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# *Checking the Other and Checking the Self: Role Morality and the Separation of Powers*

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## I. Introduction

The concepts of the rule of law, the separation of powers, and checks and balances are related in complicated ways. Jacob T Levy brings this to light in his thought-provoking McDonald Lecture, "The Separation of Powers and the Challenge to Constitutional Democracy."[1] In this response to Levy's paper I want to further explore the relationship between these three ideas. I will argue that, when thinking about the rule of law, we must consider the idea of "role morality" and its place in constraining power. We should think of the constraints on power that stem from role morality as "internal" as opposed to "external" checks on power. I also suggest that we would do well to broaden our understanding of what the rule of law requires, and to think of it not just as a matter of ensuring impartiality and formal legal equality in the sense that the law applies to all actors within the system. We might benefit from thinking of the rule of law as a weightier moral concept that demands that decision-makers comply with moral ideals, and not just with the rules as laid out.

* Assistant Professor, Faculty of Law, University of Alberta. This paper developed out of a panel discussion on Professor Jacob Levy's 31st Annual McDonald Lecture in Constitutional Studies, given on November 4th, 2020. The panel discussion took place on November 27th, and in addition to Jacob Levy, included Yann Allard-Tremblay, Mary Liston, and Arjun Tremblay. I wish to thank all of them for their thoughtful comments which influenced my own thinking in developing this paper. I also thank Patricia Paradis and Keith Cherry for organizing the panel and inviting me to participate, and the editors at the *Constitutional Forum* for excellent editing assistance.

1 Jacob T Levy, "The Separation of Powers and the Challenge to Constitutional Democracy" (2020) 25:1 Rev Const Stud 1.

## II. Checks and Balances and the Separation of Powers

In his McDonald Lecture, Levy argues that "[t]he separation of powers might well be the crucial concept in what we have come to think of as constitutionalism or constitutional government."[2] Powers must be separated so that, for example, the same person is not making and enforcing the rules. Those in power must also be subject to the rules.[3]

Levy notes that, at least in the American context, there is a tendency to associate the separation of powers with the notion of checks and balances, but he argues that "the separation of powers is not merely checks and balances."[4] It is also a vision of keeping lawmaking and law enforcement distinct so as to protect the rule of law.[5] I will discuss this connection between the separation of powers and the rule of law in more depth below. Levy argues that this American vision of the separation of powers was that the different branches would check and limit one another because those who held power would have a commitment, a sense of partisanship, towards their office or role. This sense of protectiveness of one's office was supposed to result in people within Congress "resist[ing] incursion on the legislative power by the executive."[6]

Levy raises the worry that in modern democracies with partisan political parties, when the legislature and executive are drawn from the same party, they will not adequately check one another. Rather than the legislature and executive protecting their own institutional territory, the territory of the party becomes what is important.[7] We are left with a choice between an executive that is unconstrained, or one that is constrained only by political will.[8] "Neither side, the governing party nor the opposition, has a credible claim and consistent incentive to do what the American founders thought legislatures would be able to do with executives: uphold the rule of law in an impartial way by seeking to defend their institutional prerogatives."[9] This brings us to another concept that needs introduction and elaboration: the rule of law.

## III. The Rule of Law

The related idea of the rule of law is defined by Levy as follows: "The rule of law is a matter of ensuring that judicial practices happen in an impartial way, that those who are brought before legal institutions will have full access to appropriate — that is to say, due — process, and that legal institutions and legal processes cannot be circumvented by powerful political actors, engaging, for example, in extrajudicial punishment or imprisonment."[10]

Levy argues that the separation of powers has a role in protecting the rule of law. "The separation of powers," Levy says, "is the version of institutional separation and competition

2 *Ibid* at 2.
3 *Ibid*.
4 *Ibid* at 10.
5 *Ibid*.
6 *Ibid* at 9.
7 *Ibid* at 12.
8 *Ibid*.
9 *Ibid* at 13.
10 *Ibid* at 6.

that promotes the rule of law by separating the particular processes of lawmaking and law enforcement."[11] Because the different powers are separated, the idea is that those who have the power to make decisions are not the same people who are creating the law. This is supposed to ensure impartiality; no one will be a judge in their own case, and judges will have independence from the other branches.

