

# Book Review: The Lessons of Liberalized Standing? - Locus Standi: A Commentary on the Law of Standing in Canada, by T.A. Cromwell

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# THE LESSONS OF LIBERALIZED STANDING?°

*Locus Standi - A Commentary on the Law of Standing in Canada.*  
By T.A. Cromwell. Toronto: Carswell, 1986.

REVIEWED BY WILLIAM BOGART\*

## I.

Law reform is a funny business. Take standing, for instance. The courts, for about a century, busied themselves encasing the doctrine in a series of restrictive rules. They did this as they wandered through various remedies in a number of substantive areas, not linking one set of pronouncements with another. So, the rules regarding public nuisance were transplanted to the soil of constitutional law. The prerogative writs were enshrined in a different set of strictures and, even there, supposed differences emerged — *certiorari* and prohibition allegedly were subject to more liberal provisions. The requirements for injunctions and declarations were said sometimes to be different and sometimes not.

One could spend copious amounts of time and energy parsing curial pronouncements about when entitlement to sue was to be bestowed. But the distillate centred around protection of an individualism epitomized by protection of pecuniary or proprietary rights and, conversely, an abhorrence of an undifferentiated "public" ready to storm the courts and insist upon recognition of — what? This question the courts did not answer, content to rest assured that interests which could not be characterized in a conventional way should not have a voice. The "public interest," after all, was

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incarnated, they pronounced, in the Attorney General. He was to decide where these concerns lay in any question and he could be trusted to assert them, settle them or just leave them silent. His hold was all but absolute.

But in the last decade or so the courts of at least the common law world have announced that perhaps this whole business has been overdone and the area could do with some fresh air. Most prominent in this activity has been the Supreme Court of Canada. It has reviewed the terrain four times in the past dozen years, and each time it has loosened the grip of traditional interests so that Canada, now, is perhaps the most liberal jurisdiction concerning entitlement to sue. This is a funny business because we have been thrust by the Supreme Court into the wilderness of a "genuine interest" test for standing,<sup>1</sup> and what does that mean? If our courts know, they are not saying.

Such a substantial shift leads to the question of why we need a law of standing at all. Maybe it is an encumbrance that, having outlived its usefulness (whatever that may have been) should just simply go away. Why not just proceed to the merits and dispense with all the manoeuvrings that fights over standing inevitably cause, with their attendant costs and delays for parties and judges? That question ought to be answered, and equally important is how we go about answering it, for doing so provides a window to examine Canadian courts: what they do, and what they ought to do. Thomas Cromwell offers his views about this question and how to answer it in his *Locus Standi - A Commentary on the Law of Standing in Canada*. An interesting little book, it mixes the approach of the conventional doctrinal text with the author's explicit assessment of what standing is and ought to be.

Before turning to Professor Cromwell's book, there are four basic notions to be considered. First, courts exist to honour legality and to resolve disputes, but, not always and everywhere. We create courts and obey them because we need a device to resolve specific and particular disagreements; and, as this is done, judges generate a framework of norms, either under their own steam or by interpreting

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<sup>1</sup> *Finlay v. Min. of Finance (Can.), Min. of Nat. Health and Welfare (Can.) and A.-G. Can.* (1987), 71 N.R. 338 [hereinafter *Finlay*].

statutes and a constitution, that are guides to our conduct. But this activity by courts, since it is triggered by specific issues, is a means to an end, not an end in itself. We do not insist that all disputes ought always and everywhere to be resolved by judges, or that there are not, at times other means, as good as or better than courts, for performing these tasks. The development of administrative law may be the twentieth century's most prominent example of such an alternative; of a realization that there are many ways sanctioned by the state to resolve questions.

A second idea is that if an interest cannot be characterized as pecuniary or proprietary it does not necessarily mean that the interest cannot be valued; that an illegality involving it would be viewed as something that ought not to engage the attention of courts. It would be equally wrong, however, to shift to the position that because many of these interests can lay claim to curial attention, all of them should be allowed to do so; that it is either impossible, or not worth the bother, to differentiate and value claims that before were viewed as having no value at all. We need not loosen our grip on established views of standing only to be forced to embrace the idea that anyone should be able to sue anybody at any time for anything.

