

anyone who is familiar with the criminal system, it seems to have limited value save the excellent section on reentry. Overall, Irwin has done what appears to be a good job of outlining a highly divergent social system, that of the felon.

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Tigar, Michael E. and Madeline R. Levy. *Law and the Rise of Capitalism*. New York: Monthly Review Press, 1977, 346 pp.

“St. Yves is from Brittany
a lawyer but not a thief
Such a thing is beyond belief”

(13th century poem written for an exceptional lawyer)

Law and the Rise of Capitalism represents the most recent theoretical contribution of legal scholars associated with the National Lawyer's Guild. The central focus of the book is adequately captioned by W.I. Emerson who provides an introduction to the text. “How does a group challenging the old order begin to formulate its own jurisprudence?” (ix). Tigar and Levy contribute an historical perspective on this question, and utilize the rise of contract law to illustrate the ascendancy to state power of the bourgeoisie. “With a perspective of eight centuries, we hope to identify the forces and events which doomed the friar's movement to failure, which labeled the brigands as no more than bandits, and which brought the bourgeois revolutionaries to eventual victory” (xvi). Tigar and Levy combine a penetrating historiographical account of the rise of legal ideology with a theory of “insurgent jurisprudence.” This review provides an overview of their historiography, and critically evaluates the heuristic concept of *Law and the Rise of Capitalism*, “insurgent jurisprudence,” to the rise of legal ideology.

The development of bourgeois ideology proceeded from the initial communes of the urban centers as serfs, seeking freedom, created a social space for equality. Urban communes embodied an attractive conception of life for the serf and, as a result, feudal ties were weakened. The communes, originally formed to provide equitable monetary and political protection, became bitter disappointments. Municipal institutions of legality drifted into the hands of the rich, and the urban collective slowly lost the solidarity it had originally exercised.

In the shift towards centralization of authority, the practice of law became a tremendously powerful device. Lawyers spoke

Latin, and thus participated in an overlay of intellectual pursuit with the clergy. The primary tie between the two intellectual pursuits was the recovery of Roman Law and its various codifications. Intellectually, both lawyers and clergy focused on a common historical objective: the realization of the legal precision of the Holy Roman Empire. Practically, however, as Tigar and Levy demonstrate, the two pursuits diverged on questions of trade and mercantilism. In the 12th and 13th centuries, theoretical approaches to the price of products underwent a change from reliance on moral principle (just price) to a market situation of casuistry promoted by the canonists. Canonical precision in record-keeping, as well as its demand for documentary evidence, were valuably utilized by those urbanites who desired charters for their communes and trade. The "just price" became the price prevailing in the market place. This stimulated mercantile activity; yet the canon law, due to its feudal ties, tended to restrict trade to localized regions. Ecclesiastical tribunals retained documentary methods of precision which the seigneurial courts lacked, but, simultaneously, the Church limited "adventurous" trade.

The centralization of the seigneurial courts resulted in the codification of local custom under the directive of a sovereign power. As the law of contract developed, it penetrated the collective security of those urbanites who had initially fled serfdom. The feudal estates began to be purchased by the wealthy bourgeois who, in turn, claimed noble status. Contract law served the merchant well. A contract held the potential for universal acknowledgement, if the courts and legal ideology could be secularized. The secularized state and industrial capitalism provided bourgeois legal ideology with this conformity and standardization. The transition from mercantile to industrial capitalism was plagued by medieval vestiges of feudal relations and necessitated a central power to standardize legal statute. The nation-state symbolized successful transformation. Machievelli's *The Prince* and Sir Thomas More's *Utopia* represent polarized interpretations of this historical shift. Law of contract did not burst into existence and become established on the basis of the self-evident justice of its first principles. Each nation proceeded toward the uniformity of legal statute according to the sovereign's

relation to the Church and the severity of internal splits of the bourgeoisie between the bourgeois nobility and the entrepreneurs of the mercantile period. The development differed drastically among England, France, and Italy.

Tigar and Levy indicate that the nation-state represented a form of social organization ideally suited to manufacture and the stability needed for massive capital investment. Italy, between 1400 and 1600, was unable to provide the political unity necessary for this form of social organization. Consequently, "the bourgeoisie's creation of a legal order suited to its own development from 1500 onward took place almost entirely in England and France" (184). In France the formation of the National Assembly systematized the payment of feudal dues and transformed the feudal estate into a purchaseable commodity. This culminated a legal process which had been underway since the bourgeoisie left the urban communes to purchase "nobility." Monetary affairs (feudal dues) tightened to the point that Francois I, following the Roman practice of selling votes, "established a special bureau for selling offices" (217).

