

The interface between education and law: Marxist themes for critical analysis.

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ABSTRACT

The marxist tradition has developed through several phases and it is only in the most recent and least orthodox of which it has devoted extensive attention to questions to do with law and with education. In each context the efforts have been controversial and in the process marxism has been extended, severely criticised and enriched. Hardly at all in this process, however, has social analysis, let alone marxism specifically, considered the interrelationships between education and law. This essay is intended to initiate discussion towards opening both of those spaces. It takes a focus within a standpoint. The broader standpoint is marxism and the marxist traditions and so aims to discuss and illuminate aspects of marxism in relation an hitherto under-explored area of social investigation and critique, namely the education/law interface. However, whilst exploring the issues from this standpoint, the embedded focus is educational rather than legal. Within the aspirations of the marxist tradition of socialist development, radical critique and politics, law and education amount most abstractly to the same things. They are sites of struggles for power, social justice and development for the fullest of human potentials in the face of social, economic and cultural conditions of production, distribution and exchange which fundamentally undermine and deflect these. The educational focus is concerned with making socially productive knowledge, itself paralleling marxism strategies as immanent educational critique and development. As such, this essay is concerned more with marxist educational theory than a complementary 'marxist jurisprudence', though the full model would require the development and articulation of both.

Introduction

The marxist tradition has developed through several phases and it is only in the most recent and least orthodox of which it has devoted extensive attention to questions to do with law and with education¹. In each context the efforts have been controversial and in the process marxism has been extended, severely criticised and enriched. Hardly at all in this process, however, has social analysis, let alone marxism specifically, considered the interrelationships between education and law. This essay is intended to initiate discussion towards opening both of those spaces. It takes a focus within a standpoint. The broader standpoint is marxism and the marxist traditions and so aims to discuss and illuminate aspects of marxism in relation an hitherto under-explored area of social investigation and critique, namely the education/law interface. However, whilst exploring the issues from this standpoint, the embedded focus is educational rather than legal. Within the aspirations of the

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The term 'education' is intended to signify the social relations of definition, distribution, and control of knowledge, skills and capacities in relation to production; their relations to individual and collective identity formation both in and for the groups concerned, classically social class formation in the marxist models; and the institutional forms, most obviously formal schooling, but extending through various cultural forms, including for instance the autodidactics of leisure, the mundane as educative etc., the educative aspects of symbolism in daily life around key institutions (schools and specifically for this essay, courts of law, tribunals, etc.), as well as, other educational modes, such as the specifics of the criminal justice system for vocational training for effective criminality in penal institutions, paralleling the vocational dynamics of cultural capital formation and reinforcement in elite educational establishments. Or, for that matter, in formal organisations of every type as training sites for white collar criminality. Within a marxist standpoint, these all relate to capital, its forms and functions, in myriad specificities.

Marxism, it must be made clear, is being taken here as a standpoint, and not as a total and complete theory in a positivist mode. As such its value can only be demonstrated in practices embedded, as the theory and methods of the marxist tradition must be, in the social and political conditions of its own time and making. Marxism, as Marx famously and firstly made clear (Castoriadis:1975, 10), was and is, along with all human products, historically formed in human practices. It cannot step outside its time and place to propose essential truths. As a standpoint, it can never be completed. It offers themes which are vital to social analysis, but these should be deepened, widened, revised for specific times and places. Their value is as starting points and points of return. The marxist contribution is in the merit of the argument that without its informing social and political practices where they constitute critiques of capitalist forms, such critiques would be blunt and deflected in vital respects.

So far as the institutional analysis of law and education and their interfacing are concerned, the marxist themes provide a distinctive edge, but they will almost certainly require supplementation and further specifications at many points of detail. This point is to draw a positive parallel with methodological hybrids such as marxist phenomenology, marxist anthropology, ethnography and psychoanalysis, etc. The marxist tradition, along with critical hermeneutics, accepts as vital to effective analysis the de-reification of historically located human practices of objectification. In the broadest methodological sense of praxis, the themes we will highlight undergird the educational project we might call fundamental reflexivity, in which it is recognised that there is no place to stand to assume the mythic confidence of essentially firm ground. In this connection, the themes of the marxist tradition proposed here as being of continuing value for critical analysis constitute support for relational as distinct from relativist methodology. They indicate points of commitment woven into the analyses, rather than a species of relativism posing as neutrality. So the approach is methodologically scientific in the modernist sense of being corrigible, adaptable to the times and places of its production and practices beyond contemplation, above all reflexive and educational, learning from 'experience' and critical reflection thereon.

