The Comrades Law of Hebrew Workers in Palestine: A Study in Socialist Justice

RONEN SHAMIR

The purpose of this article is to examine socialist justice “in action.” Specifically, it looks at the Comrades Law system established in 1920s Palestine under the auspices of the General Federation of Hebrew Workers in Palestine. It finds that, regardless of original intentions, the Comrades Law quite rapidly became a quasi-state apparatus, displaying a clear bias in favor of institutional interests over those of individual workers. The argument, therefore, is that rather than becoming a liberating, alternative form of justice, this form of socialist justice ended up reinforcing existing relations of power and working as a mechanism of bureaucratic control.

It may be argued that giving priority to the collectivity (presumably represented by its institutions) over the individual is precisely the distinctive trait of socialist justice that sets it apart from liberal jurisprudence.1 However, it could also be said that socialist justice should be committed to the individual worker and to notions of democratization from below. At minimum, as Merry concludes, socialist justice as a form of popular justice tries to transform the judicial process into an educational and an empowering experience.2 Hence, it may be plausibly argued that socialist justice should serve as a popular outlet providing workers with means for political par-


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participation by way of voicing grievances against entrenched institutional interests.

Accordingly, the working hypothesis of this article is that the actual direction in which socialist justice develops must not be understood against a preconceived ideal but, rather, in the context of the concrete conditions that determine its trajectory. This is what I mean by socialist justice "in action": Socialist justice as it develops in the course of concrete practices carried out in the name of socialism and as its jurisdictional boundaries are shaped within the institutional framework of a socialist organization.

Thus, the proposed analysis is based on the pragmatist notion that socialist justice is an evolving concept that acquires meaning and direction in the course of actual practices. Socialist justice per se is only a loosely defined idea, lacking clear criteria and standards, with no established tradition to follow. At least to some extent, socialist justice evolves and acquires a distinct character simply by setting itself against "bourgeois-liberal law," namely that relatively well-established body of knowledge and set of institutional practices that constitute state law in capitalist societies. Accordingly, socialist justice, as it is manifested in comrades courts, can only be described in generic terms. Comrades courts, in general, are reputed to be "informal, nonprofessional, non-bureaucratic, and therapeutic rather than condemnatory."3

In what follows, therefore, I offer a conjectural and situational explanation to the process during which comrades’ tribunals become instruments of organizational control. My main argument is that the trajectory of the Comrades Law system followed that of socialist Zionism in general: its main purpose was to establish a highly centralized organization that would have regimented workers to the national cause of establishing a Jewish state in Palestine.4 However, this does not mean that the thesis holds only to the particular case of Israel/Palestine. Studies of comrades courts and socialist popular tribunals elsewhere also indicate the tendency of such tribunals to become instruments of social control, enforcing state power over individuals.5 The thesis, therefore, may be expanded to include other cases in which socialist justice operates within the framework of a political center that aims to achieve its goals through centralist-bureaucratic means.

In the first section of this article, I introduce the general background for establishing an in-house system of socialist justice and elaborate on its

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structure and ideology. In the second section, I outline a general thesis concerning the type of socialism that had been developed by the Zionist workers’ movement. It is in the light of this thesis that I analyze the career of the Comrades Law system. In the third section, I consider the socialist system of justice “in action,” looking at actual cases and analyzing the commitment of the system’s leading figures to socialist principles of justice. In the final section, I summarize the findings, situate them against the theoretical framework that I offer, and conclude with a general evaluation of the possibility of socialist justice.

Background and Context:
Palestine under British Mandatory Rule

The British army occupied Ottoman-ruled Palestine toward the end of the First World War. Having been granted a mandate from the League of Nations, the British established a relatively modern and fully functional colonial state in Palestine. Over the next thirty years, they created a sophisticated web of administrative apparatuses and governmental departments, a sound infrastructure, and a reformed legal system modeled along a combination of English law and the Ottoman law of the former imperial power that ruled over Palestine.

The Zionist movement—namely the forces advancing the Jewish national project in Palestine—gained considerable momentum following the British occupation. The Jewish population, estimated at about 55,000 in 1918, had risen by 1925 to 108,000. Equipped with an official and public British commitment to facilitate the creation of a Jewish National Home in Palestine, Zionism had now been set free to launch an assertive colonizing project. Thus, Palestine in the 1920s may be fairly described as subjected to dual-colonialism: While the British rulers created a political and economic infrastructure in the form of a colonial state, the Zionist immigrants purchased land from Arab owners, created institutional mechanisms for drawing more Jewish immigration, and developed self-governing organizations for the explicit purpose of a future takeover of the state.

The Zionist colonizing project, however, was unique because there was no identity between the British political rulers of the land and the actual Jewish colonizing population. It developed within the framework of a hovering colonial state from whose perspective the Jewish colonizers were in themselves natives that had to be reconciled with the Arab population. Further, the Zionist colonizing project was unique in that it strove to gain control over land but did not seek to employ cheap Arab labor at its service. On the contrary, it aimed at marginalizing and suppressing Arab la-
bor in order to create employment opportunities for propertyless Jewish immigrants.

Many of the new Jewish immigrants—particularly those who arrived in 1919–1923 and were labeled in Zionist terms as members of the “third aliyah” (third wave of immigration to Palestine)—were young propertyless immigrants who relied for their survival upon their ability to sell their working power. These workers were organized in several workers’ parties. The stronger and bigger ones were Achdut Ha’Avoda [Unity of Labor] and Ha’Poel Ha’Zair [The Young Worker]. In 1920, these two political parties were the driving forces behind the creation of the General Federation of Hebrew Workers in Palestine Ha’Histadrut Ha’klalit Shel Ha’Ovdim Ha’Ivirim Be’Eretz Yisrael (hereinafter, Histadrut).

Concurrently, it was in this formative period that the World Zionist organization made a conscious choice between two alternatives for consolidating the national project. In what became known as the 1921 Weitzman-Brandeis debate, the option of advancing the colonizing project through centralized organizational control over public capital and over disciplined cadres of workers had been preferred over advancing the project by private capital and reliance on private economic initiatives.6 The principled victory was immediately reflected in the rapid development of the Histadrut.

