

## BOOK REVIEWS

ORREN, KAREN. *Belated Feudalism. Labor, the Law and Liberal Development in the United States.* Cambridge University Press, Cambridge [etc.] 1991. x, 238 pp. £12.95; \$15.95.

Some decades ago the majority of the historical profession agreed with the opinion that between the end of the sixteenth and the beginning of the nineteenth century a decisive rupture occurred in the socio-economic and political institutions of the Western world. The various "revolutions" (religious, scientific, economic, political) of the early modern period ushered in a new era in human history: during the first decades of the nineteenth century the new era was safely established and the old order dismantled or at the very least damaged beyond repair. Widely different interpretations of the dynamics and the significance of the transition persisted, of course, but there was a fair amount of agreement on the nature of the new social order of the post-Napoleonic, North Atlantic world. The most commonly used epithets to characterize the new order were probably "liberal", "bourgeois", "capitalist", "democratic" and "modern".

Today many historians feel less secure about all this. The whole transition is now seen to have been much slower and far less complete, and a greater emphasis is put on the persistence of the old within the new, and the complex interaction of the "traditional" and the "modern". A related shift can be discerned in the conceptualization of the mode of operation of historical transformations. The model of encompassing modernization has been largely abandoned, and the dismantling of the old order is now seen to proceed on a largely contingent basis: new institutions are continually improvised by reassembling elements of the new with parts of the old, in a process that calls to mind the anthropological concept of *bricolage*.

More than ten years ago Arno Mayer forwarded the bold thesis that Europe's *Ancient Régime* survived well into the nineteenth and indeed into the twentieth century: according to him, the major European states were governed by aristocratic, landed and militaristic élites with the *haute bourgeoisie* as subordinate co-rulers.<sup>1</sup> Mayer probably overstated his argument, certainly in the cases of France and Britain, but it has proved a healthy corrective to the old commonplaces about unmitigated bourgeois rule in nineteenth-century Europe. Accordingly, Liberalism is nowadays seen in a different light: instead of a dominant ideology, the creed of a supposedly victorious bourgeois class, it is regarded as an oppositional movement that did not gain the upper hand before the final decades of the nineteenth century, and even then only in some nations. Moreover, the social composition of the Liberal movements was not confined to the bourgeoisie but variously comprised intellectuals, the free professions, small masters, shopkeepers, artisans and skilled labourers. On the other hand, large sections of the bourgeoisie were decidedly unliberal, or even outright anti-liberal.

<sup>1</sup> Arno J. Mayer, *The Persistence of the Old Regime. Europe to the Great War* (New York, 1981).

In the realm of political thought a somewhat different revision of the old received opinion has taken place. In the older view, the modern theory of natural rights held centre-stage, and a Lockean Liberalism was presumed to have gradually triumphed in the course of the long eighteenth century, from 1688 to the Napoleonic era. Modern scholarship, however, has seriously damaged the Lockean interpretation of the history of political discourse. The highly influential work of J. G. A. Pocock and Bernard Bailyn has led to a reappraisal of the importance of civic humanism, republicanism and an anti-commercial ethos of virtue and citizenship, both in Europe and in North America.<sup>2</sup> This new interpretation has not gone uncontested,<sup>3</sup> but it is by now generally accepted that the ideological origins of Liberalism are more complex and less straightforward than the old Lockean consensus had made them appear. The persistence of eighteenth-century themes within nineteenth-century Liberalism is beginning to be recognized.<sup>4</sup>

The United States was traditionally seen as the nation without a feudal past, the great exception to the entire problematic of "transition". Tocqueville built the whole edifice of his *Democracy in America* around this thesis, and it has exerted an enormous influence on the study of American history on both sides of the Atlantic. Here, for example, is what Werner Sombart, in his famous tract on the absence of socialism in the United States, has to say on the vast mass of immigrant labour that made up a large part of the nascent American working class:

Finished with Europe, they moved over to the NewWorld with the will to carve themselves a new life based on principles of pure reason. They had left all remnants of their European character behind in their former homes, together with all superfluous romanticism and sentimentality. They had left everything of their feudal artisan existence, as well as all sense of traditionalism [. . .]<sup>5</sup>

Republican revisionism has undercut the ideological and cultural part of the liberal interpretation of United States history. American politics were after all not so totally different from European politics, and especially not so utterly unlike British politics as had formerly been thought. Karen Orren sets out to demolish another part of the Tocquevillian-Sombartian legacy, namely the thesis that American labour relations were purely capitalist from the very beginning. She wants to demonstrate that the ancient feudal law of master and servant actually dominated American labour relations until well into the twentieth century, and that these feudal practices were not completely abolished until Roosevelt's New Deal. In other words, the *free* contract between labourer and employer, the cornerstone of capitalist relations of production, was conspicuously absent in the country of

<sup>2</sup> J. G. A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Harvard Univ. Press, 1967).

