On Lawmaking
Author(s): William J. Chambliss
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ON LAWMAKING

There are literally thousands of laws enacted each year. In the United States with fifty state legislatures passing laws, thousands of municipal and county ordinances and the federal government, the sheer magnitude of law is overwhelming. In addition, there are court decisions at the state and federal level which often constitute the creation of new laws. Other nations, including most European countries and Scandinavia, where the law making function is more centralized, do not produce quite the magnitude of new law each year that the United States does, but it is nonetheless a very prolific enterprise, this business of making law.

It is not surprising, then, that attempts to generalize about the processes that lead to the creation of law should be wanting. Some laws are clearly passed for the specific interest of an individual; others emerge out of lobbying by groups representing substantial portions of the population; yet others, perhaps the majority, are no more than an expression of the views and interests of legislative committees.

Despite this, however, there remains the need for generalization to aid understanding. Fortunately, we are not hopelessly entangled in an endless number of laws for they are not all of equal significance. In fact, most bills and statutes passed by legislators are concerned with tinkering with existing law. What we should be concerned with is not the mountain of *minutiae* produced as law but the critical events, the points at which laws are produced which provide a new approach to a problem, a basic revision of the existing relationships between state, polity, government and basic institutions; new innovation in the conception of legal contracts or the rights of children vis à vis parents; of women and work, and so forth. These laws are the ones that comprise the important turning points in the historical process and are therefore the ones about which we should be concerned to develop adequate sociological theory:

> Most cases, to be sure, are merely cumulative in their effect, moving in well-beaten paths, with some inevitable deviation but by and large within the lines laid down. Occasionally, however, comes a case of tremendous important.[1]

These are the cases which "strike out in a new direction."

Explaining the Creation of Law

Social theories differ markedly on the relative weight they give to the ideological and the material aspects of society. Theories which place greatest emphasis on ideology see the beliefs people have, their ideas of right and wrong, the things they value and their culture as the most important configuration of elements shaping the way people and their history behave. Theories which emphasize the importance of the social structure stress the way people organize the production and distribution of

[1] J. Hall, *Theft Law and Society* (Revised Edition, 1952). 3–4.

resources: food, shelter, clothing, money and power as the proper starting point for sociological analysis. There is a sense in which the entire history of western social thought can be seen as a struggle between exponents of these conflicting traditions.

In the zeal to defend one or the other theoretical paradigm it is not uncommon to find one side accusing advocates of the opposing position of having "completely ignored" or "relegated unimportant" those features of reality seen by the writer to be "salient." Those who attack ideological or normative theorists accuse them of neglecting entirely facets of social structure that are not part of the ideology of the times. Conversely those who argue against structural interpretations that de-emphasize the importance of culture or ideology like to characterize such theories as devoid of any emphasis upon ideology as a moving force. Attacks on Marxist theory are among the clearest examples of this erroneous contruction of strawmen to strengthen one's own argument. Critics of Marxism invariably accuse this tradition of ignoring ideology and culture as forces shaping society. They also accuse Marxism of being "reductionist" and attributing everything to the force of economic determinism. No careful reader of Marx, Engels or those who have followed in that tradition could honestly make such an error. As Engels put this conflict between emphasizing social structure rather than ideology to a friend in a letter:

> ... because we deny an independent historical development to the various ideological spheres which play a part in history (we do not therefore) deny them any effect upon history. [2]

The point is given more concrete manifestation when it is observed that those nation-states that have based their political and economic organization on Marxist ideas have been among those most concerned to develop and foster an ideology among the people supportive of the state.

Critics of Weber and Durkheim often make the same oversimplification in the other direction, accusing them of emphasizing culture, norms and ideology to the exclusion of social structure. The reduction of these complicated theories to such simple mistakes is as fallacious as is the characterization of Marxism as economic determinism.

This is not to say, however, that there is no significant difference in emphasis between sociological tradition. There are differences in emphasis which make for profound differences in the claims and explanations put forth. If one sees the most important force behind the development of the state in modern societies as resulting primarily from a tendency towards increasing rationalization and only secondarily from the demands and machinations of material conditions then a theory is suggested which is quite different from one that sees the state as developing primarily as a means of furthering the interests of those who control the means of production and

[2] Letter from Engels to F. Mehring, 14 July 1893 in K. Marx and F. Engels, *Selected Works In One Volume* (1968) 701.

only secondarily as being influenced by the ideology and norms extant at the time.

There was a time, not too long ago, when theories trying to answer the question of how laws are created followed directly from the two paradigmatic traditions discussed above. One theory suggested that the law represented "societal consensus". Durkheim, Sumner, and Hall (to mention the more obvious examples) saw the law as primarily a reflection of the "collective consciousness", the "norms and values" and the "customs" of a people. In opposition to this view was the "ruling class" model which argued that the law reflected the ideas and the interests of those who controlled the economic and power resources of the society, those who sat at the top of the political and economic institutions.

One is hard pressed to find examples of modern social scientists defending the pure forms of either of these models. Everyone, it seems, recognizes that there is some truth in both claims. Thus Richard Quinney invokes the idea that the law reflects extant ideology but integrates into this hypothesis the notion that extant ideology is largely a reflection of dominant class interests:

> As long as a capitalist ruling class exists, the prevailing ideology will be capitalistic. And as long as that ruling class uses the law to maintain its order, the legal ideology will be capialistic as well.[3]

Lawrence Friedman has expressed a similarly eclectic view of the relationship between ideology and economic structure but his emphasis is on the role of consensually held values rather than economic structure: "What makes law, then, is not 'public opinion' in the abstract, but public opinion in the sense of *exerted social force*."[4] Friedman goes on to recognize that there are differentials of power which makes it more likely that some groups (and social classes) will be more successful in "exerting social force to create law" than will other groups. The "explanation" proffered is one of competing interest groups with different power bases as the moving force behind the creation of laws.

These two views of which the works of Quinney and Friedman are representative, characterize the current debate over law creation. They are logically derivative from earlier, less subtle characterizations of "ruling class" and "normative" theories of law. It is to the credit of the sociology of law as a scientific endeavour that the more sophisticated theoretical formulations take account of the empirical research and theoretical discussions which revealed the shortcomings of the more simplistic interpretations.

Several criticisms are nonetheless appropriate to the paradigms suggested by Quinney and Friedman. For one thing, neither is amenable to empirical test. As Friedman recognizes, if the test of whether or not one "interest group" has more power than another is that one is successful in its efforts to

[3] R. Quinney, *Critique of Legal Order: Crime Control in Capitalist Society* (1974) 138.

