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Law and Norms in Left-Wing Novels of the U. S. Mid-Twentieth Century

walter j kendall
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“When you come to think of it, it’s a might funny thing, the law.”1

Each of the major law-based structuring or ordering systems of society – markets, regulation, litigation, and democracy – should work as a path to a good and just society. However, the scholarship of the last half of the 20th century establishes that none work the way they should2; each is blocked by a wall with doors locked to working people. In such circumstances most people either make an everyday life for themselves through consumption3, especially of small systems that do work, like DVDs and microwave ovens; or lose themselves in big ideological fundamentalisms, like religion and tribalism.4 Some few look for a key to open the door; fewer determine to scale the wall5; fewer still to knock them down.

The University of Illinois has recently reissued 12 novels in a series entitled The Radical Novel Reconsidered, edited by Alan Wald of the University of Michigan. This paper will briefly summarize the fictional situation in which protagonists find themselves in each novel. It will look at the law as it is represented in the books. How is it perceived by the characters? Does it help or hinder them in their pursuit of the good life? What are its functions? Is the law autonomous or is it dependent on or determined by other social, cultural, or economic forces?
The novels in chronological order of original publication are:

*Salome of the Tenements* (1923), Yezierska

*To Make My Bread* (1932), Lumpkin

*Pity is Not Enough* (1935), Herbst

*A World to Win* (1935), Conroy

*Moscow Yankee* (1935), Page

*Lamps at High Noon* (1940), Balch

*The People from Heaven* (1943), Sanford

*Tucker's People* (1943), Wolfert

*The Great Midland* (1948), Saxton

*The World Above* (1951), Polonsky

*Burning Valley* (1953), Bonosky

*The Big Boxcar* (1957), Maund

Because these books are unfamiliar to most readers I've briefly summarized their story lines in the appendix.

In a number of United States Supreme Court cases Justice Thurgood Marshall urged the Court to recognize the reality of the lived experience of the poor. He considered the details of the trial records in light of his own experience and saw things that other Justices overlooked, misunderstood, or undervalued. For instance in *Illinois v. Perkins*, the majority characterized the questioning of a prisoner by the police as a “conversation.” Justice Marshall quoted from the actual transcript and recharacterized it as an “interrogation”
requiring Miranda warnings. More directly, dissenting in U.S. v. Kras which found the imposition of a filing fee for petitioning the bankruptcy court constitutional, he wrote “no one who has had close contact with poor people can fail to understand how close to the margins of survival many of them are.” In another opinion he characterized this factual determination of the majority as “callous indifference to the realities of the life of the poor.”

Justice Thurgood Marshall insisted that “it is perfectly proper for judges to disagree about what the Constitution requires. But it is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live.”

A character in Salome of the Tenements says: “From afar off I see the free air of where I’d like to be, then no sooner I get there than unseen walls rise up to shut me in.” (p. 134). Might these novels tell us something of value about the realities of the life of the poor and the law?

Douglas Wixson’s study of Jack Conroy and Midwestern radicalism is indispensible as it puts a human face on the theoretical and historical debates evoked by the terms literary left, or radical literature. Hapke, Gilbert, Wald, and others provide a broader context making a powerful case for reconsidering the impact of such literature on the culture. However, let it be clear at the beginning there is no pretense here of being a literary critic or especially knowledgeable about labor and left history. Nor is this paper a jurisprudential analysis. Rather, as was the publication of the novels it studies, it is an essay in synchronic retrieval. Retrieval of what these socialist-Marxist
influenced writers had to say about the law. Accepting that there is truth in fiction, this evidence is relevant to the continuing debates about what is broadly understood as the rule of law. Is the law a neutral, even autonomous feature of the society’s infrastructure facilitating non-coerced action? Or is it less autonomous superstructure reflecting, even determined by, either nature, nurture, society, or culture; perhaps a combination thereof? If determined and non-neutral is the preference for the have-nots, however defined? Or could the resulting preference be a preferential option for the have-nots, however defined?

James Burkhart Gilbert in his 1968 book *Writers and Partisans – A History of Literary Radicalism in America* sees “two primary clusters of ideas appear(ing) in the great flurry of changing philosophies (in the early 20th century), the “revolution” and the “renaissance” out of which most of the important literary factions of the 1930s evolved.” During this period, especially after World War I there was a “new paganism” comprised of three bohemia: one of the stereotypical starving artist, starving literally and intellectually, looking for a link to the American tradition as was Van Wyck Brooks; a second, depicted by Floyd Dell, of “restless vagabond(s) seeking a political home; and a third, of Parisian expatriates who were inspired more by T.S. Eliot and other modernists than by politics.

The dawn of the 20th century into the 1920s, the era of Emily Post, the Ms. Manners of the day, was a time of corporate and financial consolidation, and rapid urbanization. Cities were overwhelmed with new immigrants.
families leaving the farm, and African-Americans fleeing Jim Crow. All of that and the War fueled the movement for women’s suffrage. During this period workers faced inhumanely “long hours, the low wages, the filth, the racking clatter of machinery, the accidents without compensation, the domination of foreman or manager, their large and petty methods of graft or terrorization, the job insecurity, the ‘yellow dog’ contract and the blacklist, the semi-imprisonment of those who have nothing to sell but their strength including child labor, usually by church-going employers.”

The “search for order” during these times included struggles between big city bosses and political machines empowering the new urbanites, and good government reformers more skeptical of mass democracy. The fissures in society created opportunities for the exploration, even implementation, of utopian ideas of direct democracy and socialism.

