

The Law and Student Movements

# A History of Injunctions

The Chicago 7 trial revealed again to 1970 what American labor unionism has known since the 1890's: Justice is a weapon for the rich and mighty, not a shield for the weak and poor. One particularly efficient and odious form of American justice has been the use of the labor injunction. A short historical analysis of the use and abuse of this tool of the American ruling class will make clear the recent extension of the court injunction into cases between universities and student movements. The ruling elite obviously considers the threat posed by student political mobilization to be similar to the challenge of late nineteenth-century trade unionism and this similar treatment is justified.

As originally conceived, since the beginnings of English Common Law, injunctions issued by courts of equity served to "protect property from irreparable injury when there is no adequate remedy at law". Injunctions lead to fall into one of three general categories: first, the temporary restraining order, issued without notice or hearing, upon evidence that the danger is "too imminent to risk delay"; second, the temporary injunction, issued after notice and opportunity to be heard; third, the permanent injunction, based on a full hearing and enforcing the decision of the hearing. The first form of the injunction has obvious

merits, as discovered in the early 1830's, as a means of breaking a strike at critical moments and without warning or hearing given to the union. Though often later removed for lack of cause, this tactic usually served its purpose of bringing labor attempts to collectively shut down working men and a right to be individually.

All three forms of the injunction, when applied to labor disputes, included the definition of property to include the process of business itself. Thus, "irreparable injury" to the normal functioning of business (i.e. business, going on, striking) justified the use of an injunction to restrain trade unionists from doing anything to protect their organization from being destroyed. "Government by injunction" a Democratic campaign slogan already by 1896, threatened to become a reality as the equity courts were not governed by constitutional or statutory law, but solely by the "conscience" of the judge. The judge could issue edicts binding to all within its notice. Dyschordance became punishable by contempt of court, thus depriving the accused of a trial by jury and leaving the judge's "conscience" free to act, as legislator, prosecutor, judge, jury, and executioner.

The labor injunction's effectiveness was reflected by the rapid increase of its use dur-

ing the 1890's, as well as by the storm of protest from many members of the Judiciary, the Congress, and of course from those most oppressed by its use, the laboring classes. The form, however, was slow in changing, and was largely ineffective. First with the Clayton Act of 1914, then much later, with the Norris-La Guardia Act of 1932, Congress attempted to limit the powers of the equity courts. The labor injunction, though, was too valuable a tool against labor unionism to be easily given up, and despite present limits on its applicability, remains as one primary out-of-class means of controlling the threat of organized labor, or as shown today, the threat of organized student movements.

Thus, the injunction has served historically to stymie constitutional guarantees and to create and sustain class distinctions before the law. Similar to military "justice," the defendant is presumed guilty and must prove his own innocence, instead of the burden of proof lying on the court as it does in all criminal cases. Usually couched in indefinite language and ambiguous language, the injunction is left open to interpretation by the judge. Finally, equity courts extended their jurisdiction without precedent into criminal cases by restraining the commission of illegal acts, then citing the accused for contempt of court, not for the alleged criminal action. -- J.C.



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