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Book Review of A Radical Lawyer in Victorian England: W. P. Roberts and the Struggle for Workers' Rights by Raymond Challinor

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Book Review: Raymond Challinor, *A Radical Lawyer in Victorian England: W. P. Roberts and the Struggle for Workers' Rights* (London: I. B. Tauris & Co. Ltd., 1990) *17 Victorian Review*, Spring, 1991, 99-106.¹

Raymond Challinor's book *A Radical Lawyer in Victorian England* is fine biography. His subject, W. P. Roberts, was closely involved in the work-place and democratic struggles of ordinary working people between 1837 and 1871 - years which encompass the rise and fall of Chartism, the breaking of the Bond, battles against truck, the emergence of trade unionism, the Fenian troubles. The book is more than biography for it is also a study of each of these. More importantly perhaps Challinor draws attention to an issue which has been much overlooked in nineteenth Century history: the social role and functions of LAW.

The author's preface indicates that one motivation for writing the book was to "deal with the methods used by the state - many of them employed right down to the present day - to defeat, or tame, working class movements" (vii). The methods of state, of course, are only aberrationally violent. More routinely "it" acts through and in turn is constituted by law, lawyers, judges, magistrates, adjudication, court orders, "contractual" arrangements, or unexceptional prohibitions of "anti-social" behaviour. While the use of soldiers, special constables, militia, police, and agents provocateurs in the suppression of nineteenth century working-class politics cannot be denied, the more mundane, pervasive, and ambivalent workings of the legal system remain virtually unexplored territories.

There are some obvious explanations for this. Historians are often intimidated by the procedures and languages of law and are immobilized when confronted with legal materials (little realizing that nineteenth century law is often just as foreign to those who have experienced formal legal education): far easier to interpret the more familiar discourses of Hansard, Parliamentary Journals, broadsheets and political pamphlets. In addition to being unfamiliar, the primary records of the legal system are vast, largely unindexed, scattered, and unsystematically maintained. Often no records have survived of matters which are of interest to the historian; revealing gems are found - if at all - buried in mountains of seemingly useless crumbling parchment. The search is extraordinarily time-consuming, the more so because the social historian is concerned with "law in action" rather than with the written words of Parliament or the published judgments of Superior Courts. Mining the multiple

¹ Note: there may be variations between this and the published version.

social meanings of law calls for careful attention to the proceedings of a multitude of local level courts - precisely where records are most difficult to access. Work of this sort can only be conducted with an army of research assistants or at a pace likely to leave the scholar well behind in the race for academic appointment, tenure, or promotion. (Challinor worked on this book for some twenty years - vii.)

Moreover, the study of the legal system in operation has until very recent times been unfashionable. It necessarily involves a study of the "middling" classes who actually worked as attorneys or barristers and has neither the traditional allure of kings, queens and statesmen nor the trendier appeal of heroically reclaiming the lives of working class heroines and heroes. While there has latterly been increasing recognition of the need to direct attention to the middling classes, their role continues to be generally under-acknowledged by both those who would study history of the "top" down and social historians working "from the bottom up."

A Radical Lawyer in Victorian England makes a considerable contribution to filling this gap in historical knowledge and is suggestive of avenues of inquiry that need to be taken up by others. Challinor's subject is an extraordinary historical figure. Admitted to the lower branch of the legal profession² in Bath in 1827 W. P. Roberts converted from Toryism in the first decade of his professional life to emerge as a leading figure in the Bath Working Men's Association by 1837 (5). Apparently motivated by a deeply-held Christian belief in an essential human dignity, (6-7, 211) Roberts' consistently employed the law as a shield in the defence of working people, a platform from which to denounce injustice, a prod with which to encourage collective action, and a weapon with which to bludgeon the perpetrators of injustice. Variously he was a local activist in Bath and Wiltshire (1837-), delegate to Chartist conventions, political prisoner, solicitor to Karl Marx, lawyer for the Northumberland and Durham miners' county unions (1843), and lawyer for the Lancashire Miner's Association (1845-).

Roberts seemed always to be near the centre of crucial events in the Victorian making of the English working class - he confronted physical force Toryism, defended those accused in the Newport uprising (1839), and was a central figure in the 1842 Potteries general strike. He was present for the wire-rope controversy at Wingate grange colliery, the Thornley colliery trials, Northumberland and Durham coalfields "big strike" of 1844, the Jones and Potts strike of 1846 and the legal aftermaths of explosions at Haswell and Coxlodge collieries. Roberts was active in the formation of the National Association of United Trades, the Miner's Union, and various friendly society and co-operative endeavours. He published pamphlets on

² The English legal profession was then characterized by two major "branches" which operated in effect as distinct professions providing related legal services. The Bar ("barrister's branch" was the socially more exclusive of the two, enjoyed a monopoly of superior court practice, and was governed by four "Inns of Court" in London. The so-called "lower branch" of the legal profession consisted of attorneys (also called solicitors), was much less socially exclusive, much larger, and provided the vast bulk of legal services throughout the country.

legal and political issues, worked on the Chartist petitions to Parliament, and on one occasion stood for election himself. He was present in the aftermath of the Kennington Common demonstration and, worked for Karl Marx in his libel action against Herr Vogt. Roberts conducted the notorious Blaina trial in South Wales and published 10,000 copies of the transcript in an important part of the war against truck. He was attorney for the Manchester martyrs in 1867 and for those accused in the Clerkenwell prison explosion prosecutions. Roberts was instrumental in aiding the Wearmouth colliery workers to smash the hated Bond in 1869.