As things evolved, at least until the Depression, there were “renewed corporate attempts to foster a mass-work, post-craft mentality. Giants like Ford...led the way in offering white ethnic immigrants and native born workers a management vision of industrial democracy.” Higher wages, fringe benefits, and overtime facilitated in the case of Ford, the purchase of the very cars the workers built. Similarly, with inexpensive housing, and furnishings. Fordism and consumerism helped fuel the “normalcy” of the roaring twenties!

The literary typology that follows is based on Rideout’s presentation of the understanding during the Cold War of the literary left.
In the early 20th century up to just after the first world war, what Rideout labels “Socialist novels” are primarily centered around “(class) conversion, the coming of Socialism, labor struggles, the decadence of the rich, and prostitution.”

In the 20s, events like the Gastonia mill strike and the execution of Sacco and Vanzetti, resulted in “a defeat for the three cardinal principles of Liberalism: ... the working for equal justice of free institutions; the application of intelligence to correct the short-comings of system; and, the possibilities of educating public opinion and making its control effective over the instruments of government,” and a new social consciousness.

The 30’s, the period of the Great world-wide Depression, and of Dale Carnegie and how to succeed in business was the period of the “proletarian novel.” Again according to Rideout, the content or focus of these novels fell primarily into four broad categories: (1) those centered about a strike; (2) those concerned with the development of an individual’s class-consciousness and his conversion to Communism; (3) those dealing with the “bottom dogs,” the lowest layers of society; and (4) those describing the decay of the middle class.” He emphasizes that “A very sharp ideological distinction marks off the proletarian fiction of the thirties and the earlier Socialist novels, a distinction clearly resulting from the divergence in the dominant political attitudes of the two parties. Where almost all of the Socialist writers had expressly rejected violence in favor of parliamentary methods of change, almost all of the proletarians
insisted that the coming struggle for power between capitalist and working class would be of 'cataclysmic' nature."  

Additionally, the conversion experience in the earlier socialist period was very different from the proletarian Depression era experience. Within the later proletarian novels there were really two different conversion stories. The earlier Socialist conversion was a growth into a sense of the possibility of political change through Party participation. There was an active Socialist Party at least at the local level. In the later proletarian novels the developmental process is different for the worker and the middle-class protagonist. For the worker, it is "a slow awakening to the injustice of capitalism as it operates within his own limited experience. The worker often attempts to rise from his class, only to find that his struggles are thwarted by his lack of money or his predilection for honesty. He blunders along, painfully puzzling out such questions as to why he is periodically laid off, why men injured by machines are given no compensation or are cheated of it, why strikes are sometimes sold out by corrupt union officials, why police brutality has always to be expected. When, therefore, a Communist agitator or organizer begins to make the protagonist generalize from his experiences, the agitator’s words are like a match applied to an already laid fire, which then blazes up in the red flames of revolt." For the middle-class protagonist the conversion is one of being declassed by the effects of the Depression. “He is forced to earn what he can through the sale of his labor power, discovers how precariously the proletariat lives, is drawn into a strike or radical demonstration wherein his middle-class faith in capitalist
justice is shattered, and thereupon throws himself wholeheartedly into the
class struggle on the side of the workers.”

The end of World War II and the Cold War fostered the McCarthy period
which saw the end of an active effective communist inspired left. Waiting for
Godot was a hit play. The number of radical novels, small all along, became
even smaller. However, the subject matter became a little more varied. Strike
novels continued to appear; and books dealing with “bottom dogs” appeared.
The theme of the declining middle class and the rise of the workers was
continued. But, the Party worker was being replaced by a more independent
radical as the hero.

Rideout also provides a concise summary of the older consensus view of
the political-economic system presented by the authors of socialist-proletarian
novels. “Since the economic contradictions and the exploitative social
relationships of capitalism are the chief object of attack, these novels, like the
Socialist ones, attempt to expose all manifestations of capitalist evil – to reveal
that business ethics are the ethics of the jungle and that the comfort of the few
rests heavily on the misery of the many. Police brutality unleashed against
strikers appears often for the police are the immediate agents of class
domination. A blow from a policeman’s club, however, is only the result of a
whole long series of impulses. In these novels, it is always demonstrated to the
reader in some way that the chain of authority runs back behind the police,
behind the strikebreakers, the hired thugs and private detectives, the citizens’
committees and vigilantes, to institutions which capitalism has set up to
protect and preserve itself. Capitalist justice is always class justice; if property relationships are endangered, the whole legal apparatus is brought to bear against the offender. When strikers are brought into the courts, as in the Gastonia novels, no really fair trial can be expected by either striker or reader. The jury, usually composed of petty-bourgeois individuals, is prejudiced, the prosecution lawyers exploit the unsanctified attitude of radicals toward God and country, the defense lawyers may very well be in cahoots with the prosecution, and the judge either consciously or unconsciously responds to the dominant economic pressures of the community.”

The Woman’s Story from *The Big Boxcar* presents an even more horrific picture of the operation of the law. There are scenes of rape and torture by law enforcement officials. It recapitulates the Jim Crow experience with only the lynchings left out. Throughout, these novelists have manifested a concern for racial justice.

