HOWLING AT HARPER

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In November 2006, the federal Executive moved to amend the processes—one cannot properly say rules that govern—associated with the exercise of its judicial appointment power. The then-standing process was, subsequent tinkering aside, the process installed by the Mulroney government in 1988. Under that scheme, persons seeking appointment to provincial or territorial Superior Courts or to the Federal Court were—and still are—required to submit applications to the Federal Office of Judicial Affairs, which then directs the applications to the Judicial Advisory Committee (JAC) in place in the jurisdiction, provincial or territorial, from which the applicant submitted.

There are presently twelve JACs across the country. Until the recent initiative, each was composed of seven members appointed by the federal Minister of Justice for three-year terms using the following calculus: one member was nominated by the provincial or territorial law society and another by the provincial or territorial branch of the Canadian Bar Association; a Superior Court judge was nominated by the provincial Chief Justice or territorial Senior Judge; a person (generally a non-lawyer) was nominated by the provincial Attorney-General or territorial Minister of Justice; and two non-lawyers and a lawyer—together termed "members at large"—were nominated by the federal Minister of Justice. Then as now, JACs are forbidden to act on their own to search for applicants and to interview or otherwise communicate with applicants. Instead they remain confined to *in camera* discussions of applicant merit assessed in light of three factors: the characteristics declared desirable by the Executive through the Office of Judicial Affairs; the formulaic dossiers required of applicants; and secret input from persons contacted, again formulaically, by the JAC. The outcome of this curious form of deliberation concerning appointment to public office was a recommendation in one of three directions to the Minister of Justice: a JAC could only utter that it was unable to recommend, that it was able to recommend, or that it was able to highly recommend an applicant for appointment. Then as now, the Minister is not bound to select from among the pool of recommended applicants; then as now, the Minister remains free to appoint whomever he or she wishes on whatever grounds he or she thinks proper or useful.

The Harper government's is an amendment in five parts. First, it has added a fourth member at large, namely, a nominee of the law enforcement community, and thereby has increased JAC membership to eight from seven. Second, it has

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eliminated the "highly recommend" alternative from among the utterances allowed to the JACs. Third, it has named judicial representatives as *ex officio* chairs of their respective JACs and removed from them the authority to vote on applications except when necessary to break a tie. Fourth, it has staggered the terms of appointment of JAC members. Fifth, as a pilot-project it has installed a new, five-member JAC to assess applications for appointment to the Tax Court of Canada.[1]

My concern in this comment is not the merit of these changes, since, in my view, the last two housekeeping measures possibly excepted, they are patently without merit. To be clear: they cure none of the constitutional diseases that afflicted the former regime; they are in consequence as fulsomely violative of the most basic norms of Rule of Law governance—namely, rule governance, transparency, and the separation of powers—as was the regime they amend; they too render the act of judicial appointment an act of Executive tyranny, of unbridled power plain and simple; and every bit as much as did the former protocol, they too taint root and limb the constitutional legitimacy and moral standing of the judicial branch.

I will not rehearse my arguments to these conclusions here.[2] I will but add that I think them entirely unavoidable. Any literate lawyer that sets his or her mind to the matter must, I believe, in good faith conclude that our system of appointing judges, including especially and most egregiously to the Supreme Court of Canada, is so offensive to the standards of transparency and divided authority required for limited and accountable government that it constitutes a continuing constitutional embarrassment.

What I wish instead briefly to explore is the public reaction of the legal community—judges especially but practising and academic lawyers as well—to the Harper government's initiative in this matter. My comments will not however be directed, at least not primarily, towards the substance of the reaction. Indeed, inasmuch as judges and academic and practising lawyers have criticized the new regime in defense of the ideological and political purity of the old regime, the substance of their criticism is risible and more warrants ridicule than analysis. My target rather is the bare fact the criticisms were made at all. That is important, I want to suggest, because it discloses that the Canadian legal community is afflicted by a wide-ranging constitutional immaturity and insolence, which arises from and expresses a deep and deadening cultural narcosis among a great many judges and lawyers. And those matters are in turn important because they compromise the community's status as steward of our constitutional tradition and patrimony and, with that, its performance of the obligations it owes the public, to whom and for whom it is responsible.

I shall attend first to the immaturity and insolence. Foremost here are our

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[1] The whole, unholy mess is available online: Office of the Commissioner for Federal Judicial Affairs <www.fja.gc.ca>.

