Labour/Le Travailleur

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Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Allen Lane 1991).

E.P. Thompson, *Customs in Common* (London: Merlin Press 1991).

EIGHTEEN YEARS AGO, students from the Centre for the Study of Social History at the University of Warwick set the historical establishment on its heels with a brilliant book of essays on the criminal law and criminality in Hanoverian England. Pursuing the poacher, the wrecker, and the smuggler through the archives, they recovered forms of community-sanctioned action that addressed the important distinction between the law and the unwritten popular code of justice that resonated with such vigour in the 18th century. And by exploring the bloody code and the way in which popular custom became reified as crime, they offered new insights into the social relations of an age immortalized by Hogarth and Fielding and inscribed in the shadow of Tyburn's 'triple tree.'

   Both of the books under review may be said to have grown out of that collaborative, pioneering venture. Peter Linebaugh's monograph on the London hanged is a substantial reworking of his Warwick doctoral thesis, of which he gave us but a glimpse in his fascinating essay on the Tyburn riots against the surgeons. Edward Thompson's collection of essays in *Customs in Common* represents the

culmination of years of work on 18th-century plebeian culture, first sketched out in *The Making* and then in a series of magnificent articles, but subsequently put aside while he battled the politics of the 'second cold war' in the 1980s. It was a war he helped to close, but not, as it tragically eventuated, without a ruinous and fatal injury to his health.

Customs in Common is a collection of essays on a common theme: the centrality of custom and customary expectations in the lives of ordinary people in the face of capitalist innovation. Some of the essays included in this volume are so well known that they now have something of the quality of *déjà vu*. But it is worth stressing just how important they were when they first appeared. "Time, Work Discipline and Industrial Capitalism," for example, first published in *Past and Present* in 1967, dramatically revised historical understandings of the meaning of work before the advent of industrial capitalism and subtly revealed how that industrial experience ruptured the traditional relationship between work and leisure and confronted the task-oriented and community-centred rhythms of everyday life with new cultural imperatives and discipline. Such a perspective fundamentally changed the terms of the debate about the effects of the industrial revolution, which had hitherto become bogged down in arguments about the improvement in workers' standard of living. It encouraged scores of historians to rethink the 'cultural politics' of industrialism and to explore the myriad forms of worker resistance both in the workplace and outside of it. In North America, where trade unionism was less deep rooted than in Europe, it facilitated new challenges to the commonplace orthodoxies about American 'exceptionalism.'[1]

Thompson's essay on 18th-century bread riots is also a piece of similar stature; a brilliant investigation of the *mentalité* of labouring people in the face of scarcity, what Thompson called the 'moral economy,' a concept that historians have found helpful in understanding early labour struggles in Britain as well as the social reciprocities which informed peasant culture as far afield as southeast Asia. It is good to have these two essays, both vintage Thompson, in this volume together with a lengthy postscript on the latter. They are accompanied by explorations of the wife sale and 'rough music,' plebeian rituals that sought to monitor gender relations or provide for some form of popular divorce; an essay on custom, law, and common right which complements earlier work on deer poachers (*Whigs and Hunters*) and patterns of inheritance among the yeomanry; and finally, a more general chapter on the prevailing forms of cultural power and social relations in 18th-century England that bring coherence to the whole.

What is the legacy of this work after all these years? In a recent recollection of Thompson,[2] Perry Anderson has suggested that the foray in the 18th-century constituted something of a shift from the heroic battles over class and industrialism

[1]Herbert G. Gutman, *Work, Culture & Society in Industrializing America* (New York 1976), 3-78.
[2]Perry Anderson, "Diary," *London Review of Books*, 21 October 1993, 24-5.

that Thompson charted in *The Making*, a switch that affected his style of writing, now more ironic and Swiftian, suited his playful, irreverent temperament, and corresponded with a change of venue from industrial Yorkshire to the rolling countryside of Worcestershire. If this shift is meant to suggest a political *disengagement* from earlier debates within the New Left and a new academic complacency, then it should be denied. Thompson was never at home in the academy as *Warwick University Ltd.* quickly revealed. And the retreat back in time was perfectly consonant with a Marxist agenda that sought to explore long-term continuities in popular resistance to capitalism, whether agrarian or industrial, that stretched back to the 16th century. In this context Thompson built on the work of Maurice Dobb and Christopher Hill. Furthermore, Thompson's 18th-century explorations led him to a deeper understanding of the role of the state in regulating social relations than can be found in *The Making*, particularly through the law. It also led him, in his reconstruction of the customary practices of the poor and their rituals, to reject the Marxist model of base and superstructure in favour of one that gave greater weight to culturally-endorsed norms and needs within modes of production.[3]. For historians, at least, these were important theoretical gains.

