

Is US Attorney General Barr Showing Wrongful and Undue Deference to Roberts?

US Attorney General William P. Barr's (Barr) 2019 speeches at the Federalist Society and Notre Dame University's Law School categorized a litany of deliberate lawbreaking by federal judges [Note 1].

Barr identify that the federal judges are the "prime source of the erosion of separation-of-power principles generally, and Executive Branch authority specifically. I am speaking of the Judicial Branch. In recent years the Judiciary has been steadily encroaching on Executive responsibilities in a way that has substantially undercut the functioning of the Presidency." [Note 2]

Barr explained how the federal judges are wrongfully justifying their lawbreaking by claiming that they are entitled to use the coercive power of the state to "*remake a man.*" He has demonstrated federal judicial misconduct is responsible for the "*grim*" consequences that include the wreckage of the family, record levels of depression and mental illness, dispirited young people, soaring suicide rates, increasing numbers of angry and alienated young males, an increase in senseless violence, and a deadly drug epidemic. [Note 3 and 4]. Barr remarked that these federal judges are willing to ignore propriety and violate laws and legal standards and practices that protect truth and fairness to achieve their leftist goals.

Barr remarked that "the process of secularization has accelerated," that REFRA has come under assault, and the idea of religious accommodation has fallen out of favor. Barr remarked that, "*as lawyers, we should be particularly active in the struggle that is being waged against religion on the legal plane. We must be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith. I can assure you that, as long as I am Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished of our liberties: the freedom to live according to our faith.*"

"Because this Administration firmly supports accommodation of religion, the battleground has shifted to the states. Some state governments are now attempting to compel religious individuals and entities to subscribe to practices, or to espouse viewpoints, that are incompatible with their religion. Ground zero for these attacks on religion are the schools. To me, this is the most serious challenge to religious liberty. For anyone who has a religious faith, by far the most important part of exercising that faith is the teaching of that religion to our children. **The passing on of the faith. There is no greater gift we can give our children and no greater expression of love.** For the government to interfere in that process is a **monstrous invasion** of religious liberty."

"I will not dwell on all the bitter results of the new secular age. Suffice it to say that the campaign to destroy the traditional moral order has brought with it immense suffering, wreckage, and misery. And yet, the forces of secularism, ignoring these tragic results, press on with even greater militancy."

Barr remarked on large city “[d]istrict Attorneys that style themselves as ‘social justice reformers,’ [Note 5] and on the “*use of the criminal law process as a political weapon.*”¹

You have remarked that “*so-called progressives [who] treat politics as their religion*” and how federal judicial misconduct leads to government with “*no liberty, just tyranny*” [Note 6]. You have remarked that these so-called progressives claim to be on a “holy mission” and justify themselves by claiming they are “*virtuous people pursuing a deific end*” [Note 7] who use the law as a “*battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy*” and who “*take a delight in compelling people to violate their conscience.*” [Note 8] You have remarked that “*restraints could not be handed down from above by philosopher kings. Instead, social order must flow up from the people themselves—freely obeying the dictates of inwardly possessed and commonly shared moral values. And to control willful human beings, with an infinite capacity to rationalize, those moral values must rest on authority independent of men’s will—they must flow from a transcendent Supreme Being . . . free government was only suitable and sustainable for a religious people—a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles*” [Note 9]. [Note 10].

apply only to executive action. Attempts by courts to act like amateur psychiatrists attempting to discern an Executive official’s “real motive” — often after ordering invasive discovery into the Executive Branch’s privileged decision-making process — have no more foundation in the law than a subpoena to a court to try to determine a judge’s real motive for issuing its decision. And courts’ indulgence of such claims, even if they are ultimately rejected, represents a serious intrusion on the President’s constitutional prerogatives.”

The impact of these judicial intrusions on Executive responsibility have been hugely magnified by another judicial innovation – the nationwide injunction. First used in 1963, and sparsely since then until recently, these court orders enjoin enforcement of a policy not just against the parties to a case, but against everyone. Since President Trump took office, district courts have issued over 40 nationwide injunctions against the government. By comparison, during President Obama’s first two years, district courts issued a total of two nationwide injunctions against the government. Both were vacated by the Ninth Circuit.