The third idea, related to the second, is that although differentiating and evaluating these non-traditional interests is no easy process, it is not a quantum difference from that which continues to concern traditional legal interests. Conventional interests are constantly being moved off of and onto courts' agendas. After all, it is not enough that a plaintiff can show that he or she has had an interest invaded. A plaintiff must also show that the interest is one the law will protect through a right to litigate. Ms. Donoghue wasn't protected once,<sup>2</sup> but she is now. Susan Nelles is not protected, yet, against the pervasive claims to power of the Attorney General,<sup>3</sup> but someday (maybe soon) she might be. Workers used to be able to sue their employers for injuries in the workplace. Now, in most cases, they cannot. Some day victims of

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<sup>2</sup> *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.).

<sup>3</sup> *Nelles v. The Queen in Right of Ontario* (1985), 51 O.R. (2d) 513 (C.A.) (at the time of writing, this case is on appeal before the Supreme Court of Canada).

motor vehicle accidents in Ontario may not be able to sue in court but will seek redress in another forum. Why these various traditional legal interests can and cannot sue depends on a myriad of factors, some of which are peculiar to the context, and others transcend specific considerations. Such assessments involve sensitive social and political judgments and an awareness that, even when an interest should be protected, the courts are not always the best institution to perform that function.

The final notion is that there are no bright lines to determine recognition of non-traditional legal interests. So, their recognition or non-recognition is *not* dictated by the Attorney General as guardian of the public interest, or by distinguishing between "public" and "private" interests, or by particular concerns of the administration of justice like justiciability, use of resources and need for adversity. It is not that concepts of "public" and "private" are irrelevant (these are discussed more fully below) but that fast distinctions based on them are impossible to draw. There is nothing mysterious about what the courts will be doing in determining standing. Judges, and sometimes, legislatures will engage in a determination of values, just as they do in other contexts in which they are engaged. Indeed, one attraction of standing is that it lays bare rather easily how value-driven judicial decisions are: "When a court or the legal system does decide to recognize and hear a person in a case, that decision may be taken (and criticized) as an announcement that the values he is pursuing, the purposes of the role he is assuming, have a public value."<sup>4</sup>

## II.

*Locus Standi* sets itself two tasks; indeed, this small book is in some ways two. The one describes and analyzes standing in the tradition of conventional legal texts. The other tackles some essential questions surrounding standing, with the author's views and policy formulations firmly delivered. In my view, there are some major flaws in *Locus Standi*. Nevertheless, the book is a decided success

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<sup>4</sup> J. Vining, *Legal Identity, The Coming of Age of Public Law* (New Haven: Yale University Press, 1978) at 62.

in offering both a road-map through the morass of cases and, further, a developed view of what standing is and ought to be.

Cromwell describes and analyzes the law of standing by investigating certain substantive areas and, then, how standing has developed in various remedies. Even here, he does not plunge ahead and suggest that he can tame the wilderness and weave all the disparities together. He begins the enterprise with the right tone:

It may be doing the topic an unwarranted kindness to even speak of a law of standing. The Canadian law on the subject consists of a number of rules developing in a number of different doctrinal and remedial contexts, frequently with very little attempt to reconcile outcomes with those obtained in parallel situations. To make matters worse, the courts have not probed the rationalia of standing rules very deeply. The result of all of this is a large body of case law that is difficult to rationalize into a unified whole.<sup>5</sup>

The four substantive areas which he examines are public nuisance, shareholders' rights, municipal law, and constitutional and related cases. He has selected these four areas because of the continuity of development of standing that he observes therein. Public nuisance is the primary source of the requirement that the plaintiff suffer some special or peculiar damage. In developing this requirement, case law established the domains of "public" and "private" interests as the demarcation of recognition of entitlement to sue and the role of the Attorney General, as guardian of such a public interest, with the resulting strictures in standing law which persisted until the Supreme Court's refacing.

The choice of constitutional law is equally obvious since this area has been the main source of the refacing of standing in the past dozen or so years,<sup>6</sup> although, with the latest instalment, *i.e.*, *Finlay*,<sup>7</sup> the Supreme Court has now ventured explicitly into standing in the context of judicial review of administrative action. A criticism here: In the part on constitutional law there is a section on the *Charter of Rights and Freedoms* that is thin. The section is very brief

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<sup>5</sup> T.A. Cromwell, *Locus Standi – A Commentary on the Law of Standing in Canada* (Toronto: Carswell, 1986) at 11.

