

This bill is opposed by over 350 groups ranging from the Sierra Club and the ACLU, to the Chamber, the NFIB, and National Right to Life.

That is right, Democrats have done a unique thing here: they have united the left and the right in opposition to the effort to take away political speech from some and enhance it for others. These organizations, standing on firm first amendment principles, have been vigorously opposing this effort to stifle their speech.

And I stand with them in asking each and every one of my colleagues to join me in honoring the oath we took to protect and uphold the Constitution of the United States of America, and, in particular, the first amendment to free speech.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. STABENOW. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the majority controlling the first 30 minutes, and the Republicans controlling the final 30 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

#### UNEMPLOYMENT INSURANCE

Ms. STABENOW. Madam President, with all due respect to our Republican leader, I have to express concern on a couple of points. He was just talking about court decisions, a court decision that said BP is a person; that said all big corporations have the same rights as individuals. What we are trying to do, both in the House and the Senate, is to make sure that, in fact, the democratic process can work and that huge corporate interests that have controlled too much of this country are not allowed to do even more in terms of overriding elections and putting money into elections.

I also have to disagree with our distinguished Republican colleague when he says this is all about the deficit. As we would say in Michigan, that is a bunch of bunk. This is about who we care about and how we think we should

move forward as a country in terms of what is best for the majority of the American people. Very different views. Very different beliefs.

Our Republican colleagues have believed if we give tax breaks to the wealthiest Americans and wait for it to trickle down, things will get better. If we back up and let corporations police themselves, everything will be OK.

Well, we saw that for 8 years, 6 years of which they had control of the whole system. I tell you what, it did not trickle down to the people in Michigan. After the Wall Street collapse and what we saw with BP in the gulf and what we have seen with miners' loss of life, I would suggest that view, that belief, has not worked for the majority of people.

So we have a different view. We have a different view. It is one that actually worked in the 1990s under President Clinton when 22 million jobs were created. Yes, we believe this is about jobs. This is about how we get out of deficit.

I also find it amazing that the people who dug the hole, the deepest hole we have ever had in the history of the country, when they were handed a surplus—they dug the hole—now want us to give the shovels back. They want more shovels to dig even deeper.

So this is a difference of opinion on how we believe we should move the country forward and who we are trying to move it for—not the large corporate interests that the Republican leader just talked about who want to be able to give millions of dollars for elections and have no rules and regulations and be able to control the democratic process of elections in this country.

It is not about the folks who are concerned about paying their fair share in this jobs bill, with the tax loopholes we want to close so they cannot take jobs overseas and requiring people to pay their fair share. That is not what we are about. What we are about is creating jobs for the American people. The bill in front of us, the bill we are going to have a chance to vote on one more time, is all about jobs and who we are fighting for. That is what it is about. It is about whether we believe we should only invest in what the wealthy and powerful of this country care about or should we invest in the majority of Americans and create good-paying, middle-class jobs.

It really is a philosophy right now about how we get out of debt. They say more tax cuts to the wealthiest Americans. We will have an estate tax fight where they say: Oh, we ought to be more and more for the top few hundred families, billionaires in the country. Give them more tax relief.

We say, in this bill, what we ought to be doing is focusing on creating jobs to grow out of debt. We are all opposed to debt. I was opposed to the debt when I voted to balance the budget. I was opposed to debt when they got us into debt in the last 8 years, 10 years, when they were focusing on racking up debt. I was opposed then.

Now the question is, How do we get out of debt? We say we have to create jobs, and we have to help the people who are out of work be able to get some help to be able to get some training to be able to keep a roof over their heads and food on their tables while they look for a job.

That is what we believe. That is what this is about. We believe we will never get out of deficit with over 15 million out of work, having to ask for temporary assistance. We will never get out of debt unless we are creating jobs. We have begun to do that. Our colleagues on the other side of the aisle say: We want to stop that.

Let's look at what happened. I talk about the previous administration not only to focus on the past, but these are the same ideas that are on the floor today. They are promoting the ideas that got us into these job losses. When President Obama came into office, we were losing about 750,000 jobs a month. That is what he inherited. We said: This hasn't been working for the majority of people. It didn't work for the majority of people in Michigan. We want to go back to investing in people and communities, helping businesses get the capital to grow, supporting small businesses, focusing on manufacturing, making things in this country. Let's take away the incentives to take jobs overseas. We are in a global economy, but we want to export our products, not our jobs.