British nobility fared better than the French or Italian. The confiscation of Church land by Henry VIII severely weakened ecclesiastical tribunals; heresy and treason came to be treated as the same offense. Tigar and Levy dispute the oft-repeated comment that "the distinctive feature of English law is its gradual, peaceable development in an unbroken line since Magna Carta" (272). Rather, they demonstrate that revolutionary changes, often violent, occurred when the English bourgeoisie could not remove obstacles with the law.

Tigar and Levy center the final section of *Law and the Rise of Capitalism* on a discussion of insurgency and jurisprudence. An insurgent jurisprudence is one "in which a group challenging the prevailing system of social relations no longer seeks to reform it but rather to overthrow it and replace it with another" (286). Whereas initial bourgeois aspirations were oriented toward attaining the status of nobility and became engulfed in feudal hegemony, later bourgeois movements were insurgent and replaced the feudal order with the hegemony of contract. In historiographical research this yardstick of insurgency and

hegemony serves Tigar and Levy well; however, when the principle of insurgent jurisprudence is applied to present-day legal processes, Tigar and Levy's analysis resembles an empty exercise in homoletics.

According to Tigar and Levy, the internal contradictions of contemporary bourgeois legal ideology present capitalism with a disjunction between legal ideology (egalitarianism) and formal organization (monopolies). Blacks, aided by an entitlement theory of justice, are viewed by Tigar and Levy as inherently revolutionary agents. Present-day tensions are compared to those situations surrounding "early bourgeois jurists," and Marxian socialism is considered by Tigar and Levy to be "the most likely to succeed in replacing it" (323).

Tigar and Levy's historiographical account of contract law is sound to the extent that it makes evident the element of conflict and struggle which accompanied the rise of bourgeois legality. This emphasis on process and conflict, with ties to politics and the market, is closer to historical reality than the usual jurisprudential exegesis on the changing nature of rule systems. Unfortunately, Tigar and Levy's analysis of contemporary instances of insurgent jurisprudence does not fair so well. They leap over the historical significance of the American Revolution and the Civil War to jurisprudence in the United States, and proffer a theory of insurgency based on European historiography.

Even though challenges for social justice from blacks, women, and American Indians may present problems for "formalistic" justice, it is not *self-evident* that Marxian socialism will produce a viable answer to this disjunction. We may simply be witnessing an adjustment of institutionalized justice to demands from below. Whether this represents, in today's vogue of Marxist discourse, a "crisis" or a "transformation" could be more adequately assessed from an extensive historiography of American jurisprudence. Hopefully, Tigar and Levy will direct their future efforts towards this end. Nonetheless, *Law and the Rise of Capitalism* contains an abundance of historical information on law and society from which sociologists can certainly benefit.

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Jones, Rochelle. *The Other Generation*. Englewood, N.J.: Prentice-Hall, 1977, 264 pp.

The Other Generation, a book on older people by Rochelle Jones, is very enlightening in that it discusses the problems that older people face today, as well as offers solutions and different ways of coping with becoming older. Jones speaks of the problems of the elderly from their point of view, as well as from that of the young and middle-aged. She presents a broad picture of how things stand for the "65 and older" age group in our society today.

She discusses many issues including problems after retirement, problems with Social Security, and problems with the growing number of older adults in our society today. She speaks of "ageism", an extreme bias against older adults which is held by society at large. The bias exists because older adults don't or are unable to conform to society's norms of usefulness and productivity. The lack of production by older adults is considered to be a major reason for bias against them. If they could produce, society would allow them to help; but society keeps them from producing, and then uses their lack of productivity as an excuse to deny them help.

The problem of funding programs for older adults is also discussed. Jones asserts: "The exact amount of money that is being spent on programs and activities for older adults is unknown because, in reporting expenditures, the governments (both state and local) lump older adults and the poor into the same category." These and many other issues are brought up and discussed by Jones. She stresses that older people *are* people, and that they should be treated as such, not as "things" which have outlived their usefulness.

The book is straight-forward, interesting, and well-written. It shows that working with older people can be a rewarding and fulfilling experience. It will broaden any student's horizons in thinking about a future career.

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