Due to the demographic structure of the Jewish colonizing community in Palestine and the extraordinary organizational skills of its leaders, the Histadrut grew at an impressive rate. It had 4,433 registered members in 1921, doubled its membership by 1923, again by 1926, and counted 22,538 members (not including family members) in 1927, when the total Jewish population of Palestine had been estimated at roughly 140,000 people. By the second half of the 1920s, the Histadrut incorporated 73 percent of the total number of Jewish wage earners in Palestine, thus becoming the strongest organizational, economic, and political organ of the Jewish colonizing community of Palestine. It is of particular interest that the Histadrut, from its inception, acted not only as a workers union but also as a large employer, establishing major commercial enterprises and, not less important, creating an enormous bureaucratic and administrative apparatus.7

Consequently, from its inception the Histadrut had been perceived not merely as an organization designed to advance the collective interests of workers but also as an instrument to advance the national project. In other


words, the degree to which socialism could flourish and develop by the Histadrut, or alternatively, the degree to which socialism could be compromised, depended upon the perceived national imperative and upon the structural fusion of workers’ solidarity and Jewish solidarity within a single institutional framework.

Socialism and Nationalism: An Impossible Fusion?

Grounded in the idea of Hebrew work and enlisted to protect the rights of Jewish workers at the expense of Arab ones, the Histadrut was designed as a body whose commitment to socialism was fused with strict nationalist dispositions. In his *Nation-Building or a New Society?*, Zeev Sternhell posits a tension between socialism, as a world-redeeming universal orientation, and nation-building, as an orientation that forever flirts with particularism and chauvinism. If there ever was such a tension in the history of the Palestinian-Jewish labor movement, Sternhell argues, it had been decisively resolved in favor of nationalism: a praxis that harnessed the socialist principles of equality and social change as symbols at the service of the nation-building project. Sternhell is unambiguous. The so-called Zionist socialist “revolution,” he argues, was about the acquisition, consolidation, centralization, and bureaucratization of power, preventing both individuals and voluntary associations from having a significant independent ability to shape public policy. The socialist ideology was an instrument for regimenting workers, not necessarily in order to promote their rights but in order to advance the conquest of Palestine by ensuring, first and foremost, uncompromising loyalty to the leadership of the Histadrut. Nation-building meant that the purpose was to establish a Jewish state in Palestine and the means to achieve that purpose were realized through a strong political and economic organization that made any other consideration subservient to the national mission. Under such terms, ideas of participatory democracy, individual initiatives, diffusion and sharing of power and authority, and granting channels for workers’ voices “from below” threatened the building of the nation “from above” and were therefore suppressed and marginalized. Instead, the dominant socialist principle at work was that of discipline, exploiting the rhetoric of workers’ solidarity principally in order to create organized national cadres subjected to a relatively unchecked political leadership.

In this article, I put Sternhell’s thesis to a socio-legal empirical test by

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looking at the labor movement’s conception and realization of legality in
the organization and among its members. Specifically, I analyze the career
of the movement’s “internal” legal system, which purported to be, from the
outset, an exemplary system of socialist justice.

Socialist Justice in the Making:
Constitutive Reasoning, Basic Ideological Guidelines

One of the early decisions of the Histadrut was to create its own internal
legal system and to call it the “Comrades Law.” The 1921 constitution of
the Histadrut stipulated that “all members of the Histadrut are subjected
to the Comrades Law and should obey its verdicts” [Article 14]. In 1923,
acting upon the principled resolution, the Histadrut published the Consti-
tution of the Comrades Law. The constitution, which had been revised and
amended during the 1920s and 1930s, defined the jurisdiction of the courts,
established an organizational structure, and outlined the most essential
details for operating the judicial process and for enforcing and executing
decisions. A more detailed explanation of the system is provided in the next
section of the article. Here, suffice it to say that the general idea was that
the courts would further the Histadrut’s capacity to enforce market con-
trol by sanctioning “deviant” workers9 and educating them about workers’
solidarity. Furthermore, the idea was that members of the Histadrut would
use the courts to resolve all their individual disputes relating to monetary
issues and “honor” (libel, insults, and so forth). Accordingly, the courts
were designed to serve as forums both for handling disputes between in-
dividual members and institutional organs of the Histadrut and for the in-
vestigation of complaints brought by the Histadrut’s Acting Committee (its
highest political organ) against “deviant” workers.10

Above and beyond any specific substantive commitments to socialist
justice, it seems that the most profound rationale for the establishment of
the Comrades Law had been a principled interest in allowing for the oper-
ation of nonstate judicial mechanisms for the resolution of disputes. This
was so not because state law was perceived to be founded on bourgeois
principles but because it was perceived as the law of a foreign colonial
power, notwithstanding its relatively enlightened nature. At times, the sen-
timent had been explicitly antistatist. Thus, one activist of the Comrades
Law wrote about “the centralization of political authority and the interven-

10. For a broader discussion of the political context, see ibid.
tion of the state in all areas of life.” “The state wants to be everywhere,” he declared and went on to outline the “historic role” of nonstate legal mechanisms in the “struggle against the state.” This historic role had been perceived as particularly important under conditions in which Zionists did not yet enjoy self-rule in Palestine. The role of nonstate law was to provide a forum for expressing the particular norms of society, consolidating the collective legal consciousness and eventually creating a body of rules that the foreign colonial legislator would be forced to consider and recognize. In other words, the Comrades Law took upon itself the duty of expressing general social customs and of providing a popular outlet from the tendency of the state to “become involved in everything” and to “leave nothing beyond its reach.”

In this respect, the Comrades Law was favorably compared by its founders to the Hebrew Law of Peace. The Hebrew Law of Peace, consisting of an elaborate system of community justice tribunals, had been established with the explicit purpose of providing Jews with means for resolving disputes and for activating and creating Hebrew law without the interference of the colonial state. The Hebrew Law of Peace urged Zionists not to bring cases before the courts of the British colonial government, considering the latter’s law to be a foreign cultural element. Unlike the Comrades Law, however, the Hebrew Law of Peace targeted the “civic circles” of the Jewish colonizing community, namely those who were not members of the Histadrut.

A primary rationale for establishing the Comrades Law was to provide yet another means of realizing a sort of community justice under colonial rule. This is key to understanding the trajectory of the system. The emphasis on the need to retain and develop legal autonomy vis-à-vis colonial law grounded a fundamental and at times contradictory fusion between nationalism and socialism in the Comrades Law.

12. Ibid.
14. In principle, the coexistence of two nonstate Zionist judicial systems in Palestine, one targeting workers and the other targeting the general public, could lead to jurisdictional struggles. However, I found no evidence that such was the case. Advocates of each system often expressed support for the goals of the other and cases of cooperation between the two systems had not been rare. A draft of a revised constitution of the Comrades Law even instructed judges that “when the regulations are silent, the ordinary practices of arbitration and of the Hebrew Law of Peace should be followed” (Article 9, chap. 1, Lavon Archive, (4)-250–72–1–2479) (Hebrew).
The Histadrut’s ideological commitment to both socialism and nationalism is clear in the ideas and justifications provided by its activists for establishing the Comrades Law system. On the one hand, the advocates of the system grounded their vision in the need to strengthen national solidarity: to develop social institutions independent of the British colonial regime of Palestine and to enact—through law—“authentic” national institutions that would have continued a glorious Jewish history of legal autonomy. Thus the activists of the Comrades Law consciously engaged in the reconstruction (or the invention) of Jewish legal traditions. They appealed to the “powerful desire that always characterized the history of the Hebrew People to enjoy autonomy in the resolution of disputes and to be free from foreign tribunals . . . [hence] the Hebrew court was always a pillar of national existence in exile, substituting popular trust for coercion.”  