The recent studies of Wald
\(^3\)\(^4\), Foley
\(^3\)\(^5\), and others
\(^3\)\(^6\) present a more nuanced and positive view of the independence, creativity, and politics of socialist-proletarian authors. With the exception of *Moscow Yankee*, which is a not entirely idealized description of the Soviet experiment with human nature through the eyes of Americans who went to Russia in the 30s to seek work and to help the revolution, the novels being reviewed evidence the modern revised view of left literary authors and their work. For instance:

-- All law enforcement people are not alike, there are at least subtle differences. In *A World to Win* the local police are bad to be sure, but they just
throw you off the train, while the “railroad dicks” are worse; they also beat you up. (p. 57).

-- Some capitalists are more paternalistic than oppressive. The judge in *The World Above* gives the hero money to study, selfishly, so he will leave the country, but with the money he becomes a psychiatrist. In *Salome of the Tenement* the Settlement House benefactors are another example of this paternalism. It is noteworthy in this regard that Justice Clarence Thomas has led the now majority of the Supreme Court to reject such racial paternalism as oppressive and violative of the Constitution.\(^{37}\)

-- Not all professionals are bad, not even all lawyers. There is at least one committed, if ineffective, union lawyer in *To Make My Bread*. (p. 361).

-- The importance of transparency through media coverage is recognized. While in *The Great Midland* the newspapers are pawns of the elite, in *Tucker’s People* it is press coverage of the corruption that causes the special prosecutor to act against the numbers racket.

-- The justice system, at least the jury, sometimes works as it should. In *A World to Win* a protagonist accused of killing a “scab” gets off, in his words, with “only 21 years” instead of the gas chamber, because the “jury had some union men” on it. (p. 26).

-- Even religion which is almost uniformly seen as an enemy of workers comes in for some praise. The old drunken priest in *Burning Valley* stands with the workers till the bitter end. The introduction to that novel sees the seeds of liberation theology in his thinking and actions.
THE LAW –

More important than these counter-points, there is a strong undercurrent of nuanced debate about the law and norms in these novels. Is the law different? Is there any majesty to the law and lawyering? Or is it just like all other activities? In *The World Above* the protagonist says at one point in arguing that all people are bound by their economic circumstances (p. 72):

... “scientists and coal miners and lawyers are all the same. They each have a profession because they happen to have it, but as men they are not much different from each other. One thing they all have in common. They work for whoever pays them. The coal miner digs coal to run engines to make explosives to kill poor coal miners in other countries or in his own. The lawyer perverts laws so that lawyers become unnecessary and law meaningless. The scientist will make poison gas and invent any monster of equations to kill scientists here and elsewhere. They work for who pays them.” (p. 71-72)

However, throughout these novels, a belief in constitutional or fundamental law, if not everyday law, is manifested. In *Burning Valley* the people clearly believe the State is supposed to do good. Benedict says the “evil that came with the sanction of the State was bewildering.” (p. 123).

In *Pity’s Not Enough*, Joe is reassurred he is okay because he’s been told by the Attorney General that everything he was doing at the behest of the carpetbaggers and local Reconstruction politicians was OK. “Barrow is in a position to know, he’s A.G., above politics; he’s a man of the law.” (p. 39) Perhaps ironically, but perhaps not he says. “that’s the whole thing in a
nutshell, the Union won. The laws behind the North, and the majesty of the law is mighty." (p. 27)

There are two references to the Constitution in *The People from Heaven*. In the first, Eli Bishop (the racist rapist) is questioning why a black would be in a car waiting in front of the local hotel. Doc Slocum has been challenging his concern suggesting it was wrong. Bishop says “I said this before, and I’ll say it again: a man’s got a right to find out about strangers.” Doc responds “I never saw it in the Constitution.” The conversation continues:

“There’s lots of things ain’t in the Constitution that ought to be.”

“For instance, what?”

“For instance, the right to ask a ordinary question.”

“Like ‘What’s a nigger doing in a automobile?’”

“Now, that’s a good example, Doc.”

“Eli, you’re messing up this town worse than a hog’s breakfast, and for nothing at all – nothing!”

“A nigger-stranger ain’t nothing.”

“He’s nothing to me,” Slocum said. “If a man wants to sit in an automobile, I’m for letting him sit there till he starts to decompose.”

“He’s nothing to me, either, but I got a right to be curious.” (p. 60-61)
Later in a school room scene a student was mocking other students as they struggled to answer the teacher’s questions. The teacher Ms. Quinn, then called on Aben Vroom, the American Indian student.

“Dopey Aben,” someone said.

“Aben,” Quinn said, “maybe you can help us out. What was the cause of the Civil War?”

“… They wrote out some compromises, but that didn’t do much good because the South was always trying to get the bulge, and finally they got boiling mad and said, ‘No more compromises. I guess we will stand on our rights and get out of the Federal Government. …’”

“Aben, the half-breed,” someone said.

“… The North said, ‘Nothing doing. When you come in the Federal Government, you give up your right to get out.’ The South said, ‘How come, and who says so?’ and the North said, ‘We say so, and it’s account of the Constitution.’ The South said, ‘The Constitution is only a roll of paper, and we will tear off the part we don’t like,’ so they opened fire on Fort Sumter. …”

“Aben is a red-skin son-of-an-Indian-bitch,” someone said.

Marvin Piper sat across the aisle from the boy reciting, and two rows to the rear. Without turning, and speaking as if the words were part of his recitation, Aben said, “If Marv Piper don’t quit, I’m going to do the same thing to him that Crazy Horse done to Custer.” (162-164).