Former US Attorney General Jefferson B. Sessions remarked that “Judicial activism is . . . a threat to our representative government and the liberty it secures.” [Note 11]

1. Remarks in video interview at the Wall Street Journal’s Chief Executive Officer Council on December 10, 2019.

1. In late 2019, in two speeches, the Hon. Attorney General for the US William Pelham Barr committed resources to keep an eye out for cases in two areas. One is to protect religious liberties. Two is to protect the Constitution and rule law from “leftist ... militant secularists ... so-called progressive” federal judicial that “seem to take a delight in compelling people to violate their conscience [or acquiesce] . . . [that] eliminate laws that reflect traditional moral norms.

One of the speeches was presented at University of Notre Dame Law School and its Nicola Center for Ethics and Culture. The other was presented in honor of 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention. The excerpts in endnotes from a transcript of Attorney General William P. Barr's “**Notre Dame 2019**” speech posted on the Department of Justice's website under the title of “Attorney General William P. Barr Delivers Remarks to the Law School and the de Nicola Center for Ethics and Culture at the University of Notre Dame, South Bend, IN Friday, October 11, 2019” and from a transcript of Attorney General William P. Barr's “**Federalist Society 2019**” speech posted on the Department of Justice's website under the title of “Attorney General William P. Barr Delivers the 19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society's 2019 National Lawyers Convention Washington, DC Friday, November 15, 2019.”

In the Notre Dame speech, “The Attorney General committed to “set up a task force within the Department with different components that have equities in these areas, including the Solicitor General's Office, the Civil Division, the Office of Legal Counsel, and other offices; be involved in regular meetings on these matters, to keep an eye out for cases or events around the country that discriminate against people of faith, or impinge upon the free exercise of religion, and to be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith.” He gave an assurance you that “as long as he is Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished liberties: the freedom to live according to our faith.”

Notre Dame 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-law-school-and-de-nicola-center-ethics>

Federalist Society 2019. <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture>

2. Federalist Society 2019. “In any age, the *so-called progressives treat politics as their religion*. Their holy mission is to *use the coercive power of the State to remake man and society in their own image*, according to an abstract ideal of perfection. Whatever means they use are therefore justified because, by definition, they are a virtuous people pursuing a deific end. They are willing to use any means necessary to gain momentary advantage in achieving their end, regardless of collateral consequences and the systemic implications. They never ask whether the actions they take could be justified as a general rule of conduct, equally applicable to all sides.

Conservatives, on the other hand, do not seek an earthly paradise. We are interested in preserving over the long run the proper balance of freedom and order necessary for healthy

development of natural civil society and individual human flourishing. This means that we naturally test the propriety and wisdom of action under a “rule of law” standard. The essence of this standard is to ask what the overall impact on society over the long run if the action we are taking, or principle we are applying, in a given circumstance was universalized – that is, would it be good for society over the long haul if this was done in all like circumstances?

For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media.”

3. Federalist Society 2019. “In other words, religion helps frame moral culture within society that instills and reinforces moral discipline. I think we all recognize that over the past 50 years religion has been under increasing attack. On the one hand, we have seen the steady erosion of our traditional Judeo-Christian moral system and a comprehensive effort to drive it from the public square. On the other hand, we see the growing ascendancy of secularism and the doctrine of moral relativism. By any honest assessment, the consequences of this moral upheaval have been grim. Virtually every measure of social pathology continues to gain ground. In 1965, the illegitimacy rate was eight percent. In 1992, when I was last Attorney General, it was 25 percent. Today it is over 40 percent. In many of our large urban areas, it is around 70 percent. Along with the wreckage of the family, we are seeing record levels of depression and mental illness, dispirited young people, soaring suicide rates, increasing numbers of angry and alienated young males, an increase in senseless violence, and a deadly drug epidemic. As you all know, over 70,000 people die a year from drug overdoses. That is more casualties in a year than we experienced during the entire Vietnam War. I will not dwell on all the bitter results of the new secular age. Suffice it to say that the campaign to destroy the traditional moral order has brought with it immense suffering, wreckage, and misery. And yet, the forces of secularism, ignoring these tragic results, press on with even greater militancy. Among these militant secularists are many so-called “progressives.” But where is the progress? We are told we are living in a post-Christian era. But what has replaced the Judeo-Christian moral system? What is it that can fill the spiritual void in the hearts of the individual person? And what is a system of values that can sustain human social life? The fact is that no secular creed has emerged capable of performing the role of religion. Scholarship suggests that religion has been integral to the development and thriving of *Homo sapiens* since we emerged roughly 50,000 years ago. It is just for the past few hundred years we have experimented in living without religion. We hear much today about our humane values. But, in the final analysis, what undergirds these values? What commands our adherence to them? What we call “values” today are really nothing more than mere sentimentality, still drawing on the vapor trails of Christianity.”

