

# Book Review: A Life in Struggle With the Law - Review of: J. B. McLachlan: A Biography, by David Frank

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Book Review

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# A LIFE IN STRUGGLE WITH THE LAW

Review of:

J.B. McLachlan: A Biography

BY DAVID FRANK

(Toronto: James Lorimer, 1999)<sup>1</sup> 595 pages

I suspect that most readers of this journal will not recognize the name J.B. McLachlan. Because this review appears in a law journal, some might assume he was a judge or a lawyer, but he was neither. McLachlan was engaged with law in a different manner, as a political radical, trade union activist, and leader of the Cape Breton, Nova Scotia coal miners from the first decade of the twentieth century until his death in 1937.

Of course, readers of law journals are not uniquely unaware of figures such as McLachlan. Although Canadian labour history has flourished in the past twenty-five years, the subject has failed to gain a larger foothold in school curricula and public consciousness. McLachlan would not be surprised were he alive today. More than seventy-five years ago, he proclaimed, "I believe in telling children the truth about the history of the world, that it does not consist in the history of Kings and Lords and Cabinets, but consists in the history of the mass of the workers, a thing that is not taught in the schools."<sup>2</sup> The history of labour conflict and class struggle is even less likely to be depicted today than it was when McLachlan first uttered these words. Indeed, as Ian McKay has forcefully argued in this study of the production of Nova Scotia "folk," historical narratives have been constructed in ways that exclude aspects of the past that might lead people to question existing patterns of power and privilege.<sup>3</sup>

Labour historians may bear some responsibility for this state of affairs. Most are university-based scholars who are accustomed to writing for academic audiences. Although their goals and commitments often incline them to reach out to a broader community, by taking their training academic labour historians often find it difficult to present their work in accessible formats or locations.<sup>4</sup> (*Mea culpa!*) David Frank's biography of McLachlan does not suffer from such difficulties. This is a beautifully written book that tells a compelling story, not just of a single individual, but

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<sup>1</sup> D. Frank, *J.B. McLachlan: A Biography* (Toronto: James Lorimer, 1999) [hereinafter *McLachlan*].

<sup>2</sup> *Ibid.* at frontpiece.

<sup>3</sup> I. McKay, *Quest of the Folk: Antimodernism and Cultural Selection in Twentieth-Century Nova Scotia* (Montreal & Kingston: McGill-Queen's University Press, 1994).

<sup>4</sup> C. Heron, "The Labour Historian and Public History" (2000) 45 *Labour/Le Travail* 161 (reflections on the challenges of and opportunities for bringing workers' history into public history).

of a people. As the following description of a 1923 May Day parade in Glace Bay indicates, Frank draws the reader into the story, vividly portraying both the character of his protagonist and the time and place in which he lived.

Here they come around Senator's corner, under a red banner big enough to block the whole of Commercial Street. People are standing on the sidewalks, hands in their pockets, wearing caps to protect themselves against the icy rain that has started to fall. Children are watching, pointing. There in the front row are the familiar figures of the union officers, the men who triumphed at Truro last year and brought the coal miners through the long strike: Dan Livingstone, Alex McIntyre – and Jim McLachlan, the miner's secretary, smaller than expected, walking with the rolling gait of a man from the pits, big moustache dripping with rain, his eyes twinkling as he marches past.<sup>5</sup>

It is, in Frank's words, a "social biography," an examination of the experience of Nova Scotia miners, struggling to make a better world for themselves, their families, and their community, and of one man who was both a product of that struggle and who also sought to lead it in a particular direction.<sup>6</sup> For Frank, who has devoted most of his academic career to the study of the Cape Breton miners, this is a labour of love.<sup>7</sup> It is Frank's closeness to his subject and his world that is both a source of the book's considerable strengths, and its only weaknesses.