Customs in Common none the less raises a number of issues that will continue to spark comment and debate. The first concerns the salience of custom in 18th-century England and the extent to which the plebeian defence of customary rights entailed a formidable and systematic attack upon capitalist development. These issues are important because in the wake of Thompson's studies over the last two decades a new orthodoxy has emerged that has reconstructed Hanoverian Britain as a consumer society in which market forces became dominant by 1750 and indeed necessary to fuel its dramatic urbanization.

Thompson does not address these issues head on but rather through a number of acerbic asides and refusals. He is consistently and categorically hostile to the notion of consumerism which he dismisses as a bland endorsement of 'improvement.' To some extent this is fair, for it is certainly true that the notion of a 'consumer society' has been unproblematically and sloppily formulated in recent work, without any historical vision of what that might entail in terms of the commercialization of desire and the internalization of work discipline. Yet Hans Medick has constructed an interesting argument about the vicarious and intermittently 'conspicuous consumerism' of plebeian culture in terms of a habitus of 'social exchange,' involving drinking rituals, flash dressing, and the consumption of sugar, tea, and tobacco, which would mesh with Thompson's reflections upon the leisure preferences of the poor and the forging of social bonds against misfor-

[3]For Thompson's own brief reflections on the theoretical issues raised by his 18th-century work, see *Folklore, Anthropology, and Social History* (Brighton 1981), reprinted from the *Indian Historical Review*, 3 (January 1978), 247-68. See also Ellen Meiksins Wood, "Falling Through the Cracks: E.P. Thompson and the Debate on Base and Superstructure," in Harvey J. Kaye and Keith McClelland, eds., *E.P. Thompson. Critical Perspectives* (London 1990), 125-52.

tune and hard times.[4] Some engagement with this line of reasoning would have been helpful.

Similar strictures might be raised about Thompson's retort to his critics over his interpretation of foot riots in which he juxtaposed the moral economy against the emergent market 'rationalities' of Adam Smith. In his original article Thompson was somewhat equivocal about the extent to which his moral economy was grounded in actual market practices rather than drawn from oral memory and legal precedent. Various historians have noticed this, and indeed the paradox that food riots increasingly occurred (as the century advanced) in industrial areas where workers were dependent upon complex market networks for their food. Did this not weaken the antinomy of the moral versus the market economy? Could not the moral economy be a pragmatic strategy of food rioters, directed against unreasonable market speculations, rather than the capitalist market *per se*, a reinvention of 'custom' as a bargaining tool? On the one hand Thompson appears to concede this could be the case: "*of course* the rioters were already deeply involved, in some part of their lives, in the market economy's exchanges of labour, services, and of goods." (272) On the other hand he curmudgeonly accuses its advocates of acceding to the fashionable *zeitgeist* of market triumphalism. (267) Perhaps a response rather than a rebuke would have been more appropriate, one that simply stated that negotiating the wider market did not necessarily mean buying into its ideology.[5]

One of the difficulties in current discussions of 18th-century custom is determining its pervasiveness as social practice and *mentalité*. Thompson does not add greatly to our knowledge of the first, although, following Christopher Clay, he interestingly speculates that perhaps a third of all landholders held their tenures by copyhold at the end of the 17th century, not to mention the great number of landless people who had access to customary rights on the commons and to customary perquisites within their trades. On these important considerations, he has largely left the field to his students. None the less his reflections on custom as law and agrarian practice go a long way towards re-establishing the salience of custom as an index of social change in 18th-century rural England and of the continuing struggle against capitalist definitions of property. Drawing upon case law and the records of the courts, Thompson shows how the battle over common right was prolonged and complex and how the lawmakers narrowed the definition of customary rights to *lex loci* and showed an increasing impatience with co-incident use rights to landed property. Enclosure, Thompson argues, effectively eradicated *lex loci* in many areas and radically diminished the agricultural labourers' access to non-monetary income. Until that massive transformation of the countryside, he

