FALLEN TORTES & VICARS

Ian Hunter on Canada's Legal & Clerical Trials

There are ancient links between priest and lawyer, going back to the earliest development of the universities, when divinity and law were pinnacles of "science," of *scientia* or knowledge. But today, lawyers are widely, and often deservedly, regarded as hired guns, shills for whatever purse can afford their services, while, by and large, clerics are utterly disregarded.

I wish to cast professional courtesy to the wind, and to say, as frankly as Jeremiah, what I think is the state of the law and the clergy, sketching my thesis only in broad brushstrokes.

Collapsing Pillars

The legal profession rests on three pillars, each of which is, I believe, in danger of collapse: the practicing bar, the law schools, and the judiciary.

First, the practicing bar. When I graduated from law school, the practice of law was regarded, at least by lawyers, as an honorable profession, not a business. A lawyer

was obliged to exert his best effort on his client's behalf, true enough; but he was also an officer of the court and, as such, constrained in what he could say or do. When did you last hear a lawyer called "an officer of the court"? A lawyer was then also required to be a champion of what were called—and today it sounds quaint —"the rules of natural justice."

And where, pray, did the rules of natural justice come from? Why, from natural law, of course. True, natural law was not a formal part of the law-school curriculum, but the idea of natural law still held a place in our jurisprudence. Today, no law student ever hears of natural law, except perhaps as one of the superstitions of antiquity from which we have happily been liberated; indeed, only the fusty greybeards on the faculty have heard of natural law.

Mary Ann Glendon, in her incisive book *A Nation Under Lawyers,* quoted hard-headed -American legal realist Karl Llewellyn telling a 1960 University of Chicago graduating law class: "[You] must never lose sight of the fact that you are an officer of the court with special responsibility for the integrity of the legal system . . . your conscience, your God, your family, your partners, [and] your country." Today, a speaker who uttered such words would be hooted from the stage.

Incidentally, Llewellyn concluded that same address by telling students that, at the end of their careers, the words they should most fear hearing are: " *Mene, Mene, Tekel, Upharsin,*" the words that Daniel translated for King Nebuchadnezzar, informing the king that he had been weighed in the balance and found wanting. "When you die," he concluded, "will you have left the law better or worse than you found it?" Anyone saying that to today's graduating class would not only be speaking over their heads but would be accused of buffoonery.

Except on ceremonial occasions, the Canadian legal profession no longer pays even lip service to such ideals. Why is that? What has caused the change? Many things, I think, have contributed.

The loss of articling, where a student is mentored by a senior professional, is one; although a form of articling continues to exist, it is shadow without substance. Law firms now openly call themselves "businesses," and in business the bottom line governs. Firms now have a Managing Partner responsible for the business. The concept of "billable hours" has trumped many old ideas, including mentorship.

But there are other reasons for the decline of the legal profession: When I graduated, lawyers were prohibited from advertising. Today some law firms not only chase ambulances, they boast about it on television. When I graduated, a lawyer could be disbarred for stirring up litigation; it was called "champerty." Today, the contingency fee, by which a successful litigator claims a portion of the spoils,

underpins all class-action lawsuits.

When I graduated, the great names of the profession were generalists who could be briefed by either side on any legal issue; today three developments—-specialization, computers, and billable hours—have rendered the generalist obsolete and made it nearly impossible for a lawyer to be much more than a technician.

Diverting Faculties

Well, then, what of the second pillar, the law schools? What are they doing to recapture professional ideals? Here I speak with some authority, having spent more than a quarter-century teaching in law schools.

Perhaps the best way to convey what the law schools have become is to repeat what I hear when I reminisce with former colleagues who are still teaching. I find that most are cynical and dispirited.

How could it be otherwise? They have watched the university sell its intellectual birthright for a mess of pottage, government and corporate. They have watched, and participated in, rampant grade inflation and the almost total abandonment of academic standards. Writing under the title “The Professor’s Lament” in *Commentary,* Carol Iannone wrote of “grade inflation of Weimar-like proportions.” The essential function of the professor in the modern university, she asserted, is no longer to educate, but “to divert, entertain and interest.”

When I enrolled at the University of Toronto Faculty of Law in 1966, the dean assembled the first-year class and said: “Look to your left. Now look to your right. One of you will not be here after Christmas.” And so it was. In my last five years of law teaching, not a single student failed. It was not that students had so much improved; it was that faculty standards had so far declined.

Thinking back, I recall a faculty meeting where a colleague explained to me why he had never failed a student. He had “a principled objection,” he said, to thus stigmatizing anyone. I asked him what he would do if a student wrote nothing at all on a final examination paper? “That would pose a difficult issue for me,” he replied. “Fortunately, I have not had to deal with that.”

I recall, too, another former colleague, widely honored for her feminist scholarship, who gave students grades if they participated in a carwash to raise money for the battered women’s advocacy center. I brought this matter, which in my naiveté seemed an affront to the university’s integrity, to the attention of my dean and the university senate, but nothing was done.

My former colleagues have watched two decades of affirmative-action hiring, where

merit is secondary to an applicant's race, sex, and now sexual proclivity. No academic institution can pursue a deliberate policy of hiring mediocrity and expect to build a meritocracy. Two decades of affirmative action have reduced Canadian universities to intellectual backwaters.