Where the discussion is focused around law, it is generally in the sense of civil, and administrative public law (Richardson & Genn, 1994), rather than criminal law, though the latter, as we have intimated has educational functions, particularly as 'reform', and normalisation as part of what is regarded in Foucauldian vein as governmentality (Foucault, 1979; Hunt & Wickham, 1994).

Legal institutions and practices, including non- and paralegal forms of legality, are taken as essential aspects of the complex dynamics of contemporary state forms of regulation, particularly where they constitute the ongoing remaking of the myth of the social contract in both coercive and enabling moments. As with legality, educational institutions and forms of educality, from a marxist standpoint, are class patterned, relating to the dynamics of capital forming, and vital in the context in which the boundary between state and civil society is shifting and where signification is blurred. Penetrating the blur is no easy task in marxist terms, as the current demoralisation of the marxist tradition in the face of liberal as well as both left and right libertarian modes indicates.

These contexts include subtleties of cultural ambiguity and ambivalences, key modes in liberal processes of control and political displacement in contemporary state forms which regulate what is constructed as simultaneously both private and in the public interest. Law, and legality, constitute forms of regulation with the imprimatur of legality and comprise a vital network of practices articulating what is civilised about civil society. We are interested in how these take forms interfacing with the social regulation of education as educality, signifying the potential for being knowledgeable, competent and appropriately trained to any of the spheres of the production of social life. The symbolic, iconographic and fetishized forms of value of both law and education are part of the real to be de-mystified, as ever potentially unstable reinforcements of respect for that which at best, is not a reliable facility, and, at worst, is an instrument for class and capital interested control and oppression.

Part One: Marxism and interface analysis: Immanent critique

The marxist tradition continues to be strongly influenced by the original intent of the Marx and Engels work which was not so much to produce explanations of social phenomena but to provide an ontology, in which they attempted to discover what should be taken as real phenomena, i.e. identifying real relationships between real entities in the context of political struggle for freedoms and justice against exploitation in the context of mystification and hypostatisation. Their methods were developed for the purposes of both understanding and explanation, but the real interest they displayed, for the purposes of this essay, was not so much in concepts as such, as in social reality and in radically reconstructing social reality. Here it is a matter of fusing the urgencies of positing the real, with explaining its dynamics, and acting within these realities to transform them and simultaneously learn from these experiences, the reflexive moment of marxist educality.

The key themes in the marxist traditions which remain central to contemporary social critique are:

- Theme One: materialist appraisal of the political dynamics of social formations vis democratic socialist empowerments and their obstructions in the context of the reproduction of class relationships within capitalist, post- and pre- capitalist formations of every type;
- Sub-theme: formations of the forces and relations of production, consumption and exchange, their reproduction and transformation in relation to specific labour processes, and in particular, the formations of labour power;
- Sub-theme: articulations of class and non-class forms of oppression, discriminations and exploitations (gender, race/ethnicity, etc.)
- Theme Two: materialist appraisal of the differences between appearances and reality in the context of Theme One, with respect to the dominant accounts of reality.

This is ideology-critique, articulating with ontological critique, and 'realist' in its assumptions², though not an epistemological analysis as such. It attempts to avoid relativisms (deconstructivist poststructuralisms, etc) and voluntarisms (naive phenomenologies), but is nevertheless open

endedly scientific and speculative, as much concerned to analyse, inform and explain, as to inspire by demonstrating the points in common sense which make sense against the dominant order, and so offering political leads. Ideology-critique exposes hypostatizations as political manoeuvres, strategies, not in a Foucauldian subject-free modes of power's constitutive expression of itself, but to capital, in front of and behind our backs.

