

Chapter 8

Legal Traditions, the Universal Declaration of Human Rights, and Intercultural Professional Communication

ABSTRACT

This chapter examines the relations between rhetoric and law across cultures, grounding the discussion in U.S. common law, Latin American Civil law, and Asian law. It also explores the writing of the Universal Declaration of Human Rights as a model of developing “international” or “universal” approaches to law and human rights. It concludes by discussing recent events of international law involving intellectual property and global communications.

INTRODUCTION

More than 40 years ago, Octavio Paz, the great Mexican Nobel prize winner of literature, argued that to understand Mexican law is to understand Mexican culture and vice versa (1985). Guided by his own versions of Marxism, Paz continually emphasized the influence of Mexican law in structuring economic, social, and cultural institutions and practices in Mexico; and most often, his purpose for connecting law and culture was to compare U.S. and Mexican cultures as a way for those from the United States to better understand Mexico. Many other scholars have similarly argued for the extensive and comprehensive influence of law on Mexican culture, with some focusing on the era of colonialization (Kellogg, 2005) and

current U.S.-Mexico relations (Castaneda, 1995). Kellogg’s work (2005), for example, is useful for rhetoric and professional communication scholars because she shows how attorneys, Mexican law, and legal discourse were all key mechanisms for structuring colonialization and subsequent economic and social relations in Mexico.

Much like Paz and Kellogg, the U.S. scholar James White (1985) argues for the intimate connections between law and culture, but White goes even further, claiming that the connection between these two is accomplished through rhetoric. In 1985, White argues that Law is most usefully seen not, as it usually is by academic and philosophers, “as a system of rules, but as a branch of rhetoric; and that the kind of rhetoric of which law is the species. It is most usefully seen not, as rhetoric

usually is, either as a failed science or the ignoble art of persuasion, but as the central art by which community and culture are established, maintained, and transformed. So regarded, rhetoric is continuous with law, and like it, has justice as its ultimate subject” (p. 684).

White continued his inquiry into law and rhetoric for more than 20 years, always arguing for the connection between law and culture, with rhetoric as the mediator and justice as its end or purpose. In this work, White does not clearly lay out his theory of rhetoric, but he does argue for the use of language systems for structuring and encouraging legal systems, institutions, and education. Similarly from the UK, Neil McCormick’s *Rhetoric and the Rule of Law* (2005) examines the rhetorical structures of legal reasoning and law, arguing “the whole enterprise of explicating and expounding criteria and forms of good legal reasoning has to be in the context of fundamental values that we impute to legal order” (p.1). Following a traditional view of rhetoric, such as the one articulated by Perelman (1982), McCormick examines the following rhetorical devices in legal reasoning: syllogisms, deductivism, universals-particulars, judging by consequences, analogies, narratives, and using precedents, among others.

The works of Paz, White, and McCormick are important for rhetorical scholars because they connect the formation of law and corresponding legal institutions, education, and practice with rhetoric and culture. Further, these works argue that rhetoric and law are connected to justice, that is, a sense of fairness, ethics, and rule of law, over rule of will (Tamanaha, 2006). McCormick (2005) explains that despite the current skepticism of values in the postmodern world, “that some arguments are genuinely better than others” (p.2). He centers this discussion of “better” in terms of argumentation (rhetoric) and grounds them in universal applications. In a more developed way, Twining, in his critical work *Globalisation and Legal Theory* (2000), argues that the emic-like features assumed by postmodern law cannot provide

the foundation for law in the age of globalization, a point more thoroughly discussed in the next section. McCormick’s work is rich in rhetorical inquiry, but often controversial because it places rhetoric at the center of law making and justice, a sort of relativism that worries many legal scholars that are unfamiliar with rhetorical inquiry, but as explained later, is the kind of rhetorical ethics that are critical to law in a globalized world (Twining, 2000). Despite these rich rhetorical inquiries into law, McCormick’s work is directed to the law field, not to professional communication; thus, applying his work to intercultural professional communication is difficult. Further, White’s work predates most postmodernism, so he never directly refutes this epistemology or connects it to cross-cultural work. Neither scholar provides enough rhetorical or cultural theory to systematically compare law and rhetoric across cultures, the topic of this chapter.

Despite these groundbreaking inquiries by Paz, White, McCormick, and others, there is relatively little discussion of rhetoric, culture, and law in professional communication. There is some work with ethics and professional communication (Porter, 1998; Dombroski, 1999), but these works examine the relation of ethics and rhetoric through critical, postmodern theories, not grounding the connections to U.S. legal systems and culture, even though both works are based in the United States. In short, they are not useful for connecting law and rhetoric across cultures. Most current work in professional communication that addresses intercultural legal issues focuses on copyright and intellectual property, loosely linking the values of property and authorship of one culture (often China) with another culture (often the United States). (See, for example, St. Amant, 2007a). This important, but relatively narrow, view of law is critical for intercultural work, but it does not give a sufficient foundation for comparing the influence of law on rhetorical patterns across cultures. Further, the work in ethics and copyright has not systematically connected law and rhetoric

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