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**A chief justice's mutilation of 'natural law'**

**By Ted Byfield**

Beverley McLachlin, the little girl from Pincher Creek, Alberta, who grew up to be Canada's first female chief justice, cannot be described as a closet revolutionary. She is a revolutionary all right, but she conducts her revolution from the bench, the public podium and in the media. She is gutsy, outspoken, highly articulate, and one thing more. She is dead wrong, and in a candid interview with *Western Standard* magazine this month, she demonstrated exactly where and how.

After Canada adopted its Charter of Rights and Freedoms, like the American Bill of Rights, in 1982, its nine-member Supreme Court took it upon itself to act like a Parliament and make new laws. It boldly created a long list of liberal "rights," lowering the age of consent for sodomy, ordering Parliament to enact gay marriage, stripping away every last legal impediment to abortion, and conferring new entitlements on sundry designated "victims." But where her predecessors righteously denied they were usurping Parliament's role while doing just that, Chief Justice Beverley defiantly declared it was the court's fundamental obligation to make new laws.

As the implications began sinking into the densities of the Canadian political psyche, a rising public alarm doubtless persuaded her to accept the *Western Standard* interview and provide for the first time the philosophical rationale that underlies the revolution. The court is acting, she said, on "new natural law."

Now if she had said "on natural law," she would have positioned herself as a traditionalist. The concept of "natural law" goes back to the Greeks and is one of the philosophic underpinnings of the Christian religion. Its best modern exposition is in the introduction to C.S. Lewis's "Mere Christianity." The idea is that all people intuitively recognize certain rules of human conduct - things like keeping promises, playing fair, telling the truth, protecting the weak, putting the interests of the whole group above those of the individual, and Lewis cites a whole range of moral principles all appearing in unrelated societies and all astonishingly similar.

Legal traditionalists very much adopt this concept of "natural law," and they say that courts should be guided by it in their interpretations of written laws. Now, in her interview Chief Justice Beverley likewise invokes "natural law" and affords a competent description of it. "There exists," she notes, "fundamental norms of justice so basic that they form part of the structure of governance and must be upheld by the courts, whether or not they find expression in constitutional texts. ... It is the court's job to enforce those unwritten rules, regardless of what voters or the Charter actually express."

All well and good, except that she then goes on to describe "new natural law." In other words, while recognizing the body of the "natural law" as manifest in the ancient morality of almost all societies, the judges of the Canadian Supreme Court consider themselves somehow ordained to make renovations, additions, subtractions and improvements to it. Chief Justice Beverley sees this as part of the job description. But how can you sweepingly revamp something whose whole authority lies in its imperishability? Putting it another way, how can there possibly be such thing as "new" natural law? Insofar as it's "new," it ceases to be "natural."

She would argue, of course, that "natural law" has been under constant revision over the centuries. Slavery, for instance, once enjoyed almost universal assent. It no longer does. But

surely what abolished slavery was its inconsistency with natural law. It was simply “not fair,” not “just.” Moreover, technology rendered it uneconomic as well.

But Chief Justice Beverley and her court of revolutionaries have gone wildly beyond this. Buggery and sodomy are condemned by natural law, and her court has virtually hallowed them. Because certain people have these inclinations, they must be natural and right, the judges declare. Yet every human code requires curbs on the sexual appetites, recognizing that mere desire should not confer approbation. And to bestow rights without demanding corresponding responsibilities is utterly alien to natural law - yet her court has been lavishly endowing rights for 20 years on various favored groups with no suggestion whatever of corresponding responsibilities.

The fact is the Supreme Court of Canada has been diligently abolishing natural law and introducing untried, experimental law, a dangerous and irresponsible frivolity. For this, we will one day all suffer. Only then will we realize the mischief wrought by this renegade cabal of sociological dabblers, and history will assuredly denounce them.

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