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Woe Unto You, Judges: or How Reading Frankfurter and Greene, *The Labor Injunction*, Ruined Me as a Labour Lawyer and Made Me as an Academic

HARRY ARTHURS*

This article is a contribution to the occasional series dealing with a major book that influenced the author. Previous contributors include Stewart Macaulay, John Griffith, William Twining, Carol Harlow, and Geoffrey Bindman.

Here is how I responded to the Editor's invitation to write 'a semi-autobiographical piece reflecting on a book that was important to [me]':

I'm inclined to write about Frankfurter and Greene, *The Labor Injunction*, an early realist/empiricist muckraking classic . . . which led to a public outcry and some important law reforms, caused the scales to fall from the eyes of many who harboured illusions about judicial neutrality, and helped put labour law on the map as the juristic equivalent of the Spanish Civil War – all of which appealed to my romantic sensibilities and (then) rebellious nature . . .

That is the whole story, truly; all that follows is commentary.

I arrived at the Faculty of Law of the University of Toronto in 1955, a student with a middling education, good grades, left-ish genes and a determination – formed at age four, unexamined thereafter – to become a lawyer. What did it mean to become a lawyer in Canada in the 1950s? Ontario, the largest and richest province, had a very odd view of the matter. Up to 1949, the Law Society of Upper Canada – the profession's governing body – had maintained its monopoly over legal education. It operated its own law school at Osgoode Hall, an Inns-of-Court-like edifice which also housed the Law Society and the superior courts. Students attended only two classes a day, and spent the rest of their time working in a law office. Standards for admission and graduation were low; formal instruction was patchy; classes were large; the curriculum was limited; practitioners taught most courses; and student intellectual life was impoverished. However, the school's minuscule full-time faculty – the dean and three or four lecturers – was both very able and committed to change. As their predecessors had done sixty

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years earlier,¹ when the law school was founded in 1889, they sought inspiration in the American model of legal education, rather than the British (four faculty members had attended Harvard Law School). They tried to overcome the stultifying effect of set-piece lectures to large classes by introducing America's distinctive contribution to pedagogy, the case method, and to diminish the numbing effects of British and colonial formalism by assigning a few American cases and articles. But most importantly, they pressed for the introduction of a three year, full-time post-graduate programme of studies, also an American innovation, which by then had become standard in most Canadian provinces. The Benchers of the Law Society were not amused; they resolved to retain a part-time programme, and to continue admitting some students immediately following their graduation from high school. The faculty's reforms and restructuring proposals were unceremoniously rejected.²

A ten minute stroll from Osgoode Hall sat the University of Toronto. In January, 1949 the entire full-time faculty of Osgoode Hall resigned in protest at the profession's heavy-handed and reactionary regime, and in March took that stroll to the University, to join its re-organized School of Law, which had begun life as an appendage of the Department of Political Economy. In its new incarnation the School of Law (later renamed a Faculty) adopted the three-year post-graduate curriculum, expanded to eight or nine full-time members (thus becoming the largest law faculty in the country), practised case-method pedagogy to its heart's content, and developed its own distinctive intellectual ethos with predictable American influences. The ten minute stroll thus became the mythic Long March of Canadian legal education. The revolution it launched succeeded in all respects save one: despite the clear academic superiority of the Toronto programme, the Law Society required Toronto graduates to spend an additional year at Osgoode Hall before being called to the bar. Those of us who enrolled at Toronto therefore did so out of conviction, and at some personal cost. Throughout the 1950s, the Toronto faculty fought for equal treatment of its graduates and finally in 1957, just in time for my graduation in 1958, it succeeded.³ Osgoode Hall Law School adopted the Toronto model, several new law schools were established in the province, and legal education in Ontario joined the North American mainstream.⁴

1 B. Bucknall, C. Baldwin, and J. Lakin, 'Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957' (1968) 6 *Osgoode Hall Law J.* 137.

2 In fact, criticism from the profession, the press and the public soon forced the Law Society to retreat, and to adopt a mixed full- and part-time programme. See *id.* and C. Kyer and J. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers and Legal Education in Ontario 1923–1957* (1987).

3 J. Arnup, 'The 1957 Breakthrough' (1982) *Law Society Gazette* 18.

4 Ironically, a subsequent attempt was made to merge the two law schools, but in the end, the Osgoode Hall Law School migrated to York University. See H. Arthurs, 'The Affiliation of Osgoode Hall Law School with York University' (1967) 17 *University of Toronto Law J.* 194.

