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Radical Lawyers in the 1960s and 1970s

Luca Falciola defines “radical lawyers” as partisans who pursued left-wing causes using the courtroom as a stage to reach the press and the public. This leftist commitment distinguishes radical lawyers from “cause lawyers” whose clients might span the political spectrum (p. 3). They “blossomed in the wake of the social mobilization of the 1960s,” but they were not the first (p. 4). Radical lawyers have been defending unpopular defendants at least since Chicago’s Haymarket Square bombing in 1896. Anarchists, Wobblies, labor agitators, and Communists have been among their clients.

In 1937, many of them formed the National Lawyers Guild (NLG) as a progressive bar association in opposition to the conservative American Bar Association. Falciola pointedly says he is not writing a history of the NLG, but it is a thread that runs throughout this book. A lecturer at Columbia University in New York City, the author was able to make extensive use of the NLG papers at New York University’s Tamiment Library and oral histories at Columbia University. The other major location of similar collections is University of California-Berkeley’s Bancroft Library. Falciola also used other special collections, especially those in California libraries. His book reflects his sources. While radical lawyers and the NLG operated all over the country, the book is heavily about what happened in New York and northern California.

The book, nonetheless, starts in the South, where the burgeoning civil rights movement came up against local law and practices. The National Association for the Advancement of Colored People (NAACP) Legal Defense Fund had been bringing southern cases for decades, but it focused on school desegregation. Criminal defense for activists arrested in demonstrations, or just generally working in southern states, was difficult. There were few Black attorneys in those states in the 1950s and 1960s. The rare white attorney who represented civil rights activists (such as Clifford
Durr) soon found themselves spurned by their colleagues. These colleagues were quite glad to grab their other clients who did not want to give their business to lawyers they considered southern traitors.

Falciola does not tell us how northern lawyers represented southern civil rights clients. With some exceptions, states require attorneys to join that state’s bar in order to represent clients, especially in court. Joining a state bar is not that easy; it is rarely worth the time and money unless the lawyer intends to develop a major practice. The author mentions attorney Donald A. Jelinek in a section on the New York State Attica uprising but does not mention that he was jailed by a judge in Marengo County, Alabama, in 1966 for practicing law without a license.[1] Jelinek was trying to represent one young man doing civil rights work in that Alabama county. Most of the NLG lawyers represented large groups of defendants arrested during demonstrations. You try cases differently when your clients knowingly commit civil disobedience. The courtroom becomes a classroom.

The first big mobilization of the 1960s occurred in May 1960 when the House Committee on Un-American Activities (HUAC) held hearings in San Francisco. Several dozen youthful protesters were washed down the marble steps of city hall and arrested. An NLG lawyer bailed them out and eventually arranged for their charges to be dismissed. This was followed in 1963-64 by the civil rights movement in the Bay Area with a series of sit-ins against several large employers who were racially selective in whom they would hire for what. The NLG coordinated the defense of 474 people charged with trespassing and other crimes. Tried in 37 small groups of around a dozen defendants, roughly half were acquitted. Not all lawyers were members of the NLG. One of my two lawyers was; one was not.[2]

The following year 773 of us were arrested at one time in the Berkeley free speech movement. The NLG did not have enough lawyers to represent everyone and Alameda County did not have enough space or personnel for multiple trials of small groups as had happened in San Francisco the year before.[3] This convinced the NLG that it needed to develop a strategy for mass defense. The strategy emerged as student demonstrations, race riots, and anti-Viet Nam War demonstrations spread over the country. By the time of the Columbia University sit-in in the spring of 1968, the Mass Defense Committee of the NLG was able to recruit several dozen lawyers to represent them pro bono. This strategy eventually resulted in mass dismissals.

One result of all this public action was that “Guild [NLG] ... affiliates had skyrocketed” from a few hundred to a few thousand in only a decade (p. 63). Growth brought internal problems. Whereas the NLG’s roots were Old Left, the new joiners were mostly New Left. While both were committed to social change, the New Left wanted to transform the NLG into something that was active and exciting. This generated a certain amount of turmoil.