This bill takes away incentives to go offshore, overseas, keeps the jobs here. It creates more capital for manufacturers. I was pleased to craft a provision that will create the ability to buy more equipment and facilities to create jobs. It helps small businesses keep jobs. That is what we believe. We have put in place the Recovery Act. We have begun to climb out. We are not out. But these guys are going: Stop. Oh, my gosh, it is beginning to work. This may affect the elections. Let's do everything we can to stop the recovery. Let's take the resources that have been used to invest in a battery manufacturing plant, private sector, in Midland, MI, where I attended a groundbreaking on Monday, Dow Kokam. Let's take that money away now. We will say: We have too big deficits. We can't invest in jobs. We can't invest in jobs.

They want to take that away and come over and say: We will take the money that is creating jobs and we will give it to people who don't have a job.

Wait a minute. So you want to use the Recovery Act money that is beginning to create jobs and put it over here to help people who don't have a job, and then we will create more people who don't have jobs?

We say that is a bunch of hokey, that is a bunch of bunk. In Michigan, we have stronger words for that, but I won't say them on the Senate floor. My people in Michigan are sick and tired of this.

It is pretty bad when we have one side in this Chamber rooting for failure

every day. I have people in my State, Republicans who are out of work, small businesses that are Republican. They don't have capital, manufacturers that are Republicans who want us to pass legislation to give them more capital. This is not a partisan issue. This is about whose side we are on in this country. It is about whether we embrace a philosophy that will work for the majority of Americans or work for only a few. That is what this is about.

What we have from the other side is a litany of no, no, no. We will be yes, if you take away the money for the recovery, which they all voted against—most, excuse me, not all but most—we will take away those dollars because that will slow us down, that will make sure this President is not successful. God help us if this President is successful and this majority is successful. Let's keep people hurting as long as possible, because maybe that will help us pick up some seats.

No wonder people are angry. No wonder people are cynical. I am pretty angry myself.

There are real people's lives at stake in all of this. All we get is no, no, no—cynical, political games on the other side. Even though things are moving up slowly but surely—way too slow from my perspective but, thank God, they are not continuing to go down, it is beginning to work. Instead of letting it work—and it certainly is not everything we want, but it is beginning, it is turning—instead, they want to stop it. The election is coming up. Let's make sure people are as mad as possible, and then we will blame the people who were in the majority, even though we are stopping them every day. We are stopping them from doing things. We filibuster. The cynical view is that the public won't understand that so we will keep making sure that nothing happens so people are hurting. That is what is happening here.

Let's talk about unemployment benefits and the fact that we do have people hurting. We do, in fact, have 3 million jobs available and 15 million people looking for work. Some say: Those folks are just lazy. Go get a job. I would like to show them the real world and what is happening for too many families. The numbers are changing. When I first started coming to the floor, we were talking about six people out of work for every one job opening. Now it is five. I don't celebrate that because I want to make it one for one. It is getting better. It is creeping around. It is turning around. It is turning around because the Recovery Act incentivized people to buy a new home which, in this bill, we want to extend for people, to get as many people who have benefited from that \$8,000 tax credit as possible, or the \$6,500. But our colleagues on the other side say no.

Realtors tell me in Michigan things are turning around because of support from the Recovery Act. The stimulus has helped begin to turn things. But, oh, my gosh, no, we cannot possibly

continue to support something that is actually working, because it might have had political effects. People might not be hurting as much or as mad, and that may not help us in the election.

We have today people who are looking for work, have been looking for work for months, some longer than a year—in some cases, 2 years. People did what we told them to do. They went back to school. They are living off of unemployment for their family while they are going to school. They are trying to do everything they can. These are people who have done nothing but work hard and take care of their families and love this country. They assume, just as in every other economic downturn in the country, that we will understand, we will get it. The Congress will get it and support them to turn their lives around without losing their homes and the ability to care for their families.