In this spirit, the Histadrut had been imagined as a microsociety that, “according to the example set by the Hebrew public of medieval times,” assumed the regulation of the lives of its members, thus contributing to “the general national-political activity in the country.”

On the other hand, the nationalistic tone was wedded to a socialist one that articulated the rationale for the Comrades Law in terms of the history of the Jewish working class. Speaking about the purpose of the Comrades Law, Yisrael Bar-Shira—a lawyer who acted as the leading spokesperson for the system—added a class-centered dimension to the general national mission of legal revival. The Comrades Law, he argued, recreated traditional Hebrew Law on nonreligious grounds through its articulation of a “progressive secular law.” Jewish traditions in exile were invoked in order to sustain the image: “Hundreds of years ago,” wrote Bar-Shira, “our people already had special courts for workers and artisans. The Jewish working class was autonomous to regulate its own affairs—and judges were elected by the members of the various workers’ societies from among the general judges of the public as a whole.”

The substantive law that was to govern the operation of the system had been thought of as exemplary socialist justice. Speaking about the type of discretion Comrades Law judges were to employ, Bar Shira suggested adopting, mutatis mutandis, section 4 of the new Soviet Civil Procedure Code. Section 4 stipulated that, in the absence of a clear rule, judges were to decide disputes in accordance with “the general politics of the workers’ and farmers’ government.” Accordingly, Bar Shira suggested that judges of the Comrades

16. Ibid., 105.
Law would render decisions, essentially based on a sense of justice and common sense, in accordance with “the general principles of the Histadrut’s legislative acts and the general politics of the Histadrut’s leadership.”\textsuperscript{18} This model seems to have been incorporated into the 1923 Constitution of the Comrades Law, stipulating that judges would render decisions “on the basis of the general principles of the workers movement” (Article 5).

The projected ideal of the Comrades Law, in short, consisted of popular tribunals whose judges would have been responsive to the needs of workers. They were expected to employ informal methods of adjudication and, in particular, to be ready to assume an active role in protecting the interests of workers: “One should come to terms with the identity of those who appeal to Comrades Law,” wrote Bar Shira,\textsuperscript{19}

Workers far removed from legal education and legal understanding, let alone legal sophistication. Exhausted after a hard day’s work they go at night to the Comrades Law in order to claim their rights from their comrades. And if the lawyer of the other party, or the other party himself, when he is so equipped, confuses him and fails him with legal tricks, he is always able to do so. . . . therefore, the judge should be more than a passive onlooker at a competition he cares little for. The judge should instruct the parties, consciously teaching them the rules. The judge must act as an adviser to the weaker party who is not familiar with formalities and must not himself become a slave of his own formalism.\textsuperscript{20}

Concretely, Bar Shira proposed to depart from dominant adjudication models that barred judges from rewarding parties with more than they had asked for. The Comrades Law, in short, was to apply socialist notions of legality and substantive notions of working-class justice. Succinctly summarizing the projected image, one activist described the Comrades Law as “the conscience of the Histadrut” and as “the civil legal apparatus within it.”\textsuperscript{21} This was the projected image of a forum that gives a voice to the needs of ordinary workers within an organizational apparatus structured along bureaucratic and quasi-statist lines.\textsuperscript{22} The image of the Comrades Law

\begin{itemize}
  \item [19.] Bar Shira, “A Study of the Substance of the Comrades Law,” 113 (emphasis added).
  \item [20.] However, it seems safe to argue that the architects of the Comrades Law were far from being well acquainted with Marxist writings on law in general and with works such as Pashukanis’s in particular.
  \item [21.] Feller, “On the Comrades Law.”
\end{itemize}
system as the “civil” apparatus within the Histadrut seems to offer a key to the projected ideal. Inasmuch as courts in “civil society” provide a channel for citizens to voice grievances against the state, the Comrades Law system was imagined to offer individual workers means of checking upon their political leadership. The degree to which the Comrades Law lived up to the above mentioned ideals of Socialist Justice is the “internal” standard against which I consider the operation of the system in this article.

**Organization and Jurisdiction**

The Constitution of the Comrades Law established a system of tribunals consisting of three juridical instances: a “Limited Comrades Law” court, an “Expansive Comrades Law” court, and a “High Comrades Law” court. The first two instances were to function as a two-tiered juridical system affiliated with the geographically organized Workers’ Councils of the Histadrut. In the first, three judges were to rule over disputes between individual members of the Histadrut. In the second, five judges were to consider appeals from the first instance and to handle disputes between institutional organs of the Histadrut or between institutional organs and individuals. The third was designed to function as a court of appeal from the second, with additional jurisdiction for providing principled opinions to the Histadrut’s Acting Committee (its top executive organ) in matters of constitutional importance.

Comrades Courts could be established everywhere, granted the approval of the secretary of the High Comrades Court. In practice, they were established alongside branches of Workers’ Councils, which were the local cells of the Histadrut and its organizational power blocks on the ground. For all practical purposes, it was the local councils with which workers were routinely engaged for their daily needs, for obtaining work, and for participating in the political life of the labor movement. Accordingly, the Constitution of the Comrades Law stipulated that judges would be elected by workers in the course of general elections for local Workers’ Councils. In fact, judges were not directly elected. Rather, one month before general elections, the local Workers’ Councils published a list of prospective judges that typically reflected the extant political composition of the council (composed of various political parties). Those judges were considered to have been elected—following the general elections—unless a formal appeal had been submitted to the council before the elections by a considerable number of the voters (article 11, chap. 2). The result of this procedure was that judges were in effect elected and designated by the Workers’
Councils, on the basis of the existing political balance of power among the various political parties of the Histadrut.

Judges were not required to have formal legal education and were expected to decide cases on the basis of their general experience, common sense, and their familiarity with workers’ conditions. Article 5 of the Constitution of the Comrades Law stipulated that “judges rule on the basis of their discretion and honesty of heart, on the basis of the general principles of the workers movement in this land, within the bounds of the Histadrut’s Constitution and the decisions of its authorized institutions, and on the basis of agreements between the parties as long as these do not contradict the above mentioned principles.” The judges of the High Comrades Court were elected once every two years directly by the Histadrut’s General Council (article 11, chap. 2).