[4] L. Friedman, *Law and Society: An Introduction* (1977) 99.

affect legislation while the other is not then the theory is a mere tautology which tells us that those groups whose interests are represented in the law are the groups who succeeded in having their interests represented in the law. On the other hand, the view that the law represents the ideology of capitalism so long as there is a capitalist ruling class begs the question of how this comes about. Is there an automatic response of all law or is there a process involved? Furthermore, this theory is also subject to the dangers of tautology. If we discover the passage of laws that are opposed by the "capitalist class" then does this contradict the theory? Perhaps it should but if we invoke the idea that "in the long run these laws turn out either to be unenforced or to represent the interests of the capitalist class" then we have once again suggested a paradigm which becomes true by (a) definition and (b) the invocation of auxiliary hypotheses.

There is a third theoretical paradigm which captures the best of these alterntive perspectives and is at the same time able to make sense of the extant empirical data on law creation. This is the dialectical paradigm which sees law creation as a process aimed at the resolution of contradictions, conflicts and dilemmas which are inherent in the structure of a particular historical period.

Contradictions and Resolutions

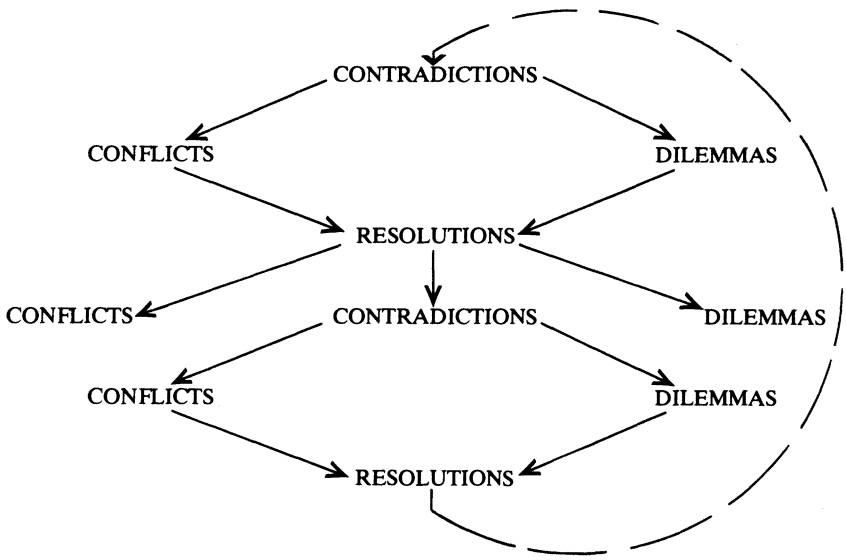
Every historical era has its own persistent dilemmas and conflicts. The most important dilemmas and conflicts extant in a particular time and place are those that derive from the economic and political structures of the times. Under feudalism a source of continuing conflict and irresolvable dilemmas was the attempt by feudal lords to expand their territory and provide protection for their serfs from attack by other feudal barons. These conflicts and dilemmas, in turn, were a direct result of the particular contradictions inherent in that economic form which we have come to call feudalism.

A contradiction is established in a particular historical period when the working out of the logic of the social structure and ideology must necessarily destroy some fundamental aspects of existing social relations.[5] This admittedly abstract depiction of what is meant by contradiction can best be comprehended by juxtaposing contradictions with other aspects of reality. Under capitalism, according to Marx, the basic contradiction is between capital and labour. This contradiction inheres in capitalism because if the workers and the capitalists both persistently and consistently pursue their own interests as defined by the logic of capitalism, then the relationship between workers and capitalists must eventually be destroyed. Without debating for the moment the validity of Marx's position we want only to illustrate the meaning of contradiction from this example. This contradiction of capitalism produces a wide range of dilemmas and conflicts. The attempt by workers to organize and demand higher wages, better working conditions, and tenure of employment, is a result of the basic contradiction.

[5] E. Mandel, *The Contradictions of Capitalism* (1970) 132–181.

The attempt by owners to resist these demands by workers creates conflicts.[6] The dilemma for capital, the state and government is how to resolve the conflicts: how to maintain the capitalist system without fomenting a revolution. Note, however, that it is usually the conflicts which create the dilemma for the state. It is conflicts which the state and the government attempt to resolve, not the basic contradiction. Note also that this process is a dynamic one whereby the contradictions create conflicts and dilemmas which people try to resolve. In the resolution of particular conflicts and dilemmas, assuming that the basic contradictions are not resolved, we inevitably have the seeds for further conflicts. Often, resolutions of particular conflicts and dilemmas not only create further conflicts but spotlight as well other contradictions which were heretofore less salient.

Schematically we can depict this model in the following way:



Let us take an example from a recent study of law creation to illustrate how this model works. Alan Page studied the creation of the "Special Areas Acts".[7] These were a series of laws passed in Great Britain between 1934–1937 which were similar to ones passed in many other capitalist countries during this period. The special areas which the legislation was designed to encompass were those which were especially hard hit by economic depression. The legislation consisted of three separate

[6] For two excellent recent articles on dialectical methodology see (a) Appelbaum, "Marx's Theory of the Falling Rate of Profit" (1978), *Am. Sociological Rev. 43* 67–81; (b) Appelbaum, "Marxist Method: Structural Constraints and Social Praxis" (1978) 13 *The American Sociologist* 73–81.

[7] Page, "State Intervention in the Inter-War Period: The Special Areas Act 1934–37" (1936) 3 *Brit. J. of Law and Society* 175–203.

enactments: the Special Areas (Development and Improvement) Act of 1934; the Special Areas Reconstruction (Agreement) Act of 1936 and the Special Areas (Amendment) Act of 1937.

The basic contradiction to which these laws were a response is that under capitalism it is part of the logic and ideology of the system that industry (and therefore employment opportunities) will develop in those areas of the country which provide the best opportunities for industrial and economic expansion. There is also the belief that allowing private entrepreneurs the freedom to locate industries and business wherever they wish will in the long run provide the best economic growth and highest possible standard of living for the workers. Unfortunately this does not always happen. Capitalism is subject to economic crises (slumps and peaks) which follow from certain fundamental features (and contradictions) of capitalist economic forms. As a result it will happen from time to time (and to some extent at all times) that there are large parts of any capitalist country which suffer from periodic or permanent economic depression.

Special Areas Legislation

During times of general economic recession the number of such depressed areas as well as the extent to which these areas suffer from unemployment will be vastly increased. This creates conflicts and dilemmas. The manifestation of the conflict will be labour unrest, sometimes violence and an attendant growth of militant and radical political movements. The dilemma for the state and the government is how to resolve these conflicts while protecting the capitalist system. Needless to say how to resolve the basic contradictions will not be part of the discussion. The discussion will focus instead on the wisdom of intervening to counteract what is a "natural consequence" of the capitalist economic system and if intervention is to take place what form it should have.