I want to read a few letters from people in Michigan. We have thousands of e-mails and letters. It breaks our heart. People cannot believe what in the world is going on around here that we are not doing everything conceivable to create jobs. These artificial debates about deficits—again, it is a very big issue, these deficits, but it is pretty hard for us to be lectured by the people who created the deficits who are now saying: We can't help people caught in this economic recession because of deficits. It is pretty hard to accept their view, the way they would get us out, which didn't get us out, which created more deficit, that somehow we should go back to that rather than what has worked in the past which is putting people to work, having people work so they can pay into the system and contribute and buy things. They become part of the economy. Then deficits begin to go away. We begin to come out of the hole. That is what we believe, focusing on people.

Kim from Flint says:

I am writing today to beseech you to urge Congress to act quickly to extend federal unemployment benefits. In this unprecedented economy, especially where I live in Michigan, extra time is much needed to find employment. Many of my family, friends and neighbors are in the same situation I am. I personally was laid off from what I thought was a stable position back in July and despite having experience and a BBA, I have not been able to find comparable work. Our no worker left behind program in Michigan is out of funding. My college career services department has not been helpful. While I'm trying to keep hope in pursuing job leads and even looking at going back to school for an entirely different field, I fear what will happen to me if these benefits are not extended. I will lose everything. I am indeed writing from my own self-interest but not only for my own interests. With so many people in the same situation as I am, what will happen to them? Will you have a large segment of your constituent population suffer so, or will you have the economic situation in Michigan worsen as many become unable to even provide the bare necessities for themselves and their families? Or will you act quickly to extend much needed unemployment benefits?

Kim, we are trying to act as quickly as we can. We have been trying to. I

know it is no consolation. It feels so frustrating and empty to talk about differences between Republicans and Democrats when people are hurting. But the reality is, we don't have one Republican right now willing to step forward, as one, and stop this filibuster that has been going on for weeks. We have been dealing with this now every time we bring up the extension. We don't have one colleague, people with whom we work in good faith on so many different issues, not one has been willing up to this point to step up and join us based on the larger good, not the political pressure, not the partisanship but the larger good of making sure somebody who is out of work knows that they have at least the bare minimum so they can continue and not lose a house and be homeless on top of job loss and then try to figure out what to do to take care of the kids. We don't have one colleague who has been willing to do that, to step up and have the courage to join us in stopping this incredibly irresponsible filibuster that has been going on.

We will have an opportunity later today. We fully expect the same result, unfortunately. The politics of the moment seem to be overwhelming. It is amazing to me. But I guess if it works, people will keep doing it. That is the question, whether it will work with the American people. With all of the mumbo-jumbo going on, numbers and so on, the bottom line in the world in which I live and the world in which my family lives in Michigan and the people I represent is a world that is very different from here. We in Michigan, Democrats and Republicans, are rooting for success as Americans. We want things to get better. We want our country to be safe. We want it to get better for everybody. We will go on, have another day to fight about differences, ideological differences on issues. But we are at least rooting for the country to succeed, for the President, for the government to be working together to do the right thing so we can get out of this hole.

When we look at what is happening around the world, when we look at the brink of disaster last year when President Obama came in and we were on the edge of the cliff—some would say over the cliff—holding on with our fingers, losing 750,000 jobs a month, we began to walk it back through some very bold things that had to be done at the time, such as investing in people and jobs.

In the previous administration, when they stepped up and did what was called the Wall Street bailout, a lot of folks in Michigan said: What about us? Who is going to bail out us working people? Well, the Recovery Act, in my judgment, was that. It was the people's bail out. It was focusing on people, jobs, and job training, and helping those who are temporarily out of work while they get their lives together and find another job, and investing in the future.

That is what that was about. And that is what it is still about. It is a 2-year effort, and it is beginning to work. We can go back and look at the numbers again. We are certainly not where we want to be, but it is turning around. We are coming out of the hole. Step by step, we are coming out of the hole. Now the folks who created the hole say: Oh, give us more shovels so we can dig some more. We are saying: No, let's keep it going. Let's give it a try. We can tinker with it. We can change some things that we need to, but let's keep it going, let's give it a try here so we can keep this thing moving in the right direction. These folks are saying no. In order to do the bill in front of us on jobs, we want to take money away from jobs, slow this down in order to be able to "pay" for the bill in front of us.