[2] For which, see F.C. DeCoste, "Political Corruption, Judicial Selection, and the Rule of Law" (2000) 38 Alta. L. Rev. 654.

judges. The Canadian Judicial Council (CJC) was fast and first off the critical mark. After having been informed by then Minister of Justice and Attorney-General Vic Toews of the Executive's intention, the CJC, a creature of the federal *Judges Act* and chaired by Chief Justice McLachlin, issued a media release the day prior to Toews' first public pronouncement on the matter, calling upon the government to refrain from implementing the changes and instead "to initiate an immediate process of consultation on the proposed changes with the judiciary, Canadian Bar Association, the law societies and other interested parties."[3] This was necessary, the CJC declared, both "to protect the interests of all Canadians in an independent advisory process for judicial appointments" and in order to comport with "a well-established convention followed by all previous governments [all, save one of which, it must be noted, were Liberal Party governments] since the inception of the committees."[4] When on 10 November 2006 Toews issued a media release announcing the changes and the Executive's intention to move forward with them, the CJC held its tongue until late February 2007.[5] It then came forth with a four-page media release that both condemned the Executive's action and put at issue, if indeed it did not threaten, the judiciary's continued participation in the JACs.[6]

The CJC's release offers a civics lesson on the structure of the state (which lesson emphasizes the importance of the judicial branch and its independence) and a prescription on the Executive's exercise of its appointment power ("[t]hat responsibility," the CJC intones, "must be exercised with due regard to the responsibilities and authority of the other two branches of government".)[7] However, the nuts and bolts reside in equal measure in the CJC's accusations against and its threat towards the Executive, neither of which is more than barely concealed. "[T]o eliminate the distinction between "recommended" and "highly recommend"", the CJC first asserts, "raises questions about whether the most qualified individuals will continue to be identified".[8] Warming to the task, the CJC next asserts that adding the law enforcement member and eliminating the voting authority of the judicial representative together compromise the supposed independence of the JACs: "the advisory committees may neither be, nor seen to be, fully independent of the government" and "[t]his puts in peril the concept of an independent body that advises

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[3] R.S.C. 1985, c. J-1; Canadian Judicial Council, News Release, "Canadian Judicial Council calls on government to consult on proposed changes" (9 November 2006), online: CJC <http://www.cjc-ccm.gc.ca/english/news.asp? selMenu=1061109>.

[4] *Ibid.*

[5] Department of Justice Canada, Press Release, "Minister Toews pleased to announce changes to Judicial Advisory Committees" (10 November 2006), online: <http://www.justice.gc.ca/en/news/nr/2006/doc_31932.html>.

[6] Canadian Judicial Council, News Release, "Judicial Appointments: Perspective from the Canadian Judicial Council" (20 February 2007), online: <http://www.cjc-ccm.gc.ca/english/news.asp?selMenu=1070220> [CJC].

[7] *Ibid.*

[8] *Ibid.*

the government on who is best qualified to be a judge."[9] Fully warmed, the CJC then gets to the core of its complaint against the Harper Executive, whom it thinks is letting loose the dogs of ideology and politics on the prey of a heretofore ideologically neutral and politically pure judicial selection process. "The fundamental importance of appointing only the most meritorious candidates, *irrespective of political or ideological conviction*, should," the CJC hectors, "guide all three branches of government in working together to serve the interests of all Canadians."[10] The CJC puts force behind its dissent by raising the specter of judges' abandoning participation in the selection process. This it does with *faux* cleverness: "[t]he Canadian Judicial Council accepts, despite these changes to the Advisory Committees, that judges can continue to participate in the deliberations of the Advisory Committees, but only if the principle of judicial independence is respected and judicial candidates are recommended strictly on the basis of merit."[11] So there it is: the ideological and political inclinations of the Harper Executive are so much a threat to judicial independence and to meritorious judicial selection, that it falls to judges to put the Executive on notice.

The CJC release made quite a splash in the popular press and in the Commons where it was cited chapter and verse by Her Majesty's Loyal Opposition in numerous question periods, and it moved other judicial worthies—to name but two, former Chief Justice Lamer and Chief Justice Wachowich of the Alberta Queen's Bench—to join the media fray.[12] The whole spectacle however proceeded in the pall of one very fundamental question: whence comes the CJC's authority to hector the Executive in this fashion and, in so doing, to embroil itself in rough and tumble of parliamentary politics and of editorial commentary and criticism?

