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[Review of the Book *Values and Assumptions in American Labor Law*]

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[Review of the Book Values and Assumptions in American Labor Law]

Abstract

[Excerpt] Reading this book it is difficult not to think that the intent of the author was less to understand the origins and developments of the values and assumptions that gild the practice of labor law than it was to 'prove' that labor law in America is really capitalist law and thus it invalidates itself. This is not only circular reasoning, but it is unfortunate as well. For there is another book to be written that would analyze these questions through a serious and sustained reading in the history of industrial relations and then apply that knowledge to specific case studies of more contemporary court cases and/or arbitration decisions. For the problems alluded to by James Atleson are indeed important and the legal scholar and trade union activist alike could benefit from an historically informed critical study.

Keywords
labor law, labor movement, collective bargaining, industrial relations, Wagner Act

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ultimately rearguard attempt to refute it in the Smith volume) that another concatenation of circumstances progressively lessened the modality of intrafamilial transfer after the Black Death, and further accelerated the turnover of property at the same time. Among the longer-term results were a diversification of tenurial forms and a sharpening of rural dwellers’ social differentiation, attested by all of Harvey’s contributors and put forcefully by Christopher Dyer in Land, Kinship and Life-cycle, setting the stage for the quintessentially English early-modern spectrum of rentier-landlord/proto-capitalist-tenant-farmer/cottager-labourer-and-life-cycle-servant. Ian Blanchard’s ingenious schema (in the Smith book) for familial ‘defensive strategies’, entailing a kind of collective memory by means of which families might re-assemble tenements after a generation or more of disintegration, is bound to be provocative but will need much more extensive empirical substantiation than is offered here. But life-cyclical patterns of family formations and balances of wealth and poverty appear to be properly regarded as constant themes (if susceptible to evolving specific forms) in English rural society over a long duration, from the hints of provisions for the elderly in late-medieval sources to the patterns of early-modern poor relief disbursement and occupation-based (rather, apparently, than property-based) differences in age at marriage in early-nineteenth-century England (surveyed in Land, Kinship and Life-cycle by Tim Wales and Richard Wall respectively).

In all, the near-simultaneous appearance of these two books not only marks a significant advance in available empirical studies but also should help to set a more rigorous course for future work. There is still much room for further local studies, particularly from regions outside East Anglia and the Midlands where source survival has made possible most research to date (Lomas’s essay on Durham in Harvey’s volume is a notable exception). The painstaking analysis demanded by the medieval sources is nowhere better exemplified than in The Peasant Land Market in Medieval England. But the issues raised, and the conceptual framework shared, by the contributors to Land, Kinship and Life-cycle have raised the discourse from parochial ranks, and can hardly be ignored by future toilers in this field.


Reviewed by Nick Salvatore

In this polemical study, James B. Atleson expresses serious misgivings about the political orientation, legislative history and contemporary practice of American labor law. He argues that judicial decisions in this area are derived from ‘often unarticulated values and assumptions’ that are not present in either ‘the language of the statute or its legislative history’. (p. 2) One such controlling assumption, he suggests, which he claims has neither statutory nor historical justification, ‘is that continuity of production must be maintained, tempered only when statutory language clearly protects employee interference’. (p. 7) Such assumptions, in his view, have systematically perverted the intent of the National Labor Relations Act of 1935, as ‘an act seemingly created to radically alter economic power is [now] used to institutionalize employer power’. (p.

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20) In presenting this argument Atleson employs an historical analysis as subtext for his legal interpretation. He seeks to show that the historical record of America’s working people supports his belief in the concept of workers’ control and, by extension, in the more contemporary postulate of a worker’s ‘right of possession in a job’. (p. 91) This historical interpretation, sketched in with reference to the late nineteenth and twentieth centuries, then allows Atleson the purview to comment on the more contemporary practice in labor law. In chapters on protecting the right to strike (NLRB v. Mackay Radio & Telegraph Company); on circumscribing areas of federal protection (NLRB v. Elk Lumber Company); and in an extended discussion of management rights and the process of collective bargaining, the author develops his central argument that the effect of ‘the narrowing of the Wagner Act ... was to limit collective activity primarily to the specific relation of employer and certified or legally recognized bargaining agent. Activities that were based on class or worker solidarity or that existed outside the contractual regime were often defined as outside the protective ambit of the law’. (p. 47)

In short, he concludes, the institutional development of collective bargaining since the 1930’s ‘does not seem to have altered the basic legal assumptions about the workers’ place in the employment relationship’. (p. 180)

