Welfare Law and Order

Critical Texts in Social Work and the Welfare State

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Pete Alcock and Phil Harris

WELFARE LAW AND ORDER: A CRITICAL
INTRODUCTION TO LAW FOR
SOCIAL WORKERS

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Welfare Law and Order

A critical introduction to law for
social workers

Pete Alcock
and
Phil Harris

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This book is dedicated to our
respective assessment units

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Preface

It must be emphasised that this is *not* a 'law textbook' in the conventional sense of the phrase – we have not tried merely to provide summaries of relevant legislation and case law in a particular area. Rather, we have endeavoured to explore the historical background and practical context in which law is used to regulate those issues which have, since the 1940s, become referred to as 'welfare provision' and 'welfare rights'. In attempting this exploration we have tried to identify the economic and political forces, and the various ideological debates which have shaped legal control in the areas of poverty and inequality, children and the family, housing provision, mental deviance, and ethnic communities. The law has, of course, its own history and ideological structure, and these have determined the manner in which legal services are provided – these issues, too, are examined critically with a view to assessing the value of using the law and legal services in specific circumstances.

Here we have particularly addressed ourselves to the problems encountered by welfare workers: social workers, probation officers, advice agencies, and so on. We believe that welfare workers *do* encounter legal problems and provide legal advice, and we hope that this book will not only help them in knowing what advice to give, but will also explain both the possibilities and limitations of using the law in a modern capitalist society. This will obviously be of particular relevance to social work students; but we hope that practising welfare workers, too, will see the need to understand the framework of legal rights within which they now work.

This is an introductory book, and because of the obvious constraints on space we have not been able to deal in great detail with more complex areas of legal provision. Throughout the book, there-

fore, we have referred the reader to other material on specialised areas of legislation, social policy and theoretical debate. Also, we have provided, in the appendix, a brief survey of the position in Scotland where it differs from that in England and Wales. It should be remembered also that the law, like society, is constantly changing; as far as possible we have attempted to state the law as at September 1981.

We would like to express our gratitude first to our students (past and present) through whose courses much of this book has been developed, and whose advice and experience we have frequently found invaluable. Second, we would like to thank our colleagues at Sheffield and elsewhere who have helped in various ways. In particular we are indebted to Lesley Allen and Sinclair Dinnen for their constructive comments on draft chapters; to Steven Kennedy and Peter Leonard for editorial advice throughout the preparation of the book; to Paul Watchman and Bob Ferguson for advice on Scottish law; and last but by no means least to Jan Alcock and Sue Hare for their sustained support and occasional bullying - it helped to ensure productivity and prevent mental breakdown, and (after all) what are a few more grey hairs between friends? As for the errors which remain, we must both plead guilty.

Sheffield, England
September 1981

PETE ALCOCK
PHIL HARRIS

Editor's Introduction

Events in Britain at the time of writing are remarkable for the commentary they provide, both tragic and comic, on the mystifying power of established law and order, and on the way in which this law and order is being both supported and challenged. The working class of this crisis-riddled country has witnessed over many months the preparation and acting out of a piece of symbolic theatre, the royal marriage of two millionaires. The vulgarity and arrogance of this event revealed afresh the capacity of the ruling class to stage-manage effectively a strong reinforcement of its ideological and material position as guardians and representatives of the law of the land as it is evidenced in monarchy, property, capital and state power. Although these events might seem ludicrous and archaic, their mystifying power over much of the working class was a clear sign of their ideological success. At the other end of the spectrum were the riots, looting and civil disorder in some of our cities; here, the ideological legitimisation of the law of the land appears to have broken down completely. The agents of state power – police, courts, politicians, welfare workers – are seen without ambiguity by many people as simply the enemy. In the inner cities, at least, the mystification of the law seems to have been to some extent broken; its inhabitants, especially if they are young or black, do not expect justice from the law, only direct repression.

