

# **american socialist quarterly**

**Socialism and the Myth of Legality—**

Felix Cohen

**The Socialist Party and Trade Unions—**

Haim Kantorovitch

**One Step Forward—Three Steps Backward—**

The Seventh World Congress of the  
Third International

Herbert Zam

**Third Party Movements—**Andrew J. and

Hannah Biemiller

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# Table of Contents

	Page
<b>Socialism and the Myth of Legality</b> By Felix Cohen	3
<b>The Socialist Party and the Trade Unions</b> By Haim Kantorovitch	34
<b>One Step Forward—Three Steps Backward:</b> <b>Seventh World Congress of the Communist International</b> By Herbert Zam	45
<b>Third Party Movements</b> By Andrew J. and Hannah Biemiller	55

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# Socialism and the Myth of Legality

FELIX COHEN

## 1. Attitudes Towards Law

THOSE who seek to rebuild the social order have usually taken one of two views towards the law:

- (1) the view that the law is a set of "rules of the game" which must be followed until they are modified through established constitutional methods; and
- (2) the view that the law is an instrument of class oppression which must be strenuously attacked by any means that may be available.

The former of these views would be appropriate enough in a truly democratic state. The latter is clearly necessary under an open dictatorship. But neither of these views is adequate within a society in which the forces of class dictatorship wear the forms of democracy,—in which a dominant capitalist class maintains its rule by persuading a majority of the governed that they are doing the governing. A revolutionary party, seeking the abolition of this system and the establishment of a socialist democracy cannot base an adequate philosophy or tactic upon either of these over-simple approaches to the problem of legality.

## 2. Law as "Rules of the Game"

The view that law represents the rules of a game between the rival teams of capital and labor, in which courts are merely umpires, has a certain superficial plausibility. But if law represents the rules of a game, it is well to recognize that one of the teams employs the umpire and reserves the right to change the rules, to disqualify the other team's players, or

## The American Socialist Quarterly

to move away the goal posts when the other team threatens to score.

Thus when the forces of labor, following strictly democratic and constitutional methods, achieve the enactment of anti-injunction laws or laws against child labor, capitalist courts, arrogating to themselves power to declare statutes unconstitutional, change the "rules of the game" and hold that such laws are illegal.<sup>1</sup> If mass protest against judicial decisions is powerful enough to secure constitutional amendments, the courts are still in a position to pervert the meaning of these amendments. The Fourteenth Amendment to the Federal Constitution, designed to protect the freed slave against oppression, has been interpreted by the courts to protect the system of wage slavery against all sorts of legislative attempts at amelioration,<sup>2</sup> while Federal laws to protect the Negro against lynching, disfranchisement and discrimination have regularly been held unconstitutional.<sup>3</sup> If workers manage to conduct their struggle "according to the rules," without violating any of the countless statutes that capitalist courts may invoke against labor, then these courts manufacture new law on the spot, in the form of injunctions. Those who seek to avoid violence, and to use the legal and constitutional method of changing public opinion by talking, are likely to find their arguments answered by police clubs, tear-gas, or

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<sup>1</sup> Anti-injunction legislation is held unconstitutional in *Truax v. Corrigan*, 257 U. S. 312. Anti-child-labor legislation is held unconstitutional in *Hammer v. Dagenhart*, 247 U. S. 251; and *Child Labor Tax Case*, 259 U. S. 20.

<sup>2</sup> Thus in 1872 the Supreme Court itself described the purpose of the due process clause of the Fourteenth Amendment in the following language: "In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden. . . . We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision." (*Slaughter-House Cases*, 83 U. S. 36, 81.) More recently the Supreme Court has invoked the Fourteenth Amendment as authority for declaring progressive legislation invalid in the following cases (among many others): *Truax v. Corrigan* (see note 1); *Coppage v. Kansas* (note 5); *Dochner v. New York* (note 5); *Railroad Retirement Board v. Alton R.R. Co.* (note 5); *Schlesinger v. Wisconsin* (note 5); *Western Union Co. v. Kansas* (note 5); *Quaker City Cab Co. v. Pennsylvania* (note 5); *Tyson v. Banton* (note 5); *Weaver v. Palmer Bros.* (note 5).

<sup>3</sup> *Civil Rights Cases*, 109 U. S. 3 (Federal Civil Rights Law prohibiting discrimination in inns, railroads, etc., held unconstitutional); *United States v. Harris* 106 U. S. 629 (Federal Anti-Lynching Law held unconstitutional); *United States v. Reese*, 92 U. S. 214 (Prohibition against Negro disfranchisement held unconstitutional); *James v. Bowman*, 190 U. S. 127 (Federal protection of Negro voters against violence held unconstitutional); *Hodges v. United States*, U. S. (Federal Statute protecting Negro workers against violence held unconstitutional).



## Socialism and the Myth of Legality

bayonets, whenever the talk becomes dangerous. When workers send socialist representatives to a state legislature, these legislators sit under the threat of expulsion. In all the bitter offensive that capital has waged against the forces of labor, no method of oppression found useful to the capitalist class has ever been held unconstitutional,<sup>4</sup> while every legislative measure that seriously threatened capitalist power or profits has been declared unconstitutional by the courts.<sup>5</sup>

To say that the American courts reflect the will of the capitalist class is to put the matter very mildly. It is more correct to say that American courts, on the whole, represent the most reactionary section of the capitalist class. One could hardly regard Congress as anti-capitalist, yet the most important measures of Congressional legislation which have sought to correct social abuses of capitalist power have been knocked out by the Federal courts. The most liberal of American judges, men of the stamp of Brandeis and Holmes,<sup>6</sup> might

<sup>4</sup> This is not to say that all bad laws are constitutional. There have been a few cases in which oppressive laws, attacked by workers, have been held unconstitutional. Such cases are: *Fiske v. Kansas*, 274 U. S. 380 (holding Kansas Criminal Syndicalism Law unconstitutional where no advocacy of unlawful acts was shown); *Stromberg v. California*, 283 U. S. 359 (holding California Red Flag law unconstitutional where showing of red flag was not accompanied by "seditious propaganda"); *Bailey v. Alabama*, 219 U. S. 219 (holding that peonage is forbidden by Federal law and by the Thirteenth Amendment); *Norris v. Alabama*, decided April 1, 1935 (holding exclusion of negroes from jury unconstitutional). It must be observed, however, that none of these decisions requires more than a technical observance of paper rights in the process of capitalist aggression.

<sup>5</sup> Legislation on the following subjects has been declared unconstitutional by the United States Supreme Court:

1. Establishment of minimum wage (*Adkins v. Children's Hospital*, 261 U. S. 525).
2. Abolition of child labor (see note 1).
3. Abolition of yellow dog contracts (*Adair v. United States*, 208 U. S. 161; *Coppage v. Kansas*, 236 U. S. 1).
4. Abolition of injunctions in labor disputes (see note 1).
5. Establishment of 60 hour week (*Lochner v. New York*, 198 U. S. 45).
6. Establishment of old age pension system (*Railroad Retirement Board v. Alton R.R. Co.*, decided May 6, 1935).
7. Legislation to stop holes in inheritance tax (*Schlesinger v. Wisconsin*, 270 U. S. 230).
8. Legislation to stop holes in income tax (*Eisner v. Macomber*, 252 U. S. 189; *Evans v. Gore*, 253 U. S. 245).
9. Taxation of corporations (*Western Union Co. v. Kansas*, 216 U. S. 1; *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389).
10. Regulation of prices in interests of consumers (*Chicago, M. & St. P. Ry. v. Minnesota*, 134 U. S. 418; *Tyson v. Banton*, 273 U. S. 418).
11. Regulation of quality of goods in interests of consumers (*Weaver v. Palmer Bros.*, 270 U. S. 402).

<sup>6</sup> The limitations of Justice Brandeis's usually tolerant attitude towards labor unions are revealed by his jubilant speech to the printing employers who had hired him to smash the Boston printers' strike of 1904, and to establish the open shop,—which he succeeded in doing, in the name of "Liberty, Fraternity, Justice, Honor." See L. D. Brandeis, "Business—A Profession" (1914) p. 13. While conceding the right to organize, Mr. Brandeis advised the employers to remember "the good old maxim, 'Not one cent for tribute, but millions for defense'."

Justice Holmes, in one of the earliest labor injunction cases, *Vegeahn v. Guntner*, 167 Mass. 92, offers a picture of the class struggle as a struggle between selfish workers

## The American Socialist Quarterly

be ranked as conservatives in Congress, or in almost any state legislature, and the high water mark of their liberalism is expressed in dissenting opinions written to uphold legislation which has already been enacted by majority vote in some legislative body and approved by a governor or president.

It is natural that capital should find its strongest defense in the judicial arm of the government. For it is in this arm of government that economic power is most directly translated into political advantage. Lobbying before legislatures is still considered disreputable by most Americans,—but all lawyers are lobbyists before the courts. Every argument is bought and paid for. In case after case, the party that represents some dominant interest of capitalism will hire the most competent advocate and the most impressive witnesses, will be best able to appeal from an adverse decision or to nullify such a decision with a new legal attack. This pressure, if unobtrusive in a single case, is cumulative, and in the long run it molds the law. Against this pressure, the efforts of a few high-minded judicial idealists are doomed to Quixotic failure. The brave words of liberal judges are either buried alive in dissenting opinions or beheaded by appellate courts or tortured on Procrustean beds by less liberal judges in later cases.<sup>7</sup>

It is in recognition of the services of the American judiciary that the rising forces of industrial autocracy, commanding the school and the press, raised the judiciary to the supreme place in the American constitutional system. Few people now realize that the first judicial nullification of an important Federal statute occurred in the Dred Scott case, and that this

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and society-serving capitalists: "One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return." (p. 104.) It is only just to remark that in this opinion, Holmes dissented from the majority opinion of the court, which insisted on adding new and more stringent terms to the labor injunction that Holmes had originally issued. Against Holmes' record in free speech cases must be noted his opinions approving the sentence of Debs and other signers of the Socialist Anti-War Declaration in 1917. See Debs v. U. S., 249 U. S. 211 and related cases.

<sup>7</sup> It is noteworthy that the most reactionary decisions of American courts in labor cases nearly always appeal to the "prima facie tort theory," developed by Holmes in *Vegelahn v. Guntner*, above cited. In practice this theory means that acts of labor unions which injure capitalist profits are unlawful unless proved "justifiable". Holmes himself protested against this use of his words, (see *Plant v. Woods*, 176 Mass. 492, 504), but in vain.



## Socialism and the Myth of Legality

decision was denounced by a nation and over-ruled by an army. Only with the modern growth of industrial autocracy has the Supreme Court made good its claim to constitutional supremacy in the government of America, and to final authority in defining the rights of labor and capital.

It is clear that a party which uncritically accepts the canons of capitalist legality as final limits upon its tactics thereby abandons any credible claim to a revolutionary purpose. Even the lords of capital take a more limited view of the claims of legality, as is evidenced by the long history of capitalist law-breaking, ranging from the falsification of records and the concealed use of gangsters in industrial disputes to the open defiance of executive orders, judicial decrees, and Congressional statutes.

### 3. Law as an Instrument of Class Oppression

The vices of the "liberal" conception of law as "rules of the game" are avoided by those who view the law as the chief instrument of class oppression and insist that a revolutionary party must attack the capitalist legal order with every means at its disposal. While recognizing that this latter view is based upon a perception of certain basic social realities, it would be foolish not to take account of certain serious difficulties in which this attitude must involve a radical party.

For one thing, an attitude of forthright opposition to the capitalist legal system seriously weakens the defenses of the party against illegal attack. It is awkward, to say the least, to appeal to constitutional rights, civil liberties, and the common right of police protection against the violence of mobs or hired thugs, after denouncing the law and the constitution. Many people who will today defend the civil liberties of organized labor, of atheists, and even of socialists and anarchists, believe that there is an inconsistency in defending the civil liberties of communists, or, for that matter, of fascists, who boast that when they achieve power they will not allow civil liberties to their opponents. I am not concerned, for the moment, with the truth or falsity of this belief. Its existence is a fact.

## The American Socialist Quarterly

There is a second consequence of the denunciation of the existing legal system which is of much graver importance. To the politically uneducated, the law is primarily something that protects innocent men and women against violence. The fact that the law is itself a system of violence, actual or threatened, is very largely concealed (although strike situations may make this fact obvious, in a rudimentary way, to increasing numbers of workers). In the first place, the violence which is the basis of law is ordinarily concealed by the fact of its immensity and the smoothness of its functioning. There is no appearance of violence when a steamroller crushes a beetle, or when a hungry man is sent to jail for stealing a loaf of bread, or when a hungry man doesn't steal any bread because he doesn't want to be sent to jail. Actual violence is unnecessary if the threat of violence is accepted at face value. In the second place, the intrinsic violence of a legal system is concealed or justified by a social ritual and ideology, a set of forms or phrases, a system of constantly reiterated ideals, which portray the law as a moral force that acts, in the first place, upon men's consciences, and only secondarily upon the heads of law-breakers. A legal order differs from a system of brute force in only one respect: a legal order must appeal to the popular sense of justice. Its high priests must wear priestly robes, not military uniforms. Of course, if the appeal to principles of justice fails it may be replaced by an appeal to brute force. But moral sentiments are cheaper and more effective, in the long run, than machine-guns. Neither a capitalist nor a communist state will use mass terror if it has the moral support of the people. The appeal to popular moral sentiments is therefore an integral part of any legal system. The more widespread is the popular belief in the justice of the law, the more difficult will it be for law-breakers to organize effective resistance to the law, and the less occasion will legal authorities have to utilize actual violence in executing the law.