This vision of the rule of law focuses on procedural limits — due process, impartiality, no interference with the judiciary, and so on. This is certainly an important thread in the literature on the rule of law, but many theorists take the rule of law to be more substantive. According to Ronald Dworkin, for example, the rule of law is partly a matter of judges making the correct decision: respecting the moral rights people actually have. He contrasts what he calls the "rule-book" conception of the rule of law with the view he ultimately defends: the "rights" conception. The rule-book conception "insists that, so far as is possible, the power of the state should never be exercised against individual citizens except in accordance with rules explicitly set out in a public rule book available to all."[12] The rule-book conception does not restrict the content of the rules that are valid. Whether or not these rules are just is a separate question that we might care about, but that is not properly dealt with under the umbrella of the rule of law. We might think of Levy's account of the rule of law as something like the rule-book conception: it is concerned that the procedures are proper and impartial, and that the rules are followed, but does not consider the question of whether the rules are just to be a matter of the rule of law. Under Dworkin's rights conception, by contrast, we must assess the content of the law. For Dworkin, the rights conception:

> … assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law, so that they may be enforced *upon the demand of individual citizens* through courts or other judicial institutions of the familiar type, so far as this is practicable. The rule of law on this conception is the ideal of rule by an accurate public conception of individual rights.[13]

This means that judges, in deliberating about what they must do in a given situation, have to face certain fundamentally moral questions. Judges in hard cases must ask "whether the plaintiff has the moral right to receive, in court, what he or she or it demands."[14]

I am not going to fully defend a Dworkinian account of the rule of law, or any substantive account of the rule of law here. Instead, I want to simply explore the question of what the complex relationship between the rule of law, the separation of powers, and the idea of checks and balances looks like if we are to take a somewhat more substantive view of the rule of law.

What happens to the idea of the separation of powers if we incorporate a more substantive vision of the rule of law — i.e. one where the judge's role is not just to protect the processes that ensure impartial treatment, but also to provide limits on the substance of law? The more substantive vision of the rule of law requires judges to make a judgment about the justice of an enactment, and not just to apply it impartially.

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11 *Ibid* at 10.
12 Ronald Dworkin, *A Matter of Principle* (Oxford: Clarendon Press, 1985) at 11.
13 *Ibid* at 11-12.
14 *Ibid* at 16.

One result would be that we would see judges less as enforcers or protectors of something another branch enacted,[15] and more as independently seeking to do justice as required in a given situation. This is, itself, a vision of separation. The rule of law as Levy sees it is a matter of impartiality and due process. But impartial and consistent application of the law as it is laid down might lead to a kind of subordination of the judiciary to the legislature. They would be separate, but one might still be very much doing the bidding of the other. On a more substantive view, the idea is that a judge is seeking to do justice rather than the bidding of the other branches. This is a form of separation of powers that also empowers each branch to act independently in the service of justice, rather than to act in a way that conforms to what other branches have laid down. So a widening of the scope of the rule of law to include principles of substantive justice might strengthen the separation of powers, or at least strengthen the judiciary's ability to "check" the actions of the other branches.

But this is only one form of checking that goes on in government. While one branch may check another, and might be able to influence what another branch does through its own processes and decisions, each branch must also engage in a substantial amount of what we might call "self-checking." Whichever version of the rule of law we accept, we should recognise that promoting and protecting it requires internal as well as external checking. The next section explores this idea in more depth.

## IV. The Rule of Law, Role Morality, and "Self-Checking"

The rule of law has, in my view, always required a strong element of "self-checking." In other words, it depends less on external checks and balances than we might often think, and more on a strong sense among those who exercise power about the limits and expectations of their role. Much of the literature on role morality is concerned with the question of how roles can alter our moral obligations. Is it possible for one's role as a judge to trump one's moral obligation to do the right thing? This is a bigger question than I can answer here. But I want to discuss one aspect of the literature on role morality: that is, the idea that one's sense of one's role plays a significant part in one's practical decision-making.