During the 1930's in Great Britain (and elsewhere) this was precisely what happened. The economy generally declined precipitously and large geographical areas suffered inordinately high rates of unemployment and economic stagnation. Workers became increasingly vocal in demanding state intervention to reduce the high rate of unemployment. Members of Parliament elected from these constituencies were pressed to call for national initiatives to alleviate the growing crisis. At first the response of the government (that is the elected officials and their appointees) was, to use a politically popularized phrase from several generations later, "to tough it out": "The initial reaction to the crisis was to pursue strict financial orthodoxy, that is, balanced budgets and reduced government expenditure ..."[8] This was the ideology of capitalism and the logic of this economic form precluded intervention by the state. Page quotes Lord Eustace Percy's pertinent remark:

[8] *Ibid.*, p. 189.

> Because I saw the facts, I did take a somewhat defeatist view of the possible solutions to the problem. There were basically only two possible solutions: new industry or migration. Not that I was alone in my defeatism. It is difficult to realize how slowly their prewar predecessors of all political complexions rid themselves of the assumption that the movements of industry must necessarily be determined by solid economic motives and the "artificial attraction" of new industries to depressed areas must therefore run counter to fundamental laws.[9]

Another government spokesperson echoed this sentiment and even suggested that intervention ran counter to the laws of nature:

> It is quite clear that the normal economic process which we have learned to expect has been working, and that, as labour is relieved by the easier production of, and reduced demand for, the commoner necessities of life, so that labour has been absorbed by the more intricate requirements of a more advanced civilization .... Although, of course, that change-over may create, and does create, in certain areas and in certain industries, very grave problems and very heavy stresses, yet I do not think one is entitled to regard it as an unhealthy symptom of a developing civilization; and I am sure it would be not only unwise but impossible, for any government to attempt to fight against an economic tide of that kind and try to standardize at any time the prosperity of this or that industry.[10]

The high sounding oratory and the call for the inexorable wisdom of capitalist development to fulfil the promise of inevitable progress did not alter the course of history. Nor did the oratory solve the contradictions or diminish the conflicts. "The demands that something be done steadily increased throughout 1933 and into the early months of 1934." *The Times* ran several articles and reported a survey which said in part: "There are parts of Durham where one feels strongly, sometimes angrily, that London still has no conception of the troubles that affect the industrial North."[11]

The increasing disaffection and criticism made some sort of action by government imperative. A committee was established which, after considerable floundering, rendered a report. On 24 October 1934 the Interim Report of the committee was approved by the cabinet. Then came the attempt to use the legislation principally for its symbolic value:

> Subsequent deliberations were entirely devoted to the public presentation of the proposals, it being agreed that the experimental nature of the measures should be emphasised to preclude their extension to other areas (other than those carefully delimited in the report) which regarded themselves as depressed ...[12]

Page summarizes the results of his study in a way that catches quite nicely the fit between his research findings and the general model of contradictions-conflicts-dilemmas-resolutions that we are proposing:

> In the subsequent process of conflict and amendment the legislation and its meaning emerged from the interactional sequence between the demands of the economy, the proponents of change and the actions of politicians and bureaucrats. Its meaning was

[9] *Ibid.*, p. 195.

[10] *Ibid.*, p. 193.

[11] *Ibid.*, p. 194.

[12] *Ibid.*, p. 198.

> thus an emergent property of this political process. What had been originally viewed in terms of existing norms and institutions, became successively reconceptualized as, a problem of severe localized unemployment and depressed areas, a problem of the adequacy of legislative intervention and finally, with the setting up in 1937 of a Royal Commission on the Distribution of the Industrial Population, as one of the locations of industry ...[13]

We see here the workings of the law creation process as an effort to resolve conflicts and dilemmas posed by fundamental contradictions of the economy being manifested, in extreme form, by the normal workings of economic change. The response to the conflicts is both ideological (at first resistance, then rationalization for intervention) and structural (involving changing economic patterns and modification of heretofore predominant economic policy). Finally, Page also reflects in his analysis the end product of this process, that is, the creation of new conflicts reflecting other contradictions revealed by the attempted resolution:

> The Act of 1934 was in many ways to become the vehicle for the promotion of the cause of the depressed areas through the exposure of its inadequacies rather than, as had been intended, the means to their political suppression."[14]

It may help to grasp the argument if we reiterate briefly why the model we are proposing stands as a solution to the shortcomings of the major alternative theories of law creation.

Taking the creation of the Special Areas Act in Britain as our data, how might the theory of ideology as the source of law account for this legislative innovation? Presumably the argument would have to be made that it was the general ideology of the people which was the moving force behind the creation of these laws. The problem, of course, is that as we have seen the prevailing ideology of at least a majority of the legislators was diametrically opposed to such legislation. It was antithetical to the logic, ideology and belief in capitalism to attempt to create industry in depressed areas. It was in fact only in the context of "political realism", which is to say in view of the persisting conflicts and threats to the established political (and perhaps economic) order, that legislation was effectively passed.

Nor does the theory that the law inevitably reflects the interests of the ruling class fare much better. Clearly the ideology and the perceived interests of the ruling class were hostile to the government's intervention in the location of industry. One could argue, of course, that this view was short-sighted; that unless something drastic was done the entire ruling class might have been overthrown by a revolution and therefore that the new laws were part of a stop-gap measure which preserved the ruling class with the least amount of sacrifice. Such a view is untenable theoretically because it is tautological and teleological. It is tautological because any solution to a problem can be interpreted as protecting ruling class interests if the ruling class

[13] *Ibid.*, p. 200.

[14] *Ibid.*, p. 202.

survives the change. It is teleological because it attributes some kind of rationality to the system that is independent of the people making decisions. It is much more accurate, and much better scientific theory, to see the relationship between the larger social, economic and political forces and the decisions being made by those who shape and create the legislation. This is what is intended by our model.

It may also be pertinent at this juncture to point out the extent to which other less general theories fit in with and fill out the model being proposed. As we have seen from the analysis of the Special Areas Acts, to a very real extent the passage of these Acts was a symbolic gesture consciously designed to placate a critical force which could not be ignored. This reflects what Edelman has called "the symbolic use of politics" and what Gusfield found as a crucial factor in the creation of prohibition laws.[15] It would be a mistake, however, to argue that these laws were only symbolic or that all laws are created for purely symbolic purposes. The intention of the legislators and the presumed effect of the legislation is rarely carried forth in a unilateral way between the formulation of law and its implementation; but it would be erroneous to suppose for that reason that the entire process is merely symbolic. It has symbolic elements and its symbolic character should not be overlooked any more than its legitimating function (that is the extent to which it helps to legitimize the existence of the entire system) can be ignored. But these functions alone cannot explain the creation of law. The social forces that produce law are more dynamic and more clearly processual than can be tucked away into a simplistic causal relationship such as is assumed by theories that focus solely on the symbolic quality of laws.

