

## **Book Review: Up Against the Law: Radical Lawyers and Social Movements, 1960s-1970s, by Luca Falciola**

By Dalia Fuleihan<sup>1</sup>

The 1960s and 1970s conjure up images of massive protest movements—sit-ins and “freedom rides” in the south, anti-war marches and young people burning draft cards, and the violent police repression of demonstrators all immediately come to mind. The stories of widespread social discontent, civil disobedience, and unprecedented mass mobilization for progressive social change are well known in traditional discourse. Less known is the role of radical lawyers in this crucial moment in history.

In his new book *Up Against the Law: Radical Lawyers and Social Movements, 1960s-1970s*, Luca Falciola provides a fresh look the social movements of the 1960s and 1970s, but from the perspective of the radical lawyers who engaged with these movements—primarily those in the National Lawyers Guild (NLG).<sup>2</sup> Falciola traces NLG involvement in the various social movements of the time period and in doing so sheds light on the relationship between lawyers and social movements.

Traditional notions of lawyers in social movements conjure images of a removed legal advisor, or of a litigator bringing cases to defend individual rights. Radical lawyers in the 1960s and 1970s took on a drastically different role. As Falciola recounts, radical lawyers moved beyond a traditional legalist approach to representing activists in social movements. Radical lawyers sought to challenge and dismantle systems of power alongside their clients, using their legal education to keep their clients and comrades in social movements out of jail while also using the defense of their clients to challenge the systems of power that were actively trying to silence calls for change.

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2. LUCA FALCIOLA, *UP AGAINST THE LAW: RADICAL LAWYERS AND SOCIAL MOVEMENTS, 1960S-1970S* (2022).

Falciola traces the development of these radical lawyering techniques across the 1960s and 1970s. Falciola uses an anecdotal style to track the progression of radical lawyers and their involvement in the social movements of the time period. It would be impossible to describe all the events and movements covered by Falciola's book in this review, however, he begins his account with the NLG's involvement in the southern civil rights movement.<sup>3</sup> He creates a timeline for the re-energizing of the NLG through the mass defense of civil rights activists, highlighting this specific strategy during the Free Speech Movement.<sup>4</sup>

Falciola uses several high-profile trials to demonstrate the development of militant litigation as a strategy for defending activists with progressive social movements. He chronicles the defense movements for high profile cases such as the Huey Newton trial and the trial of the Chicago Eight. Through high profile defense—specifically of leaders of the Black Panther Party (“BPP”), Falciola shows how radical lawyers combined courtroom defense with publicity campaigns to create a very different dynamic in the courtroom. Instead of relying on established defense practices, radical lawyers used publicity campaigns to spread awareness of the goals of liberatory movements—like the BPP—and to educate the public about oppressive racial systems in the United States. This then culminated in using the trial to not simply defend BPP leaders under the restrictive measures provided for by law, but to put the entire system on trial. Radical lawyers used trials and political education tools to demonstrate that individuals had a right to revolution against oppressive power systems.<sup>5</sup> Crucial to this form of litigation was jury selection—ensuring that BPP leaders were truly judged by their peers—and radical lawyers achieved great strides in challenging jury selection processes, resulting in diverse juries and ultimately more just decisions.<sup>6</sup>

Defense of members of the BPP formed a crucial element in this story of radical lawyers; it pushed radical lawyers to focus on prisoner defense. Many Black power militants were incarcerated for at least some time during the 1960s and 1970s. Radical lawyers rose to the challenge. Instead of focusing on prison conditions or simply trying to release individuals from penal institutions, these lawyers wanted to challenge the very existence

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3. *Id.* at 10-36.

4. *Id.* at 37-62.

5. *Id.* at 89-117.

6. *Id.* at 104-107.

of penal institutions. Radical lawyers took the position that all prisoners were political prisoners and used their representation of incarcerated folks to challenge the legitimacy of the carceral system. Falciola recounts radical lawyers' involvement in challenging incarceration by focusing on a few high-profile cases including the Soledad brothers, the trial of Angela Davis, and NLG's work with prisoners during the Attica prison riot.<sup>7</sup>

No history of radical lawyering in the 1960s and 1970s would be complete without a history of the anti-war movement. The civil rights movement and the anti-war movement captured international attention during this period, and radical lawyers were right there with activists throughout. Falciola highlights one of the key distinctions between radical lawyers and progressive lawyers: the partisanship of radical lawyers. This is especially apparent in Falciola's analysis of how radical lawyers got involved defending anti-war activists.

Radical lawyers focused on defending draft resisters; interestingly, this work clashed with other progressive legal organizations such as the ACLU. The ACLU decided they would not defend draft resisters—even though the organization opposed the war, they felt that the draft was a legitimate law, and they did not want to expend resources defending resistance to a valid exercise of legal authority.<sup>8</sup> Radical lawyers took a different view. Radical lawyers weren't interested in whether the draft was technically, legally valid. It was more important to challenge imperialist systems upholding the war machine for the immortal Vietnam war.<sup>9</sup>

Radical lawyers contributed to the anti-war movement by defending anti-war activists, regardless of the tactics they utilized to express their political dissent, including representing members of the Weather Underground. In addition to their work representing draft resisters, radical lawyers defended GIs who went AWOL, deserted, or engaged in political defense while on active duty.<sup>10</sup>

Falciola is exceptionally thorough, covering every aspect of radical lawyers' engagement with social movements during the period. This detailed account is impressive and admirable, yet certain movements and subject areas received more attention than others. The bulk of Falciola's book details radical lawyers' engagement with the civil rights movement,

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7. *Id.* at 168-192.

8. *Id.* at 140.

9. *Id.* at 140.