All of this serves to explain that I was a law student during one of the most dramatic episodes in the history of Canadian legal education, at a crucial juncture in the debate over whether law would become a 'normal' university discipline, free to respond to new ideas and influences, to experiment with new pedagogies and programmes, to transform not just academic instruction in law but our understanding of law's intellectual premises and social effects and, ultimately, the practice, administration and content of law.

Or so it seemed at the time. In retrospect, things were perhaps a little less dramatic than we thought they were. The Toronto faculty were in fact committed not so much to transforming legal education, scholarship, and practise as to improving them. At this they worked very hard indeed. Faculty members edited Canada's most significant series of law reports and one of its most prestigious legal periodicals, the *University of Toronto Law Journal*. They wrote articles, case-notes, commentaries, and continuing education lectures for the profession and edited casebooks for their courses, which slowly proliferated and diversified. And of course they campaigned for recognition of their law school and acceptance of their vision of legal education. These preoccupations left the Toronto professoriate – and a handful of like-minded colleagues across the country – with little time for other forms of scholarship. With few exceptions, neither they, nor their predecessors, nor other Canadian legal academics, produced much in the way of empirical studies, theoretical work, scholarly monographs or magisterial treatises. Too few people were trying to do too much, too quickly, in too hostile an environment.⁵

Nonetheless, ideas did matter to me and my fellow law students at Toronto. If we did not quite know what we believed in, we certainly knew what we rejected: the 'trade school' approach to legal education at Osgoode Hall; the profession's black letter, formalistic approach to law; judicial conservatism, and arid conceptualism; law's wilful ignorance of social reality and indifference to the 'needs of society'. My personal list of phobias was, perhaps, a little longer than most. Early on, I somehow began to feel that there was something odd about the judgments I was reading every day for class. The inexorable logic of the law which ought to have led to one outcome suddenly wandered off in the direction of another. Or that same logic, pursued rigorously, produced results which seemed contrary to social justice and, sometimes, to common sense. As time went on, I occasionally sensed that judges saw things in light of distinctive professional values and perspectives, had personal ideologies and political agendas, and that these – not logic, not legal rules, not social justice – tended to shape decisions. By

5 In 1951, when the Canadian Association of Law Teachers was founded, there were fewer than fifty full-time legal academics in the country. A decade later, on the threshold of the great expansion of law schools in the 1960s, that number had barely reached one hundred.

the time I reached my third and final year, this intuition had hardened and broadened to the point where whole bodies of law seemed to me as suspect as individual judgments. While I could never have articulated this position in the language of legal theory, in retrospect I had clearly become a vulgar or unsophisticated legal realist.

Still, however intuitive, inarticulate, vulgar or unsophisticated I may have been, at least I was ready for Labour Law, the most highly politicized subject on the curriculum, the subject for which I was genetically programmed, the subject which I most looked forward to studying. Labour Law was taught by Bora Laskin – a family acquaintance, with Masters degrees from Toronto and Harvard and a veteran of the 1949 Long March from Osgoode Hall to Toronto. By the mid-1950s, Laskin enjoyed unwarranted notoriety as an intellectual and political radical, which rather endeared him to me, and a more appropriate reputation as a pre-eminent architect of Canadian labour law through his contributions as a commentator, critic, pedagogue, policy advisor, and arbitrator.⁶ (Though no one could have predicted it then, Laskin was to become Chief Justice of Canada – the first Jew and the first academic to hold that office.)⁷

Laskin, however, was not a full-blooded legal realist like, say, Frank or Llewellyn,⁸ much less an iconoclast in the style of Rodell.⁹ Rather, he has been described as a ‘functionalist’, an ‘institutionalist’, an adherent of the earlier school of sociological jurisprudence propounded by Pound, preached by Justices Holmes and Cardozo, and – importantly for present purposes – applied to scholarship by Professor (later Justice) Frankfurter.¹⁰ Unlike the more robust realists, Laskin continued to believe that the common law could to some extent ‘work itself pure’, that principled and imaginative adjudication could produce appropriate social outcomes, especially if assisted by constructive academic criticism. However, he also believed that the legislature, not the courts, should translate major shifts in social relations or public policy into new legal rules and processes, and that courts should defer to legislative choices.