Pollution and Law

In recent years we have witnessed an explosion in the passage of public law relating to the environment and to consumer protection. For the most part processes by which these laws develop have not been the subject of systematic attention. One exception to this void, however, is the study of pollution laws conducted by Neil Gunningham. This area of legislation is particularly pertinent for our inquiry because it highlights the conflicts between public interest representatives (what Becker called "moral entrepreneurs") and those who own the industries which are largely responsible for the pollution.

Gunningham begins by pointing out the growth in recent years of concern over pollution. He singles out the publication of Rachel Carson's *Silent Spring* and the extent to which the media generally have brought the problem of pollution to public attention. But, he adds: "To explain the growth of environmental concern and the demand for legislation is not necessarily to explain the emergence of legislation. Only some legislative

[15] M. Edelman, *The Symbolic Use of Politics* (1970).

campaigns are successful, other fail."[16] The author goes on to point out that although public awareness about pollution problems increased in the years preceding passage of new laws there was certainly nothing approaching consensus:

> ... at one extreme are those who regard pollution as a minor problem and who deny that the environment is being threatened, while at the other, it is suggested that over-population, exploitation of natural resources and pollution will cause ecocatastrophe if present policies are not drastically amended.[17]

In his search for a plausible explanation for the emergence of pollution laws Gunningham also dismisses a simplistic "class conflict" explanation. He argues that the "working class" has not been particularly active or well organized in the campaign for anti-pollution laws. He acknowledges, however, that the most important groups opposing pollution control are "capitalists with strong economic interests in maintaining the status quo". Gunningham also notes that some government agencies (bureaucracies) develop a vested interest in opposing certain forms of environmental laws and come out strongly trying to influence legislation:

> In the pollution campaign, the clearest example of an agency engaged in status politics is the U.S. Department of Agriculture (U.S.D.A.) whose irresponsible attitude towards pesticides has been severely criticized. Why U.S.D.A. went overboard on new pesticides can be understood within an organization perspective. The department found its power and responsibilities diminishing in comparison with several other departments. Graham notes how the twentieth century has reached the farm, and the successful farmer-businessman, with his vast acreage, college degree and modern machinery was less dependent on the U.S.D.A. than the poorly educated struggling farmer with his scanty crop a decade or two earlier.[18]

Under these circumstances the U.S.D.A. was:

> ... in the tradition of all bureaucracies which feel their position threatened by shrinking responsibilities. The department's impulse to fabricate programmes which gave it the illusion of "business" has been especially apparent ... in the business of promoting pesticides, springing to arms at the first whisper of a past.[19]

The position taken by the U.S.D.A. and the negative reflex action of capitalist owners to any pollution legislation was, however, shortsighted for it failed to realize a fundamental contradiction between industrialization and the quality of the environment. While short-term profits will be maximized by spewing forth industrial waste into rivers and oceans:

> It has become apparent with dramatic suddenness that, at the present more or less uncontrolled rate of industrial and urban development, the major rivers and lakes of the country will become incapable of supporting marine life and unsuitable for humans.[20]

[16] N. Gunningham, *Pollution, Social Interest and the Law* (1974) 35. See also F. Graham, Jr.,*Since Silent Spring* (1970) 225.

[17] *Ibid.*, p. 35.

[18] *Ibid.*, p. 40.

[19] *Id.*

[20] *Ibid.*, p. 46.

In the long run it is apparent that the maximization of profits by ignoring environmental pollution will not be in the interests of capital.

Furthermore one of the most effective long-term profit maximization guarantees is the development of a monopoly. The law has often been used as a subtle means of increasing monopoly by creating law which gives an advantage to the largest firms in a particular industry. Thus the Meat Inspection laws in the United States were lobbied for and praised by large meat processing firms precisely because the added expense of meat inspection meant that the larger firms could more easily distribute the added expenses with a minimal loss of immediate profits; smaller firms would be forced out of business thus increasing monopoly for the larger companies.[21]

The same process is apparent vis à vis pollution legislation: In 1956 when the Clean Air Act was passed, industry was predominantly hostile to effective anti-pollution legislation inasmuch as this represented increased costs without any direct dividend ....[22] However by 1968 another Clean Air Act was passed which met with little industrial opposition.[23] Gunningham explains this shift as occurring in part because of the change in the importance of management as contrasted with owner control over major corporations in the modern capitalist countries. More importantly, however, Gunningham observes:

> Thus, where a firm can afford to implement pollution controls and still make a sufficient profit to maintain expansion, research, etc., we may expect it to do so if it perceives it to be in its own long-term interests.[24]

Again we see the fit between our model and the reality of the legislative process culminating in the passage of law. The contradiction between exploiting the physical environment for maximum profit and destroying that environment to the eventual demise of the system (not to mention the people) creates conflicts between interest groups demanding change and owners attempting to maintain maximum profits and control. Ideology enters into the justification and protection of interests by arguing for the inherent morality of private ownership and private control of the profits derived therefrom. A resolution to the conflict emerges in the form of legislaton that is in fact in the interests of the profit structure of the largest industrial firms and simultaneously placates the demands of those minority groups seeking state intervention in the industrial process. These laws, however, reveal other contradictions in the form of increased monopoly which itself will lead to further conflicts and dilemmas resulting in yet other legislative innovations.

[21] G. Kolko, *The Triumph of Conservatism* (1963).

[22] *Op.cit.*, p. 42.

[23] *Id.*

[24] *Ibid.*, p. 46.

It is important to note at this point that contradictions are not limited to those that exist between social classes. There are contradictions within particular classes as well. A recent study of the politics of public transportation in California by Alan Whitt is informative in this regard.[25] Whitt, focussing on the relative utility of what he calls the "pluralist, élitist and class-dialectical models", analyzes the forces behind five separate (but interrelated) referenda on public transportation which were voted on by the people of California. In California, as in many other states, voters are sometimes asked to approve or disapprove a particular piece of legislation. The five campaigns studied by Whitt were (1) the issue of whether or not to approve the construction of a mass transit system in San Francisco (BART); (2) Proposition A (1968) to establish rail and bus service public transportation in Los Angeles; (3) Proposition 18 which affected all of California and diverted revenues heretofore used for highway construction to public transportation; (4) Proposition 5 which was similar to 18; and (5) Proposition A which was a 1974 version of Proposition A above.

