

# E.P. Thompson's Legacies

ROBERT W. GORDON\*

Edward Thompson was by common agreement the greatest English-speaking social historian of his age, the presiding genius of an entire generation of historians of the 1960s and after who determined to write history “from the bottom up,” through the eyes of people who had been crushed under the wheels of history, especially the wheels of economic “progress.” It was Thompson more than anyone else who rescued the lower orders from “the enormous condescension of posterity,”<sup>1</sup> from their reputation as a dumb, illiterate, and violence-prone mob—Burke’s “swinish multitude,” or less pejoratively but almost as anonymously, Marx and Engels’ faceless, mutely suffering “proletariat”—and who showed the New Social Historians how to perform patient, exhaustive archival excavations; whose work gradually revealed a whole underground world of articulate, thoughtful laboring men and women, architects of their own consciousness, active agents who well understood and fiercely resisted the catastrophic changes that were carelessly sweeping them onto history’s scrapheap. It was Thompson whose slashing and passionate, while surprisingly precise and delicate, narrative style could make any reader feel—and resolved many to act on the feeling—that writing social history to recruit the understanding of past struggles to present-day social understanding and political action was one of the most important things one could do with one’s life.

Thompson’s masterpiece, *The Making of the English Working Class*, first appeared over thirty years ago. Reading it through again is like resuming a very old friendship, which intervening time and experience have only improved. The prose is as fresh as ever; the English artisans, laborers, and peasants of 1790-1830 are made as real and immediate as any present-day social movements. All over again one experiences, through Thompson’s power of sympathetic recreation, his admiration for their irreverent wit and courage, and his scorn and indignation for the landowners, employers, and magistrates who harassed them endlessly and ultimately wore them out.

Yet at this later re-reading still other qualities, which I was not really equipped to appreciate the first time around, emerge from Thompson’s work. One such quality is Thompson’s sheer amazing craftsmanship as historian, shown in the hundreds of thousands of scraps of notes from local archives and obscure sources that he gathered and wove into narratives both coherent and grippingly dramatic; in his refusal to be confined by

---

\* Adelbert H. Sweet Professor of Law, Stanford University.

1. E.P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* 12 (1963).

discipline or specialty and his ability to draw freely upon economic, legal, intellectual, political, and social perspectives; in his complete mastery of high and popular cultures reflected in the scraps of poetry, belles-lettres, ballads, and political songs scattered like jewels over every page; and in the intense but restrained (and, for so engaged a writer, remarkably judicious) critical scrutiny that he repeatedly brought to bear on technical and historiographical quarrels. Thompson wore his learning lightly; he almost never (save when exposing an opponent as an ignorant twit) showed off how hard he had been working, what deep quarries of research and theoretical synthesis lay just out of sight, behind his monumental art.

On this re-reading yet another facet of Thompson's work—one of special interest to this readership of lawyers and legal scholars—also becomes more visible: his extremely sophisticated understanding of the many social roles of law. Like other social critics schooled in Marxist traditions of history and theory, Thompson was well aware of the instrumental functions of law as a bag of weapons and tricks for the rich and powerful to use against the poor. In the period of his special interest, such instrumental uses of law could hardly have been ignored, since they were everywhere: the criminalization of customs, whereby exercises of ancient right such as grazing or deer-taking in common fields and forests were curbed by enclosure; the death penalty; the Combination Acts passed to break up workingmen's associations; and the great wave of repressive statutes and prosecutions of "Jacobin" societies and organizations for sedition and riot in England during its early nineteenth-century Red Scare.<sup>2</sup> Thompson's period of interest provided numberless examples of the cynical manipulation and deployment of law by a ruling elite to maintain its privileges and to shatter the leadership, morale, and cohesion of working-class organizations.

Thompson, however, never succumbed to a crudely instrumentalist view of law, or to the dismissal of law altogether as expressing merely "bourgeois rights." As always, he drew insight from the radical traditions he admired, and in those traditions law appears in many forms besides class trickery and repression. Law appears, most importantly, as customary right. The claims of easement, or of use-rights such as gleaning, grazing, and taking of fish and deer, made by cottagers, villagers, and tenants upon farmer and gentry landowners were, of course, legal claims—claims to rights of property, not in defiance of property.<sup>3</sup> The claims made by defendants at trials for sedition and riot, for free speech and assembly, free press, fair procedure, and trial by jury were legal claims as well, claims to the rights of "free-born Englishmen" that every radical asserted as his

---

2. See generally *id.* at chs. 4, 5, 14, 15; E.P. THOMPSON, *WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT* (1975).

3. See E.P. Thompson, *Custom, Law, and Common Right*, in *CUSTOMS IN COMMON* 97 (1991).

heritage. The eighteenth-century crowd resorted to riot, more often than not, as a carefully regulated remedy aimed at restoring a status-quo-ante after some violation of legal right that regular legal institutions would not or could not redress. Undoubtedly Thompson's famous, spirited defense in *Whigs and Hunters*<sup>4</sup> of the "Rule of Law" as an "unqualified human good" and permanently valuable legacy of Western culture, despite all the long history of law's abuse by rulers and the wealthy for their own ends, draws upon this rich tradition of legalism in English radical dissent.