There is another reference to law early in the Spoon River introductory portion. Two characters are chatting about hunting and the approaching season.
“Sometimes I can’t hardly wait for the seasons to open.”

“Having Game Laws is a pretty smart idea, though,” I said. “Where’d all the game be if a man could go banging away any time of the year?”

“Hard to tell,” he said.

“Easy to tell,” I said. “Inside of a year, there wouldn’t be anything left to shoot at but people.”

“That’s why I say sometimes I can’t hardly wait.”

“Of course, Big,” I said, “I’m not trying to make out I never broke the law. I can remember when I didn’t pay much attention to it. I kept on forgetting all the time.”

“Funny thing,” he said. “That used to happen to me.”

“Even now, I kind of lose track every once in a while.”

“You know, Steve,” he said, “you ask me, I think the two of us is just a pair of common poachers.” (p. 27-28).

On the other hand, here is a totally dismissive comment in *Burning Valley* when one of the characters refers to the Constitution as positive and protective the law enforcement official responds “What constitution? never heard of it!” (p. 50).

In *To Make My Bread*, a clear distinction between “right” and the law is drawn. Grandpa is involved with moonshiners. His daughter says he’ll get in trouble. He responds:

“we’ve got a right to make money in the best way we can ... (I) fought in the Confederacy and I done my
duty and have a right to make money when my folks need it; no government can take that right away from me."

She argues back: “I’m not a-talking rights. We’ve got a right. But the Law’s got the Power!” (p. 71).

In *The Big Boxcar* Jonah, a white escaped prisoner, jumps into the boxcar to see six or is it more black faces. “Almost always one white man among six negroes, or a dozen even, is boss, automatic, because he carries the Sheriff in his pocket. His word is law because the law always takes his word. But in the boxcar things were different; there wasn’t no law, so numbers countered…” (p. 146-47).

The 1951 anti-McCarthyism novel *The World Above* has two jurisprudentially suggestive exchanges. Carl, the protagonist scientist affirmatively uses one of Roberto Ungar’s key concepts - plasticity. He argues at one point: “The city ... was a maze.... It stamped upon its creatures the sign of the maze, so that they were able to traverse it and somehow not know that man was not born to live in a maze. He was born for anything and everything, capable and plastic, infinitely various, infinitely promising.” (p. 382)

Later, Carl is advised that there really is no way to protect himself from attack by the Congressional Committee. “Your only real hope is that something even more foolish and scandalous comes up elsewhere. For this is the way we govern today, by crisis and scandal. If ever America was a nation that lived by law, it has become material for scholars.” (p. 429). An interesting anticipation of the “displacement of law” in today’s law and society debate.
SOCIAL NORMS –

Social norms appear throughout these novels as powerful forces, even more so than the law. In fact, in *To Make My Bread* it is said the law as such is an alien, an outsider – “if the outside (modern civilization) creeps nearer, the law does too.” (p. 71). Robert Ellickson’s title *Order Without Law* captures this notion. Social norms shape people’s predispositions and thus influence their choices. They influence people’s sense of self. Clearly they affect compliance with the law.\(^{41}\)

In *Salome of the Tenements* Anna decries “the straight jacket of American civilization.” (p. 132) At a critical point in the story she is confronted by the pawn broker from whom she borrowed the money to spruce up her wardrobe and furnishings to favorably impress the settlement house benefactor she desired to marry. She is confident that he will not sue her rich husband because he, the broker, shares her sense that the law cannot be trusted to rule against the rich. The broker however instead threatens to go to the newspapers to embarrass them. He may not have the courts on his side but as he puts it to her “I’ve got the law of the newspapers...” (p.142).

That cynicism about the law and recognition of the power of social norms is also manifest when Anna is trying to convince her landlord to bring the apartment building she rents up to Code. He is resistant because it will be expensive and he knows that the Code is seldom enforced. He relents when she threatens to go to her intended to get the code enforced. As he had put it in a
fit of pique earlier “even the Judges are a bunch of Bolsheviks, socialists, and anarchists.” (p. 43).

Shame is an important disciplinary notion. In *To Make My Bread*, “Shame,” your shoddy work lets yourself down. (p. 25). “Shame,” you let your family down by not contributing to the household. “Shame,” you let the entire community down by creating disharmony. (p.177). Later when the new mill workers have gone on strike a worker from her village, now a boss at the Mill says to Bonnie who is a strike leader, “Shame yourself for keeping people from making good wages.” Her response is “Shame yourself for going against your own people. Not so long ago you was a mill hand yourself.” (p. 340).

More subtly in *Tucker’s People*, there is the following:

“I mean, to be really bad, real rotten bad. That takes a whole lifetime. It’s not just something that you can go out and do, adultery, stealing murder. That’s not bad.”

“It’ll do for a start.”