The source of the Executive's authority to define and manage the process of appointing judges to the provincial Superior Courts and to the various Federal Courts is clear: the *Constitution*.[13] So also is the source of Her Majesty's Loyal Opposition's authority to criticize and oppose the Executive's conduct of its appointment power: again, the *Constitution* and more particularly its incorporation of the Westminster parliamentary tradition. Our judges, of course, carry no such constitutional brief, nor have they any such constitutional authority. No doubt, for just this reason, the CJC attempted to hang its adventure in this matter on the provisions of the *Judges Act*[14] to which it owes its existence. So must it have been

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[9] *Ibid.*

[10] *Ibid.* [emphasis added].

[11] *Ibid.*

[12] *House of Commons Debates*, No. 115 (21 February 2007) at 1415 (Hon. Stephane Dion) (Her Majesty's Loyal Opposition in question period); Janice Tibbetts, "PM shouldn't try to 'influence' judiciary: ex-chief justice" *The Vancouver Sun* (19 February 2007) A1 (former Chief Justice Lamer); Charles Rusnell, "Scales of justice 'out of alignment': Alberta's chief justice questions Harper gov't's new structure for judge selection panel" *Edmonton Journal* (2 March 2007) A3 (Alberta Chief Justice Wachowich).

[13] *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 [*Constitution*].

[14] *Supra*, note 3 at ss. 59-60.

moved to make the following justificatory declaration: "[u]nder the federal *Judges Act*, the Canadian Judicial Council has a mandate to promote efficiency and uniformity, and to improve the quality of judicial service, in the country's superior courts. The Council will continue to work to sustain public confidence in the independence and impartiality of Canada's judges."[15] Alas, even the most vilely cynical construction of ss. 59 and 60 of the *Act* fails as a constitutional amendment that would found and defend the conduct of the CJC in this matter. Simply, as statutorily conceived and constructed, the CJC's brief is judicial education and discipline, full stop. That brief does not include, as the Council here pretends, sustaining "public confidence in the independence and impartiality of Canada's judges", but even if it did, such permission would, and could, not include authority to challenge the constitutionally arranged, separated, and divided responsibilities of the federal state.

So, the CJC has no authority to speak in the way it has on the matter it has. Just the contrary. We pay judges their handsome salaries to speak and apply the law on our behalf and at our behest. When they are not rendering that service, under our legal tradition, judges, a single caveat aside, should simply remain silent.[16] What they must never do is what the CJC has done in their name here: insolently stick their noses in a matter beyond their constitutional brief and in a fashion that debases and defames the public office they hold.

The response of the practising branch, happily, did not come from the law societies, none of which appears to have a practice of issuing media releases on the political controversies of the day. It did come, unsurprisingly, from the Canadian Bar Association (CBA) which, like our judiciary, does follow such a practice.[17] And the CBA did not here disappoint.[18] The CBA protests "[m]andating a representative of a particular special interest group", here the police, not only because it "could lead reasonable people to conclude that candidates are being assessed on criteria related to that group's interests rather than solely on merit", but also because it evinces a "specific intent of diluting the number of lawyers".[19] This dilution, along with the

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[15] CJC, *supra* note 6 (in the first sentence, the CJC is citing s. 60; the second sentence is its invention).

[16] The Anglo-American legal tradition has always permitted judges the latitude to speak, beyond their chambers and their judgments, in platitudes to the community–the legal community especially. This permission accounts for the rich literature of occasional speeches and addresses delivered to the bar and at law schools by distinguished judges.

[17] Last August, for instance, the Association was moved to issue a release instructing the federal Executive in the Omar Khadr matter. Canadian Bar Association, News Release, "CBA calls for Omar Khadr to be released from Guantanamo Bay and turned over to Canada" (12 August 2007), online: CBA <http://www.cba.org/CBA/News/2007_Releases/2007-08-12_omar.aspx>.

[18] Canadian Bar Association, News Release, "CBA Says Recent Changes to the Judicial Appointment Process Must Be Reversed" (20 March 2007) online: CBA <http://www.cba.org/CBA/News/2007_Releases/2007-03-20_judicial.aspx> [Release]; Letter from J. Parker MacCarthy, Q.C., Office of the President, Canadian Bar Association to Art Hanger, M.P., Chair, Standing Committee on Justice and Human Rights (15 March 2007) online: CBA < http://www.cba.org/CBA/submissions/pdf/07-14-eng.pdf > [Submission].

