

Staughton Lynd

Labor and the law

The law: shield or a two-way sword?



I have felt since before his inauguration that Jimmy Carter's moment of truth with the labor movement would be the coal strike of 1977-78.

His intervention once again brings working people face to face with the role of the state. Economic oppression makes people militant. Government suppression makes them radicals. It is not we, with our columns and books and speeches, who convince working people of the necessity of socialism. What convinces them is when the state, to which they had looked for justice and fairness, smashes them instead.

This is an old story. Marx described the process in *The Communist Manifesto*. Alan Dawley speaks of it in his new book, *Class and Community: The Industrial Revolution in Lynn*:

[T]he history of Lynn between 1860 and 1890 contradicts [the axiom that history does not repeat itself], because a certain sequence of events that occurred first in 1860 recurred with uncanny similarity in 1878 and again in 1890, giving the researcher reading the local newspaper a strong feeling of déjà vu. Each time there were three steps in the sequence: (1) a strike occurred, (2) bringing out the police, (3) causing the strikers to mount a political campaign to unseat the incumbent officials and dismiss the police chief.

Similarly it was Eugene Debs' experience in the 1894 Pullman strike, when a former railroad lawyer serving as U.S. Attorney General sent in federal troops, that made Debs a socialist.

A person like myself, making a living as a lawyer, and a newspaper like IN THESE TIMES, with its emphasis on electoral politics, should be very much challenged by such events. For do we not, by leading

people to believe that they can use the state apparatus, mislead them *strategically* even when we achieve *tactical* victories?

With this problem in mind it is interesting to look also at the Labor Reform Act now before Congress. Viewed from one angle, it is obviously a progressive measure. If enacted, unions will find it easier to organize in the South. And if Southern wage rates rise industries will think a second time before running away from the Northeast.

But from another angle, is it in the long-run interest of working people for the federal government to supervise their affairs ever more comprehensively? Given the structure of power in the society even progressive legislation tends to be diverted from the intent of its sponsors. This has begun even before the Labor Reform Act is approved. For instance, as attorney Robert Gibbs of Seattle warns, the so-called "good" version of the bill passed by the House of Representatives contains an amendment apparently agreed to by the AFL-CIO that gives an employer or the NLRB authority to seek an injunction restraining anyone from "inducing or encouraging" an employee to violate a no-strike clause. This would destroy the effectiveness of mineworker "roving pickets." It is the statutory equivalent of restrictive contract language sought by the operators in the coal strike.

Indeed, the National Relations Act itself is not the self-evidently progressive measure it is often portrayed as. When it was first introduced in 1934 the Communist party and the ACLU opposed it. Even in its amended 1935 form, it was bitterly fought by the NAACP and the Urban League.

Herbert Hill explains why in his recently-published *Black Labor and the American Legal System*. Blacks had had an unhappy experience with the Wagner Act's predecessor, the National Recovery Administration. The NRA excluded agricultural and domestic work, which meant excluding 70 percent of the black labor force. The one black employee of the NRA was fired when she insisted on personally investigating code violations in the South.

Hence when Sen. Wagner proposed his National Labor Relations Act civil rights groups insisted on an anti-discrimination clause. Leon Keyserling, Wagner's secretary, wrote Walter White of the NAACP that the Senator originally intended to include such a clause but had dropped it because of AFL opposition. White wired the President: "We rely on you to prevent sacrifice of Negro to Jim Crow unionism." FDR signed the bill anyway. The result, in Hill's words, is that:

Neither the National Labor Relations Act nor the Railway Labor Act contained provisions for the protection of minority interests from the rule of the majority; neither specifically prohibited racial discrimination in employment; and neither contained express provisions requiring unions to represent their constituents fairly in negotiating and executing bargaining agreements.

Citing Max Weber and C. Wright Mills, Hill argues that black organizations correctly anticipated that the effects of increased government regulations of collective bargaining would be to legitimize and protect, not to extirpate, the racist practices of American unions.

As a lawyer, I try to honor the maxim that the law is a shield, not a sword. You

can win tactical victories in court. You can protect people who are trying to change the society in other ways, as by getting the striker's job back, or vindicating the woman who seeks to equalize wages. But I think Ralph Nader misleads people in suggesting that law suits can make fundamental changes.

The miners, as I see it, are right to rely on their own strike power. One reason Arnold Miller has become so out of touch with the membership may be that his election came about through court victories, and was supervised by federal marshals. Perhaps the Miller tragedy is that when push comes to shove he looks for help to the government, not to the rank and file.

