middle class of merchants and shopkeepers, artisans and professional men. These were men who gathered every evening before dinner to

discuss public affairs. Their wives and daughters seasoned their correspondence with quotations from Greek drama and German literature. They brought to America the values of "enlightened" European Jewry—a respect for culture and education, professional independence, honesty, public service, and individual endeavor. Underlying it all was the notion that religion is best expressed in terms of ethics and conduct and an enduring respect for history.

It was these values of an "old" middle class which Brandeis was to represent throughout his successful years in Boston, his work as corporation counsel and "people's attorney," and later as Presidential advisor and Supreme Court Justice. It is to the credit of his intelligence and ingenuity that he can still be regarded as a "realist," although his realism never extended to questioning his own values. He was intent upon amassing facts about modern conditions so that the old values could be reasserted without violent upheaval. The law, as he saw it, must be modified to alleviate new problems of work and business, or it must be used to alter conditions opposed to traditional liberal values. The task demanded public education as well as the mobilization of opinion by the better elements in society. "Most of the world is in more or less a hypnotic state," he once wrote his wife, "and it is comparatively easy to make people believe anything, particularly the right."

To these ends Brandeis brought a rigid intellectual discipline, a capacity for organization, and a single-minded perseverance which separated him from most men. His individualism was manifest in the solitude of his public service. Unlike Ralph Nader, his contemporary counterpart, Brandeis did not attempt to spawn a movement. He viewed public service not as an extension of personal need or ambition, but as a luxury he was fortunate enough to afford. Urofsky is quite right to suggest that one reason public causes held such an attraction is that "they gave him the opportunity to enjoy his individualism as well as to operate

within a broad framework." Possibly this might explain the noticeable lack of anguish in a man who could easily have been a tragic figure in our history.

It should be emphasized that the liberalism which Brandeis espoused was by no means a simple reversion to "laissez-faire" doctrine. While he believed in competition, he saw that it required regulation to preserve its virtues. As Urofsky points out in his chapter "The Economist as Moralizer," at the heart of Brandeis' economic reforms was a concern with the development of man. The ability of democratic man to endure the deprivations of industrial absolutism was the overriding issue. Brandeis was offended by the culture as well as the magnitude of the new wealth. The "curse of bigness" corrupted the capitalist and laborer alike; it denied them those intimate relations which encouraged a measured understanding between men. Bring them together and the sense of balance in men and society could be restored, a harmony of interests would once again reign. The central goal was the protection of *all* the people from the avarice of the special interests, to create a society where competition would once again reward the diligent and industrious citizen.

Since Brandeis' death, the bigness which he opposed in government as well as business has become a fact of modern life which most reformers today attempt to control rather than destroy. Tocqueville's fear concerning the ability of democracies to pursue both equality and freedom seems more relevant than ever before. The realities of mass society make Brandeis' commitment to individualism seem well-meant but archaic. Was Brandeis, as his biographers like to imply, a prophet ignored by his countrymen?

Brandeis, like many Progressives, was sensitive to the dangers of mass society. Yet it was precisely his dedication to liberalism which prevented him from offering realistic alternatives. His emphasis on economic and social reforms reflected the intellectual bias of an age which saw politics as a secondary cause of social ills.

For Brandeis the major issue was the democratization of society. This achievement demanded regulated competition, dissolution of the trusts, unionization, and industrial democracy. Although he believed that government should stand for the public interest, he had no definite conception of what that meant. His greater concern was in extending the restraints on power which he favored in political life to the "separate" sphere of society.

A reliance on society and avoidance of creative political solutions are characteristic features of liberal thought, but in Brandeis' case they can also be related to the pattern of his entire life. Perhaps his reverence for the law and his natural caution regarding the wisdom of "tinkering" with existing institutions restricted his overall view. More importantly, by putting himself above party and politics Brandeis could avoid that emotional involvement which threatened his individualism. Finally, we should note that Brandeis' political outlook was limited by his profession. As an attorney, he approached social problems as cases, or battles to be joined, and his efforts were aimed principally at combatting evils he saw as immediate and close. A sense of tournament, of sport, was an additional reward for the crusader against moral corruption.

Urofsky's chapter on Brandeis the lawyer epitomizes those qualities which enhance the book. He succeeds both in defining Brandeis' relation to the American legal profession at the turn of the century and in showing how Brandeis the lawyer was not a role apart from Brandeis the man. There is a tendency in this book to make too much of Brandeis the thinker, but in this chapter Urofsky is mainly concerned with proving the intellectual consistency in his legal activities. Brandeis was one of the rare lawyers of the period to involve himself in public interest law. He chided his fellow lawyers for becoming stalwarts of privilege, for sacrificing the moral quality of the law to the practice of a manipulative craft. Urofsky describes how Bran-

deis joined his personal ethics to a technical mastery of the law and a fascination with modern methods. Yet, in Urofsky's words, "underneath the twentieth-century man was the eighteenth-century individualist."