Well, what is in front of us? We have a bill today that provides tax cuts to businesses, tax relief to State and local governments to help them invest and create jobs. The other side of the aisle has said no.

We have a bill in front of us to provide tax cuts that are going to put dollars back into the pockets of working families trying to make it. The other side has said no.

We have a bill that is going to help restore credit to small businesses. It is the one thing I hear over and over, and I want to thank our leader for keeping small businesses at the forefront, and we are working on additional legislation to help small businesses. We have to free up capital. Too many cannot get their line of credit or get the loan they need to operate or to be able to expand. That is certainly true in Michigan. But this bill has provisions to help small businesses expand, hire new workers. The other side has said no.

It would expand career training so the people we want to be able to get off unemployment benefits and to be able to get into jobs will have an opportunity to focus on new careers. This bill includes provisions to help people get career training to get new jobs. The other side has said no.

It would extend help for people who are out of work right now, people who have had the dignity of working their whole lives, breadwinners who are no longer bringing home the bread. It would help them keep a roof over their head and food on the table and maybe a little gas in the car so they can go look for a job while they are moving through this difficult time and while we are focusing on job creation. The other side has said no.

This bill would ensure that senior citizens, military servicemembers, and Americans with disabilities would continue to have access to their doctors. We did get agreement to pull out that one provision to be able to extend it for 6 months, which I hope will get done very quickly. But the rest of this, frankly, is being held up, in my judgment, because—even though it is all paid for. None of this I have just talked

about—other than unemployment benefits, which are always funded differently as an emergency because it is an emergency—the rest of this is entirely paid for, does not add a penny to the deficit. But I do think it then brings up the question: Why would they be objecting?

Well, we are paying for jobs and job training by closing some tax loopholes. You will no longer get tax benefits if you take the jobs overseas. We want the jobs in America. We want to stop that. The other side says no.

We want to make sure people who are very wealthy but whose income comes in in a different way are paying their fair share, contributing just like middle-class people, low-income people. We close some loopholes to pay for this. They say no.

We also have in this bill a provision that would increase the dollars, by pennies—49 cents—on every barrel of oil to be able to clean up the spill in the gulf, to be able to add money to the Oil Spill Liability Trust Fund. In the past, oil companies only had to kick in 8 cents a barrel. Well, given what has happened in the gulf, that is not enough. So we have said 49 cents for every barrel. A barrel of oil—I do not know the price now but \$70, \$80 a barrel, whatever it is: 49 cents.

The oil companies probably do not like that. So the other side said no. In fact, the day the distinguished Republican Congressman in committee was apologizing to BP on the House side—that same day—Republican colleagues here were doing the bidding of the oil companies by voting "no" on increasing their contributions by 41 cents a barrel into the liability trust fund to clean up the oil spills.

I think it is pretty clear whose side we are on, whose side they are on, what is happening right now. We have a stalemate going on. We have tried and tried, and our leader and the chairman of the Finance Committee, who has worked and worked and worked and worked, as he always does, in good faith to find some compromise, to be able to move this jobs bill forward and help people who are out of work. It appears right now we do not have one Republican colleague willing to join us in that effort. There have been discussions, but there has been no agreement.

So we have the votes. That is the darnedest thing about this place. We have the votes. We just cannot stop a filibuster. Somehow in our democracy, with men and women fighting around the world for our democratic process of majority rule—when you win an election, you have to get one more than the other guy, one more vote than the other guy to win the election. And here, instead of having majority rule, they are using the political processes and tricks in a way so as to tie us up in a pretzel like I have never seen before, unprecedented, using rules in a way that is absolutely unprecedented so that the public shakes their head and says: What is going on here? What are these people doing?

But they are doing this in a way so that instead of majority rule, you have to get a supermajority. That is what we are talking about: Trying to get 60 votes, not 51, which is majority rule in every town and city and State and every Federal election; you have to get one more than the other guy. But because of a gross misuse of the rules in the last year and a half, we have to now get 60 for everything. And we cannot—up to this point—get even one Republican colleague to join us. So that is where we are.

