BOOK REVIEWS

THE GOOD SOCIETY. By Walter Lippmann. Little, Brown and Co., Boston, 1937. Pp. xxx, 402. Price: $3.00.

The importance of this answer to the dilemma of the liberal—apart from the fact that it is by Mr. Lippmann and is therefore saturated with thought and brilliantly written—is that it is a vigorous, positive program for the reconstruction of liberalism. It is no middle of the road solution. It offers a program of its own, founded on a contentious philosophy of the true nature of human and economic liberty.

At the outset Mr. Lippmann examines the current political theories. It is of course impossible for the liberal to accept the solution of the extremists of laissez faire whose concept of the role of law is "a monstrous negation raised up as a barrier against every generous instinct of mankind". The authoritarian state on the other hand is nothing but a peacetime mobilization with war as its object and its unavoidable end. Nor can the liberal accept the solution of the "gradual collectivists"—well intentioned men who, either because of a real sympathy for collectivism or because of a philosophic ignorance of what they are doing, advocate policies which lead gradually but unavoidably to the authoritarian state, the destruction of individual freedom and the return to mercantilist poverty.

But the greater part of the book is the reconstruction and the agenda of liberalism. The rebuilding starts with the principle that the division of labor and the sale of the product of that labor in a freemarket is the source of the wealth, sovereignty and freedom of the people. "It is no exaggeration to say that the transition from the relative self-sufficiency of individuals in local communities to their interdependence in a world-wide economy is the most revolutionary experience in recorded history. . . . Only by recognizing the primacy of the division of labor in the modern economy can we . . . successfully distinguish between truly progressive and counterfeit progressive phenomena. . . . The first principle of liberalism . . . is that the market must be preserved and perfected as the prime regulator of the division of labor. . . . The authentic progressive thought of the modern world is an evolution from (the discovery of Adam Smith) that the wealth of nations proceeds from the division of labor in widening, and, therefore, freer, markets". The collectivist movements, fascist, communist or gradual, are counter-revolutions which seek "to resist, by various kinds of coercion, the consequences of the increasing division of labor".

The agenda of liberalism thus require that nations "practice the division of labor in wide markets or sink into squalor and servitude. Those who do not practice this new economy, the so-called backward nations, will become the prey of those who do." The debacle of liberalism in the nineteenth century came from the degradation of the principle of the free market into a policy of governmental inaction. The reconstruction of liberalism in contrast will be drastic in its prohibition of forces that trammel the market and positive in its action to increase the marketability of the product of labor. The free economy requires that the quality of the human stock, the equipment of man for life, be maintained by affirmative regulation of health and education, that the patrimony of the country's natural resources be protected against impairment by those who have the immediate right to use it, that social controls make capital move to where it is needed, that laws keep the savings and the investments of the community equal to each other to prevent inflation or deflation, that a neutral value for money be achieved through social control, that legalized equality of bargaining power assure the truth of the markets, that continual study and positive measures guarantee their efficiency and honesty, that monopoly and unfair trade practices be outlawed, and

that the human costs of a changing economy be lessened by taxation and the insurance of human beings against their personal losses in the progress of industry. The limited liability corporation and its creation, big business, will suffer heavily under the agenda of the new liberalism. Big business is not little businesses which have grown big. It is business which has been made big by the corporate device, in a deliberate attempt to evade the test of the market. The new liberalism will correct the error of the latter day liberals who mistook "the privileges of corporate bodies for the rights of man, the immunities of artificial persons for the inviolability of natural persons, the possession of monopolies for private property. . . . Big business of that sort is wholly inconsistent with the principles of a free economy. . . . Just as the East India Company was transformed into the government of India, so the giant corporations will, if they are allowed to continue, become in effect departments of the government". Truly Mr. Lippmann is justified when he says that "the agenda demonstrate . . . that liberalism is not the rationalization of the status quo, but the logic of the social readjustment required by the industrial revolution".

But how does this program differ from gradual collectivism? It seems to include most of the reforms which the gradual authoritarians are asking for. The answer is in the political principle that the laws which are to carry on the program of the Good Society are to be common laws. They are not to be commands issued by the State affirmatively to do this or that. They are to be laws of general application which will establish the rights and duties of the members of society and will be enforced so far as possible through civil actions by private litigants. The law is to work more through torts and contracts than misdemeanors and felonies. This does not mean that there are to be no policemen and no administrative agencies. It means that their duties are to be limited to those laws which by their nature cannot be enforced by private initiative.