In general, judgeship was seldom a primary occupation. Typically, most judges were deeply involved activists and functionaries of the Histadrut, fulfilling a variety of duties, and often treating judicial duties as a necessary but far from desirable burden. This fact, as we shall see, became a major source of dissatisfaction with the operation of the courts, expressed by litigants and functionaries alike.

The jurisdiction of the Comrades Law applied to all types of monetary disputes, not only those directly relating to labor issues. In effect it assumed the force of a compulsory and all-inclusive dispute resolution mechanism for the members, organs, and affiliated institutions of the Histadrut. This jurisdiction, however, was constantly checked by both the Acting Committee and local Workers’ Councils. Article 4 of the Constitution of the Comrades Law formally limited the jurisdiction of the courts in matters within the prerogative of the Acting Committee. The limits imposed on the courts’ jurisdiction by the Workers’ Councils, however, were informal and based on the former’s deep dependence on the latter in many of its functions, from the election of judges to the enforcement of decisions. As we shall see, the jurisdictional struggles with Workers’ Councils were an important source for constraining the ability of the Comrades Law to function as a truly popular tribunal operating for the benefit of individual workers.

The decisions of the courts were to be based on majority opinions. The

rule was that all judges sign the decisions, including those who disagreed with the majority. Minority opinions could be inserted into the courts’ records, but it was forbidden to disclose them in public. In principle, the courts had a wide array of sanctions at their disposal, both on the merits and as punitive measures against recalcitrant parties who disobeyed decisions. The ultimate sanction was the court’s ability to expel workers from the Histadrut. Lesser sanctions included the temporary suspension of various membership rights, such as health services, employment privileges, and a set of collective goods offered to members of the Histadrut (such as subsidized food, mail services, and so forth).27 Given that the Histadrut effectively controlled the life of its members through its monopoly over a wide set of social services, and given the dependence of propertyless workers on such services, the Comrades Law had strong disciplinary measures at its disposal, with the ability to inflict considerable social pain on workers-litigants.28

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*Moral: Issues relating to a person’s good name or character.

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Table 3. Total Volume of Litigation at Tel-Aviv, Haifa, and Jerusalem Comrades Courts

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Socialist Justice in Action

I. General Principles

The history of the Comrades Law did not turn out to be one of assertive independence in respect to the political organs of the Histadrut, nor has it been a history of concern with the grievances of workers who challenged institutional authority. On the contrary, within a short period of time, the Comrades Law had become an instrument of discipline and control at the service of the organization. As we shall see, attempts to reassert its independence were effectively blocked at the local level (by Workers’ Councils) and at the national level (by the Acting Committee).

In actuality, the officials and judges of the Comrades Law paid very little heed, if any, to the development of an alternative socialist law. “The socialist tradition of popular justice,” writes Merry, “springs from Marxist-Leninist theories about the potential of popular tribunals to empower the masses to deal with rule breaking and to educate them in the forms of a new socialist ideology.” 29 As educators, Comrades Law judges occasionally inserted lecturing-style statements into their decisions, yet it is impossible to conclude that, in so doing, they acted any differently from “ordinary” judges of “bourgeois law” who occasionally do the same. Consider, for example, a case of violence between two neighbors in a Jewish settlement. The disputants hit each other, and there had also been physical damage to property and violence against the wife and children of one of the disputants. The records of the trial reveal that the judges, after hearing a considerable number of witnesses, could not reach a conclusive decision. Eventually, the judges decided that they were not competent to rule in the “legal” issue of property damages (referring the parties to a rabbi.) Instead, they restricted their ruling to the “factual” matter of personal violence. They

resolved to fine one of the disputants and concluded with a general statement to the effect that the Comrades Law

Expresses its dismay [with the comrades] for their anti-social, impolite, and irresponsible behavior which hurts the dignity of the Histadrut. . . . Failure to behave patiently and nicely in the future may lead the Histadrut to resort to harsher measures that may lead to their exclusion from the Histadrut.30

Even more commonly, “educational” decisions had to do with attempts to discipline workers who deviated from the official norms and regulations of the Histadrut. It was in such cases that the role of the courts as instruments of market control and as potential producers of a “moral community”31 were most explicit. Consider, for example, the case of the Haifa Labor Bureau against the Carmel Workers group. The Carmel group consisted of a number of construction workers who at one time contracted directly with an employer. Direct contracting violated a strict Histadrut rule, which required workers to refer employment opportunities to the local Labor Bureau. The Labor Bureau, in turn, in association with the local Workers’ Council, was in charge of distributing work among registered workers and workers’ groups according to certain criteria and queuing procedures. This process, in principle, was designed to equalize employment opportunities among workers and to increase their overall bargaining power. In practice, the process was ridden with conflicts and tensions. Complaints against the allocation process were common, and workers frequently voiced rumors of unfair and corrupt policies by the Labor Bureaus’ officials. Consequently, numerous disputes erupted around attempts of workers to bypass or avoid the official waiting lists. The Comrades Law in judgment of the Carmel group ruled:

Obtaining work by bypassing the organized organs of the Histadrut may lead to competition among workers and to decreasing wages which destroy the worker and demoralize the organized working class, undermine the authority of the Histadrut, and provide exploiters with ammunition in their war against the Histadrut. Obtaining work without the mediation of the Histadrut deeply subverts the institutions of the worker in his struggle to consolidate work-contracts and obstructs a just division of labor.32

While it is possible to read cases such as the above in terms of the educational functions of law, namely teaching workers about the importance of workers’ solidarity, it is also evident that in such cases the overriding concern was to consolidate and defend the centralizing authority of the Histadrut.33

33. Also see, for example, the Litvak case, cited in De Vries, “The Making of Labour Zionism,” 139–42.
At any rate, local Workers’ Councils often challenged the jurisdiction of the Comrades Law over such disciplinary measures. Essentially, these challenges reflected a struggle over jurisdiction. The councils were worried about their ability to exert effective disciplinary measures on their own and the bureaucrats who held positions of authority in the local Workers’ Councils were reluctant to delegate it to the Comrades Law. Thus, for example, a letter sent to the Comrades Law from the Jerusalem Workers’ Council flatly determined that

It is inconceivable that the Comrades Law would hear appeals concerning [work opportunities’] waiting-lists, and that it would review the actions of committees and secretaries of local councils or would pass judgment over the administration of our various bureaus. Bureaus and officials are only responsible to the Jerusalem Workers’ Council whose executive committee has the exclusive authority to consider such matters. 34