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Solution to last week's puzzle:

A	M	A	H	H	A	S	J	O	S	E	P	H
T	I	T	O	A	L	I	O	S	W	A	L	D
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C	H	A	I	R	S	S	U	M	M	I	N	K
H	A	R	M	S	S	U	S	A	N	Z	O	E
E	T	U	I	W	I	N	R	O	P	I	N	G
				N	E	O	N	E	T	R	E	
J	E	T	H	R	O	L	A	I	K	U	R	E
O	R	O	A	D	D	E	R	F	I	D	E	L
B	R	I	M	S	A	T	M	U	N	I	T	Y
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A	P	U	L	S	E	K	A	R	L	M	A	R
G	A	N	D	H	I	T	R	A	A	M	O	I
A	R	I	S	E	N	M	E	L	N	I	S	I

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CONTENTS Volume I Number 1

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Lise Vogel

Christopher Lasch
Mark Tushnet
Leonard Quart
International Dialogue

Umberto Cerroini
Special Feature
Gore Vidal
From the Other Shore
Stanley L. Engerman
Review Essay
David Montgomery

Religion & Early Socialism
The Indian Question Revisited
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Eurocommunism & The State

IN THESE TIMES Chicago Associates will sponsor a lecture-discussion class based on "Eurocommunism and the State" by Santiago Carrillo, General Secretary of the Communist Party of Spain. The class will examine the policies and implications of Eurocommunism as they pertain to developed capitalist countries, especially the United States.

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LIFE IN THE U.S.

Can there be a New Deal for the old?

By Dave Wood

MINNEAPOLIS

MARSHALL FIELD'S, J.L. Hudson's, Macy's—actress Ruth Gordon calls them “palaces of dreams.” Like most large cities, Minneapolis has a stylish department store that sells *everything*. This store, Dayton's, recently sponsored a two-day symposium on aging titled, “The Zestful Generation: Exploding the Myths of Age.”

Can myths be exploded in a corporate palace of dreams?

Yes and no. During the conference “big name” speakers, including Joan Fontaine, Edgar Bergen, Jimmy Bresslin, Sen. Frank Moss, Jesse Owens, Ruth Gordon and Ellen Goodman, did explode some of the myths of age, but at the same time they obscured some important realities.

Dr. William Masters (of Masters and Johnson) did an excellent job of exploding the myth of senior sexlessness. He told the audience of 1,200 that sexuality is life-long.

Male babies have erections and female babies lubricate within their first 24 hours of life. Regardless of age, men continue to have erections and women continue to lubricate every 80-90 minutes while asleep if they are in normal health. With age, it takes a little longer to reach these aroused states but, yes Virginia, there is sex after 60—and 70 and 80 and 90.

A number of speakers demolished the myth that there is any good reason for mandatory retirement at age 65. Hoyt Catlin, 87, said that 71 is the average age of workers at the manufacturing company he started in 1956 to prove that older workers are productive workers. A Connecticut study found that the company is one of the most efficient small businesses in the state.

The vigor of speakers in their 70s and 80s laid to rest the myth that age and decrepitude are synonymous. A moving performance by the Free Street Too Theatre Company, which is composed of people aged 65-80, was especially persuasive in this regard.

The explosion of these ageist myths is significant for both the now-old and those of us who are relatively young.



Even Ruth Gordon (left) and Maggie Kuhn (above) couldn't bring reality to the “dream house.”

However, certain important realities did not filter through the perfumed air of Dayton's dream palace to the eighth-floor auditorium where the conference was held.

No one noted the scarcity of minorities at the conference except Jesse Owens who commented ironically: “I saw some of my black brothers and sisters here earlier today. Thank you for inviting us to add a little color to the meeting.”

And no one lamented the absence of older people whose impaired mobility or shame at being seen using a walker or a wheel chair prevented them from attending this conference on aging.

Maggie Kuhn, national convenor of the Gray Panthers, was the only speaker who discussed illness at length. She said that chronic arthritis has made her forefingers practically useless. “I once hid them,” she said, shaking an emphatic finger at the audience. “Now I use them as a criticism of a society that doesn't know how to heal one of the most common diseases.”

Kuhn spoke on behalf of the Dellums

Health Care bill, which she called “the socialized medicine bill.” The military, the president and his family already have socialized medicine, she said, and “if it's good enough for the president, it's good enough for us.”

Poverty among older Americans was another harsh reality that was neglected by most of the conference's 14 speakers. This is a serious omission since one-third of all people over 65 live at or below the federal poverty line, and many experts feel the actual number who live in poverty is at least double the official figure.

Sen. Frank Church did outline what sounded like a New Deal for the old. He called for the elimination of poverty among older Americans, an improved financial base for Social Security, a national health care system and affordable, acceptable housing.

These are certainly some of the major problems which a prosperous, humane society would deal with, but Sen. Church did not explain how a society that fails to provide jobs and a decent standard of living

for a large percentage of its younger citizens could show much concern for the old.