First, what are roles? Michael O Hardimon, focusing on institutional roles, defines them as "constellations of institutionally specified rights and duties organized around an institutionally specified social function."[16] Similarly, Jeremy Evans and Michael Smith define roles as "the complex web of behaviours and expectations of individuals and collectives in persisting social

15 This vision of the judicial role as that of merely an enforcer of law laid down by another branch can be seen in Montesquieu. See, e.g., Montesquieu, *The Spirit of the Laws*, ed and translated by Anne M Cohler, Basia C Miller & Harold S Stone (Cambridge: Cambridge University Press, 1989) at 163: "[T]he judges of the nation are, as we have said, only the mouth that pronounces the words of the law, inanimate beings who can moderate neither its force nor its rigor. Therefore, the part of the legislative body, which we have just said is a necessary tribunal on another occasion, is also one on this occasion; it is for its supreme authority to moderate the law in favor of the law itself by pronouncing less rigorously than the law." Levy, in his vision of the rule of law, seems to draw on this sort of view in understanding the relationship between the judicial and legislative branches in the separation of powers. My thanks to Mary Liston for drawing my attention to this point.

16 Michael O Hardimon, "Role Obligations" (1994) 91:7 The Journal of Philosophy 333 at 334, citing RS Downie, *Roles and Values: An Introduction to Social Ethics* (New York: Methuen, 1971) at 127-8.

relationships."[17] A role obligation, then, is "a moral requirement, which attaches to an institutional role, whose content is fixed by the function of the role, and whose normative force flows from the role."[18] For Stefan Sciaraffa, "role-duties are … clusters of social rules that are taken to apply to persons who occupy certain roles within society."[19]

Hardimon draws an important distinction between roles we agree to undertake, and those into which we are born. Roles that are thrust upon us raise different issues beyond the scope of this paper, but Hardimon argues convincingly that such roles can still generate obligations under the right conditions.[20] Leaving these non-voluntary roles to one side, let us focus here on roles which we voluntarily undertake, such as doctor, lawyer, or judge. In such roles, there is a further crucial element, according to Hardimon. It is not just the voluntary acceptance of the role that matters. There is also the idea of "role identification" — "the idea of identifying with a role or conceiving of oneself as an occupant of a role."[21] Identifying with a role involves seeing the norms of the role as reasons for oneself.[22] "If you are a judge who identifies with the role of judge, the fact that this is something judges do (in the normative sense) will give you a reason for doing it."[23] What Hardimon says that this adds to our understanding of role morality is a source of motivation: "When people identify with their roles they acquire reasons for carrying out the duties distinct from those deriving from the fact that they have signed on for them."[24] Views that neglect this dimension have an impoverished image of those exercising their roles. Such views envision, for example, doctors who heal merely because they have promised to do so.[25] In reality, though, "people do identify with their social roles and are motivated by the fact that they identify with their social roles."[26] As Hardimon puts it, "[r]ole identification represents a basic way in which people can conceive of themselves as participants in the dimension of moral life that is lived through institutions."[27] If this is the case, then it becomes apparent how much work this phenomenon of role identification does in driving the decisions of those who occupy institutional roles.

A John Simmons objects to this, pointing out that the important question here is about what people have moral reason to do, not the motivations they in fact have.[28] Stefan Sciaraffa presents a more detailed defense of the argument that role identification matters, arguing that by identifying with a role, people can bring about "the fundamental goods of meaning and

17 Jeremy Evans & Michael Smith, "Toward a Role Ethical Theory of Right Action" (2018) 21:3 Ethical Theory and Moral Practice 599 at 604.

18 Hardimon, *supra* note 16 at 334.

19 Stefan Sciaraffa, "Identification, Meaning, and the Normativity of Social Roles" (2009) 19:1 European Journal of Philosophy 107 at 109.

20 See Hardimon, *supra* note 16. Hardimon makes this argument throughout the piece. The key idea is that unchosen roles, if they are to bind us, must be 'reflectively acceptable'. *Ibid* at 348.

21 *Ibid* at 357.

22 *Ibid* at 358.

23 *Ibid*.

24 *Ibid* at 360.

25 *Ibid* at 361.

26 *Ibid* at 362.

27 *Ibid* at 363.

28 A John Simmons, "External Justifications and Institutional Roles" in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001) 93 at 97.

self-determination by performing the duties that constitute the role."[29] But Sciaraffa and Simmons are both concerned with justifying reasons, and I wish to skirt that larger question here. I merely want to note, with Hardimon, that roles play an important part in our social fabric, and that in many cases our sense of role obligation does in fact contribute to the actual decisions we make.

