

The Global Sixties

An Interdisciplinary Journal

ISSN: (Print) (Online) Journal homepage: www.tandfonline.com/journals/rsix21

Up against the law: radical lawyers and social movements, 1960s–1970s

by Luca Falciola, Chapel Hill, University of North Carolina Press, 2022, 412 pp., US\$32.95 (paperback), ISBN 9781469670294

Jeremy Varon

To cite this article: Jeremy Varon (06 Mar 2024): Up against the law: radical lawyers and social movements, 1960s–1970s, The Global Sixties, DOI: [10.1080/27708888.2024.2325724](https://doi.org/10.1080/27708888.2024.2325724)

To link to this article: <https://doi.org/10.1080/27708888.2024.2325724>



Published online: 06 Mar 2024.



Submit your article to this journal 



Article views: 6



View related articles 



View Crossmark data 

BOOK REVIEW

Up against the law: radical lawyers and social movements, 1960s–1970s, by Luca Falciola, Chapel Hill, University of North Carolina Press, 2022, 412 pp., US \$32.95 (paperback), ISBN 9781469670294

Dressed in the Guantanamo “uniform” of an orange jumpsuit and black hood, I stood for the cameras outside the Supreme Court on a frigid December morning in 2007. Inside, attorneys were arguing, in a landmark case, that the GTMO detainees had under federal law the right to challenge their detention.

Michael Ratner, the legendary radical attorney and co-founder in the 1960s of the Center for Constitutional Rights, emerged from the august building, just minutes after addressing the court. “Michael,” I cried out. “Thanks so much. We need you in the legal trench. Our protests are nothing without you!” “I wouldn’t be here without the public outcry,” he shot back. “We’re nothing without *you!*” Our volleys of praise ended with the shared recognition that both kinds of activism – legal work and street protest – were needed.

Our momentary revelation spoke to the longstanding relationship between legal advocacy and leftwing movements, brilliantly explored by Luca Falciola in *Up Against the Law: Radical Lawyers and Social Movements, 1960s–1970s*. Falciola’s focus is on the attorneys and initiatives of the National Lawyers Guild (NLG). Founded in 1937, it gained the reputation as the legal arm of the American communist movement and was nearly decimated by McCarthyism. The NLG roared back to life in the 1960s, with its members involved in the decade’s signature struggles.

Falciola is careful to distinguish “radical lawyers” from mere “cause lawyers.” The radicals “joined the most combative causes, shared their clients’ substantive political clams, sought to transform legal questions into political issues, and criticized the law as an instrument perpetuating systemic injustice” (3). Chronicling their renaissance in the Guild, Falciola does several things. He recasts the great storylines of America’s long 1960s through the prism of the law and radical lawyering; shows the importance of lawyers to the era’s movements; and presents radical lawyering as a movement unto itself, in which mostly young attorneys transformed understandings of the both the law and the legal profession. Most ambitiously, Falciola takes up the weighty question – as confronted by many of his historical subjects – of how one practices law when convinced that it is fundamentally incompatible with true justice.

The Civil Rights Movement was the inspirational origin for a new surge of socially committed attorneys. The deep South, in particular, had a frightful lack of Black and progressive lawyers who might challenge discriminatory laws and help to enforce integration measures. In response, the Guild sent scores of legal workers into the South. Increasingly, protecting Civil Rights activists from the violence of vigilantes and local law enforcement was a major task. Older, more mainstream civil rights groups remained spooked by the NLG’s alleged communism. But younger activists, like those in the Student Nonviolent Coordinating Committee, welcomed the NLG’s help. In the South, the attorneys learned that federal powers and law would not remedy racial injustice. “Being out in the streets,” one concluded, “was where the strength of the movement lay” (35).

As the Sixties heated up, great numbers of lawyers were needed just to defend the many thousands arrested in anti-draft actions, campus takeovers, and antiwar protests. The NLG did pioneering work to establish law clinics to deal with the constant stream of cases. Skillful legal work kept activists out of jail and in the fight. More and more, NLG attorneys became full-fledged participants in protest, with scant separation between their political and professional selves.

