

ernism and communism holds out: the ground to struggle against history whether we believe in its stoppage or not. If history is in motion, as Marx suggests that it must be for revolutionary change to occur, then we need to work to overcome what Walter Benjamin called “the one single catastrophe” that it has been. This becomes the reason, as Benjamin also put it, to “brush history against the grain,” or change the course of historical time and events. Yet, post-modern stoppages of history do not need to be viewed as antithetical to this cause. They might also be viewed as a means to “brush history against the grain.” They may provide us with an immanent experience of power, a “present-ness” for it, that would stand as a reason to resist it and rearrange it. Either way, we would be engaged in struggle, which seems to me to be the point. It seems to me that only in struggle may we “oppose the existing social and political order of things,” as Marx put it. Surely Hardt and Negri would like to do that in George Bush’s America and Silvio Berlusconi’s Italy. Why not provide us with the largest number of means for doing so?

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Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (Toronto: The Osgoode Society/University of Toronto Press, 2001).

In a liberal democracy such as Canada, which professes to be ruled by law, lawyers are important and the ideology of lawyers important for the diverse roles they play both inside and beyond the law. A few lawyers have sought to extend law’s frontiers, not in order to forge a new weapon for class warfare but to ensure that the fundamental, legal, and democratic rights of the working class are respected by the ruling class. Among the first and most important of them was the subject of this book, a lawyer who worked both within and against the system in order to change it. Jacob Lawrence Cohen (1897-1950) was born in Manchester, England, and came to Canada in 1907. Called to the Ontario bar in 1918, within twenty years he had become Canada’s most prominent labour and civil-liberties lawyer. J.L. Cohen did not so much invent labour law as invent the idea that law should serve labour’s interests as well as management’s; that workers had something significant to gain from law’s hegemony. Cohen was a left-winger who not only acted for the Communist Party and trade union organizers, but also served as legal counsel for the new industrial unions, pro-

moted the development of industrial standards, and the right of workers to bargain collectively, and defended left-wing leaders and organizations during the Depression, internees during the Second World War, and alleged spies after it. Cohen was a lawyer for social responsibility long before the idea was invented. *Renegade Lawyer*, which received honourable mention for the Canadian Historical Association's 2002 Sir John A. MacDonald Prize for the best book in Canadian history, is a most welcome addition to the minuscule corpus of scholarly Canadian lawyer biography. It demonstrates the promise and potential of sociolegal history, and should help reduce the anti-lawyer sentiment which still prevails among historians of the mainstream.

Though both MacDowell and the legal biographer, the late David Ricardo Williams, use the term "pinnacle of the profession," Williams would not have agreed that Cohen had reached it. Williams' Seven Giants, only one of whom – Eugene Lafleur – merits serious consideration as an historical figure, were all establishmentarians who swam with the corporate elite. All were lawyers' lawyers. All were the complete antithesis of J. L. Cohen. Yet unlike most of Williams' subjects, Cohen was more than just a lawyer. Williams, for example, makes much of the fact that one of the elect, Frank Covert, was a "labour lawyer." Covert, some ten years younger than Cohen, was unusual for a corporate lawyer practising industrial relations law in that he not only advocated union recognition and negotiated collective agreements, but also sat on conciliation boards and occasionally (and controversially) acted for unions seeking certification. Behind Covert's enlightened attitude lay the example of J.L. Cohen. Thanks to Cohen, corporate lawyers such as Covert sought to educate their big business clients in the new industrial relations reality of the post-war world. Corporate capitalists were forced to acknowledge that labour-management relations were a two-way street. Cohen was influential and successful enough to make Toronto's corporate lawyers and law firms take notice that industrial relations law was one of the two big new areas of practice opening up as a result of the Second World War. Of course, the legalization of collective bargaining during the war made the "lawyerization" of industrial relations after it inevitable.

J.L. Cohen was perhaps less a labour lawyer than a civil liberties lawyer, for whom the working class happened to be the largest constituency disenfranchised by the vested interests whose ideology the rule of law favoured. Ergo, though working people were not the only constituency whose civil rights were not respected, they engaged his attention most. It was at the height of his fame, in 1945, that Cohen, while working on an important brief for one of his union clients, was involved in an incident that led to his being falsely accused and wrongly convicted of assault with bodily harm against his secretary-cum-mistress du jour. Whether he was framed on the basis of a mere lovers' quarrel is

