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Book Review of *Authorities: Conflicts, Cooperation, and Transnational Legal Theory*
by Nicole Roughan

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In *Authorities*, Nicole Roughan develops a theory of *relational authority* to account for the legitimate authority of legal systems in circumstances of plurality. Roughan argues not only that it is possible for more than one legal authority to legitimately bind subjects in the same time and place, but that the legitimacy of public authorities is measured in part by the way they relate to each other. According to the relational authority account, legal authorities create and sustain their legitimacy by cultivating certain kinds of relationships with other authorities. Roughan develops this thesis through an interdisciplinary engagement with analytical jurisprudence and legal pluralism. The book is a rigorous attempt to bring different literatures into meaningful dialogue with each other, demonstrating in practice some of the dialogical demands of the relative approach that Roughan advocates. For feminist legal scholars, *Authorities* offers substantive resources for assessing the legitimacy of claims to legal authority, and methodological inspiration for allowing conventional and critical approaches to benefit from the insights offered by each. These resources are of particular value in the wake of the Calls to Action issued by the Truth and Reconciliation Commission, and the attendant need for more adequate dialogue and critique in the service of building just relationships between Indigenous and settler communities and legal orders in Canada.

Roughan begins by identifying the empirical reality of plurality as the background for her work: law operates in multiple places, through multiple institutions, with interaction and overlap between officials, systems, and norms. Legal authority is claimed in the context of state, international, and other legal orders. And yet, she argues, “somehow, despite this messiness and multiplicity, law still can, or at least claims to be able to, create obligations for its subjects. Despite its plurality, law still has or at least

claims some kind of authority.”¹ Roughan argues that some of the theoretical and practical dilemmas that arise out of the reality of legal plurality (such as, for example, the question of what to do when the directives of overlapping authorities seem to conflict), are really a matter of confusion over law’s *authority*, and when it is legitimate.² The question at the heart of the book is: “when can authority be legitimate in circumstances of its plurality?”³

To respond to this question, Roughan turns to multiple literatures. Most importantly, she engages with analytical jurisprudence on the concept of authority, as well as a variety of literatures on legal pluralism and transnational law. Roughan argues that these literatures, taken together, have failed to adequately account for the possibility of legitimate authority in circumstances of plurality. That is, conventional jurisprudence provides for various detailed normative justifications of legitimate authority, but generally presumes a world of singular public authority, in the form of state law. Literatures on legal pluralism take seriously the reality of multiple legal orders, but do not provide a way to explain how these legal orders are authoritative, or how they create morally binding obligations on their subjects. Taking an approach that may resonate with feminist scholars, Roughan argues that one of the reasons this gap is problematic is that it allows pluralist jurisprudence to escape a normative interrogation of legal authority, instead relying on general descriptions of de facto exercises of power, rather than

¹ Nicole Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory*, (Oxford: Oxford University Press, 2013) [*Authorities*] at 1.

² *Authorities* at 3.

³ *Authorities* at 5.

legitimate exercises of authority.⁴ This aspect of Roughan’s argument may speak to feminist scholars because of its attentiveness to relations of power and the role of power in relation to normative claims about legitimacy and justice.

Authorities is structured in four parts. In Part I, Roughan provides an overview of the concepts of authority and plurality and how they generate questions for each other. In Part II, Roughan engages in a sustained analysis of the work of Joseph Raz and scholars in conversation with him on the concept of “authority” in law.⁵ Roughan argues that Raz’s “service conception” of authority has important strengths, but that it ultimately fails to account for legitimate authority in circumstances of plurality. In Part III, Roughan describes an alternative theory of legitimate authority, in which authority is fundamentally and essentially relative. In Part IV, Roughan takes this concept of relative legal authority and explores it in the context of several important examples, including international law, constitutionalism in the European Union, and relationships between state and Indigenous authorities in New Zealand.

The heart of Roughan’s theory is that legitimate authority is derived, partially but essentially, from appropriate relationships with other authorities.⁶ Without attempting to provide a full description, I note that the concept of relative authority encompasses both

⁴ *Authorities* at 7-8.

⁵ Key texts for Roughan include Joseph Raz, *The Authority of Law* (2nd ed. Oxford: Oxford University Press, 2009) and Jeremy Waldron, “Authority for Officials” in Lukas H Meyer et al (eds) *Rights, Culture and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* (Oxford: Oxford University Press, 2003).