The ante was upped for lawyers with the growing numbers of aspiring revolutionaries, whether from the Black Power or student and youth movements. Criminalized by law enforcement, these radicals often welcomed confrontation with police. State charges now included serious felonies, including murder. High-profile trials – like the Chicago 8, Harrisburg 14, Panther 21, and murder prosecutions of Huey Newton, Bobby Seale, George Jackson, and Angela Davis – became great spectacles that transformed approaches to criminal defense. Guild lawyers also had Indigenous clients within the Red Power movement, whose militant actions also made legal claims against the U.S. government.

Above all, the attorneys consented to their clients' desire to mount political, and not narrowly legal, defenses. That meant putting racism, militarism, and the law itself on trial; insisting on the unfairness of the entire prosecution; rallying public support, including from celebrity artists and intellectuals; and even holding society to primary blame for apparently criminal behavior. The courtroom itself, in short, became an arena for radical politics.

For these trials, the NLG also did groundbreaking work. In collaboration with social scientists and psychologists, they found ways to identify and limit the racism of jury pools and individual jurors. All these efforts were remarkably effective in winning acquittals from jurors who seemed to agree that the system was rigged against certain populations and dissidents more generally.

Transforming litigation strategies, radical lawyers also sought to change the legal profession. In the early 1970s, radical law collectives formed in major cities. Their lawyers rejected “professional” attire and courtroom decorum, which showed undo deference to the judge. Dispensing with secretaries, they shared the administrative scut work of their firms. They lived among their client pool, taking no money for “political” cases or from poor clients. And they often set up free legal clinics, in which distressed populations could learn about tenant, immigration, criminal, and employment law. “People’s Justice” required putting legal tools in the hands of everyday people, while diminishing reliance on the costly “expertise” of lawyers.

Some attorneys in and around the NLG took the extreme step of assisting radicals in clandestine, illegal activities. More generally, they became immersed in murky political worlds, where paranoia and internecine rivalries ran deep. In a heartbreaking storyline, Falciai recounts how Fay Stender – a white attorney who heroically defended the imprisoned Soledad Brothers and other Black radicals – was nearly assassinated in 1979 by ex-prison gang members for allegedly betraying her clients. The era’s morally fraught ultra-radicalism had claimed its own.

Up Against the Law is a richly composed and researched book that describes the drama of radical lawyering through flesh-and-blood portraits of individual attorneys, trials, and law collectives. Most profoundly, it is a timeless inquiry into the profound ambiguity of the law itself and the attitudes political radicals may take toward it. One prominent, radical attorney flatly declared that “there can be no social change through the law” (75). At the same time, some radical lawyers concluded that rights could be both protected and expanded, and the powerful held to account, through legal action.

The courtroom, one concluded, was on occasion a place where “David could beat Goliath” (283).

Reflecting on this tension, Falcia describes how, for radical lawyers, there is an “ontological” difference between the law and justice, no matter popular belief in their essential unity. Indeed, those Falcia studied typically believed that the law mostly exists to preserve hierarchies of class, race, and caste. Yet approached critically, the law nonetheless could point past itself toward the horizon of justice.

Prompted by the murder of George Floyd and growing attention to systemic racism, a new generation of progressive lawyers is learning to navigate the fraught relationship between the law and justice. As with so much for the American left, the long 1960s offer usable wisdom, made newly accessible through Falcia’s work.

The radical past also points to a troubling irony: that today’s political right – equally much or more than the left – doubts the legitimacy of the law and legal institutions by virtue of efforts to hold both president and citizen Trump to account. The Sixties-era tactics of politicizing a trial – calling it a persecution, berating judge and jury – find chilling echo in Trump’s dangerous ranting, which have inspired assaults on law enforcement. “Liberal” justice, whose limits radical lawyers attacked, may be part of the problem. But it is also a safeguard, eloquently defended by constitutional patriots like Jamie Raskin, against authoritarian assaults on the entire liberal order. Our troubled times present us with another dilemma beyond the scope of Falcia’s study: how at once to go “up against the law” as an engine of inequality, while building up the law as a bulwark against anti-democratic threats.

Jeremy Varon
The New School
 varonj@newschool.edu

© 2024 Jeremy Varon
<https://doi.org/10.1080/27708888.2024.2325724>