“No, child,” he cried suddenly. He looked distracted. He seemed to be crying out to himself. “That’s not bad. It’s not really bad to take another man’s wife or life or spit in the face of your father. Yes, even that, even to spit, from the bottom of your heart, in the face of your father. Those things happen to anybody in a moment when he gets himself in a situation, or a week or a month or a year when a man is in a certain kind of situation that is too much for him. Everybody has it in him and it’s an accident when it comes out. But real badness, real rotten badness, where you do something that’s against your whole nature, and that rots your whole nature ... it takes a lifetime.” (p. 414).
For some characters class trumps everything. Ambition is useless even bad. For instance in *Pity is Not Enough* Joe argues “money is power and power is freedom.” Joe’s brother Aaron rejects Joe’s view and instead anticipated Janis Joplin about freedom being nothing left to lose. (p 207). Joe himself towards the end says: “It would be better not to try to rise, to stay down in one’s beginnings, where there was company and kindness. On top, somebody was always waiting to do you.”(p 338). On the other hand, for some rather than this leveling down, so to speak, or acceptance of one’s place in life, there is a new order coming. With news of strikes and war the lead characters in the second volume of Herbst’s trilogy feel “alive and as if they have a clue to living.” (p. 343). “I believe that the state of caste and classes, the state where one class dominates over and lives upon the labor of another, and calls this order, yes, I believe this barbaric form of social organization with its legalized plunder and murder, is doomed to die and make room for a free society”. (p. 338)

And then an ambiguous cri de coeur: “Old phrases from the Bible came to (Joe). He wondered what these men had believed in. Not God. God was of no use to them ... But when he thought of the world without God he was very lonely.” (p. 339)

**WALLS-**

There are two high and thick *walls* present throughout the entire series of novels that block working class and poor people from justice and then reinforce each other. The first is the necessitous circumstances of the workers
that make them vulnerable to predatory commitments. Legally the joint notions of employment at will, and assumption of risk support even reinforce fugitive capital; capital that escapes any ties with the communities that helped create it.

A legal concept that recognizes these, and tries to limit them in the context of private transactions is “adhesion contracts.” ⁴³ In the public context (drawing a contested distinction) the limits are set by government regulation.

The second wall is that the participants in the legal system – sheriff, police, governor, legislators, judges and bureaucrats – operate as a corrupt combine in violation of the rule of law, the principle that there are limits binding on all.

In *Pity Is Not Enough* to escape his legal troubles in the Reconstruction South Joe Trexler goes west in search of his fortune. In response to his many and varied ups and downs economically he tells another prospector that before the capitalists and lawyers came out west one man was as good as the next. (p.268).

In *A World to Win* there is a scene involving a character looking for a doctor to perform an abortion. The doctor whose name comes up had legal troubles in the past, but was still operating. It is said about him “(I) guess he has enough backing to get out of it.” (p. 232).

In another scene, a property owner in threatening one of the protagonists says that in addition to the minor charge of disorderly conduct “there are lots of other laws that come in handy. …” (p. 217).
In *To Make My Bread* a company agent says to the striking workers who have appealed to the law for protection from strikebreaking thugs “I’m the law!” (p. 353).

In *The World Above* all the government positions, legislative, executive and judicial, are described as payoffs or bonuses to the “(otherwise) respectable servants of the political machine.” (p. 398).

This reference to the political machine reinforces the sense that the message of these novels throughout is congruent with populist-progressive political reform: not revolution neither anarchist nor communist. *Tucker’s People* especially reads like a description of the operations of the early and mid-twentieth urban political machines: for instance, among other things insider trading, buying votes with no show jobs, and arbitrary law enforcement.

*Pity Is Not Enough* goes further. It shows corruption of government at all levels without any countervailing checks or balances. *Lamps at High Noon* is similar with even more attention to the specifics of how this corruption actually operates.

Today political patronage is unconstitutional as a violation of the first amendment freedoms of speech and association. There are also whistle-blower laws, and qui tam statutes, however weak they may be. Similarly the media despite consolidation and corporate control still periodically operates as a watchdog. And like the unnamed but feared prosecutor in *Tucker’s People* there are prosecutors like Patrick Fitzgerald, who prosecuted Vice President Cheney’s chief of staff.
Before concluding it must be mentioned that these novels recognize something in human nature or experience which variously can be understood as our sense of injustice\textsuperscript{50} or of the moral economy\textsuperscript{51}; or of our sense of human solidarity\textsuperscript{52}. For instance, in *The Big Boxcar*, after the stories have been told and as they approach the danger in the rail yards Sam reflects “how strange this all was. Seven people running away...one white man, five Negro men – with a negro woman of easy virtue ruling things. Everyone of them was an outlaw...and there wasn’t no law in the boxcar. By all rights a person could have expected rough trouble...Despite the lack of law they stuck together...What’s more they choose a leader on brains and guts...It took a lot of fear out of what was up ahead to think that people don’t need a sheriff to make them people. Call them (whatever) they’re still people. If the North is free...it isn’t much more free than this boxcar. He felt for the first time...he had something to hang on to.” (p. 146-147). This might suggest to some something like natural law.\textsuperscript{53}

Theodore Dreiser describes *Sister Carrie’s* conscience as “no just and sapient counselor ... It was only an average little conscience, a thing which represented the world, her past environment, habit, convention, in a confused way. With it, the voice of the people was truly the voice of God.”\textsuperscript{54}

In Sam’s Story in *The Big Boxcar* he is working in the fields as he always did, minding his own business, trying not to be noticed when the Superintendent of Schools pulls up to the fence in his car and “beckoned his finger to show Sam should climb over and come beside the car. “You Sam
Cutler? ... Sam was so surprised at a white man knowing his name that he was ready on the spot to go to Parchman Prison or top take over as Governor up in Jackson.” (p. 152).