10. *Id.* at 139-167.

anti-war movement, and Black power struggles (both outside and inside carceral institutions). Conversely, the indigenous liberation movement, gender equality movement, and labor rights movement shared one chapter.<sup>11</sup> Some of this imbalance is undoubtedly a function of where radical lawyers and the NLG especially were spending their time. Falciola acknowledges that there was internal criticism within the Guild over its focus on representing “male-dominated struggles” and “male political defendants.”<sup>12</sup> No doubt, the NLG was more heavily involved in civil rights, Black liberation, and anti-war struggles than they were with any other movement. This imbalance is reflected in Falciola’s novel.

As a historian, Falciola is cannot alter what the NLG and other radical lawyers chose to focus on, and so a representation of the imbalance in their involvement is expected. However, the lack of emphasis on the indigenous liberation movement in particular is somewhat concerning. Labor movements and the struggle for gender equality are by no means ignored in the wider literature and Falciola’s brief overview of radical lawyers’ involvement with them is more understandable and probably necessary when considering the breadth of subject matter included in his book. Indigenous liberation, however, is a topic often ignored.

I applaud Falciola for including an account of radical lawyers’ involvement with the indigenous liberation movement but am disappointed by his cursory treatment of the topic. Between radical lawyers’ involvement with American Indian Movement, the reclamation of Wounded Knee, intense FBI infiltration into the indigenous liberation movement, and radical lawyers’ representation of movement leaders at their trials, there is enough material to merit a chapter of Falciola’s book. Moreover, the indigenous liberation movement presented unique challenges such as cultural divides and the intersection of American law and tribal sovereignty, further meriting a chapter rather than a mention by Falciola.

Falciola’s book, in addition to providing a thorough and engaging history of radical lawyers in the 1960s and 1970s, discusses compelling case studies for two major philosophical conundrums that all progressive and radical lawyers must grapple with in their practice to this day. The first, is the type of attorney-client relationship a lawyer wishes to create. Falciola discusses that lawyers did not maintain the traditional attorney-client relationship. In the 1960s and 1970s, since radical lawyers were part of the

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11. *Id.* at 218-247.

12. *Id.* at 240.

same social movements as their clients, Lawyers viewed the activists they represented as comrades rather than clients and saw themselves as part of the movements rather than outside observers. The goal was not to defend within the confines of existing legal structures. Radical lawyers aimed to further the political goals of their clients and use their trials and legal defense to advance the social movements of which they were a part.<sup>13</sup> Throughout his book, Faciola uses the various events, trials, and movements to illustrate the way radical lawyers navigated this new approach to attorney-client relationships. Judges remarked on the familiarity of radical lawyers with their clients, and these attorneys fundamentally shifted the way lawyers could choose to approach the defense of their clients. Faciola honestly discusses both the positives and negatives — most notably the attack that paralyzed Fay Stender and her suicide in 1980<sup>14</sup> — of this philosophical shift to the attorney-client relationship.

The choice between a traditional attorney client approach and the approach of radical lawyers remains a relevant question for lawyers today. I personally have struggled with these approaches in my own practice and have seen each play out in different scenarios. For example, my experience working with community organizations and social movements naturally leads me to prefer a movement lawyering approach. Those whose goal in entering the legal profession is to work with marginalized communities and fundamentally challenge oppressive legal systems tend to agree. At the same time, legal services organizations or small law firms (who tend to be our employers) often choose a client-centered approach. Faciola's book contains numerous examples of how lawyers have navigated, successfully or unsuccessfully, these very conflicts in the past, and is a useful source for us today as we are still faced with these.

The question on how to approach legal practice necessarily leads the second philosophical question presented by Faciola: "is it possible to practice law and use the legal system to defend activists and community organizers while simultaneously advocating for the dismantling of the very

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13. *Id.* at 63-88.

14. Fay Stender was part of the legal defense team for Huey Newton and George Jackson. When she shifted the focus of her legal practice in the mid-1970s and moved away from representing inmates, this change was viewed as a betrayal of the incarcerated she used to represent. Fay Stender was shot in her home by a member of George Jackson's prison gang in 1979 and paralyzed below the waist. She ultimately committed suicide in 1980. *Id.* at 216.

system that lawyers uphold on a daily basis through the court system?" This is an inherent hypocrisy that we are confronted with daily. Falciola poses this question in his introduction<sup>15</sup> and proceeds to provide detailed examples of how radical lawyers attempted to do just that throughout the 1960s and 1970s. Needless to say, the lawyers were not always successful. However, Falciola's account provides examples of the many ways lawyers chose to navigate the precarious position of using courts and the legal system as a part of a larger movement to dismantle oppressive power structures and serves as a useful roadmap for those of us grappling with this question today.

Overall, *Up Against the Law* by Luca Falciola is a masterful account of radical lawyers' involvement in the social movements of the 1960s and 1970s. Beyond merely chronicling their activities, Falciola uses specific case studies to explore the development of radical lawyering as a practice, highlighting both successes and failures of lawyers in the process. Importantly, Falciola does not view the era through rose-tinted glasses. While radical lawyers enjoyed numerous successes during that period, Falciola is clear that for strategies like militant litigation to work, a series of political and societal conditions need to be in place. In other words, radical lawyering works when the public has an appetite for social change.

Falciola's work provides fuel for ongoing debates about the role of lawyers in social movements and the ability of lawyers to contribute to progressive social movements attempting to dismantle systems of power that created lawyers' role in society in the first place. Many of the themes and debates described by Falciola in his book remain topical today and are much discussed among radical legal practitioners. Those of us engaged in radical legal practice have much to learn from both the successes and failures of our predecessors, and *Up Against the Law* provides an indispensable history of the beginnings of radical lawyering. Anyone interested in movement lawyering or radical social movements would do well to read *Up Against the Law* by Luca Falciola.

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15. *Id.* at 6-7.

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