

Dominion and Agency: Copyright and the Structuring of the Canadian Book Trade 1867-1918

By Eli MacLaren

Publisher: University of Toronto Press 2011

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It might surprise the general reader to learn that one of Canada's most iconic authors pointedly refused to publish, in Canada, a work that became synonymous with Canada. "I wouldn't give my M.S. to a Canadian firm," wrote Lucy Maud Montgomery of her draft of *Anne of Green Gables*. "It is much better financially to have it published in the United States."

Montgomery was not alone. Stephen Leacock, Ernest Thompson Seton, Morley Callaghan, and Nellie McClung, among others, chose to publish outside Canada. Until the 1960s, a lack of literary publishers left Canada without the domestic infrastructure necessary to nurture its authors. The Canadian book trade was built around an agency model, its English market publishers focusing largely on the distribution of foreign publishers' books, rather than on publishing original books of their own.

Eli MacLaren, in his admirably researched and highly readable *Dominion and Agency: Copyright and the Structure of the Canadian Book Trade, 1867-1918*, sets out to explain why. The clue is in the subtitle. MacLaren blames copyright -- more particularly, the copyright laws of mercantilist, imperial Britain and of protectionist America -- for undermining efforts by early Canadian publishers to establish an independent book trade. This legal one-two punch "compell[ed] the book trade of the Dominion of Canada into modes of operation that were more

or less incompatible with original publishing.” The development of an independent publishing industry was made virtually impossible, with profound implications for Canadian culture.

MacLaren brings a sharp, analytic mind to tracking these copyright laws as they played out in the landscape of early Canada. As he demonstrates, the legislated disadvantages faced by early colonial publishers were striking.

Books published in the British North American colony were protected neither by British nor by American copyright. The British Copyright Act of 1842 extended British copyright throughout the whole of the British Empire, but to qualify for that ‘imperial’ copyright, books had to be published first in the UK. The Act banned unauthorized reprinting and commercial importation of foreign reprints into any British territory, precluding colonial printers from reprinting British books for their home market.

American publishers were under no such prohibition. The Americans had thrown off British copyright laws at the time of the Revolution. The US Copyright Act of 1790 expressly permitted the unauthorized reprinting of works by foreign authors published outside the United States. British authors -- most famously, Charles Dickens -- found their works reprinted freely throughout the U.S., fueling a vibrant publishing industry. Cheap American reprints proliferated, and from the late 18th century onward found their way into the British colony to the north.

The Copyright Act of 1842 prohibited the import of cheap American reprints, but in 1847, recognizing established practice, the relative expense of British imports, the difficulty of enforcement, and fearful that the colonists would turn to more affordable American books full of

dangerous republican sentiment, the British parliament compromised with principle and suspended the 1842 Act's prohibition. Instead, it imposed an import duty to compensate British authors. Printers within the British colony, however, were still prohibited from making unauthorized reprints, effectively delivering the colonial market over to American publishers.

Shortly after Confederation in 1867, when the British North America Act conferred exclusive jurisdiction over copyright to the federal government, the new Dominion government of Sir John A. Macdonald tried to address this anomalous situation with the passage of its own copyright act. Analysis of the attempt and failure of the Canadian Copyright Act of 1875 forms the core of MacLaren's book. He illustrates its sorry practical effect in the story of the Belford Brothers, who, launching a vigorous reprinting business in reliance on an honest belief that the 1875 Act said what it was originally meant to say, folded their tents and left for the States when the Ontario Court of Appeal in *Smiles v. Belford*, held that imperial copyright continued in Canada, co-existing with Canadian copyright, and found against them.

The lasting effect of this was a Canadian market where multiple foreign editions competed, and which domestic publishers could not control. By this time the commercial practice on the part of London publishers was to cede the Canadian market to American publishers. Until 1886, to secure imperial copyright, authors needed to publish in London; until 1962, to secure American copyright, authors needed to publish simultaneously in the U.S. The only place where it was to no particular avail to publish, if you wished to sell into Canada, was Canada itself.

MacLaren shows us how Canadian publishers, negotiating the conflicting implications of these copyright regimes, seeking the most efficient means to protect their market, adapting closely to business realities in a legal environment imposed on them largely from without, were inexorably led to play the role of publisher-agent in their own country.

MacLaren emphasizes that “the inflexibility of imperial copyright stunted and impoverished Canadian publishing.” But fundamentally, the trouble was such inflexibility in the context of the “North American Copyright Divide” -- the intransigence of the United States, which refused to grant the protection of American copyright to foreign works. Canada was uniquely vulnerable to the American market. The copyright cards were stacked against a home-grown publishing industry in Canada until 1954 when the U.S. finally signed an international copyright treaty, the Uniform Copyright Convention. This, when signed by Canada in 1962, for the first time gave books published in Canada a reciprocal copyright protection in the U.S.

The 1960s brought a flowering of Canadian literature supported by a Canadian publishing industry that was finally able to leave the agency model behind. Eli MacLaren’s excellent study will fascinate anybody who wants to understand what took us so long.