
BOOK REVIEWS

Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937–82* (Univ. of B.C. Press 2008) 281 pages, ISBN 9780774814799.

In late April 2009 I had the pleasure of attending the retirement dinner for Alan Borovoy, who has led the Canadian Civil Liberties Association since 1968. In attendance at the luxurious Royal York Hotel in downtown Toronto were a former chief justice, a former provincial premier, former mayors, numerous judges, and leaders in the Canadian legal community. Prestigious law firms had reserved corporate tables for the event and placed full-page ads in the glossy program. Toasts were offered by sitting members of the Supreme Court of Canada and the Ontario Court of Appeal, and by ACLU president Susan Herman (a video tribute was sent by her predecessor Nadine Strossen), among others. The establishment turned out to honor Alan Borovoy. It was great oratory and splendid fun. The motto for the evening was "Forty Years of Raising Hell (without breaking the law)." Not long ago I attended a comparable event in Halifax, Nova Scotia, the "Rocky Jones Appreciation Night," put on by that province's black community. The numbers in attendance were about the same as the Borovoy dinner, the food was similar (plump chicken), the level of noise and revelry perhaps a bit higher, but there were no corporate tables, no judges, no prominent politicians from the past.

Rocky Jones was the leader of the black radical movement in Nova Scotia in the 1960s and 1970s, an associate of the Black Panthers, and, in his later years, the province's chief agitator and community organizer on behalf of equality rights and social justice. The crowd that gathered in a community hall in Halifax's North End was made up of civil society activists and individuals who had campaigned with Jones over the previous forty years. Two celebrations, two charismatic and influential men who, as the composition of their tribute dinners might suggest, represented distinct dynamics within the Canadian rights movement.

There has undoubtedly been a fundamental transformation in human rights in Canada. When Borovoy and Jones were schoolboys, one a Jew in Toronto, the other an African Canadian in Nova Scotia, they faced a Canadian society that was exclusive and restrictive toward many people on grounds of "race." Canada's borders were closed to a range of prospective immigrants, including Jewish refugees fleeing Hitler's Europe, because of their alleged inability to assimilate as determined by their "racial" character. Employment discrimination was rife, residential and recreational segregation was widespread, even the vote was denied to some Canadians due to their "race." The extent of the transformation since that time is measured by the elimination of "race" as a condition for immigration or for the franchise, the passage of the federal Charter of Rights and Freedoms, and the introduction of provincial human rights codes and commissions to

enforce them. In short, there has been a *legal* sea change, and one that has been accompanied by a shift in public morality and even in national identity. Canada now regards itself as the first truly multicultural nation.

Dominique Clément sets out to examine this Canadian “revolution,” which he locates in the period between 1937 and 1982, in the hope of explaining why the changes occurred. His “Big Question,” as announced in the Introduction, is “To what degree can rights discourse promote social change?”¹ To answer it, he engages in analyses of various “Social Movement Organizations” (SMOs), all of which employed human rights principles and rhetoric in contributing to the shifting relationship between Canadians and their state, and with each other. In his early chapters Clément offers an overview of what he calls the “first generation” of rights organizations, beginning in the 1930s and peaking in the 1940s. These organizations were provoked into existence by egregious violations by the federal or provincial governments. As his first example, Clément takes the “Padlock Law” passed by the province of Québec in 1937. Designed to stifle communist propaganda, the law was capable of being used against trade unions and political dissenters of many stripes. From the protest over this repressive law emerged the Canadian Civil Liberties Union, with branches in many parts of the country and thousands of adherents. World War II created new targets for protest, including censorship, internment, and the suspension of habeas corpus under the Defence of Canada Regulations. Surprisingly, the mass relocation and confinement of Japanese Canadians did not receive very much attention from civil libertarians,

because it was presented to the public as a military necessity, but when the government sought to deport Japanese Canadians to Japan at the end of the war a Canada-wide campaign eventually convinced the government to cancel the program. Another burst of rights activism was launched after a Russian defector, Igor Gouzenko, revealed a network of Soviet spies in Canada, resulting in secret interrogations and incommunicado imprisonment for suspects. In each of these cases the organizations were utilizing the discourse of traditional British civil liberties, seeking to protect individuals from abuse by the state. Clément also briefly mentions the activities of the Association for Civil Liberties, in cooperation with the Canadian Jewish Congress and the Jewish Labour Committee, to combat discrimination by private individuals through the adoption of Fair Employment and Fair Accommodations Practices Acts in the early 1950s.

