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Robert Bork on 'The Worldwide Rule of Judges'

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Wednesday, October 22, 2003

According to Robert H. Bork, the American constitutional order is being subverted by an elite of judges. In his new book, *Coercing Virtue: The Worldwide Rule of Judges*, Bork takes on the judicial usurpation of politics, culture and morality.

“One of the indispensable institutions of Western Civilization is the rule of law. That rule is central to democratic government, a vigorous economy, and individual liberty,” states Bork. So far, so good. But Bork also argues that the rule of law, “requires that the law be understood to have force and moral weight of its own, independent of the political and cultural struggles of the moment. That is another way of saying that the rule of law, when it is observed, guarantees the supremacy of process in public affairs; self-government, stability, and safety depend on that supremacy.”

Without doubt, Robert Bork is one of the most controversial figures of our times. As a matter of fact, he likes it that way. Bork is a man of serious ideas and passionate arguments. He possesses one of the greatest legal minds of his age and this is combined with an irascible personality and the absolute lack of any ability to hide his own beliefs. Bork’s legal brilliance led President Ronald Reagan to nominate Bork to a seat on the United States Supreme Court in 1987.

His intellectual vigor, conservative constitutional philosophy, and outspoken opinions caused such an outbreak of organized liberal opposition, that Bork’s nomination was turned down by the United States Senate. Bork’s confirmation hearings were a crystallizing moment in America’s cultural history. Liberal opposition groups, ranging from abortion advocates and feminists, to environmentalists and the critical legal studies movement, opposed Bork and took to the nation’s airways in order to defame his character as well as his judicial philosophy.

The battle over Bork’s nomination was the first real example of the “politics of personal destruction” in Washington. Liberal groups painted Bork as a “extremist,” demonstrating again that truth is a luxury when ideologues are at battle. The attack on Bork was so fierce that a new verb, to Bork, was coined, meaning to destroy by personal attack rather than to win on the arguments.

The fact that Robert Bork was not confirmed to the United States Supreme Court is a national scandal. His absence on the Court is a grave loss to the nation. On the other hand, Bork has used his time since those conformation hearings to good purposes, publishing a series of ground-breaking books that have helped many Americans to see the truth. In *Slouching Toward Gomorrah*, Bork argued that moral relativism, an extreme vision of radical individualism, and egalitarianism have led to the moral debasement of the culture.

As he explained, “the pessimism of the intellect tells us that Gomorrah is our probable destination.” He called on the nation to be determined to turn the tide and reverse course. In the book, Bork argued that the nation should adopt a constitutional amendment that would allow Congress to override any Supreme Court decision by a simple majority vote of both houses.”

“This is necessary,” Bork argues, “because the law has become the instrument of the intellectual classes that are opposed to middle class values and hold America in contempt.” Contempt? That is not an understatement. The traditional morality held by most Americans is hated by the intellectual elites — and all too often by the courts.

As Bork states: “The political revolution brings with it a cultural revolution. In reading the opinions of many judges, it is apparent that they view their mission as preserving civilization from a barbarian majority motivated by bigotry, racism, sexism, xenophobia, irrational sexual morality and the like. The New Class hardly dislikes bourgeois culture. Hence, courts everywhere displaced traditional moralities with cultural socialism.”

This line of argument from Bork is really nothing new. In *Slouching Towards Gomorrah*, Bork aimed his guns at judicial activism in the United States. In *Coercing Virtue*, Bork turns his attention to the worldwide phenomenon of judicial activism. Bork describes this judicial activism as “the single most powerful influence aiding and abetting all other forces” in the Culture War. He describes these judiciaries as “activists, ambitious, and imperialistic.”

Bork understands the Culture War and its contours. As the moral revolutionaries are unable to get their agenda through the legislatures, they turn to the courts, which are generally packed with their ideological allies. As Bork explains, “Judicial activism results from the enlistment of judges on one side of the Culture War in every Western nation.” As he continues: “Despite denials by some that any such conflicts exist, the Culture War is an obtrusive fact. It is a struggle between the cultural or liberal left and the great masses that is, left to their own devices, tend to be traditionalists.”

The problem is bad enough if the United States is taken alone, but placed in the larger international context, the picture grows far more ominous. As former Secretary of State Henry Kissinger noted, “In less than a decade, an unprecedented concept has emerged to submit international politics to judicial procedures.” Bork contends that American courts are now following the demands of the intellectual left and are substituting international law for the law of the United States. He points to the growing tendency of American courts to cite the decisions of foreign courts as the United States Constitution is interpreted.

A glaring example of this is seen in the June 26, 2003 U.S. Supreme Court decision, *Lawrence v. Texas*, in which Justice Anthony Kennedy, writing for the majority, claimed an evolving international consensus on homosexuality and decisions of international courts as precedent for handing down one of the most revolutionary decisions in the history of the High Court.

As Bork warns, “international law is not law but politics. For that reason, it is dangerous to give the name ‘law,’ which summons up respect to political struggles that are essentially lawless. The problem is not merely the anti-Americanism that grips foreign elites and shapes law; it is also the American intellectual class, which is largely hostile to the United States and uses alleged international law to attack the morality of its own government and society.”

A quick look around the world should be sufficient warning to most Americans. Do we want the mores of decadent, post-Christian Europe to bind the rule of law in the United States? This is no longer a hypothetical question. We are in Robert Bork’s debt for this penetrating analysis.