Respect for the law—not for every statute, of course, but for the legal order as a whole—is deeply felt and widely shared among Americans,—if we except the unreconstructed

## Socialism and the Myth of Legality

rebels of the southern Appalachians, the gold-plated anarchist lords of industry and finance, and the legal fraternity (in whom familiarity breeds contempt). This respect for law is likely to melt away when the law fails to assure a reasonable measure of physical security. War, mob violence, the wholesale use of armed force in the enforcement of the law, or the provocative tactics which were used by Nazis and Communists in Germany to create scenes of public disorder in parliament and at public meetings, may undermine popular respect for the existing legal "order" and for the agencies of law enforcement. Today in this country respect for law is notably lacking in poor rural communities that cannot afford the luxury of police protection against private violence. But by and large, a capitalist government as efficient as that of the United States does grant to the masses a large measure of security against private retail violence, with a minimum use of actual legal violence. To that extent capitalist law commands widespread popular respect as a source of peace and order.

Security of person is closely linked, in popular legal theory, with security of possessions. As the existing legal order appears to protect men against the violence of murder, so it appears to safeguard the security of home, domestic possessions, and individual savings. The fact that the law is itself an instrument for depriving workers of the property they create is obscured by the legal mythology of economic individualism and liberty of contract. Most urban workers, and nearly all farmers, still think of property in terms of physical possessions, rather than in terms of intangible rights to divert the future product of labor. Any proposal to abolish the legal system of property thus appears to most Americans to be a perverse attack upon the meager fruits of their own industry and frugality,—the only bulwark against destitution which the existing order permits.

What follows inevitably is that radicals who attack the legal system are felt to be attacking the basis of physical and economic security. It is easy for the ruling class to inculcate and strengthen this popular feeling if it can quote the words



## The American Socialist Quarterly

of the radical leaders themselves as to the need for overthrowing the whole legal system.

A party which attacks the entire existing legal order thus stands convicted, in the popular judgment of American workers, on these two counts: it is convicted of inconsistency and hypocrisy in its appeals for legal protection against violence; it is convicted, in any event, of keeping company with robbers and murderers.

There is a third count in the popular indictment: opposition to the law and the constitution conclusively shows lack of appreciation for the past struggles and achievements of American workers. A doctrine of wholesale opposition to the existing legal order colors all the acts of a radical party with the dye of novelty and danger. It obscures the fund of experience and tradition that guides even the most revolutionary legal changes. It makes even minor reform measures sponsored by a radical party (e.g. a "capital levy," which is nothing more than a property tax with revolutionary whiskers), seem to be complete breaks with the past. This obsession of illegality may be skilfully played upon by the defenders of the established order to impress upon the masses the view that radicals are, if not criminals, at least "visionaries," "theoreticians," or just "stupid foreigners," who would experiment with American citizens as with guinea pigs, disregarding all the solid achievements by which the resources of modern society and the present American standard of living, (even in depression times above that of any other country), have been won from the American plains and forests. Indeed, the obsession of illegality is a restraining force from the standpoint of the radicals themselves, because it tends to make them less revolutionary. If even a minor economic reform wears the dress of bloody conspiracy, it will receive more attention than it deserves from the revolutionary camp. If, on the other hand, a revolutionary party resolutely attempts to exploit the resources of legality before proceeding to more drastic measures, it is less likely to confuse basic social change with the superficial insignia of revolution.

## Socialism and the Myth of Legality

### 4. The Capitalist Myth of Legality

If the foregoing arguments are sound, a revolutionary party can neither accept nor oppose the system of capitalist legality. But the dilemma vanishes if we recognize that under American capitalism we have not one system of law but two, two systems, moreover, which are essentially incompatible. The law is, in the first place, *a system of class violence, against which a revolutionary party will throw its entire force*. But the law is, at the same time, *a system of popular ideals, towards which a revolutionary party must show proper respect*. A rational attitude towards the problem of legality is possible only if we recognize this distinction and repudiate the myth of capitalist legality, i.e., the myth that capitalist courts and policemen act only in accordance with principles of law, democratically promulgated and embodied in constitutions and statute books.

It is certainly not true that American courts are impartial umpires in the struggle between labor and capital and that all a revolutionary party need concern itself with is the task of winning a majority at the polls. But neither is it true that the law and the constitution can be used only for capitalist oppression. Both of these views credit the capitalist legal order with more consistency than it possesses.

The difficulties we have found in each of these views may be avoided, in some measure, by a realistic analysis of the nature of law in a concealed class dictatorship, i.e., a society in which class exploitation is carried on under the forms of political democracy. Such a realistic analysis must explain the discrepancy, under American capitalism, between the forms, the phrases, the professed ideals of the law, and the substance or content of law, law as it is actually interpreted and enforced by judges, sheriffs, policemen, and soldiers.

### 5. The Substance of Law under Capitalism

In substance, law is a statement of the conditions under which the armed force of society, i.e., the police and the army, will be brought to bear upon individuals. More particularly, law under capitalism represents the force of the capitalist

## The American Socialist Quarterly

state utilized by the dominant capitalist class for the maintenance of its class interests.

The qualifications that must be attached to this statement are minor. Parts of the capitalist legal system are directed against capitalists themselves and appear to benefit the working class. Upon close analysis, however, these laws will be found similar, in the main, to the game laws which sportsmen secure, limiting the seasons during which one can shoot deer and the number of deer one can shoot. Such laws serve the interests of the capitalists or the hunters *as a class*, although restrictive of the actions of *individual* capitalists or hunters; they do not represent a surrender of power to the workers or the deer. To take another example, a society of sheep and wolves could not continue to exist very long if the wolves ate up all the sheep. If that happened, all of the wolves would soon starve to death. A society of wolves and sheep can exist on a stable basis only if the wolves allow a certain number of sheep to live, to turn grass, which wolves cannot eat, into mutton, which they can eat, and to reproduce. This may require punishing those wolves who eat up too many sheep, and it may even require the killing off of a certain number of wolves, if there are too many wolves for the sheep supply.

A second qualification must be added to the statement that law is today the tool of the capitalist class. Certain realms of law deal with human relations that are not entirely bound up with the capitalist system, and legal rules within these realms might be continued in a socialist society. The number of such rules, however, is much smaller than is commonly imagined. It is a serious error to suppose that class bias is found only in the law of injunctions, or labor law generally. It is reflected also in the criminal law, in the law of contracts, of property, of torts, of procedure, etc.<sup>8</sup> These various branches of law constitute the legal or political framework of the economic system. It is impossible to attempt the overthrow of capitalism as an economic system without at the same time attacking the substance of capitalist law.

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<sup>8</sup> Even the law of evidence has been responsive to shifts in class dominance, as is indicated in Brooks Adams, "The Modern Conception of Animus" (1907) 19 Green Bag 12.



## Socialism and the Myth of Legality

### 6. The Form of Law under Capitalism

If it is important to recognize that the substance of the law is class oppression, it is no less important to realize that the form of the law is something very different.

In form, modern law, in this country at least, is an affirmation of human equality, of democracy, of the supreme welfare of society. These are the assumed or professed purposes of the law. Constitutions, statutes, and judicial opinions are framed in accordance with these ideals; any aspects of law which do not conform with these ideals are carefully and systematically concealed. It is very rarely that one finds in the statute books or in the reports of decided cases any express affirmation of class bias.

Again, some exceptions to the general rule may be noted. Certain states have enacted specific laws against syndicalism, communism, or other forms of social agitation and opinion. And some judges have been indiscreet enough to express their real feelings about the political beliefs or affiliations of "anarchist bastards" and other working class prisoners. But in general the pressure that is brought against radicalism makes use of the forms of classless justice. No legal institution could be more classlessly respectable than a literacy test for voters, but we all know the actual use to which such tests are put, particularly in the South. The legal frame-up is not simply a means of terrorizing militant workers; it is at the same time a means of identifying radicals, in the public mind, with forms of criminal violence likely to awaken deep popular resentment. It is thus a much more powerful support of the capitalist system than either mob violence against workers or special laws against radical activities. The statutes which are most effective for the suppression of radicalism are statutes which appear to be non-political, such as laws against vagrancy, inciting to riot, conspiracy, speaking without a license, entering the country without a passport, littering streets, or obstructing traffic, and other laws which are not commonly enforced against non-radicals. Although the *substance* of such law is class oppression of the most flagrant sort, the *form* of the

## The American Socialist Quarterly

law, the language and apologetics of the law, lies on a high moral plane.

### 7. The Hypocrisy of Capitalist Law

In analyzing the relation between the substance and form of law under capitalism, we have much to learn from contemporary "realistic jurisprudence". The critical studies of K. N. Llewellyn, Jerome Frank, and other professed legal "realists", have made it clear that the language of the law has only a remote and tenuous relation to the actual decisions of judges.<sup>9</sup> Law as actually enforced corresponds to the class relationships and class forces of capitalist society, rather than to the superstructure of language which laymen look to as "the law". This superstructure of language—law-in-books as contrasted with law-in-action<sup>10</sup>—represents, in large part, an attempt to obscure the brutalities of class oppression by means of a verbal and emotional appeal to the ideal of impartial justice. As Anatole France ironically observed, "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." No matter how flagrant the inequality which the law-in-action enforces, the form of the law is always equality. Even those statutes directed at a single person or organization can be phrased in language of complete generality, as for example, in state laws governing "all cities in this state having a population of one million or over."

Legal repression of the boycott is defended by judges on the basis of the judge-made rule that "concerted action to injure another's trade is unlawful." This rule of law seems

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<sup>9</sup> For readable statements of the standpoint of "realistic jurisprudence" see: Jerome Frank, "Law and the Modern Mind" (1930); Karl N. Llewellyn, "The Bramble Bush" (1930). A few of the more intelligent of contemporary judges frankly admit that their actual decisions are not really controlled by established rules of law. See Hutcheson, "The Judgment Intuitive: The Function of the 'Hunch' in Judicial Decision" (1929), 14 Cornell Law Quarterly 274. "Realistic jurisprudence" represents a great intellectual advance beyond orthodox legal doctrine, in revealing the difference between what judges *do* and what judges *say*. Unfortunately, neither Mr. Frank, Professor Llewellyn, nor Judge Hutcheson offers any plausible explanation of *why* judges do what they do or *why* judges say what they say. In common with most liberals, these writers seek to explain large-scale social facts in terms of the atomic idiosyncracies and personal prejudices of individuals, rather than in terms of a truly realistic analysis of social forces.

<sup>10</sup> See Roscoe Pound, "Law in Books and Law in Action" (1910) 44 American Law Review 12.

## Socialism and the Myth of Legality

to be an instance of absolute impartiality in dealing with the conflicting interests of capital and labor. In fact, however, the rule is used only against the forces of labor.<sup>11</sup> Indeed, if judges were to apply this rule against capital, as they have applied it against labor, all businesses would be unlawful and subject to injunction, since all business enterprises in a competitive system must seek to lessen the trade and profits of business rivals and business opponents. To *state* the rule in the language of impartial justice is necessary in order to conceal its class character. To apply the rule only for the specific purpose of smashing the boycott is necessary in order to strengthen and maintain the power of the capitalist class. The substance of this rule is class violence. The form of the rule is impartial, classless justice. It would be a mistake to suppose that the form of the rule is accidental or unimportant. Without the popular support which the language of justice and equality commands in large masses of the public, a capitalist class could not long retain political dominance under the forms of political democracy.

Thus it is that every rule invoked by the courts to break strikes is carefully phrased in terms equally applicable to acts of employers. But the rules are never actually applied against employers. On the contrary, the "offenses" of labor are the "natural rights" of capital. Capitalist boycotts against union labor (yellow dog contracts) have been held legal, and laws prohibiting such boycotts have been held unconstitutional, by the same courts that hold union labor boycotts against capitalists to be illegal even though not prohibited by any law.<sup>12</sup>

The fact is that under the development of capitalism the Common Law has evolved new legal doctrines (notably the torts of "conspiracy," "inducing breach of contract," and "boy-

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<sup>11</sup> The actual decisions and pretended principles in this field of law are analyzed in "The Privilege to Disparage a Non-Competing Business" (1930) 30 Columbia Law Review 510.

<sup>12</sup> In *Adair v. United States*, 208 U. S. 161, the United States Supreme Court held that it was legal for a corporation to order the discharge of workers who joined a union, and that an act of Congress forbidding this practice on the part of railroads engaged in interstate commerce was unconstitutional. The same court held that it was unlawful for workers to boycott non-union employers, and approved an injunction against such boycott, in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184.