In each theme, production, the economic, is essential. That is to say, it cannot simply be ignored as a matter of indifference in the face of consumptionist relations of power or deconstructivist dispersal of the social. Understanding social relations, forms and functions cannot occur without grasping the complexity of the forms of exchanges and their relations to cultural and ideological dynamics. This includes the disparagement and demonisation of cultural forms of the downsidiers in capitalism's collection of social relations, as feckless and uninvolved, doubtful or objects of suspicion constituted as being both less educable and less trustworthy because they are the blameworthy victims of their own misjudgments. It makes no sense to observe the radical changes in the forms of production relations and the commodification of ideas and treat these as the justification for radically displacing attention from forms of ownership and control of capital, as seems to be the message of postmodernist critical modes. Nor of recognising the complexity of social and cultural differentiation and their articulation with the formation of labour power for segmented labour markets as the pretext to dismiss social class formation/deformation as part of the dynamic of capitalism. Clearly capitalism is triumphant, but it is capitalism, and it is in critique of its relations that marxism was brought into play for and designed to effect. It still has much to say without lapsing into vulgar determinisms or romantic dreams of proletarian power necessarily winning out in the long run (Willis, 1977), or as simply lurking in everything that is in the experiences and practices of the downside and completely absent from the upside of capitalism in its multitude of forms.

Part two: Analysis of education

The dominant preoccupations of so much of social analysis of education continues to demonstrate that educational institutions and practices are intimately implicated in the social and cultural reproduction of social relations and structures in social class terms. Unfashionable though the term socialisation is in sociology of education, the major interest has been in the formal institutions of state provided, or regulated (in the case of the private sector), educational services and their role in locating individuals in social positions, largely those not too dissimilar from those occupied by their parents, ie social and cultural reproduction. To provide a moral edge, such analyses are generally set against the ideological backdrop of system aspiration, or at least pronouncements about equality of opportunity, the meritocratic model of social regulation.

Legality is central, though rarely remarked upon in this focus where it constructs equity, procedural integrity in institutional forms, rather than taking the maldistributions of power and their connections to inequality, as the primary issue. The liberal aspiration is to providing fair rules for allocating chances, i.e., procedural justice in the educational system rather than equality of outcomes, more substantive justice, or requiring the deeper appreciation of relations of power necessary to grasp these. At its liberal progressive best, and there are worse possibilities for social and political organisation than liberal forms, the system shows signs of improvement to the extent that the graph of educational achievement is rising more steeply for the poor, downsidiers and working classes, than the graph of the better placed. These lines of convergence, of course, can never meet nor the social and cultural conditions occur in which they no longer have social relevance (McPherson & Whilms, 1987).

Social analysis of education has been dramatically stimulated since the mid-80's by the advent of marketisation as the ideological form and partial material embodiment of many central policy developments. Regulation is increasingly being organised in terms of rhetorics of parental choice

and the hidden hand to effect system-wide improvement in educational outcomes in the context of international competition. This constitutes, in part at least, a reversal or rebuttal of the marxist oeuvre and aspirations, a re-assertion of the vulgar political economy the marxist tradition has been in business to critique. Marketisation in ideological form and material effects is important here as part of the cultural revolution intended to undermine the gains, such as they are, of welfare capitalism for the working classes, despite the latter's articulating with conditions in which the professional middle classes and the between-off benefit disproportionately.

At the interface between legal and educational practices the citizen is made and remade. In New Right terms social regulation takes paradoxical forms. De-regulation for market forms of control through parental choice and tightening regulation with respect to curriculum and the formation of teachers' labour power and remuneration. Educational de-professionalisation is on the agenda. Together these focus our attention upon moments of ideological refraction in relations between the state and the citizen, and the economy and schooling system. The priorities are the production of 'free' (with the right to work unhampered by collectivist intrusions of trades unions, etc.) labour power for national and international market needs and regulation for the smooth development of the enterprise culture. Legality and educality meet in the ongoing production of conscientious citizens, the embodiment of commodifiable capacities for turning into labour power, able to take their opportunities in the ever more globalising labour markets. These forms combine a neoconservative emphasis upon the responsibilities of citizens to be aware of their national traditions and neo-liberal concern for the rights of individuals. There is a tilting in social relations from collectivism to individualism and from professional autonomy to consumer choice.

