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A vast image springs to mind from the pages of *Radical Lawyers* and *Law Against the People*. A drab, somber, wood-paneled courtroom. On the bench sits Julius Hoffman, small, pinched, ornery and senile. Frederick Katzmann, fresh from his success putting away Sacco and Vanzetti for good, stands ready for the prosecution. Lining the back of the courtroom and filling the jury box, resplendent in baby-blue helmets and gas masks, mace in one hand and clubs in the other, the entire police department of the City of Chicago chants "Bomb Hanoi." Onto the scene strides the "radical lawyer"—Enells under his arm, fist
clenched, sneering contemptuously.

The clerk intones, as clerks have done the memory of man runneth not to the contrary, "Oyez, oyez, oyez." The radical lawyer responds, "All power to the people. Off the pig. Free all political prisoners." The judge flinches and screams, "I think we should regard this action as a writ of mandamus, or maybe trover or replevin or trespass on case, but since I can't decide, I sentence defendant to an indeterminate sentence."

The radical lawyer responds, quoting Marx, "This juridical illusion which reduces law to the mere will necessarily leads, in the further development of property relationships, to the position that a man may have a title to a thing without really having the thing."

The prosecutor says, "The law is a seamless web," to which the radical lawyer responds, "The law is illegal." The police move in and clear the courtroom, the defendant is taken off to jail, and all the participants go home and write articles on the proceedings from their own particular perspectives.

The trouble with the law, *Radical Lawyers* tells us, is that it is controlled by the rich and powerful. I was persuaded of that long before reading all 320 pages. (Those who won't be won't be after.) I'm also persuaded the law is slow-moving and unresponsive to change. And another trouble, the lawyers say, is the mystique surrounding the law—a mystique which makes necessary a lawyer-priest who can guide the neophyte litigant through a situation in which he often has no chance anyway. I buy that assertion too.

If so much is correct in these books, then where do they fail so terribly? They fail by refusing to recognize that the very words they use to "demystify" the law, their rhetoric of the revolution, is as unintelligible as that of the courts. It is difficult to imagine a welfare mother, deprived of her check without cause, responding any differently to the radical lawyer's explanation of "power elite" or "dialectic" than she would to the judge's decision on "declaratory relief" or "summary judgment."

And the books fail by not telling us how we could go about getting that welfare mother her check. Most of the writers—lawyers like Stephen Wexler and William Kunstler, Henry di Suvero and Charles Garry—have demonstrated their expertise in just that sort of thing. And while, no doubt, these books make no claim to be "handbooks" for radical lawyers, they wind up instead being exercises in radical rhetoric which, to paraphrase a popular cartoon, "totally transcends a legal education."

In their outrage at the legal system, the authors succumb to their emotions, at least in the books if not in court. That results in what radical lawyer and law professor Arthur Kinoy calls "radical-sounding, one-sided rhetoric, or fire and brimstone from another day and another age." In their eagerness to change the system the writers in these anthologies forget the men and women who cannot wait for the system to change—the men and women who need help now.

This too-farsighted view reaches an extreme point in a story Wexler relates, apparently approvingly:

"The starkest way to paint a picture of the "proper" mentality for a poor people's lawyer is to relate a story which a very successful welfare rights organizer tells to illustrate his view of his role as an organizer:

'I once found a recipient who worked hard at organizing, and was particularly good in the initial stages of getting to talk to new people. I picked her up at her apartment one morning to go out knocking on doors. While I was there, I saw her child, and I noticed that he seemed to be retarded. Because the boy was too young for school and the family never saw a doctor, the mother had never found out that something was seriously wrong with her son. I didn't tell her. If I had, she would have stopped working at welfare organizing to rush around looking for help for her son. I had some personal problems about doing that, but I'm an organizer, not a social worker.'

Wexler continues to point out that while "a lawyer is not an organizer," lawyers working with poor people are apt to come across the same "personal problems."

The question is how the statement, "I'm an organizer not a social worker," differs from the statement "I'm a businessman not a bank" (refusing credit to the poor), or "I run a factory not a kindergarten" (refusing to hire the unskilled). Is it because what the "organizer" is doing is so valuable that he can afford to sacrifice a child for it? Is it because businessmen or industrialists owe something to society which the organizer no longer owes? Is it because one child can not be allowed to stand in the way of the revolution?

And what does "the revolution" mean? In "Law Against the People," Florence Kennedy rhapsodizes on "The Whorehouse Theory of Law." She concludes: "[M]y attempts [to use the law as a weapon against Establishment repression and against the system itself] have made me feel like I was trying to level the Pentagon with a wet noodle. I feel that the courts and the legal system are so thoroughly a part of the whole system of prosecution, persecution, and prostitution that an anti-Establishmentarian hustler like myself might be as well off simply using the law as a source of income, and disrupting the Establishment whenever my laziness and timidity permit. It's more fun that way. What's the revolution going to be for, if it's not going to bring more fun, anyway?"

