

# Book Review: Renegade Lawyer: the Life of J. L. Cohen, by Laurel Sefton Macdowell

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Book Review

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*RENEGADE LAWYER: THE LIFE OF J.L. COHEN* BY LAUREL SEFTON MACDOWELL (TORONTO: UNIVERSITY OF TORONTO PRESS, 2001) 385 pages.<sup>1</sup>

BY BETH BILSON<sup>2</sup>

Pity the poor biographer. Unlike his or her cousins in the fiction trade, a responsible biographer cannot use the character and experiences of a chosen subject for some coherent literary or dramatic purpose, but must work with the immutable raw material provided by an actual life. The evidence of that life may be tantalizingly incomplete or ambiguous, and—in contrast to the novelist—there are limits on the extent to which the biographer can imaginatively repair the deficiencies in the record with respect to the subject’s motivations or emotional state.

The proper status for biography as a component of historical study has also been contested, especially now that the agency of “great men” has been discredited as the primary moving force for historical events. Though the lives of individuals indisputably have some explanatory power in the analysis of historical developments, single human beings cannot be seen as the exclusive progenitors of events or as simple exemplars of a social context that will be comprehensively understood by examining them.

Even if the selection of a single life as the focus for study defines a biography’s scope in an obvious way, the biographer must still decide what aspects of that life will be emphasized or downplayed. Because human lives

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are not neatly contained, there may be more than one story to be pursued within the confines of an individual's career or lifespan.

This is certainly true in the case of J.L. Cohen, the subject of *Renegade Lawyer* by historian Laurel Sefton MacDowell. There is the story of an immigrant lad who was thrust into the position of breadwinner for his large family at the age of thirteen. There is the story of a prominent advocate who stepped forward to argue for the entrenchment and protection of workers' rights and for the civil liberties of religious and political minorities. Finally, there is the story of a man with significant personal problems whose professional life ended in mysterious and tragic circumstances. MacDowell includes all of these stories and marshals an impressive amount of research on each aspect of the life of this fascinating, enigmatic, and almost-forgotten figure.

The major emphasis in *Renegade Lawyer* is, however, on the events of Cohen's professional career, and on his contributions to the reform of collective bargaining law, to the defence of civil liberties (particularly during the Second World War), and to Canadian discourse concerning radical politics.

Cohen was one of a handful of Canadian lawyers during the 1920s and 1930s who took up the cause of workers, and the unions and political organizations that represented their interests. Although adversarial aspects of the relationship between workers and their employers certainly still exist, and although some of the rhetoric remains, it is difficult to recapture a time when collective activity by workers was truly marginal in legal terms, and exposed the employees involved to overt employer hostility and to a range of civil and criminal sanctions. All activity promoting collective action by workers was considered radical in some sense, but the dubious legal position of worker organizations, and the social and economic tensions of the times, lent an unprecedented attraction to groups such as the Communist Party of Canada. The involvement of these radical political organizations in the cause of workers raised the temperature of public debate, and was taken to justify suspicion and aggressive action by the political and business establishment.

As a lawyer, Cohen was able to lend his professional skills to the defence of workers, unions, and left-wing political organizations against these attacks. He was, by MacDowell's account, a meticulous and talented lawyer, and enjoyed the respect, if not the affection, of other lawyers and judges. He took a systematic approach to the burgeoning field of labour law, and made efforts to place it alongside other areas of legal

specialization by writing one of the early books on the subject<sup>3</sup> and by contributing to publications such as *Saturday Night*. Cohen took pride in his forensic legal skills, and sometimes described his own role in terms of dispassion and objectivity, qualities he thought were appropriate for a lawyer. In legal proceedings, his focus was always on the legal issues, and he declined to permit his clients to use legal proceedings as a soapbox for their larger campaigns.

On the other hand, Cohen discovered, as have subsequent generations of labour lawyers for both unions and employers, that it is difficult to disentangle the legal principles and processes associated with collective bargaining from the social, political, and economic context in which they arise, and that when the parties to collective bargaining hire lawyers, they expect a degree of personal commitment that goes beyond technical legal advice. Furthermore, as Eugene Forsey, a faithful supporter of Cohen, described it, Cohen "did not think of himself as a mere adviser but rather as a force, a guru, a leader."<sup>4</sup>

Cohen demonstrated his interest in playing a broader role in the development of labour policy by his involvement in the discussions that led to the passage of new collective bargaining legislation in Ontario in 1943, and by his brief tenure as a member of the National War Labour Board.