Public choice theory in education rarely mentions, though generally assumes the framing of educational provisions within legal devices, and does so without addressing as problematic the ever flexible forms of legality which effectively poses very little threat to the dominant order (Chubb & Moe, 1990). Thus the educational and legal establishments appear to be under direct threat from the state with respect to producer capture and lack of accountability to their clients. In Britain customers' charters offer an individually based appearance of forms of redress. There is, however, only marginal institutional re-adjustment to the social distribution of class power, with precious little opportunity for the poor to systematically improve their lot. There are many indications of the reverse process. The system determines litigation and redress to have costs beyond control where they extend for instance, to the business of dispute resolution through legal aid, and the effectivity of judicial review (Richardson & Genn, 1994), let alone the 'costs' of evening the distribution of life-long continuing education and health care, etc. At the same time the legal framing of privatisation articulates with the ideological and structural features of the capitalist system, extending it into ever deeper realms of life and in doing so reversing the paltry collectivism of welfarism.

New statute law provides the framing regulations and lower level ministerial regulation, now more extensive than ever before and ratcheting up the centralisation of administrative power in British education. It is 'no accident' that the Secretary of State for Education has recently been transformed into the Secretary of State for both education and employment. Legal changes have brought with them shifts in school managerial cultures, and new personnel into school governance. The increasing professionalisation and embourgeoisification of school governing bodies is probably under way in England and Wales, because the time and efforts required for these forms of public service are likely only to be available to the relatively better off and appropriately skilled. More specifically, it is also likely that, lawyers are coming onto schools' governing bodies in greater numbers than ever before. Added to this is the increase in litigation in education indicating that education is an increasingly fertile field for marketing lawyers' skills (Green, 1994). These constitute what we wish to depict as empirical instances at the interface of law and education, moments in the contemporary juridification of education. The argument is that here marxism can play a part in framing analysis of these developments and outcomes.

Part three: Interface analysis

By interface we have in mind the constitutive effects of the practices deployed to realise the forms of institutional fields where they meet, mediate, articulate, influence, interpenetrate, contextualise/re-contextualise, etc., forms and practices in other institutional fields, and at those points combine to constitute their boundaries, their interfaces. In this case we have in mind law, legal practices and legality, (or it could be medicine or religion, or whatever) in relation to, education, educational practices and educality. Similarly, by reversal at this interface, we are interested in analysis of the play of education upon law, etc. To complete the formal problematics of these conceptual spaces, are their elements of symbiosis and mutuality. Put directly as empirical concerns, this requires attending to issues which arise when we ask questions like: "What happens to an educational problem when it is recontextualised as a legal question?" ... the juridification of education. Collaterally, there is a collection of characteristic sub-issues about when, where, which and how, educational issues become juridified. Or, in the other direction: "What is educational about legality as practices, cultures and institutions?"... the pedagogics of law, again with a range of associated sub-issues. And, symbiotically, 'When, where, about what, and how are legality and educality constituted in mutuality?'

There is virtually no focused and systematic, not to mention empirical, analysis to draw upon for this, largely, it might be speculated because of the general assumption, within liberal discourse, of priority given to law as the framework for social relations, what we might call the fetishised empowerment of legal autopoiesis (King, 1993). There are examples of studies of the impact of legislative changes upon educational opportunities, for instance social class polarisation consequent upon extending parental choice in Scotland (Adler, Petch and Tweedie, 1988), extensive work on race and educational opportunities following the Brown decision in the USA (Kluger, 1977; Seidman, 1992) and many others which tend to assume the autonomy of legality with respect to education. Rendering problematic and de-reifying these institutional assumptions and their subsequent re-interpretation within marxist protocols is a development to be anticipated as this perspective progresses. For the present, interpretation of materials developed in other modes will be necessary if we are to attempt any critical suggestions.

Part of our interest in developing interface analysis is stimulated by reflection upon the linguistic turn in social analysis and its de-constructivist mode in poststructuralist intellectual fashions. While methodological notions such as 'intertextuality' are central in poststructuralist discursive analysis, there has been very little attention to intertextuality for boundary or interface questions so far as social analysis of education is concerned. There are oblique clues scattered throughout the literature for instance on the dualisms of micro-macro analysis, the relative autonomy 'problem', etc. Developments in Bernstein's work, out of Durkheim on the principles of social solidarity, in which dualistic methods constitute techniques for the conceptualisation of boundaries, vis, classification and framing of educational knowledge in examining the penetrability, porosity of curricular and pedagogic boundaries, is available (Bernstein, 1990) as a lead. Bourdieu's work on institutional fields, etc., which puts primary interest in the domination from either side of the boundary, for instance the particular formulations on law (Bourdieu, 1987), may prove useful but limited because it is too one-sided to realise the constitution of boundary forms themselves.