Similarly, the Construction Workers’ Association, affiliated with the Jaffa Workers’ Council, revolted against the interference of the Comrades Law in the matter of one of its members, comrade Kushnir. The Construction Workers’ Association expelled Kushnir from the Histadrut after he was found guilty of conspiring with an independent contractor to “exploit workers” on a private basis. Concurrently, a member of the Construction Workers’ Association turned to a Comrades Law tribunal, raising the very same charges against Kushnir. The Comrades Law reached the same conclusion as the one reached by the Association. Nonetheless, the Jaffa Workers’ Council challenged the authority of the Comrades Law to consider the matter. It opined that the Comrades Law stepped beyond its jurisdiction: “Complaints against undisciplined workers,” the Workers’ Council wrote, “were strictly the concern of local councils whose decisions could only be appealed to the higher executive bodies of the Histadrut.” 35

II. A Case of “Sexual Harassment”

The inability of the Comrades Law to develop and consolidate a power base independently of other political organs of the Histadrut had also been evident in what can be described, from a present-day perspective, as the first sexual harassment case in the history of Zionist judicial tribunals in Palestine. In 1927, an official of the Jaffa Workers’ Council, who was in charge of allocating financial aid to workers, was accused of systematically harassing women workers in need. Most of the allegations concerned the attempts of the official to kiss female comrades, to visit them at night in

their homes, and to make indecent propositions. Most seriously, a number of complainants claimed that the official promised financial aid to women who complied with his demands and threatened those who refused that they would not be granted such aid.\footnote{Ibid., (4)-208-1–106 (10 Feb. 1928) (Hebrew).}

The case was not brought before a Comrades Law court. Rather, the Jaffa Workers Council nominated a five-member board of inquiry, which heard witnesses and testimonies behind closed doors. Finally, in 1928, the board submitted to the council a secret report summarizing the testimonies of thirty-two witnesses. Regardless of the clear testimonies against the accused, the board concluded that most allegations were unfounded and exaggerated and that the accused was only guilty of “general indecency.” The board therefore suggested removing the official from his position temporarily and offering him another job not involving direct contact with the public.\footnote{Ibid.}

Significantly, the board did not include any “educational” statements in rendering its decision. Yet one member of the board refused to endorse the conclusions and findings of the board. Apparently frustrated by the clandestine nature of the investigation, he published the full story in a periodical of one of the Histadrut’s opposition parties. In his article, he wrote that the decision of the board was based on political considerations and that the whole “judicial” process was marred by the fact that “a number of female comrades refused to testify in full because they were ashamed to do so.”\footnote{Milchamtenu: A Publication of Po’aley Zion, (12 Jan. 1928) and (3 Feb. 1928) (Hebrew).}

In response to this, the Jaffa Workers Council brought charges against the recalcitrant member of the board for breach of secrecy, this time taking the case to a Comrades Law court. The court found him guilty of unlawfully publicizing secrets of a judicial chamber. Upon conviction, he was removed from the list of persons eligible to serve as a Comrades Law judge.\footnote{Lavon Archive, (4)-250–72–1–2398 (Hebrew).} The sanction imposed on the recalcitrant member of the board thus reveals the uneasy relationship between Workers Councils and the Comrades Law. From the standpoint of the Comrades Law, the sanction reflected the notion that a Comrades Law governed the process. Yet from the standpoint of the Jaffa Workers Council, its own quasi-judicial board of inquiry handled the original proceedings. The Comrades Law court practically ignored the fact that, indeed, the council retained the power to decide on the identity of board members and that it was also able, at least according to the recalcitrant member, to shape the result. It seems that the Comrades Law court preferred not to raise the principled issue of jurisdiction and not
to protest the route taken by the council. In fact, in deciding against the
board member, it legitimized the process and implicitly acknowledged the
superior discretion of Workers’ Councils to decide if and when to hand
disputes over to Comrades Law tribunals.

III. Socialist Law and Rights of Employees

Comrades Law courts were rather timid when it came to rights of employ-
ees, especially when it considered disputes in which the employer was the
Histadrut itself.40 In deciding labor disputes, the Comrades Law was often
as rigid and as formalistic as any other “bourgeois” court. Consider the case
of Sara Agi. Agi was a cleaner at the offices of the Jerusalem Workers
Council. She was laid off without compensation on the grounds that she
was not a monthly wage earner but only a part-time employee who could
produce no documentation concerning her working status. Agi brought
charges against the council at a Comrades Law court where it was further
argued that she had been laid off because she was not fit for the job. Agi
argued that she had been working in the same offices for seven years, be-
ginning her employment with the local Labor Bureau that was later dis-
mantled and integrated into the Jerusalem Workers Council. The Workers
Council argued that Agi had worked for it for only four and a half years
because “the Jerusalem Workers’ Council never assumed upon itself the
obligations of former bureaus and cannot be held responsible for the plain-
tiff’s former years of employment.”41

The judges of the first instance (one of whom was Golda Meir [Meir-
son]) established Agi’s principled entitlement to compensation for four and
a half years of employment, thus accepting the principled claim but reject-
ing the part relating to her employment with the Labor Bureau. The coun-
cil appealed the decision on grounds that it had not been under any bind-
ing obligation to pay compensation at all. The court of appeal upheld the
decision of the lower instance and went as far as to establish Agi’s princi-
pled entitlement to compensation for seven years of employment. Still, the

40. Comrades Law could hardly ever be depended upon to resolve disputes between a
member of the Histadrut and employers unaffiliated with the Histadrut. Such employers
simply refused to litigate in a Comrades Law setting. Shivo wrote about an attempt of an
employee to summon a “well-known capitalist firm” to a Comrades Court: “The company
failed to respond to a couple of invitations. After a third attempt had been made, the chief
secretary of said company answered that since the company was capitalist, ‘we cannot sur-
render to decisions made by judges who act on behalf of the Histadrut.’” See Shivo, “About
Another Institution of the Histadrut.”

(22 Feb. 28) (Hebrew).
court abstained from awarding Agi that additional compensation on grounds that she herself did not appeal the decision of the lower instance.

