Law And Class Essay, Research Paper

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The selections in this chapter address the problem of the historical specificity of law as a form of social regulation. Why does law appear so conducive to the rule of capital? Readers should be aware that this basic question leads quickly to a region that until recently was theorized as reform or revolution? Some writers have suggested that by its very nature law is an inherently bourgeois form of social regulation. If this is true, then the attempt to provide legislation with a socialist content is a self-defeating strategy for the socialist movement. On the other hand, if law is an arena of active class struggle in which gains and losses can potentially be made by any of the contending classes, then legal struggles under capitalism are of immense importance.

In Property, Authority and the Criminal Law the historian Douglas Hay offers us a brilliant interpretation of the subtle interplay between property, forms of personal dependence, and criminal law in 18th century England. Hay shows us how law assumed such unusual dominance in England as the main legitimising ideology that displaced the religious authority of previous centuries. Why was it, he asks, that the number of capital offences for crimes against property increased nearly fourfold between 1688 and 1820, and, simultaneously, an increasing number of convictions for theft wad not accompanied by an increase in the number of executions? His answer reveals that this paradox has less to do with the regulation of crime then with the maintenance of property relations. Hay vividly documents that the criminal statutes were part of a practice surrounded by the elements of terror, majesty, justice, and mercy. The rhetoric of the death sentence, the ever-present sanction of the gallows, the localized and personal system by which the rural poor and occasionally the gentry were convicted, often released on technicalities, or pardoned all these produced a chaotic system by which respect for property and property owners was effected through the rule of law. So successful was the particular system of criminal law a system that ensured political domination of the poor without the need for a police force or a large standing army that is ultimate intention cannot be seen in terms of its physical control of rural populations, It must, much more, be understood as a mechanism for enforcing the moral and psychic domination of the gentry, and, therefore of property.

The second reading is E. P. Thompson s now famous conclusion to Whigs and Hunters. This offers a timely rejoinder to those who consider law to be simply an outgrowth of class power and therefore to be ignored. In the 25 years since the Hungarian uprising of 1956 in such books as the Making of the English Working Class and The Poverty of Theory, and in the pages of The New Reasoner, New Left Review, and The New Statesman there has not been a more fervent and gifted opponent of Stalinism (and champion of radical populism) in the socialist movement than the pen of E.P. Thompson. As Steve Redhead documents in the last chapter of Marxism and Law, the focus of the controversy that now surrounds Thompson s work is the thorny status of civil rights and liberties in class societies.

Thompson provides us with a compelling and provocative thesis in The rule of Law . He argues that it is true that law mediates class relations to the advantage of the rulers. But it is also true, in countless cases, that law has imposed inhibitions on the rulers. Law mystifies class rule, but its rhetoric and rules are a great deal more than mere sham. There are, he continues, profound differences between extralegal power and the rule of law. The rule of law itself its imposition of effective inhibitions upon power and the defence of the citizen from power s all intrusive claims Thompson asserts to be an unqualified human good. To deny or to belittle this good is a desperate error of intellectual abstraction, a self fulfilling error that disarms us before power and that discards a whole inheritance of struggle about law.

The next essay is a detailed historical analysis of piece of legislation and the rise of organized labour, and the profound effects that these wrought on the political economy of the US. In Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941 Karl Klare examines the deradicalization and incorporation of the American working class through, and as revealed in, the Supreme Court s early Wagner Act decisions. Klare stresses that the initial history of the Wagner Act must be understood as a radical and democratic device. Klare shows that the Act represents real gains for the working class in that it guaranteed certain aspects of labour activity and collective bargaining. The Act was enacted only after arduous working class struggles against the interests of capital and despite its bitter opposition. But Klare also reveals how the subsequent judicial interpretation of the Act by the Supreme Court was adapted to the needs of capital. The question of which readers ought now to be aware, as Klare warns, is whether collective bargaining established in law can ever be anything other than an institutionalised structure, not for the expression of working class interests, but for controlling and disciplining the labour force and for rationalizing the labour market.

Because legal reform culminated in the consolidation of the oppression of workers, Klare leaves us with the conclusion that capitalist law is an expression of the same alienation that characterizes capitalist social relations in general: one cannot expect that work will be emancipated from its alienated character without the abolition of the social relations, including legal relations, that produced that character.

Sol Picciotto s The Theory of the State, Class Struggle and the Rule of Law inveighs against Thompson that debate over the rule of law seldom travels beyond the ambiguous dichotomy of coercion and legitimacy. The demand for the rule of the ambiguous dichotomy of coercion and legitimacy. The demand for the rule of law in such periods as the social and economic crisis of the 1970s expresses either a demand for the application of coercion in social relations, or for the control of such coercion through the due process of law. Picciotto asserts that we must begin elsewhere in our analysis if we are to understand the specific ways in which law mediates class relations. In so doing Picciotto returns us to the analysis of the historical development of legal forms. Picciotto reminds us that class struggle is the basic source for the liberalization of state and legal forms. But the development of more adequate forms of regulation can only contain the underlying contradictions of capital, at a higher and more acutely contradictory level of development. Against Thompson he warns that although trial by jury, for example, is better than trial by ordeal, this improvement must not prevent us from seeing its bourgeois characteristics and hence its limitations. The working class movement, he concludes, must strive not to uphold the unattainable ideas of the rule of law, but to transcend them in ways that challenge the dominance of capitalist social relations themselves.