[19] Submission, *ibid.* at 4.

dilution of judicial impact wrought by the non-voting change, signals, in the CBA's view, "a sea-change" that "gives the appearance of attempting to stack the deck in the Minister's favour, thus politicizing the advisory process and creating greater opportunity for patronage appointments."[20] Which is of course to claim that, despite "the importance of having members of the community involved in the JACs," judges and lawyers must anchor the judgments of JACs because they alone do not represent special interests and are, instead, seized of "knowledge of the pool of candidates from whom judges must be chosen, rather than a bias about the views they should bring to the Bench" and of "an important perspective on the qualities required of judges, and the needs of the courts."[21] As did the CJC in its release, the CBA culminates its critique with accusation: "[t]his new policy could lead to the conclusion that candidates are being assessed on the basis of ideology rather than solely on merit."[22]

Whatever may be said about the special interest status of lawyers and judges more generally (and certainly under the CBA's definition—"any specific community that could be perceived as having preconceived opinions about judicial appointments"—each would qualify), the CBA is itself clearly a special interest group.[23] It neither does, nor can it possibly do, what under our tradition it falls to lawyers corporately to do, namely, to maintain the integrity and independence of the practising branch in the public interest by faithfully attending to the standards of competence and conduct on which both depend. Those tasks, each of them critical to limited government, are of course performed by lawyers through their self-governing societies. That the CBA has no hand in either of them makes of it a fraternal organization that pursues the interests of its members, and surely chief among those interests is maintenance of the social status and influence of lawyers. That the CBA makes so much of the bias of special interest groups carries with it then a certain, though lamentably naive, irony.

Like judges, lawyers too are denizens of a dependent, other-regarding community. The tasks that are properly theirs—advice and advocacy—do not arise unless and until a member of the public calls for their performance. In the absence of that individuated call for service, lawyers must either sit quiet or else devote themselves to the aforementioned collective tasks of their community. What they must never do is arrogate to themselves purposes and tasks that under our system of law are assigned in the public interest to other institutional parties. The purposes and tasks of politics are different from the purposes and tasks of the legal community and, because they are, they are preserved for parties separate and distinct from the legal community. That (some) lawyers have combined in the CBA to serve their self-interest may or may not be proper. Whatever one's judgment in that regard, self-interest can never properly trump the constitutional division—so critical to the

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[20] *Ibid.*

[21] *Ibid.*

[22] Release, *supra* note 18.

[23] Submission, *supra* note 18 at 4.

interests of those whom lawyers exist to serve—between law and politics. In its conduct in this matter, the CBA has violated that commandment. That it has done so whilst parading itself as a body beyond self-interest renders its sin, in my view, mortal, indeed repugnantly so.

Though the legal academy did not on this occasion reach the fervid ideological heights it twice previously scaled in its interventions on the same-sex marriage issue, it nonetheless managed through the offices of the Canadian Association of Law Teachers (CALT) to meddle however meagerly in the appointments matter (as notably it also intervened, in October 2006, in the federal Executive's decision to cancel the Court Challenges Program and the Law Commission of Canada).[24] I say meagerly because in this instance CALT could but muster a single sentence. "If implemented," it warns in a 29 November 2006 Media Advisory, "the recently announced reforms to the federal appointment process, and the involvement of law enforcement representatives in particular, could undermine the perception of fairness and impartiality in the administration of justice."[25] Other than that, the Advisory reiterates the conclusions of a CALT Panel on Supreme Court appointments that was itself released in October 2005 (and whose "constitutional experts" called for "an independent and depoliticized appointment process", which objective in the Panel's opinion would require, *inter alia*, remitting the matter to an independent commission for Supreme Court of Canada appointments, prohibiting confirmation proceedings, and requiring the Court be composed of not fewer than four women and one justice from an Aboriginal background).[26] But no matter: CALT is clearly at one with the CJC and the CBA in the matter, and the same question of propriety arises with respect to its intervention as arose regarding theirs.