There are instructive connections with Goffman, where rituals may be seen as boundary constituting modes (Goffman, 1967), and at the same time weapons of class domination, via exclusions, collusions and differentiations, in which the sacredness of the thing itself, the ritual of daily school worship, for instance, or of court appearance, are reinforcing of collective consciousness embedded in institutional practices (e.g. the gravitas of law and goodness of education, is ritually reproduced during such encounters). In marxist class terms this signals the need to penetrate below the surface appearance of the phenomena of ritual and symbolism, all the more so in the hyper-space of postmodern symbolic forms and functions³ to expose their articulations with the politics of production, distribution and exchange.

More specifically, in discourse analysis, intertextuality of legal discourse is rarely the object of examination in the specific context of education (though see Dingwall; 1987, Whitson, 1991). When shifting the focus more broadly to look at the articulations of institutional practices and their wider social structural concomitants, there are many methodological, conceptual and analytical issues which arise when attempting to understand what is happening at the interfaces between two or more institutional fields. Limitation of space preclude any detailed explication, particularly, for instance, in relation to articulation of class and non-class differentiation, gender, race/ethnicity, etc. Clues dropped in this sketch will have to suffice.

Part four: interface analysis and social critique

On the face of it, this would seem to be poor ground on which to try to contribute to the discovery (or yet another re-discovery), building, or re-building perhaps, of the contribution of marxism to social analysis of education. Surely the empirical eclectic traditions of the powerful weberian forms of liberal humanist modes of analysis are a safer bet? Or structural anthropologies deriving from Durkheim through to their expression in the formalism of Basil Bernstein, as already cited? Or critical discourse theory, perhaps (Fairclough, 1989; Hodge & Kress, 1988), to name but a few of an ever lengthening list? Of the many candidates, most fashionably at present, are any one of a number of variants of poststructuralist methodology fitting to the postmodern condition in which the permeability of social and cultural boundaries is assumed to have reached hyper proportions through the critical power of deconstructive analyses of our foundation-free social reality. While the attention of the latter to dynamic cultural surfaces may be instructive for an aesthetic analysis of the social text, this does not require us to reduce the social to aesthetics.

Critically, in this regard, what has become of academic social analysis in recent transformations, is the over-dependence upon discourse as either irrespective of action or as replacing action, reducing the social real, in both cultural and institutional modes, to the discursively possible and problematic. To many it is the perspective which is most characteristic of our postmodern, poststructuralist, postindustrial, postmarxist, etc., times, constituting, from this marxist standpoint, what amounts to spuriously humanistic 'critical criticism' (Marx & Engels, 1957). Its tendency is to reject the socially determining features of social structure and institutional arrangements, as at all effective in explaining what is going on, and to dismiss a vision which embraces a sense of totality for fear of totalitarianism.

The marxist tradition must reject the exclusive deployment of these methods as idealist and ultimately complacent political standpoints on the real possibilities for human development. However the present essay cannot be a testing of marxism in relation to these other methods. The aim is not to reinstate a philosophical marxism as an infallible truth, or as foundation for understanding the direction of history. So far as marxism is concerned, teleology and vulgar determinisms have long been demonstrated to be wrongheaded and now out of their useful time. However, babies and bath water! Several of the key marxist themes continue to have vitality and the relational standpoint they provide remains strong.

It is important not to misunderstand a central premise which is brought into view by recognising the inherent danger of reification and hypostatisation of either legal or educational social structures, processes, relations and inter-relations. They are to be deconstructed. This is doubly important when setting the discussion in and around the marxist tradition of critical analysis. Either through the charges of essentialism or various kinds of reductionism, marxism has come to be considered in some quarters as intellectually incoherent, marginalised and currently virtually irrelevant, an outmoded icon of a once valuable but now arthritic mentality. The point must be that for marxism, we are analyzing and acting within the determinations of social relations. Social relations are essentially subject to all the possibilities of reflexivity, and making the subjective objective, and the reverse, in order to plan and implement active lines of behaviour which

acknowledges itself to be subjected to at present unrecognised structures of opportunities to act. Actions, structures and the processes of structuration are real, though never wholly understandable in mechanical or rigidly patterned ways.