Each of the campaigns followed some typical patterns: groups mobilized to protect their own interests and support their values. They did not however mobilize in a vacuum. Some groups, city businessmen for example, favoured mass transit measures and would have supported them but were under pressure from the highway construction and oil industries to oppose them. What support was forthcoming was thus sometimes rather half-hearted. Opposition was often conspiratorially organized with contributions from various banks and industries being virtually "on demand": even to the point where each industry or financial institution contributed according to a predetermined percentage of the size of the market it controlled.

In some cases massive expenditures by large industry successfully defeated the referenda through advertising and political campaigns. But money was not always victorious. Furthermore, the "élite" or the "ruling class" was not only divided but it changed over time, opposing mass transit proposals at first but later coming to accept and support them (presumably because they discovered that it was not all that inimical to their economic interests). In short, Whitt's study forcefully reveals the shortcomings of both "pluralist" and "élitist" models — models in the tradition of "interest group" and "ruling class" models I have outlined above. Whitt's study also supports the explanatory power of a dialectical paradigm:

> It is this broader context which allows us to more fully appreciate the political events herein analyzed. Now we see more of the motivation behind such campaigns, the contradictions and conflicts manifested therein, and the reasons for the previously difficult-to-explain patter of political contributions. We can see these political events in the context of the contradictions which the dominant class must face: 1) the market economy *versus* the need for planning, 2) selling transportation as a private good *versus* the requirement for public services 3) the competition among cities and among capitalists for growth-generating developments *versus* coherent structure and regularity

[25] Whitt, "Toward a Class-Dialectical Model of Political Power: An Empirical Assessment of Three Competing Models of Political Power" (1979) *Am. Sociological Rev.* 81–99.

> in urban development, 4) the need to construct new urban transit systems *versus* the budget crisis and occasional mass resistance, 5) the desire for class hegemony *versus* the requirements of legitimacy and mass persuasion, and 6) the desire for class unity *versus* the divisive tendencies of intracapitalist class differences and conflicts .... Rather than seeing (the political events in the five campaigns) as simply a clash of organized interest groups pursuing their own goals as the pluralist model would hold, or as the reflection of an élite working its will, we see that the situation is more complex than either of these models would lead us to believe. There is both competition and cohesion here, but that is not the real point. It is most important to understand that the capitalist class must respond to contradictions and crises in the economy, in the cities, and in the polity.[26]

Furthermore, and this point is essential, neither the "polity" nor the working class is impotent. The ruling class must respond somehow to forceful demands made by organized groups or risk losing not just the ideological legitimacy of the system but the ability to control their own destiny. In a word, the process is dialectical; it avoids "both the determinism of a completely materialist science, and the voluntarism of idealist philosophy".[27]

Profits, Markets, Law and Labour

One of the contradictions inherent in capitalist economic systems is between profit and markets. If the owners pay workers very low wages then profits will be high but the workers will not be able to purchase the goods produced by the owners. If, however, the owners pay the workers very high wages there will be a heavy demand for products but less profit. One solution to this contradiction is to legalize slavery: keeping some workers at foced labour on subsistence wages while alowing others a higher standard of living and relying on them to purchase the products. Slavery was a solution to this contradiction which was ideologically defended and legally institutionalized for over a hundred years while the industrial revolution was taking place in Europe and America.

Another tack to resolve this contradiction is to seek external sources of labour and external markets. This resolution was also institutionalized as capitalism developed in Europe by way of expansion into colonies in Asia, Africa, America — in fact to almost every area of the world where technological development was slow thus making the people of these parts of the world more easily conquerable.

Simply appearing on the scene, however, was not sufficient to guarantee that the people would work or buy products from Europe. In most areas of the world touched by European ships and settlers the indigenous peoples had little interest in working for wages. These areas of the world were either dominated by tribal or feudal economies within which the idea of working for wages made little sense. Furthermore, except for an initial interest in some oddities the Europeans have on board their ships, European manu-

[26] *Ibid.*, pp. 38–99.

[27] Appelbaum, *op.cit.*, p. 78.

facturing and industry had little to offer by way of products which appealed sufficiently to the peoples of these worlds to entice them into working long and arduously for Europeans. Thus a problem of some magnitude arose for the would-be European profiteers: how to induce the people to work and to purchase goods? The resolution of this problem took many different forms and varied from one part of the world to another depending in part on the co-operativeness of local governments, the degree to which local areas were governed by a central authority, the extent to which Europeans could quickly subjugate the people and so forth. In America, for example, the native American populations generally resisted so successfully the attempts at using them for labour and as markets that the settlers relied on a constant stream of immigration from the criminal and impoverished classes of Europe. In Africa, however, quite a different situation led to substantially different solutions.

The Africans were understandably reticent to work for European settlers. As mentioned, their way of life and the material conditions of their existence were uncongenial to working for wages as labourers under the direction and control of foreigners. The Europeans, however, were able to establish control over substantial African territories and set up large plantations for raising crops that were saleable on the European market. The problem was to induce labourers to work on these plantations. Significantly, the passage of laws to accomplish this purpose was shrouded with the highest moral pronouncements by lawmakers who tried to justify the laws in terms of the contribution being made to the well-being of the Africans themselves by helping them to learn to take "a share in life's labour which no human being should avoid". The fact that the Africans had "shared in life's labour" sufficiently to create a thriving culture was conveniently ignored in the one-sided rhetoric of the settlers.

One major institutional innovation to create an abundance of labour for the settlers was the passage of law requiring Africans to pay to the colonial government a poll tax. A supporting legal innovation to the poll tax law was a law requiring Africans to register with the colonial government. Failure to pay the poll tax or to register was punishable as a criminal offence by the imposition of fines, imprisonment or corporal punishment. The reasons for the law were quite clearly stated. Sir Harry Johnston, a Colonial administrator observed:

> Given abundance of cheap labour, the financial security of the Protectorate is established .... All that needs to be done is for the Administrattion to act as friends of both sides, and introduce the native labourer to the European capitalist. A gentle insistene that the native should contribute his fair share to the revenue of the country by paying his tax is all that is necessary on our part to ensure his taking a share in life's labour which no human being should avoid.[28]

[28] Sir H. Johnston, *Trade and General Conditions Report* (1895) 11.