<sup>6</sup> See *Thorson v. A.-G. Can.*, [1975] 1 S.C.R. 138; *N.S. Board of Censors v. McNeil*, [1976] 2 S.C.R. 265; *Min. of Justice (Can.) v. Borowski*, [1981] 2 S.C.R. 575.

<sup>7</sup> *Supra*, note 1.

and concentrates on hugging the few cases there are, instead of using the unmarked terrain of the *Charter* as a vehicle for the author's views of basic guideposts the courts ought to use and whether standing under the *Charter* should be treated any differently than in other areas of law. (Should violation of fundamental rights and freedoms push towards even more liberal standing, or decidedly less?)

Cromwell uses the sections on shareholders' rights and municipal law to establish the basis the Supreme Court relied on in breaking the mold in *Thorson*. I found the section on shareholders quite interesting. Most discussions of standing have not looked to the early shareholders cases as a source of the law, but *Locus Standi* establishes their relevance. More importantly, shareholders' rights and, particularly, the interaction of personal, representative and derivative suits and their uneasy development by courts and legislatures, provide yet another example of how standing is not a problem that arises only when a public entity — government or its emanations — is sued. Most significantly, Professor Cromwell uses these examples to show how procedure and substance are intertwined and how, in addressing issues of standing we must necessarily address how a particular area of law should develop and which interests should be protected: "[T]he real issues concern what rights ought to be legally protected and how those rights should be defined."<sup>8</sup>

I make a special point of this not only because I agree that this is a central element in any analysis regarding standing, but because Professor Cromwell seems to turn away from this position later in the book when he offers his own analysis. He appears to reintroduce distinctions, particularly between cause of action and standing, which obscure this vital aspect.

*Locus Standi* is strong in its treatment of standing in relation to remedies, taking us through *certiorari*, prohibition, *mandamus*, declarations, injunctions and statutory schemes for obtaining judicial review of administrative action. Distinctions are thoroughly analyzed, with particular attention to the impact that the trilogy of standing decisions of the Supreme Court, existing at the time of the writing

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<sup>8</sup> *Supra*, note 5 at 34.

of the book, might have on the various remedies. If anything, however, the careful attention that is paid to the case law here leads, at times, to an over-refinement that, while useful as a compendium for the doctrinal analysis that courts and lawyers might be tempted to engage in, is hair-splitting even on those terms. For example, Professor Cromwell carefully sets forth the distinctions between the rules regarding declarations and injunctions, yet concludes: "[T]he two have been treated in the same way in a large number of cases and there is no case law articulating the differences."<sup>9</sup>

It is in the last two chapters, "Standing Rules and Their Rationalia — A Critical Examination" and "Reforming the Law of Standing," that the book develops its own views of what standing is all about. Freed from close doctrinal analysis, this part is more interesting, and I believe it will make the larger contribution.

Dragons need slaying in this area, and the book does good service regarding a number of them.<sup>10</sup> For example, Professor Cromwell is particularly pointed in dismantling the claim of Attorneys General to a monopoly in representing the public interest. The book draws distinctions between the English Attorneys General and the Canadian ones — such as, the Canadians' membership in cabinet and active involvement in politics — that weaken claims of Canadian Attorneys General to be the guardian of the public interest. But even the English Attorneys General are open to attack because of the potential for abuse of their exclusive discretion concerning the public interest, a subject that clearly admits of no indivisible and monolithic interpretation. Finally, in Canada, where the courts have been empowered to patrol the limits of power between the federal and provincial governments and, more recently, to draw limits on that power itself, it is "incongruous ... to assume that the unreviewable discretion of the Attorney General is needed to prevent them [the courts] from acting in appropriate cases."<sup>11</sup>

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<sup>9</sup> *Ibid.* at 157.

<sup>10</sup> For instance, his criticism of the public-private distinction, *ibid.* at 148-54, 177-80. Professor Cromwell also provides insightful reviews of other approaches to reform of standing, *ibid.* at 203-07.

<sup>11</sup> *Ibid.* at 188.

Cromwell concludes, rightly, that breaking the politician's monopoly need not lead to ousting him or her altogether. The Attorney General can still both commence and intervene in litigation in which issues of standing may need to be addressed.