Finally, Laskin appears to have thought that innovative approaches to law would be more easily accepted if they did not break radically with

6 See W.L. Hunter, ‘Bora Laskin and labour law: The formative years’ (1984) *Supreme Court Law Rev.* 431; D. Beatty and B. Langille, ‘Bora Laskin and Labour Law: From Vision to Legacy’ (1985) 35 *University of Toronto Law J.* 672.

7 I happily record for posterity that in 1978, in a conversation with me, Lord Denning expressed great amusement at Laskin’s appointment. ‘What can a law professor know about being a judge?’ he said, or words to that effect.

8 For a readable, recent account of the American realist movement, see W. Twining, ‘Talk about Realism’ in *The Great Juristic Bazaar* (2002).

9 Fred Rodell, a leading legal realist, seemed to me an iconoclast at the time; now I recognize him as merely a fellow curmudgeon. My title represents a nostalgic *homage* to his notorious book, *Woe Unto You, Lawyers* (1939).

10 D. Réaume, ‘The Judicial Philosophy of Bora Laskin’ (1985) 35 *University of Toronto Law J.* 438.

established traditions, if they operated within the deep structures of legal thought, culture, and institutions. He therefore expressed his scholarly views in the language of legal authority and principle, carefully crafted and formally respectful, though occasionally ironic or even sarcastic. (He was somewhat more free-wheeling in class discussion: his phrase ‘penetrating glimpse into the obvious’ lingers in my mind.) Nowhere – except in Canada’s claustrophobic, outpost-of-empire legal culture – could Laskin’s views or his style be characterized as *avant garde*. Nor would he have wanted them to be. Laskin was also a leading scholar in the mainstream fields of property and constitutional law. The former, and to some extent even the latter, would have given him a significant intellectual investment in discourses which would be familiar to lawyers of a more conventional bent. Second, he was doing foundational work in the entirely new discipline of labour law, a subject still considered faintly disreputable in the mid-1950s. Moderation in aid of the long-term project of improving the legal rules of industrial relations would be altogether understandable. Third, since black-letter, formalist analysis dominated Canadian legal-academic and especially legal-professional discourse, and since the practising bar was quite suspicious of academics in general and United States-trained academics in particular, any scholar might have been tempted to opt for understatement, just to get a fair hearing. Finally, Laskin would surely have been concerned not to do anything which might unnecessarily jeopardize the credibility of the new Toronto law faculty, in which he and his colleagues were so heavily invested.

However, these explanations come to me only with hindsight. At the time, I would not have questioned the view – held by admirers and detractors alike – that Laskin’s was a radical critique of the conventional wisdom. Nor would I have understood that I myself was already some distance down the road to a more *truly* radical critique (a claim my own students, successors and assigns will no doubt deconstruct in due course). Frankfurter and Greene’s book, *The Labor Injunction*, launched me down that road.

How did I come to read *The Labor Injunction*? I recently disinterred Laskin’s Labour Law casebook from the 1950s and reviewed my notes from his class, the only notes I have kept over all these years. There was a little more contextual material than I had recalled, a suggestion that Laskin after all was something of a closet realist, at least in the area of labour law. However, almost everything we were assigned to read for class was conventional legal material – decisions and statutes – and class discussion consisted largely of exegetical analysis of legal doctrines and rules, with an occasional aside regarding industrial relations realities, the need for legislation, and the virtues of expert administrative tribunals. Still, there it was, in bold letters in the syllabus, starred and underlined in red in my notes: Frankfurter and Greene, *The Labor Injunction*. Laskin’s treatment of the book must have been rather cursory and my notes on it amount to only a few lines. Nonetheless, it evidently made an impression on me.

And rightly so: *The Labour Injunction* was a profoundly important book. Felix Frankfurter and Nathan Greene dedicated their book to Mr. Justice Brandeis 'for whom law is not a system of artificial reason, but the application of ethical ideals, with freedom at its core'. They sought to demonstrate that anti-unionism, not 'freedom', was at the 'core' of the law governing industrial conflict, that the law in this area was a system precisely of 'artificial reason', not of 'ethical ideals'. The egregious use of labour injunctions, they claimed, amounted to 'government by injunction', to 'the expansion of a simple judicial device to an enveloping code of prohibited conduct, absorbing *en masse* executive and police functions and affecting the livelihood, and even lives, of multitudes'.¹¹ Their description of the abuses associated with the labour injunction had been anticipated by previous studies but they documented these abuses so thoroughly that they could no longer be ignored.