## The American Socialist Quarterly

cott") which, as commonly formulated by the courts, would make practically all economic activities illegal, but which, as actually enforced, are used almost entirely as weapons for the suppression of labor organizations. *There is no possible activity of labor or its sympathizers in the class struggle that cannot be condemned as illegal by capitalist courts in terms of high-sounding moral principles filled with weasel words,— "coercion," "legal malice," "restraint of trade," "intimidation," etc.*

What is true of Common Law is no less true of statutory law. Even laws which in terms protect the rights of labor may be turned into weapons of capitalist oppression, under that judicial process which is aptly called "statutory construction". The Federal Anti-Trust Laws, passed in response to a great wave of popular resentment against the tyranny of Big Business,<sup>13</sup> have never been effectively used to destroy any trusts, but have been repeatedly invoked to smash strikes, boycotts, and campaigns of union organization.<sup>14</sup> So with any law governing industrial relations. The phrases of the act must convey the impression of industrial democracy. That is the social function of statutory phrases. In a state where a minority class maintains its power only by persuading the masses that they are the real rulers of society, the language of the law must always appeal to the human sense of justice.

Constitutional law, like all other law, is marked by this pervasive hypocrisy.<sup>15</sup> The written constitution of the nation blazons forth the ideals of democracy, human freedom, and respect for civil liberties. (There is no explicit mention in this document of slaves or slavery.) Many of our state constitu-

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<sup>13</sup> The Clayton Anti-Trust Act was hailed officially at the 1914 A. F. of L. Convention as "the most fundamental, the most comprehensive enunciation of freedom found in any legislative act in the history of the world."

<sup>14</sup> Perhaps the most famous of these cases are *Loewe v. Lawlor*, 208 U. S. 274, in which the Danbury Hatters' boycott was enjoined under the Sherman Anti-Trust Act, and *Bedford Cut Stone Co. v. Journeymen Stone Cutters Ass'n*, 274 U. S. 37, and *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, in which boycotts were enjoined under the Clayton Act.

<sup>15</sup> See Brooks Adams, "The Nature of Law" in *Centralization and the Law* (ed. by Bigelow, 1906), p. 20; Arthur F. Bentley, "The Process of Government" (1908); Al'an L. Benson, "Our Dishonest Constitution" (1914); Gustavus Myers, "History of the Supreme Court" (1912); Louis B. Boudin, "Government by Judiciary" (1932); Max Lerner, "The Supreme Court and American Capitalism" (1933) 42 *Yale Law Journal* 668.

## Socialism and the Myth of Legality

tions proclaim the inherent popular right of revolution.<sup>16</sup> But in the name of these high constitutional principles our judicial oligarchy has savagely attacked every hard-won legislative reform that seriously threatened to curb the tyranny of capitalism,—the abolition of child labor, anti-injunction laws, the minimum wage, the income tax, the abolition of yellow dog contracts, the regulation of prices, and the limitation of hours of labor, to mention only a few of the outstanding examples of judicial nullification of important reform legislation.<sup>17</sup> So wide is the disparity between the written constitution of the nation and the body of "constitutional law" which the courts enforce, that an eminent scholar (who cannot be accused of radicalism and would recoil from the revolutionary implications of his position) sums up the relation between the two in the following words:

"Where it makes no important difference which way the decision goes, the Text—in the absence of counter-vailing practice—is an excellent traffic light."<sup>18</sup>

To recognize the wide gulf between law-in-action, law as it is actually interpreted and administered by capitalist courts, and the high-sounding phrases that hide this substance is essential to an enlightened attitude towards the problem of legality. Because of the inherent hypocrisy of a system which invokes mass support for the oppression of the masses, it is possible for a revolutionary party, with perfect consistency, to proclaim loyalty to the idea of law and order, to the prin-

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<sup>16</sup> The Constitution of New Hampshire, for instance, contains the following declaration: "Government being instituted for the common benefit, protection, and security of the whole community, and not for the private interest or emolument of any one man, family, or class of men, therefore, whenever the ends of government are perverted and public liberty manifestly endangered and all other means of redress are ineffectual, the people may, and of right ought to, reform the old or establish a new government. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind." (Part I, article 10.) The Constitution of Pennsylvania guarantees to the people of the state "at all times an inalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper." (Article 1, sec. 3.) Substantially identical clauses are found in the constitutions of Colorado (Art. 2, sec. 2), Idaho (Art. 1, sec. 2), Maine (Art. 1, sec. 2), Maryland (Declaration of Rights, Art. 1), Massachusetts (Part 1, Art. 7), Missouri (Art. 2, sec. 2), Montana (Art. 2, sec. 2), Ohio (Art. 1, sec. 2), Oregon (Art. 1, sec. 2), Tennessee (Art. 1, sec. 1), Texas (Art. 1, sec. 2), Virginia (Art. 1, sec. 3), West Virginia (Art. 3, sec. 3). Many other state constitutions contain generally similar statements.

<sup>17</sup> See cases cited in notes 1 and 5.

<sup>18</sup> Karl N. Llewellyn, "The Constitution as an Institution" (1934) 34 Columbia Law Review 1, 39.

## The American Socialist Quarterly

ciples of the constitution, and even, in large measure, to the language of statutes and the announced principles of the judge-made law, while at the same time waging a relentless struggle against the substance of the capitalist legal order. Indeed, the attack upon the substance of capitalist law may be very greatly strengthened by an appeal to the professed principles and ideals of the law and the constitution. The ideals of equality, liberty, and democracy which capitalist courts and legislators have proclaimed will offer a perfect base for socialist attack upon the legal foundations of capitalism. Socialists can learn from their adversaries that it is always possible to attack existing law, and, if the power is available, to destroy existing law, in the name of democracy, justice, and liberty, in the name of the great ideals of the American Constitution, and in the name of law itself.

### 8. The Capitalist Appeal to Legality

The technique of attacking existing law in the name of the law itself has often been practiced by non-revolutionary groups in this country, with marked success.

When, for instance, during the bank panic of 1933, various state governors decided to grant bankers a moratorium upon their debts to depositors without waiting for the ordinary constitutional processes of legislation, they did this in the name of various obscure laws permitting the declaration of "days of thanksgiving or fasting and prayer".<sup>19</sup> Two things were clear in this situation, first that the actual power of the executive was not dependent upon the traditional processes of democratic legislation, and second that the claim of legality was deemed to be a matter of considerable importance. To have curtailed the legal right of bank depositors to withdraw their funds without invoking these legal justifications would have served the immediate interests of the bankers but at the same time would have shaken the sanctity of private obligations, founded in the law and the constitution, upon which

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<sup>19</sup> New York Consolidated Laws, vol. 18, sec. 9. From this phrase and similar phrases in the statute books of other states, more than 40 governors derived legal authority to declare "holidays" for harassed bankers. Lawyers laughed but the courts were silent.



## Socialism and the Myth of Legality

capitalism itself depends. It was necessary not only to preserve the bankers but also to preserve public respect for the myth of capitalist legality.

More important examples of capitalist attack upon existing law are found in the history of judicial review of legislation. No more bitter attacks upon American law have been made anywhere than those attacks which have been penned by the United States Supreme Court itself. Yet these attacks have always been made in the name of the Constitution, and the glorious principles of liberty which it proclaims. Now it would be absurd, as a matter of strict history, to suppose that a majority of the men who drafted or voted for the Fifth or the Fourteenth Amendment to the Federal Constitution actually intended to prohibit future legislation designed to protect the rights of workers to decent wages and decent hours, to jury trial and freedom of assembly and organization. No one of any intelligence would accuse the members of the United States Supreme Court of such crass ignorance of American history.<sup>20</sup> The fact is, of course, that when the judges of the Supreme Court say that legislation is unconstitutional, they are referring not to the documentary constitution that is studied in public school, but to the judge-made constitution that is studied in law school. Most Supreme Court decisions on constitutionality refer scarcely at all to the words of the written constitution. What is constantly referred to in testing whether any new-born statute shall have the right to live is the body of economic and social theories developed in the opinions of the court itself. It would be instructive to consider what transformations a Socialist Supreme Court could work in American law by utilizing the tactics of capitalist judges.

The Supreme Court, it may be noted, has not been con-

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<sup>20</sup> There is no factual basis for the common belief that laws regulating hours, wages, and prices are "radical" innovations which "conservative" judges oppose on grounds of unfamiliarity. Such laws go back to the earliest days of the Republic, (see, for instance, Act to regulate the wages of mechanics and laborers, the prices of goods and commodities, and the charges of inn holders within this State and for other purposes therein mentioned, enacted April 3, 1778, 1 Laws New York 1st session, chap. 34), and beyond, at least to Fourteenth Century England. (See C. A. Beard, *The Office of Justice of the Peace in England* (1904) 59-64.) The significant fact is that only in recent decades have any courts dared to attack such legislation as "unconstitutional."

## The American Socialist Quarterly

tent with attacking mere statutes as unconstitutional. It has also attacked the constitution itself, on occasion. Thus the Supreme Court has, in effect, repealed the Eleventh Amendment, which prohibits Federal courts from entertaining suits brought by private persons against the states, by holding that such a suit may be entertained if some officer of the state, instead of the state itself, is named party defendant. This amendment of the Federal Constitution was carried through by the Supreme Court at the insistence of capitalist lawyers who found that the most convenient way to attack inconvenient state laws was by suing the state government in Federal courts.<sup>21</sup> The language of the Eleventh Amendment was not allowed to stand in the way of this high purpose. The Fifteenth Amendment, guaranteeing Negroes the right to vote, has been reduced to a dead letter by judicial interpretation.<sup>22</sup> The language of the Sixteenth Amendment authorizing Federal taxation of "incomes, from whatever source derived" has not been permitted to disturb either the Supreme Court's doctrine of tax-exempt securities or the salaries of Supreme Court judges.<sup>23</sup> Of course, the most basic of the constitutional changes inaugurated by the Supreme Court has been the seizure, by a judicial coup d'etat, of the power to veto laws for unconstitutionality, a power which had been expressly considered and withheld from the court by the Constitutional Convention.<sup>24</sup>

What is important to note in the history of judicial attacks upon the established legal order is that such attacks are always carried out in the name of the law itself. Yet courts have never been hampered or restrained from acting as they saw fit by any objective difficulties in using the idea of law as a sledge-hammer to smash the substance of law. There is probably no part of the law or the constitution which the Supreme Court could not demolish, if the need arose, in the

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<sup>21</sup> See T. Taylor and E. I. Willis, "The Power of Federal Courts to Enjoin Proceedings in State Courts" (1933) 42 Yale Law Jour. 1169, 1190.

<sup>22</sup> *Grovey v. Townsend*, decided by the Supreme Court on April 1, 1935, upholds the constitutionality of exclusion of Negroes from the primary elections of the Democratic Party. And cf. cases cited in note 3.

<sup>23</sup> *Evans v. Gore*, 253 U. S. 245; *Bunn v. Willcuts*, 29 F. (2d) 132.

<sup>24</sup> See Boudin, *Government by Judiciary* (1932), vol. 1, p. 102

## Socialism and the Myth of Legality

name of the constitution itself. The myth of legality in no way hampers the use of illegal and unconstitutional methods by the forces of capitalism. Or, to put it more accurately, no methods thought by the capitalist class as whole to be useful can ever be illegal or unconstitutional in the eyes of capitalist courts, *no matter what the written constitution says*.

What is true of the law-breaking activities of the United States Supreme Court is equally true of courts in general, with respect to those fields of law in which capitalists desire the abolition of established legal rules that offer some protection to the forces of labor. The substance of the rule is changed in accordance with the demands of the dominant class; but the language of the old cases is reverently preserved. There is a long-hallowed rule, for instance, that equity will not enjoin libel or slander. The rule is still piously mouthed by courts, but when the alleged libel or slander occurs in the labor struggle it is given a new name, "boycotting" or "disparagement" or "conspiracy", and an injunction is promptly granted. The old law is changed, but always in the name of law itself.<sup>25</sup>

Parallel to the foregoing instances of capitalist use of the myth of legality to attack well-established principles of American law is the meticulous show of constitutional propriety with which the Nazis transformed the political structure of Germany. At no point in the Nazi march to power did the German masses as a whole feel that any procedure of constitutional government was being violated. The Weimar Constitution was destroyed according to its own recipes. The death of political democracy was celebrated by plebiscites carried through within the forms of political democracy.

### 9. The Revolutionary Appeal to Legality

It would be a grave error to suppose that the foregoing incidents are simply examples of capitalist hypocrisy without further significance for the forces of socialism. What is im-

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<sup>25</sup> For an analysis of the process of making new law out of ancient cases and the technique of concealing this from the public, see Morris R. Cohen, "The Process of Judicial Legislation" in *Law and the Social Order* (1933).

## The American Socialist Quarterly

portant about these examples of capitalist use of the myth of legality is that they show conclusively the disparity between the *form* of the law, impartial, classless, and eternal, and the changing *class content* of the law, and thus indicate that a *revolutionary interpretation of existing legal forms* is possible.

Accepting the forms and symbols of the law and the Constitution but substituting a socialist for a capitalist class content, a revolutionary party can attack the whole substance of capitalist oppression, in terms of these very symbols, as *illegal* and *unconstitutional*, and defend as *legal* and *constitutional* every act which circumstances make it expedient for the revolutionary forces to undertake.