The case of Agi is a strong demonstration of the Comrades Court’s tendency to assume a neutral noninterventionist posture, molded along classic liberal legalism rather than along the lines of that type of socialist justice that speaks of the judge’s role in actively guaranteeing the substantive interests of individual workers. In other cases as well, the original idea that Comrades Law judges should actively assist the weaker party to a dispute and should actively intervene in cases where lack of legal sophistication worked against the substantive interests of workers had not been applied.42

Particularly telling in this respect was the decision of the High Comrades court in the matter of Solel-Boneh. Solel-Boneh, previously the Bureau for Public Works, was incorporated under the ownership of the Histadrut and functioned as its largest “flagship” construction company. In June 1927 it went into bankruptcy, throwing the Histadrut into a severe fiscal and moral crisis. Following the collapse of Solel-Boneh, a number of laid-off employees sued the company for compensation. The employees argued that they were entitled to compensation also for their years of employment at the Bureau for Public Works. As far as the rights of employees were concerned, they argued, “Solel-Boneh and the Bureau were one and the same.”43

The first instance accepted the claim and established plaintiffs’ right to full compensation. Solel-Boneh appealed the decision to the High Comrades Law court. Representing the company were David Remez, a senior Histadrut executive, and Dr. Krongold, a lawyer who was also one of the senior executives of the Comrades Law. Moreover, the High Comrades court was fully aware of the fact that Dr. Moshe Zmora, the General Secretary of the Comrades Law, was operating behind the scenes because he was also Solel-Boneh’s legal adviser.44 On appeal, the High Comrades Law court reversed the decision of the lower instance. In its laconic decision,
the court ruled that Solel-Boneh, “in its present situation, could not pay workers compensation due to them for their years of employment in the Bureau for Public Works.”

The decision was so shockingly unexpected that the Tel-Aviv Comrades court that rendered the original decision asked the High Comrades Law court for further clarification, “without which the decision would remain incomprehensible to our comrades.” Dr. Krongold, who represented Solel-Boneh at the trial, replied to that request, this time in his capacity as the deputy-secretary of the Comrades Law. His reply was telling:

Dr. Zmora and the undersigned did not take part in the case either as judges or as secretaries. The undersigned appeared as an advocate for Solel-Boneh. Dr. Zmora, who is a lawyer of Solel-Boneh, could not take part in the case. Therefore, I do not know the reasons for the decision of the judges. The meetings of the judges are confidential, there are no protocols and it is therefore impossible to know their reasons. . . . I am also not satisfied with the decision because the court did not provide a clear answer as to the responsibility of Solel-Boneh towards the Bureau for Public Works. I argued that such responsibility did not exist, neither legally, nor morally, and I explained my position at court.

Of course, the court should decide whether a claim is justified and should not inquire into a defendant’s ability to pay. But I can understand that in certain cases the court may not validate a legal right and at the same time validate a moral right—known in English law as Equity. And in such cases the court may also morally evaluate the condition of the defendant and rule that although the plaintiff had a moral right, this right could not be granted under the circumstances. This is how I understand the decision in this case. I understand that the court did not recognize the plaintiffs’ legal right, but recognized their moral right on the basis of equity, and yet resolved not to validate it because of the situation of Solel-Boneh. These, of course, are my personal speculations. . . .

This remarkable answer, written in fluent legalese, seems to be quite remote from Bar Shira’s original ideal of what the Comrades Law should have looked like. The troubling conflict of interests notwithstanding, the very ideal of socialist justice seems to have been seriously compromised here on substantive grounds as well. The ideal of judges who would actively employ judicial reasoning in accordance with “the general politics of the Histadrut’s leadership”—namely, in accord with some envisioned socialist principles—has come full circle, turning the court into an instrument

for denying workers’ rights. The Solel-Boneh case exposed some inherent weaknesses of the Comrades Court. First, the complex organizational structure of the Histadrut placed senior officials in positions carrying a potential for conflicts of interest, Comrades Law officials and judges simultaneously serving as legal advisers to the Histadrut qua employer and the Histadrut qua a political organ. Second, rights of employees—whether “legal” or “moral”—were deemed subservient to the practical financial needs of the Histadrut in its capacity as a “socialist corporation.” In this latter function, the problem that I see is not that the court refused to adopt a liberal standpoint that places the individual at the center of its concerns. Instead, the problem is that the style of socialist justice applied here opted for a version that, as in the case of Agi, did not assume any responsibility whatsoever for the de facto unequal relations between employees and employers. Thus it seems that a nation-building orientation—in the concrete form of primary concern with institutional centralizing interests—shaped the practices of the court.

IV. Socialist Justice as an Administrative Instrument

Early signs of substantive departure from the basic elements of “socialist justice” already became apparent in 1923. A telling example was a case deliberated at a Hebrew tribunal unaffiliated with the Histadrut and its Comrades Law courts. This tribunal was part of the Hebrew Law of Peace system of courts that, not unlike the ideology of the Comrades Law, urged Zionist settlers not to bring cases before the courts of the British colonial government but rather to develop an autonomous system of community justice. In general, the Hebrew Law of Peace system operated alongside the Comrades Law system and targeted the “civic circles” of the Jewish colonizing community, namely those who were not members of the Histadrut. Nevertheless, members of the Histadrut occasionally turned to the Hebrew Law of Peace rather than to the Comrades Law in order to settle disputes. Such was the case of Erlich v. Bureau for Public Works, deliberated in 1923.

Dr. Zmora, who was also the General Secretary of the Comrades Law, represented the bureau, an organ of the Histadrut. Plaintiff asked for compensation for three years of work, calculated on the basis of one month’s salary for each year of work. Zmora objected, arguing that “this principle of granting one month’s salary for each year of work is not recognized by the Bureau,” suggesting instead compensation equivalent to one month’s salary for the whole period. The judges, faithful to their own community-
justice principle of seeking compromises, awarded plaintiff more than he had been offered by the Histadrut, yet less than he had asked for. Both parties appealed, and on appeal Zmora protested the conciliatory reasoning of the judges, arguing that the duty of judges was not to enforce compromises but to make either/or judgments.\(^48\) In other words, the idea of the trial as a competition, as a combat in which the winner takes all, guided the legalistic outlook of the Comrades Law’s most senior executive.

By 1928, the bulk of the caseload of the Comrades Law consisted of hundreds of routine cases, processed on standard forms, in which members of the Histadrut were sued for failure to pay membership taxes or to pay back loans granted them by the Histadrut’s Savings and Loan fund. These cases resembled neither an elaborate judicial proceeding nor a popular justice process. Further, the more such cases were processed by the Comrades Law courts, the less satisfactory they seemed to be. A letter from the Histadrut’s Savings and Loan fund to the Jerusalem Workers Council complained that

> While we are obliged by law to submit collection cases to the Comrades Law, this system does not function. . . . many of our comrades smile when they see a judgment against them. . . . of all the judgments in our favor this year there were no more than two comrades who complied and paid their debts. We had to resubmit all other cases to the courts of the state for judgment and execution. . . .\(^49\)

In contrast to the ideal articulated by a few enthusiasts, the main issues on the agenda of the Comrades Law executive meetings—by the second half of the 1920s—concerned the lack of respect toward the system displayed by both individuals and institutions, the tendency of judges not to show up for designated trials, the system’s chaotic administration and chronic lack of resources, and the urgent need to establish more rigorous formal procedures. Most of the discussions held by activists and judges of the Comrades Law dealt with procedural and organizational matters, while only a handful were concerned with ideological and conceptual issues regarding the realization of socialist justice.\(^50\)

The fact that most discussions did not touch at all on ideological or substantive issues, and that there were hardly any attempts to articulate the socialist standards that should have guided the Comrades Law, is telling in and of itself.\(^51\) Most of the discussions were devoted to organizational

\(^{48}\) State Archive, 76/P, box 635, file 212, 1923–1924 (Hebrew).