Nevertheless, I have some misgivings about the important details for altering the law: not about the general thrust but about important details. I think the problem occurs because Professor Cromwell insists that standing be isolated and be given functions that are essentially negative: that is, to guard against a multiplicity of actions, to eliminate busybodies and to ensure that only justiciable questions are presented to courts. And all these negative functions are to be directed against *non-traditional* legal interests, since he assumes that where, to this point, standing has been granted, it ought to continue.<sup>12</sup>

I would start from a different perspective. Traditional legal interests should not have trump so that no interest should be excluded from consideration just because it cannot be characterized as pecuniary or proprietary, or because it is widely held. What I would have a court do, when it considers recognizing any interest, is take into account and evaluate reasons why an interest should or should not be recognized.

Specifically, Professor Cromwell and I differ in the following respects. He wants to keep the recognition of rights and standing as separate enterprises (even while remarking that "the process of how the courts 'recognize' common law and equitable rights is beyond the scope of this work"<sup>13</sup>), while I think that how courts recognize rights, and any evaluation of that process, is at the very heart of the problem we have called standing.

Unlike Professor Cromwell, I see no need to differentiate so clearly between cause of action and standing. In a strong discussion he shows how most questions of standing and cause of action could be viewed as interchangeable; he indicates, for example, how the classic *Donoghue v. Stevenson* could be seen as an issue of standing. He insists, however, that we should not do this because "if the definition of standing includes such issues, it fails to isolate a set of

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<sup>12</sup> *Ibid.* at 217.

<sup>13</sup> *Ibid.* at 149.

legal issues concerned solely with access to adjudication that may be usefully analyzed as a unit."<sup>14</sup> But of course that is precisely the point: If we acknowledge that there is no reliable point of divide between "public" and "private," and that interests of varying characteristics can deserve the law's protection, then standing, as a sealed unit, does and should break down, because there is no sustainable reason to keep it separate and apart.

At this point a concrete example may prove helpful. Let us take *Finlay*, the latest foray of the Supreme Court. Finlay brought suit for a declaration that unlawful payments were being made to Manitoba, where he resided, under the *Canada Assistance Plan* and an agreement between Canada and Manitoba. He asserted that the legislation stipulated that any agreement by Canada for contributions include a term that a receiving province furnish aid to "a person in need ... in an amount or manner that takes into account his basic requirements,"<sup>15</sup> and he alleged that he was such a person within the meaning of the statute. The action claimed that Manitoba neglected to comply with this requirement and, therefore, was ineligible to receive federal contributions.

The Supreme Court of Canada recognized Finlay's entitlement to sue. Was this because he had a cause of action or standing?<sup>16</sup> I do not think it matters very much, just as I do not think it is critical to decide whether private or public rights are being enforced, further, whether or not the interest of the plaintiff is to be characterized as special, peculiar, or personal. In fact, it is critical is to look at all the circumstances relevant to why an entitlement to sue should (or should not) be recognized. In this view there were cogent reasons to recognize Finlay's entitlement.

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<sup>14</sup> *Ibid.* at 208-09.

<sup>15</sup> *Canada Assistance Plan* R.S.C. 1970, c. C-1, s. 6(2)(a).

<sup>16</sup> I note, in passing, that the Supreme Court in a short discussion of Finlay's "cause of action" as opposed to his "standing" observed, *supra*, note 1 at 371-72:

The issues of standing and reasonable cause of action are obviously closely related, and as acknowledged by counsel for the appellants, tend in a case such as this to merge. Indeed, I question whether there is a true issue of reasonable cause of action distinguishable, as an alternative issue, from that of standing .... Clearly, if a plaintiff has the requisite standing an action will lie for a declaration that an administrative authority has acted without statutory authority.

His case involved an important and legitimate question, capable of and appropriate for resolution by a court, it was brought by someone connected to the issues raised, and there were no substantial reasons to preclude the litigation.

I also understand Professor Cromwell's attempt to devise a "check list" for determining standing, in order to somehow tame the issues.<sup>17</sup> But in giving the elements he lists, I would find it impossible to stay clear of analyzing the substantive law. For example, under a heading concerning the danger of a multiplicity of similar actions he raises the following specific question, "Given the level of demand for judicial resources, is the issue of sufficient practical importance to deserve a share of those resources?"<sup>18</sup> Most of the time I think that question will be hard to answer, if it is agreed that to answer it one would have to evaluate the potential candidate for recognition against some very controversial entitlements which presently exist. For instance, some would argue that almost any use of a judge's time is better than having him or her find "fault" and assess compensation for damages caused by the mayhem on the highways. From such a viewpoint, an attempt to answer the question has to involve a discussion of what, I take it, Professor Cromwell would see as a separate inquiry about substantive law.