Urofsky also demonstrates how Brandeis' Zionist activities were consistent with the rest of his works. Although he avowed a belief in God, Brandeis practiced no religion in the formal sense. He never denied his Jewish identity, but remained aloof from things Jewish to the extent that he would often refer to the Jewish people as "they." His tendency was to view Jewish identity as racial rather than religious, ignoring the essential spiritual core of Judaism. As Urofsky indicates, Brandeis accepted Zionism as a necessary reform, and as such, it fit quite well into his basic liberalism. "Each race or people," he wrote, "like each individual, has a right and duty to develop." Earlier liberal policies had failed to solve the problem because they had treated Jews as individuals, not as a group. Here Brandeis became the twentieth-century liberal pluralist, asserting the need for organization and pressure. His "new nationalism" envisioned each nationality and each nation within the framework of nineteenth-century liberal society. Competition, mutual toleration, and a harmony of interests were the predictable features of his international view.

The problem in Brandeis' Zionism was that he treated Jews as a group (or worse, as a race) and not as a community. What Urofsky fails to recognize is that Brandeis' concern with democratic society masked his inability to understand the virtues or necessities of communitarianism. Palestine symbolized for him the new society, the voluntary creation of individual Jews throughout the world. It was a place where the "essentially modern" Jewish spirit could thrive. Brandeis failed to comprehend that for many Jews at that time it was the spiritual bonds and ancient traditions, neither voluntary nor necessarily democratic, which lay at the heart of Jewish identity. How many Eastern European Jews could under-

stand (or cared to understand) his statement, "It is the non-Jews who create the disabilities and in so doing give definition to the term Jew?" There is more than a hint in Brandeis' words that Jewish emancipation meant emancipation from Jewishness.

In his Zionism as in his other reforms, Brandeis displayed a detachment that should not have escaped examination. Brandeis thought of himself as an American first who came to Zionism out of a realization that the Jewish people "were by reason of their tradition and their character peculiarly fitted for the attainment of American ideals." There was no incompatibility between being a good American and a Zionist. Urofsky notes perceptively that his subject's conception of "Americanism" was an amalgam of Jeffersonian individualism and New England Puritanism. Yet the Puritans, as we know, were communitarians who would have little use for John Stuart Mill or Jefferson. In truth, Brandeis was closer to the eighteenth-century individualist than he was to the Old Testament Israelite or his Puritan admirers, and this fact alone may explain his inability to grasp the human condition in the twentieth century.

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## The Cruel Choice: A New Concept in the Theory of Development

by Denis Goulet

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Marc K. Landy

Development is viewed by most American academic and governmental experts as a series of processes whose object is the modernization of institutions and whose point of departure is an abstraction labelled "traditional society." This state of undifferentiated primitivism serves as the beaker into which measured amounts of capital, technical assistance and democratic procedures are poured and blended until a rich mixture of industrialism and constitutionalism bubbles to the surface.

Mr. Goulet is less of a chemist than a philosopher. He redirects our attention to the *someone* who must develop, and to the moral, social and psychological crises he is forced to undergo. *The Cruel Choice* correctly asserts that, in view of the hardship and indignity engendered by the transformation of values, habits and behavior, the primary question to be asked about development must be an ethical one: Who has the right to do what to whom, how, and under what conditions? He takes as his point of reference three needs that are basic to human life: sustenance, esteem and freedom. He evaluates plans, programs and institutions which lay claim to the label "development" in terms of their ability to satisfy these axiomatic human needs.

Many traditional societies have dealt successfully with these needs, but the imposition of a worldwide economy based upon industrial production has destroyed the ability of all but the most remote of these societies to maintain that capability. The move from countryside to city deprives the peasant of his economic self-sufficiency. The values of achievement and competition that are foisted upon him make a mock-

ery of his claim to inherited status and group loyalty. Centralized political controls make him unable to control his own fate and, more importantly, that of his family. Underdevelopment is therefore not a primordial state; rather, it is the by-product of disruptive change. The cruel choice lies not between tradition and modernity, but between development and death.

The resistance of individuals or societies to development is not a result of a perverse desire to remain squalid and alienated; it is a response to a fear of losing what little control one has over circumstances. Increased vulnerability to processes outside one's control is too high a price to pay for the *promise* of need satisfaction, especially when policies designed to remedy a given need often involve deprivation with respect to others. The gift of food by the U.S. to India has doubtless raised nutritional levels but at great cost to the dignity of the Indian peasant who now sees what a poor job he was doing of providing for himself. The xenophobic nationalism fomented by certain African leaders has promoted a heightened sense of national pride and cultural esteem, but the consequent anti-subversion campaigns and commitment of resources to armor and "showplace" industrialism has deprived people of freedom and sustenance. Although the choice between developing or dying is a real one, it is not meaningful to the person or group being induced to modernize. In order to overcome his reluctance, a given development program must clearly serve to decrease his vulnerability to the mystifying external forces that seem to determine the course of his life.

When one employs this new yard-