\(^{50}\) See, for example, the protocol of 13 Dec. 1926, Lavon Archive, (4)-208–1–48 (Hebrew).

issues, implicitly assuming that the problems of the comrades courts could be solved by introducing better and more efficient standards of management. This very attitude reflected a centralist, organizational-bound attitude at the expense of substance. Thus, the most frequent concern voiced by the system’s functionaries was the mindless attitude of many judges toward their role and duty. Time and again, complaints were made that judges failed to appear at scheduled sessions, thus discouraging litigants from using the system and indirectly educating them not to expect justice in the Comrades Law tribunals. A “Comrade’s letter” published in Davar in 1928 summarized the situation from the perspective of the ordinary worker:

When a litigant who wishes to use the Comrades Law has to wait many months, when sessions of the court are routinely postponed because judges fail to appear, how can we blame those comrades who become disillusioned with the court? I brought a case before the Comrades Law. I was summoned to appear in court a month later, but the session was cancelled because the judges did not show up. The same thing happened five times in a row. In the sixth time, one judge out of the six did show up, and another judge who was not scheduled to sit in judgment accidentally entered the room. He agreed to sit in judgment anyway and I was so glad that I agreed to open the case before two judges only. Are we not being abused by the judges? The Acting Committee should stop this and demand from all parties, Achdut Ha’Avoda, Ha’Poel Ha’Zair, and Poalei Zion, who sent their respective members to serve as judges, to fulfill their duties in earnest.52

Administrative concerns, as well as the frequent complaints about disrespect for the Comrades Law, were only outward manifestations of the fact that the Comrades Law had been marginalized from within the Histadrut and that its jurisdiction had been constantly eroded by direct and indirect measures.

In fact, the jurisdiction of the Comrades Law had been formally defined in a way that ensured the immunity of the Histadrut’s executive bodies from effective judicial review. First, the Acting Committee of the Histadrut, its highest political organ, was exempt from the review powers of the Comrades Law. Second, article 7 of the Histadrut’s constitution stipulated that the Acting Committee had a final say in all matters relating to its activities and operations. Third, an article in the Comrades Law own constitution stipulated that the Acting Committee had the authority to decide which organizational matters were beyond the jurisdiction of the Comrades Law. Fourth, the ultimate sanction that the Comrades Law could inflict, revoking membership in the Histadrut, could be appealed to the Histadrut’s General Council. Finally, in contrast to article 14 of the Histadrut’s con-

stitution that established a principled duty to litigate at the tribunals of the Comrades Law, the regulations of other institutional bodies of the Histadrut stipulated that disputes relating to their specific sphere of activity would be resolved by their own internal mechanisms.53

Attempts to change this dismal state of affairs, which ensured the superiority and privileged standing of bureaucrats vis-à-vis the judicial organs of the Comrades Law, were effectively blocked. In the course of the 1930s, the jurisdiction of the Comrades Law was further eroded as the Acting Committee moved to transfer whole area of disciplinary control to newly established tribunals. For example, the Histadrut established special tribunals responsible for prosecuting members suspected of “communist sympathies” and for dealing with workers groups charged with employing wage laborers at cooperatives or cooperative settlements. These administrative moves, Bar Shira argued, turned the Comrades Law into just another bureaucratic apparatus for pursuing members who did not pay their taxes, thus effectively giving the kiss of death to the idea of a national-socialist legal system. Hard-pressed, and realizing the degree to which the Comrades Law had become the captive of an overriding political agenda that had little to do with the interests of the individual worker, Bar Shira eventually resorted to “bourgeois law,” completely reversing his earlier line of argument:

Scientific Socialism rejected Montesquieu’s separation-of-powers doctrine which distinguished the legislative, the executive and the judicial branches of government. Indeed, the law by and large expresses the interests of the ruling class and serves that class. Lenin even added that the imperative to govern requires the creation of a law that obeys political authority. Still, it should be otherwise in our movement.54

In sum, the trajectory of the Comrades Law demonstrates the degree to which, in both jurisdictional and substantive terms, socialist justice had been marginalized and made subservient to the political leadership of the Histadrut. The accumulated result was that rather than becoming “the civil apparatus within the Histadrut,” the Comrades Law mainly served the cause of organizational centralization, providing little space, if any, for alternative voices from below and very little room for challenging the entrenched practices and policies of the Histadrut’s bureaucratic machinery.

54. Ibid., lecture of Bar Shira, 16 Oct. 1928 (Hebrew).
Conclusions

According to Merry—who distills a number of empirical studies—socialist justice is based on the assumed potential of popular tribunals to empower workers to deal with rule breaking (including that of their own leadership), to introduce them to the norms of a new socialist society, and to increase mass involvement with politics. Such tribunals are supposed to generate a different legality: at minimum, commitment to the general idea of workers’ solidarity and socialist democracy. Socialist justice tribunals, especially those operating as community-based forums or as alternatives to state law, typically adhere to a number of traits in the absence of which socialist justice cannot be said to exist. Such traits include user-friendly and lay-staffed accessible forums, avoidance of excessive formalities and preference for substantive notions of justice, and a positive bias toward the protection and advancement of the interests and rights of individual workers.

As we have seen, the Histadrut’s Comrades Law blatantly failed to live up to such standards and to deliver substantive justice based on the above traits. First, Comrades Law tribunals invested little effort in education and empowerment. Second, Comrades Law courts were not particularly innovative, and at times even lagged behind, in workers’ compensation and other matters relating to rights of employees. Third, Comrades Law courts tended to privilege institutional organs of the Histadrut over the rights of individuals. Fourth, Comrades Law scored particularly low on issues relating to judicial discretion and innovation and failed to develop alternative forms of judicial reasoning. When they did, as in the case of Solel-Boneh, that reasoning worked to the detriment of workers. Finally, they gradually became instruments for collecting members’ debts rather than arenas for voicing grievances and settling disputes in an informal way.