Evans and Smith also make an argument in favour of role ethics as a robust normative theory, but in the process, they draw on literature from social psychology that is relevant for my present point. They refer to work by Alan Fiske, who has studied human interactions across a wide range of societies, and claim that "all human beings utilize four social-relational schemas to coordinate almost all of their interactions."[30] Human beings tend to categorize the current relationship they inhabit, and then apply the relevant norms that are appropriate to that role. "In short, relational models theory suggests that human beings are intuitively role-based moral reasoners."[31] Again, Evans and Smith use Fiske's work as a jumping-off point for an argument about role ethics as a normative theory. But Fiske's ideas can be used to make a narrower point: simply that human beings do have a tendency to understand their world according to roles, and to tailor their behaviour to fit that role. Fiske says that "[p]eople believe that they should adhere to the models, and insist that others conform to the four models as well…".[32] The key is that Fiske's social scientific research says something about how humans tend to act, and it is this descriptive point with which I am concerned here.

Like Evans and Smith, Sciaraffa is also primarily concerned with role morality as a source of real moral duties. But he too notes in passing that in practice, the maintenance of social roles and institutions requires certain behaviours from individuals in society. Maintaining social institutions, for Sciaraffa:

> involves generally following these patterns and praising and blaming others who contravene and conform to these norms … [M]aintenance also requires trying to make sense of the patterns of the behavior that constitute the relevant social institutions, to uncover what one thinks is their point and

29 Sciaraffa, *supra* note 19 at 110.

30 Evans & Smith, *supra* note 17 at 604, citing AP Fiske, "The Four Elementary Forms of Sociality: Framework for a Unified Theory of Social Relations" (1992) 99:4 Psychological Review 689. Those four categories, as summarized by Evans and Smith, are hierarchical, egalitarian, communal, and transactional. Evans & Smith, *supra* note 17 at 605-6. Importantly, social roles that we might inhabit do not map directly onto these four categories. Rather, according to Fiske, "People rarely use any one of these models alone; they construct personal relationships, roles, groups, institutions, and societies by putting together two or more models, using them in different phases of an interaction or at different, hierarchically nested levels." Fiske, *ibid* at 693. Thus, the role of judge, for example, appears to have elements of hierarchy as well as elements of transactional relationships, which involve the duty of proportionality. Indeed, Evans and Smith argue that "The proportionality duty is also recognizable as the duty that underlies the judicial practice of ensuring that punishments are proportional to the crime." Evans & Smith, *supra* note 17 at 606. I cannot fully examine these four categories and their relationships to our various roles here. I merely want to draw on Fiske, as Evans and Smith do, for the observation that human beings tend to categorize their relationships and roles, and draw from that categorization conclusions about how they ought to act. In other words, they tend to understand their roles as limiting the boundaries of appropriate behaviour.

31 Evans & Smith, *supra* note 17 at 604.

32 Fiske, *supra* note 30 at 716.

> purpose, to act in accordance with that underlying purpose, and to criticize the institutions to the extent that they run afoul of it.[33]

Again, Sciaraffa says all this in sketching out what duties this places upon us, but I think it also helpfully demonstrates what must actually take place for institutions to in fact be upheld. And since we do find such social roles and institutions in existence, it must be the case that much of this work does in fact get done on a regular basis. The key point I want to highlight is how *internal* such work is. It involves agents observing the norms of an institution, interpreting them, and *choosing* to act in ways that uphold them. This work is done by the individual, and not by any external body checking or constraining the individual.

My argument is this: in much of the discussion of the separation of powers and checks and balances, our attention is on checks and constraints that come from the outside. But that is only a part of what shapes the behaviour of those operating within institutions. A major determinant of institutional decision-making comes instead from what I have been calling "internal checking" or "self-checking." A judge's particular conception of her role is one of the primary drivers of her decision-making processes. Because she sees herself as a judge, and identifies with that role, and because she has a particular sense of what that role requires, she then chooses to act in certain ways that are different than they would be if she did not identify with the role or if she held a different understanding of the role.

Indeed: if external constraint were needed to police the judge's every act, we may start to think it makes little sense to describe her as a judge at all. A judge is someone who, by virtue of her own self-understanding, constrains and polices her own behaviour to a significant extent such that it conforms with her and her society's understanding of what a judge ought to do.[34] Recall the definition of role obligations above, as moral demands that attach to institutional roles.[35] The obligations attach to the role, and by virtue of inhabiting that role and identifying with it, the judge alters her behaviour. Because she is a judge, the moral obligations she must fulfil follow from that role. So part of what it is to be a judge is to understand and carry out those obligations. To the extent that this behaviour has to be imposed on her from the outside, we would begin to think of her as something more like a tool for governmental ends, and not as performing the role of judge at all.

