

**Fudge, Judy and Eric Tucker 2001.**  
***Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948.* Toronto: Oxford University Press, 398p.**

Authors Judy Fudge and Eric Tucker have produced an important historical study that is essential reading for labour movement activists and students.

*Labour Before the Law* examines the construction of the current labour relations system by focusing on the dynamics of industrial relations legality and illegality that played out between 1900-1948. All unionists will gain from reading this work since the authors use historical evidence to reflect on the current labour relations system and the problems faced by unions as a result of the industrial legality put in place during the 1940s.

The book begins with a question many of us have long asked. Why is it that the first thing we ever hear, or for that matter say, about a strike, is if it is legal or not? Why is there so much emphasis on legality when the media reports on industrial action? "How did this focus on the legality of workers' collective action come to be?" (p.1). The book goes on to examine all forms of collective labour action, i.e., strikes, picketing, boycotts, and their narrow legal construction in the period leading up to the end of the 1940s. The emphasis is on how unions were channelled into a narrow range of responsible legality, resulting in much of workers collective action being defined as illegal.

The authors identify three periods of industrial legality. Prior to 1900 liberal voluntarism prevailed. In this period

terms and conditions of employment were determined primarily by the operation of the labour market and the individual contract of employment. Despite the *Trades Union Act, 1892*, which gave a legal face to unions, employers, with the aid of the courts, used the power of private property to thwart collective labour action at every turn.

From 1900 state institutions played an increasingly important role in regulating industrial conflict. Fudge and Tucker refer to this period as industrial voluntarism. During this time, "freedom of association remained a legal privilege, rather than a right enforced by the Canadian state" (p.3). *The Industrial Disputed Investigation Act, 1907*, introduced compulsory conciliation and "cooling off" periods that gave time for state investigators to document and publicise strikes. "Faced with an employer who had little concern for public opinion and who refused to be cajoled by the government" (p.64), conciliation under the Act did little to benefit unions. Its main goal, the authors argued was to distinguish between those unions that were responsible and those that were irresponsible.

The third period, industrial pluralism, was put in place near the end of the war in 1944 through *Privy Council Order 1003*. Under this wartime order unions were granted a distinctive legal status. The core elements of this system remain in place in current Labour Relations Acts in all jurisdictions in Canada. Under this system employers were legally required to recognise and negotiate with unions; freedom of

association for the purpose of collective bargaining became an enforceable legal right; and unions, in effect, were recognised as the “junior partners” of business enterprise. In return for this legal status, unions and their leaders were required to be responsible. Instead of replacing the regimes of liberal and industrial voluntarism the new industrial legality was grafted onto employers' legal power of contract that is enforced through a wide range of legal mechanisms.

The authors point out that industrial pluralism and union responsibility were, and still are, constructed in economic, political and workplace terms. Being responsible economically means that unions came to accept the legitimacy of the private property, the free market and hence the dominant power of employers and capital. Political responsibility means that union leaders must be committed to a limited form of parliamentary and electoral democracy. As a consequence, workers political and democratic collective action is defined as illegal and irresponsible. In the context of the workplace and industrial relations, responsibility means accepting the rule of law and all its prohibitions on collective action during the life of the collective agreement. In other words responsible unionism means denying the collective power of labour for most of the time and relying on legal mechanisms to solve the conflict inherent in the employment relationship.

The consequences for unions and workers of the system of industrial pluralism were and still are very

significant. Responsible unionism, as defined by the state and the courts, means relying on bureaucratic, technical forms of action to resolve conflicts between labour and capital. It requires the kind of union leader who must turn away, during the life of the collective agreement, from mobilising and organising collective action. Militant organisers don't fit well with this system. Unionists must look to the requirements of legality rather than the collective power of workers for their legitimacy. Union leaders must make legality their central organising principle and be prepared to control and discipline members who go beyond the limits of the law. Under this system business unionism flourished “as unions saw their role as obtaining the best deal for their specific constituencies rather than as leading a broader social movement to obtain greater economic equality for working people as a whole” (p.307).

What does this study mean for unionism today? The authors suggest that industrial pluralism may be losing its dominance. They point to the limitations of the regime for the public sector and also for the growing private service sector with its growing number of “atypical” jobs. The authors argue that, “increasingly, industrial pluralism is confined to a narrow segment of workers” (p.313). They suggest that the labour movement must think through the implications of a labour relations system that not only limits democratic action but as well no longer applies to the majority of workers. What should replace this system is the debate that needs to happen?

While the authors weave together the overarching themes of legality and responsible unionism they do so through meticulously, detailed historical research. The evidence they present in support of their arguments is extensive and impressive. There are parts in this book that I will reread because of the richness of the documented evidence. It would have been helpful if the authors had added a glossary of legal terms, so be armed with a concise legal dictionary when digging into the legal ramification of industrial conflict. It will be, however, well worth the effort.

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**Florida, Richard 2002. *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life*. New York: Basic Books, 404p.**

The business sections of larger bookstores are well stocked with the works of aspiring gurus who endeavour to uncover the true nature of our changing economy and working lives. Many of these works are quickly dismissed, drowning in the multiple offerings released by publishers searching for the next Daniel Bell (*The Post-Industrial Society*) or Alvin Toffler (*The Third Wave*). Every few years, however, a book comes along that captures the attention of the media, academia and a broader readership. These books, such as Robert Reich's *The Work of Nations* or Jeremy Rifkin's *The End of Work* have straightforward

central themes and are written with an accessible and entertaining prose that escapes many academic writers.

A recent addition to this collection is Richard Florida's *The Rise of the Creative Class*. Inspired by research recognising the leading economic role of knowledge workers (such as Reich's 'symbolic analysts'), the author argues that a new 'creative class' of innovative workers producing new ideas and technologies, ranging from art to artificial intelligence, has emerged as the most important part of the post-industrial workforce. Florida estimates that creative workers (scientists, designers, university professors, etc.) now account for over 30 percent of the American workforce. Although these workers are presently unaware of their status as a 'class', their values, desires and ethos will increasingly dominate advanced capitalist economies and societies. Throughout the book, Florida develops his 'creative capital theory' as a superior alternative to human capital theory and other regional development models that explain dynamic economic growth. A spirited narrative peppered with lively anecdotes, the book has attracted significant international media attention and has received praise from academic and policy-making circles.

The book is divided into four parts. In the opening section, 'The Creative Age', Florida links the western economies' need for constant innovation and creativity to the rise of the Creative Class and its Super-Creative Core (i.e., the 12 percent of the workforce directly involved in producing innovative ideas). It is here where the author also introduces the 'other' workers still