The strategy adopted by Frankfurter and Greene – uncontroversial today, but unusual in 1930 – was to write a socio-legal history. They collected and analysed all reported and unreported cases involving labour injunctions in the federal courts and in the state courts of Massachusetts and New York; they identified abuses of both procedure and substantive law; they recorded editorial, political, and union reactions to these abuses; they marshalled the critiques of scholars and legislative reformers; they showed how injunctions shifted power from unions to employers; and they evaluated their use according to well-accepted notions of due process and judicial propriety. Their case was irresistible. Within two years, Congress enacted the Norris-LaGuardia Act of 1932, which addressed most of the abuses they had exposed.¹²

This was pretty heady stuff for a law student with progressive sympathies and a legal realist's inclinations: systemic bias and judicial misbehaviour exposed! hoist with their own petard of legal logic, rules and values! a pernicious travesty of justice demolished! a whole legal institution transformed! labour unions liberated from unfair legal restrictions! by a law professor who became a judge of the United States Supreme Court!

The Labor Injunction, I suspect, had another, quite different, significance for me. Frankfurter – its lead author¹³ – was a Jew and a progressive

11 p. 200.

12 29 USC 101, 47 Stat. 70. Frankfurter and Greene included as Appendix IX to their book draft legislation which had been proposed in 1927 by Senator Shipstead, and submitted in amended form by the Senate Committee on the Judiciary. This draft legislation was never enacted, but obviously served as a template for the Norris-LaGuardia Act.

13 I have been unable to discover much about Nathan Greene, Frankfurter's co-author. Greene was born in 1902; like Frankfurter he had been an undergraduate at CCNY and studied law at Harvard. He was called to the bar in 1926 and received his doctorate in law (also from Harvard) in 1929. He practised law in New York until the 1960s, and was ranked highly by Martindale-Hubbell. I am indebted to John Schlegel

academic, just like my teacher and role model, Laskin.¹⁴ As a Harvard professor, he pioneered scholarship in the fields of administrative law and regulation, pleaded the cause of Sacco and Vanzetti, and helped to conceive and implement Roosevelt's New Deal. As a member of the revered Warren Court, he was one of the authors of *Brown v. Board of Education*,¹⁵ decided just a year before I entered law school. For all of these reasons, he was something of an iconic figure for a progressive Canadian law student who fantasized about building a New Jerusalem in our white and frigid land. Thus, *The Labor Injunction* spoke to me not just intellectually but politically and personally.

Today, I might react differently. I might be asking some realist (not to say revisionist) questions: were Frankfurter and Greene pushing against a door already opened by previous critics? Did the publication of their book lead to the enactment of the Norris-LaGuardia Act, or did the legislation result from subsequent political and social developments? Did the Act actually succeed in remedying the abuses at which it was aimed? I might be troubled by the historical judgement of critical legal scholars who have come to regard the New Deal labour reforms (and their Canadian transplants) with something less than unbridled enthusiasm.¹⁶ And of course, I might have second thoughts about Frankfurter himself, it being widely asserted today that when he moved on from being regarded as a radical, even dangerous, figure, to certifiable respectability as a Supreme Court justice, he also moved to outright conservatism and disavowal of his own progressive principles.¹⁷ Those are questions for now. Then what counted were Frankfurter's reputation, the sheer audacity of the book, and its dazzling sequel in reforming legislation.

The year after my introduction to labour law with Laskin, I went off to do an LL.M. at Harvard – where *The Labor Injunction* had been written – with

for the suggestion that Greene practised labour law, but so far have been unable to document this fact. He does not appear to have published anything subsequent to *The Labor Injunction*.

14 Laskin studied Administrative Law with Frankfurter at Harvard in 1937 and, quite likely, identified closely with him as well. (I am indebted to Philip Girard, who is writing a biography of Laskin, for this information.)

15 347 U.S. 483.

16 See, for example, K. Klare, 'Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness' (1978) 62 *Minnesota Law Rev.* 265; K. Van Wenzel Stone, 'The Post-War Paradigm in American Labor Law' (1981) 90 *Yale Law J.* 1517; J. Atleson, *Values and Assumptions in American Labor Law* (1983); J. Fudge and H. Glasbeek, 'The Legacy of PC 1003' ((1996) 3 *Cnd. Labour and Employment Law J.* 357; J. Fudge and E. Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (2001).