This thesis will seem less shocking if we consider the constitutional aspects of the one historic event which revolutionary romantics like to think of as the complete negation of constitutional procedure. Leon Trotsky, in his brilliant account of the November Revolution, makes it clear that *the claim of legality was one of the most important assets of the Soviet revolutionary forces*.

"An attempt to suppress the papers, a resolution to prosecute the Military Revolutionary Committee, an order removing commissars, the cutting out of Smolny's telephones—these pin-pricks were just sufficient to convict the government of preparing a counter-revolutionary *coup d'etat*. Although an insurrection can win only on the offensive, it develops better, the more it looks like self-defense. A piece of official sealing-wax on the door of the Bolshevik editorial-rooms—as a military measure that is not much. But what a superb signal for battle! Telephonograms to all districts and units of the garrison announced the event: 'The enemy of the people took the offensive during the night. The Military Revolutionary Committee is leading the resistance to the assault of the conspirators.' The conspirators—these were the institutions of the official government. From the pen of revolutionary conspirators this term came as a surprise, but it wholly corresponded to the situation and to the feelings of the masses." (Trotsky, *History of the Russian Revolution* (1932), vol. 3, p. 207).

"The attacking side is almost always interested in seeming on the defensive. A revolutionary party is interested in legal coverings. The coming Congress of Soviets, although in essence a Soviet of revolution, was nevertheless for the whole popular mass indubitably endowed, if not with the whole sovereignty, at least with a good half of it. . . In its struggle against the Congress of Soviets which was to



## Socialism and the Myth of Legality

overthrow Kerensky, the government lifted its hand against that source of power from which Kerensky had issued.

"It would be a serious mistake to regard all this as judicial hair-splitting of no interest to the people. On the contrary, it was in just this form that the fundamental facts of the revolution reflected themselves in the minds of the masses." (*Ibid.*, p. 278).

"Would it not have been simpler in that case to summon the insurrection directly in the name of the party? This form of action undoubtedly had weighty advantages. But its disadvantages are hardly less obvious. In those millions upon whom the party legitimately counted it is necessary to distinguish three layers: one which was already with the Bolsheviks on all conditions; another, more numerous, which supported the Bolsheviks insofar as they acted through the soviets; a third which followed the soviets in spite of the fact that they were dominated by Bolsheviks." (*Ibid.*, p. 281).

"Attempts to lead the insurrection directly through the party nowhere produced results." (*Ibid.*, p. 283).

"Lenin's proposal to surround the Alexandrinka and arrest the Democratic Conference flowed from the assumption that the insurrection would be headed not by the soviets, but by the party appealing directly to the factories and barracks. . . . Lenin's plan had the indubitable advantage of swiftness and unexpectedness, but it laid the party too bare, incurring the risk that within certain limits it would set itself over against the masses." (*Ibid.*, p. 286).

"The Military Revolutionary Committee was an elected organ of the Soviet. The leading role of the Committee in the overturn did not in any sense violate that soviet legality which the professor (Pokrovsky) makes fun of but of which the masses were extremely jealous." (*Ibid.*, p. 288).

If, then, even in the Russia of November 1917, practical revolutionaries found it necessary to appeal to the forms of legality and constitutionality in order to lead a successful insurrection, how much more obvious is the possibility of appealing to the forms and ideals of American law and American constitutional principles in leading the masses to the Second American Revolution. For in the masses of the American public, even more than in the Russian populace of 1917, are imprinted faith and pride in the established symbols of democracy, hallowed by the blood of American workers in revolution and civil war, faith and pride in the established forms of popular government, in the traditional political ideals of liberty and equality. About such symbols, forms and ideals

## The American Socialist Quarterly

there cluster human loyalties so powerful that neither the judges of the United States Supreme Court nor the leaders of the Russian Bolshevik Party can lead a successful assault against established legal institutions without appealing to these loyalties by making out a plausible claim of legality for the attack on law.

### 10. The Revolutionary Use of American Ideals

Admitting the possibility of a socialist attack upon the substance of capitalist oppression which invokes the forms of legality and constitutionality, we may turn to a consideration of the practical implications of this principle in the realms of socialist strategy and tactics.

It would be a task obviously beyond the scope of the present paper to analyze in detail the resources which a revolutionary party may find in the symbols and ideals of American law. A brief and inadequate index of these resources must suffice for the present.

In the first place, the socialist movement naturally builds upon the ideals of democratic government which are proclaimed in federal and state constitutions. In terms of these ideals, it is possible to attack many actual features of present-day American government as unconstitutional,—for example, the use of the judicial veto to nullify legislative reforms, the disfranchisement of large sections of our population, particularly Negroes and homeless men and women, and the refusal of Congress to follow the specific mandate of the Fourteenth Amendment reducing Congressional representation of states which disfranchise part of their population. On all these issues, socialism must defend democratic constitutional principles against reaction. Other essentially undemocratic features of present-day capitalist government that a revolutionary party must expose and attack are: the purchase of party nominations, the use of money to swing elections, the monopoly or near-monopoly of the air and of other channels of education and propaganda, by the forces of capitalism, and the various stratagems used to bar radicals from office, ranging from the polite and peaceful method of declining to count

## Socialism and the Myth of Legality

socialist votes to the more direct method of expelling elected socialist officials from office. But the most basic of all capitalist assaults upon the constitutional ideal of democratic government is the delegation of governmental authority to organized capital.

We have seen a particularly obvious example of this in the grant to employers' code authorities of the power to fix the prices that consumers must pay, to restrict production and thus increase unemployment, to prohibit as "unfair competition" practices advantageous to consumers, and to levy taxes within the industry. If important powers of government have been unconstitutionally delegated to code authorities, the delegation of similar powers to private individuals and, more particularly, to private corporations, represents an even larger impairment of democratic constitutional government. A corporation is no less a governmental agency than a bureau or commission. Not only is it created by the state, but all its legal powers are derived from a charter issued by the state, and might be qualified by the terms of that charter. In the exercise of its corporate powers, it calls upon the armed forces of the state to enforce its edicts (unless it maintains its own private police force). It may wield the sovereign power of eminent domain, and if it controls human necessities it has, in effect, the power to tax. Yet these powers of government are not limited by the democratic principles which are supposed to control government in this country. Corporate directors today have no responsibility to the workers or consumers over whom they rule. Those activities of corporations which deprive persons of liberty or property, and even of life, are not limited by constitutional requirements of fair compensation and due process, as are the activities of states and municipalities. Industrial and financial autocracy today commands the working lives of millions of industrial workers and the consuming lives of all Americans, and legislates, in effect, on the conditions of labor, the distribution of income, employment, and leisure, and the kinds of food, housing, and news we may enjoy, all without even the pretense of regard for majority rule. Socialism, in de-

## The American Socialist Quarterly

manding popular control of industrial and financial policies, is simply pushing to its logical conclusion the ideal of democratic constitutional government.<sup>26</sup>

A second basis of socialist attack upon the realities of capitalist law is offered by the guarantees of freedom and civil liberties which the Bills of Rights of our federal and state constitutions contain. I am not suggesting, of course, that the forces of social revolution can *rely* upon these paper promises, which are flagrantly violated even in minor industrial conflicts and are even more flagrantly perverted by capitalist courts to serve as barriers against social control of industry. What I do believe is that the language of our Bills of Rights offers excellent battle-cries for American socialism. It is a weighty obligation of any radical movement to demonstrate, again and again, dramatically and forcefully, to the non-socialist public, that capitalist courts are in fact leading a bitter revolt against the constitutional principles of free speech and public assembly, against the right to trial by jury (which the injunction abolishes in industrial disputes), and against the other sacred liberties which socialism is supposed to threaten.

A third source of ammunition in the struggle against the capitalist legal order is to be found in the revolutionary heritage of America. The First American Revolution has left, for the use of the Second American Revolution, a Declaration of Independence, a set of excellent techniques for propaganda and organization, an array of historical incidents which can be re-enacted, and a philosophy and vocabulary of revolution which native Americans cannot deport or forget. The idea of a Continental Congress, for instance, took hold of large groups that had never before been deeply stirred by radical propaganda. A re-enactment of the Boston Tea Party in protest against modern tariffs and sales taxes has not yet

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<sup>26</sup>I have attempted to sketch the implications of this view in an essay on "Politics and Economics" in *Socialist Planning and a Socialist Program* (ed. by Laidler, 1932). For a more thorough analysis see: Morris R. Cohen, "Property and Sovereignty" in *Law and the Social Order* (1933); Robert L. Hale, "Coercion and Distribution in a Supposedly Non-Coercive State" (1923) 38 *Political Science Quarterly* 470; Hale, "Rate Regulation and the Revision of the Property Concept" (1922) 22 *Columbia Law Rev.* 209.



## Socialism and the Myth of Legality

been tried. Public readings from the Declaration of Independence and other writings of Thomas Jefferson have, on occasion, been punished as unlawful by capitalist courts. But when men are punished for loyalty to these hallowed revolutionary ideals, it becomes apparent to many who have previously identified socialism with an attack upon American institutions that it is rather the forces of capitalism that are waging offensive warfare against American traditions, and that socialism is the defense of a precious heritage.

There is a fourth feature of the American constitutional scene which a revolutionary party must be prepared to utilize for its own purposes. That is the fact of federalism, i.e., the division of sovereignty between the nation and the states. Most of the essential functions of government in this country are still administered by the states and their local subdivisions, rather than by the nation as a whole. It seems to me to be the height of romanticism to picture the future growth of socialism in America in terms of the sudden attainment of national power. Long before the forces of socialism are able to secure such power, they must have attained power in the more advanced states of the union, as they have already attained some degree of power in a few towns and cities. But it is fairly clear that the attempt to enforce socialist laws in a single state or group of states will be met with national measures of repression. Resistance to such measures must inevitably justify itself in terms of the constitutional principles and ideology of state's rights. Heretofore the principles of state's rights have been primarily invoked and interpreted to defend the interests of capitalist groups, i.e., slave owners and the employers of child labor, against federal legislative control. But the language, the forms, and the tactics which capitalists have invoked to preserve state's rights may serve the purposes of a socialist state. Of course, I do not mean to suggest that the use of proper legal principles will ensure the growth of socialism in a single state. One of the first tasks of a socialist state will be to make sure that it has a reliable state militia. But it will be an equally important task to make clear to the rest

## The American Socialist Quarterly

of America that this militia will be used not for interstate invasion but for defense of those workers' rights which have assumed the form of state's rights, and that those who seek to attack these rights through intervention are in fact fomenting a revolution against American constitutional government.

In calling attention to these fundamental ideals of the American legal system which a revolutionary movement may be called upon to defend, I have no desire to obscure the very real dangers which this appeal to legality may involve. The appeal to legality can serve a revolutionary purpose only if it is linked with a clear recognition that the legal and constitutional *ideals* invoked are opposed to the actual *substance* of capitalist law, that every moral principle which the law purports to defend is violated, again and again, in the name of the law itself. The revolutionary claim of legality can be substantiated only by exposing the hypocrisy of capitalist legality. Revolution can assume a defensive posture only by convicting the forces of capitalism of offensive measures against the law and the Constitution.

### 11. Legal and Illegal Means to Power

The much discussed question, "Can the socialist movement come to power in America through legal and constitutional means?" is a misleading question. The real question is, "Can the socialist movement claim that the means required in the attainment of power are legal and constitutional?" And the answer is, "Yes".

The radical who appeals to legality must adopt the realistic jurisprudence of Mr. Morgan, who is reported to have said once, to a lawyer who suggested that some contemplated plan of high finance was illegal, "I don't pay lawyers to tell me what I can't do. I pay lawyers to tell me how to do what I want to do."

A revolutionary party must recognize that every step towards power will be stamped as illegal and unconstitutional by its opponents, and that the American law is sufficiently vague and flexible to offer plenty of plausible argument in support of such a claim, no matter what these steps to power

## Socialism and the Myth of Legality

may be and no matter how gently and politely they are taken. *There is no choice between legal means to power and illegal means to power.* All *effective* means to power will be denounced as *illegal* by those whose vested interests are threatened, and defended as *legal* by the revolutionary forces, if these forces are led by practical revolutionaries and not by incurable romantics. The question of legality will be decided not in party conferences before the revolution, but *after the fact*. If the revolution is successful, the revolutionary claim of legality turns out to have been correct. The legality of the Federal Constitution is firmly established, despite the fact that it originated in a *coup d'etat* by a body which was appointed to report to Congress on proposed revisions of the Articles of Confederation, but which decided, on its own initiative, to write a new constitution which was ratified in a manner that Congress had not authorized and that the Articles of Confederation prohibited. So, too, the unconstitutionality of secession was established not by Webster's arguments, but by Sherman's soldiers, who applied these arguments in practical ways.

Recognizing that every step towards power will be met with a constitutional challenge, a revolutionary party must be prepared to make its own constitutional law.<sup>27</sup> In form, such law must derive from the language of the written constitution; in substance, such law must be based upon the revolutionary will and power of the masses. The theoretical claim of constitutionality is relevant only in so far as it is itself a potent factor in organizing this will and this power and disorganizing the opposing class forces. It is to the people that this claim of legality and constitutionality must be directed, and not to the judicial organs of the capitalist order (except in so far as these organs offer useful theaters of social drama). If capitalist courts refuse to honor the claim of legality, so much the worse for the courts. Jefferson, Jackson, and Lincoln successfully defied the mandates of the

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<sup>27</sup> " . . . a constitution is in a sense a state of mind, and can be changed by changing our mind." C. E. Merriam, *The Written Constitution and the Unwritten Attitude* (1931) 3.



