vention is closer when two of the reasons for intervention have disappeared.

In his chapter on "International Law in a Disarmed World" Mr. Gotlieb discusses the Western conception of an international society without arms and the differing Soviet conceptions of such a society. Tracing some of the advances in the field of disarmament negotiations, he also shows how the United States and the Soviet Union have remained flexible in the negotiations. He points out, for example, how the Soviet Union, which had been opposed to the Partial Test-Ban Treaty, suddenly accepted it. Mr. Gotlieb also warns of the dangerous situation that could result if a disarmament agreement were to be disrupted by a local conflict which escalated. He says:

> There would be a race towards the production of nuclear weapons and the first country to get there would obviously be the strongest power in the world. In circumstances where there were no nuclear or large conventional weapons in national arsenals, the breakdown of a general disarmament agreement would create a highly uncertain situation which could conceivably be worse for the peace than the present situation. Thus the problem of resolving political disputes in a disarmed world is an exceptionally important one.[5]

In view of the fact that this book is primarily a Canadian venture, it is fitting to conclude with a passage written by Judge Read in foreword to the book. After outlining the development of the study of international law and international affairs in Canada, he states:

> The Banff Conference and *This "Fire-Proof House"* mark the culmination of a long period of spectacular development. They can be regarded as the celebration of the coming of age of international studies in Canada.

—ANTHONY HOOPER*

[5] At 85.

* Associate Professor of Law, U.B.C.

COLLECTIVE BARGAINING LAW IN CANADA. By A. W. R. Carrothers. Toronto: Butterworth and Co. (Canada) Ltd. 1965. Pp. lxxxix and 553. ($21.50).

The small body of Canadian legal literature is greatly strengthened by the publication of Dean Carrothers' major work. Students and teachers of labour law and practitioners in the field have found *Collective Bargaining Law in Canada* to be a most welcome addition to the author's already extensive writing in the field.[1]

More than in any of his earlier work, Dean Carrothers demonstrates his ability to make law readable and meaningful by highlighting the underlying attitudes and concepts of lawmakers. These broad strokes are particularly useful to the student and the non-specialist, who otherwise are soon lost in detail. Not that there is any lack of precise legal detail in this work. Quite to the contrary, the only real criticism that can be made of the book is that for one rather long stretch the fine brush takes over completely. But where the broad and the fine are working together the result is very good indeed.

[1] The Labour Injunction in British Columbia, (1956); Labour Arbitration in Canada, (1961); several major articles in the Canadian Bar Review, the University of Toronto Law Journal and the University of British Columbia Law Journal.

Dean Carrothers postulates three freedoms which, from the employees' point of view, are necessary to an effective system of collective bargaining: freedom to form themselves into associations, to engage employers in collective bargaining, and to invoke meaningful economic sanctions in support of bargaining.[2] Each of these activities was of at least doubtful legality in the common law of the 19th century. The tale of the acquisition of these basic freedoms has often been told but, in its Canadian context, never better than it is told here. In these early chapters Dean Carrothers draws American experience in at the appropriate places. It is unfortunate that there is not more of this through the rest of the book.

In England freedom of association and negotiation and the right to strike were, broadly speaking, sufficient to ensure meaningful collective bargaining. In North America something more was necessary to produce real collective bargaining and agreement between labour and management. For this reason the policy behind the Wagner Act of 1935 was patently the encouragement of union organization, but with the Taft-Hartley amendments of 1947 Congress brought American law closer to a stance of neutrality. Canadian labour legislation in general, says Dean Carrothers, has never been far from neutral.[3] It is clear however that the "unfair labour practice" provisions in both U.S. and Canadian legislation sought to defeat the advantage of power and influence over his employees that the employer was thought to have and thus to put them on a more equal footing.

Even more important than the prohibition of unfair labour practices was the establishment in Canada of the procedure of certification of exclusive bargaining agents by administrative tribunals. The law, of course, does not stop there. Once the employee's bargaining agent is selected by legal process the employer is compelled by law to bargain, although not to agree, with the union selected, and when the parties make a collective agreement the law renders it binding on the employer, the union and the employees. All of these matters Dean Carrothers deals with in the second part of his book.

The first four chapters of Part II include two very good, although totally orthodox essays on the constitutional position of labour relations legislation and on the judicial review of labour board decisions. The last of these is particularly interesting because so much of the Canadian law of judicial review has developed in the review of labour board decisions. Then comes "Unfair Labour Practices" and seven chapters on the law of certification. The author has performed a real service in drawing together for comparison all the relevant statutory provisions and cases from every Canadian jurisdiction, but these seven chapters badly need some of the broad statements that strengthened the opening chapters.

The duty to bargain certainly deserves better treatment. It is at the bargaining stage, when the parties have come to the table or are, perhaps, protesting their willingness to do so "if only our solicitor weren't so badly tied up", that the Canadian system of collective bargaining most

---

2 At 1.
3 At 170.

often breaks down. To what extent are Dean Carrothers' postulates for effective collective bargaining satisfied by the law on bargaining in good faith, or lack of it, in this country? He does not give any indication of his opinion, but passes on to the question of conciliation. That, of course, may be the answer; there may be nothing more the law can do than to make the parties talk. The Americans, however, have attempted to set up some objective criteria of good faith in bargaining.