Academic lawyers are a funny species. Part lawyer and part academic, one foot in the university and the other in the profession, the academic lawyer is said to be suffering from "a profound crisis of identity."[27] If that is indeed the case, the crisis is

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[24] On the same sex marriage issue, I refer to the open letters to Stephen Harper when he held the office of Leader of Her Majesty's Loyal Opposition, each of which was signed by over one hundred and thirty law professors. Letter from Martha Jackman *et al.*, "Open Letter to The Hon. Stephen Harper from Law Professors Regarding Re-Opening Same-Sex Marriage" (25 January 2007), online: Equal Marriage for Same-Sex Couples <http://www.samesexmarriage.ca/advocacy/pino250105.htm> and Letter from Martha Jackman *et al.*, "Open Letter to The Hon. Stephen Harper from Law Professors Regarding Re-Opening Same-Sex Marriage" (16 January 2006), online: Egale Canada <http://www.egale.ca/index.asp?lang=E&item=1273>; Canadian Association of Law Teachers, Press Release, "CALT dismayed by cuts to Court Challenges Program and the Law Commission of Canada" (October 2006), online: CALT <http://www.acpd-calt.org/english/docs/pressrelease_0610_cuts_en.doc>.

[25] Canadian Association of Law Teachers, Press Release, "Canadian Association of Law Teachers Reiterates its Position Concerning Reforms to Federal Judicial Appointments and Criticizes Reforms Recently Envisaged by the Federal Minister of Justice" (29 November 2006), online: CALT <http://www.acpd-calt.org/english/docs/pressrelease_0611_reforms.doc>.

[26] *Ibid.*; CALT, "Canadian Association of Law Teachers Panel on Supreme Court Appointments" *Canadian Association of Law Teachers* (June 2005), online: CALT <http://www.acpd-calt.org/english/docs/SupremeCourt_panel.pdf> (recommendations summarized at 31-32).

[27] Stephen M. Feldman, "The Transformation of An Academic Discipline: Law Professors in the Past and

entirely self-imposed. For in our legal tradition, the law school is a branch of the legal community, and the obligations of academic lawyers are constitutional by origin and professional in nature (and, despite the inclinations of many law professors, stubbornly so in both respects).[28] As are the Bench and the Bar, the law school is part and parcel of the constitutional architecture of the rule of law state. Peter Birks puts this admirably. "[L]aw schools", he claims, "are discharging a public and constitutional function" that makes of them "the guardians of the law in the interest of the public."[29] Academic lawyers make good their guardianship in their classrooms and through their scholarship. The point of law teaching is to indoctrinate future lawyers into the "idealism" of our legal tradition of ordered liberty and limited government.[30] And the central vocation of legal scholarship is independently to monitor "the behaviour of the state itself."[31] But neither brief is license. The teaching mission is cabined by the difference between indoctrination and propaganda, and the scholarly mission by its object.[32] Both prohibitions are important in the present context.

It falls to academic lawyers in their teaching to show our legal tradition in its best light. To do so, they are required critically to assess the law that is and was against the requirements of our tradition. In their scholarship it is theirs to hold the judicial and practising branches to account at the bar of the norms of our legal tradition. Now, neither task permits academic lawyers to contest their constitutional place, nor therefore to arrogate to themselves, under the cover of their peculiar institutional setting, the functions that our tradition awards to other institutional actors in the ancient drama of our law. CALT's Media Advisory, of course, does both. It is an act of rebellion against the institutional constraints of academic lawyering, and its rebellion resides in arrogating to itself the role of politically opposing the Executive, a function that our tradition visits on Parliament, the People, and the Press.

Our judges and practising and academic lawyers have then, each in their turn, chosen to act as extra-parliamentary opponents to the federal Executive. In so doing, each has rebelled against their proper constitutional place, recoiled from the constraints of their constitutional position, and refused the public the performance of their constitutional obligations. Now, of course, not every judge and lawyer has done so. Indeed, one suspects that any number of judges and practising lawyers may have been horrified by the constitutional liberties here taken, and one is heartened by the

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Future (or Toy Story Too)" (2004), 54 J. Legal Educ. 471.

[28] That is, despite the urge among many law professors to cut their ties to judges and lawyers in order to land themselves securely and fully in the university, the nature of the law school and of academic law will forever prevent the dream being fulfilled. See Jack M. Balkin & Sanford Levinson, "Law and the Humanities: An Uneasy Relationship" (2006), 18 Yale J. L. & Human. 155 at 173-182.

[29] Peter Birks, "Editor's Preface" in P.B.H. Birks, ed., *Pressing Problems in the Law, Volume 2: What Are Law Schools For?* (Oxford: Oxford University Press, 1996) v at viii.