Similarly, regarding whether an issue is "institutionally suited to judicial determination,"<sup>19</sup> another item of his checklist, I think the question must involve a thoroughgoing analysis of all aspects of the issue and how the court envisions the judicial role. And, if the issue is truly unsuited for curial resolution, whether one speaks in terms of no cause of action or no standing should be quite beside the point.

Cromwell's checklist approach, even with his acknowledgement of oversimplification, is a false start. Recognition of any interest and the accompanying entitlement to sue is too complex a process for such treatment and there are no elements that arrange themselves peculiarly under the rubric of standing. What is required is a fundamental turning away from the notion that

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<sup>17</sup> *Supra*, note 5 at 216 ("At the risk of oversimplification...").

<sup>18</sup> *Ibid.* at 217; and see preceding discussion leading up to the list.

<sup>19</sup> *Ibid.*

pecuniary or proprietary interests are to be favoured and all others are suspect. Any time that any interest is recognized, a court is expressing its views about what values are worth fostering. That some of these values are not accompanied by traditional legal interests is not a good enough reason to dismiss them or to believe they are so suspicious that they must be subject to a particular and heightened scrutiny apart from the means by which we otherwise debate the judicial function.

### III.

I would like to discuss some aspects of costs which Cromwell refers to in a conventional way. Largely dismissive of allegations that liberalized standing will lead to a flood of claims or multiplicity of proceedings, he bolsters this conclusion by referring to the power of courts to award costs.<sup>20</sup> But to favour liberalized standing (however articulated) yet rest content with the established costs rules is, I believe, a curious position.

As an abstraction the traditional rules seem an adequate compromise. If I win, I recover a significant portion of my costs. If I lose I must pay such costs. Thus meritorious claims and defences are encouraged; wobbly ones are chilled. The problem, as is well known, is that, in actuality, the rules have a disproportionate impact depending on the characteristics of litigants.<sup>21</sup> For those who do not have a strong economic incentive, those who have little or no capacity to absorb or pass on attendant costs, or those who litigate as a rare or even unique event with attendant lack of knowledge and sophistication, the conventional costs rules are daunting.

The dilemma posed by the costs rules is particularly acute for those interests barred by conventional standing rules. Not possessing a claim based pecuniary or proprietary infringement, such interests will also have no economic incentives to override the disincentives of the costs rules; given the vagaries of standing law and the present

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<sup>20</sup> *Ibid.* at 168.

<sup>21</sup> The literature on costs rules and their actual impact on litigation rates is well developed. See G. Watson *et al.*, *Canadian Civil Procedure* (Toronto: Emond-Montgomery, 1988) at c. 3 "Economics of Litigation."

costs rules, it is a wonder that there are any such claims at all. But alteration of the costs regime should not be hinged on dividing the world into those who can characterize their interest in conventional terms and those who cannot; for even a sizeable economic interest often will not provide incentive sufficient to outweigh the overall costs of litigating. If we are to eliminate disincentives which chill certain litigants, alteration of the costs rules should extend across a wide range of interests.

I will not attempt in this space to articulate how to go about this. A number of tools exist. Public funding to underwrite certain kinds of litigants and types of claims is obviously one. Relieving a losing party of the obligation to pay costs is another. Permitting lawyers for the litigants to bear the economic risks attendant upon litigation is another. Whatever the mix, there should be an acknowledgment that litigants are not fungible. Claims raising issues that transcend the immediate personal interests of the parties may have a stronger claim to be encouraged through facilitative costs rules. A plaintiff tackling a powerful entity — corporations, government, trade unions — sophisticated from repeated use of the system and an ability to finance litigation, does not come to the process as an equal or even near-equal. These premises may be the basis for judicial or legislative revamping; to fail to understand them, however, will leave any claims about equal access to justice through courts at a formalistic level.