Similarly, in *The World Above* the protagonist’s research partner is called before a Congressional committee. The interrogator “spoke each time with social finality, with the whip of authority, and the hangman’s noose, the marshal’s baton, the policeman’s club, the excommunication of the church militant. Curtin raised his bewildered eyes. It did not seem to him that he was there on trial, and yet he was on trial. He had nothing to be guilty of, yet, he experienced a sense of guilt, for the nature of justice is to create guilt as well as to judgment, in a sense to create guilt in order to be able to judge at, just as there is no forgiveness and punishment unless first there is an idea of sin invented to sustain the forgiveness and the cruelty of a just punishment.”(p. 411).

Perhaps Slavoj Zizek can explain why and how it is that the law has these kinds of effects? Is it that the law as a perceived expression of the will of the people has a transcendent dimension?

CONCLUSION-
Whatever their faults, literary or political, the truth in the fiction of these novels is confirmed by studies like those of Carla Cappetti’s *Writing Chicago: Modernism, Ethnology, and the Novel* (1993); Lizabeth Cohen, *Making A New Deal: Industrial Workers in Chicago 1919-1939* (1990); and Robert Zieger &

As to the law, these novels contain an understanding of the law that moves beyond formalism to recognize both the limited autonomy of the law and its plasticity. The several references provide material relevant to debates provoked by E.P. Thompson’s characterization of the rule of law as an unqualified human good.\(^56\)

I am insisting only upon the obvious point, which some modern Marxists have overlooked, that there is a difference between arbitrary power and the rule of law. We ought to expose the shame and inequities which may be concealed beneath this law. But the rule of law itself, the imposing of effective inhibitions upon power and the defense of the citizens from power’s all-intrusive claims, seems to me to be an unqualified human good. To deny or belittle this good is, in this dangerous century when the resources and pretensions of power continue to enlarge, a desperate error of intellectual abstraction.\(^57\)

Is it, the rule of law, an unqualified human good? Morton Horwitz in his review of E.P. Thompson’s book *Whigs & Hunters: The Origin of the Black Act* rejects his characterization of the role of law as “an unqualified human good.” Horwitz contends in response:
Unless we are prepared to succumb to Hobbesian pessimism “in this dangerous century,” I do not see how a Man of the Left can describe the rule of law as “an unqualified human good”? It undoubtedly restrains power, but it also prevent power’s benevolent exercise. It creates formal equality – a not inconsiderable virtue – but it promotes substantive inequality by creating a consciousness that radically separate law from politics, means from ends, processes from outcomes. By promoting procedural justice it enables the shrewd, the calculating, and the wealthy to manipulate its forms to their own advantage. And it ratifies and legitimates an adversarial, competitive, and atomistic conception of human relations.58

In these novels the rule of law appears as Thompson argues it is, an unqualified human good; but equally the legal system operates as Horwitz describes it. The walls that divide the “is” from the “ought” need to be breeched.

One institution with the capacity to help breech the walls is the court system. That being the case, what might the Courts do in reviewing the legal-normative outcomes of the flawed public and private processes that result in this -- the disconnect between the law as it is and the law as it ought to be?

Courts could whenever any law or law supported norm has a disparate negative effect on have-nots require Congress, agencies, and even contracting
private parties to explain how the rule protects the interests and meets the needs of the poor. Opening the “imperfect institutions” of society by requiring the government to explain how they considered the needs of those disadvantaged by a rule or norm will help the movement for equality to get over the wall created by Washington v. Davis.\(^{59}\)

While the experience of the Courts with environmental impact statements and cost-benefit analysis is not all positive, clearly some of it has been efficacious.\(^{60}\) Professor Michelman has referred to the feasibility of “judicial mandates(s) to legislative, executive, or administrative officers to prepare, submit, and carry out ... corrective plan(s).\(^{61}\) Scholars like Susan Sturm have begun to suggest ways for courts to focus “on developing the institutional competence of (itself and) other actors to pursue equality norms.” She articulates something like the “balancing” role of the Court being proposed when she says, “The judiciary becomes involved when ... there is a strong indication that particular systems and practices are failing in ways that fall within the purview of generally articulated equality aspirations.”\(^{62}\)

The lived experience of working people and the poor will then become a necessary consideration in governmental decision-making. They will no longer be invisible!\(^{63}\)
APPENDIX

*Salome of the Tenements* is a live story modeled in part on both the romance between Rose Pastor, a Jewish immigrant, reporter for a Yiddish language daily and Graham Stokes a millionaire philanthropist, and that between the author herself and John Dewey.

The novel is also a debate about whether it is possible to rise above one’s class; and if so is it worth the effort and sacrifices. Sonya Vrunsky, a young Jewish working woman on the lower east side of New York, sets her mind and heart on John Manning, a very affluent philanthropist who works in the local settlement house. Sonya (Salome) wins the head, but never quite the heart of her John. She does this through wile and deception; deceptions that ultimately are disclosed, ending their marriage.

Additionally the paternalism of the settlement house movement, with its “inhuman activities” (p. 138) like being taught how to bake “milkless, butterless, eggless cake . . . (to) feed a family of six.” (p. 134) is rejected
To Make My Bread follows a family of Appalachian subsistence farmers driven off their small plot of land by the fast dealings of developers and their local agent. They are lured to a nearby factory town and by false promises become beholden to the mill owner for wages, housing and other necessities.

Issues of class, race, unionism, and feminism are dealt with in this fictionalized retelling of the workers’ experience in the Gastonia mill strikes of 1927.

Pity is Not Enough is part of the trilogy about generations of a Trexler family. It begins with Reconstruction and ends in the midst of the Great Depression. This first volume ends with a reference to Seattle in 1918.

