Beyond the Crossroads: Shackled by Liberty, Tyrannized by Equality (Book Review: Slouching Towards Gomorrah)

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I ended our first semester of Torts last fall as I have usually done in recent years, reading from The Real Mother Goose. It is a book chock-full of torts - potential claims, privileges, and immunities. Once again, I read the following:

For want of a nail, the shoe was lost;
For want of the shoe, the horse was lost;
For want of the horse, the rider was lost;
For want of the rider, the battle was lost;
For want of the battle, the kingdom was lost,
And all for the want of a horseshoe nail.1

When I ask the class what issue this nursery rhyme raises, I generally hear a resounding chorus of “Proximate Cause!” I congratulate the class on its perceptiveness, and students who are mothers smile and shake their heads, realizing with amusement what they have been teaching their children during their bedtime stories. And then we talk about the final exam.

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1. For Want of a Nail, The Real Mother Goose 101 (1916).
The insight of this particular nursery rhyme, however, is not far from remarkable. In tort law, proximate cause serves to limit the reach of liability for the results of one's conduct. It is a legal doctrine that recognizes the impossibility of holding one legally liable for all of the consequences of one's actions. After all, everything in the universe is connected with everything else.

Still, to limit liability for one's actions is not to say that one's actions do not have far-reaching effects. And, as the rhyme reminds us, those effects may be substantial - even disastrous.

**INTRODUCTION**

Our culture is in decline. Some would say a precipitous decline. Those who do not see it, or who prefer to characterize where our society is headed as ascension, would do better to stop reading right here. If we cannot agree that there is a problem, it is fruitless to attempt to discuss solutions. This review - like the book which is its subject - is for those concerned about the decline and its causes. It is for those interested in decelerating and reversing the fall. And the matter is not solely or even primarily a legal matter, though the law is much involved and the law is the focus of this review.

Declaring their independence in 1776, the American colonists asserted:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.  

Might they have gotten it wrong? Robert H. Bork, former D.C. Circuit Court of Appeals judge and Yale law professor, perhaps best known for his nomination to the Supreme Court in 1987 and his rejection by the Senate, dares to ask the question. Moreover, he asserts that the colonists did indeed get it wrong, at least in

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part. People are created equal only in certain narrow respects.\textsuperscript{4} And society cannot survive individual liberty that is unbounded. The problem is that America has largely ignored the limiting assumptions that make the Declaration's pronouncements meaningful.

In his recent book \textit{Slouching Towards Gomorrah},\textsuperscript{5} Bork raises a voice much like that of the prophets in the Israel of the Old Testament. It is a voice powerful in its perception and in its sincerity. It is a voice plaintive in its concern. Who will listen? Who will believe the message?\textsuperscript{6} We would all do well to listen. It is a book for law students, law professors, university administrators, judges, legislators, and bureaucrats. At the same time, it is a book for mothers and fathers, businessmen, physicians, farmers, consumers, producers, athletes, mechanics, teachers, carpenters, homemakers, ministers, actors, and musicians. We all are the horseshoe nails.

Bork attributes the American decline to what he calls "modern liberalism."\textsuperscript{7} According to Bork, modern liberalism is the liberalism of the Enlightenment evolved over more than two centuries into a philosophy of life characterized by what he calls "radical individualism" and "radical egalitarianism."\textsuperscript{8} The theme is not new. C.S. Lewis wrote in the 1940's of the threat presented by the modern rejection of absolutes.\textsuperscript{9} T.S. Eliot, 1948 Nobel Prize winning British poet, regularly described the unraveling of society instigated by a throwing off of moral constraints. For example:

\begin{itemize}
  \item[4.] It is one of the major fallacies of modern liberalism to contend that government must eliminate all inequalities. All men are not created equal. Some have shorter legs than others. Should government chop off the legs of those who are taller? Some are not as intelligent as others. Should government lobotomize those who are smarter? Some are born into families with billions of dollars, and others are born in the ghettos of the inner city. Should the wealth of the rich be redistributed? \textit{See Robert H. Bork, Slouching Towards Gomorrah: Modern Liberalism and American Decline} 75 (1996) (K. Vonnegut satire). Even if the answers to any such questions might be a qualified "Yes," neither the government nor anyone else could arrive at or preserve equality in the equalization effort.
  \item[6.] The question has been asked before: "Who has believed our message?" \textit{Isaiah} 53:1 (NAS).
  \item[7.] \textit{See infra} text accompanying notes 30-32.
  \item[8.] STG, \textit{supra} note 5, at 4.
  \item[9.] C.S. Lewis, \textit{The Abolition of Man} (1943). \textit{See generally} C.S. Lewis, \textit{That Hideous Strength} (1946).
\end{itemize}
But it seems that something has happened that has never happened before: though we know not just when, or why, or how, or where.

Men have left God not for other gods, they say, but for no god; and this has never happened before.

That men both deny gods and worship gods, professing first Reason,
And then Money, and Power, and what they call Life, or Race, or Dialectic.

The Church disowned, the tower overthrown, the bells upturned,
what have we to do
But stand with empty hands and palms turned upwards
In an age which advances progressively backwards?¹⁰

Indeed, the prophet Isaiah, hundreds of years before Christ, declared:

"Woe to the one who quarrels with his Maker -
An earthenware vessel among the vessels of earth!
Will the clay say to the potter, 'What are you doing?'
Or the thing you are making say, 'He has no hands'?
"Against whom do you jest?
Against whom do you open wide your mouth
And stick out your tongue?
Are you not children of rebellion,
Offspring of deceit . . . ?"
"But you who forsake the Lord,
Who forget My holy mountain,
Who set a table for Fortune,
And who fill cups with mixed wine for Destiny,
I will destine you for the sword,
And all of you shall bow down to the slaughter.
Because I called, but you did not answer;
I spoke, but you did not hear.
And you did evil in My sight,
And chose that in which I did not delight."
Thus says the Lord,
"Heaven is My throne, and the earth is My footstool.
...
For My hand made all these things,
Thus all these things came into being," declares the Lord.
"But to this one I will look,
To him who is humble and contrite of spirit, and who

trembles at My word."\(^{11}\)

And Bork's is by no means the only voice rising above the clamorous decay.\(^{12}\) But Bork is specific, his coverage is comprehensive, and his analysis is compelling. He identifies the philosophical and political themes that drive the trends that are so troubling. He proffers the cohesiveness of logic. And his understanding of human nature rings true.

It would have been unthinkable not long ago that Congress would debate the merits of partial birth abortion\(^ {13}\) or the meaning of marriage.\(^ {14}\) But, as Bork says, when liberty is exploded to its endpoint, without restraints, the result is total autonomy for the individual. Likewise, the explosion of equality to its logical conclusion means that merit-based judgments about people are forbidden, and position becomes guaranteed. The combination of the two, liberty and equality unconstrained, means a mass leveling of an increasingly atomized population.

It is no wonder that we find ourselves fettered and disheartened. Ironically, unbounded freedom tends ultimately toward slavery, and coerced equality amounts to tyranny.

A. *Slouching Towards Gomorrah*

In his Introduction, Bork describes the historical context of the American decline. It did not begin in the Sixties, but simply

13. Virtually everyone on all sides of the abortion debate agrees that partial-birth abortion, known in medical circles as "intact dilation and evacuation," is "horrific." J. Alter, *When Facts Get Aborted*, NEWSWEEK, Oct. 7, 1996, at 67. Congress passed a broad prohibition against the procedure in 1996, but President Clinton vetoed the measure. An effort to override the veto was unsuccessful, but the Senate debate did nothing to minimize the significance of the issue. As reported in the *Washington Post*, in a pause during the emotional remarks of a pro-life senator,

(Im)possibly, in an already hushed gallery, in one of those moments when the floor of the Senate looks like a stage set, with its rich wooden desks somehow too small for the matters at hand, the cry of a baby pierced the room, echoing across the chamber from an outside hallway.