Despite the hostility to the labour movement expressed by the mainstream press and many politicians, the link between some trade unions and extreme left-wing politics, and the spectre of social disintegration that was raised in connection with a number of bitter strikes in the 1930s, it is interesting that the disposition of the legislators in Toronto and Ottawa in the early 1940s should have been to formulate legislation that would extend the protection of collective bargaining rights for workers. Commentators have offered a number of explanations for this phenomenon.<sup>5</sup> The key may have been the impression left by the American experience of the *Wagner Act*, presented as an instrument that could support and promote economic recovery. It may have been the influence of Prime Minister King, who viewed protection of union organizing rights as a reasonable *quid pro quo* for a strengthened capacity on the part of the state to intervene to resolve

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<sup>3</sup> J.L. Cohen, *Collective Bargaining in Canada: An Examination of the Legislative Record and Policy of the Government of the Dominion of Canada* (Toronto: Steel Workers Organizing Committee, 1941).

<sup>4</sup> *Renegade Lawyer*, *supra* note 1 at 143.

<sup>5</sup> See Peter S. McNinnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada* (Toronto: University of Toronto Press, 2002); Judy Fudge & Eric Tucker, *Labour Before the Law: The Regulation of Worker's Collective Action in Canada, 1900-1948* (Toronto: Oxford University Press, 2001); and Laurel Sefton MacDowell & Ian Radforth, eds., *Canadian Working Class History*, 2d ed. (Toronto: Canadian Scholars' Press, 2000).

industrial disputes and thus reduce the likelihood of damaging strikes, a particularly crucial issue in wartime conditions. Certainly the legislation which emerged in Ontario and at the federal level, as well as the statutes that appeared in the provinces in the post-war period (with the exception of the Saskatchewan *Trade Union Act*), placed a heavy emphasis on dispute resolution processes and on the prevention of outright economic warfare between workers and their employers.

Whatever the explanation, and however controversial the resulting legislative regime—a regime which, in its major characteristics, is still in place—there can be no question that the option of legal protection for trade union activity was largely an attractive one to worker representatives, and Cohen used his advocacy skills to push for a clear statutory articulation of the right to take part in collective activity.

In the case of Ontario, the government issued a somewhat unexpected invitation to Cohen to play a major role in drafting a bill for consideration by the legislature. Although the choice of Cohen, given his known and often-exaggerated left-wing connections, ultimately led to friction and the cancellation of his participation in the process, the legislation that was eventually adopted included a process for the recognition and protection of union rights that must have provided him with some satisfaction.

Under the Ontario legislation, the administration of the statute lay with a labour court that was comprised of ordinary superior court judges on a rotational basis. The National War Labour Board, on the other hand, was an early example of the use of a specialized administrative tribunal of the kind that flowered in the post-war period, and of which labour relations boards are a paramount illustration. Though the chair of the board was Mr. Justice C.P. McTague, he was selected for his experience as a conciliator and mediator rather than for his judicial status.

The board's responsibilities included resolving industrial disputes and considering the issues raised by parties to collective bargaining. They were also asked to hold hearings and to contemplate what kind of collective bargaining legislation might have a positive impact on industrial relations in wartime Canada.

In the end, Cohen had a falling out with McTague and the government over what he perceived as inappropriate contact between the board and the politicians, and filed his own report dissenting in several respects from the views expressed by the other two members. However, his opinions were consistent with much of what the majority report contained,

and with the approach adopted by the government in P.C. 1003,<sup>6</sup> a regime that left its stamp on many subsequent statutes at both the federal and provincial levels. The major common elements of Canadian collective bargaining legislation—certification on the basis of majority worker support in a defined bargaining unit, the establishment of an independent and specialized labour tribunal, articulation of unfair labour practices, resort to third parties for resolution of disputes, and, above all, the imposition of a duty to bargain—were all outlined in the federal statute, thus setting in place a model that has endured with little modification for over half a century.