However, this article introduced the methodological/theoretical argument that it may be misleading to measure socialist justice against predetermined established criteria. I argued that it may be more fruitful to examine a self-professed socialist justice “from below,” searching for ways in which the very concept of socialist justice is constructed and shaped and sustained “in action.” Accordingly, we should ask what happens when we suspend, at least temporarily, preconceived ideas and look at the actual process of developing the concept, whatever form and substance it may assume. Specifically, given the accumulated evidence that the comrades courts de-emphasized the expectations of individual workers at the expense of other

overriding concerns, we should still be interested in asking whether this specific socialist justice manifested itself through a concern with the collective interests of workers. However, as we have seen throughout this article, the overriding concern of the comrades courts was directed at the well-being of the organization, rather than at the well-being of a working class per se. Only by a rather creative extension of the political and legal imagination can we argue that organization and class were genuinely fused in the operation of these courts.

The study demonstrates that the Comrades Law system ended up reinforcing existing patterns of power within the labor union and reproducing the style of state law courts from which they sought distinction. By the end of the day, the Comrades Law was unable to develop and consolidate a power base independently of other political organs of the Histadrut. Two types of political pressure constantly eroded the autonomy and jurisdictional leeway of the Comrades Law. From above, the Comrades Law was constitutionally restricted in its ability to review the prerogatives of the Histadrut’s Acting Committee and upper-end executive branch. From below, it was under constant pressure from local Workers’ Councils reluctant to delegate their own authority and to lose control over their constituencies.

The taming of the Comrades Law from below and from above reflected the internal division of authority within the Histadrut and, in particular, the jurisdictional sensitivities of those in positions of authority. I have in mind here the way political elites in control of key public institutions create for themselves spaces of unaccountability—a space where in the name of the national, or collective, or the class interest, whole domains of decision making are rendered immune from legal scrutiny. Various tactics are typically invoked in order to restrict legal scrutiny: defining issues as “political” and hence beyond the reach of strict legality, drawing a distinction between administrative and judicial matters, and creating ad hoc or internal quasi-judicial bodies that limit the jurisdiction of the general justice system. Tacitly, and often explicitly, all these tactics were invoked to contain the potential power of the Comrades Law.

Yet, while jurisdictional struggles may be part of any legal landscape, the tendency to secure spaces of unaccountability was compounded in the case of the Comrades Law because of the Histadrut’s “nation-building” mission. According to the perception of the political leadership of the Histadrut, this mission required the centralization of authority and the consolidation of collective discipline and order; it required a basis for organized political action uninhibited by legalistic checks.

In this respect, we should understand the development of the Comrades Law also in light of the inherent suspicion of the labor movement’s leaders toward law and legal regulation in general—a suspicion toward the liberat-
ing and democratic potential of truly autonomous judicial forums. Centralization of authority, at the practical level and in the name of efficiency and urgency, entailed a tendency to prefer ad hoc arrangements, informal agreements and understandings, and various political conjectures over formal rules, established procedures, and a principled subjection to a “rule of law.” Thus, ironically, the classic suspicion of socialists and Marxists toward liberal legalism and formal rational capitalist law had turned on its head, providing the impetus for marginalizing the Comrades Law as well. Consequently, the fate of the Comrades Law seems to affirm Sternhell’s thesis concerning the orientation of the Zionist socialist movement: the centralizing concerns of the Histadrut (as the leading organ of the Jewish labor movement) overwhelmed and practically suppressed alternative visions of social reforms and novel popular experiments. The overriding concern was “nation-building,” not providing a framework for a “new society.”

Finally, we may now consider the implications of the case in a broader framework. The positioning of the Comrades Law in line with the Histadrut’s organizational apparatuses can thus be understood as emanating from two somewhat overlapping sources. First, the Comrades Law was unsuccessful in consolidating an independent judiciary and recognized autonomous jurisdictional boundaries. The ensuing performance of the system sheds doubt on the ability of “socialist” courts to effectively implement socialist notions of justice and to become popular outlets for expressing workers’ grievances without adhering to the “liberal” principle of the autonomy of law. In this respect, the story I outlined seems to corroborate Hayden’s findings in Eastern Europe, namely that successful socialist courts (that is, in Yugoslavia) owed at least part of their success to their “liberal-type” autonomy. Second, using the Weberian concept of substantive rationality, we may safely argue that the Comrades Law was quite timid in implementing substantive notions of socialist justice. To be precise, the courts seem to have activated substantive-rationality mainly when responding to the “politics” of the organization but much less so when it came to the needs and expectations of workers not trained in legalese. Yet again, we are confronted here with a double-edged sword. On the one hand, sub-

57. Sternhell, Nation-Building.
58. However, as one anonymous reviewer remarked, the Histadrut may have been more active in furthering the legal rights of employees by appealing to reforms in state law (for instance, labor law) directly to the British government. The question of the Histadrut’s activity on this front is highly important and begs for further research. However, this question is beyond the scope of this article.
59. Hayden, “Popular Use of Yugoslav Labor Courts.” I thank one of my anonymous reviewers for stressing this point and suggesting that, in general, discussions concerning the possibility of socialist justice must take account of the separation-of-powers model.
stantive-rationality transcends the liberal idea of formal autonomy, thereby posing a risk to courts’ ability to maintain jurisdictional independence. On the other hand, avoiding substantive notions of justice (for instance, common sense notions of fairness, or principled commitment to defending the weaker party) tends to undermine many of the distinct traits associated with socialist and popular tribunals. The ensuing dilemma is a core issue in thinking about the possibility of socialist justice.

In light of the experiences of socialist justice in other countries as well, we should ask whether the Comrades Law could have developed differently? Of course, counter-factuals are not the strict domain of social science. Yet, following Hayden’s assessment of socialist justice, we may articulate a general conclusion. Hayden argues that (former) Soviet and most east-European comrades’ courts had largely been operating as instruments of social control, enforcing state power over individuals. Hayden’s conclusion is that socialist justice in the form of informal comrades courts cannot but be turned into an instrument of control because it is embedded within a general political field that resists forces of change from within and is inherently suspicious of the idea of legal autonomy, with its potential of a check over political practices.60 The point is that, in many cases, socialism is implicated, regardless of its universal claims, with specific political projects of state-building or state-restructuring. Under such conditions, law and politics often come into tension as two conflicting ways of ordering and governance. When this happens, socialist justice tends to assume a conservative role, to produce bureaucratized institutions closely tied up with state power, and to be increasingly less responsive to justice demands from below. This is why Hayden finds that it was only in (former) Yugoslavia, where comrades courts in fact functioned as state labor courts, assuming a professional aura and retaining a legalistic posture, that some elements of socialist justice could be realized. Paradoxically, this realization had been dependent on such courts’ ability to live up to the liberal-legalistic promise of legal autonomy. Alas, we are then talking about a departure from popular justice, precisely that type of justice that asserts itself as “the great figure of opposition and rejection” of the state.61 Whether this inevitably leads us to concede “the impossibility of popular justice” and, by extension, of socialist popular justice, is a conclusion I leave to readers.

60. Hayden, Social Courts.