No one mentioned the cry, but for a few seconds no one spoke at all.

accelerated during that decade. The clearest beginnings were in the Enlightenment that spawned the American and French revolutions. Preserved in the Declaration of Independence and in the French revolution’s cry of “liberty, equality, fraternity,” the sanctification of the twin priorities of individual freedom and egalitarianism began generations ago. John Stuart Mill’s On Liberty in 1859 increased the momentum, and in the United States, as evidenced in the moniker “The Gay [Eighteen]Nineties,” by the end of the nineteenth century the seeds of deterioration had germinated. According to Bork, the growth of the seedlings slowed during the first half of the twentieth century, not because of any genetic weakness, but because of temporary changes in climate. The growth was interrupted by the winter that was World War I; the “Roaring Twenties” followed. Then came the winters that were the Depression and World War II. The seedlings gained new strength in the 1950’s, and in the Sixties the cover of the saplings had begun to obscure ancient landmarks.

The seedlings were fed by the unprecedented affluence of American society. The traditional constraints of religion, morality, law, and the necessity for hard work became increasingly irrelevant as material priorities became more important and easier to achieve.¹⁵ Technological advance fed the hunger for convenience, and more spare time meant boredom for many and an increasing thirst for entertainment. Deviant behavior came to be redefined.¹⁶ And, still, “[w]ith each new evidence of deterioration, we lament for a moment, and then become accustomed to it.”¹⁷

Part I of Bork’s book is devoted to specific explanation of the historical and philosophical context. Chapter One is his measuring of the Sixties. It was the first American decade unable to assimilate and socialize the adolescents coming of age. Hence, the chapter’s title, “The Vertical Invasion of the Barbarians.” Taking

¹⁵. STG, supra note 5, at 8.

¹⁶. Bork notes the paradox that deviancy is being defined not only downwards (the “Durkheim constant”), but upwards as well. Id. at 3. Not only has certain behavior, homosexual conduct, for example, become increasingly tolerated, but previously acceptable conduct, a kiss on the cheek by a six-year-old, for example, has come to be vilified. See No Bliss From Boy’s Kiss, WASH. POST, Sept. 25, 1996, at A2.

¹⁷. STG, supra note 5, at 2. The Supreme Court observed in 1931 that “crime has grown to most serious proportions.” Near v. Minnesota, 283 U.S. 697 (1931) (affirming the need for a vigilant press protected against prior restraints). Today, more than sixty-five years later, we describe the current state of affairs in the same terms.
his cue from Ortega y Gassett and Rathenau, Bork observes that "[e]very new generation constitutes a wave of savages who must be civilized by their families, schools, and churches."\textsuperscript{18} Why the overwhelming surge in the Sixties? First, because the numbers were so vast. But the adolescents were also rich and pampered.\textsuperscript{19} University faculties encouraged their rebelliousness, and administrators coddled them. They were bored, and the entertainment industry catered to the growing market. Many were searching for meaning; some sought power. And, against it all, the culture was no match for them.

As for the Vietnam war, it was not objected to out of any deep-seated concern for the Vietnamese people, but because America was the common enemy.\textsuperscript{20} Bork notes that the protests ended when the draft ended and that the antiwar protesters had disappeared when following the United States' departure, North Vietnam overran South Vietnam and inflicted gross atrocities upon the people of the South.\textsuperscript{21} The philosophical foundations for the foment lay in the presuppositions that liberty was tainted as long as there were constraints and that the traditions and morality of American society, of "the Establishment," were constraints imposed by those seeking to preserve favored and undeserved positions in the status quo.

In Bork's view, modern liberalism, as typified by the Port Huron Statement of 1962,\textsuperscript{22} seeks "a shortcut to heaven."\textsuperscript{23} Its premise is that "human nature is infinitely malleable," and its deduction is that politics is the road to that heavenly kingdom on

\textsuperscript{18} STG, \textit{supra} note 5, at 21.