The reason this procedure worked so effectively was simple for the only possible source of money for paying the poll tax was to work for wages on the plantations. The only way to pay fines imposed for failing to register was to earn wages on plantations. The only way to survive without being subjected to corporal punishment and imprisonment, in other words, was to work at least part of the year for the European settlers:

> We consider that taxation is the only possible method of compelling the native to leave his Reserve for the purpose of seeking work ... it is on this (taxation) that the supply of labour and the price of labour depends. To raise the rate of wages would not increase but would diminish the supply of labour. A rise in the rate of wages would enable the hut or poll tax of a family, sub-tribe or tribe to be earned by fewer external workers.[29]

The poll tax alone did not solve the entire labour problem. Many labourers worked only long enough to raise the money for the poll tax and then deserted, sometimes in the middle of a harvest thus jeopardizing the entire crop. To resolve this dilemma the Colonial governments enforced Registration laws:

> Labourers who deserted as soon as they had earned enough to pay their taxes were no use to the settlers. To meet their (the settlers') demands, the government in 1919 put into effect a native registration ordinance which compelled all Africans over the age of sixteen to register by giving a set of fingerprint impressions, which were then forwarded to a central fingerprint bureau. By this method, nearly all deserters could be traced and returned to their employers if they broke a contract. Fines (up to $75.00) and imprisonmet (up to 90 days) were imposed for a host of minor labour offenses. Another form of compulsion took shape in vagrancy laws which operated against Africans who left the reserves without becoming wage earners.[30]

In Papua, New Guinea, Australia institutionalized indentured servitude to secure a labour supply for its colonies:

> The indenture system was inherited from the Germans in New Guinea and from the British in Papua; the Australians did not make any basic changes in its legal provisions or in its operation but initially they did modify the system in the interests of planters. There were two main aspects of the system. First it was recognized that the "native" had to be forced to work: he was seen by planters and officials as "lazy" but even apologists for the system now acknowledge to an extent that force was needed because Papua New Guineans generally preferred village life to working on plantations or at mining sites. In any case, the result was that the worker in the indenture system was subject to criminal penalties if, among other things, he "deserted" his employer or failed to work diligently.[31]

These instances of the creation and use of law to secure a labour force are interesting also for the light they shed on the relative influence of ideology and economic interests. In New Guinea, for example, ideology was important in two respects. First, the law limited the number of working

[29] Sir Percy Girovord, N. Lees, *Kenya* (1924) 186.

[30] S. Aaronovitch & K. Aaronovitch, *Crisis in Kenya* (1947) 99–100.

[31] Fitzpatrick, "Really Rather Like Slavery: Law and Labour in the Colonial Economy in Papua, New Guinea" *Contemporary Crises* (Forthcoming 1979) 2–3 in original manuscript.

hours and stipulated minimal dietary and sanitation conditions of work. Second, ideological pronouncements served as a rationale for the system of indentured servitude sanctioned by law:

> ... the provisions themselves were not always beneficient and humane. For much of the colonial period the minimum wage (which was in practice a maximum wage) was five shillings a month in New Guinea and ten shilling in Papua. To take only one more of many possible instances, the death rate among labourers, especially in the gold fields, was frequently extremely high and this was mainly because of the inadequate dietary standards; despite official recognition of this, little was done to correct the situation. More generally, the "native" must be "raised eventually to the highest civilization of which he is capable" but the process must not be rushed. It was believed by the colonists (ostensibly anyway) that requiring the "native" to work on plantations and at mines was part of the "sacred trust" because to so work was a civilizing influence and the best sort of education the "native" could get.[32]

The anthropologist, Lucy Mair, makes a similar point with respect to the importance of ideological commitments when they conflicted with economic interests in New Guinea:

> Where conditions of work were concerned the pressure of economic demand was stronger than humanitarian considerations. Rapid development, it was argued, was in the interests of the whole country, and therefore of course in those of the native population. It must not be hampered by pedantic insistence on the letter of the law. The plantation had had to encounter every kind of difficulty, and should not have their burdens increased beyond what they could bear. Inspection was in any case inadequate, and officers who were anxious to enforce the prescribed conditions felt that they could not count on support from headquarters.[33]

The model I am suggesting for understanding the development of law differs from models which give law and society a life of their own which is independent of the decisions people make. A recent treatise on law by Donald Black attempts to construct a theoretical paradigm in which law moves, spreads, goes up and down, is higher and lower.[34] I shall not dwell on the absurdity of such conceptions here but the point is that in Black's model people are not resolving problems, settling disputes or struggling to survive. Social forces are moving automatically and inexorably towards some unknown (and probably unknowable) end. The model I am suggesting takes quite the opposite starting point: rather than law or society or even history determining the content of the law it is people in a particular historical context who are determining the content of the law. To paraphrase Marx, people make their own history but they do not make it out of whole cloth.

Thus what is a solution to a contradiction in one place and time need not be the solution in another. The use of force to create a labour supply in Africa and New Guinea was not identically replicated in the same form wherever colonies were created. In South East Asia opium addiction was an

[32] *Id.*

[33] Lucy P. Mair, *Australia in New Guinea* (1970) 184.

[34] D. Black, *The Behavior of Law* (1977).

important ingredient in creating a labour supply [35] while indentured servitude helped build railways in the United States.

Work Conditions and Law

The advent of industrialization unleashed a veritable Pandora's box of contradictions on to societies. Owners of factories single-mindedly pursuing the logic of capital accumulation, profit maximization and industrial expansion demanded eighteen-hour work days, paid a bare minimum of wages necessary for the survival of an adequate work force and permitted unsanitary and unsafe conditions at work so long as these did not materially reduce profitability. As we have seen, these conditions prevailed in the colonies. They persist today in countries such as South Africa where the labour force is thus far relatively impotent against a totalitarian government and for some workers (farm labourers in the U.S.) they exist everywhere. As measured by the sands of time, it was not very long after the advent of industrialization and manufacturing that workers began struggling against owners for shorter work hours, better work conditions and higher wages: "At the dawn of the industrial revolution ... the human consequences of that technological change were unforeseeable."[36] So too were some of the problems that would emerge with the development of population concentration. In the middle of the 14th century the fact that people moved increasingly into more concentrated living conditions was an important factor in the spread of the Black Death which decimated the population of most European countries. In England at least half the population died before the pestilence had run its course. As a result of this plague, the supply of labour was severely reduced for all sectors of the economy. Workers were in a position to bargain, at least minimally, for the sale of their labour. As a result: "The difficulty of getting men to work on reasonable terms (from the standpoint of owners) grew to such a height as to be quite intolerable".[37] The Statute of Labourers (23 Edward 111, 1349) established a maximum limit on the working day and also set some minimum wages. It is significant, and pertinent to the theory being proposed, that the effect of the Statute of Labourers lasted only as long as the work force was limited. As the population grew, even though wages increased, the effect of inflation reduced the real wages of the workers to such an extent that four hundred years later a historian, J. Wade, remarked that there had been "... a greater degree of independence among the working classes than prevails at present;

[35] Chambliss, "Markets, Profits, Labor and Smack" (1977) *Contemporary Crises* 53–76.

