NEWS

Socialist Legality — Problems of Power

In the workgroup on 'Beyond Formal Justice' - which met as a subcommittee of the recent conference of the International Sociological Association held in Antwerp - a remarkably diverse and captivating series of papers was presented, detailing and critically appraising the developments and difficulties of actually existing legal systems within socialist and post-revolutionary societies - specifically Comrade Courts in Bulgaria (Stafka Naoumova) and socialist legality in Mozambique (Albie Sachs) - and also, and perhaps of more immediate applicability, the presentation of a series of primarily descriptive studies of 'alternative' or informal sub-systems of quasi-legal or in some sense coercive patterns of order maintenance within predominantly capitalistic economic and legal systems. The latter set of papers covered informal courts and 'law enforcement' in the townships of South Africa and their relation to the political struggle against apartheid (Sandra Burman); village courts in Papua New Guinea (Abdul Paliwala); community justice within the various co-operative and communal movements in contemporary Britain (Stuart Henry); as well as the legal regulation of sterilisation (Elizabeth Kingdom); a case study of the Planning Appeals Commission in N. Ireland (Brian Thompson); and finally, a paper on positivist conceptions of 'Rights' (Paul Hirst).

The work departed from the longstanding tradition of theoretical evasion of the substantive problems of the administration, exercise, and justification of post-revolutionary legality (in the sense of coercion) and similarly the concrete problems of order maintenance and political regulation of relations of social reproduction within non-capitalist nation states. The importance of critically questioning the all too easily received notions of 'popular justice' and of spontaneous and informal forms of dispute settlement is that of concretising (one is tempted to say secularizing), and so departing from, maximalist theories of revolutionary change, theories which have all too often postulated a dichotomy between municipal legal systems, viewed as the wholly negative product of capitalist modes of production, and some version of a communist society of voluntary or spontaneous self-regulation, free of law.

If the maximalist theory of the withering away of legal control needs to be rethought, it is precisely because radical legal theory cannot predict - let alone answer - the problems of the socio-historical inheritance of post-revolutionary societies. As the paper on Mozambique forcefully and illuminatingly illustrated, the understandably highly popular decision to close the Law Faculty at the national university has to be comprehended and explained in relation to the concurrent introduction (temporary) by the same administration, of whipping as the appropriate punishment for black marketing offences in a context of scarcity.

The papers which dealt with Comrade Courts in Bulgaria and with informal justice within British co-operatives and communes, could, surprisingly enough, be interpreted as raising virtually identical issues. The context of the critical legal studies movement is a distinct one. It is nonetheless possible to perceive comparable antitheses between: (i) a centralized and highly formalized state legal apparatus and coincident system of abstract and hierarchically organised norms of domination, and (ii) the concurrent growth of alternative informal modes of semi-autonomous mechanisms of self-regulation, community justice and socialist legality generally, within and despite the larger legal superstructure.

The practical value and political significance of the empirical work being undertaken into the concept of socialist legality is that of substantiating and co-ordinating practical knowledge of the significance of informal structures and practices. There is ample evidence of an increasing tendency to ignore, contradict, or compete with, the archaic and declining normative procedural discourse of the legal system itself. It is increasingly the form of law which is challenged, both at the level of multinational and national corporate exchange, and equally, though distinctively, at the level of the various organisations of semi-autonomous counter cultures. To study socialist legality as a question of immediate significance is therefore to endorse unequivocally the rejection of the formalist conceptions of the autonomy of legal systems.

The work-group was convened by Brian Hipkin of City Polytechnic. The papers (except Paliwala's) are drafts of the chapters of Towards Socialist Legality, ed. B. Hipkin, forthcoming from Academic Press.

Chris Rojek

Editorial note

The following piece is extracted from a longer article Julius Tomin sent to The Guardian in response to their series on philosophy earlier this year. Julius Tomin is a Czech philosopher now living in exile in Oxford. The Guardian did not publish anything by him. We think his practical experience of doing philosophy under difficult conditions is of interest to our readers.

The Latter Days of Philosophy

The Guardian of Saturday January 7, 1984 announced Martin Walker's three-part investigation into 'What's gone wrong with philosophy in Britain?'. The announcement hinted at the evil: 'The Oxbridge power has excluded Marxist and Freudian taints of American and Continental thinkers.' But the series proved more ambitious. Walker arrived at nothing less than foreshadowing the latter days of philosophy: 'In the greatest intellectual adventure that

man has undertaken, the exploration of the very essence of mind and the capacity to think, there is not a philosopher in sight. Perhaps they missed their chance, perhaps they organized their faculties in the wrong fashion, or perhaps it always had to be this way, and the pursuit of the mind will always remain beyond the reach of philosophy.'