I would ask, Madam President, how much time is remaining on the majority side?

The ACTING PRESIDENT pro tempore. One minute forty-five seconds.

Ms. STABENOW. I am sorry?

The ACTING PRESIDENT pro tempore. One minute forty-five seconds.

Ms. STABENOW. Thank you.

Let me indicate again, there is a huge difference in view as to how to get us out of the deficit hole. One side, with a set of policies—I am sure they were sincere—a set of policies that said: We will give it to the wealthiest Americans—tax cuts—and then it will trickle down, coupled with 8 years of not paying for things—two wars and a whole series of other things—created red lines down, job loss, so that President Obama came in at losing about 750,000 jobs a month.

We have tried a different view. We have said the only way to get out of deficit is to focus on jobs, putting money in the pocket of middle-class families, and growing our way out by focusing on the middle class, working people, the majority of people, small businesses, with manufacturers making things again in this country.

We both care about deficits. We have different views about how we got to those deficits, and certainly different views about how to get out of deficit. What we will not support is taking money away from efforts that have begun to get us on a road to recovery. We have a long way to go, but it has begun to get us out of the ditch. We no longer are losing 750,000 jobs every month. We are now gaining jobs. It is not as even as we would like, but we are gaining jobs. The question is, do we allow this to continue, while helping people who are out of work right now, and grow our way out of this deficit by creating jobs, or do we go back to the old philosophy, the old beliefs that got us into the hole in the first place?

That is the basic debate on the floor of the Senate. That is the debate. We have one view that worked in the 1990s, creating 22 million jobs over the course of 8 years in the Clinton Presidency, and one view that has lost us jobs. Now we are back again to that philosophy to create jobs, and that is what this is about.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. STABENOW. Thank you, Madam President.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

## NOMINATION OF ELENA KAGAN

Mr. HATCH. Madam President, next week the Judiciary Committee will hold its hearing on the nomination of Elena Kagan to replace Supreme Court Justice John Paul Stevens. The Senate's role of advice and consent, especially for Supreme Court Justices, is one of our most important constitutional duties. I wish to share a few thoughts about how I will approach this task.

America's Founders designed the judiciary to be, as Alexander Hamilton described it, the weakest and least dangerous branch of government. Things have not worked out as planned. The judiciary today is, instead, the most powerful, and potentially the most dangerous, branch of our government. Rather than being accountable to the people by being subject to the people's Constitution, activist judges often make the people accountable to them by seeking to control the people's Constitution. My objective in this confirmation process is to find out which kind of Justice Ms. Kagan would be if confirmed to the Supreme Court.

Judicial qualifications fall into two categories: legal experience and judicial philosophy. Legal experience is a summary of what a nominee has done in the past and can be described in a resume or on a questionnaire. Judicial philosophy describes how a nominee will approach the task of judging in the future. It is harder to determine, but I believe it is much more important.

Let me first look at Ms. Kagan's legal experience. I have never believed that judicial experience is necessary for Supreme Court service or, to put it another way, I have never believed it to be a disqualification if you do not have judicial experience. In fact, 39 Supreme Court Justices—about one-third—had no previous judicial experience. What they did have, however, was extensive experience in the actual practice of law, an average of more than 20 years. These are Justices such as George Sutherland, one of my predecessors as Senator from Utah, who practiced for 23 years, or Robert Jackson, who practiced for 21 years and served as both Solicitor General and Attorney General. In other words, Supreme Court Justices have had experience behind the bench as a judge, before the bench as a lawyer, or both.

Ms. Kagan has neither. She spent only 2 years as a new associate in a large law firm. She never litigated a case or argued before any appellate court before becoming Solicitor General last year.

And her work in the Clinton administration was focused on policy and legislation. As the Washington Post described it recently, Ms. Kagan would bring to the Court experience "in the political circus that often defines Washington." Some people may see little difference between the legal and the political, but I do and am concerned about blurring the lines even further.