[36] Friedman and Ladinsky, "Social Change and the Law of Industrial Accidents" (1967) 67 *Columbia Law Rev.* 50–82.

[37] K. Marx, "Capital" Vol. 1 (1967) 272.

for the board, both of artificers and labourers, would now be reckoned at a much higher proportion of their wages".[37A]

More generally, "... in the history of capitalist production, the determination of what is a working day presents itself as the result of a struggle, a struggle between collective capital, i.e., the class of capitalists, and collective labour, i.e., the working class".[38]

The law reflects and contributes to that struggle in the endless effort to resolve the contradictions inherent in a system in which the production of commodities is a public process requiring participation and cooperation of diverse persons while the product of the process is privately owned.

A more recent study of the development of the law of industrial accidents furnishes more evidence of the essential character of this process. Friedman and Ladinsky state:

> At the dawn of the industrial revolution ... the human consequences of that technological change were unforeseeable ... the toll it would take of human life was unknown. But by the last quarter of the nineteenth century, the number of industrial accidents had grown enormously. After 1900, it is estimated, 35,000 deaths and 2,000,000 injuries occurred every year in the United States.[39]

In the early days of industrialization in the United States there was scant legal attention paid to the plight of the worker. The atmosphere and the attitude of lawmakers reflected the logic of capitalism at its barest and owners' responsibilities were narrowly circumscribed. It was argued by lawmakers and in courts that the "free market economy" would automatically adjust to the fact that some jobs were more dangerous than others. Commenting on one of the precedent-setting cases in the early history of law concerned with compensation for industrial accidents, Friedman and Ladinsky note that the judge's opinion:

> ... spoke the language of contract, and employed the stern logic of nineteenth century economic thought. Some occupations are more dangerous than others. Other things being equal, a worker will choose the least dangerous occupation available. Hence, to get workers an employer will have to pay an additional wage for dangerous work. The market, therefore, has already made an adjustment in the wage rate to compensate for the possibility of accident, and a cost somewhat similar to an insurance cost has been allocated to the company.[40]

The application of this logic to industrial accidents was accomplished through the extension by the courts of the "fellow servant rule" doctrine of common employment to apply to industrial accidents. This rule was applied

[37A]J. Wade, *History of the Middle and Working Classes*.

[38] Marx, *op.cit.*, p. 235.

[39] Friedman and Ladinsky, *op.cit.*, p. 60.

[40] *Op.cit.*, p. 55.

in the case of *Priestley* v. *Fowler* decided in 1837. In that case an employee was injured when an overloaded coach he was driving, on instructions from his employer, broke down and injured the employee. The court decided that the employer was not responsible because employers generally were not responsible for injuries sustained by one employee caused by another employee. Employees were assumed to accept the risk of injury from other employees as a normal consequence of employment. The reasons cited by the judge were obscure and "perhaps irrelevant to the case at hand" but nonetheless this decision was the ruling case in industrial accidents for almost a half a century.

The logic, or lack of it, might appeal to capitalists but was unconvincing to workers forced to accept work wherever it was available at whatever wages were prevailing. Thus, as labour organized and became more militant in its demands not only for higher wages and shorter working hours but for protection against disabling and murderous working conditions, the law gradually changed.

The late eighteen and early nineteen hundreds began a period of heretofore unprecedented conflict between the working class and the capitalist class in the United States:

> Following the Civil War, workingmen attempting to organize for collective action engaged in more than a half century of violent warfare with industrialists, their private armies, and unemployed workers used to break strikes.[41]

In 1877 railway workers crippled the railway industry across the United States. The Haymarket Square Bombing in 1866, the Homestead strike at Carnegie Steel, the Pullman strike in 1894 in which Federal troops were used to force the workers back to work, the bombing of the Los Angeles Times in 1910, the I.W.W. strike in Massachusetts in 1912, and periodic strikes of railway, steel and lumber workers throughout this sixty-year period constitute but a small sampling of the number and intensity of labour-capital conflict.

The issues were many, of course: wages, hours of work and worker safety. In the course of resolving these overt conflicts the law was used in a variety of ways in order to suppress the strikes, to ameliorate conditions, to force owners to pay higher wages and shorten work days, to make unions illegal and later to recognize their legality.

With the increasing militancy and organization of labour it was inevitable that the law would change. The one change appeared in the form of judicial opinion and court decisions moving away from the narrow interpretation of *Priestley* v. *Fowler*. In *Parker* v. *Hannibal* the judge said:

> In the progress of society, and the general substitution of ideal and invisible masters and employers for the actual and visible ones of former times, in the forms of corporations engaged in varied, detached and widespread operations ... it has been seen and felt that the universal application of the (fellow-servant) rule often resulted in hardship and

[41] Wade, *op.cit.*, pp. 24, 25 and 577, as quoted in Marx, *op.cit.*, p. 272.

injustice. Accordingly, the tendency of the more modern authorities appears to be in the direction of such a modification and limitation of the rule as shall eventually devolve upon the employer under these circumstances a due and just share of the responsibility for the lives and limbs of the persons in its employ.[42]

In the years following the fellow-servant rule was steadily undermined: "By 1911, twenty-five states had laws modifying or abrogating the Fellow-servant doctrine for railroads .... The Federal Employer's Liability Act of 1908 ... abolished the fellow-servant (i.e. the doctrine of common employment) rule for railways and greatly reduced the strength of contributory neglience and assumption of risk as defenses".[43] A Wisconsin judge went a long way in expressing the change in law and judicial attitude when he said in the case of *Driscoll* v. *Allis-Chalmers* (1911):

When (the faithful labourer) ... has yielded up life, or limb or health in the service of that marvelous industrialism which is our boast, shall not the great public ... be charged with the duty of securing from want the laborer himself, if he survive, as well as his helpless and dependent ones? Shall these latter alone pay the fearful price of the luxuries and comforts which modern machinery brings within the reach of all?[44]

In the face of changing judicial opinion and continued labour struggle and conflict, even the National Association of Manufacturers became convinced that some sort of worker compensation plan was inevitable:

By 1911 the NAM appeared convinced that a compensation system was inevitable and that prudence dictated that business play a positive role in shaping the design of the law — otherwise the law would be settled for us by the demagogue, and agitator and the socialist with a vengeance.[45]

Thus it came to pass that:

Between 1910–1920 the method of compensating employees injured on the job was fundamentally altered in the United States. In brief, workmen's compensation statutes eliminated ... the process of fixing civil liability for industrial accidents through litigation in common law courts. Under the (new) statutes compensation was based on statutory schedules, and the responsibility for initial determination of employee claims was taken form the courts and given to an administrative agency. Finally, the statutes abolished the fellow-servant rule and the defenses of assumption of risk and contributory negligence. Wisconsin's law, passed in 1911, was the first general compensation set to survive a court test. Mississippi, the last state in the Union to adopt a compensation law, did so in 1948.[46]

As Friedman and Ladinsky point out in their analysis of industrial accident laws:

The history of industrial accident law is much too complicated to be viewed as merely a struggle of capital against labor, with law as a handmaid of the rich ...[47]

[42] As quoted in Friedman and Ladinsky, *op.cit.*, p. 59.