Kingly Judges

What about the third pillar of the Canadian legal profession, the judiciary? The Canadian bench is adorned by some excellent judges, judges characterized by detachment, independence of mind, and a cultivated ability to examine all sides of a question and then to render reasoned decisions. But the bench also has judges, including at least one recent appointee to the Supreme Court of Canada, whose careers have been marked by ideological advocacy, not by judicial dispassion.

Still, the problem with the judiciary is less the caliber of judges, more the role that the Charter of Rights has thrust upon them, albeit a role that many judges have accepted with foolish alacrity. The Charter has made our judges into Plato's philosopher-kings, supra-legislators willing to pronounce upon political questions—must a province pay for sign-language interpreters in hospitals?—and moral questions—can homosexuals marry? Indeed, every question, however tenuous its connection to law, is now adjudicable.

In the name of the Charter, our philosopher-kings now ride roughshod over legislation enacted by elected parliamentarians. When nine unelected judges, political appointees all, all drawn from the same profession, class, and social stratum, have a near-absolute power to dictate how we shall live, to decide questions of morals as well as law, then we no longer live in a democracy.

Many Canadians applaud the Charter and consider judicial supremacy an improvement over parliamentary supremacy, but I do not. I agree with Winston Churchill that democracy is the most cumbersome, inefficient, and maddening form of government, except for all the other alternatives.

In summary, then, I submit that the three pillars of Canadian law—the profession, the law schools, and the courts—have each been undermined.

Weakened Clergy

What, then, of the clergy? If I were to speak no less frankly about what I have observed of the contemporary clergyperson in a lifetime of churchgoing, I could be accused of defamation. But instead of running down a profession so weakened that some of its members seek strength not from God but from the Canadian Auto Workers Union (which they have asked to join), let me try instead to sound a

warning about four trends that I think confront all clergy.

The first challenge, which manifests itself in a myriad of different disguises, is the fundamental incompatibility between revealed religion and postmodern culture. It has often been said that Christians are "people of the book," and so we are. What Christians have to say to the world is very largely a given. As much as some would like to be more accommodating to modernity—to say, for example, that inclusive Christianity embraces homosexuality—it is not so. Moreover, it cannot be so. If it were so, whatever it was would not be Christianity.

This is the shoal upon which liberal Christianity has foundered. The United Church of Canada, for example, may be many good things, it may perform good deeds deserving of commendation, but it is not part of that historic Christian Church that constitutes the Body of Christ. To be part of that Church, one cannot repudiate Christian doctrine. And please no guff about the uncertainty of Christian doctrine: on some subjects, perhaps, but on homosexuality, no—at least not if one fairly

applies the objective test of *ubique, semper, omnibus,* what has everywhere and always been believed and taught by all Christians.

Apostasy in Canada originates not from the pew, seldom from the manse, but almost invariably from church headquarters, or from a house of bishops. This gives force to Jeremiah's scathing denunciation of religious leaders: "It is you—shepherds of my people—who have scattered my flock; it is you who have driven them away."

A second challenge: Canadian churches are about to face public (and, therefore, governmental) hostility about their privileged tax status. A harbinger of what is to come was the meeting at which Revenue Canada warned some denominations and churches to stay away from contentious issues like abortion during the last federal election. Even as recently as a decade ago, it would have been inconceivable that a government agency would dare to tell churches how they may and may not put their faith into action.

Third, it must surely by now be evident to all but the willfully blind that the strategy of some Christians to try to use the courts in an attempt to protect religious freedom is bankrupt. The Evangelical Fellowship of Canada has wandered into this particular cul-de-sac, albeit not alone. In fact, this always was a bankrupt strategy, because the Charter, by its nature, will always favor secular rights over religion.

Fourth, some time soon all denominations will have to come to grips with what Leon Podles calls "the feminization of Christianity," leading to churches largely empty of men. His book *The Church Impotent* exposed a problem that it is politically incorrect to discuss and that all denominations strive to ignore, but that is glaringly evident to

that dwindling band who still attend church.

“Modern churches are women’s clubs with a few male officers,” Podles wrote. In the pews of nearly every denomination and country of the Western world, women typically outnumber men five to one. The Bible, liturgies, and hymns have been rewritten to expunge male references, but the few men left in the pews do not protest. If not already, then soon, the Protestant clergy will become a female-dominated profession.

Unifying Issue

Is there a unifying feature of these four challenges? I believe there is. The unifying issue is the authority of Scripture.

The Protestant churches have come to a historic crossroads. There are two paths they can take: They can jettison the authority of Scripture as an affront to our egalitarian sensibilities; or they can reaffirm the ancient position that we do not judge Scripture; rather, Scripture judges us. On their choice of path rests their future.

Finally, a constructive suggestion. I submit that the most productive thing a church, or a para-church organization, could do is to arrange a conference at which - Christians from China, from Muslim countries, from former Eastern Bloc Communist countries would be brought to speak: Christians who have learned what it takes to survive under hostile regimes that persecute Christians. We have much to learn from them.

Do I say this because I believe that Canadian -Christians will face persecution? My answer to that question is simple: Those in denominations that trim their doctrine to the spirit of the age will never face persecution; and some Christians who refuse to bow the knee before Caesar face persecution already. Even as we pray to God that it will not come to this, it behooves clergy to consider that it might, indeed that Scripture warns that it will come to this, and to be prepared.

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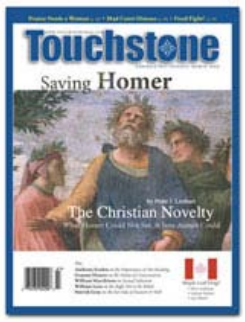

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