Seeing law in every corner of social life, Thompson never made the mistake of supposing law was only epiphenomenal, a mere rationalizing ideology or "superstructure" erected on the "real," "material" bases of social life such as technology, relations of production, market structures, or power relations. Law was a crucial element in the constitution of markets and relations of power and of production:

I found that law did not keep politely to a "level" but was at every bloody level; it was imbricated within the mode of production and productive relations themselves (as property-rights, definitions of agrarian practice) and it was simultaneously present in the philosophy of Locke; it intruded brusquely within alien categories, reappearing bewigged and gowned in the guise of ideology; it danced a cotillion with religion, moralising over the theater of Tyburn; it was an arena of politics and politics was one of its arms; it was an academic discipline, subjected to the rigour of its own autonomous logic; it contributed to the definition of self-identity both of rulers and of ruled; above all, it afforded an arena for class struggle, within which alternative notions of law were fought out.<sup>5</sup>

Still another aspect of Thompson's work that I better understand now is also one of Thompson's most valuable qualities for present day use—a quality that might be called humanistic concreteness, or particularism. Thompson never wrote a page of history that was not exceptionally dense in detail, in the proper names of persons and places, customs and trades, numbers and events, and quotations from participants. Sometimes he mocked his own habit: "[D]oes it matter a damn who gave Parson Power his instructions; which forms brought 'Vulcan' Gates to the gallows; or how an obscure Richmond publican managed to evade a death sentence . . .?"<sup>6</sup> The answer, as he well knew, is that it does matter, for (as usual) a complex variety of reasons. One reason was simply fidelity to his project and materials: he was writing about and taking the side of people who were defending against erosion their intensely particular trades, intensely local customs. Not just their livings, but also their dignity and identity,

---

4. WHIGS AND HUNTERS, *supra* note 2, at 258-69.

5. E. P. THOMPSON, THE POVERTY OF THEORY AND OTHER ESSAYS 96 (1978).

6. WHIGS AND HUNTERS, *supra* note 2, at 260.

their sense of the right and moral, were all bundled up in these particularities. To understand their situation the historian has to recreate their world in the details that mattered *to them*—especially because as progress swept them away they mattered not at all to anyone else. One cannot represent men and women as agents unless one can make the reader understand them as real, and reality resides in the details. Thompson learned this lesson from the great Radical polemicists of the period he made his own, especially William Cobbett.<sup>7</sup> Thompson's radicalism, like that of the other great lettered English radicals such as Cobbett, William Morris, R.H. Tawney, or George Orwell, was entirely and doggedly English. Without being chauvinistic or intellectually provincial, Thompson sought to elaborate the distinctness, the local and decentralized nature, the "peculiarities" of English dissent both as factors explaining England's special history and as sources of values worth preserving.

In this celebration of the particular there is concealed, it seems to me, an important and quite general message. Virtually everything Thompson wrote consists as part of a running argument against a kind of reductionist abstraction-mongering, which Thompson truly loathed and believed to be dangerously anti-human wherever it was adopted and applied.<sup>8</sup> In the early-industrial period of his main historical interest, this noxious form of intellectual practice was mainly represented by classical political economy and utilitarian theory and policy; in his own time, by the modern version of the same things—neo-liberal political economy—but also by functionalist sociology and structuralist Marxism.

*The Making of the English Working Class* is, among other things, a sustained polemic against impersonal models of "industrialization," "modernization," or "capitalist development," especially the complacent ones like those of F.A. Hayek, T.S. Ashton, R.M. Hartwell, and their school.<sup>9</sup> These writers argued that although the natural workings of markets in the Industrial Revolution may have temporarily displaced a few marginal occupations like cottagers and technologically-obsolete craftsmen, "free markets" had also produced a generally higher standard of living for everyone. Thompson set out to refute this smug cost-benefit analysis. The main technique he used was the method of detail—disaggregation of gross statistical claims, of large and lazy economic generalities. He asked, who

---

7. For Thompson's tribute to Cobbett, see *THE MAKING OF THE ENGLISH WORKING CLASS*, *supra* note 1, at 746-52. Though Thompson's style resembles Cobbett's in its attachment to particularity and proper names, it is actually quite different from Cobbett's, much more ironic, cosmopolitan, and allusive, and in fact more like that of the essayist William Hazlitt, whom Thompson admired as well.

8. See, e.g., *THE MAKING OF THE ENGLISH WORKING CLASS*, *supra* note 1, at 267-68, 776-79 (nineteenth-century utilitarians and political economists); *THE POVERTY OF THEORY AND OTHER ESSAYS*, *supra* note 5, at 140, 153, 168 (Stalinism and scientism); *The Moral Economy Reviewed*, in *CUSTOMS IN COMMON*, *supra* note 3, at 259, 303-05 (modern economists).