Marxism does not require a positivist method or empiricist epistemology to provide useful modes of analysis or to deliver interesting accounts of the socially real in the face of this predicament. To repeat, deconstructive modes are as vital to critical analysis of capitalist production and consumption relations as they are to aesthetics. However, this method is not to be an end in itself, as with aesthetics. Literary criticism may be fun but it is not what we are up to. Legality and educality and their inter-facing are our present business.

Unlike Foucault for whom critical intellectual effort of interrogating forms of power should be institution specific (Foucault, 1977), for instance, working with prisoners on penal institutions, implying in this context that we work on a radical either/or basis. Either, we focus on the iniquities of legality or, those of educality. The point here is to focus on the inter-institutional, the interfacing of institutional contexts. The aim is to formulate questions, to critique and self-critique actions, programmes and institutional patterns which form these boundaries, contributing in these processes key points of transaction and distraction about what is thinkable and do-able.

The 'problem' is one of production/reproduction, not just 'reproduction' as so much critical neo-marxist analysis of education has developed following Bowles and Gintis' landmark efforts. There is the perennial sliding of resolution of tensions and contradictions, which in judicial practice manifest themselves as procedural adjudications rather than attention to claims to substantive rights to education, let alone political demands for re-arrangements to the production and social distribution of knowledge. With respect to the much celebrated benefits of law itself, in education and in the wider contests of formally instituted adversarial legality in public court procedures, these are sites of both opportunity and dread, even as those who aim to do so, take their opportunities, and in doing so reproduce the jurisdictional legitimacy of these state forms of the mysteries of the law ... deaf, dumb, blindly impartial and very expensive (Galanter, 1974). It is, of course, generally useless in getting urgent and socially vital things done, not unlike education as presently constituted (Scheurich, 1994).

At their interfaces both legal and educational practices contribute towards the constitution of subjects, actors and legitimate actions, and objects, things to be named, processed and formed for future consideration, and, of course, of subjects as objects and objects as subjects. In these spaces, education does, the law says, the fetish of personifying what are complex social processes within and about institutional forms and functions. Thus law performs educational functions and education performs functions of legality to reproduce social forms of property and persons as legitimate (credentialed) identities, commodities in the ever shifting, controversial sites of the public/private boundary of the state and civil society.

It is the political importance, for socialist politics that makes materialist analysis continue its vitality for ideology critique, in which the other faces of power are exposed, de-reified, hypostatisation penetrated, dispersed and their functions clarified. Both law and education are implicated, not simply as reducible to economy (as production, consumption and their realisation in the plenitude of social practices of exchange), or as expressive of economy and dominant class power, but related to each of these in complex and dialectical ways within forces and relations of production. Law is part of the relations, even arguably forces of production, as is education, as well as in this regard in relation to each other at their interfaces. They are to be examined for their roles and functions in these wider processes. For instance, the idea and practices of contract which take several forms, constituting mutuality and agreement in an individualist mode. It finds both expression and endorsement in and through dominant educational and legal forms. It expresses the mystique of equity, displacing attention from the institutional practices which disguise the impediments to equality, as a worthwhile aspiration. In both contexts the tendency is to displace attention from the structuration of not just the current meaning of the specific contractual relation,

but also from the structuring of opportunities to enforce both the meaning during negotiations and subsequently, of compliance during the implementation of the social relations of the contract.

The point is that law, like education never determines anything. Law is most alive in the moments of its making, implementation and breaking at any specific historical point on both the upside and downside of dominating power. In education this is readily apparent, for instance in the daily flouting of the legal requirements vis religious worship in English schools. Headteachers simply do not enforce this because their staffs and themselves in great numbers do not accept it and feel supported by their assessment of parental agreement. At the same time there are no legal entitlements to education, it is virtually impossible to sue on behalf of parents who believe their child is not being educated to their potential (Harris, 1990). What does this tell us about legality and educality and their interconnections? It is not a matter of simply balancing competing claims to rights, in the liberal pluralist mode. It is in these latter ways that law is again rendered sacred in secular pluralist society, an icon of collective representation, and as such an ideological displacement from the realms of power and control, an imaginary collective representation whose educative function is to demoralise any attempts to envisage radical alternatives.