One of the reasons why the book works so well is Frank's treatment of the continuous interplay between structure and agency. The fate of Nova Scotia's miners was intricately connected to the conditions of industrial capitalism, globally and locally. The long-term decline of the Nova Scotia coal industry set the parameters within which relations of production were continuously renegotiated, but within those limits, both workers and mine owners made choices between different courses of action and tried to mobilize the resources available to them, whether they were organizational, economical, ideological, political, or legal.

Indeed, one of the themes that emerges most strongly in this biography is McLachlan's lifelong engagement with the law. Born in Scotland in 1869, McLachlan entered the mines ten years later. Conflict between miners and masters was rampant and the law was firmly on the side of the masters; the laws of contract and property gave them the right

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<sup>5</sup> *Supra* note 1 at 281.

<sup>6</sup> *Ibid.* at 7.

<sup>7</sup> For a sample of his work, see D. Frank, "Class Conflict in the Coal Industry: Cape Breton 1922" in G.S. Kealey & P. Warrian, eds., *Essays in Canadian Working Class History* (Toronto: McClelland & Stewart, 1974) at 161-84; D. Frank, "The Cape Breton Coal Miners, 1917-1926" (Ph.D. Dissertation, Dalhousie University, 1976); and D. Frank, "Industrial Democracy and Industrial Legality: The UMWA in Nova Scotia, 1908-1927" in J.H.M. Laslett, ed., *The United Mineworkers of America* (University Park, Pennsylvania: Pennsylvania State University Press, 1996) at 438-58.

to replace striking workers, and the state provided the coercive force needed to make this right effective. McLachlan participated in these struggles and may well have been blacklisted by the larger coal companies. He emigrated to Canada in 1902, just in time to experience and participate in the construction of a new regime of industrial law, industrial voluntarism.<sup>8</sup>

This regime differed from its predecessor, liberal voluntarism, in two ways. Its centrepiece, the federal government's 1907 *Industrial Disputes Investigation Act*, aimed to reduce the incidence of industrial conflict by compelling conciliation prior to strikes and lockouts. The federal government hoped that the process of conciliation and the production by a third party of a normative template of acceptable behaviour would promote a brand of responsible unionism that employers would find acceptable. Prior provincial government experiments with trade dispute legislation for the most part had lacked any element of compulsion and were abject failures.<sup>9</sup>

The second change to the regime of legality was the strengthening of the state's coercive powers. While direct coercion had underpinned liberal voluntarism, it did so largely through criminal law and the deployment of police and the militia. Under the new regime of industrial voluntarism, employers' rights of property and contract were more expansively defined through the development of new economic torts and better enforced through the use of the injunction, a civil remedy obtainable from the courts through a summary process that prohibited further interference with the applicant's rights. The expansion of civil remedies, however, did not come at the expense of older forms of coercion. To the contrary, a more expansive articulation of employers' rights and the enforcement of injunctions provided even more justification for the application of direct coercion.<sup>10</sup>

Frank's major contribution to our understanding of the operation

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<sup>8</sup> For a fuller discussion, see J. Fudge & E. Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Toronto: Oxford University Press, 2001).

<sup>9</sup> For discussions of these measures, see M.E. McCallum, "Labour and Arbitration in the Mowat Era" (1991), 6 *Can. J.L. & Soc.* 65; M.E. McCallum "The Mines Arbitration Act, 1883: Compulsory Arbitration in Context" in G. Philip & J. Phillips, eds., *Essays in the History of Canadian Law*, vol. 3, Nova Scotia (Toronto: Osgoode Society, 1990) 303; R. Mitchell, "Solving the Great Social Problem of the Age: A Comparison of the Development of State Systems of Conciliation and Arbitration in Australia and Canada, 1870-1910" in G.S. Kealey & G. Patmore, eds., *Canadian and Australian Labour History* (n.p.:ASSLH.CCLH, 1990) 47; and W.S. Martin, "A Study of Legislation Designed to Foster Industrial Peace in Common Law Jurisdiction of Canada" (Ph.D. Dissertation, University of Toronto, 1954).