A wholly new concept of the role of public officials is however necessary. They must no longer be regarded, as they are now, as men who are "touched with the divinity that hedges the King". They must be conceived of as men to whom the State has given certain rights and duties, who are strictly accountable in independent tribunals for the extent of the power they pretend to exercise and the manner in which they exercise it. Officials and administrative commissions are in themselves dangerous, for it makes little difference to liberty whether it is destroyed by a prince or by those who act in the name of a majority. The more that government increases the number of officials and commissions, the more important it is that the sovereign power be used as judge and conciliator in controversies between private interests and those who act in the name of the State. Were there nothing more in The Good Society than Mr. Lippman's discussion of the role of the official in its relation to democratic government, it would still be compulsory reading.

The new liberalism must reconsider the nature of the division of powers. Just as the judiciary necessarily makes law, so must the legislators and executives think of themselves as exercising an essentially judicial function. Every new law "is a judgment rendered for certain interests and against certain others", and if a legislator or an official thinks of himself otherwise than "as an impartial judge among contending interests, he soon adopts an imperial view of his function". Unfortunately the tendency to such a view is on the increase. "Legislators have come to think of themselves as the lineal descendants of the Caesars, and the heirs of their sovereignty."

But liberty will not be destroyed. Mr. Lippmann closes with an affirmation of faith. The "common law" is a super-law, above the legislature and even the Constitution. It is a convincing super-law. It is not a declaration of what ought to be or a mere statement of a revolutionary right (although Natural Law is always to the fore when authority is attacked and when men are seeking to extend

the area of peace). It is a law which in the nature of things must prevail, for it contains the germ of infallibility. Laws deal only with men; they are therefore conditioned by the nature of men. Man is inviolable; he has an indestructible will which denies that other men shall deal with him arbitrarily, and in the end laws which attempt to do so will fail. Just as in economics the free market for the product of divided labor will necessarily produce more wealth than reactionary mercantilism, so in politics the rule of the common law, armed with the quality of man's nature, will overthrow authoritarianism. "Against this mighty energy the heresies of an epoch will not prevail. For the will to be free is perpetually renewed in every individual who uses his faculties and affirms his manhood."

Mr. Lippmann's ideas will, of course, prove unpalatable to those who believe in the growth of the positive role of government, for his critique of fascism, national socialism and communism (all grouped together as reactionary) is, in the opinion of this reviewer, a dialectical coup de grace. His ideas will be no more acceptable to the advocates of governmental inaction. But the book is not for these groups. It is for those who want the State to act to meet its responsibilities to its less fortunate members, but who wish to preserve liberty and democracy in the process. To them Mr. Lippmann offers the principles which liberalism must follow to achieve its destiny.

Thomas K. Finletter †

THE ONE-HOUSE LEGISLATURE. By John P. Senning. McGraw-Hill Book Co., New York, 1937. Pp. 118. Price: $1.50.

John P. Senning, professor of political science at the University of Nebraska, played a leading part in the campaign for the adoption of the unicameral legislature in his state. He writes, therefore, not only with the clarity of a student who realizes the need for replacing the obsolete machinery of government but with the insight of a participant in the struggle to preserve democracy.

The essence of the single house is not its reduced size, which promotes efficiency and concentrates attention on the individual members, but the elimination of the conference committee, a mischievous device for shifting responsibility and corrupting legislation with political and lobbyist intrigue. Freedom from this encumbrance makes possible a direct relation between the will of the people and the work of the legislature.

The historical basis for the bicameral system has become a myth of "checks and balances." Instead of more deliberation it produces less. Instead of decentralizing power and building a barrier against corruption, it defeats these purposes. In the vast and complicated mechanism are many corners where privilege and partisanship darkly manipulate and control. The common disrepect for legislatures—and worse, the resultant public indifference—attest to the presence of evils which cling like barnacles to the ship of state.