<sup>3</sup> See for example two recent attempts at a revision of "republican revisionism": Isaac Kramnick, *Republicanism and Bourgeois Radicalism. Political Ideology in Late Eighteenth-Century England and America* (Cornell Univ. Press, 1990); Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Harvard Univ. Press, 1992).

<sup>4</sup> See J. W. Burrow, *Whigs and Liberals. Continuity and Change in English Political Thought* (Oxford, 1988).

<sup>5</sup> Werner Sombart, *Why is there no Socialism in the United States?* (Tübingen, 1906; New York, 1976), 4; the most influential contemporary statement of the Tocquevillian interpretation is probably Louis Hartz, *The Liberal Tradition in America* (1955).

“pure” capitalism. According to Orren, there was an “unbroken line stretching from labor regulation in Tudor England [. . .] to labor regulation in Gilded Age America”. This type of regulation was found in America as well as in England, and on both sides of the Atlantic it was enforced by judges who relied heavily on ancient precedent, and who were wont to privilege the common law over statute law.

Orren argues her case with a wealth of detailed research, mainly based on a meticulous study of the jurisprudential record in countless labour disputes. She convincingly demonstrates the enduring importance of the provision against “enticement” in the ancient “Statute of Labourers”. Enticement was the technical term covering all sorts of practices undertaken with the aim of luring, persuading or forcing the servant away from his master. The old statute protected the master–servant relationship against outside interference, that is, against any interference by third parties. The principle of non-interference in ongoing employment relations was affirmed by the Supreme Court in a major case in 1827, referring to precedents going back as far as 1591.

In feudal law, enticement was, of course, defined by guild practices in which the skilled craftsman was a highly valuable asset to the master, so that “enticing” him away was tantamount to improper competition. However, American judges in the late nineteenth and early twentieth centuries discussed the modern phenomenon of strikes and work stoppages in the traditional language of enticement. The legal tort of enticement was broadened to cover all acts “knowingly undertaken” and causing one or more workers to stop working for their employer. According to Orren, the vast majority of United States judges continued to apply the doctrine of enticement in a great variety of labour cases: strikes, picketing, peaceable boycotts, and related practices.

Trade unions were treated as “outside parties” attempting to interfere with the master–servant relationship, thereby “trespassing” upon the master’s lawful domain. The “out-of-town labor organizer” and the union official “not in plaintiff’s employ” were familiar figures in the language of the courts. Orren rejects the idea that the judiciary was condemning those practices out of an ingrained individualism, pointing to other cases, such as collective business practices, that were routinely approved of by the courts. The existence of such multiple standards, she contends, is only an anomaly when viewed from the vantage point of Liberal political theory, but it is perfectly logical in feudal law, which is essentially an intricate edifice of specific rules applying to particular categories of social relations. Moreover, it is apparent from the examples adduced by Orren that the courts generally did *not* endorse the free, individual and voluntary contract, but argued in terms of a set of pre-given duties of working men.

The feudal doctrine of the special nature of labour relations impinged on legislation as well. The workplace was conceived of as a privileged space from which “outsiders”, in the literal sense of the term, were to be excluded. The state, and especially the federal government, was free to interfere with business practices, as it did in anti-trust legislation, but not with the master–servant relationship itself. Orren shows in great detail how this legal doctrine ran into difficulties as it became more and more at odds with actual economic practices. She discusses a number of court decisions, mainly concerning labour disputes in railway companies: the interconnectedness of lines and organizations made the distinction between “insiders” and “outsiders”, and the concept of a distinct “workplace” protected against “trespassing”, largely illusory. Moreover, federal regulation of interstate

railroads slowly but inexorably penetrated into the inner sanctum of the “work-place”. Orren reviews a number of Supreme Court rulings in cases involving the railways. Forced to specify and make operational the clauses of the 1920 Transportation Act and the 1926 Railway Labor Act, the Court ruled that union officials and working men’s representatives could not in any meaningful way be regarded as “outsiders”. Moreover, the said officials and representatives were empowered to “interfere” not only with wage bargaining, but with a great number of issues concerning the actual organization of the labour process.

The railways exemplified a general trend. The factual evolution of capitalist organization and the labour process, and the emergence of an organized labour movement, finally turned the ancient master–servant law into an empty legal fiction. The federal government laid down general rules to cope with the new state of affairs, and the Supreme Court was called upon to adjudicate between the claims of the old common law and the new federal legislation. The legal struggle over Roosevelt’s New Deal was only the last chapter in a long story. In the famous 1937 verdict upholding the National Labor Relations Act, Chief Justice Hughes, arguing against the precedent-based claims of the Jones & Laughlin Steel Corporation, could simply conclude: “the proceeding is one unknown to the common law. It is a statutory proceeding.” At last the independent authority of common law precedents was broken, and full legislative sovereignty established.