[43] *Op.cit.*, p. 64.

[44] As quoted in *op.cit.*, p. 67.

[45] *Op.cit.*, p. 69.

[46] *Op.cit.*, p. 70.

[47] *Op.cit.*, p. 54.

Clearly, the law of industrial accidents reflects the struggle of capital and labour. Indeed, it is practically the test case of the theory that the law reflects this (and other) struggles between social classes. It is certainly the case, however, that this history stands as a clear exception to the theory that the law is simply a reflection of the interests and ideologies of the ruling class. The law reflects the contradictions and attempts to deal with conflicts generated by those contradictions. In capitalist economic systems, worker-capitalist contradictions are among the more important forces shaping the law.

Friedman and Ladinsky, it must be noted, do not analyze the development of workers' compensation laws with reference to the efforts of workers to organize and to rebel against a system of labour not of their making. Rather as a direct result of the lenses (the theory) they use to look at the issue, they seek "needs of society" which gives rise to "solutions to problems". In their words:

> Whether (a particular legal rule) ... would find a place in the law relative to industrial accidents depended upon needs felt and expressed by legal institutions in response to societal demands.[48]

Lost in this interpretation is the very real, undeniable class struggle between workers and capitalists taking place during the time that workers' compensation laws were formed. It is astounding, albeit not unique to Friedman and Ladinsky, that an analysis of worker compensation laws could almost completely ignore the riots, rebellions and incipient revolutions which gave rise to the "... needs felt and expressed by legal institutions in response to societal demands". It was not some mystical, reified "society" demanding legal changes; it was people organized, brutalized and struggling.[49] It was not "societal demands" that led to the initial interpretation of workers' accidents as risks rightfully taken by the workers and magically compensated for by the "free market," it was the struggle of capitalists to maximize profits.

While the re-interpretation of historical events according to a predetermined theoretical position is not unusual in science (see, for example, Hanson's superb analysis of physicists observing the same fact situation with different lenses,[50]) it is nevertheless incumbent on us to recognize what is left out of such an analysis. Furthermore, it is imperative that we understand the implications of the analysis as well. For if we see the law as shaped through struggle and conflict in relation to fundamental contradictions then the engine of social change becomes conflict, not harmony and equilibrium. The forces that are important to understand, then, are not the interstices of legal institutions (judges' reasoning, prosecutors' discretion) but the social

[48] *Op.cit.*, p. 55.

[49] R.E. Rubenstein, *Rebels in Eden: Mass Political Violence in the United States (1970) 29.*

[50] N.R. Hansen, *Patterns of Discovery* (1958).

forces of power, conflict, contradictions and dilemmas which create the "necessity" for legal institutions to respond, for law to change.

The more general point is that the creation of law reflects a dialectical process, a process through which people struggle and in so doing create the world in which they live. The history of law in capitalist countries indicates that in the long span of time the capitalists fare considerably better in the struggle for having their interests and views represented in the law than do the working classes; but the shape and content of the law is nonetheless a reflection of the struggle and not simply a mirror image of the short-run interests and ideologies of "the ruling class" or of "the people".

Law Creation in Socialists Societies

We know less than we would like about the law creation process in socialist societies. The media stereotype of the law coming down from a bureaucracy completely removed from people is doubtless a gross distortion. As with the perspective that sees the ruling class in capitalist societies as the beginning and end of law making, so the view of the centralized bureaucracy as the only force of any consequence in socialist societies is likewise fallacious.

A recent inquiry by James Brady indicates the extent to which contradictions inherent in socialist societies are a moving force in the law creation process:

> (In China) the central struggle is fundamentally a conflict between competing ideas for economic development ... the Ethic of Social Revolution and the Ethic of Bureaucratic Centralization. The two ethics and their conflicts result from a contradiction between social and economic necessities for China ... China must have a closely coordinated economy to organize labor and marshal scarce material and technological resources for industrial growth. At the same time, the Maoist leadership remains committed to decentralized popular participation and ongoing social change. In brief, the economy demands social discipline and the politics call for social change.[51]

That contradiction, according to Brady, is responsible for the creation of a criminal justice bureaucracy which is in conflict with local collectives attempting to determine their own destiny. At times these conflicts, as with similar conflicts in capitalist countries, culminate in violent attacks on representatives and symbols of the various institutions which stand for one or the other of the possible directions the resolution of the contradiction may take. These attacks, as well as the constant dialogue and debate, in turn create other laws, other resolutions, and so forth.

Societies differ in the precise nature of the resolution forged. The Soviet Union apparently opted early for the development of a legal system committed to bureaucratic centralization. The conflicts this has generated are legion and are exploited by the western media and politicians just as the Soviet media and political leadership exploit labour strife in the U.S., both

[51] Brady, "Political Contradictions and Justice Policy in People's China" (1977) *Contemporary Crises* 128–129.

claiming that these conflicts are evidence of the oppressive, undemocratic, and exploitative nature of the other's political economy.

Conclusion

In this paper, I have presented a model for explaining the larger social forces behind the creation of law. This model stresses the overriding importance of basic contradictions in the political economy as the starting point for a sociological understanding of law creation. It puts people squarely in the middle of these contradictions as the struggle to resolve the contradictions by fighting against existing law (laws supporting colonialism, wage discrimination, or racism for example) while others are creating new laws. In the process, ideological justifications develop, shift and change; these ideologies, in turn, become a force of their own influencing the development of legal institutions as it reflects the interplay between material conditions and ideology.

I have analyzed several laws in some detail by way of demonstrating both the utility of the theory and the kinds of data for which the theory is relevant.[52] I have looked particularly at laws pertaining to depressed areas in Britain, anti-pollution laws, and some of the laws relevant to labour and markets during capitalism's early and later stages of development. I have also indicated how the same general process characterizes law creation in socialist societies. That this process might be adumbrated in a truly classless society is a topic for another time.

WILLIAM J. CHAMBLISS*

* Department of Sociology, University of Delaware.

[52] Because of the tendency in the sociology of law to concentrate on criminal law, I have intentionally focussed primarily on civil law. The theoretical findings and trends, however, are applicable to criminal law as well.