Last week, one of my Democratic colleagues with whom I serve on the

Judiciary Committee talked about Ms. Kagan's qualifications and claimed that some Senators question her fitness for the Supreme Court solely because she has never been a judge. No one has made that argument. This Democratic colleague identified Justices Byron White, William Rehnquist, Louis Brandeis, and Lewis Powell as among those with no prior judicial experience. These Justices had practiced, respectively, for 14, 16, 37, and 39 years and Justice Powell had also been president of the American Bar Association. There really is no comparison.

So on this first element of legal experience, we have to be honest about what the record shows. Unlike other Supreme Court nominees, Ms. Kagan has no judicial experience and virtually no legal practice experience. That leaves her academic and political experience. The Democratic Senator I mentioned identified as among Ms. Kagan's strongest qualifications for the Supreme Court her experience crafting policy and her ability to build consensus. Judges, however, are not supposed to be crafting policy, and consensus-building only begs the question of what a consensus is being built to support.

This relatively light record of legal experience only places more importance on judicial philosophy, the other qualification for judicial service. Frankly, finding reliable clues about judicial philosophy is often harder in an academic and political record such as Ms. Kagan's than in a judicial record. This is especially true when, like Ms. Kagan, a nominee has rarely written directly about the topic. This does not mean that reliable clues do not exist, just that they are harder to find. I have to take Ms. Kagan's record as it is because I have to base my decision on evidence, not blind faith.

Judicial philosophy refers to the process of interpreting and applying the law to decide cases. That is what judges do, but they can do it in radically different ways. Notice I said this is about the process of deciding cases, not the results of those cases. Many people, including some of my Senate colleagues and many in the media, focus only on the results that judges reach, apparently believing that the political ends justify the judicial means.

That is the wrong standard for evaluating either judicial decisions or judicial nominees. Politics can focus on the results, but the law must focus on the process of reaching those results. Rather than the desirable ends justifying the means, the proper means must legitimate the ends. It makes no difference which side wins, which political interest comes out on top, or whether the result can be labeled liberal or conservative. If the judge correctly interprets and applies the law in a particular case, then the result is correct.

So I wish to pin down, as best I can, what kind of Justice Ms. Kagan would

be. Will the Constitution control her or will she try to control the Constitution? Will she care more about the judicial process or the political results? As I said, those clues come primarily from her record, secondarily from next week's hearing. So let me briefly focus on a few areas of Ms. Kagan's record and mention some questions that need to be answered and some concerns that need to be addressed.

First, while in graduate school, Ms. Kagan wrote that the Supreme Court may overturn previous decisions "on the ground that new times and circumstances demand a different interpretation of the Constitution." Not a different application, mind you, but a different interpretation. She wrote quite candidly that it is "not necessarily wrong or invalid" for judges to "mold and steer the law in order to promote certain ethical values and achieve certain social ends."

In a 1995 law journal article, she agreed that in most cases that come before the Supreme Court, the judge's own experience and values become the most important element in the decision. In her words, "many of the votes a Supreme Court Justice casts have little to do with technical legal ability and much to do with conceptions of value." That sounds a lot like President Obama, who said as a Senator that judges decide cases based on their own deepest values, core concerns, the depth and breadth of their empathy, and what is in their heart. If that is too results oriented, Ms. Kagan wrote, so be it.

While Ms. Kagan has not herself been a judge, those judges she has singled out for particular praise have this same activist judicial philosophy. In a tribute she wrote for her mentor Justice Thurgood Marshall, for example, she described his judicial philosophy as driven by the belief that the role of the courts and the very purpose of constitutional interpretation is to "safeguard the interests of people who had no other champion. The Court existed primarily to fulfill this mission. . . . And however much some recent Justices have sniped at that vision, it remains a thing of glory."

In 2006, when she was dean of Harvard Law School, Ms. Kagan praised as her judicial hero Aharon Barak, who served on the Supreme Court of Israel for nearly 30 years. She called him "the judge or justice in my lifetime whom I think best represents and has best advanced the values of democracy and human rights, of the rule of law, and of justice." That is not simply high praise, but the highest praise possible, for she said that Justice Barak was literally the very best judge anywhere during her entire lifetime in representing and advancing the rule of law.

Who is this judge who, for Ms. Kagan at least, is literally the best representation of the rule of law? Judge Richard Posner has described Justice Barak as "one of the most prominent of the