



How Jean-Guy Belley Thinks: A Translator's Note

Nicholas Kasirer *

Why has Quebec proved such a fertile ground for the study of legal pluralism over the last generation? It is not that formalism in law is any less tenacious in Quebec than elsewhere, or that the state-made law is held in lower esteem. If anything, the fabled cult of enactment that characterizes modern civilian methodology has been exacerbated in the run-up to the adoption of the Civil Code of Québec and the twenty years since that moment. The mixed nature of Quebec legal sources, given that *mixité* is seen as much as a historical fact as the basis for a way of knowing law, cannot explain the wealth of scholarly attention devoted to diversity in law.¹ Whether Quebec's brand of pluralism for law comes from factors such as linguistic and cultural diversity, an ongoing contact with Aboriginal law, or a special experience with religious law is a matter of ongoing speculation.² But in the final analysis, it is not unfair to think that legal pluralism has flourished in Quebec because of the work of a handful of imaginative scholars who have invested their talent in this intellectual project.³

Professor Jean-Guy Belley is plainly one of their number.⁴ His work as a theorist of legal pluralism is celebrated in Quebec and well read in France.⁵ Yet his prodigious scholarly output is less well known elsewhere in Canada,

* This note accompanies a translation prepared by Nicholas Kasirer of "Quelle culture juridique pour le 21e siècle?", written originally in French by Jean-Guy Belley.

¹ Roderick Macdonald, "Here, There . . . and Everywhere: Theorizing Legal Pluralism; Theorizing Jacques Vanderlinden," in *Étudier et enseigner le droit : hier, aujourd'hui et demain—Études offertes à Jacques Vanderlinden*, ed. Lynne Castonguay et al. (Montreal: Yvon Blais, 2006), 381.

² See Pierre Noreau, "La nation sans la culture ou l'art facile de se conter des histoires," in *Le Pays de tous les Québécois*, ed. Michel Sarra-Bournet et al. (Montreal: VLB Éditeur, 1998), 131, 139–41.

³ See, e.g., Michel Coutu, "Juridicité et normativité dans la théorie sociojuridique de R.A. Macdonald," *Revue générale de droit* 28 (1997), 337.

⁴ For some perspective on his own views see Jean-Guy Belley, "Les juristes universitaires francophones et le progrès de la justice sociale au Québec," *Cahiers de Droit* 42 (2001), 563, and "Le pluralisme juridique de Roderick Macdonald : une analyse séquentielle," in *Théories et émergences du droit : pluralisme, surdétermination et effectivité*, ed. Andrée Lajoie et al. (Montreal: Thémis, 1998), 57.

⁵ See, e.g., his edited collection *Le droit soluble. Contributions québécoises à l'étude de l'internormativité* (Paris: LGDJ, 1996), and in particular his essay "Le contrat comme phénomène d'internormativité," 195–232. Belley's entry "Pluralisme juridique," published by France's learned CNRS in the canonical *Dictionnaire encyclopédique de*

where that work would likely be understood to have special relevance. Indeed, over the past ten or so years, Professor Belley has placed increasing emphasis on Anglo-American legal scholarship and common-law sources in his teaching and thinking about law. The translation of the foregoing essay has therefore been prepared at once as a respectful homage to a friend and colleague and in the hope that, in a modest way, it might encourage a wider readership for his important work.

Professor Belley's essay "What Legal Culture for the Twenty-First Century?" was written in 2001, at a moment that marked an important turn in his career.⁶ Jean-Guy Belley had taught Obligations and Sociology of Law at Université Laval from the late 1970s until about the time he submitted the article for publication. At Laval, he produced a substantial body of work that reflected methods and insights in legal sociology that can be traced to the influence of his thesis adviser, Jean Carbonnier, whom many view as France's pre-eminent legal thinker of the twentieth century.⁷ During those years, Professor Belley used the general theory of contract as a setting to explore how the sociological method commanded an approach to the sources of law that was at odds with the prevailing dogma in the civil law faculties in Quebec.⁸ Drawing on continental thinkers and extending special attention to the work of Ian Macneil, Professor Belley introduced a generation of students to trends in legal theory that they would not otherwise have encountered in private law.⁹ He wrote a major socio-legal study at the end of this period of his career, bearing on business practices in a single industry, that Canadians interested in the relational contract as a tool for social ordering would do well to consult.¹⁰

From about 1999, Professor Belley set to one side this focus on legal sociology and devoted himself more resolutely to the theoretical foundations of pluralism in law. This coincided with his appointment as Sir William Macdonald Professor of Law at McGill University and a period during which his energies were absorbed by the "trans-systemic" law teaching

théorie et de sociologie du droit, 2nd ed. (Paris: LGDJ, 1993), 446, is a plain sign of the influence of his ideas in Europe.