another matter. That he was seems probable, as does his suicide a mere four months after his reinstatement at the bar, when it became clear to him that his career had, for all practical purposes, ended when the Ontario Court of Appeal upheld his conviction. Though MacDowell grasps and develops the point that Cohen was more or less automatically disbarred because of his conviction, sustained on appeal, for a Criminal Code offence, she does not cite the only law report – [1947] *Ontario Weekly Notes*, 336. Nor does she appear to have consulted the Timiskaming District criminal assize minute book, which, given the loss of the trial case file, might have shed some light on anomalous aspects of the prosecution. The unknown complainant was someone other than the alleged victim. The prosecutorial instrument was a preferred indictment, an extraordinary proceeding which the Attorney General of Ontario would have had to approve, if not instigate. The case, which MacDowell analyses in riveting detail, bears all the marks of a “get Cohen” put-up job. The lawyer who was anti-establishment had much more to fear from his enemies in the establishment than the lawyer who was part of the establishment. Cohen’s downfall was the inevitable result, if not necessarily the purpose and design of the prosecution.

MacDowell devotes the muscular Epilogue to a discussion of Cohen’s place in history, and a critique of the prevailing Marxist cast of Canadian labour historiography. Cohen has been excluded from it – not only because he approved the “post-war settlement” in industrial relations wrought by P.C. 1003 (Wartime Labour Relations Regulations), but also because he played a large role in helping to establish it. Other than the book under review and D.M. Estok’s 1981 Master’s thesis, there is little if any scholarship on Cohen at all. That he was the Communist Party’s quondam lawyer and throughout his career championed the civil and political rights of the Left and working people generally seem insufficient to establish his left-wing credentials. Caught up as he was in, and his political ambitions frustrated by the bitter rivalry between the CCF and the Communists, he has been tarred with the broad brush of social democracy. Cohen, nevertheless, was a major figure of the Canadian Left during the interwar and war years and deserves, no less than J.B. McLachlan, to be recognized as such. How different the outcome of McLachlan’s 1923 trial for seditious libel might have been had Cohen defended him!

Regrettably for a book of such distinction, typographical errors abound – the most serious of which is “cents” for “seats” (201). There are a few non sequiturs. In 1939 Sidney Smith was president of the University of Manitoba, not dean of its law school (22); “stressful” (203) does not mean “under stress”; Dosco was a corporation not a “company” (203). The Carroll Commission (Royal Commission on Coal, 1944-46) concerned the entire coal-mining industry in Canada, not just Nova Scotia (256). An accused may be discharged, not

“acquitted,” as the result of a preliminary hearing (345 n. 24). MacDowell had access to Cohen’s file at the Law Society of Upper Canada and has made excellent use of it. One wonders whether she also had access to Cohen’s RCMP file, to which she alludes (“J.L. Cohen’s personal file was no. 2885”) without indicating whether it is still extant. Neither the published proceedings nor the archival records of the National War Labour Board, of which Cohen was briefly and controversially a member, appear to have been consulted. While the Bibliography in addition to the Notes is interesting and useful, a complete bibliography of the published writings of J.L. Cohen – both books and articles – together with a description and discussion of the extensive Cohen Papers at the National Archives, would have been much more so. A surprising omission from the Bibliography is the important recent work of Dominique Clément on the Royal Commission on Espionage, in which Cohen was involved as counsel for the alleged spies. Also omitted is Ross Lambertson’s definitive Ph.D. thesis at Victoria on civil liberties in the post-war period, which complements and advances MacDowell’s discussion of that aspect of Cohen’s late career. A case could be made that Cohen’s own civil liberties were destroyed by the infamous prosecution to which *he* was subjected.

Though its title is unfortunate – Cohen was a genuine radical but in no sense a “renegade” – *Renegade Lawyer* is the best kind of biography. It is an exemplary work of history by a leading historian of industrial relations; a life-and-times history that explains more than it narrates. The chief danger of historical biography is that content may be completely subsumed by context. Here, however, the author strikes a near-perfect balance between the two, as between overarching and subordinate themes and historic periodization. The organizational structure lends itself especially well to historical analysis and contextualization, and proves the truism that biography should only ever be written by professional historians specializing in the study of the area in which their subject flourished. Few subjects of biography are truly historical and scholarly biographers have to demonstrate to the satisfaction of mainstream historians that their subject is indeed of historical significance. Laurel Sefton MacDowell has succeeded brilliantly in presenting J.L. Cohen as a great, tragic Canadian who personified the legal struggle for human rights in Canada and paid a terrible price for his iconoclasm. That he was neither the great lawyer beloved of internal legal historians nor the “great man” beloved of popular biographers does not matter.

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