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5. On August 12, 2019, Attorney General remarked at the Grand Lodge Fraternal Order of Police's 64th National Biennial Conference on a “the emergence in some of our large cities of District Attorneys that style themselves as “social justice” reformers, who spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law. These anti-law enforcement DAs have tended to emerge in jurisdictions where the election is largely determined by the primary. Frequently, these candidates ambush an incumbent DA in the primary with misleading campaigns and large infusions of money from outside groups. Once in office, they have been announcing their refusal to enforce broad swathes of the criminal law.”

6. Notre Dame 2019. “Men are subject to powerful passions and appetites, and, if unrestrained, are capable of ruthlessly riding roughshod over their neighbors and the community at large. No society can exist without some means for restraining individual rapacity. But, if you rely on the coercive power of government to impose restraints, this will inevitably lead to a government that is too controlling, and you will end up with no liberty, just tyranny. On the other hand, unless you have some effective restraint, you end up with something equally dangerous – licentiousness – the unbridled pursuit of personal appetites at the expense of the common good. This is just another form of tyranny – where the individual is enslaved by his appetites, and the possibility of any healthy community life crumbles. “In the words of Madison, “We have staked our future on the ability of each of us to govern ourselves...” This is really what was meant by “self-government.” It did not mean primarily the mechanics by which we select a representative legislative body. It referred to the capacity of each individual to restrain and govern themselves.”

The “force, fervor, and comprehensiveness of the assault on religion we are experiencing today. This is not decay; it is organized destruction. Secularists, and their allies among the “progressives,” have marshaled all the force of mass communications, popular culture, the entertainment industry, and academia in an unremitting assault on religion and traditional values.

These instruments are used not only to affirmatively promote secular orthodoxy, but also drown out and silence opposing voices, and to attack viciously and hold up to ridicule any dissenters. One of the ironies, as some have observed, is that the secular project has itself become a religion, pursued with religious fervor. It is taking on all the trappings of a religion, including inquisitions and excommunication. Those who defy the creed risk a figurative burning at the stake – social, educational, and professional ostracism and exclusion waged through lawsuits and savage social media campaigns . . . today – in the face of all the increasing pathologies – instead of addressing the underlying cause, we have the State in the role of alleviator of bad consequences. We call on the State to mitigate the social costs of personal misconduct and irresponsibility. So[,] the reaction to growing illegitimacy is not sexual responsibility, but abortion. The reaction to drug addiction is safe injection sites. The solution to the breakdown of the family is for the State to set itself up as the ersatz husband for single mothers and the ersatz father to their children. The call comes for more and more social programs to deal with the wreckage. While we think we are solving problems, we are underwriting them. We start with an untrammled freedom and we end up as dependents of a coercive state on which we depend. Interestingly, this idea of the State as the alleviator of bad consequences has given rise to a new moral system that goes hand-in-hand with the secularization of society. It can be called the system of “macro-morality.” It is in some ways an inversion of Christian morality. Christianity teaches a micro-morality. We transform the world by focusing on our own personal morality and transformation. The new secular religion teaches macro-morality. One’s morality is not gauged by their private conduct, but rather on their commitment to political causes and collective action to address social problems.”

“It is hard to resist the constant seductions of our contemporary society. This is where we need grace, prayer, and the help of our church. Beyond this, we must place greater emphasis on the moral education of our children. Education is not vocational training. It is leading our children to the recognition that there is truth and helping them develop the faculties to discern and love the truth and the discipline to live by it. We cannot have a moral renaissance unless we succeed in passing to the next generation our faith and values in full vigor. The times are hostile to this. Public agencies, including public schools, are becoming secularized and increasingly are actively promoting moral relativism. If ever there was a need for a resurgence of Catholic education – and more generally religiously-affiliated schools – it is today. I think we should do all we can to promote and support authentic Catholic education at all levels. Finally, as lawyers, we should be particularly active in the struggle that is being waged against religion on the legal plane. We must be vigilant to resist efforts by the forces of secularization to drive religious viewpoints from the public square and to impinge upon the free exercise of our faith. I can assure you that, as long as I am Attorney General, the Department of Justice will be at the forefront of this effort, ready to fight for the most cherished of our liberties: the freedom to live according to our faith.”