Challinor treats the beginning of Roberts full-time work on union matters as a watershed in English legal history:

By becoming the legal adviser to the Northumberland and Durham miners' county unions in August 1843, Roberts took a historically unprecedented step. Hitherto the law and all its works had been regarded as enemy territory by workers; only when arraigned before a court for punishment did they come into contact with it. To try to alter this situation - systematically using the judicial system both to defend workers and as a vehicle to claim their legal rights - was unheard of before Roberts began his struggle. (71)

While this assessment may be somewhat overstated - there certainly had been radical lawyers willing to act in working class causes prior to 1843 - it does emphasize the novelty of a major worker's organization engaging in a focused, sustained, and multi-faceted court-room strategy.

The visions of law, legality, and progressive legal practice which informed Roberts working life are noteworthy. He consistently eschewed the role of a legal technician in favour of more direct confrontation with the political realities underlying Victorian legal ordering. In Challinor's assessment, Roberts consistently "sought to speak through the courtroom window, combining the legal struggle with the struggle in the political arena." (11) In Robert's advocacy, "class conflict was re-enacted inside and outside the courtroom, the collision of two worlds with different outlooks and values" (80) and the courtroom forum was deliberately employed to communicate incendiary messages to larger audiences. Union bosses might seek to calm things down when industrial unrest arose in the coalfields but Roberts would "spread the fire, dousing the whole coalfield with paraffin, if he thought this could force his enemy to surrender. He regarded the courts as a battleground, where he used the law as a weapon, belabouring the coal owner until `he bit the dust.'" (253)

Despite his commitment to advocacy, Roberts was never so naive as to think of the courtroom as a neutral arena in which the democratic discourses of the working class might be impartially assessed and thereby enter peaceably into the discourses of state. He considered the police "a plague of blue locusts" (quoted at 81) and thought no better of judges and juries. These individuals, he said, "live by

the plunder of the present system" and therefore could be expected to oppose progressive movement (25-26). Roberts thought magistrates and special juries to be class partisans pure-and-simple (68, 78, 79, 255-256). Even judges who were honest enough to rise above mere political hackery were, he wrote, individuals whose entire tendencies and circumstances are against [the working class].... And there are hundreds of other considerations - meetings, political councils, intermarriages, hopes from wills, etc.... it certainly is, at best, an uphill game to contend in favour of the working man in a question which admits of any doubt against him." (quoted at 80).

In addition to all this the extraordinary costs of litigation, employers ability to black-list troublesome workers, the unequal distribution of knowledge about the law, and the consistent ability of the privileged to act in concert in the face of crisis conspired to make the judicial forum a singularly unequal place (240-242; 265-266). All in all, Challinor contends, the legal system amounted to a "judicial juggernaut" which ruthlessly "rode over working people" (59).

If the courtroom players were biased, the substantive rules of law offered no solace. In an insightful chapter entitled "The Victorian Working Class and the Law" (71-86) Challinor presents a class instrumentalist account of law in nineteenth century England. Explicit class legislation was buttressed with nominally equitable rules which in fact censured only working-class activity. The whole was underpinned by doctrines of "private" law which ensured the subjugation of workers ("the hangman's noose was being replaced by Adam Smith's hidden hand" - 85). Unemployment, starvation, the workhouse, gaol and police were, in Challinor's view, part of a whole cloth (85). Where statute proved ineffective, judge-made common law could be relied upon to repress trade unionists (75).

While so brief a summary fails to fully communicate the subtlety of Challinor's account he does, I think, present too one-sided a vision of law - even in the self-consciously hierarchical society which was Victorian Britain. There is little sense here of genuine reform accomplishments, of the glacial creep of political democracy, of the real gains achieved by progressive legislation - or indeed of the possibility that legal formation occurs in complex, evolving, unpredictable patterns. Nonetheless, the LAW was rightly viewed as a daunting opponent by Roberts and, perhaps, by the bulk of his working-class constituency.

Given that judges and magistrates were biased, legal rules unfair, and juries stacked it is intriguing that Roberts and the workers he represented chose to devote considerable efforts in the courts rather than working directly and more fully in the political arena. In part the answer is simply that they had no choice: courts were routinely used to punish workers - defensive action was necessary. Beyond this, it was thought that the legal arena should not be abandoned entirely to the other side.

Following the repression of Trowbridge Chartism in 1839 Roberts indicated his views on working-class legal practice:

it would be wrong, he contended, to retreat from the legal arena, leaving their opponents in undisputed control. Rather, they should fight court cases, using them as an opportunity to expose the evils of existing society and thereby to advance the Chartist cause. (25-26)

Challinor's account places heavy emphasis on Roberts awareness of the symbolic, or ideological, significance of law (25-26; 73; 79; 182-3; 266; 267-8).