The bulk of the book consists of four case studies of the next generation of rights organizations, beginning in the 1960s. This period witnessed the establishment of professional SMOs, with permanent offices and trained personnel, in contrast to the amateurs and volunteers of the earlier generation. Clément’s first example is the British Columbia Civil Liberties Association (BCCLA), born in 1962 in response to abusive Royal Canadian Mounted Police tactics against the Doukhobour religious sect. He proceeds to dedicate a substantial chapter to each of La ligue des droits de l’homme (LDH) in Québec, the Toronto-based Canadian Civil Liberties Association (CCLA), and the Newfoundland-Labrador Human Rights Association (NLHRA). These are solid and detailed accounts, describing

1. DOMINIQUE CLÉMENT, *CANADA’S RIGHTS REVOLUTION: SOCIAL MOVEMENTS AND SOCIAL CHANGE, 1937–82*, at 5 (2008).

the origins, tactics, membership, leadership and funding of Canada's major rights associations from 1960 to 1982, by which time, with the introduction of the Charter and other legislation, Canada was "a veritable human rights state" with "an institutional infrastructure designed to protect human rights."² The revolution, he implies, was complete. Though he illustrates the many differences among the organizations under study, Clément's analysis reveals some common characteristics. They tended to arise in response to transgressions by governments, and with few exceptions to focus their attention on civil and political rights. They were "elitist" both in their structure and their methods, led for the most part by white middle-class lawyers appointed by boards of similar ilk, who conducted research into allegations of wrongs, composed briefs suggesting legislative reforms to correct them, lobbied senior politicians, held press conferences, and took test cases to court. There was no mass mobilization, no boycotts or general strikes, no civil disobedience, not even mass membership. Clément provides a list of thirty-eight organizations existing in Canada from 1971 to 1977 and gives their membership figures.³ Taking 1974 as representative, his figures show that there were only 6,805 paid-up members of all rights associations in Canada. Of these 4,000 were in the CCLA, 750 in the LDH, 463 in the BCCLA and 119 in the NLHRA. That leaves fewer than 1,500 members for all the other associations created in what Clément calls a "wave . . . [that] swept across the country" in the 1960s and 1970s.⁴ As would be ex-

pected in such circumstances, the rights associations tended to rely on dynamic leaders who spoke and acted on behalf of the membership as a whole. One prominent feature unearthed by Clément is the exchange of personnel from rights associations to judicial appointments, official human rights commissions, the senior civil service, and university presidencies, and the flow was often in the other direction as well. The nongovernmental SMOs were clearly an intimate part of a national human rights "policy community," with close allies in high levels of the Canadian establishment. Furthermore, with the major exception of the CCLA (which stoutly resists government funding and even refuses tax-deductible status for membership fees), *all* the other organizations studied by Clément received, and indeed have been dependent upon, money from federal and/or provincial governments.

Clément concludes his book with some doubts about the ability of "rights discourse" to implement social change. Its practitioners, he suggests, focus too much on the state, and their perception of social change is limited to legal change. For Clément their tactics, perhaps even their make-up, prevent them from confronting systemic inequality. "By embracing the state as a vehicle for social change, rights associations hobbled their ability to achieve their own goals."⁵ Clément's final sentence locates the ur-source of the problem: "The one idea that linked all rights associations in Canada, their vision for social change that led them to embrace conservative strategies for change, was human rights."⁶ Well,

2. *Id.* at 25.

3. *Id.* at 64–65.

4. *Id.* at 62.

5. *Id.* at 211.

6. *Id.* at 212.

maybe. This book does make a convincing case that the rights associations under examination were not “revolutionary.” Their contribution was reformist: they refined laws, enhanced the protection of individuals under the law, extended its reach to the most vulnerable. It was a valuable contribution and it continues to be a necessary one, but the “revolution” promised in Clément’s title was not executed by the associations he offers as examples. The underlying problem however is not that the basic idea of human rights was inherently non-revolutionary, but that Clément chose to study only one stream of Canada’s rights movement. As a Canadian, and as a long-standing member of the CCLA, I am grateful to Alan Borovoy for “raising hell” for forty years. I don’t think any of the dignitaries at his retirement dinner, though with gratitude equal to my own, would regard him as “revolutionary.”