## The American Socialist Quarterly

judges of the United States Supreme Court.<sup>28</sup> Any socialist president, governor, or mayor may profit from their example. It is one thing for a socialist governor to surrender, as a matter of military necessity, to a superior military force. It is another thing to offer a moral surrender to the hollow voice of capitalist legality. To surrender physical power before the forms of capitalist law—in the manner of those pathetic figures, Braun and Severing—is to sacrifice socialism upon the altar of a mythical legality.

### 12. The Socialist Transformation of Law

In a class society, the forms of law must have a class content. Before the attainment of a classless society, in which the law will be truly an instrument of impartial justice, there lies the period of revolutionary struggle. In this period the only weapons available to labor are those that have been produced by capitalism. In this period, it is the task of a revolutionary party to substitute, within the legal framework of society, a socialist content for a capitalist content. Until the existing weapons of class oppression can be utterly destroyed, they must be pointed in a new direction.

In the preliminary stages of this struggle, the emphasis will be upon the educational task of exposing the hypocrisy of the capitalist legal order, and dramatizing the pervasive contradictions between the substance of law, under capitalism, and its professed ideals. Wherever the law is invoked in a flagrant instance of oppression against the working class, agitation for a parallel attack upon the exploiting class will serve to show up this hypocrisy. If unemployed men are arrested for vagrancy, it is not enough to defend the proletarian prisoners; a revolutionary party will agitate for the arrest of prominent capitalists who do not perform useful work, on the same charge of vagrancy.<sup>29</sup> When radicals are arrested for the misdemeanor of "littering the streets," it is a simple matter

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<sup>28</sup> See Boudin, "Government by Judiciary" (1932) vol. 1, pp. 256, 259, 375: vol. 2, p. 33. See, for instances of state opposition to Supreme Court decisions, *ibid.*, vol. 1, pp. 283, 374, 463-483; vol. 2, p. 316; see also Ames, "State Documents on Federal Relations", pp. 1, 93, 103, 105, 295, 304.

<sup>29</sup> In Milwaukee, a Socialist City Attorney invoked such a law to exclude imported strike-breakers from the city.

## Socialism and the Myth of Legality

to swear out warrants against capitalist publishers and advertisers. It requires no great legal ingenuity to work out the proper counterpoise for each instance of capitalist legal oppression. It is the task of a revolutionary party to dramatize each such counterpoise, either through the ordinary channels of agitation or through the theatrical machinery of the courtroom.

In this task of education, failure is still success. Sacco and Vanzetti, dead, and Mooney in a living tomb still lead the struggle of the workers against tyranny. The unconvicted capitalist criminal convicts the legal order that sets him free.

In the later stages of the struggle for socialism, new tactics become available. Each post in the capitalist constitutional order that a revolutionary party captures becomes a base for the propaganda of action. The legal weapons that have been used by capitalists against workers are turned against the capitalists themselves. Until the day when injunctions are abolished, the injunction will prove a powerful instrument in any socialist court. Condemnation proceedings, instead of being used to fatten the pocket-books of real estate speculators, may be used to acquire the industrial properties that society needs at costs that juries will assess. If a capitalist community ensures class justice by excluding from jury duty those who have less than a certain amount of property, a socialist community will very likely have to secure its own brand of class justice by excluding from jury duty those who have more than a certain amount of property. If a capitalist state punishes revolutionary propaganda as treason, a socialist state will not hesitate to punish counter-revolutionary propaganda in the same way.

There is plenty of aged legal precedent for transforming the corporation into an instrument for the democratic management of industry. If inflation can be used as a capitalist instrument of wage reduction, it can no less be used as a socialist instrument for the expropriation of the expropriator. Socialism will find good use for the remarkably efficient techniques which capitalists have developed for taking away each other's property without compensation. Under capitalist law,

## The American Socialist Quarterly

for instance, when a corporation has failed to meet the claim of some creditor, any stockholder may be lawfully deprived of his property under a "reorganization plan" evolved by receivers in bankruptcy. Exactly the same technique may be used in a socialist state to terminate rights of private ownership in those industrial enterprises which, under private ownership, cannot meet the just claims of workers and consumers.

What is important to note in this strategic use of capitalist weapons is that it marks the defenders of capitalism as enemies of constitutional government, and helps to win over to the side of the revolution those workers who will support fundamental revolutionary change if only it avoids the obscene costume of insurrection.

No one who seriously considers the legal and constitutional techniques available to the modern rulers of America can accept the romantic notion that a successful socialist movement, upon attaining power, would have to invent new measures of "dictatorship". The tools of a capitalist "democracy" are sharp enough for the most delicate tasks of a revolutionary government. The redistribution of wealth, the transfer of industrial and financial power, the reorganization of bankrupt industries, these are regular events in the permanent civil war of the competitive system. Existing techniques and forms, brimming with the flavors of legality and constitutionality, are at hand for the new purposes of the socialist state. It would be a pity if socialists were more squeamish in the use of these techniques and forms than are present-day captains of industry.

In the light of these considerations, it would be madness for socialists to obscure the democratic basis and purpose of a socialist state and to ignore the dictatorial character of capitalism by opposing what is known as American democracy in the name of the "dictatorship of the proletariat." Socialism, even in moments of crisis, cannot be more dictatorial in its repressive measures than capitalism. It is the task of socialist education to convict the capitalist state of dictatorship, and to oppose to this dictatorship not a new and



## Socialism and the Myth of Legality

better dictatorship but rather the fulfillment of democracy, which is socialism. The ideal of justice, liberty and democracy under capitalism is a utopian vision, which involves an inner contradiction. It is the task of the socialist movement to resolve this contradiction, not by condemning justice, liberty, and democracy, which do not yet exist, but rather by abolishing capitalism, in the name of those ideals that, in American hearts, reflect the most humane aspirations of men and women throughout the world.<sup>30</sup>

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<sup>30</sup> I can only hope that criticisms of the foregoing article will deal with what it contains. This paper does not purport to lay down a general philosophy or program for the socialist movement, and the fact that labor organization is not discussed does not mean that I consider this unimportant. I have tried only to deal, as objectively as possible, with a narrow but important problem of political theory, that of the relation between legality and revolution.

### A WORD ABOUT OUR CONTRIBUTORS

#### FELIX COHEN

was editor of the City College Campus in 1925 and a leader in the student fight against the R. O. T. C. He is an attorney of the New York bar, author of *Ethical Systems and Legal Ideals* (1933); "Politics and Economics" in Laidler, *Socialist Planning and a Socialist Program*. (1932).

#### HERBERT ZAM

is a member of the editorial board of the *Socialist Call* and conducts the column on international socialism.

# The Socialist Party and The Trade Unions

HAIM KANTOROVITCH

**B**ECAUSE, in his union, he had acted contrary to socialist policy, a member of the Socialist Party was brought up on charges. In defense he stated that he had acted according to his socialist conscience and that he had never known that the party had a specific party line according to which comrades in unions must act. As a socialist, he knew that he should utilize every opportunity to attack capitalism, and advocate independent political action. He was not certain about his attitude towards industrial unionism. Some socialists in his local favored it; others opposed it.

In his union, he faced a problem of reactionary, if not corrupt, leadership. These leaders opposed every progressive action and fought against every progressive proposition that arose. They turned inner union democracy into a mockery. Progressive union members, radicals of all kinds, united to fight against this leadership. He was asked to join in this fight, and hesitated. For advice he went to his local socialist leaders. Their answer was as usual, an answer that most of us now know by heart: The Socialist Party is not a Communist Party; we do not want to control unions or dictate to them, nor do we want to mix into their inner affairs.

Yes, argued the comrade, I understand that. But what shall I do in my union now? You see, there are quite a number of socialists in the union. If we would only consent to join the opposition, we could control it; we could give it its tone, a socialist tone. We could even elect socialists instead of reactionaries who now rule the union. If we don't assume the leadership, the communists will. The communists are numerically weaker than we are, and the members of the union would rather follow us, but if we refuse to lead, the com-

## The Socialist Party and the Trade Unions

munists will naturally fall heir to the leadership. That will be just as bad for the union as for the socialists.

No, his leaders told him. No, his fellow socialists told him. We don't want to get mixed up with oppositions. That is the tactic of the communists. We don't want to dictate to the unions, or influence their elections, or in any way mix into their inner affairs. As a result the communists took over the leadership and, as usual, made a mess of it. It was easy for the reactionaries to work up a "red scare" and win the elections. Now, the rank and file progressives are disillusioned. All that they retain of their former rebellious mood, is a profound contempt for socialists, "who talk like heroes and act like cowards."

The comrade on trial continued: It is true. I did support the communist ticket. I did not want to do it; I would rather have gone with my fellow socialists. I would have followed them anywhere. But they did not go anywhere, and I had to choose between reactionary politicians or communists. My socialist conscience dictated that I should choose the latter.

### What Is Our Policy in the Trade Unions?

A progressive movement is growing in a number of unions. Undoubtedly, it is a good sign. It shows an awakening of class consciousness, or at least, real trade union consciousness among the workers. In most cases, these progressive oppositions are spontaneous revolts against incompetent, reactionary and often corrupt leadership. It fights for a more aggressive, a more progressive unionism; for democracy in the unions; and it often includes a demand for industrial unionism and independent political action. What is the policy of the Socialist Party towards these movements? No one really knows. Individual socialists act as they see fit. One can find socialists active in the opposition groups, and socialists supporting reactionary leaders, in the same local unions. Which of these comrades acts in accordance with the policy of our party?

Let us take a more concrete example: A fight recently took place in the New York Teachers' Union, Local 5, between

## The American Socialist Quarterly

the leadership of that local and its left wing. What I know, and probably what all "outsiders" know, is that on the side of the right wing leadership is William Green and his lieutenants; and that on the side of the left wing is, it seems, every progressive man and woman who is at all interested in the fight. The entire fight reduced itself to the effort of the right wing leaders to expel, or, as they politely phrase it, "to get rid of" the left wing members in the union. A great number of socialists were in the Teachers' Union, some right, some left wing. Among the left wingers, there are socialists of national prominence, including a member of the National Executive Committee of the Socialist Party.

The *New Leader*, the official organ of the Socialist Party of the state of New York and some other states, in its issue of September 7, 1935, featured an article by Dr. Abraham Lefkowitz, one of the leaders of the right wing of the Teachers' Union and a non-party member. The article is not only a vicious attack upon the left wing, but it also contains very serious charges against prominent members of the party, including Maynard Krueger, a member of the N. E. C.

We will not here stop to consider the ethics of the *New Leader* in allowing a non-party member to publish such serious charges against party members without previously investigating them, and without submitting them to the responsible party committees for action. When some militant comrades, in their fight against racketeering in the unions, published charges against Nemzer, they were declared nothing less than agents of Stalin. Charges against a party member must first be brought before the Grievance Committee, it was argued. When charges are proved, they may then be published. The same attitude, however, was not taken by the *New Leader* in the case of the Teachers' Union. Maynard Krueger may be a member of the National Executive Committee of the party, but he is a left winger. It is, therefore, quite proper for a non-party member to charge him with any action in the official party organ.

In fact the *New Leader* has even violated the principle laid down by its own editor in his capacity as chairman



## The Socialist Party and the Trade Unions

of the sub-committee to formulate the trade union policy for the N. Y. State Executive Committee. A draft of this policy appeared in the *New Leader*. In this instance, the party has gone into an intra-union fight in absolute violation of the ruling. There was no question here of racketeering or principle. The *New Leader*, through its editor, and as spokesman for the party, jumped in against the advice of the majority of socialists in the union.

Nor was it a question of exposing communist members, because Oneal in his answer to Norman Thomas expressly stated that he stood by the N. E. C. position on trade unions, which he, Oneal, had also drafted, against expulsion of union members because of political affiliation. The reason he favored expulsion, through charter revocation, in the case of the Teachers' Union was on the ground of disruption and anti-union tactics. Since when has the Socialist Party become the judge of who is, and who is not, a good union member and what is good union tactics, inside a union.

But putting aside this unethical conduct of the *New Leader*, who represents the party policy in this conflict? The militants in the Teachers' Union, or the *New Leader*? If this can not be answered, we are back again where we started: What is the policy of the party in the trade unions?

### Our Official Resolutions on the Trade Union Question

In vain will comrades point to the resolutions on trade unionism adopted at every convention. They may be excellent as far as they go, but they never go far enough. The resolutions adopted at our conventions are always general and abstract. They usually reiterate that unions are very important; that we, socialists, are ready to help them in their work of organizing the unorganized, as well as in their fight against their enemies. The resolutions declare that it is the duty of every socialist to join the union of his trade, if there is any; to help organize his trade, if it is unorganized; to help other unions in their struggle against their bosses. It sometimes includes a paragraph about the necessity of industrial

## The American Socialist Quarterly

unionism and independent political action. So far, so good. No one will dispute the principles expressed in these resolutions.