These are times when democratic processes are in danger of succumbing to bureaucratic and monocratic remedies because of inability to cope with the problems of modern society; when men with a concern for the American ideal put stress on the means of attainment. Dr. Senning's lucid and scholarly survey of his subject nurtures the conviction that the unicameral method is the truly democratic one. Published on the eve of the opening session of Nebraska's one-house legislature, his book gives compactly a review of the development of both the old and the new systems and his conception of the proper functioning of the new. A foreword is contributed by Senator George W. Norris, who undertook the major share of the heroic campaign in that commonwealth for a non-partisan body.

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Now, upon the adjournment of the pioneering session, during which the spotlight shone on every move, Senator Norris observes that the one-house legislature "has demonstrated beyond the possibility of a doubt its great superiority."

Alfred Lief †

JURIDICAL BASES OF DIPLOMATIC IMMUNITY—A STUDY IN THE ORIGIN, GROWTH, AND PURPOSE OF THE LAW. By Montell Ogdon. John Byrne & Co., Washington, D. C., 1936. Pp. xx, 254. Price: $4.00.

In this book the author undertakes to re-examine the historical foundations of the most ancient branch of international law and to subject to a searching analysis the various theories upon which, in the course of evolution, the practice of states and the decisions of courts concerning the privileges and immunities of diplomatic agents rested. Professor Ogdon rejects the discredited fiction of "exterritoriality" as well as the less objectionable theory of "representative character" as bases of diplomatic immunity and suggests that the doctrine of "necessary and adequate protection" of channels of communication between states would, in the light of modern conditions, be a sound and acceptable premise by which the extent of immunity may be determined.

No exception can be taken to Professor Ogdon's conclusions. In fact, the tendency of recent years has been decidedly toward restriction of diplomatic immunities and, as the author himself points out, foreign offices and courts have been inclined to turn down unsympathetically exaggerated or unreasonable claims. The author's analysis is historically correct and in substance sound although somewhat confusing and devious. Clarity is not characteristic of his style and his interpretation of philosophical theories as well as of court decisions is often involved and cumbersome. Consequently, this study does not seem to help much in clarifying doubtful points of the legal problems or the social objectives involved. Although useful as a handy reference book, Professor Ogdon's book falls short of an original contribution. It should be recognized, however, that the achievement of originality in this subject would be difficult since the author was following a trail that has been blazed repeatedly by scholars of no mean authority and competence.

Francis Deák ‡

GUIDE TO LAW AND LEGAL LITERATURE OF CENTRAL AMERICAN REPUBLICS. By Edward Schuster. (American Foreign Law Association, Bibliographies of Foreign Law Series, No. 11.) New York, 1937. Pp. vi, 153. Price: $2.00.

The present publication is the latest in the series of bibliographies undertaken by the Foreign Law Association (in this case in cooperation with the Committee on Foreign Law of the Association of the Bar of the City of New York) to acquaint the members of the legal profession, historians, scholars, and others interested in foreign law with the legal literature of other countries. The author, Mr. Edward Schuster, is a distinguished member of the New York City and Mexico City Bars and a former chairman of the Committee on Foreign Law of the Association of the Bar of the City of New York and vice-chairman of the Comparative Law Section of the American Bar Association. To these activities he contributed a wealth of practical experience and vast erudition in the field of

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Spanish American law, which are reflected in his present work and which render it highly authoritative as well as very interesting, readable, and helpful.

After a brief preface, there is an introductory chapter on the general and comparative legal literature of the six Central American Republics (Panama being included because of practical considerations even though historically and juridically its legal ties are with Colombia rather than with its northern neighbors). Then follow six chapters of about twenty pages each devoted to each of these Republics and divided uniformly into fourteen topical headings as follows: Bibliography, Legislation, Court Reports and Digests, General Works, Legal History, Civil Law, Commercial Law, Judicial Organization and Civil Procedure, Notarial Law and Practice, Criminal Law and Procedure, Constitutional Law, Administrative Law, Military Law, and International Law (public and private). A brief appendix on the Central American Federations and a topical index in which the subjects treated are divided into ninety-three headings complete the book.

The numerous publications listed under the various headings are discussed in a continuous, connected, and terse narrative, and it is a welcome relief that footnotes are few and far between.

In a work of such wide range, particularly where the sources and materials are not available, for the most part, in this country, and where the author has to rely to some extent on others for up-to-date information not always accessible, there are likely to be omissions or slight inaccuracies, but on the whole the task has been carefully and thoroughly done.