17 Early, sympathetic biographies include: H.S. Thomas, *Felix Frankfurter: Scholar on the Bench* (1960); L. Baker, *Felix Frankfurter* (1969). Recent critical biographies include: H.H. Hirsch, *The Enigma of Felix Frankfurter* (1981); M.E. Parrish, *Felix Frankfurter and his Times: The Reform Years* (1982); M.I. Urofsky, *Felix Frankfurter: Judicial Restraint and Individual Liberties* (1991).

Archibald Cox (then a leading labour scholar, later famous as President Kennedy's Solicitor General, and as the Watergate Special Prosecutor who was fired by President Nixon) and Derek Bok (then in his first year of teaching, later Dean of Harvard Law School and President of Harvard University). By today's standards, perhaps, neither Cox nor Bok exhibited a particularly radical approach to law. But each of them built his course around real-life issues; mounted a robust, external critique of legal doctrine; and comfortably drew on a wide range of socio-legal materials. Some months before completing my LLM, I returned to Toronto and visited Laskin. In an extremely kind and flattering gesture, he invited me to talk to his current labour students about how different it was to study the subject at Harvard. To my everlasting embarrassment – I still blush to tell the story – I regaled the class with a vivid contrast between the two experiences, emphasizing how much more extensively and easily American scholars, and even judges, integrated industrial relations, societal and jurisprudential issues with technical legal analysis.

Back at Harvard, I settled down to work on a mini-thesis under Cox's nominal supervision, but with Bok providing most of the encouragement and feedback. Predictably, I chose the industrial torts as my subject, castigated the failure of Canadian judges to understand and respond to the labour relations and political context of strikes and picketing, and prefaced my work with an epigraph from Frankfurter and Greene. In revised form, the mini-thesis became the first article I ever published,¹⁸ and it launched me on my academic career. First, however, I spent fifteen months as an articled student in a union-side labour law firm,¹⁹ where I got to know the labour injunction first hand. Nothing I saw caused me to recant anything I said in my article, or to question anything in *The Labor Injunction*. On the contrary, my exposure to the labour injunction in practice confirmed all my worst fears: judges who made clear their distaste for unions and their tactics; procedural rules patently designed to deny unions a fair hearing; the egregious use of *ex parte* and other interlocutory proceedings so that employers could speedily dismantle picket lines and destroy the morale of strikers; questionable findings of fact based on *pro forma* affidavits in elegant legal language sworn by deponents who spoke little or no English; on one famous occasion a judge who took it on himself to phone someone he knew in the town where a strike had occurred to supply missing evidence of picket-line misconduct;

18 'Tort Liability for Strikes in Canada: Some Problems of Judicial Workmanship' (1960) 38 *Cnd. Bar Rev.* 346. I was not surprised to discover recently that Laskin's first published article, also written when he was a student at Harvard, 'Picketing: A comparison of certain Canadian and American Doctrines' (1937) 15 *Cnd. Bar Rev.* 10, referred frequently to *The Labor Injunction*, as did his second, 'The Labour Injunction in Canada: A Caveat' (1937) 15 *Cnd. Bar Rev.* 270.

19 My mentor, Sydney Robins, a Harvard graduate, taught part-time at Osgoode Hall Law School and was a brilliant litigator; he later became Treasurer of the Law Society of Upper Canada and a Judge of the Ontario Court of Appeal.

and on another, management counsel who assured me over lunch that on the basis of the facts alleged in the menu, he would have no difficulty in securing a labour injunction.

My exposure to the real world of labour injunctions, coupled with my academic interest in the field, led me to invest the better part of a decade in a campaign against their substantive deficiencies and procedural abuses.²⁰ Early on, I wrote a law review case-note (commented upon in a daily newspaper) which earned me a letter from a judge demanding an apology – surely an over-reaction on his part to my understated description of his judgment as ‘an affirmation of totalitarian philosophy quite inconsistent with constitutional government ...’.²¹ A few years later, I proposed that union members and supporters should not be found in contempt of an injunction for publicly demanding the reform of injunction procedures; this earned me a motion of censure at a Bar Association meeting which, alas, failed.

I survived these *rites de passage*, however, and ultimately graduated from youthful attempts to exorcise the industrial torts and the labour injunction to a more general campaign against any role whatsoever for courts in industrial relations – either original or reviewing. This was a position which Laskin himself may somewhat have favoured, though Frankfurter and Greene probably did not. It was, however, more or less the ruin of me as a labour lawyer. And things got worse: unable or unwilling to revise my initial conclusions about labour law, I took to wondering out loud whether courts had any role to play in any field involving social conflict or controversy.²² And worse yet: I began to imagine a revised map of public law in which the courts might either be sketched in at the margins or omitted altogether.²³ And then things began to get better: I realized that I had to ask myself just what was at the centre of my map if the courts were not, or whether indeed there was a centre at all.²⁴ This proved to be the making of me as an academic. Attempts to answer that question took me in the direction of legal

20 The copy of *The Labor Injunction* I used to write this article was acquired by the Law Society’s library in 1962; it was purchased at my request.

