
The terrain investigated by Law, Rhetoric and Irony in the Formation of Canadian Civil Culture can be described through a series of assertions that the authors take somewhat more space to substantiate: the nation-state is articulated through its civil culture; cultural studies has neglected legal and institutional studies; there has been a turn toward culture in recent legal studies; there has been a turn toward law in recent social and political philosophy (Habermas, Derrida); and the specificity of Canadian identity has been articulated through law. Thus, a historical study of the centrality and development of law in Canadian social and political institutions can explain the development of Canadian identity and its civil culture. “The ‘subject’ of our history is discourse,” write Michael Dorland and Maurice Charland, “and in particular the discourses relative to the constitutive language of the law; how this language has figured as a problem facilitating or complicating communication; its historical sedimentations; and the continuing tension between law and rhetoric in understanding our contemporary civil condition” (p. 40). But this is no apologetic study of the origin of our benign polity à la Ignatieff; the conception of law that Dorland & Charland deploy emerges from and is transformed by the social conflicts constitutive of national history.

It’s an ambitious project. If fulfilled, it would not only contribute to the contemporary international turn in social and political theory toward legal studies with a detailed Canadian case, but would answer the vexed and persistent question of the nature of Canadian identity—and pose conceptual issues for international theoretical debate rooted in the Canadian case. Throughout, the book lives up to the task of maintaining a high degree of literacy in international social and political theory in dialogue with the specificities of Canadian history and culture.

The authors’ thesis is developed and expanded through five historical chapters dealing with the aftermath of the conquest of New France, constitutional changes under the British regime, the North-West (Riel) Rebellions, women’s suffrage, and recent language politics in Manitoba and Québec. Their task is not straightforward history, though, but a study of “discourse” or “rhetoric,” which means that they are equally, or even more, interested in the way an event is talked about—they like to say “figured”—than in the event itself. Indeed, like most contemporary cultural analysts they would be suspicious of any notion of the event “itself,” purportedly apart from discursive and cultural dimensions, since their focus is on the meaning of the event in a national tradition and such meaning is discursively constructed through a multiplicity of phrasings.

Their use of the term “rhetoric” emphasizes that this is not a mere plurality but a competing one in which a certain way of phrasing an event contains an evaluation and a response with political implications. The authors attempt to study this competing plurality with emphasis on its rhetorical dimensions in order to explain historically the specific nature of the argumentative space of Canadian civil culture. “The language and rhetoric of law,” they write, “constitutes nothing less than the basis of all forms of social communication legitimizing social speech, and also the conditions of future speech” (p. 27). The ambitious nature of the project is slightly mitigated by this focus, which liberates them from questions of primary history and peripheral events, but only slightly, since it orients them to a close study of texts and debates imbedded in key events. This is a constitutive study of discourse, quite distinct from the pervasive study of “representations” in cultural studies, which deals with communication as a structuring force in social life. Innis did this through medium, McLuhan through technology. Dorland & Charland do it through law. It may well
be this constitutive conception of communication study that distinguishes Canadian cultural and communication studies from other national traditions.

I will set aside the detail of the historical chapters for other reviewers to address. It would take a critic with expertise in the subject matter of each to evaluate with precision the authors’ rendering of each episode. But the unifying quest behind the historical investigations is quite clear. “We are concerned with the symbolic dimensions of the transition from aristocratic, landed power to the democratic and bourgeois forms of an emerging public sphere as this was experienced in the Canadian colonial context” (p. 36). If successful, then, this study would achieve for Canada an account of the origin of the public sphere and its limitations comparable to the now classic *The Structural Transformation of the Public Sphere*, by Jürgen Habermas (1991). Dorland & Charland argue that this transition occurred in Canada through law and that the nature of this transition has to be understood by considering its origin (English common law), the conflicts through which it developed (the five historical cases), its contemporary features, and its persistent rhetorical styles.