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[4]Hans Medick, "Plebeian Culture in the Transition to Capitalism," in Raphael Samuel and Gareth Stedman Jones, eds., *Culture, Ideology and Politics* (London 1982), 84-113.
[5]For a reformulation of these negotiations, see John Bohstedt, "The Moral Economy and the Discipline of Historical Context," *Journal of Social History*, 26 (Winter 1992), 265-84.

claims, echoing Neeson, common right was a important resource of the poor, stubbornly defended by the poor themselves and sometimes tolerated by farmers who needed a resident but seasonal labour supply. This important revision dispatches the historical apologists of improvement and also those Marxists who prematurely pronounced the univocal advance of agrarian capitalism from Locke onwards. It puts custom and the peasantry back on the 18th-century landscape.

Thompson's work on the 18th century focused principally upon rural settings. Apart from his brief exploration of political disturbances, the assize of bread, and disputes over the urban commons, he had little to say about the significance of custom in city life. In the *London Hanged*, Peter Linebaugh goes a long way to redressing this balance. In this richly-textured study Linebaugh underscores the importance of customary perquisites to many of the London trades. In an age when there was no uniformity about the wage, when piece rates were commonly described as 'prices,' when truck was widely used, especially in sub-contracting, workers often supplemented their wages and believed they had a right to supplement them with the waste materials of their trade. Shipwrights' 'chips,' hatters' 'bugging,' and weavers' 'thrums' were an integral aspect of the 'social wage,' especially in the highly seasonal context in which many artisans worked. Like common rights, many lawmakers and employers increasingly looked on these perquisites with disfavour and their appropriation was often criminalized as embezzlement or theft. Thus the 'Clicking Act' of 1723 sought to clamp down on the appropriation of leather scraps by shoemakers, while the 'Bugging Act' of 1749 sought to do the same to the wool and beaver stuff retained by the hatters, sentencing offenders to two months' hard labour in the house of correction. This process, the reification of urban custom as crime, forms one of the central features of the book.

But Linebaugh is not content to leave the analysis here. In his view, the standard of living of most workers was so marginal, and the abuses and scams of employers and public figures so flagrant, that workers had little compunction about stealing their share of the product with an antinomian insolence. One rip-off deserves another. Those who were 'cheated' (hanged) at Tyburn for trying to cheat the cheats (whether employers, luxury-ridden rentiers, corrupt politicians, or officials) drew the sympathy of spectators of a roughly similar sociological and ideological disposition. Whatever qualifications historians had about different categories of property crime — the late George Rudé, for instance, distinguished acquisitive, from social, from protest crimes — these are eliminated by Professor Linebaugh. All property is theft and crime its proletarian restitution.

In formulating this thesis Linebaugh strives to make the following crucial points: 1) that there is a critical link between capitalism and capital punishment; 2) that the London hanged were not part of a criminal sub-culture but representative of the London trades; 3) that the elimination of customary perquisites and the establishment of a wage system was "the fulcrum around which class relations revolved" and part of the process of disciplining the 'proletarian,' a term that

Linebaugh prefers (121-2) over 'plebeian' to describe the footloose workers who may have toiled only intermittently for a wage; 4) that these workers became so alienated from the law and the law-makers that they shared the antinomianism of the law-breakers. All of these arguments demand some engagement.