There was, as I have suggested, another element in the movement, as represented at the Rocky Jones Appreciation Night in Halifax. That element *did* organize protests and demonstrations, they *were* arrested, they *did* threaten the establishment and, above all, they generated the national shift in consciousness that allowed the legal changes to occur in the first place. Hugh Burnett, a black carpenter in the small town of Dresden, Ontario, headed a civil rights campaign during the decade after World War II, pioneering the “sit-in” tactic in the early 1950s. Kalmén Kaplansky, Director of the Jewish Labour Committee in that same period, adopted the tactic of legal change only with great reluctance, arguing throughout most of his career that the way to effect genuinely revolutionary change was to capture the hearts of the population through demonstrations and revelations of injustice. Burnett, Kaplansky and their colleagues (one of whom

was a young Alan Borovoy) reversed the public conception of “common sense” and transferred the bearer of rights from the discriminator, under the banner of freedom of association, for example, to the citizen denied an apartment or a job. In the 1960s Rocky Jones launched another conceptual turn, putting “systemic racism” on the agenda in Canada and carrying his message not to government functionaries but to public meetings where he insisted that a systemic problem demanded a systemic solution. These community organizers and the countless others who participated in the movement utilized “rights discourse.” In earlier years they made their claims in terms of “British justice” and “fair play,” because that was the language available to them. When the UN Charter and the Universal Declaration became available, they made exactly the same claims but now in the more universal language of “human rights.” The discourse was a tool, not the motivating force, in Canada’s rights revolution.

It is important to consider, finally, that the more mainstream organizations like the LDH and the CCLA entered that same discursive turmoil, furthering the public’s acceptance of a new conceptualization of “rights.” If they did not initiate the revolution, they made it more acceptable precisely because they did represent a more established layer of society. Their articulations to governments and courts carried the new ideas from the hearts to the heads of Canadian society. Dominique Clément has given us a valuable analysis of Canada’s leading rights associations, and his conclusions about their relatively conservative tactics and their establishment ties cannot be contradicted. It deserves to be read and studied, for it contains important lessons about SMOs. But by isolating Social Movement Organizations from the broader social

movements, from the truly revolutionary ideas and activities that were operating between 1937 and 1982 (and operate still), Clément in effect obscures the extent to which his organizations did in fact participate in the revolution.

James W. St.G. Walker*
University of Waterloo

** James Walker is a Professor of History at the University of Waterloo, Ontario, and former Bora Laskin National Fellow in Human Rights Research. He has written several books and articles on Canadian human rights history, including "Race," Rights and the Law in the Supreme Court of Canada (1997).*

Francis M. Deng, *Identity, Diversity, and Constitutionalism in Africa* (U.S. Inst. of Peace Press 2008) 269 pages, ISBN 1601270356.

Francis M. Deng, currently the UN Secretary-General's Special Adviser for the Prevention of Genocide, is one of the few scholar/practitioners who continue to be active on the world stage. In addition, he is a prolific analyst of political conflict. He has written or co-authored more than thirty books over the last three decades, despite the public service burdens he has taken on. These include three positions at the United Nations: Human Rights Officer in the Secretariat from 1967–1972, Representative of the Secretary-General on Internally Displaced Persons from 1992–2004, and his current post. He was Sudan's Minister of State for Foreign Affairs and Ambassador to the Nordic countries, Canada, and the US. He can

speak, as few can, with both first-hand knowledge and scholarly authority on the struggle for stability and governance in the world's most conflicted continent.

Deng was also the main intellectual thinker behind the promotion of the Responsibility to Protect (R2P) principle, which was endorsed at the 2005 UN Millennium World Summit. His writings helped promote the decision taken by various heads of state and government to unanimously affirm that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."¹ If a government was unable or unwilling to protect its citizens, then the international community had the "right of humanitarian intervention"—the right, that is, to take a variety of steps, including coercive military action, if necessary, to protect civilians at risk of genocide and mass atrocities. Since 2007, Deng has been working to apply this principle to real at-risk situations.

In this volume, Deng argues that genocide and mass atrocities are not sudden or spontaneous eruptions of mass anger. They are often a result of deep defects in political and constitutional structures that were originally based on Western models and grafted onto traditional societies, without adequate regard for the cultures and social tensions that define everyday life. Post-colonial elites not only accepted them, but frequently manipulated them for their own purposes. Left unchanged, these defects can lead to a breakdown in the moral fabric of society, because they erode indigenous African norms and cultures with laws and regulations

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1. For an early and complete analysis of R2P, see INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf>. R2P still is a subject of intense controversy. For a more recent analysis of UN attitudes toward the principle, see *Implementing the Responsibility to Protect, Report of the Secretary-General*, U.N. GAOR, 63d Sess., U.N. Doc. A/63/677 (2009).