The most difficult historical case for their analysis is that of the North-West Rebels. The Manitoba Act (1870) recognized a new civil status of “half-breeds” and their land title, though in the form of alienable private property that extinguished the French river-lot system, while at the same time affirming federal sovereignty. The close of the 1885 Rebellion and the hanging of Riel confirmed this result. The authors conclude that “no heroic narrative, either of victim or of victory, can be told that links the North-West, Riel and Canadian justice through a happy process of identification. Rather, a revisiting of the case requires an identification with some kind of failure: of meaning, of law, of reason, of justice” (p. 190). True enough, but they are not at all clear about what this means for their thesis of the centrality of law to Canadian civil culture. Riel tested the limits of that culture and, it could equally well be argued, showed that it represented only official culture and not the whole of Canada. Indeed, Riel is the absent father of Confederation and progenitor of multiculturalism. However, it seems that he is acceptable within Canadian culture only to the slight extent that the Métis claimed, and were recognized by Ottawa, to be or be willing to become rights-bearing Englishmen. He has been banished to exactly the extent that they claimed an original self-constitution. In their last chapter, the authors define contemporary Canadian society as “monarchical republican” and suggest that “without a republican countertradition, Canada would not have its current constitutional form, and that countertradition furthermore remains available as a means of countering central authority” (p. 304). Indeed, but this rebellious moment did not, as they themselves show, enter into the civil culture generated from the rights of Englishmen. Surely, then, this shows that the civil culture that they document is limited to official culture and does not describe accurately the whole of Canadian culture.

The authors claim that “the problem of difference is constitutive of Canada itself” and that this is evident within “the struggles over Canada’s legal and constitutional order with respect to its limited capacity to ‘presence’ difference” as manifested in “the particularity of the Canadian rhetoric attendant to the inscription of difference in law” (p. 191). Their reliance on Habermas for the concept of law is evident throughout the text not only through the number of citations registered in the index but in the characterization of the relation between law and culture as one between system and lifeworld. “The law is not a ‘closed’ discursive machine but is open to the lifeworld,” which “as a technical system requires legitimation” (p. 129). They state that “In Habermas’s view, it is the central, remaining site of interface between the lifeworld in which we dwell existentially and the highly technical ‘steering systems’ that regulate lifeworlds in complex societies” (p. 70). And, indeed, this is exactly where Habermas situates the problem of law, arguing that “law then functions as a hinge between system and lifeworld, a function that is incompatible with the idea that the legal system, withdrawing into its own shell, autopoeitically encapsulates itself” (1996,
Law, in their conception, is not limited to legal statutes nor court cases but extends throughout civil culture as a mediating function, or translation, which “constitutes nothing less than the basis of all forms of social communication legitimizing social speech, and also the conditions of future speech” (p. 27). The problem is that this characterization conceals an ambiguity. Is this a thesis about Canadian civil culture bolstered by their historical analysis, or is it a general statement about the role of law using the authority of Habermas, in which case the role they assign to law in Canada would be true *ipso facto* for all other polities?

For Habermas, the notion that law mediates system and lifeworld applies to all modern societies. In his own words, “[T]he argument developed in Between Facts and Norms essentially aims to demonstrate that there is a conceptual or internal relation, and not merely a historically contingent association, between the rule of law and democracy” (1996, p. 449). From this point of view, a post-traditional morality that has let go of religion or metaphysics as the source of political legitimation is necessarily related to the rule of law. In this instance, the historical cases discussed by Dorland & Charland would be merely the Canadian version of this theory. Clearly, they want to claim more than this. Is it, then, that the *particular form in which the rule of law is expressed in Canada* is “inscription of difference in law” (p. 191)? This argument is never made clearly, since their claim is usually presented in historical terms such as “what we can claim to have shown is the development of the civil culture of this particular country” (p. 314), a claim whose specificity might be that of simple contingency. On the other hand, they emphasize that Canadian law rejects natural law, is oriented to the public good at a given historical moment, is traditional rather than rights-based, and, in general, is concerned with “inscription of difference in law,” suggesting that it is the specific character of Canadian legal culture to which their thesis is oriented. Their thesis would in this case reside within that of Habermas: the rule of law, and thus a civil culture oriented to law, prevails in all modern democracies; in Canada, the civil culture has been oriented mainly to the inscription of difference. This makes sense of an ambiguity in the text, but at the price of making the thesis almost entirely unoriginal. It would naturally have its resonance in law but it extends beyond official civil culture characterized by tradition and continuity to the experiences on the land that motivated a break with tradition.

**Notes**

1. The term “autopoietic” indicates that Habermas’ target here is Niklas Luhmann, whose conception of self-enclosed autopoietic systems is concerned to conceptualize precisely the manner in which, in his view, they are insulated from influences in their environment (or lifeworld) due to the inability of any system to render what is beyond its border in any definite terms that could be mirrored within. In Habermas’ view Luhmann’s theory erroneously “assigns law a marginal position (as compared with its place in classical social theories) and neutralizes the phenomenon of legal validity by describing things objectivistically” (Habermas, 1996, p. 48).

2. I have argued elsewhere that this duality of continuity break through politics environment is what defines Canadian culture (see Angus, 1997, pp. 114-118).

**References**


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