In the contemporary world the meanings and practices of legality and educality are ambiguous. Being prepared to 'break the law' is very loosely related to immorality but sufficiently so, for it to be invoked with regulative effects. The rhetorical exposure of someone identified as being prepared to break the law continues to be powerful indeed for instance in labour relations. It provides a lightning rod for conducting the terror to each individual one of us of the social without a social contract. Similarly, on educality, education is what is best for your child, this time in consumerist individualist terms. It is parental choice which currently carries the ideological burden of renewal of the faith in a system which as a collectivity works largely not in the interests of all. The argument here is that marxism can help us to appreciate such issues in the many cases of the ambiguous juridification of education, what might be considered to be paradigm cases of formal legality being un-made in its rejection, sidestepping, ignoring and re-made in local regulation and in the general will, for instance, of media vilifications?

Conclusions: Marxism and justice in the learning society

Functionally, law and education generally complement each other, providing ideological supports for the liberal conception of civil society, dispersing radical concerns and particularly those expressing the marxist perspective that exploitative capitalist social relations are readily reproduced below the surfaces of rights and entitlements. They articulate capitalist forms through the struggles over what is common sense in civil society, Gramsci's theme and Critical Theory's major pre-occupation with communication, community and the public sphere in the work of Habermas. The symbolic effect of being law abiding, law governed, of being educated and knowledgeable are ongoing manifestations of the sites of hegemonic struggles which constitute the current state of being 'civilised'. Within marxism, this speaks to the Hegelian inspirations of much of its accounting for the politics of a just civil society as an elaborate form of educational process, without revisiting once more, as with Fukuyama, the Hegelian paradox that history is ended in the present (Fukuyama, 1989).

The approach being developed here inspects the interfacing of institutions such as law and education, both as being educational, productive of the civilised citizen, and then as requiring critically inversion, exposing the hidden faces, ideological functions of institutional and discursive processes of identity formations, aspirations and rationalisations of sufficient successes and culpable failures. Here citizens are interpellated in a range of cultural forms of civilised responsibility.

Legally, education is a the site of compulsion through attendance requirements. Here is a moment in the control of the bodies of young people, i.e. attendance is required and spontaneously accepted, learned into youngsters, parents, all alike, so as to be virtually habitual. There no possible

item for general dispute, not even around the marginalised phenomenon of home schooling, except for the wastefulness of too high a cost of financing too late a school leaving age where the more direct labour power elements of secondary education are better provided by the private sector, as training schemes and work experience, etc.

Legality, as modes of familiarity and difference, is class determined in forms of cultural capital of facility in access and use for some, mystery, fear and obscurity to many. So much of the sociology of professionalism, for instance, is built upon premises which include specific forms of legality and regulation as iconography of responsibility, with legal professionals themselves constituting a virtual ideal type of professionalism. The marxist critiques of professionalism should deploy the above themes to show, for instance, that the differentiation between teachers and lawyers, as, 'sub-' and 'real' professionals respectively, is more than a matter of social status, articulating with the politics of occupational closure and autonomy, and articulates in turn with forces and relations of capitalist production and dynamics of hegemony.

Law for most people is such a mystery and so difficult to think about, to come to grips with. It is alienated and alienating, yet it is resorted to as the mark of civilisation, of security of the weak against the strong. This is particularly so in relation to the state and the constitutional role of the division and balancing of powers, for instance. Here legality, the common recognition of rules which transcend specific interests, weak and strong, government minister and vagrant alike, is in procedural legal practices. The role of interface analysis is to demonstrate that it is substantive in its practical implications as educational practices also.

As in law, educational practices are both rule governed, have principles, and are spontaneous, dynamic, changing, while the primary patterns of social and cultural powers remain much the same. Thus schooling is legitimated as class neutral rather than class conscious, a moment in educality where it reproduces class relations in material and symbolic forms. This connects with the formations of labour power around discipline and self-discipline, identity and self-identity. The educational force of law is inscribed in the active student, worker, teacher, lawyer, etc., in the self regulation which articulates their actions with those of others in the self creation of the human power aspects of the forces of production. The forms in the advanced corporate capitalist world are highly differentiating and differentiated, specifying, individualising and specialising, generative of capacities for labour power, nonetheless. Bowles and Gintis' initial formulations of a correspondence between the forms of education and the forms of production is unsubtle and inadequate as an historical account and, being tension- and contradiction-free, signals an ongoing crudity often exposed as 'reductionist' or 'determinist'. It is essentially apolitical or cynical in its implications for critical action, because there can be none. However our interest is in labour power formation, the disciplines of production, are still there to be understood, unfashionable though this idea currently feels in academic circles (Rikowski, 1995).

