

# Book Review: Current Law and Social Problems, Volume III, by E. E. Palmer (ed)

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Book Review

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*Current Law and Social Problems, Volume III.* EDITED BY E. E. PALMER, M.A., LL.B., LL.M., FACULTY OF LAW, THE UNIVERSITY OF WESTERN ONTARIO, TORONTO: UNIVERSITY OF TORONTO PRESS, 1963. Pp. 237. (\$6.00).

This book is the third in a series sponsored by the Faculty of Law in the University of Western Ontario "to promote collaboration between lawyers, social scientists, juristic philosophers, and others who are interested in exploring social values, processes, and institutions." The latest edition of this legal yearbook is largely devoted to articles on labour law. Also included is the concluding part of an article on the international law of fisheries, the first part of which appeared in Volume I of the series.

In an introductory article, Dean I. C. Rand sketches the historical background in which the law affecting labour has been framed and points out that it has taken "six hundred years of struggle (to win) these rights and privileges" (for labour). Society is entitled to require observance of law in their exercise. Smaller industrial disputes were one thing, but with expanding amalgamation in industry and the spread of unionism, the public is steadily becoming more deeply victimized by both parties to the struggle, he contends. The nub of the issue in labour relations is remuneration and regrettably there is as yet no rational basis according to which the dollar earned is to be divided as between wages, dividends, depreciation and other categories. Strikes and accompanying violence, picketing and boycotts are, he says, analogous to a barbarous scrimmage over the division of spoils. His plea for a solution based on reason rather than on force is more convincing than his contention that compulsory arbitration is that rational solution.

In his article entitled "Conciliation Boards in British Columbia" Mr. R. G. Herbert of the Law Faculty at U.B.C. indicates agreement with Dean Rand when he says that "the fundamental issue before every conciliation board is money." General principles useful to a conciliation board in dealing with wage issues are, he says, difficult to state. (The same difficulty, presumably, would confront the compulsory arbitration tribunals advocated by Dean Rand). Mr. Herbert,

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\*Mr. Eisenberg, a graduate of the Universities of Toronto and Pennsylvania, is presently a candidate for his Ph.D. in philosophy at the University of Toronto.

as an experienced conciliation board chairman, starts from the assumption that if there is an existing agreement it generally represents a major approach to "a satisfactory resolution of the relationship between the parties" and there should be convincing reasons for any radical departure therefrom. Most useful, he says, are comparisons with analogous groups in the same community or area. Other money items such as pensions, health and welfare plans, are increasingly important, but ad hoc conciliation boards do not have the professional "expertise" in these fields necessary to assist the parties in achieving agreement. The solution? — a board recommendation for joint study and failing agreement, arbitration.

The basic problem raised by both Dean Rand and Mr. Herbert is the subject of one of the major articles in the book, "The Drift towards a British National Wages Policy" by Dr. W. F. Frank of Lanchester College of Technology, Coventry, England. Dr. Frank brings to his work the disciplines of both economics and law and the result is an excellent example of the correlation of law and social science which is one of the major objects of the series. Although he relates his subject to the British scene, the analysis he makes and the tentative proposals he advances are generally relevant to the Canadian scene too.

A "National Wages Policy" implies, he says, that "the state takes a direct part in the process of wage determination instead of leaving it to the unfettered forces of the market". After surveying the "wage policy" of the state from the 14th Century on, including wage-ceiling, minimum wage and other legislation, he chides lawyers and politicians for having been guided too often by the economic views held in the days of their fathers — and, like generals trying to fight the last war, following policies intended to deal with the last depression.

While Lord Keynes had shown that full employment may be achieved and maintained by regulating aggregate demand, he did not live long enough to study the problems of peace-time full employment, including particularly the maintenance of stable prices while allowing money wages to rise in line with the real increase in national output. Free and sectional collective bargaining, Dr. Frank contends, "undertaken under conditions of full employment is not compatible with price stability, except where trade unions exhibit a degree of self-restraint in their demands which it is humanly impossible to expect of them."

He dismisses arbitration as a solution because "arbitrators prefer to decide each case on its merits and to ignore, as something outside their control, the wider national implications of their awards or decisions."

He argues that a proper wages policy should not be sought as a means of clipping the wings of the trade unions but rather as one part of a true incomes policy which aims at an over-all increase in

the national income in line with the growth potential of the economy. He proposes a set of "norms". His "basic norm" would be a decision at the national level, by Parliament, of the proportion of the projected national income available for the payment of wages and salaries. A "secondary norm" would be a decision of the principles on which the total should be divided with respect to particular industries and jobs. This would be made by a "high-powered" body, representative of employers and trade union officials and employing the services of trained economists and statisticians. A "tertiary norm" would govern the assessment of wages within a particular industry. Here he suggests joint industrial councils might be employed.

The author then explores some of the implications of such a wages policy: the changes trade unions might have to make both in structure and function, the changes required in labour law and finally the opposition which such a wages policy might encounter and how it might be overcome.

J. H. G. Crispo of the University of Toronto and H. W. Arthurs of the Osgoode Hall Law School, in their excellent essay on jurisdictional disputes outline the efforts made to handle such disputes through legal processes, both in the United States and Canada. They describe the origin, development and operation of the National Joint Board in the U.S.A. and its role today in the resolution of disputes in Canada. The authors include an account of the work to date of the newly formed Ontario Jurisdictional Disputes Commission, and while they praise the speed and efficiency with which the Commission has carried on its work so far, they conclude that jurisdictional disputes can be satisfactorily resolved neither by adjudication nor by adjustment.

They trace the roots of jurisdictional strife in the North American labour movement to "job-conscious" or "craft-conscious" unionism as opposed to European "class-conscious" unionism. "Job property" became for the skilled worker the notional equivalent of real property. Ultimately, the authors conclude, the solution to jurisdictional disputes probably lies in a re-structuring of the unions themselves so that instead of attempting to eliminate *disputes*, the solution may be to eliminate *jurisdiction*.

Prof. Mackay, in a short piece on picketing, discusses some of the more important cases on criminal liability for picketing and points out that Canadian courts have not been consistent. Different courts have indeed reached diametrically opposing conclusions on what constitutes criminal picketing. Prof. Mackay contends that the *Ward, Lock Case*<sup>1</sup>, which holds that picketing is not a crime unless it amounts to an actual nuisance or is akin to molestation or harassment, should be followed by Canadian courts.

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<sup>1</sup> (1906), 22 T.L.R. 327 (C.A.).

Prof. Beaulieu's outline of Labour Legislation in Quebec is rather too short to give the reader a comprehensive view of the subject. It is to be hoped that in a future volume the subject will be treated more fully.

LORNE INGLE.\*