Are we satisfied with the unions as they are? Are they, in our opinion, capable of organizing and leading the workers in their economic struggle? Do we approve of the present ideology and strategy of the American Federation of Labor?

Do we believe that the present American Federation of Labor leadership is capable of really leading the American workers to victory? We must give an answer to these questions before we can decide the all-important question of socialist tactics within the union. If, for instance, we believe that the present leadership of the American Federation of Labor is not capable of leading the workers, are we to fight against it, and how? If we believe that the form of organization to which the American Federation of Labor clings is obsolete and has become a fetter to progress, what are we socialist members in the unions to do about it? Shall we fight for a more progressive form of unionism? It is clear that a fight can not be conducted except in an organized manner. An individual member, who has no understanding to act concertedly with other individual members is always powerless. Shall we then organize socialist groups in the unions?

None of these questions is raised or answered in our official resolutions. The resolutions are abstract declarations, but not directives either to our labor committees, or to our members. The result is chaos and confusion. In some unions, socialists unite with communists; in others, with Lovestoneites against Stalinites. At least in one local union, some right-wing socialists united with Stalinites and reactionaries against a progressive administration headed by a Lovestoneite, while militant socialists in the same local united with the Lovestoneites in defense of the administration. The net result is not only chaos and confusion in our own ranks, but the party itself is placed in a ridiculous position in the eyes of the workers.

# The Socialist Party and the Trade Unions

## A False and Dangerous Policy

Unofficially, however, there really is quite a well-defined policy for socialists in the unions. This policy has never clearly been formulated in official resolutions because it is taken for granted. It may not be acceptable to all socialists, but it is clearly adhered to by a very important section of the party—by the entire right wing. One always finds it expressed in the writings and speeches of the old guard of the party.

This policy was clearly and effectively expressed at a socialist meeting, by a former chairman of the New York Labor Committee. We are, he said, with organized labor, right or wrong. We don't tell labor what to do nor how to do it. We help them in whatever they do. He was applauded. It sounded nice. We are with labor . . . we help labor. A moment's reflection, however, is enough to learn that this "theory" is both false and dangerous.

It is not true that we are with labor right or wrong. We are with labor only when it is right. When labor endorses the Democratic Party, we are against it. When labor is out red-witch hunting, we are against it. When labor insists on clinging to an old and obsolete form of organization, we are against it. The reader will, of course, say we are mistaken. We confuse labor with labor leaders. He will say, labor really does not endorse the Democratic Party; labor leaders do. That is true. But we are not mistaken. In practice, those who proclaim that they are with labor right or wrong, are really with the labor leaders, right or wrong, whoever they may happen to be—very often with the labor leaders against the rank and file.

At the last convention of the party in Detroit, the resolution on the N R A contained a paragraph very mildly critical of the present leadership of the American Federation of Labor. How scared the right-wing leaders and delegates were! How bitterly they fought against it! What did that paragraph contain? It stated that the obsolete ideology of the American Federation of Labor had become harmful and that its archaic form of organization was out of tune with con-

## The American Socialist Quarterly

temporary industrial conditions. These are not the exact words, but the thought is exact.

Were those who so bitterly fought the resolution afraid that the masses of workers in the American Federation of Labor would feel insulted by our resolution? Of course not. No one mentioned the masses in the debate. It was the fear that the leaders of the American Federation of Labor would feel insulted and that their friendship would be lost. Whether or not we have this friendship, is debatable. At best, the friends of the Socialist Party among the Federation of Labor leaders can be counted on the fingers of one hand. Furthermore, a friendship that can not stand even such mild criticism, is not worth much. Sooner or later some socialist will say something that these leaders will not like, and the friendship will come to an end. Yet, the attitude of "we are with labor right or wrong" is held by a very important section of the party. And what is the result? The party has not made any headway in the trade union movement. It does not influence it in the least. To the broad masses in the unions, we are the eternal supporters of the leadership; to the leadership, we are nothing at all.

As a result of this attitude, there is hardly ever any criticism of the trade union movement in our party press. Of course, we do not share the communist view that every trade union leader is a faker just because he is a leader; and that every trade union administration is a racket. We know that there are plenty of honest and efficient labor leaders, as well as honest and efficient trade unions and trade union administrations. But, we also know that there are plenty of dishonest leaders for whom the union has become a private racket. There is no use denying, and it can not be denied, that many a union is nothing but a misuse of the name. Reaction and racketeering in the trade unions has become the greatest menace to the labor movement. President Green has admitted it more than once, but, of course, has done nothing about it. Neither have we. We feature President Green's articles in our press, but we keep quiet when he joins Hearst in a red-hunting campaign—and for Green as well as for



## The Socialist Party and the Trade Unions

Hearst, a "Red" is one who happens to disagree with him. We keep quiet, because after all, "we are with labor right or wrong." Just because it happened to be more wrong than right during the last few decades, does not matter. We are with labor right or wrong.

### Socialism and Trade Unionism

The attitude of socialists towards trade unions is determined in the long run by their attitude towards socialism. The attitude towards the trade unions, which we discussed above, is the logical outcome of the purely parliamentary view of socialism. The purely parliamentary socialist believes that the victory of socialism will be purely political. Socialism will be voted in; all we need is a majority of votes. When votes are counted, no one thinks, or cares, about who may have cast them. Whether socialists will get a majority of votes one way or another, does not really matter. If the majority will in itself contain a majority of non-socialist votes, does not matter either. Once we have a socialist president in the White House and a majority in both houses, we shall decree socialism by law.

We will not discuss this view of socialism. We have done it often enough. Furthermore, history has done it in an even more effective manner in some of the European countries. However, it is clear that once one accepts this view, his entire strategy will be devoted to the getting of votes, no matter how.

There is no doubt that the trade union movement is a favorable field for socialist activity. Trade union members have already had a taste of workers' organization, and are more conscious of the significance of the class struggle than other workers. Socialist activities in the unions for the purely parliamentary socialist, however, means nothing but getting the political endorsement of a union. If our unions were really democratic bodies where the masses decided whether to endorse this or that party, the socialists would naturally be compelled to appeal to these masses and to rely upon them.

Unfortunately, this is not the case, or at least, very

## The American Socialist Quarterly

rarely so. The trade union movement as it is today, is largely a matter of leadership. It is the leaders who decide. The rank and file is quite indifferent to these political endorsements. This indifference is sometimes interpreted as acquiescence. But it really is not. The fact that the American Federation of Labor, or any of its local bodies, endorses this or that political party or candidate, may be important as a means of propaganda, but it does not mean that the membership feels obligated to vote for the endorsed candidate or party. The American Federation of Labor actually has very little political influence over its members. However, the vote-getting socialist chooses the path of least resistance. It is easier to gain favor—at least with some leaders—by being “good”, refraining from criticism and proclaiming that we are “with labor (i.e., labor leaders) right or wrong,” than to try to tear the masses away from under the non-socialist influence of these same leaders.

Militant socialists can not accept this point of view. When they are accused of De Leonism, or of wanting to use communist tactics in the trade unions, it is not the truth, of course. These accusations of De Leonism and communism are hurled at any one who dares to criticise anything in the existing trade union movement or its leadership. Militant socialists have always fought against dual unionism. When the communists attempted to gain control over the trade unions in order to make them an appendix to their political party, they met with the bitter opposition of all militant socialists. The accusation that the militant socialists are De Leonites or accept the communist tactics, has fully as much foundation in fact as all other kinds of red-baiting. That certain socialists should resort to these cheap tactics of red-baiting in order to discredit other socialists who have differed with them, is of course very unfortunate.

However, it is not the most unfortunate feature of the Socialist Party at present. The militant socialist has a two-fold interest in the trade union movement. He is interested in the trade union as such. If, together with other progressive elements in the unions, he is ready to join in a fight for a more

## The Socialist Party and the Trade Unions

efficient, a more democratic, better and cleaner union, it is not because he is eager to gain control of it, but because he is convinced that most of our trade unions, as they are now, are incapable of performing the tasks which they assigned to themselves. In other words, he is interested in making the union a better union.

This is not, however, the sole interest of the militant socialist in the trade union movement. He does not believe that socialism is a purely parliamentary affair; that it will simply be voted in and consequently, that it does not matter how one gets the votes as long as one gets them. The militant socialist realizes that socialism will be achieved as the result of hard struggles, in which the trade union movement, as the economic force of the working class, will have to play a very important role—perhaps, even the decisive role. When the time for this decisive struggle comes, a trade union movement controlled by reactionary elements may turn out to be a force for reaction and against socialism. It would not be surprising if William Green and Matthew Woll would organize a political labor party to fight the “red menace”. Some socialists erroneously believe that Green’s campaign against communism in the unions is, and never will be other than, an anti-communist campaign. This, however, is a mistake. Those who are active in unions not only as good boys, but as socialists, know that they may expect the same treatment that communists now get. The best example is the Teachers’ Union. The leaders of the right wing in this union make no distinction between socialists and communists, unless of course, it is the kind of socialist from whom leaders—no matter how reactionary—have nothing to fear.

The socialist press and socialist speakers often emphasize the fact that the socialist movement in America will not amount to anything if it does not get the full support of the trade union movement. Every one will agree. But the way to get it is not by playing up to the leadership of the union, but by influencing the masses of trade-union workers in the direction of socialism. This is not only a difficult task, but a task which the majority of trade union leaders very much

## The American Socialist Quarterly

dislike. It will have to be done, however, despite these leaders. Our slogan must be: To the workers instead of to the leaders.

The task of winning the trade union masses for socialism cannot be left to the unplanned and unorganized activities of individual members. If the party will undertake this all-important task seriously, it will have to map out a systematic plan of how to organize and direct this work. A start was made in New York through the organization of socialist leagues in the unions. Under the able leadership of Jack Altman, these leagues had begun to develop and were about to become a force in the trade union movement; a force for a more progressive unionism, as well as for socialism, but, by no means for outside control of the unions or for party dictatorship within the unions. Unfortunately, the New York Labor Committee that did this work was dissolved. The new committee which was appointed succeeded in practically killing these leagues.

At the next national convention of the party, the trade union problem will have to be dealt with more seriously and in greater detail than at former conventions. The present situation is so chaotic and confused that it has become a danger to the party. The party can not again content itself merely with adopting a general and abstract trade union resolution. It must work out a policy for planned and organized work within the trade unions—a policy to be followed by all party members.

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# One Step Forward—Three Steps Backward:

THE SEVENTH WORLD CONGRESS OF THE  
COMMUNIST INTERNATIONAL

HERBERT ZAM

THE Seventh Congress of the Communist International marked one of the most far-reaching changes in policy in the entire history of the international labor movement. It abandoned a line of policy by which it had sworn for eight years. It endorsed concepts which it had constantly warred against since its formation. And, this was accomplished without a single dissenting voice, with a unanimity which is at once admirable and damnable; for, one cannot help admiring a political machine which can, at a single stroke, reverse the course of a decade and leave the machine unimpaired, while at the same time condemning it for having stifled all independent thought and having left, not only all decisions, but all thought, in the hands of a small group of people—in the last analysis, in the hands of a single person. Those who are attracted by the “fuehrer” type of movement, who prefer blind devotion to conscious, thoughtful activity, who are satisfied to follow orders regardless of consequences, will find the Communist International a model organization to join. But those who believe that the working class cannot emancipate itself by following the model of fascist organization must categorically continue to reject the Communist International as the instrument for working class emancipation.

Blind rejection of every decision of the Congress as “a new conspiracy against labor” can serve no useful purpose. As the title of this article indicates, on a series of questions, the Congress decisions marked a decided step forward, a step which, ordinarily, would prove very beneficial to the international working class movement. On the whole, it may be said, the entire line made famous during the “third period” was dropped. Furthermore, some of the dogmatic

## The American Socialist Quarterly

concepts held practically since the founding of the Comintern, for instance, that social democracy was the main bulwark of capitalism, were also abandoned.

An enumeration of some of the more important changes in policy, of a constructive character, will suffice to illustrate the thoroughness with which the "third period" has passed into history.

1. The theory of "social fascism" and all the concepts connected with it are abandoned. No longer are socialist parties the main bulwark of capitalism. No longer are they a "wing of fascism". Everywhere there is shown a sudden friendship to the socialist movement, a desire for a united front. Not stopping here, the communists, for the first time since the split, are talking of the need for re-establishing the united political party of the working class through unification of the socialist and communist parties.

2. Arising from the changed attitude to the socialist parties, is a changed attitude toward the united front. No longer is there talk of "united front from below," "against the social democratic leaders." There can be no doubt of the genuine desire on the part of the Communist International for a real united front with the socialist parties.

3. There is also a new estimate of the trade union movement, which is no longer made up of "company unions". Union splitting, dual unionism, and the related disruptive tactics are completely abandoned.

4. Perhaps the most striking change of all is the new appreciation of bourgeois democracy and the dividing line between it and fascism. To understand the full significance of this change, one must remember that for some eight years, the communists in practice made no distinction between the two, often flirted with fascists, ideologically as well as organizationally, and even developed the theory that fascism was a sort of forerunner, or transition, to communism.

5. The Seventh Congress also layed the ghost of "nihilism on the national question," even admitting that the Comintern had committed some blunders on this important matter.