That is another question the books leave unanswered: what is the revolution going to be for? Why should anybody take the beatings and abuse these radical lawyers take? Why face the threat of professional censure and disbarment? Why live at subsistence level if the revolution is not going to "bring more fun?" Can we expect the same grimness that permeates so much of legal proceedings, so much of national policy, so much of life for the poor after "the revolution" as before? If so, why bother?
Radical rhetoric doesn’t answer these questions, it only broadly attacks the legal system as a whole. Arthur Kinoy, in attempting to explain the contradiction between being “radical” and being a “lawyer,” says of his “radical colleagues at the bar,” “their frequently expressed formulation of their central role and objective as being that of ‘delegitimatizing’ the institutions of the law is at once too narrow and too one-sided.” Instead, says Kinoy, “the struggle to preserve the elementary forms of procedural guarantees, designed originally to protect individual liberty and the right to a fair trial, is not a struggle to ‘delegitimatize’ or ‘demystify’ these forms. The struggle is to defend these forms, to protect them; if you will, to legitimatize them against the efforts of the rulers to delegitimatize them.”

If we set aside, even accept Michael Kennedy’s argument that the authors of the Bill of Rights—slaveholders, aristocratic landholders, merchants and pirates—wrote the first ten amendments to protect “their class from the intrusion of such rabble as Tom Jefferson wanted to protect,” it is still impossible to ignore the potentialities which the words themselves hold, the protections which, however abused, they offer.

“[A]ll of these rights and liberties read very well in the abstract,” Kennedy says, “the problem is that the government—through a conspiracy of the executive, judicial, and legislative branches—defines what these rights and liberties mean and when they should be enforced.”

The function of the radical lawyer should be to insure the enforcement of these rights and liberties and to fight government attempts to stifle them. “The movement,” Henry di Suvero suggests, “has to understand that every case that comes to trial must be tried thoroughly, hard and well. . . . If the state knows a battle royal will ensue in every political case, and that the state’s legal reputation is likely to emerge bruised, tarnished and unindicted, if the state knows that the uncelebrated, if they are tried, will consume enormous amounts of time and have an even better chance of emerging victorious, then fewer prosecutions will be commenced.”

The frustration evidenced when Kennedy calls the American Civil Liberties Union “paragovernmental,” when Kenneth Cloke says “law has been accomplice to the greatest criminals, and should be sentenced to be hung by the neck until dead,” and when Lefcourt entitles his book “Law Against the People,” that kind of frustration simply is not an excuse for turning out so many words and so few suggestions.

The books are most successful when the writers describe what can be done, and what is being done, in a practical sense. Frank Bardacke, a defendant in the Oakland 7 draft trial, describes the personalities and events which led to his acquittal. Charles Garry traces step-by-step the pretrial phases of the Huey Newton case in Oakland. And, in another vein, Brenda Fasteu describes the revolting and reprehensible excuses of law firms which discriminate against women.

When Jonathan Black, in his introduction, notes that “Not every trial . . . can be exploited politically. Very few can, and it is important to place ones energies where the return is potentially greatest,” he, along with most of the other radical lawyers, makes an assumption as to what the “greatest return” is. In terms of revolution, the “greatest return” may well be the biggest headlines which awaken the most people to the particular cause. But in terms of immediate result, of preparation of the people for revolutionary change, and of waging a battle for fundamental liberties, the “greatest return” may come through an accumulation of small, day-by-day victories. If one’s goal is the happiness of the people who are alive now and can be helped now through the law, Black’s sense of “greatest return” loses its validity.

Brendan Behan, in no way a lawyer and in every way a radical, wrote in “Borstal Boy,” “I respect kindness to human beings first of all, and kindness to animals. I don’t respect the law; I have a total irreverence for anything connected with society except that which makes the roads safer, the beer stronger, the food cheaper, and old men and women warmer in the winter and happier in the summer.”

It is difficult to believe that the same people who have devoted so much of their lives to radical causes can turn out books so copulent with superficial criticism and so light on specific suggestion. Day after day they deal with the situation as it exists now. While it is pleasant to think upon the brighter day after the revolution, it seems there is important work to be done before the revolution—both in preparing for it and in surviving until it arrives. If this be playing into the hands of the power elite, so be it. But freedom for a poor man who can’t make an unfair bail seems vastly preferable to a whole book of Marx.