⁶ *Authorities* at 158.

substantive and procedural criteria, and describes how authority must respond to reasons for action (substantive reasons why a subject should do or not do something), reasons for decision (procedural reasons for thinking some type of decision should be made in a certain way), and governance reasons (reasons for thinking that authorities, overall, should relate in a certain way).⁷ Scholars who study “relational” theories of law and rights will be interested in the ways Roughan makes inter-authority relationships central to her normative account. In some respects, it is disappointing that *Authorities* does not engage more with explicitly feminist work on relational rights (such as work by Jennifer Nedelsky and Colleen Sheppard), but the book nonetheless provides many openings for such engagement.⁸

Roughan’s detailed description of her notion of relative authority was, for me, the most satisfying part of the book. In fact, in some moments I wanted to hear more from Roughan directly, and less about her detailed critical engagement with Raz. Working through the detailed distinctions and conceptual frameworks of analytical jurisprudence only to arrive at the conclusion that a wholly new approach is required resulted in some frustration for this reader. Furthermore, I think it is always important to attend to the

⁷ *Authorities* at 126.

⁸ See, for example, Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford: Oxford University Press, 2012); Colleen Sheppard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada* (Montreal: McGill-Queen’s University Press, 2010).

risks of endorsing the continuing centrality of “canonical” texts.⁹ However, on reflection, I think I have learned something deeper from engagement with this book. By leading us through the analytical nuances of philosophers like Raz and Waldron, and then tying those threads into pluralist and other literatures, Roughan challenges her readers to take up the kind of intellectual practice that her idea calls for. In order for us to take seriously the idea that we can measure the legitimacy of legal authorities by assessing their relationships, we need to seek resources for conducting that assessment in a principled way. Moreover, we need to develop the intellectual and dialogical skills for understanding relationality. We need to understand how these literatures can speak to each other, just as we need to understand how Maori and New Zealand legal orders can speak to each other.

Reflecting on Roughan’s idea of relational authority is provocative and productive in the context of Canadian feminist legal scholarship in the wake of the Truth and Reconciliation Commission Report and Calls to Action, issued in the summer of 2015. It can inform our ongoing efforts to respond as scholars, as educators, and as feminists in a multi-juridical legal order. In particular, two themes stood out for me. First, Roughan’s account of legitimate authority is adamant that overlap and indeed conflict between authorities be understood, not as an exceptional “problem” that a theory of authority can safely assume away, but rather as a central characteristic of the practice of public authority. Further, conflict itself need not always be resolved. As Roughan writes:

⁹ For an interesting feminist argument on the “politics of citation,” see Sara Ahmen, “Making Feminist Points,” posted September 11, 2013 at www.feministkilljoys.com: <https://feministkilljoys.com/2013/09/11/making-feminist-points/>.

The point is not that there must always be a way to resolve conflict between legitimate authorities or find a way to individuate one over others. Sometimes it will be necessary to resolve conflict, but at other times conflict can be a useful way of keeping alive competing values, and the contest of reasons that they embody.¹⁰

This idea has some resonance with Canadian scholarship on Indigenous-settler relations and constitutionalism that focuses on the importance of process and dialogue rather than achieving particular settled outcomes (for example, the work of James Tully and Jeremy Webber).¹¹

Second, I am compelled by Roughan's argument that one of the values of her theory of relative legal authority is that it embeds in legitimate legal authorities a commitment to building and maintaining good relationships. She writes:

[E]mbodied within a claim to relative legitimate authority is a commitment to pursuing the appropriate relationships with other authorities that are required by the relativity conditions...When there is plurality of legitimate authority, such that any one authority must engage appropriately with others in order to be legitimate,

¹⁰ *Authorities* at 120.

¹¹ Jeremy Webber, *The Constitution of Canada: A Contextual Analysis*. 1 (Oxford: Hart Publishing, 2015).

James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, (Cambridge: Cambridge University Press, 1995).

then any claim that such an authority makes entails a commitment to the pursuit of those appropriate relationships.¹²

And further:

It is the responsibility of the legal authorities to avoid placing their joint or interactive subjects in situations of problematic practical conflict, uncertainty, or confusion over their legal rights and obligations. To succeed *qua* authorities, legal officials (on behalf of their systems) must be responsive to other systems with which they share subjects or domains of activity.¹³

In the summary of its Final Report, the TRC clarifies that: “To the Commission, reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country.”¹⁴ There is ongoing work and much conversation to be had about what a respectful relationship is, and how to establish one. Roughan’s work in *Authorities* is a useful intervention, particularly from the perspective of legal theory and constitutional law, because it provides a way to understand how and why Indigenous and Canadian legal orders need to attend to their relationship, *as a condition of their authority*. Respectful relations are not an optional path, but, rather, a core requirement for the existence of legal authority. In this way,

¹² *Authorities* at 158.

¹³ *Authorities* at 166

¹⁴ Truth and Reconciliation Commission of Canada. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Library and Archives Canada Cataloguing in Publication, 2015) at 6.

Authorities provides new theoretical ways for grappling with some of the challenges posed by legal pluralism and the possibilities for just relationships between legal orders in Canada.