So too with presidents, whose exercise of power is a major concern in Levy's lecture. A president must have an understanding of what it is to act "as a president." What obligations attach to that role? The specifics of the role obligations might be a matter of debate, but the idea that the president must use a conception of the role to determine their behaviour applies here just as it does with the judge. A good president is someone who understands the limits of their role and makes a good faith effort to act within that role. The situations in which that sense of role identification drives the president's decision-making must, I think, be seen as just as important as the situations in which presidential power is checked by one of the other branches.

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33 Sciaraffa, *supra* note 19 at 124.

34 Her understanding and society's understanding may, of course, come apart. Often, those in important institutional roles have a conception of that role that is shaped by a shared social conception of that role. But of course, this is not universal; there is contestation about what a role requires. My main point is that the agent's perception of what is required will be a driver of how she ultimately acts. In some cases, this will also reflect a more widespread social idea of the role, but not always.

35 Hardimon, *supra* note 16 at 334.

With this idea of self-constraint in mind, let us return to the point raised above: the separation of powers, checks and balances, and the rule of law are interrelated but different concepts. Separating the processes of lawmaking and law enforcement is a vision of separation, but it is not necessarily a vision of independence. Indeed, it seems potentially the opposite: a properly separated judiciary might well do the bidding of the legislature slavishly, not because of pressure but because of an understanding that that is its proper role: to enforce the law and not to create or change it. Moreover, as I argued above, that tendency might be different if the judge conceives of the rule of law differently and therefore understands her own role differently. If the rule of law is framed as a more substantive ideal, then the judge may have an obligation to question the content of the formal law and not simply to enforce it. But what is important to notice here is how much turns on the judge's self-conception. If she believes the rule of law requires careful control of her actions such that the rules are applied as written, what she will do will more closely track the desires of the legislature. But if her conception of the rule of law, and therefore of her role, is different, then she will conclude that different, more "interventionist," acts may be required.

What I have tried to draw attention to above are the different ways in which checking functions. I want to suggest that it does not only take the form of external checks on power. It is also to some extent internal. When the judiciary "checks" the power of the legislature, they do so by interpreting the law in a particular way. But they do that with a vision of the limits of their own power in mind: they consider themselves constrained by the rule of law to decide in a particular way, or to avoid rewriting legislation wholesale. There is, in other words, some amount of internal respect for the system, and that internal sense of what is appropriate does much of the actual checking. Learned Hand's famous quotation about liberty comes to mind here: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it."[36] If we apply the same thought to institutional values such as the separation of powers and the rule of law, we will see that it is crucial to have commitment to these values held dear by those who make up the institutions. It cannot only be enforced from the outside by competing institutional powers, but must come from people's own sense of the right use of their own power.

In Mary Liston's reply to Levy in this same issue of the *Constitutional Forum*, she asks us to examine the foundational insight from *Roncarelli v Duplessis*[37] that "there is no such thing as absolute and untrammelled 'discretion'" [38] in public law. She invites us to apply that idea to other parts of the executive branch, up to and including the political executive.[39] The upshot, in Liston's view, is that judicial review would be far more widespread, applying to "most, if not all, exercises of public power…"[40] I think this is a tremendously important insight, and we should move towards a stronger default of reviewability of exercises of public power. This is one important direction for reform. What I have been arguing here, though, is that we should

36 Learned Hand, *The Spirit of Liberty: Papers and Addresses of Learned Hand, Collected, and with an Introduction and Notes, by Irvin Dilliard, Together with the Bill of Rights: The Oliver Wendell Holmes Lectures, 1958 by Learned Hand*, 3rd ed (Birmingham, AL: The Legal Classics Library, 1989) at 190 (speech at "I Am an American Day" ceremony, Central Park, New York City (21 May 1944)).

37 1959 CanLII 50 (SCC), [1959] SCR 121.

38 *Ibid* at 140.