The new radical lawyer had two goals: “the first was keeping activists on the streets, [and] out of jail.” The second was “to demystify the law” in order to expose oppression (p. 79). There was constant tension between challenging the legal system and using it to protect activism. Older radical lawyers saw the NLG as a professional association, albeit one that furthered left-wing causes. Younger ones wanted it to be a political association.

The younger lawyers won that debate as older ones with roots in the Old Left dropped out. In 1972, the NLG expanded its membership from lawyers to include students, legal workers (i.e., office employees), and other interested persons; “by the mid-1970s, non-lawyers surpassed 45 percent of total membership” (p. 73). This growth brought in more women. By 1975, they were almost one-third of total members.

Many of the women brought a feminist perspective and a desire to spend more time dealing
with women’s issues, such as abortion, rape, and domestic violence. Falciola goes into this topic in a section titled “Confronting Sexism,” but he skims over sexism within the NLG’s own ranks. One gets the impression that the NLG adjusted quickly and easily to feminist demands. If true, that would certainly make it unique among professional organizations, let alone political ones. Most likely, a separate book could be written on how the NLG confronted sexism, especially within its own ranks.

Race is another matter. Old Left lawyers were defending Blacks accused of crimes while confronting “white chauvinism” within their own ranks long before the NLG was founded. Many were inspired by the civil rights movement and excited by the Black Panthers. As more and more members of the Black Panther Party did serious prison time, radical lawyers spent more time arguing for prisoners’ rights. They grew infatuated with the incarcerated, seeing them as political prisoners, not criminals. Radical lawyers began to question the entire justice system as “an instrument of class and race oppression” (p. 169). As jail incidents and insurrections throughout the country leapt from five in 1967 to forty-eight in 1972, more lawyers became devoted to protecting those inside.

One of these was Fay Stender. Quite enamored with prisoners, she initiated the Prison Law Project. She also suffered the consequences. Her office was raided by law enforcement, and she was shot and paralyzed in 1979 by a paroled member of a prison gang known as the Black Guerilla Family (BGF). The action was not an accident but planned and completed on orders by an incarcerated BGF leader. This and other incidents ended “the romance between radical lawyers and inmates” (pp. 216-17).

Of course, radical lawyers represented workers, both those trying to form unions and those “opposing bureaucratized unions” (p. 218). This was complicated by the fact that by the 1960s “unions were not revolutionary organizations but often functioned as counterrevolutionary organizations” (p. 219). The NLG sometimes faced conflicts. For example, the NLG was “divided on the question of working with the UFW” (United Farm Workers). While believing that farmworkers should form a union, it also wanted to support the undocumented workers who were “used to damage striking farmworkers and to weaken their bargaining power” (p. 226). This was one of many such challenges.

The NLG is still alive and well and still open to members besides lawyers. It has a wide variety of projects and committees. It still has chapters all over the country and still believes that there is a “distinction between law and justice” (p. 283). The challenge is when and how to use the law to achieve justice, at least some of the time.

What’s missing from the book is biographical information on the lawyers and legal workers whose deeds Falciola chronicles. Since he interviewed many and read others’ oral histories, surely he knew something about them besides their legal work. I wanted to know how these people became radicalized. Since I knew several of them personally, I knew that some inherited their politics from their parents (e.g., red diaper babies), but not all. I wanted Falciola to tell us what in these people’s backgrounds prompted them to spend their lives working for social change through the legal system.

Also missing is how these lawyers earned their living. There are a few references to fundraisers for specific projects, especially during crises. That income was too uncertain for the lawyers, let alone their staffs, to rely on to pay normal bills or raise families. Did they have regular law practices in addition to their political work? Doing what? This is a long book, but it would not have taken more than a few pages to tell us something about the people in it. It has an index and bibliography as well as endnotes, all of which are valuable features that are sometimes left out of today’s books. Why not a bit more?
Notes


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