Joe Trexler leaves Iowa behind to seek his fortune down south in 1868. He gets connected with the Republican Reconstructionists in Georgia. He has some facility with numbers and is given a series of increasingly responsible accounting and record-keeping positions. Joe plays his small part as a cog in
the corrupt political-economic system: phony charges for goods and services never provided, kickbacks, and bribes, abuse of inside information, and electoral chicanery involving the Governor and Senators, and much of the business elite.

Thus, Joe becomes the “Yankee” fall guy for the gaggle of crooks he was involved with as they struggle successfully to save their hides. He is prosecuted for misuse of public funds, but runs away.

He leaves Atlanta, but not his quest for “capital”. He travels in search for the next big thing, ending up after many twists, turns, ups and downs, in the Rockies searching for gold.

Joe himself towards the end says: “It would be better not to try to rise, to stay down in one’s beginnings, where there was company and kindness. On top, somebody was always waiting to do you.” (P. 338)

Among his last thoughts are these:

“I believe that the state of caste and classes, the state where one class dominates over and lives upon the labor of another, and calls this order, yes, I believe this barbaric form of social organization with its legalized
plunder and murder, is doomed to die and make room for a freer society." (p. 338)

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A World to Win concerns two half-brothers. In a sense it is two stories, coming together only at the end. In Robert’s story we see a writer of at most modest talent struggle to find his form and voice. He tries formal education and bohemia but finds both inadequate. He listens to debates about the best way to effect social change. Both Christian socialism and anarchism seem sterile.

In his older brother Leo’s story we see a school dropout, married and the father of more children than he can support who has difficulty holding a job, and who loses his wife in childbirth.

Through their mutual failures they come together. They, in a sense, find themselves in the experience of labor activism and a strike.
Moscow Yankee is the story of Frank Andersen, Andy, an autoworker who goes with some fellow workers to Moscow to find work and see just what the Soviet experiment is all about. Andy arrives with a common American workers’ attitude towards bosses and work. Slowly, and in part by his growing love for Natasha, a true believer in the Soviet experiment, he recognizes the new Soviet relations of production as transformative. Myra Page, who herself had visited Russia after the Revolution, presents a positive picture of the Soviet work environment. The book presents anecdotes illustrating the old way: inefficiency, waste, hostile bosses, bureaucratic management and sabotage. It at the same time clearly suggests these are remediable and will be overcome when the new Soviet person has developed. Along the way Page does acknowledge that these remnants of the old way are counter-revolutionary and must be treated as such!
Lamps At High Noon is a fictionalized account of a strike by the writers and other workers at the St. Louis office of the Missouri Writers Project in 1936. The Federal Writers Project was a New Deal effort to put artists and writers to work. Writers like Nelson Algren, John Cheever, Zora Neale Hurston and Richard Wright were employed by the FWP.

The book is eloquent on how having a job enlarges, even ennobles a person. At the same time it explores the psychology of need and fear as it affects workplace solidarity.

This novel shines a light on the corrupting consequences of patronage politics. Political and economic interests important to bosses and elected officials could not be challenged and the best qualified writers were shunted aside to satisfy the hiring wishes of these same big shots. It is particularly telling on the need for solidarity not only among striking workers, but other workers, community and religious leaders. Otherwise friends let down, even betray friends. The tensions between a striker, his or her union, and each of
its locals are also insightfully presented, further complicating organizing efforts.

The People From Heaven takes its title from the view of the first Europeans held by Native Americans. It is said in one of the historical interludes used by Sanford to enlarge the frame of the story and to suggest the possibility of progress “if truly these are people from Heaven, why are they so God damned familiar with hell?” The “they” would be most of the folks of Warrensburg, New York, especially Eli Bishop and his cronies. Eli Bishop is an outspoken racist and anti-Semite. He intimidates people and brutalizes Native Americans in the town; eventually he rapes America Smith, the black woman.

The novel opens with an introduction of these Warrensburg residents presented much like the lists of contributors in books of essays – names and a relevant snippet or two about them. The basic story line follows the impact of
the sudden arrival in town of a nameless black woman as she moves about and settles in.

Each of the main characters has a story much like the people of Spoon River. These stories flow towards the final scene where they confront Eli Bishop to call him to account for his violent intolerance. America Smith, as the black woman is known, shoots and kills Bishop in front of much of the town including the sheriff. Rather than arrest her, he apologizes for what happened to her; and adds “I’m glad about something else, though. I’m glad you found out (the preacher) was wrong about people: they are such a much, ma’am.” (meaning able to rise above their self interest and prejudice at least sometimes).

Tucker’s People at one level is a gangster story with all the feel of a film noir starring the likes of George Raft. In fact it was made into a movie Force of Evil starring John Garfield. It may well be the book was written to become a
movie as characters throughout the book draw their understanding of situations they face from the movies (e.g., p. 318)

Two brothers, one “good” and one “bad” get mixed up with the numbers rackets at a time of urban corruption. There are rival operators and a crusading special prosecutor. The story is loosely based on the facts disclosed during the trial of a Tammany Hall leader who was in cahoots with Dutch Schultz, a then-famous mob boss. The chief prosecutor was Thomas Dewey who went on to become New York Governor and Republic Presidential nominee in 1948.