[30] *Ibid.* at xiv.

[31] *Ibid.* at x.

[32] *Ibid.* at xiv.

refusal of the law societies to abandon their office by joining the political fray. But the importance of the CJC, the CBA, and the CALT presuming to act corporately in the name of all cannot be over-stated. Each has declared its community as a whole, not just politically opposed to the Executive, but freed as well from the constraints of our legal tradition, and with that, they have together obscured the distinction between law and politics on which the liberty of the people so very much depends. Good faith judges and lawyers will, in my view, be moved to confront this act of constitutional rebellion by asking how such an extraordinary course of events could possibly have come to pass. I shall conclude this comment by briefly discussing its genealogy, which, in my view, has two aspects, one socio-historical and the other cultural.

From a socio-historical perspective, what is at play in this matter (and all the other matters in which the rile of the legal community has been recently raised) is the maintenance of a monoculture that owes its existence to the peculiar circumstances of federal politics in Canada. For most of the past century, Canada has been ruled by the Liberal Party of Canada. For example, the Party was in government for 60 of the 80 years between 1920 and 2000. So far at least as the legal community is concerned, this unparalleled political hegemony has led to ideological and political conformity. Most of our judges, past and present, were appointed by Liberal Executives, and most lawyers, practising and academic alike, entered and pursued the profession under the laws and policies of Liberal governments. Liberal Party orthodoxy in the result became the political orthodoxy of the legal community. Consider for instance the conduct of the judicial branch since the appearance of the *Charter*.[33] The post-*Charter* judiciary has ever more confidently taken upon itself the task of expanding the reach of state and law. The business of growing the state has involved two moves: the re-conceptualization of the *Constitution*—the *Charter* especially—from a limitation on state power to the repository of Canadian values; and, with that, the conjuring up of constitutional permission to colonize the institutions of public and private life by making them comport with state values. The Liberal Party is the barely acknowledged director of this course of judicial imperialism. It not only appointed most of the judges, but it also conceived and presented itself as the owner of the *Charter* and therefore as the proper custodian of Canadian values. Most of our judges share the Liberal Party's view of the *Constitution* and they recoil, as here, from anything that in their view would diminish the progress of imprinting that understanding of the *Constitution* on political and social life. This unhealthy symmetry between party politics and judicial orthodoxy is, by force of political history, also reflected in the ruling orthodoxies of the legal academy and the profession: like our judges, academic and practising lawyers—at least as they are presented and represented by the CBA and CALT—see Liberal Party values as legal values that are properly and necessarily theirs to defend.

Though it may very well be an associate of this history, the second aspect involves matters perhaps more troubling still. Central to our legal tradition is the acknowledgement of the law's sovereignty. So far again as the legal community is

[33] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

concerned, this acknowledgement resides in recognizing that the offices of judge and lawyer are embedded in law and that they are therefore defined as much by what they forbid as by what they permit. Law schools, the organized bar, and the judiciary have over the wealth of time served as custodians of this culture of permission and limitation. It seems now, however, that each has to some significant measure abandoned its stewardship. Too many of our judges appear to opine at their whimsy beyond parties and causes on whatever matters catch their fancy. And too many of our lawyers, academic and practising, think of themselves as political partisans and of the law as an endlessly elastic instrument of politics. According to some, the culture of our law—and the accomplishments of limited government and ordered liberty that it alone sustains—is in danger of collapse, if indeed it is not already incurably broken.[34] Whatever turns out to be the case in those grander regards, it is beyond dispute that lawyers and judges engage in activities that have not before been countenanced. It is also, in my view, beyond dispute that judges and lawyers pursue those once forbidden paths because they appear entirely unaware of their moral and legal significance or of the destination they beckon.

The legal community finds itself in a state of cultural and ethical narcosis. As this present matter attests, its members appear not to understand whence their offices came or what their offices require them to be and do. And the lesson, both here and as regards the other novelties of contemporary judicial and professional practice, is plain: the legal community must rouse itself from its cultural stupor and reconnect with its ancient and noble tradition of public service under and through law.

[34] See e.g. Brian Tamanaha's searching account of the decline of American legal culture in Brian Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2006); Harold Berman's is the most important voice in this respect. For an introduction to Berman's canon in this and other respects, see Harold J. Berman, "Religious Foundations of Law in the West: An Historical Perspective" (1983) 1 J. L. & Religion 3.