Legality shapes the way we do education but it also shapes the educating we do, largely by legitimising the present patterns whilst pressing for endorsement of specific class forms, including nationalist collectivism, for instance the History and English debates around the England and Wales National Curriculum, and disparagement of downsidiers' cultures. Education shapes the way we do law, legality, but it also shapes the law we do, partly in forming those who practice or 'do' the law. The moves, for instance toward informal legalities, community dispute resolutions keeps the issues within rather than between different class positions. The struggles to realise justice in the face of corporate and state power are legion, and the least well equipped to fight are poor people, impoverished by the successful assaults upon their own forms of collective representation in their community and production forms.

The case, therefore, is that marxism supplies important dimensions to social analysis, namely, to ask what the relation is between ideas and class power, opening up the space which is sceptical of the neutrality and consensus making effects of law and education. In this, the pressures of economic consideration are present both directly and indirectly, without the articulation of law and

education being simply reduced to or expressions of them. The ideological effects of reification, displacement from focusing and exposing interests are complex, and as such is a significant form and of their effectivity. Simple deceptions fool nobody, they have to be believed in, and vital half truths like the rule of law and the good of education in contrast to anarchy or ignorance has to be ever-present to catalyse these powers as wants and needs. The uneven distribution of effective knowledge, effective education works in, to and for, both law and education and the modes of their articulation. The politics of welfare law making show no simple one to one capital favouring modality. The reality is complex, reflecting the dynamics of struggles between capital formation and development of the fullest potentials of the individual and collectivity.

My theme has been that we find benefits in stepping back to re-consider what is at stake with interface analysis and arguing that it is underdeveloped but vital to examining the social world, and that, contrary to contemporary fashions in social analysis, the concerns central to marxism are important to focus description, explanation and inspiration for political movements. In analytical terms the issues go to the heart of the methodological problems around relative autonomy, where it is not autonomy but relativity which is the vital issue. Our appreciation of social and institutional practices should focus here, rather than ritually citing the term in an effort to save or demolish the particular theory. It is not so much that so called base and superstructure are relatively autonomous, or that economy, politics and culture have their own spheres, it is the work of demonstrating in historical and cultural terms the human practices which constitute the dynamics at and of the boundaries between them.

The dialectical process of practice and analysis is one of folding back into the social relations of production of legality and educality the dynamics of their production, and so re-focusing to counter the refractive effects which make so difficult the struggle in common sense for exposure of the myths of equity, particularly as they are professionalised in the special concerns of experts in education and the law. The questions to put are all about the social genesis of controlling ideas and institutions in the present hegemonic balance.

The educational interest here is to expose pernicious differentiation, in the context of making a case, being educable, constituting a problem, nuisance, or whatever. Here the liberal ideal of equity is constantly displaced by the reality of inequality and functionally related to the cultural conditions of economic production and to mechanisms for re-forming labour power to encourage the others.

Notes

1. On education, the 1970's and '80's saw a surge of intellectual interest following Bowles and Gintis' *Schooling in Capitalist America* (1976) and Willis' *Learning To Labour* (1977), with extensive collateral discussion, see Bowles & Gintis (1987); Brosio (1994); Enslin (1987); Cole (1988); Hargreaves (1982); Sharp (1980); Strike (1989); West (1984). On law see Collins (1982); Cotterell (1992); Hunt (1978); Kerruish (1991); Pashukanis (1978); Sugarman (1983); Sumner (1994).
2. The methodology builds on the realist positions elaborated by Bhaskar (1979) and specifically for Marxism by Sayer (1979). It articulates with the recent movements in 'Open Marxism' as discussed in Burnham (1994) and 'form analysis' (Hodgkinson 1991) in which social entities take on the appearance of being separate (Holloway 1995: 164-148). I am grateful to Glenn Rikowski for drawing the recent work of Holloway to my attention.
3. For a radically different approach to Bernstein's work see Tyler (1995).

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