The rest of Part II gives good coverage to strikes and lockouts, the nature and enforcement of the collective agreement and the legal personality of unions.

It is in Part III, "The Limits of Lawful Picketing & Boycotting", that *Collective Bargaining Law in Canada* shows us what its author has to offer. This area is the subject of most of Dean Carrothers' earlier writing and every page evidences the perception he has gained.[4] It is an area of the law badly in need of perception, as he indicates in his chapter "Sources of Confusion in the Law":

> It is hard enough on the law to be misshapen by misapprehension of the nature of industrial conflict and bias against collective action. But when there is added blind adherence to precedent, logical fallacy and the invocation of meaningless fiction, the law which Lord Mansfield perceived to be in a perpetual state of working itself pure by rules drawn from the fountain of justice seems from time to time to degenerate into a witch's brew. . . .[5]

The various bases upon which picketing and boycotting may be held to be illegal are dealt with each in turn, including intimidation, defamation, watching and besetting, nuisance, trespass, conspiracy, inducing breach of contract and breach of collective bargaining statutes. The consideration of the Canadian cases on civil conspiracy is particularly enriched by Dean Carrothers' assessment of the impact of underlying judicial attitudes toward economic pressure through combination.[6]

The Canadian law of industrial conflict is the unhappy product of the English common law mated with an American statutory framework. The Canadian cases abound in failures to understand the common law and misconceptions of the basis of the North American system of industrial relations. Dean Carrothers documents all of this and yet concludes that the judiciary must be left to work out a functional jurisprudence. This conclusion is hard to accept. Admittedly, any statute that seeks to govern this head-on conflict of highly important interests must leave scope for broad judgment, but there must be a statute. Surely, if ever complexity made an area of the law ripe for codification it is the law of industrial conflict.

In Part IV, "Internal Affairs of Unions", Dean Carrothers is understandably concerned with the position of the individual in the collective system. This manifests itself elsewhere in the book, in the chapter on the unfair labour practice provisions,[7] which rather neglect the individual, and in the consideration of the duty of fair representation, which is imposed on a certified union in the United States but not in Canada.[8]

4 See for instance page 458, where the judicial creation of liability for secondary picketing is used to illustrate the thesis, that "a constant in the judicial apprehension of what is reasonable is an assessment, generally unarticulated and perhaps on occasion unconscious, of the reasonable limits to the pursuit of self-interest where two or more interests conflict." (see p. 430).

5 At 420.

6 At 459.

7 At 180.

8 At 195.

His very real concern for the individual is a natural theme for this last part of the book and gives it coherence and strength.

Most of the provincial labour relations acts have been amended since *Collective Bargaining Law in Canada* was published, and there have been important decisions in the courts, particularly those dealing with the enforcement of the collective agreement. The Rand Royal Commission will soon report in Ontario and the Federal Government's Task Force on Industrial Relations will not be far behind. It is a measure of its value that a second edition of "Carrothers" will soon be demanded by the many people who have come to rely on it.

—INNIS CHRISTIE*

* Associate Professor, Faculty of Law, Queen's University.

JURISPRUDENCE. By B. A. Wortley. Dobbs Ferry, N.Y.: Oceana Publications Inc., 1967. Pp xxi and 473. ($9.00).

Books and articles on Jurisprudence continue to be published at a prolific rate.[1] It does not take long before even the most enthusiastic student of the subject turns to each new contribution with strained eyes and jaded attitude and asks, "Is this book necessary? Does it advance my understanding of the subject?" Unfortunately, the answers to these questions when they are applied to Professor Wortley's book cannot be an unqualified yes.

Not that the book does not have many laudable features. It is refreshing to open a book on Jurisprudence published in 1967 and to discover that it is not just a summary, apologia, or exposition of the thoughts of other jurisprudes. These surveys may be useful to the neophyte but are no substitute for reading the 'real' thing. It is also refreshing to find a recent work on Jurisprudence free from psychedelic language. To be topical may keep up the reader's interest, but fundamental concepts in jurisprudence can be described in ordinary language. Nor has Professor Wortley found it necessary to establish his own terminology with accompanying glossary to baffle or dazzle the reader.

In his preface the author tells us that the book can be summarized in six parts under the headings (1) Law as prediction, (2) Law as order, (3) Law as rule, (4) Law as expectation, (5) Law as a sense of value, and (6) Law as justice.

In the first part, under Law as prediction, the author distinguishes between lawful authority and anarchy or lawyers and anarchists. The definition of anarchists is woolly at best; the reader is never sure whether they are imaginary men of straw or actually existing phenomena. The difficulty may be caused by the author's reluctance to be fashionable. Not only does he shun psychedelic language, but he seems reluctant to point to any more modern examples of anarchists than communists in the 1930's. His examples of the Mafia and teenage street gangs are not exactly apt since both these groups meet the author's own

1 For example, in a three year period between September 1961 and August 1964 the Index to Legal Periodicals lists over 250 items under Jurisprudence. See in general the references collected by Ehrenzweig in the footnotes to his article *Psychoanalytical Jurisprudence: A Common Language for Babylon*, (1965) 65 Colum. L. Rev. 1331.