On what grounds has Walker abrogated a future for philosophy? He defined 'philosophy's unique strength' as that of having 'the longest institutional memory of any of the academic disciplines, back to the ancient Greeks ... back to Buddha too. Nothing is forgotten; all ideas remain for potential recycling.' Thus the end of philosophy is in sight: 'We might just be living in the last generation when this holds true. In Japan, in America, and in research centers in Europe, there is feverish activity under way to build something called the fifth generation computer, a machine that can think.' (The Guardian, Wednesday January 11, 1984).

How is the machine able to think to deprive philosophy of its standing? Walker found philosophy's strength in its long institutional memory. Does he suggest feeding all the contents of philosophy books into the fifth generation computer?

At this point I feel like apologizing to a Czech police officer. In 1957 I was imprisoned for refusing to undergo military service. My father was questioned. Asked what was his education, my father said that he studied philosophy. The fifties in Czechoslovakia were marked by hard dogmatism, the dogma about the end of philosophy was sacrosanct. Bits of propaganda must have penetrated the memory structures of the interrogator's mind. 'I know what philosophy is,' he exclaimed. 'It is a book this thick.' As he indicated the thickness of the book with his fingers, my father envisaged him rampaging through the public libraries in search of forbidden books.

What was there in Walker that reminded me of the story? His defining the strength of philosophy by the longest institutional memory. In saying so, he must mean philosophy in books and libraries. He cannot mean philosophy as a living human activity. If we understand philosophy as always anchored in human lives, and do not mistake it for sediments of philosophic activity, the very notion that it could ever be surpassed by computers is absurd.

Walker points out the evil and proposes remedies. The evil lies in Oxford's preoccupation with classical philosophy. It could have been exposed earlier but for the Prague interlude: 'Oxford dons could counter any suggestion that they and their classics are out of touch by referring to a brave and thrilling experience that many of them have recently enjoyed. It began when Julius Tomin ... asked for moral and intellectual support... It is cruel, but illuminating, to point to the contrast between Oxford's Czech experience and the effect of Vietnam upon American philosophy. Simply, Vietnam thrust moral, ethical and political issues to the forefront of American intellectual life' (The Guardian, Tuesday January 19, 1984). Walker implies that the Prague involvement of Oxford philosophers did not raise moral and political issues concerning intellectual life in Great Britain or in Czechoslovakia.

There was a moment when Czechs compared their experience to that of Vietnam. Within hours of the Russian invasion of August 21, 1968 Prague walls were covered with inscriptions: 'USA in Vietnam - USSR in Czechoslovakia'. It did not occur to me that the experience of Oxford philosophers in Prague could be compared with the effect of Vietnam on American philosophers. I leave the claim that the contrast 'is cruel but illuminating' hanging in the air without discussing it any further.

Walker writes, quoting Gellner: 'The Czechs were polite, but they really did not want to hear any of the Marxist-inclined people like Steven Lukes because they had enough of Marxism, and they did want to hear right-wing people like Roger Scruton not because they were any good, but simply because they were conservative and this was new.'

It is true that my students felt disappointed with a lecture on Marxism from a philosopher of whom a lot was expected. The blame lies entirely with me. Charles Taylor visited my seminar the day my wife returned from hospital blue all over her face - the consequences of an assault and miscarried attempt at abduction; Zdena Tomin was at the time the only spokesperson of Charter 77 left at large, the other spokespersons were imprisoned. From the night of the assault I hardly had time to sleep properly. I was in the Zoo serving my night-watchman's duty when our neighbour called: Zdena was assaulted when entering the house; fortunately the masked man was driven away by a group of people returning from the cinema; Zdena was taken to hospital. I left the Zoo, visited my wife in the hospital, got all the information she could give me, returned to the Zoo and wrote an open letter to the president of the republic. As I left the Zoo at dawn I distributed the letter - copies made with the sole help of carbon paper; any other type of multiplication, if available, would have meant imprisonment. With every further copy delivered to the next Charter 77 signatory I felt that our chances of surviving the incident were growing. My sold means of transport were my feet and public transport (my driving licence was confiscated right after I signed Charter 77, and anyway, we had to sell our car a long time before that). Later in the day I visited the hospital. The chief sister told me that my wife was in a coma; the chief doctor forbade any visits. I told her she had bad luck, as I had talked to my wife shortly after the assault, in the hospital. I gave the sister and the chief doctor an hour to think better: 'I go to the Central Committee of the Communist Party to inform them of the case. When I come back I want to talk with my wife.' I returned to the hospital from the Central Committee and talked to my wife. My wife complained of terrible headaches. She was not helped by having to assist suffering patients in an overcrowded room during the night, the sisters did not care. The next day I learned from an inept interrogator that an ambush had been prepared for me as well. I escaped it by leaving the Zoo for the hospital. The interrogator tried to find out how it happened that the action in the Zoo failed. The oncoming night a completely drunk deputy director of the Zoo visited me in the Porter's Lodge; 'I was told you were kidnapped the other night. So I called the police.' I spent another night writing an open letter, this time to the minister of internal affairs. The new information about the case had to be made public. Once again I had no sleep after my night service. After distributing the letter I began to translate it into English. At that point I was visited by German students. They wanted me to give them a lecture on ethics. I agreed if they would have my letter translated into German and published. They took me for lunch to Vikarka at Prague castle, the students had reserved there the big hall of the restaurant. We were about to leave - as many students as my flat would take planned to go with me - when torrents of rain started to pour down. I asked the waiter whether we could stay, me giving the students a talk in the hall. The Germans paid well; the waiter welcomed our prolonged stay. And so I gave my lecture on ethics at the Prague Castle 'under the nose' of the president and his guard. That evening Charles Taylor came to lecture to my seminar. He offered me five topics from which I could choose. I rejoiced when I saw Marxism on the list: 'A lecture on Marxism I could interpret even on my death bed.' The result was far from glamorous. That evening I realized that we could not afford any more weak performances. The next day as we were heading for an abandoned quarry deep in the Karlstein woods - the place of our picnic and of Charles Taylor's next lecture - I told Charles Taylor: 'You gave us a standard university lecture. That is not enough for us. We put our lives at stake for the sake of free philosophic thought. We do not pay you a penny and yet we ask from you your best.' Taylor's remaining talks to my students were the best. Those were the days when I felt that there were philosophers in the West on whose moral and intellectual sup-