39 Mary Liston, "Bringing the Mixed Constitution Back In" (2021) 30:4 Const Forum Const 9 at 22.

40 *Ibid*.

also think of constraint as internal as well as external. I want to suggest that we should think about how to expand our conception of internal constraint. We should recognize that the absence of absolute and untrammeled discretion is a foundational idea in all three branches. When we reflect on how our government is structured, we will see that there is a deep commitment to the idea that legislatures and executives can't simply do what they wish. Their discretion is limited by their role. But their role is something they choose to inhabit, and decisions they make within that role are enforced from the inside as well as from the outside.

We have general norms of constraint and limited discretion in all branches, but only in some cases are they enforced from the outside. Often, the constraint is internal, and in such cases we often miss that it is constraint at all. The person occupying the role develops a self-conception of what that role entails, and adjusts their behaviour accordingly. What we need to do, in addition to building up external checks, is develop our socially agreed-upon conceptions of the various political roles, such as that of the executive, and promote conceptions of those roles that suit the norms of governance we want to uphold.[41] To draw on the idea of moderation Liston refers to, we should develop ideas of role that promote "good judgment, practical wisdom, and responsiveness to context."[42]

Fundamentally, the idea of constraint requires either external or internal checking. My point here is to ask: what does it mean for the rule of law, for the separation of powers, and for checks and balances, if that constraint is (at least partially) dependent on goodwill or trust, and on the process of internal or self-applied checks on power?

In his lecture, Levy notes the problem of internal motivation. He says that, in Montesquieu's theory, the judiciary was designed to have "the independent social standing and clout to be able to stand up for itself against the threat of interference by either the legislature or executive."[43]

But further, those in such roles must also have "enough sense of their own status, that they will say no; they will refuse orders from the king."[44] This point goes to the internal tendency to protect one's own territory from encroachment by others. But I believe that same sense of role morality has always also required a certain tendency to self-check and limit one's *own* power. A belief in the importance of roles goes both ways: those occupying them must believe both that others ought not to encroach, and that they themselves must stay within certain limits.

I think this is crucial, both to understanding the separation of powers and the rule of law in general, and to seeing a way to a possible solution. One of the major concerns articulated in Levy's piece is that the growth of political parties is problematic for our constitutional structure. Parties aren't able to fulfill the role of holding one another accountable in the way that

41 Of course, there are complex questions about how a person's conception of role is related to and influenced by conceptions of role that might be endorsed in wider society. See *supra* note 34. The question of how to generate change in the conceptions of role that people hold is a difficult one that I cannot fully address here. But I am assuming here that there is some possibility of influencing the views held by those in institutional roles, through, for example, law school education, think tanks, research institutes, media, social media, and so on.

42 Liston, *supra* note 39 at 23.

43 Levy, *supra* note 1 at 8.

44 *Ibid*.

different branches of the government were designed to do. This is a particularly stark problem when the legislature and executive are controlled by the same party.[45] The role of the executive, in Levy's view, comes with an additional complexity that changes how one occupying it might act: the executive is the actor best placed to claim to speak for the whole people.[46]

But if I am right that self-checking is as important as the separation of powers or the checking of one branch by another, then in some ways the problem Levy highlights is not a new one. The executive has always had the ability to present itself in this way; whether or not it does so, or what it understands "speaking for the people" to mean, depends very much on the vision the person occupying an executive office has of that role. Political parties don't change this very substantially, because the extent to which they alter the incentives people have depends on people's conception of the relationship between party and institutional role. This is not to say that partisanship and worries about the executive gathering greater power by claiming to speak for the people are not important worries. They are. But they are worries that are not fundamentally different from those we have always faced. It has always been the case that good governance required good faith actors with a particular conception of their role to occupy that role and carry out their vision of what it requires. They might have better or worse conceptions of that role. But that has always been the case. And so this suggests that what we ought to do, in service of improving governance, is work on building robust conceptions of role morality, and developing shared ideas of the limits of all institutional roles, especially the executive. The widespread acceptance of these limits is at least as effective a way of creating change in behaviour as reliance on external checking, given how much of our decision-making depends on the self-checking that is done by the people occupying specific roles. We should focus on promoting the idea of a limited executive even in times when we are governed by an executive we happen to agree with, so that the vision of the executive role as a limited one gains power and salience for people. Then, when an executive we happen not to agree with is in power, it will matter less if both the executive and the legislature are occupied by the same party, because internal conceptions of role will be the primary drivers of behaviour within each branch of the government.

45 *Ibid* at 12.
46 *Ibid* at 15.