⁶ "Quelle culture juridique pour le 21^e siècle?" *Canadian Bar Review* 80 (2001), 1. The paper appeared in the proceedings of a colloquium held to mark the 125th anniversary of the Supreme Court of Canada.

⁷ See Jean-Guy Belley, "Le rayonnement intellectuel de Jean Carbonnier au Québec : le succès d'estime d'un honnête homme," *McGill Law Journal* 54 (2009), 407. Belley's thesis, *Conflit social et pluralisme juridique en sociologie du droit* (Université de Paris II, 1977), appeared at roughly the same time that Carbonnier published *Sociologie juridique* (Paris: Presses Universitaires de France, 1978). Carbonnier refers to the thesis as a welcome break from the practice in legal pluralism whereby "la doctrine d'expression française et d'expression anglaise . . . se sont développées dans une ignorance réciproque" (363).

⁸ See, e.g., Jean-Guy Belley, "La pensée positiviste et ses tourments," in *Transformation de la culture juridique québécoise*, ed. Bjarne Melkevik et al. (Quebec, QC: Presses de l'Université Laval, 1998), 237; "L'avenir du droit et des juristes : trois scénarios," *Revue générale de droit* 30 (2000), 501.

⁹ See, e.g., his extended preface to Alain Roy, *Le contrat de mariage réinventé. Perspectives socio-juridiques pour une réforme* (Montreal: Thémis, 2002), ix.

¹⁰ Jean-Guy Belley, *Le contrat entre droit, économie et société* (Cowansville, QC: Yvon Blais, 1995).

project embraced by that university's Faculty of Law.¹¹ His impact on that program of study as an intellectual endeavour has been most meaningful.¹² This paper captures some of that moment of his transition from legal sociologist to theorist, as well as signalling, in an early form, themes that would dominate his concerns over the coming decade. One senses in this essay, for example, Belley's growing conviction that legal pluralism has been deployed to the advantage of business organizations, rather than of individuals or disenfranchised communities, and that the old debates on the sources of law have been overtaken by this new economic reality.¹³ For Professor Belley, trans-systemic legal thought has been an invitation to inquire into the untoward economic impact of globalization on law and on legal pluralism. Some of the influences on these ideas are manifest in this paper, including Gunther Teubner, Anthony Giddens, and Niklas Luhmann; some are less plain but very present, including Fernand Dumont, Mary Douglas, and Professor Belley's McGill colleagues, among them Roderick Macdonald and H.P. Glenn. "What Legal Culture for the Twenty-First Century?" can be read as an introduction to "how Jean-Guy Belley thinks" and to his own brand of pluralism, which continues to shape Quebec legal scholarship.¹⁴

Nicholas Kasirer
Quebec Court of Appeal
Researcher, Centre for Private and Comparative Law
McGill University
Montreal, QC Canada

¹¹ Jean-Guy Belley, "Le programme d'enseignement trans-systémique du droit à l'Université McGill," *Jurisprudence—Revue critique* 1 (2010), 93.

¹² As is plain in the portions of a special issue of the *McGill Law Journal* pointing to the foundations of this teaching experiment in legal pluralism, notably Richard Janda, "Toward Cosmopolitan Law," *McGill Law Journal* 50 (2005), 967, 971, et seq.

¹³ Jean-Guy Belley, "L'orgueil de la société par actions," in *Les sept péchés capitaux et le droit privé*, ed. Véronique Fortin et al. (Montreal: Thémis, 2007), 49.

¹⁴ Asking how Jean-Guy Belley thinks might be undertaken in the spirit of Mary Douglas's inquiry in *How Institutions Think* (Syracuse, NY: Syracuse University Press, 1986), which is a clear influence on Belley's essay translated here. One suspects that Douglas's work, especially *Purity and Danger* (1966; reprint, New York: Routledge Classics, 2008), is one of the many strands that make up Jean-Guy Belley's legal pluralism.