The symbolism associated with the legal discourses of equality, due process, majesty, mercy and justice is a double-edged sword. It is this that empowered Roberts to engage in deliberately counter-hegemonic legal practice even before crassly manipulated, hostile tribunals. On the one hand, Challinor asserts that the primary "role of industrial law under capitalism" is to impose "acceptance of the attitudes and values of the existing system... altering behaviour and perception of the world" (182-3). Conversely, the disjunction between law in the books and law in practice provided significant creative opportunities when workers as well as employers had legal representation.

When the legislation upon which employers relied was made to appear draconian this could foster disrespect for the law, aid in union recruitment, and generally mobilize a subordinate population for political activity (79; 248; 267-268). In the opposite situation, a legal victory by workers could undermine employer's authority, erode their self-confidence, and provide positive encouragement for worker's causes. Challinor's observation to this effect is perceptive:

more crucial than the actual law was what it was perceived to be: the symbol of the law had more power than its substance. This played a large part in determining behaviour, by giving assurance to those from the upper echelons of society to assert their arrogance, whereas the legislation they cited to justify their conduct did no such thing. Much of W. P. Roberts' job was to prick this bubble of over-weaning self-confidence, based upon unwritten laws that really were not laws at all. The heated courtroom exchanges frequently occurred because he challenged the conception that, far from being impartial, legal authority was simply there to buttress the employers' authority. (73)

All in all, Challinor's account of Roberts' legal career provides an insightful analysis of the social roles of law in Victorian Britain. It is an extraordinarily well-grounded piece of research which provides insights inaccessible both to mere theorists and to lazier historians. Nevertheless there are, I think, some important issues which are either inadequately dealt with or unaddressed in *A Radical Lawyer in Victorian England*.

One such issue relates to Roberts' life as a lawyer. It is intriguing to speculate as to what role, if any, he played in the corporate life of the attorney's profession,

what sort of personal and/or business relations he maintained with other solicitors, how he worked with barristers, and so on. During most of the nineteenth Century the English Bar routinely refused to admit individuals of radically democratic politics and almost all cases of disciplinary disbarment during the first two-thirds of the century were persons whose political orthodoxy was in doubt. Did the solicitor's profession attempt to act in similarly repressive ways or did its looser institutional structure make this impossible? Did other attorneys or barristers complain about Roberts or in any way attempt to control his behaviour? Did, then, a unique professional culture make it seem less necessary or less desirable to act against deviants than was the case at the Bar? Did the tribunals before which Roberts appeared themselves attempt to constrain his professional activities? These questions relate directly not only to the historically fascinating question of the potential for counter-hegemonic legal practice (if this phrase is not an oxymoron) but also to the social construction of legal discourses, of legal knowledge and - ultimately - of law itself. Because law is embodied in a profession these are crucial questions and it is a pity (though not a strong criticism) that Challinor was unable to address them in this book.

Similarly, other aspects of Roberts' life seem underdeveloped in this professional biography. In particular, Challinor drops several strong hints that a key element of Roberts world-view and in his political activism was his Christian faith (6-7, 211). This is an intriguing dimension to the life of an individual who worked for Marx, and who Engels praised effusively (87) in his classic work, *The Condition of the Working Class in England*. The denominational affiliation of Roberts, his role in church life and the visions of righteous struggle, dedicated service, suffering, and community life to which he subscribed are fascinating issues which are left largely unexplored in this book. The pursuit of such lines of enquiry promises to reveal much about the social roles of religion in relation to hierarchy, economic development, and class struggle.

At a conceptual level, perplexing problems arise with respect to the relationship between Challinor's historical reconstruction and the quagmire which is social theory. In accounting for Roberts' career the author relies on metaphors which invoke, variously, notions of law as class instrumentalism, mystification theory (182-3), relative autonomy (267-8), theory of ideology (25-26, 73), as well, perhaps, as discourse theory (268). Probably Challinor would not wish to be accused of most - perhaps any - of these things, but his historical interpretation does at various points imply a range of such socio-theoretical explanations. While these threads are not drawn together explicitly at any length the dominant tone is one which invokes variously class instrumentalism or class struggle analysis. Generally, he tends towards functionalism more than is currently fashionable and more, perhaps, than is merited on the evidence (although, as has been observed in other contexts, it is hard

to avoid outright conspiracy theories when one's historical subject matter focuses on treason, seditious libel, trades unions history, conspiracy laws, or prohibitions on combinations or illegal oaths!

It would be churlish to conclude any review of this book on a critical note. It is a fine piece of scholarship. Quibbles apart, *A Radical Lawyer in Victorian England* is a tremendously valuable contribution to the understanding of an important aspect of Victorian English society. There can be no argument with the author's concluding comment that "there is a need for greater interest to be taken in the legal system - the laws themselves, who operates them, and who benefits from their operation." (268)