To begin with, it is odd that Linebaugh should regard the 18th century as the age of Thanatocracy because capital punishment was on the decline. The research of John Beattie and others has shown that despite the accretion of capital statutes, there was a marked decrease in the number of men and women who were hanged for capital offenses. In the 18th-century, lawmakers developed a calibrated system of punishment to deal with major property offenses, including transportation, and ultimately imprisonment. Between 1718-1769, more than two-thirds of all Old Bailey felons (69.5 per cent) were banished to America, while only one in every six or seven (15.5 per cent) received the death penalty or, by a similar ratio, lesser punishments (14.9 per cent).[6] Capital punishment was thus reserved as a form of judicial terror within the constellation of punishments. There is little evidence that it was deployed more severely in periods of capitalist intensification; rather, its use accelerated in periods of demobilization when contemporaries became alarmed at the upsurge in property crime. Indeed, in the classic period of the industrial revolution, when the disciplinary imperatives of capitalism took on new meanings, the penitentiary was considered the more appropriate mechanism of control because of its rehabilitative potential.

Whether or not the London hanged formed part of a criminal underworld remains a moot point. The criminal biographies on which Linebaugh bases his study certainly believed in its existence, as a recent edition reveals.[7] That aside, Linebaugh does not conclusively demonstrate the contrary case because his 'samples' of the London working population are flawed. Jack and Marion Kaminkow's list of migrants to America is not strictly a London list, as Linebaugh states, but a list of emigrants, some of whom travelled far afield, who happened to sail from London.[8] Linebaugh's subsequent 'samples' are similarly imperfect, so we are left with a quagmire of percentages of dubious relevance. All we can say is that the great majority of the London hanged were male (92.6 per cent), young, and mobile, their geographical origin conforming to the general profile of Londoners, most of whom (67-80 per cent depending on one's reference group) were born

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[6]A. Roger Ekirch, *Bound For America: The Transportation of British Colonists to the Colonies 1718-1775* (Oxford 1987), 21; see also J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton 1986), chs. 9 and 10.

[7]Philip Rawlings, ed., *Drunks, Whores and Idle Apprentices of the Eighteenth Century* (London 1992).

[8]Jack and Marion Kaminkow, *A List of Emigrants from England to America 1718-1759* (Baltimore 1964). In fact the introduction notes that these were only the emigrants who were registered at the Guildhall, not from Middlesex, which was part of the London conurbation. Some had no occupational attributions, but were described as "poor lads."

elsewhere. They were largely clustered in the poorer trades or the armed forces — the two were not necessarily indistinguishable given the occupational mobility of many workers — and to that extent Linebaugh is right to protest against Rude's overly rigid division between the artisan and the criminal 'riff-raff.' Yet Linebaugh does not consider whether the social profile of the executed is skewed by the trial process itself, which tended to discriminate against those who could not produce convincing character references at short notice.[9] This may explain the seemingly high proportion of soldiers, sailors, and Irishmen who were sent to the gallows, and perhaps apprentices and servants, especially if they had fallen foul of their masters. What is also intriguing is the possibility that Londoners were over-represented among those hanged. Compared to the 'sample' of males listed in the Westminster General Dispensary for the years 1774-1781, this would be the case (20 per cent vs. 39 per cent). This finding goes against the grain of Linebaugh's analysis, which seeks to emphasize the unusual salience of the roving proletariat among those executed at Tyburn.

Linebaugh goes some way towards anchoring the London hanged to the working community, but he does not thereby prove that the plebeian population shared the antinomianism of the condemned, or the antinomianism attributed to them by the balladeers. Indeed, he never addresses the question of whether the public at large viewed property crimes (let alone rape, murder, etc.) in a particularistic light; whether, for example, theft with violence (especially against women) or theft against market-sellers as opposed to gentlemen might draw different responses.

Nor does he confront the issue of whether customary perquisites were an indispensable source of income for London workers whose disappearance threatened their whole way of life. Jeanette Neeson has recently established that common rights were a critical addition to the income of a rural household, amounting in some cases to the equivalent of an adult male wage.[10] But in urban settings the evidence is murkier. Linebaugh can demonstrate that 'chips' in the royal dockyards were worth a third to a half of wages, but were such perquisites as remunerative along the London wharfside where there were fewer delays in pay? Linebaugh cannot offer any conclusive answers to this sort of question, nor can he offer any reliable evidence as to how stringently customary perquisites were policed.[11] On his own admission, the 'Bugging Act' of 1749 remained a dead letter

[9]See J.M. Beattie, "Crime and the Courts in Surrey 1736-1753," in J.S. Cockburn, ed., *Crime in England 1550-1800* (Princeton 1977), 155-86.

