

## The tyranny of lawyers

Canada needs a 'peasant revolt' against the Charter classes

BY JEFF WHITE

In 1381, the peasants were revolting - so much so that they attacked palaces, universities and other strongholds of the British ruling class. If their Canadian descendants were to try the same tactic today, they couldn't go wrong to head for the nearest law school.

After all, when the new aboriginal territory of Nunavut was created, it immediately began planning its own law school. The territory recently budgeted \$381,000 to launch the school in September, with a first class of 15. Now Nunavut can produce its own racially pure ruling class - even if its new lawyers couldn't have won admission to any other law school. Such as the one at the University of Toronto, scene of an ongoing scandal over falsified marks.

Those who enter the U of T law school's peeling portals know they have been chosen to rule Canada. After graduation, they won't merely interpret the law, as lawyers traditionally have done - they'll make it as well, using the Charter of Lawyers Rights conceived by one-time law professor Pierre Trudeau. They'll abolish old crimes and create new ones. They'll reprovably decide which privileges the serfs must concede to the superior "Charter Canadians."

That power grab is the real legal scandal. But the passing brouhaha at U of T serves to remind us these mighty gods are as human as the rest of us. Asked the rebel leader John Ball in 1381: "Are we, not all descended from the same parents, Adam and Eve?" Just as a day came when medieval serfs tired of tugging their forelocks at their masters, a day may come when we tire of cringing before the papal bulls emanating from the Supreme Court's brutalist palace on Wellington Street.

To date, the Canadian peasantry has been too

fearful to indulge in more than a few surreptitious acts of defiance. One came in 1999, when a surviving ancient privilege gave the rabble an opportunity to briefly outwit their oppressors. That year, the lawyers refused to tell a jury that an accused killer had been found with the victim's blood on his shirt and cigarettes by his bed. Their justification: a Charter section providing for the exclusion of evidence should its admission "bring the administration of justice into disrepute." (In fact, the exclusion brought the justice system into disrepute.) But the wise jurors found out about the lawyers' omission through the media and convicted the killer anyway.

Such victories are few and far between. As far as the lawyers are concerned, the Charter is a blank cheque. Its vague words have let them toss entire categories of murder out of the lawbooks and enter new crimes, such as refusing to hire homosexual teachers, that the Charter's framers deliberately excluded. Soon after the Charter's passage, the chief of staff to the chief justice of the Supreme Court crowed that it had already shifted many issues "from the political to the legal arena" and that "in the future, lawyers will have an opportunity" to do plenty more shifting. Exactly that has come to pass.

That hubris is quickly transmitted to law students, that lucky handful of Canadians selected for rule by the shadowy figures on law school admission committees. One law student explains condescendingly that her school, the University of British Columbia, uses "perspective courses" to "raise the consciousness of the students" about how the law can "serve as a mechanism for change."

That change is accomplished by concentrating not on the law, but on the parties. Lawyers now favour whichever one is from the privileged caste known as "Charter Canadians," instead of favouring the one backed by law and precedent. This "results-oriented ju-



Supreme Court judges past and present, from left, Beverley McLachlin, Peter Cory and Frank Iacobucci at Osgoode Hall Law school.

Judges and lawyers have too much influence on public policy, and Canadians should rise up, writes Jeff White.

risprudence" truly gives lawyers the unlimited power enjoyed by King Richard II in the days of the Peasants' Revolt.

If those particular results are all you care about, it hardly matters that power has been taken from democratic bodies. Trudeau himself explained that the Charter "guarantees the exercise of democratic choice by the electors. It is for them to elect governments that will [improve the] 'conditions of disadvantaged individuals and groups,' " as the Charter requires. It never occurred to him that many Canadians may not want to improve the conditions of whomever the courts should anoint as "disadvantaged," given that many such are wealthier than they are.

Nor did it occur to Trudeau that he had no right to make such a fundamental change in Canada's system of government without democratic approval. When I heard about his plans in 1981, I said to myself: "Just wait till I get a chance to vote on this." I'm still waiting. It's

small comfort that Brian Mulroney permitted me to vote "No" to the far less consequential Charlottetown constitutional accord of 1991.

Like *Star Trek's* Borg, the court's courtiers would have us believe that resistance is futile. Not so. If the non-lawyers in the House of Commons were to combine, they could rout the jurists. I'd suggest they ban lawyers from Parliament, due to conflict of interest, and then use the, override section of the Charter wholesale.

If college fails them, as well it might, the provinces could step into the breach. They could eliminate taxpayer funding for surplus law schools, or take the disciplining of incompetent lawyers out of the hands of their chummy colleagues. Such a body blow might force the legal class to sit down at the negotiating table with their subjects for the first time.

Not as violent a tactic as those seen in 1381, when the mob on the road to

London "destroyed all the houses of lawyers and courtiers," but equally effective in getting the attention of our lords and masters.

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