Despite his heavy commitments in the labour field, Cohen also found time during the war to play a prominent role as a defender of persons interned under the *Defence of Canada Regulations*. MacDowell uses the information about Cohen's part in these events to shed welcome light on a somewhat shameful period in Canada's history. It was to be expected that members of the Communist Party would be viewed with suspicion, given the shock occasioned by the German-Soviet pact, though these internments necessitated some interesting political footwork when the Soviet Union later joined the ranks of the allies. Less easy to rationalize were the internments of Jehovah's Witnesses, who seem to have been guilty largely of showing insufficient patriotic fervour, and members of groups like the Ukrainian Labour Farmer Temple Association (ULFTA). Although the latter admittedly subscribed to left-wing views, and had approved of the Bolshevik Revolution, their preoccupation, like that of more right-wing Ukrainian organizations, was with national self-determination for Ukraine. In any case, as MacDowell points out, it is somewhat difficult to identify how Canadian war objectives were served by destroying the libraries and collections of national costumes owned by the ULFTA, or by transferring their meeting halls to rival associations.<sup>7</sup>

In today's climate of anxiety, it is interesting to read the account of Cohen's determined crusade to assert the civil liberties of individuals. He made the point frequently and vigorously that a fight to preserve democracy does not fit well with the kind of repressive measures and compromises which place the rights of individual citizens in democratic countries at risk. In the context of Camp X-Ray<sup>8</sup> and the controversy over anti-terrorism legislation, Cohen's appeal to ensure that only the most

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<sup>6</sup> *Renegade Lawyer*, *supra* note 1 at 145-49.

<sup>7</sup> *Ibid.* at 169.

<sup>8</sup> Camp X-Ray, located in Guantanamo Bay, Cuba, served as a temporary holding facility for Al Qaeda and Taliban detainees. The detainees were housed in small cells with walls made of diamond-shaped mesh wire and only a metal roof to protect against the elements.

necessary infringements are made on the liberties of the citizen could, almost without modification, be inserted into the contemporary debate.

The dramatic collapse of Cohen's career occurred in 1945 when he was charged with assault after a mysterious incident involving Elizabeth Guenard, a young woman on his staff, with whom he had been having an affair. The assault occurred during a quarrel in a hotel room in Kirkland Lake, where Cohen had gone to address a labour convention. Cohen was convicted in a criminal trial and imprisoned, and was later disbarred.

There are a number of riddles surrounding the events that led to the criminal proceedings, beginning with the possible explanations for Cohen's behaviour which, even by his own account, was at least intemperate and inappropriate, and was, by the accounts of others, thoughtless and brutal. Even on the basis of thorough research, MacDowell reaches only provisional conclusions about whether there was a medical explanation for his actions, whether it was the result of drugs or alcohol, or whether it was indicative of unpleasant traits of character. A further mystery surrounds the question of why the police initiated an investigation, given that Guenard did not file an assault complaint. While it cannot be proven, MacDowell points to evidence that suggests the directions for the investigation originated with Cohen's political enemies.

This section of the book concerning these tragic last years is fascinating, but it also creates a sense of frustration that many of the striking features of Cohen's personal life are only described at this late stage. The phobias, obsessive concentration on work, chronic exhaustion, abuse of alcohol and prescription drugs, involvement in a series of affairs, and previous disciplinary actions by the Law Society, are all revealed in a discussion of the events that ended Cohen's career, and, possibly, his life.

Although it is certainly difficult to decide on organizing principles for biographical material, more pointed references to the personal demons that apparently beset Cohen throughout his life, and a more complete foreshadowing of the end, would have been helpful in understanding the discussion of his professional life that takes up so much of the book.

A similar frustration arises from the author's decision to place, in an epilogue, her analysis of the issues and controversies connected with the development of Canadian labour law. MacDowell provides a concise discussion of current writing on these issues, and argues that the compromises entailed in the "post-war settlement," which resulted in current collective bargaining regimes, do not represent a betrayal of workers by their leaders and advisers, but rather the cost of an achievement

that was genuinely sought by workers and their organizations.<sup>9</sup> Placing this discussion in closer proximity to the description of Cohen's role in achieving the post-war settlement would have provided a helpful backdrop.

These are minor complaints about a book that provides a balanced and thorough analysis of an enigmatic lawyer who made a significant contribution to Canadian labour law. Although there are limitations within which a biographer must work, there are compensations in the opportunity to explore the place of a single individual in the sweep of history, and, as here, to demonstrate how a flawed and ordinary person can influence the events of his time.

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<sup>9</sup> *Renegade Lawyer*, *supra* note 1 at 294-98.