21 H. Arthurs, ‘Labour Law – Secondary Picketing – Per Se Illegality – Public Policy’ (1963) 41 *Cnd. Bar Rev.* 573 at 58. Ironically, I was commenting on the first decision by the in Ontario Court of Appeal concerning strikes and picketing to be handed down since 1936, when the Court produced the decision which provoked Laskin’s first published article, *op. cit.*, n. 18. One of the abuses of the labour injunction, as this twenty-seven-year interval demonstrated, was the virtual impossibility of appealing such injunctions, and hence of correcting errors in courts of first instance or even reconciling divergent views amongst trial judges.

22 John Willis, Canada’s most original public law scholar, once told me that judges ought to think of themselves as ‘civil servants in the Department of Dispute Resolution’ – an elegant and economical statement of my own position, but of course entirely at odds with future developments in public law in Canada and elsewhere.

23 ‘Rethinking Administrative Law: A Slightly Dicey Business’ (1979) 17 *Osgoode Hall Law J.* 1.

24 *‘Without the Law’: Administrative Justice and Legal Pluralism in Nineteenth Century England* (1985).

pluralism, a bundle of socio-legal theories which suggest that law can not only exist without courts but without the state as well. Twenty years on, I am still at it.²⁵

And what of the labour injunction? In theory, it is alive and well in most, if not all, Canadian jurisdictions. However, as a practical matter, its use has diminished considerably. Canadian studies documented abuses similar to those found by Frankfurter and Greene.²⁶ A federal Task Force on Labour Relations recommended that labour relations boards should take over the courts' remedial jurisdiction over the 'where', the 'why', and the 'when' of picketing, leaving judges to deal only with the 'how' – with the deliberate infliction of damage on persons or property.²⁷ These recommendations were adopted *holus bolus* in the innovative Labour Code of British Columbia,²⁸ and to a lesser extent in other provinces. Then, in the late 1970s, the Supreme Court of Canada began to show somewhat greater deference to the normative rules and remedial jurisdiction of labour tribunals,²⁹ while trial judges began to exercise more self-restraint in issuing labour injunctions. Canadian legislators reinforced these trends by adopting a series of reforms, which varied from province to province, but in general either ensured greater procedural fairness or, in some cases, abolished the industrial torts or required that administrative or criminal remedies be exhausted before injunctive relief could be sought.

A happy ending to the injunction story, more or less, and to my academic career – all thanks to Frankfurter and Greene, and to Laskin too who first introduced me to *The Labour Injunction*.

25 'Labour Law without the State?' (1996) 46 *University Toronto Law J.* 1; '“Landscape and Memory”: Labour Law, Legal Pluralism and Globalization' in *Advancing Theory in Labour Law in a Global Context*, T. Wilthagen (ed.) (1997) 21; 'Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation' in *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*, eds. J. Conaghan, K. Klare, and M. Fischl (2001).

26 A.W.R. Carrothers, *The Labour Injunction in British Columbia* (1956) and *The Labour Injunction* (1961); A.W.R. Carrothers and E. Palmer, *Report of a study on the labour injunction in Ontario* (1966); I. Christie, *The Liability of Strikers in the Law of Tort* (1967); S. Tacon, *Tort liability in a collective bargaining regime* (1980).

27 Task Force on Labour Relations (H.D. Woods, Chair) (1968), at 177–87.

28 H. Arthurs, '“The Dullest Bill”: Reflections on the Labour Code of British Columbia' (1974) 9 *University of British Columbia Law Rev.* 280.

29 This development had several strands: judicial review of labour tribunals became more circumspect, *Canadian Union of Public Employees v. New Brunswick Liquor Commission* [1979] 2 SCR 227; courts refused to issue labour injunctions in situations where comparable relief could be obtained from a labour tribunal, *St Anne Nackawic Pulp and Paper Co. v. Canadian Paper Workers Union* [1986] 1 SCR 704; and some of the most egregious labour torts were laid to rest, *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, (2002) 208 D.L.R. (4th) 385 (SCC).