<sup>10</sup> E. Tucker & J. Fudge, "Forging Responsible Unions: Metal Workers and the Rise of the Labour Injunction in Canada" (1996) 37 *Labour/Le Travail* 31.

and development of his regime of industrial regulation is to present it to us from the bottom up and, more particularly, from the perspective of labour radicals and socialists, who not only wanted strong trade unions vigorously to defend workers' living standards under capitalism, but also to spearhead a movement capable of transforming the social order. While more compromising trade unionists stood to benefit from the conciliatory side of industrial voluntarism, labour radicals saw its coercive force.

As Frank demonstrates, the development of trade unionism in the Nova Scotia mines repeatedly challenged the capacity of the regime of industrial voluntarism, ultimately contributing to its transformation. First the Provincial Workingmen's Association and later the United Mine Workers of America accepted the mantle of responsible unionism and were favoured by the law. But when these unions accepted compromises that failed to meet the expectations of a significant segment of the mining community, insurgent movements arose. Although as a union leader McLachlan had to sell compromises to his membership from time to time, more often than not he was on the side of the insurgents, facing the hostility of employers, the state, and more conservative trade unionists. Frank provides a richly conceptualized study of the law in action, whether it be the intervention of the militia in 1904, 1909, 1922, 1923, and 1925, the role of royal commissions in 1907, 1917, 1918, 1920, and 1925, or the trial of McLachlan for sedition in 1923. The settings are carefully composed, the links connecting the players are exposed, and the choices made by officials between the very different versions of reality they were presented and the alternative courses of action open to them are identified. While some might argue that Frank presents an overly instrumental view of the law, it is quite plausible that during a period of intense class conflict the imperative to preserve the social order trumped other concerns.

Ironically, it was the persistent threat of labour radicalism in Nova Scotia, notwithstanding the application of coercion and the use of conciliatory mechanisms to benefit responsible unions, that made it the Canadian leader in the development of industrial legality, a regime most closely identified with the post-World War II system of industrial relations, in which trade unions are granted recognition by the state in exchange for exercising discipline over their members to insure that managerial authority is respected and contracts enforced. Nova Scotia was the first province to legislate a mandatory dues check-off (1927), provide for state-supervised counts of union membership to determine which union enjoyed the greatest support (1934), and require employers to recognize unions that enjoyed the support of a majority of employees (1937).

Industrial pluralists who defend the post-war labour relations regime undoubtedly will have plenty of bones to pick with Frank's critical

stance towards industrial legality. Indeed, Frank does not engage directly with those arguments that point to the strong and enduring unions that were constructed and the benefits unionized workers obtained. Instead, Frank presents the historic protagonists of industrial legality, people such as John L. Lewis, the leader of the United Mine Workers of America, and Sibley Barrett, one of Lewis's Nova Scotian proteges, through the critical eyes of McLachlan, who viewed them as class traitors.

This points to a larger problem with the book. At times there is a lack of critical distance between the author and his subject. McLachlan is cast as an heroic figure, virtually without flaws, and the correctness of his choices and views are rarely questioned. For example, McLachlan negotiated the so-called Montreal Agreement with the British Empire Steel Corporation in 1920. The agreement contained all the elements of industrial legality: union recognition, no discrimination against union members, acknowledgment of management rights, a no-strike clause and binding third-party arbitration of contract disputes. McLachlan faced tough opposition from his erstwhile allies, the labour radicals within the union, but argued in favour of accepting the agreement on pragmatic grounds. Frank implicitly accepts McLachlan's judgement that the agreement was necessary because of declining market conditions, but this is the kind of argument that proponents of industrial legality would have made. Rather than taking the opportunity to explore the difficult choices faced by a radical in a position of trade union leadership, Frank points to police reports at the time that continue to identify McLachlan as a "sly and crafty agitator" as if to assure us that McLachlan's revolutionary commitments were not compromised.<sup>11</sup>

This is, however, a minor flaw in a marvelous biography that, among its many strengths, captures a life enmeshed in struggle with the law, in both its coercive and its hegemonic guises.

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<sup>11</sup> *Supra* note 1 at 196-201.