9. See *CAPITALISM AND THE HISTORIANS* (F.A. Hayek ed., 1954).

exactly were the people displaced, how many of them actually were there, and—above all—how did *they* experience their displacement? He insisted on describing human welfare in non-reductive terms—not just as money incomes, but as independence, dignity, autonomy, and pride in craft. He peered closely at the “natural workings of market forces” and exposed the pervasive coercion behind them—the manipulation of law to reassign property from ancient rights to entrepreneurial uses; the recruitment of tort, trespass, and criminal law to defeat customary practices; the massive repression of political dissent and labor combinations. And indeed Thompson’s case is overwhelming that, seen through the eyes of the men and women who lived through them, the Industrial Revolution and the political counter-revolution that accompanied it were nothing short of catastrophic.

Thompson was often accused of being a “romantic,” of sentimentalizing obsolete and pre-industrial forms of community. It is certainly true that he saw value in the lives his subjects had assembled around their customs and trades, and irrecoverable losses—losses not easily valued in a cost-benefit accounting and usually not attempted to be valued at all—in the disappearance of those customs and trades. Though formally a socialist, he was at bottom a Romantic radical in sensibility; he despised both Stalinism and bureaucratic capitalism for their crushing of human personality, especially the eccentric, cantankerous, combative, and lyrical fighting spirit of the sort of radicalism he himself personified.

But to think of Thompson exclusively in this way—for example, as someone who preferred to depict reality with the personal stories of underdogs rather than with abstract models of impersonal processes—is to marginalize him unduly and greatly to underrate his importance as a social thinker. Thompson was a better social analyst, most of the time, than his reductionist opponents because he was a more accurate observer and more hard-headed theorist. He did not disdain economic theory and statistical indices; he used them in his own work, but broke them down, critiqued them, and refined them. He did not suppose that the emphasis he gave to agency in his histories denied the existence or importance of processes or structures. Indeed, one of his persistent criticisms of the New Leftists of 1968 was of their utopian voluntarism, their notion that the world can always spontaneously be remade if you only will it hard enough. But he thought that both economists and structuralist Marxists persistently *misdescribed* those processes because they were too lazy, or blinded by ideology, to look at them *in detail*.

Economists, for example, repeatedly asserted that successful forms of capitalist development require markets constituted by fixed and stable legally-defined rights of property, and illustrated this proposition with historical examples of societies in which, they contended, such rights had emerged (such as early-modern England). Thompson, sometimes patiently and sometimes not, would respond that there was never anything very

fixed about the rights pointed to; that they were a version of rights favored by some courts and social groupings but not others; that they existed in conflict with well-established claims of competing rights; that in any case they were constantly being fought over and renegotiated with every shift in the balance of economic and social power; and that we could not begin to understand property rights until we also understood the webs of local custom, religion, magic, and politics in which they were embedded. Moreover, the webs of customary practice were not just reactionary drags on free markets; but were often highly functional in their own way. For instance, the moral economy of the English crowd in Thompson's classic essay of that title,<sup>10</sup> using law, custom, and calibrated rioting to regulate the price and supply of staple commodities, represented a functional system for preventing famine in times of dearth.<sup>11</sup>

It is heartening to see, in recent economic theorizing and historiography among other places, some tendencies even in the reductionist disciplines to begin to recognize the importance of custom, culture, moral norms, path-dependent institutional forms, religious and family ties, and other solidarities in the formation and enforcement of legal claims and the constitution of markets—in short, to see social science working its long, slow, painful way back to the insights E.P. Thompson had already achieved in 1963. Social-legal historians, who like everyone else familiar with Thompson's work, could hardly avoid being inspired by it, have profitably lived off those insights for some time.<sup>12</sup> But now more than ever the terrible simplifiers are roaming the globe, prescribing “shock therapies” for economic stagnation in post-Communist societies and the Third World in the form of “fixed and stable property rights,” “privatization,” and “free markets.” Evidently, they are without the faintest knowledge of the political, legal, and cultural contingencies in which such institutions developed even in the Western capitalist economies—not to mention the human wreckage such development often entailed—and certainly without the slightest reflection on the indigenous political and cultural contexts of their new experiments. More than ever, therefore, social thinkers and social activists, perhaps especially legal thinkers and activists, will have need of Thompson's patient attention to detail, his polemical talent for attacking ideological abstractions and his analytic talent for picking them apart, his engaged

---

10. See *The Moral Economy of the English Crowd in the Eighteenth Century*, in CUSTOMS IN COMMON, *supra* note 3, at 185-258.

11. In a fascinating reply to critics of his thesis on *The Moral Economy of the English Crowd*, Thompson enriched the thesis by comparisons to similar moral-economies at work elsewhere in the world, especially in India. See *The Moral Economy Reviewed*, *supra* note 8, at 259-351.

12. Among the legal historians who have seemingly been strongly influenced by Thompson, one thinks of William Forbath, Douglas Hay, Hendrik Hartog, Morton Horwitz, Alfred Konefsky, Elizabeth Mensch, William Novak, Carol Rose, Richard Ross, David Sugarman, and Christopher Tomlins.

sympathy with the men and women whom structural changes leave flattened in their path, and his sharp, disciplined moral indignation. These are his legacies: to strive to imitate his methods, in the service of his ideals of social decency and the most exacting standards of craft, is the best tribute we could pay him.