6. After fighting against "exceptionalism" for six hectic

## The Communist International

years, the Comintern finally decided that there was something in it after all, and instructed all of its sections not to transfer policies and tactics from one country to another mechanically.

7. Finally, the individual sections were given (on paper) greater autonomy in the conduct of their internal affairs and in the elaboration of their line of tactics. This is an important concession, even if it remains only on paper, as it recognizes the falseness of the type of centralization which has characterized the Comintern in the past decade.

Regardless of what we must say further about the Seventh Congress and the Comintern as a whole, it would be foolhardy to refuse to recognize the above changes, or to refuse to welcome them as measures which can work out advantageously for the working class. And this is true regardless of the intentions of the Comintern in accomplishing these changes. Objectively, the new tactics of the Comintern may be of great benefit to the worker, and this is the primary consideration. That the Comintern will endeavor to derive factional benefit from its new tactics goes without saying, and of course, to the extent that such benefit might injure the movement as a whole, they ought to be combatted.

But a mere statement of the corrections which have been made is insufficient. It is equally important to see how the corrections have been made, whether the previous course is honestly and frankly recognized as false, and what indications there are that the new tactics will be carried out in practice over an appreciable period of time.

From this examination the Seventh Congress does not emerge with glowing colors. For the new line was adopted without the old one having been declared false. Where an error was acknowledged, it was shunted onto the shoulders of some insignificant "scapegoat".

Let us take as an example the examination of the cause for the fascist victory in Germany. Dimitroff lists five major reasons for this victory:

1. No united anti-fascist proletarian front.
2. No genuine mass struggle against the liquidation of

## The American Socialist Quarterly

the bourgeois-democratic liberties.

3. The failure to fight against the suppression of the Red Front League.

4. No decisive measures against the fascist movement were taken by the Prussian government.

5. Failure to re-establish and extend all forms of social assistance, and the introduction of a moratorium and crisis benefits for the peasants.

And Dimitroff concludes:

*"It was the fault of the Social Democrats of Germany that this was not done, and that is why fascism was able to triumph."*

This, it is clear, is the old tune. Where is the culpability of the German communists and of the Comintern itself in all this? How about the communist opposition to the united front? How about the united front with the fascists in the infamous "Red Referendum"? How about the united front with the fascists in the Prussian Landtag to overthrow the Braun-Severing socialist government, making way for Von Papen? How can one take seriously the change in line of the Comintern until it shows a willingness to acknowledge its own crimes, and leave the acknowledgment of the errors of the socialists to the socialists?

Besides, is it likely that the decision with reference to the mechanical carrying over of policies from one country to another will be carried out? Hardly. For the Congress itself immediately aroused the entire movement with a new international fetish—the People's Front. Originating in France because of an extraordinary situation there, it has become the communist cure-all from Bulgaria to New Zealand. It has completely displaced its predecessor, "Class against Class", and is equally absurd. For the application of the tactic of "People's Front" without regard to class relations, to the objective conditions in the country, to the strength of the labor movement, can only result in opportunism and in the liquidation of the independent activity of the working class.

How "revolutionary" this slogan will be in practice can



## The Communist International

readily be judged by the following paragraph from the New York City Election Program of the Communist Party:

### "FOR THE PEOPLE'S FRONT AGAINST FASCISM"

"The hour demands the building of the broadest People's Front, uniting workers, farmers, unemployed, professionals, small businessmen, Protestants, Catholics, Jews, Socialists, Communists, Democrats, Republicans—a People's Front fighting in the interests of the common people, the working population and poor farmers."

So that mechanical uniformity has not been abandoned. Only another "inspiring" slogan has been substituted for the discredited one.

It might be insisted that this discussion is futile, that all we should be concerned with is whether the new line is right or wrong, not with how it was achieved. Not so! For this method of correcting "errors" prepares the ground for their constant repetition. And in order to judge an organization properly we must know not only what it stands for, *but also how it works*. In this regard, the Seventh Congress made no improvement in the Comintern.

Even with these shortcomings, had the Seventh Congress confined itself to making the above-mentioned corrections in its line, it would on the whole have been a progressive Congress. Unfortunately, it did not stop there. As so frequently is the case, the pendulum made a swing from extreme left to extreme right. Having taken one step forward by revising its line, which had been false in the period preceding the Hitler victory, it took three steps backward with regard to its tactics on the issues arising from the Hitler victory. On the burning question of war, bourgeois democracy and fascism, and coalition governments, the Communist International today stands on the same ground as the extreme right wing of social democracy. And this, at a time when the socialist workers in large numbers had already begun to abandon these positions as having contributed to the defeat of the proletariat in Germany, Austria, and elsewhere!

## The American Socialist Quarterly

The new Comintern position on war is a form of chauvinism, "left" chauvinism. It is a call to support war on the part of countries either allied with the Soviet Union, or fighting against fascist countries or both. It has even been extended to include support in a war to "potential colonies," which of course includes practically the entire world. How jingoistic and anti-working class this policy is may be seen by two diverse examples.

Harry Pollitt, leader of the British communists, has declared that in the event of Poland or Czechoslovakia being involved in war, the communists **"will support in that war their own ruling class"** on the ground that it would be a war for "national liberation". The Dutch communists have adopted the same policy with regard to Holland.

In far-off Sweden a communist leader was asked for the attitude of his party toward military sanctions and the military budget. He replied:

"When we communists go in for sanctions, we are also ready to take the consequences. If the League of Nations applies sanctions for the freedom of Abyssinia, we must support the demand that Sweden also participate, with its military forces, if it is demanded. We will also vote for the budget that will be necessary for this."

The present position of the communists on war is by now so well known, that it is unnecessary to enter into any detailed analysis of it. In adopting this position, the Comintern repudiated its own finest traditions, the justification for its very foundation. Instead of an organ for "world revolution," the Comintern has become an organ to induce the working class to support one side in an imperialist war. The tactic "turn the imperialist war into a civil war" which gave Lenin and the Bolsheviks power in Russia is now being replaced by the tactics of coalition with the bourgeoisie, which eventually paved the way for Hitler in Germany.

The second, in the unholy trinity in the bag of new tactics shown by the Seventh Congress, is the method of combating fascism by supporting—bourgeois democracy.

"The choice is no longer between fascism and communism" declare the communists, "it is between fascism and

## The Communist International

democracy." For this reason they come out for democracy as the means of defeating fascism.

This is a new tactic only for the communists. For if we look to Germany and to a lesser extent to Austria and Spain, we see that this is the tactic which was applied, and which failed. The stating of the alternative "fascism or democracy" seems to imply that fascism is something which is independent of contemporary capitalism, expressing the decadence of capitalism as a system. There is no unbridgeable gap between fascism and bourgeois democracy. They are both children of capitalism. So long as capitalism exists, there is always the possibility of a "growing" into fascism. The permanent elimination of the danger of fascism can be achieved only by the overthrow of capitalism and the beginning of the building of socialism. Therefore, for the period, it is absolutely correct to place the alternative: *Fascism or Socialism*. This does not mean refusal to defend the present democratic liberties, as the communists did in Germany, or to fail to undertake specific measures against the fascist danger. But all this work must fail if it does not have a perspective extending beyond the immediate struggle. That perspective must and can be only the placing of the proletariat into power.

From its new attitude to war and bourgeois democracy, the Comintern logically falls into the third basic error of its present position—*coalition*!

If together with the "democratic" bourgeoisie we are to support war; if together with the democratic bourgeoisie we are to defeat fascism, then does it not logically follow that the best way to accomplish these things is to have control of the government together with the "democratic" bourgeoisie?

Of course, the term "coalition" has been discredited and the communists do not use it. "Government of the anti-fascist people's front" sounds better, but is it any different? What, for instance, were the coalition governments in Germany? They were governments of the socialists and of the democratic bourgeois parties which were opposed to fascism. The governments proposed by the communists will have exactly the same character with the exception that the communists will also

## The American Socialist Quarterly

participate in them. That surely is not a basic difference. What other difference does Dimitroff find?

"While the Social Democratic government is an instrument of class collaboration with the bourgeoisie in the interest of the preservation of capitalist order, a united front government is an instrument of collaboration between the revolutionary vanguard of the proletariat and the other anti-fascist parties in the interest of the entire toiling population, a government of struggle against fascism and reaction."

*Dimitroff has here stated what his intentions are in establishing a coalition government, nothing more.* These same intentions were stated by the German Social Democrats when they entered a coalition. But objectively, no government made up of workers' parties and bourgeois parties can be anything else but "an instrument of class collaboration with the bourgeoisie." For if it were anything else the bourgeoisie would not be in it. The German socialists were at least frank in their recognition of this fact. They recognized a coalition government as an evil, the "lesser of two evils" but an evil nonetheless. The communists try to parade it as a glowing achievement.

Indeed, Dimitroff recognizes the futility of coalition when he declares:

"Final salvation this government cannot bring. It is not in a position to overthrow the class rule of the exploiters and for this reason cannot finally eliminate the danger of fascist counter-revolution.

Amazing? Yes. Why should the revolutionary party assume responsibility for the government which can accomplish nothing for the proletariat. Dimitroff has an answer to this question also. *Transition.* The coalition government will be the transition to Soviet power, to the proletarian dictatorship, to a pure socialist government.

We are sorry we cannot score this discovery as a triumph of originality for Stalin-Dimitroff, for there is nothing original in this idea. It was used more than a decade ago and became the theoretical justification for all coalition governments.

In the "Critique of the Gotha Program", Marx said: "Be-



## The Communist International

tween capitalist and socialist society lies a period of revolutionary transformation of the one into the other. To this there corresponds a political transition period during which the state can be nothing else but the revolutionary dictatorship of the proletariat."

The post-war coalitionists did not favor this at all, and as a result interpreted it as follows:

"This sentence we can today vary on the basis of the experiences of the last years as follows: Between the time of the *pure bourgeois* and *pure proletarian* governing democratic states there lies a period of transformation of one into the other. *To this corresponds a period of political transition during which the government will as a rule assume the form of a coalition government.*"

Is this not the same formulation as Dimitroff's? Is this not a more honest revision of Marx? Dimitroff may think he is quoting Lenin. Sorry to disillusion him. *The above is a quotation from—Karl Kautsky!*

What are the prerequisites for the establishment of such a coalition government? Dimitroff carefully lists them:

"Under conditions of political crisis, when the ruling classes are no longer in a condition to cope with the mighty upheaval of the mass anti-fascist movement,

"First, the state apparatus must be sufficiently disorganized and paralyzed. . . .

"Second, the broadest masses of toilers, particularly the mass trade unions, must be in a violent state of revolt against fascism and reaction. . . .

"Third, the differentiation and leftward movement in the ranks of social democracy. . . ."

*A very good re-statement of the conditions which, according to Lenin, are prerequisites for a proletarian revolution!* And at such a time, the Comintern wants to set up—a coalition government!

If there can be even the slightest justification for the social democratic policy of coalition, it is that it was a policy for a period of capitalist stabilization. But the Comintern proposes this policy for a period of capitalist instability and

## The American Socialist Quarterly

revolutionary discontent.

Considered as a whole, therefore, revolutionary socialists must reject the new line of the Comintern, for it is the new, the objectionable features which are its dominant characteristics. Should we then cease designating the Comintern as a working class movement? Not at all, for there are parties in the Labor and Socialist International which, on the questions, hold the same or similar views. And just as inside the Labor and Socialist International, revolutionary socialism, through discussion and democratic procedure, hopes to win the membership to its position, outside it must carry on a vigorous battle against the position of the Comintern as a menace to the revolutionary movement.

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# Third Party Movements

ANDREW J. and HANNAH BIEMILLER

IT has become increasingly apparent that we are probably on the eve of new developments on the American political scene. The prolonged economic depression and the evident inability of capitalism to solve it, is bringing in its wake new political alignments.

On the one hand conservative leaders are calling for the creation of a strong tory-minded party, planning either to revise the Republican machine for this purpose, or to create a new "Constitutional Party". On the other hand we find evidences of a new party, anti-capitalist in character.

In between is a curious combination of enlightened capitalists, (that is, capitalists who realize that the president is doing his best to save their skins), and liberals supporting Franklin D. Roosevelt. The Democratic Party has a tremendous machine headed by an astute politician. Jim Farley has cleverly used many of the brain trusters' schemes for distributing more political patronage than any other political leader in America has ever had the good fortune to get his hands on.

Roosevelt still has the support of most labor leaders, who believe that such legislation as the Wagner Labor Disputes Bill establishes Roosevelt clearly as a "friend of labor".

However, there is wide questioning, among workers and farmers, of capitalism and Roosevelt. Bit by bit thousands upon thousands of people are losing their faith in the existing economic and social system. They are now groping blindly for a new orientation.

Roosevelt's popularity is waning, primarily for two reasons: first, the resentment against many features of his relief administration, particularly WPA wages, and second, the constantly increasing cost of living. We must be careful, however, not to fall into the trap of wishful thinking. While it is true that Roosevelt has slipped, it is also probably true that he still has a strong hold on the loyalty of a large majority of the American people. The personality of Franklin D. Roosevelt is one of the greatest stumbling blocks to crystal-

## The American Socialist Quarterly

izing the vague anti-capitalist sentiment which is more prevalent now than at any previous period of our history.