#### IV.

What good will come of courts' broadening standing to encompass a diverse range of interests? A vital result will be an acknowledgment by courts that their function is directed to ends more diverse than economic quests and personal liberty. Values such as good health, a safe environment, a sense of individuality in all its aspects and of position in social organization may be tentative and abstract, but they are values that can be realized and nurtured

by courts.<sup>22</sup> To broaden standing is to depart from a regime absorbed with the protection of individual proprietary, economic and pecuniary values and to recognize other values, many of which may be more collective than individualistic, and more inspired by altruism than self-interest.<sup>23</sup>

In none of this do I cast judges in the role of omnipotent seer. This country has a rich ideological tradition, and altruism and collectivism have been values often nurtured by legislatures and their agencies. Enlarged standing and revamped costs rules should not be part and parcel of extravagant claims for the judicial role. But that role, whatever the limits and definition ought to be, cannot be realized by pretending that only a certain strain of aspirations should count, that only a particular view of societal organization ought to be embodied in how the judiciary discharges its function. For the courts to continue to adhere to the conventional strictures on standing would not inhibit any over-reaching; but it would confine the courts to dealing with a limited range and kind of interests while the rest of Canadian society expresses itself in a complicated and variegated array.<sup>24</sup> I am thinking here particularly of the resilient communitarian and collectivist traditions in this country, fed by such disparate ideologies as toryism — with its emphasis on order and hierarchy, but also upon restraining individualism for the public good

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<sup>22</sup> G.B. Baker, "Legal Identity, From Maine and Durkheim to Graveson, Tribe and Vining: An Essay on *Legal Identity, The Coming of Age of Public Law*, by Joseph Vining" (1981) 19 U.W.O. L. Rev. 307 at 310.

<sup>23</sup> D. Kennedy, "Form and Substance in Private Law Adjudication" (1976) 89 Harv. L. Rev. 1685; M.V. Tushnet, "The Sociology of Article III: A Response to Professor Brilmayer" (1980) 93 Harv. L. Rev. 1698 at 1724: "Broad areas of contemporary law ... are inexplicable in terms of the ideology of self-determination; clearly they are motivated by an altruistic ideology."

<sup>24</sup> W. Christian & C. Campbell, *Political Parties and Ideologies in Canada*, 2d ed. (Toronto: McGraw-Hill Ryerson, 1983) at 3: "... Canada was in its origins and is still a country of rich ideological diversity; and that the explicit expression and acknowledgement of these differences gives our country a much greater chance to resolve the question of the kind of social life we wish to share as fellow citizens."

— and socialism — as attenuated as it has sometimes become, in Canada.<sup>25</sup>

Now, I realize that what I have said so far reveals no theory, no blueprint for how any interest might be recognized. In the end are we left with nothing but a hunch about how this new terrain is to be charted? In responding I begin by saying that no one, so far as I am aware, who has tackled standing and who urges its expansion has provided an elaborated theory of how interests should be recognized. In my view, this would include Professor Cromwell who provides (in his own characterization) an oversimplified checklist and leaves the matter at that. I point this out not as a matter of avoidance (if no one else has done it, I shouldn't have to) but to suggest that the absence of a grand theory is for a good reason, one that concerns the connection between traditional and non-traditional legal interests.

If we were to ask "what is the theory that tells us how to recognize traditional legal interests?" I doubt that we should receive a simple or straightforward answer. We might be asked what area we were interested in: torts, contracts, and so on. We might be asked to say what school we wished an answer from: law and economics, critical legal studies, positivism, etc. Similarly, I suggest that an answer to the question "how do we go about recognizing these new interests?" will emerge only after a number of such interests have sought recognition in various areas of law and a number of schools and positions have brought their analyses to bear. I expect no clear and simple response and, in this way, the issues surrounding these interests will be no different from so many others that law deals with. But all areas and all schools would share common ground by calling for careful attention to the reasons and circumstances for and against the recognition of any particular claim.

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<sup>25</sup> "Canadian Conservatism" *ibid.* at c. 4; "Canadian Socialism" *ibid.* at c. 5; G. Horowitz, *Canadian Labour in Politics* (Toronto: University of Toronto Press, 1968), and see especially c. 1 "Conservatism, Liberalism and Socialism in Canada: An Interpretation."

## V.

Although I disagree with parts of *Locus Standi*, I think it is a valuable book. The careful reader cannot come away from it without asking why standing has become such an important question in the recent past and what the appropriate response ought to be. We need to think much longer and harder about the role of litigation and courts in shaping the social and political life of this country. Standing is an important focus for that exercise, and Professor Cromwell and his book do us good service.