[10]J.M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge 1993).

[11]To be fair to Linebaugh, nor can anyone else. See, for example, Robert Shoemaker, *Prosecution and Punishment: Petty crime and the law in London and Middlesex c. 1660-1725* (Cambridge 1991), 161. Shoemaker shows that 28.7 per cent of all committals to the House of Correction between 1670 and 1721 were for 'theft or fraud,' but what proportion concerned disputes over customary perquisites remains unknown.

(240), an acknowledgement that rather undercuts his argument. What also compromises his thesis is the fact that employers sometimes tolerated perquisites as a means of remunerating casual labour and of cleaning premises. This was true of sweepings and scrapings at the London waterside where subcontracting gangsmen and coopers used them to mobilize labour and reward overtime, often with the acknowledgement of merchants and wharfingers.[12] Customary perquisites were often a useful source of "exchange entitlement" in the 18th century for both employers and workers. They were not necessarily a source of class conflict and they sometimes demarcated hierarchies within the workforce itself.

What is also damaging to Linebaugh's argument is the fact that the vast majority of the London labour disputes that were reported in the press were about wages. Rarely were perquisites mentioned.[13] To be sure, these accounts may well conceal the importance of perquisites as an aspect of the wage, but in fact the well-documented cases of the journeymen hatters and tailors make little reference to struggles over 'bugging' and 'cabbage.' This wage-consciousness has some bearing upon the artisans' attitude to the law, for workers were not averse to magistrates mediating labour disputes, nor to securing protective legislation for their livelihood. Nor were they unwilling to apply to the petty sessions over issues concerning poor relief, unpaid wages and conditions of work.[14] Certainly workers had to negotiate laws that frequently worked to their disadvantage, and they often had to do this through concerted collective pressure upon employers and legislators. But they seldom appear to have lost total disrespect for the law itself. Their attitude seems to have been one of pragmatic negotiation rather than outright rejection, even in the face of the law's manifest inequalities. At Tyburn, where the labouring population constructed an elaborate counter-culture to mitigate the terror of the gallows, hangings were usually modestly and successfully policed. Crowds applauded valiant criminals who resolved to die 'game,' but rarely did they attempt to rescue the condemned. They might mock justice, but seldom did they subvert it. Even the Tyburn riots against the surgeons, as Linebaugh himself has remarked, "inflict only a minor but frequent irritant to the city's stability."[15]

Linebaugh is certainly right to remind us of the antinomian strain of London popular culture with its ironic cant, criminal heroes, and ribald balladry, and he executes his mission with panache. But in linking this tradition to the broader frame of popular protest in London, to what he believes was an international and insurgent movement of a picaresque proletariat, he constantly overplays his hand. Two

[12]Peter D'Sena, "Perquisites and Casual Labour on the London Wharfside in the Eighteenth Century," *London Journal*, 14 (1989), 130-47.

[13]C.R. Dobson, *Masters and Journeymen* (London 1980), 154-70; see also John Rule, "Proto-proletarians?" *Labour History Review*, 58 (1993), 51.

[14]Peter King, "Crime, law and society in Essex 1740-1820," PhD dissertation, Cambridge, 1984, 277-9; Shoemaker, *Prosecution and Punishment*, 201-2.

[15]Peter Linebaugh, "The Tyburn Riot Against the Surgeons," in Douglas Hay, *et al.*, eds., *Albion's Fatal Tree* (London 1975), 101.

examples may illustrate the point. In his account of the seaman's strike of 1768, for example, Linebaugh dwells on the strikers' proclamation that ended with the dramatic words "No W(ilkes), no K(ing)." In his view this document revealed aspirations for a democratic republic or at least a decisive break with the Wilkite movement. (316) Yet the fact remains that the sailors were induced to abandon this declaration in favour of the more orthodox "Wilkes and Liberty for ever!" by the schoolmaster who agreed to edit it, although not before they had threatened, as men who had risked their lives for King and country, to raise hell in the Pool of London and "steer for France" if their grievances were not met.[16] This does not sound like republican language, especially when one other witness heard them declare for "King and Parliament." Rather, it appears to be a symbolic war of words between the seamen and the authorities that was typical of the political theatrics of the era. Moreover, it did not lead to an abandonment of Wilkes as a libertarian hero. Seamen at Shields, who were also on strike in May 1768, displayed their colours in his honour on the anniversary of his release from King's Bench two years later, and the London seamen themselves had cause to thank him for his opposition to naval impressment.[17]