Sen. Church's failure to understand the connection between the problems of the old and those of the young was shared by almost all of the speakers. Only Studs Terkel and Maggie Kuhn clearly enunciated this connection. “The dilemma of the old is related to that of all the other outsiders,” said Terkel. “If all the outsiders got together, they are a majority.” The Gray Panther leader emphasized that her concern is not limited to the old. “I'm not interested in Brownie points for old people. I'll never wear a senior power button. I'm interested in using what energy I have left for the larger public interest.”

Mandatory retirement and the myths of senior sexlessness and decrepitude can apparently be addressed even in a corporate dream palace. But the special needs of older people who are non-white, poor or sick and the connections between the problems of the old and those of the young will have to be dealt with beyond the palace walls. ■

Dave Wood is a writer in Minneapolis.

Mothers

Continued from page 24.

in trucks,” she explains, “always something about trucks. First it was driving them, local delivery, then for a while fixing them, then even selling them, but he *really* couldn't stand that. What Steve likes best of all is drinking beer with his buddies. And that's okay with me...he's really good at it. I'm serious; it's the only time he looks happy, not hung up about something or bored... But I just don't see why all this qualifies him to be a more fit parent than me.”

Deirdre says she made the mistake of telling him about her new lesbianism. He had always told her about his affairs with other women; she decided she would tell him about her first affair with another woman. Honesty between them had always been “the one thing we had going for us. But then about a week later he said he was going to use that to get the kids away; he didn't think it was right that they would be brought up by a lesbian.”

Steve had never spent much time with the kids, Deirdre says. “He gave me orders and I carried them out. He could never bring them up by himself. He'd get some other woman, though he doesn't have a steady one now; he's in a ‘more the merrier’ phase.”

Sex, love and children.

We got on to sex and love at this point. They allowed that they had a good sex life between them—but that they also had enjoyed sex with their husbands. The real problem was that “we just felt so lonely with them after a while. Neither one was that interested in kids or anything we were interested in...like the women's movement or even just going to the movies.”

“The biggest reason why it makes sense for us to make a home together, with all our kids together, is that we're real interested in our kids. It's such an amazing lift to have someone else around who really knows what it's like.”

Susie said that Hank also knew about her lesbianism. “At first he threatened to take them away but then he had full responsibility for them for a couple of months while I took this trip to California I'd always wanted to, and we all let the dust settle. When I came back, he said, ‘You can have 'em so long as I can see 'em once a week.’ He said I was their mother and he knew I was a good mother. I know he likes his peace and quiet after a day's work too much ever to want the responsibility.”

The non-involvement, irresponsibility and/or inability in relation to childraising shown by the fathers in Susie and Deirdre's cases is common. Though some men are coming to play more active roles in childraising, most men do not have primary responsibility for the actual work

of raising children.

A great many mothers, lesbian or not, willingly or not, do and will continue to do this work, even though society gives it none of the tangible rewards given to workers on jobs (e.g., money and the respectability of being money-earners). It is probably the thing, along with wage differentials, that makes the actual lives of many men distant and unshared from the actual lives of so many women.

The anonymous East Coast lawyer says that many men who initiate custody cases do not intend to take active child-rearing responsibility, or at least, do not end up taking it. Good intentions may be behind the suits in some cases, but “often it's revenge against their insulted manhood, that's about as far as they've thought it out. Sometimes they send the kids to their mother, sometimes away to a boarding school, even when it's real young kids.” What the judge who awards custody to such fathers is usually saying then—since the men won't be doing the actual work—is that any woman who does it will be better than the natural mother if she is a lesbian.

Sexual identity.

In the Best Interest of the Children (available from Iris Films, Box 5353, Berkeley, CA 90026), shows mothers and children in eight lesbian-headed families of various socio-economic backgrounds, including some who are poor, and several who are

black. The children are all clearly growing up alive and well, even though they may have some problems the same way children of straight parents do.

Clearly some have experienced worry about their mothers' sudden pariah status—all the older ones knew about their mothers' sexual preference (unlike Deirdre's and Susie's, who were being introduced to it only indirectly, because of the pending custody case). Yet there had been mitigating factors, as well. “I saw my mom being happier and it made me happier,” said one child.

One question of great interest to judges, whether children of either sex will automatically take on their mothers' homosexuality, is answered succinctly in the film by a teenage girl: “I've been a boy watcher from the word go.”

This aspect has apparently been critical in several cases. Fortunately for lesbian mothers, expert testimony can be found to strongly suggest that sexual identity is virtually formed in a child by the age of three. One such witness is Dr. Richard Green, a psychologist, who has testified at several cases where custody was awarded to a lesbian mother.

Green is working on a study in which he interviewed the children of 21 homosexuals and 17 transsexuals. Though the results are not in published form as of yet, they indicate, according to Green, that *none* of the children shows confusion

Continued on page 21.