Consideration of the two simultaneous events of the royal wedding and the city riots point to a central issue in the understanding of the law from a Marxist perspective: at this precise historical moment in late capitalism, does the state apparatus of law any longer reflect, even to a very minor degree, the interests of the working class or of women, or of the black population generally? This new book in the

series *Critical Texts in Social Work and the Welfare State* answers this question by pointing to contradictions within the legal system generally and within specific pieces of welfare legislation. Pete Alcock and Phil Harris argue that by identifying these contradictions we can see that they reflect both ruling-class power and the struggle which the organised working class and others have engaged in historically to secure some benefits from the law. They further argue that these benefits still exist, and that for all its restrictions the law and the legal system remains a sector of the state apparatus within which it is still possible and profitable to engage in struggle.

The reader of previous books in this series will no doubt remark that the identification of contradictions and a belief in the possibilities of struggle, both within and against the state, are recurrent themes in them. Throughout the series so far and especially in the most recent book, Bolger *et al.*, *Towards Socialist Welfare Work* (1981), we have contended that the welfare state cannot be viewed simply as a direct expression of ruling-class interests, but must be seen as a relatively autonomous arena of struggle where the subordinate interests of the most oppressed and exploited, particularly welfare clients, can find expression, especially through collective action.

But we must be careful here both to avoid dogmatism and to be aware that the various state apparatuses, including those concerned with welfare and the law, are undergoing substantial change and that our analyses and our strategies may have to reflect these changes. Alcock and Harris point to the increased direct political activity of police chief officers, and E. P. Thompson has, in a remarkable series of articles, *Writing by Candlelight* (1980), recorded the gradual erosion of those traditional liberties and freedoms for which the working class fought, an erosion reflected in the recent activities of the Attorney General, the Director of Public Prosecutions, the Chief Constables, the Special Patrol Group and coroners' inquests. Do these changes suggest that the state is becoming *less* relatively autonomous in relation to the ruling class, just as local government is becoming less autonomous in relation to the central state machine? Do these changes suggest, even, that the contradictions that are evident within the state apparatus and the law are now to be understood as resulting increasingly from conflicts of interest between different fractions of the ruling class and their allies (see, for example, the present conflict within capitalist interests over 'monetarist'

economic policy or central control over local state expenditure) and less and less from conflicts reflecting the interests of the working class and its allies? It is not my place, in this introduction, to start to answer these questions; they would in any case require some consideration of the effects of the decline and collapse of social democratic politics and the fact that socialist and feminist politics, by contrast, has not yet made much direct impact on the state apparatus and the law. The questions are raised in order to indicate some of the areas of debate to which this book will be making a contribution, so far as they are concerned particularly with the field of welfare law. They are certainly not questions designed to induce in social workers and other employees of the welfare state a sense of despair and paralysis about the possibilities of struggle within the legal system, but to sound a note of caution, especially about the possibilities of individual compared with collection action.

Alcock and Harris provide us with a penetrating examination of the major areas of welfare law - family law, child care, mental health, housing, income maintenance and race relations - an examination which provides not only an introductory exposition but, crucially to a Marxist text, a critical analysis which firmly locates the law within the historically specific conditions which determined it. Underpinning their work is the theoretical distinction developed especially in the writing of Louis Althusser between relatively autonomous kinds of practice, on the one hand economic and on the other hand ideological and political. As a theme of this present book, and of the series as a whole, ideological struggle as a legitimate focus for feminist and socialist politics is clearly of crucial importance. But emphasis on the deep penetration of ideology, especially in the field of welfare law, draws our attention also to how problematic are struggles against dominant ideologies. The legal system demonstrates perhaps more clearly than any other sector of the state how crucial to the reproduction of the social order is the conception of the individual subject as a free, autonomous and responsible being. The deep reality of the person under capitalism, unfree and exploited, is mystified by the illusion of freedom and autonomy, an illusion of central importance to the basic conceptions of bourgeois law. Where people break the illusion, for example in the 'delirious discourse' of the mentally ill, as Foucault has shown, the law and its agents, including social workers, must act to control this deviance by repressing, individualising, pathologising and 'treating' it.

In *Welfare Law and Order* we have a text which provides a much needed base of analysis and information for the task of demystifying and utilising welfare law in the interests of those subjected to it. It will become an invaluable aid to welfare workers committed to this task.

University of Warwick
September 1981

PETER LEONARD