This book will be a welcome and valuable tool in the hands of every lawyer, of every exporter and importer having any business with Central America, and every student of history and comparative law who wants a ready and accurate reference to the sources of law and legal literature in the countries south of Mexico and north of Colombia.

Charles Berguido, Jr.†

BOOK NOTES

CONSTITUTIONAL LAW OF THE UNITED STATES. By Hugh Evander Willis. The Principia Press, Bloomington, Ind., 1936. Pp. viii, 1198. Price: $10.00.

Attempting to state constitutional law from a new viewpoint, the author's primary emphasis is purportedly confined to a discussion of what social interests are protected by specific constitutional provisions and how far the courts have succeeded in providing the intended protection in their interpretations. The undertaking is commendable, but unfortunately large areas of the subject matter do not lend themselves to such treatment, and, as a result, in these the method lapses into conformity with the conventional—the book reading like a hornbook.

Another innovation of interest is the introduction of a mass of economics, sociology, and political science, which material, although extremely interesting, is eclipsed by the refreshingly plain-spoken, if at times ingenuous, conclusions deduced therefrom. Thus we are told that "capitalism has shown that it is vicious and impossible"; also, to gain salvation corporations "must be dominated by the state or the state must become the corporation"; finally, Professor Willis imparts the startling information that "the real rulers of this country are the justices of the United States Supreme Court".

Evaluated as a technical treatise of a legal subject, the book adds to our present collection of literature a logical treatment of modern jural problems together with the solutions of the courts, and a study of general constitutional law with a new perspective unavailable to writers whose studies predate the epoch-

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making decisions of the past few years. These cases have come down so fast that by now even the text being reviewed is outmoded in important portions due to the Wagner Act cases, the Social Security decision, and others handed down since the printing of the book.

Albert B. Gerber †

PROBLEMS IN LAW (2d ed.). Edited by Henry Winthrop Ballantine. West Publishing Co., St. Paul, 1937. Pp. xxiii, 1316. Price: $5.00.

Thirty-four topics, including practically all of those generally contained in a law school curriculum and many more than the average student finds time and law school requirements will permit him to study, afford a wide coverage. With the exception of Contracts, Corporations, and Torts, and perhaps one or two others, the subjects are treated very superficially. To one reviewing for law school examinations, the time spent in reading the problems and their answers could more profitably be utilized in going over class notes and cases discussed in the course. For the bar examinations, the answers given by the various authors are useful only if they contain citations to cases arising in the state the law of which is to form the basis of the examination. For a lawyer seeking to acquire a general background in a subject once studied and long-since forgotten, the book might prove of some help, although it may be that a few pages of Corpus Juris or a Hornbook would be equally helpful and much easier reading.

David Cohen †

THE LAW OF WILLS (2d ed.). By George W. Thompson. Bobbs-Merrill Co., Indianapolis, 1936. Pp. clxxxii, 1097. Price: $15.00.

To those who are familiar with the first edition of Thompson on Wills, it is a sufficient encomium to say that this book, a revised and enlarged edition of the volume first published in 1916, has brought Professor Thompson's work up to date. To those who are not familiar with Professor Thompson's first edition, the book is best described as one of the most complete and up-to-date treatises of the many on the subject. Provision for a looseleaf supplement, which may be fitted into the back of the book, permits the busy lawyer to have available recent changes in the wills acts of the United States and its territories.

The practitioner will also find useful the testamentary forms exhibited, each one of which has been tested and interpreted by the courts. The author at all times contents himself with a discussion of the theories of interpretation of wills which the various courts have adopted, citing case authority for each proposition. He wisely refrains from injecting into the discussion jurisprudential analysis of how the cases might have been decided.

IT'S A FAR CRY. By Robert W. Winston. Henry Holt and Co., New York, 1937. Pp. 381. Price: $3.00.

This autobiography is unique in that it does not attempt to give the Great Man's formula for success in life. Instead, the author offers only a simple description of those things which most impressed him during his long and eventful career, and in their telling shows the discerning reader pitfalls which the lawyer should avoid and stepping stones that he should utilize. The references to great men whom Judge Winston knew keep the book from being too egocentric, and help to endow such legendary characters as William Jennings Bryan, Josephus Daniels, and Washington Duke with the earthy characteristics. Although this book is not in any sense a great work of art, it is an interesting, entertaining, and enlightening story of the life of a famous member of a famous southern family.

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