Ironically, Professor Atleson, in that last sentence in his book, is essentially right for all the wrong reasons. If the emphasis is placed on the first word in the phrase, ‘basic legal assumptions’, it is clear that those assumptions remained relatively constant over the intervening half-century since the Wagner Act became law. But two other points are equally as clear. First, even a cursory familiarity with the historical writing on the period should have made the author sensitive to the fact that a fundamental change in those assumptions was the intent neither of Senator Robert Wagner, sponsor of the bill, nor of President Franklin Roosevelt, who hesitantly supported it after the Supreme Court declared the National Recovery Act unconstitutional. The same may be said for others in Congress and in Roosevelt’s ‘brain trust’. At times the author seems to recognize this, as when he cites Irving Bernstein in a footnote (p. 192, note 7) to the effect that it was the Court’s decision on the NRA that moved Roosevelt from a concern with recovery to an interest in reform. But, Atleson quickly notes, Bernstein is ‘not completely convincing on this point’. Such a cavalier and unsubstantiated dismissal of as careful a scholar as Bernstein suggests the rather sloppy scholarship in this book. There is a second, corollary point as well, one even more damaging to Atleson’s argument. If Washington’s ‘movers and shakers’ had no intention to challenge those assumptions, it can be sharply argued that neither did the majority of the nation’s workers. That many were angry at a capitalist system gone awry, and at specific employers as well, is obvious. But as the work of David Brody, Melvyn Dubofsky and Daniel Nelson suggests, this anger was anything but a prelude to a fundamental restructuring of American society. In a society where workers have not sustained a conscious class self-identity, it is simply foolish to deride a piece of legislation for failing to give legal protection to class-based actions by self-conscious workers.

The failure here is a failure in research and in rigorous thought. History as subtext is utilized to try to legitimize a contemporary legal and political analysis. A broader understanding of the history of industrial relations would have cautioned the author to treat more carefully that elusive if evocative phrase, ‘workers’ control’. At a minimum Atleson might have recognized the fact that, in the limited examples where the phrase has historical meaning in this country, workers gained elements of control over the work process in an extra-legal fashion, even at times through union negotiations with employers. Similarly, in discussing the manner in which contemporary arbitration decisions allow for the ‘‘residual’’ rights of management’, the author suggests that this approach ignores that the steel industry, ‘for instance, began with worker-controlled
production processes'. Instead, such arbitration awards 'reflect only management's victory in taking control of the production process in these industries from the skilled employees'. (p. 123) Such a narrow reductionist view of changes in the process of work is embarrassing, given the rich literature that is available.

Reading this book it is difficult not to think that the intent of the author was less to understand the origins and developments of the values and assumptions that gild the practice of labor law than it was to 'prove' that labor law in America is really capitalist law and thus it invalidates itself. This is not only circular reasoning, but it is unfortunate as well. For there is another book to be written that would analyze these questions through a serious and sustained reading in the history of industrial relations and then apply that knowledge to specific case studies of more contemporary court cases and/or arbitration decisions. For the problems alluded to by James Atleson are indeed important and the legal scholar and trade union activist alike could benefit from an historically informed critical study.


A.W.B. Simpson

In the early seventeenth century an enterprising individual named Hugh Myddleton, who was by training a goldsmith, conceived a scheme to provide the City of London with a dependable supply of wholesome water. It was no good taking water from the Thames, which was an open sewer, and indeed remained one until recent times. Instead he set out to bring the water from two springs north of London by constructing a channel some twenty miles long to a distribution point, the New River Head, in Islington, from where the water would be supplied to consumers through a system of elm wood pipes. Work was begun in 1609, and concluded four years later; the official opening took place on Michaelmas Day 1613. Thereafter the New River has continued to operate to the present day. Indeed parts of the works have much the same appearance today as they had in the seventeenth century. The engineering history of this remarkable and enduring scheme is not however the subject matter of this book, except in an incidental sense. Instead Professor Rudden has set out to investigate the invention and history of the legal regime through which this undertaking was financed and managed, and through which the very considerable profits which the enterprise generated were distributed. For Hugh Myddleton was neither engineer nor philanthropist; he was a capitalist, and entrepreneur, concerned to do well, and only indirectly to do good. In 1619, that is to say some three years after the work had been completed, he and his associates tidied up the legal structure of the enterprise by securing a charter of incorporation as The Governor and Company of the New River brought from Chadwell and Amwell to London. This company still exists, making it the oldest commercial operation in Britain and perhaps in Europe, much older than such antiquities as the Hudson Bay Company, formed in 1670. In 1904 the New River Company lost the management of the water supply to the Metropolitan Water Board, but as an entity within London Merchant Securities PLC it continues to manage its property holdings, which are considerable. By good fortune the history of the company over its long life is peculiarly well documented. A considerable body of records still remain, and Professor Rudden has tracked down in various

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