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For these reasons, conservatives tend to have more scruple over their political tactics and rarely feel that the ends justify the means. And this is as it should be, but there is no getting around the fact that this puts conservatives at a disadvantage when facing progressive holy war, especially when doing so under the weight of a hyper-partisan media.”

8. Notre Dame 2019. “A third phenomenon which makes it difficult for the pendulum to swing back is the way law is being used as a battering ram to break down traditional moral values and to establish moral relativism as a new orthodoxy. Law is being used as weapon in a couple of ways. First, either through legislation but more frequently through judicial interpretation, secularists have been continually seeking to eliminate laws that reflect traditional moral norms. At first, this involved rolling back laws that prohibited certain kinds of conduct. Thus, the watershed decision legalizing abortion. And since then, the legalization of euthanasia. The list goes on. More recently, we have seen the law used aggressively to force religious people and entities to subscribe to practices and policies that are antithetical to their faith. The problem is not that religion is being forced on others. The problem is that irreligion and secular values are being forced on people of faith. This reminds me of how some Roman emperors could not leave their loyal Christian subjects in peace but would mandate that they violate their conscience by offering religious sacrifice to the emperor as a god. Similarly, militant secularists today do not have a live and let live spirit - they are not content to leave religious people alone to practice their faith. Instead, they seem to take a delight in compelling people to violate their conscience.”

9. But what was the source of this internal controlling power? In a free republic, those restraints could not be handed down from above by philosopher kings. Instead, social order must flow up from the people themselves – freely obeying the dictates of inwardly-possessed and commonly-shared moral values. And to control willful human beings, with an infinite capacity to rationalize, those moral values must rest on authority independent of men’s will – they must flow from a transcendent Supreme Being. In short, in the Framers’ view, free government was only suitable and sustainable for a religious people – a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles. As John Adams put it, “We have no government armed with the power which is capable of contending with human passions unbridled by morality and religion. Our Constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other.” As Father John Courtney Murray observed, the American tenet was not that: “Free government is inevitable, only that it is possible, and that its possibility can be realized only when the people as a whole are inwardly governed by the recognized imperatives of the universal moral order.”

10. But what was the source of this internal controlling power? In a free republic, those restraints could not be handed down from above by philosopher kings. Instead, social order must flow up from the people themselves – freely obeying the dictates of inwardly-possessed and commonly-shared moral values. And to control willful human beings, with an infinite capacity to rationalize, those moral values must rest on authority independent of men’s will – they must flow from a transcendent Supreme Being. In short, in the Framers’ view, free government was only suitable and sustainable for a religious people – a people who recognized that there was a transcendent moral order antecedent to both the state and man-made law and who had the discipline to control themselves according to those enduring principles. As John Adams put it, “We have no government armed with the power which is capable of contending with human passions unbridled by morality and religion. Our Constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other.” As Father John Courtney Murray observed, the American tenet was not that: “Free government is inevitable, only that it is possible, and that its possibility can be realized only when the people as a whole are inwardly governed by the recognized imperatives of the universal moral order.”

11. In a speech at **Heritage Foundation** on October 2018, former US Attorney General Jefferson B. Sessions delivered “Remarks to the Heritage Foundation on Judicial Encroachment.” He remarked that “empathy” is “more akin to emotion, bias, and politics than law” and that “Judicial activism is therefore a threat to our representative government and the liberty it secures. We at the DOJ fight against this heresy relentlessly.” The former Attorney General remarked, “In effect, activist advocates want judges who will do for them what they have been unable to achieve at the ballot box. It is fundamentally undemocratic. Too many judges believe it is their right, their duty, to act upon their sympathies and policy preferences.”

Heritage Foundation 2018. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-heritage-foundation-judicial-encroachment>