Karen Orren has written an important book. Her revisionist reading of American labour history is relevant to at least four areas of historical research. Firstly, she convincingly shows that the careful scrutiny of the judicial record is highly relevant to the interpretation of labour history. Looking beyond legislation to the implementation of the law by the courts, a new and more nuanced picture of the evolution of labour relations and labour conflicts emerges.

Secondly, this interpretation of labour history has some broader implications, notably for political history and the study of the processes of state-formation. The actual “making” of the state proceeds on a contingent, day-to-day basis, involving the interpretation and enforcement of the law in concrete cases. It would seem that there is a major difference between state-formation in the Anglo-Saxon world and in post-Napoleonic continental Europe, where the ancient legal traditions were formally abrogated. For the moment, however, the verdict on this issue can only be provisional, pending further comparative research along the lines indicated by Orren. In the meantime, general studies of state-formation should pay more attention to legal structures and judicial practice.<sup>6</sup>

Thirdly, Orren’s argument is relevant to the ongoing debate on the historical significance of Liberalism. Her interpretation of the place of Liberalism in the long run of American history can be usefully juxtaposed with the newer historiography of European Liberalism. Orren submits that Liberalism was not inherent in American society from its inception, but had to be constructed and established in the face of considerable opposition. She singles out the contribution of the American labour movement to the making of a truly liberal society based on the notion of free contract in all spheres of society. In her conclusion she briefly refers to family law as an area where the same type of legal development occurred. In both spheres,

<sup>6</sup> This is an area that is almost entirely neglected in Charles Tilly’s recent brilliant synthesis on European state-formation, *Coercion, Capital, and European States, AD 990–1990* (Oxford & Cambridge, Mass., 1990).

labour and the family, an old established “order of persons” (feudal or patriarchal) was eventually reconstituted as a field of activity “malleable to legislation”. In the light of Orren’s study, American history becomes somewhat less of a historical exception. In America, as in Europe, a reassessment of the historical role of Liberalism is central to the revision of social and political history.

Finally, Orren’s book sheds light on the general problematic of the transition from the Atlantic (not solely European) *Ancien Régime* to the modern world. While generally agreeing with her analysis, I would question her use of the term *feudal*, instead of the slightly weaker *feudalistic*. This might seem a vain quarrel over terminology, but it is not. Terms like “feudal” and “feudalism” refer to an interconnected set of social relations, centred in the political realm. Feudalism was essentially a mode of governance, encompassing justice, honour and military organization. The legal traditions discussed by Orren were only a part of the intricate social fabric that was feudalism. They survived long after the demise of the political, military and cultural practices of feudal society, mainly in legal learning and the practice of the courts. It was their rearticulation with entirely novel economic and political structures that enabled them to survive, as Orren so convincingly demonstrates. In the process of rearticulation, however, they inevitably absorbed some new, modern elements as well. The final product was hybrid and chameleonic, still “feudalistic” or “feudaloid” but no longer “feudal” in the full sense of the term.

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VINCENT, K. STEVEN. *Between Marxism and Anarchism. Benoît Malon and Reformist Socialism.* University of California Press, Berkeley [etc.] 1992. xiv, 193 pp.

K. Steven Vincent’s intellectual biography of Benoît Malon (1841–1893), the worker-communard who became the founding editor of *La Revue Socialiste*, is the first full-length, scholarly study of this important French socialist leader. Historians such as Madeleine Reberieux and George Lichtheim have noted the importance of Malon as an authentic proletarian who played a formative role in establishing the Parti Ouvrier, and as a reformist tactician who sought a middle ground between Marxist centralism and Proudhonist mutualism; but it has taken uncommonly long for Malon to receive the focused attention that he deserves. Vincent’s meticulously researched book is a fitting tribute to commemorate this year’s centenary of Malon’s death and raises timely and significant questions regarding the historical legacy of the French left.

Born to landless peasants in the Loire, and an industrial dyer by trade, Malon was an autodidact-opsimath who wrote over a dozen books, ranging from party propaganda tracts to his assiduously researched two-volume *Le Socialisme Intégral* (1890) that encompassed theories of political economy as well as philosophical and religious ideas. Vincent uses these texts, as well as correspondence drawn primarily from the IISH collections, to trace Malon’s political career: from his early years as a Parisian cooperatist, emissary for the French Workingmen’s International (A.I.T.) – when he met Mikhail Bakunin – and his election to the 1871 Paris Commune, through his mature years when he edited *La Revue Socialiste* from 1885 until his death.