\* \* \*

The Socialist Party has always favored a national farmer labor party in preference to state farmer labor parties. It is becoming an open question, however, whether the formation of a few strong state farmer labor parties in which socialists participate is not an inevitable step toward a national party.

The difference between states is tremendous. It is folly to overlook it. Some states are almost ready for the step. Others show absolutely no interest and only a few good examples will influence them. State parties could assist in financing organization work in other states, as the stronger socialist organizations do today.

We may as well face frankly the fact that there is no widespread national demand for a national farmer labor ticket in 1936. In the opinion of the writers the launching of such a ticket would be a fatal mistake, with results similar to the ill-fated Progressive collapse in 1924.

There is a small and loud, but unimportant, group demanding immediate action on a national farmer labor party. The people who attended the conference called by the Farmer Labor Political Federation (now known as the American Commonwealth Political Federation) in Chicago are typical of this group. It is safe to say that most of them could not raise ten votes in their home precincts. The only ones with any political experience were disgruntled old-party politicians who are willing to grab at any forlorn hope on the chance of getting back into office. They have never taken discipline from anybody, and never will.

Responsible farm and labor leaders were conspicuous by their absence. The group as a whole had neither principles, money, nor influence. Its members varied from left-wing Communists to Roosevelt Democrats, but most of them were middle class romantic liberals. Such individuals might do yeoman service in a sound class party with strong organization and discipline, but they can never take a leading part in building it.

The so-called "progressive" senators and congressmen,



## Third Party Movements

Borah, Nye, Norris, Lundeen, and others, gave a wide berth to this meeting and the group behind it. Congressman Marcantonio attended and withdrew in disgust. Senator Nye made a speech pointing out in no uncertain terms that he and his colleagues were not going to give up their present affiliations until they saw something substantial to tie up with. It is doubtful if these men would ever fit into any disciplined party of farmers and workers.

\* \* \*

What kind of party would Socialists welcome? We must take into consideration on the one hand, the necessity of sound Marxian economic philosophy, and on the other, the temperament of the American people.

In the first place such a party should have a class base, that is, it should be founded on labor unions and organizations of working farmers. Second, it must have a democratically controlled organization sufficiently disciplined to hold its leaders and elected officials in line with its platform. Third, it must have a platform whose ultimate demand is the replacement of capitalism by a workers' government, and whose immediate demands all lead in the direction of improved conditions for workers, farmers and unemployed, and increased control over private capital by the government.

Platform is purposely placed last, as we have seen all too many groups with radical preambles and resolutions whose actions are completely reactionary. Control over its leaders by the organization is of more importance than the most radical program that could be drawn.

We want no more episodes like that of last fall, when Hendrik Shipstead repudiated the socialist platform of the Minnesota Farmer Labor Party and ran "on my record".

The financial set-up of such a party is also of the utmost importance. A party run on the contributions of a few is going to be owned by those few. Governor Olson's campaigns in Minnesota have been largely paid for by the "All-Party Committee for Olson for Governor", an independent personal organization over which the Farmer Labor Party has no control. It is not strange that Olson takes the view that he is not

## The American Socialist Quarterly

elected by the party and will not take orders from it.

Socialists have always believed in a dues-paying organization, as much for its effect on the individual members as for the money collected. We feel that if a man will not help support his party, he will take little interest in it.

However, a mass party is not going to be able to collect high monthly dues. A yearly or quarterly payment, probably not exceeding a dollar a year, might be wiser. At the present time many farmers complain that they cannot meet the high monthly payments of the Socialist Party, and that the impossibility of regular meetings in winter puts them so far in arrears in their dues, that they cannot catch up.

Of course, the ideal system would be a federated party with a per capita tax on members of affiliated organizations, with some special provision for the unemployed, and perhaps individual membership for those not eligible for any organization.

But this is impossible under the present union set-up. Most union constitutions forbid such affiliation. Hence some subterfuge such as Farmer Labor Party Clubs will doubtless have to be established. The interest and the enthusiasm of the unions can be gauged somewhat by their willingness to find ways and means of building a party without letting themselves be gagged by their reactionary constitutions.

\* \* \*

When we examine the two most important state third parties we find them sadly lacking in the qualities needed. The Progressive Party of Wisconsin and the Farmer Labor Party of Minnesota are not going to be saviors of the country.

Let us examine the Progressive Party first, as it is in the most significant state, the state which has the largest Socialist Party, the most advanced labor movement, and the most progressive tradition, of any state in the union.

The Progressive Party is held together by two things, the ghost of "Old Bob" LaFollette and Roosevelt patronage. These two factors are manipulated with great skill by Philip LaFollette and his astute secretary, Thomas Duncan, in order

## Third Party Movements

to keep a queer collection of populists, Democrats, labor leaders, farmers, small business men, and a large group of middle class elements in one organization.

Farmers who hate Philip LaFollette's College of Agriculture still swear by "Old Bob" and refuse to fight his son. Democrats who hate the power of the "Madison ring", the LaFollette personal machine, have to kow-tow to it for appointments. Labor men who are disillusioned about the depth of LaFollette's interest in labor work for him because they think he is better than a Republican or Democratic governor would be. Philip LaFollette's anti-chain store patter and orations on Wisconsin-owned business hold the small merchants in line.

Only a political accident has kept the Progressive Party from being the Democratic Party in Wisconsin. Until 1932 there was no Democratic Party in the state worth mentioning. There were the "stalwarts", (reactionary Republicans headed by Kohler) the Progressive, and the Socialists. When the LaFollettes were defeated in the spring primary of 1932 and the Democrats swept the state in the fall of the same year, it was a complete surprise to everyone. The Democrats had no political experience or organization, and soon lost hold.

Eager to get rid of the Republican label, the LaFollettes consented to the formation of a new party in 1934. But they kept it strictly under their own thumbs, holding a cut and dried convention which permitted no opportunity of expression for the many rank-and-file Progressives who felt that the time was ripe for a real class party.

Since then the Progressives have been hand-in-glove with the national Democratic administration. The state Democratic organization is out in the cold and the best plums all go to the Progressives. It is rumored that Roosevelt will run on the Progressive ticket in Wisconsin in 1936, and not on the Democratic ticket. Whether this is true or not, both the LaFollettes have come out openly in support of Roosevelt, and rarely make a speech without praising him.

The Progressive Party is in no sense a class party. Philip LaFollette has repeatedly stated that he is opposed to a class

## The American Socialist Quarterly

party. He wants one built on "American traditions", which he leaves undefined. While some labor and farm groups support it, the officials of the State Federation of Labor and most Milwaukee labor leaders are Socialists. An increasing number of farm leaders are deserting the Progressive ranks. If a real farmer labor party could be started, there would be a considerable influx of them.

The Progressive Party is by no means democratically controlled. No platform was adopted at the convention at which the party was formed, in spite of the loud protests of Amlie's group and others. There is no provision at all for control over elected officials, or for expression of opinion on party policies. There are no party policies; there are only LaFollette and Duncan policies.

The Progressive Party believes in open primaries. The result is that any individual who can scrape up a local organization and a little money can get himself elected as a Progressive, and he is responsible to no one but his local machine. Every shade of opinion from neo-Communist to Hoover Republican is to be found in the party.

The Governor, Philip LaFollette, manages to hold them in line most of the time on bills which he particularly favors, but only at the cost of giving them complete leeway on many matters of utmost importance to farmers and workers. Several Progressive legislators, for example, opposed the thirty-hour bill sponsored by the State Federation of Labor. The voting record of the Progressives shows as much divergence even on matters included in their platform as there is among Republicans and Democrats.

There are other elements in the Wisconsin situation however which makes the state the most significant in any discussion of farmer labor parties. There is within the Progressive Party a group of insurgents known as the Farmer Labor Progressive League, led by Congressman Thomas M. Amlie. This group is definitely hostile to Roosevelt and refuses to back him. It has a platform of its own more radical than the Progressive platform, and it believes in discipline of its members.



## Third Party Movements

Politically, the Wisconsin State Federation of Labor is a much more significant element than are the State Federations in most states. It has long been on record in favor of a farmer labor party, and this year its convention took the important step of instructing its officers to call a conference of groups interested in the formation of such a party. The following organizations were asked to send two representatives each to a conference in Milwaukee: the Socialist Party, Progressive Party, Farmer Labor Progressive League, State Federation of Labor, Railway Brotherhoods, Wisconsin Workers' Alliance, Farm Holiday Association, Farmers' Equity Union, and the Wisconsin Milk Pool.

This group will be in session intermittently until the first of November. There is genuine desire for a farmer labor party among rank-and-file unionists, many farmers, members of the Farmer Labor Progressive League, and the Socialist Party.

If the Socialist Party decides to participate in a state party in Wisconsin, it will, of course, act under the conditions laid down in the national party constitution, Article X, Section 3, which reads as follows:

"State organizations of the party may cooperate with organizations of labor and working farmers, within their state, in independent political action, but such cooperation must in all cases be on the following conditions:

"A. The term 'independent political action' as herein employed shall be understood to mean the nomination and election of candidates by a party of workers and farmers, organized in express opposition to the political parties supporting capitalism and excluding participation in the primaries of such parties as well as voting for their candidates in public elections.

"B. The political program and platform adopted for such joint political action shall not be inconsistent with the platform and principles of the Socialist Party.

"C. State or local organizations of the Party desiring to cooperate with political organizations of labor and working farmers shall first get the approval of the National Executive Committee."

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## The American Socialist Quarterly

So much for the situation in Wisconsin. The Minnesota Farmer Labor Party has many of the defects of the Progressive Party, and a few of its own. Its worst fault is lack of control over elected officials and party leaders. At the present time it is torn by dissension. Governor Floyd B. Olson is charged with using his patronage to build a personal machine. Thomas Latimer, Mayor of Minneapolis, who has gubernatorial ambitions, condoned the recent police killings of pickets in his city. Many Farmer Laborites are up in arms demanding his ouster from the party, but they have no adequate machinery through which to express themselves.

If the Socialist Party had remained strong and intact inside the Farmer Labor Party, it might have been an influential factor. But many Socialists jumped on the Olson patronage bandwagon. Many others saw no reason for maintaining the organization. As a result its influence is negligible.

The Farmer Labor Party of Minnesota will doubtless again give Roosevelt its open or tacit support in 1936, but a large bloc of members would favor a national set-up. However, Olson, like LaFollette, will not risk loss of patronage for any little matter of principle.

Elsewhere in the country groups are discussing the advisability of a Farmer Labor Party. Iowa has a small movement grouped around Wallace Short, who ran for governor in the last election on a farmer labor ticket, after having been defeated in the Republican primary. He has a group of personal followers in his home town of Sioux City where he owns a newspaper, but his influence among farm and labor groups is negligible. His philosophy is more nearly populist than radical.

Connecticut is talking labor party. Many sincere labor groups are active in attempting to form a new party. It is too early to say what the future holds. It must be noted that a number of Republicans are interested in the venture, possibly with the thought that a third party would draw away enough votes from the Democrats to put them back in office. The bone fide farm, labor and socialist elements however may be able to overcome this handicap.

## Third Party Movements

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On the whole, the outlook for a farmer labor party before 1938 at the earliest is not good. Wisconsin and Connecticut may possibly have state parties by 1936, but there is not sufficient interest elsewhere.

Most labor unions have clung too long to their old policy of giving half-hearted support to this or that old-party candidate before election in the vague hope of getting half-hearted results from him after election. They will not change that policy overnight. Even those who express real interest in a Farmer Labor Party do not intend to do more than endorse its candidate and perhaps vote a contribution of a hundred dollars or so. They do not realize the work involved in setting up a substantial party that will succeed in electing some of its candidates to office in its first fight, and build a permanent organization to function between elections.

Yet, some sort of party must be built before many years have passed. What will be the most effective method? In states where work for a third party is now being carried on, the Socialist Party is strong. It has trained and experienced people, an organization, and a press; hence it will be able to play a leading role.

The quickest way to get the kind of farmer labor party we want, in our opinion, is to build the Socialist Party. Fifty socialists in one town have more value than two socialists each in twenty-five towns. If they build an organization that will win the respect of the unions and the working class in general, that can show real understanding of labor's problems and the will and ability to help, their influence will be felt in the building of a labor party.

The most important tasks before us are educational work with trade unions and farmer organizations, and the building up of our press. By these means we can establish contacts with workers' groups, help them gain an understanding of our philosophy, and of their own economic and political needs. Unless we do this, we shall have lost our right to take a prominent part in a genuine farmer labor party, state or national, if and when it comes.



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Of The American Socialist Quarterly, published quarterly at New York, N. Y., for October 1, 1935.

State of New York, N. Y., County of New York, N. Y. Before me, a Notary Public in and for the State and county aforesaid, personally appeared Anna Bercowitz, who, having been duly sworn according to law, deposes and says that she is the managing editor of the American Socialist Quarterly and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—The American Socialist Quarterly, 21 E. 17th St., N. Y.

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Managing Editor—Anna Bercowitz, 21 E. 17th St., N. Y.

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2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)

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Anna Bercowitz, Managing Editor.

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