port we could rely in working for a more open society in our country.

Steven Lukes visited my seminar a few months later. He did not lecture on Marxism to my students. His Marxism-lecture was for a circle of philosophers whose careers were was interrupted by the purges following the Russian invasion of 1968 or after they signed the Charter 77 document. I was invited to the circle as an interpreter. Lukes talked about the incompatibility of Marxism and Ethics - the theme of his forthcoming book.

The incompatibility of Marxism and Ethics dominated Marxist thought in our country in the fifties, but the sixties were marked by growing interest in ethics among Marxist thinkers. The attempts to integrate ethics into Marxist thought were brought to an abrupt end with the Russian invasion. None of this was reflected in Steven Lukes's lecture. He seemed to expect appreciation for his discovery that Marxism and Ethics were incompatible. But the audience perceived his talk like lecturing to farmers that cows give milk. In spite of many misunderstandings that surfaced in the following discussion, I welcomed the event. In the purges of 1970 philosophers turned into anti-Marxists as they lost their Communist Party Membership Cards. In the atmosphere of the following years it was virtually impossible to discuss Marxism. Such a gap in reflectivity should be overcome, if only for the sake of intellectual and moral integrity. Scholars from the West might provide an invaluable impulse. But they must try and reflect on what happened to Marxism and Marxists in our country: 'I hope I do not ask for anything alien to theoretical enquiry of Marxism; the experience of our country lies in the heart of the historical heritage of Marxism.'

If Oxford philosophers chose the easier way and began sending to Prague right-wing people regardless of their capacity to do philosophy, and if it all ended 'like an Iris Murdoch novel', I still do not see how it all is linked with classical philosophy in Oxford. But I fully agree with Walker that Oxford-Prague experience offers material for reflection. In the absence of any open discussion on the subject I may venture to point out at this stage:

1. There are no easy ways for philosophy. If philosophers choose to follow easy ways for the sake of 'thrilling experience', sooner or later it proves fatal for authentic interests of philosophy.

2. Philosophy essentially requires openness, especially in Eastern Europe with its sickening secret-police-laden atmosphere of secretiveness. What positive values can philosophers from the West bring if they renounce openness? It is a sick philosophy that deems itself worthy of hiding. What philosophy can give, if true to itself, is the capacity to think free, to talk free and to act free vis-a-vis the totalitarian tendencies and structures.

Postscript

For three years now I have shared the lot of unemployed British philosophers. I wonder when we will begin to organise to help each other in our pursuit of philosophy. Philosophy is a life-task; who ever really tasted it cannot give it up - or resume it - according to the dictat of the 'market'. If the universities begin to produce graduates who would insist on doing philosophy even if unemployed, philosophy will start to pay its due to problems of the present world. Socratic insistence on free time for philosophy became embedded in our life where we are, for the most part, the least aware of it. Socratic concept of free time - schole in Greek - gave the name to our schools; intellectual activity requires free time for its unfolding. Facing the Athenian jury, Socrates raised the claim to have schole institutionally guaranteed for the life of philosophy. The modern concept of redundancy deprives people of human dignity. It is in the power of philosophy to restore the sense of dignity and direction to free time. Philosophy can transform unemployment into tie of free intellectual effort for all those who can pursue it.

And so I confront my colleagues in Oxford with the request of three hours in a fortnight jointly devoted to Plato and Aristotle; three hours during which an unemployed philosopher might participate in intellectual exchange with his more fortunate colleagues. More fortunate? As long as they do not find time and capacity for such an activity, I would not call them more fortunate.

Julius Tomin