“Business” is the term used throughout to describe the entire political-economic system. The characters are presented as pawns, having little or no choice. Things as they arose and worked out were “inevitable” (p. 48) “I’m in a business and I do what I have to do to stay in it. (Business was business and everybody had to make a living unless he’s born rich). That’s the law. Stay in business. Tend to business. Everybody does it. That’s the law for everybody.” (p. 303)
Wolfert uses the words “deformed” (p. 314) and “crippled” (p. 347) to describe people throughout. Wolfert explains that “man is two things: in the first place, he is what he actually is; and thus he is what he has been made into” and both “exist in him at the same time.” What people are “made into” is a function of the working of the world, of “business.” Business breeds insecurity, “insecurity breeds fear and fear is stronger than love. Some believe it may even be the strongest of all forces in man.” (p. 313)

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The Great Midland is the story of the lives of David Spaas and Stephanie Kovaks as communist party workers; he as an organizer, she as a teacher in a worker school. It follows their relationship and marriage as they each ponder how to make a life together while at the same time working to build multi-racial and ethnic working class coalitions. There are unsafe working conditions, company cops, stool pigeons, scabs, and goons to be dealt with; to say nothing
about the leadership of the union. It describes with insight work place
organizing and party cell or branch meetings.

The focus throughout remains on the organizing activities at the local
level. It avoids big picture philosophic debates and thereby almost
paradoxically universalizes this story of struggle for a better life and
community.

The World Above traces the continuities and changes in the personal,
scientific, and political views of Carl Myers, a New York doctor who was born
and raised in a tenement apartment on the lower east side, over a period of
almost 20 years; from the early Depression to the beginnings of what is known
as the McCarthy era.

Carl’s relationships with family, especially his brother Bill, and with
friends and women, are described in great detail with much emphasis on the
emotional roller coaster involved in such relationships.
Carl tries to remain focused, even fixated on discovering “the mathematical laws that govern their operation (the operation of the machines that are men) and then we will have the beginning of a real science of neurology and ultimately of psychology.” (p. 7) These views of biology and history combine with an increasingly better understanding of the CIO union organizing work of his brother Bill. This understanding makes Carl “ready.” (p. 462) Ready for confronting a choice between the “acceptable” and the “inevitable.” (p. 464) Will he give in to the pressure of the powers and principalities and “save” his work and the hospital in which it occurs, or will he refuse to “kiss the Pope’s foot.”? (p. 451) Or is this a false choice? Galileo kissed the Pope’s foot yet “still revolutionize(d) a civilization of thought.” (p. 451)

Yet despite the determinism, the talk of inevitability, and the awful forces of the status quo, the flow of history; despite the “notion of being banished, of having been pushed … beyond the protection of society (of being) remov(ed) from the laws of the community” (a hint of something positive about law) (p. 415) Carl concludes “if my scientific work leads me to criticize, or even
condemn, a society which creates the illness which it is my duty to treat, then I shall devote my life to exposing this society, condemning it and changing it.” (p. 464)

Burning Valley is the story of Benedict Bulmanis, as he struggles with his calling to the priesthood in the midst of the literal destruction of his family’s community by an expanding steel mill. The needs of his family and the experiences of his steel worker father make him acutely aware of the power of the steel company. His vocational conflict is that this identification with the workers puts him at cross purposes with the new priest in town and the Bishop who identify with the good law abiding people who attend the cathedral church uptown. He hears another voice from the valley. There is an old dilapidated church and an aged alcoholic pro-labor priest. There is also the call of Dobrik (“good” in Polish) the labor organizer who is aiding the workers in their resistance.
The Big Boxcar is the Canterbury Tales of the black migration north.

Each of six blacks, five men and a woman, find themselves together in the same boxcar heading north away from the racial injustice of the South. They agree under the leadership of the woman to share what little they’ve brought with them; and to tell stories to pass the time.

Along the way a white man, running from the law jumps into the boxcar. He joins in the story telling. Each of the stories involves racial injustice or its consequences in one form or another.

As the train approaches the rail yards of Birmingham there is danger from the railroad police and local authorities. The actions and reactions of the participants in the final scenes of confrontation and danger illustrate each in their own way brute power, fear, self-respect, solidarity, and even romance.


9 *U.S. v. Kras*, *supra* note 7 at 460.
All references to the novels under study are in the text.


Gilbert, supra note 13 at 15.

Gilbert supra note 13 at 51-52.


Hapke, supra note 12 at 171.
24. Rideout, supra note 21 at 73.

25. Rideout, supra note 21 at 133.

26. Wixson, supra note 11 at 242-43.

27. Rideout, supra note 21 at 171.


30. Rideout, supra note 21 at 181.

31. Rideout, supra note 21 at 260.

32. Rideout, supra note 21 at 270.

33. Rideout, supra note 21 at 199.

34. Wald, supra, note 14; Wald continues his study in *Trinity of Passion – The Literacy Left & the Antifascist Crusade* (2007).
35 Foley, supra note 15.


Wixson, supra note 11 at 149.


See the Statement to the Court of Eugene Debs on September 18, 1918 (available on the internet).


Theodore Dreiser, *Sister Carrie* (1900) quote is from Chapter X – The Counsel of Winter – Fortune’s Ambassador Calls.
See Jodi Dean, Zizek on Law available on internet. Slavos Zizek was the key note speaker at the Conference at which this paper was presented.

Daniel Cole, “An Unqualified Human Good”. E.P. Thompson and Rule of Law (June 1, 1999). Available at SSRN:


63 See Ralph Ellison, *Invisible Man* (1953)