A similar kind of problem besets Linebaugh's account of the delivery of Newgate in June 1780 and the riots that accompanied it. There are many fine features to his reconstruction: a detailed quarry into the lives of those executed for their part in the riots; an original account of the participation of blacks; a teasing out of the apocalyptic passions, fired by the American revolution, that surfaced during the riot. Yet the exercise is marred by Linebaugh's disinclination to confront that central impetus behind this complex event, the protest against limited concessions conceded to Roman Catholics in return for their support towards the war effort. It was Lord George Gordon's massive repeal campaign that set this riotous world turning, and that campaign, drawing upon the darker side of the Englishman's birthright, fired a disconcerting sectarian bigotry. Irish men and women found themselves on the receiving end of 'No Popery' violence which extended to some of the meaner habitations in Southwark and Bermondsey and would have extended deeply into the working-class quarters of the East End had not the Irish coalheavers threatened counter-reprisals upon Dissenting meeting houses.[18] This ugly aspect of the riot is deeply damaging to Linebaugh's interpretation, which seeks to impart an internationalist flavour to the crisis. In fact the London poor were divided by the event. Even the blacks, whose participation in the riots was not exceptional relative to their numbers, had mixed feelings about it. Ignatius Sancho reported with horror the "poor, miserable, ragged rabble, from

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[16]William L. Clement Library, Ann Arbor, Michigan, Shelburne Papers, vol. 133 F. 367, cited also by Thompson, *Customs in Common*, 76-7.

[17]*Leeds Mercury*, 24 April 1770; *Middlesex Journal*, 13-16, 27-30 October 1770.

[18]Public Records Office (London), SP 37, 14,147-8. See also Nicholas Rogers, "The Gordon Riots Revisited," *Historical Papers/Communications historiques* (1988) 16-34.

twelve to sixty years of age, with blue cockades in their hats — besides half as many women and children — all parading the streets ... ready for any and every mischief ... This instant about two thousand liberty boys are swearing and swaggering by with large sticks — thus armed, in hoped of meeting with the Irish chairmen and labourers." If this was "genuine British liberty" he opined, "I am not sorry I was born in Afric (sic)."[19]

Linebaugh ably captures the antimonian spirit of 1780, but he glosses over the central passions that informed this complex and protean riot. These included a strident anti-Catholicism and patriotic populism, a populism that pitted 'true Protestants' against an alliance of cosmopolitan aristocrats, episcopal lackeys, war-mongers, and ministers. Under the banner of the Protestant Association, an organization that adeptly mobilized the media and a rich variety of local institutions to transmit its message, this ideology invoked a deeply-ingrained proto-nationalism that had extraordinary appeal. Its success causes us to consider the changing political landscape of the late Georgian era, the rapid expansion and transformation of political space that allowed such organizations to penetrate the artisan world and to construct new identities from the traditions of the past and the conjunctures of the present. I am not sure that "history from below" has successfully addressed this problem, largely because its practitioners have always seen society in terms of a bi-polar antipathy between rulers and ruled. Thompson recognized the difficulty when he concedes the increasing importance of the "public sphere" in the 18th century, one that gave greater purchase to the wealth and cultural power of the middling orders in society. (88) But in the end even he held fast to his patrician-plebeian polarity. It is perhaps time to move beyond this and to recognize, in the denser political culture of the late 18th century, the ways in which long-standing local identities could be ruptured, revitalized, and transformed. Class, new regional identities, new visions of international brotherhood, and nationhood were all part of this battleground.

[19]Paul Edwards and James Walvin, eds., *Black Personalities In the Era of the Slave Trade* (London 1983), 96-7.