\textsuperscript{19} Bork suggests that the "envious guest" syndrome explains in part the rebelliousness. The generation of the Sixties was given much and resented the society that was the source of the beneficence for the guilt that its charity engendered. \textit{Id.} at 25.

\textsuperscript{20} \textit{Id.} at 20.

\textsuperscript{21} A former North Vietnamese colonel described in specific terms the importance of the American antiwar demonstrations in their strategy. Among other things, he said, "We were elated when Jane Fonda, wearing a red Vietnamese dress, said at a press conference that she was ashamed of American actions in the war and that she would struggle along with us." \textit{Id.} at 19-20. Ms. Fonda is known to a new generation as the one who stands beside media tycoon Ted Turner throwing tomahawk chops as they cheer their Atlanta Braves baseball team. One wonders where she, and the rest of us, would be had her efforts in Hanoi proved more successful.

\textsuperscript{22} \textit{See} James Miller, \textit{"Democracy Is in the Streets": From Port Huron to the Siege of Chicago} 329-74 (1994).

\textsuperscript{23} STG, \textit{supra} note 5, at 27.
earth which its proponents envision. Hence, modern liberalism and politics become religion.

Showing where all this leads, Bork makes by implication the case for the historic Christian doctrine of original sin. Man needs God because left on his own, man tends toward evil, not good. Modern liberals assume that the converse is true. In their view, man does not need God and whether He exists is really not relevant to matters of polity.

Chapter Two demonstrates that the rebellion of the Sixties was not without long-term impact. The abeyance of the turmoil was temporary. The radicals of the Sixties graduated and dispersed, but many left only to begin climbs to power and influence within the established institutions of our society. They now for the most part "run the universities." They also went into "politics, print and electronic journalism, church bureaucracies, foundation staffs, Hollywood careers, public interest organizations, anywhere attitudes and opinions could be influenced." Later, "[t]he spirit of the Sixties revived . . . and brought us at last to Bill and Hillary Clinton, the very personifications of the Sixties generation arrived at early middle age with its ideological baggage intact." The Sixties marked the establishment of that new religion, a religion of politics and moral relativism, which has brought us to the place where self-gratification and egalitarian absolutism reign. As in the kingdom it seeks to establish, this religion not only ignores traditional morality, but attacks it. And in the pursuit of its agenda, truth is a casualty. Lying is not only permissible, but necessary.

In Chapter Three, Bork elaborates on the evolution of classical liberalism to modern liberalism. Classical liberalism has as one of its major premises the assertion of the Declaration of Independence that liberty is an unalienable right endowed by the Cre-

24. Id.
25. Id. at 24.
26. Id. at 44. My father-in-law, who in 1969 was employed in the office of legal counsel at Cornell University, has vivid recollections of the armed takeover of Willard Straight Hall by militant students. Ironically, some twenty years later, one of the student leaders in that event was at the helm of TIAA-CREF, the nation's preeminent university faculty retirement annuity fund.
27. Id. at 53.
28. Id. at 51.
29. Id. at 2.
30. Id. at 50-51.
31. Id. at 54.
ator. As Bork notes, however, the nature of liberty is to press continuously outward, to knock down those fences that would confine. The implicit assumption of the founders was that the traditional restraints of religion, morality, community, law, family, and school made limitations on liberty unnecessary. Characterizing the founders as sadly mistaken in their assumption, Bork quotes Edmund Burke: "The effect of liberty to individuals is, that they may do what they please: [but] We ought to see what it will please them to do, before we risque congratulations." Bork observes that the founders "would have done better had they remembered original sin." Moreover, unbounded liberty, in the end, is an ideal that is devoid of meaning. To remove fences without knowing why or where one is going is to live the life of a nihilist. Bork concludes: "It is sensible to argue about how far apart the walls should be set, but it is cultural suicide to demand all space and no walls."

Bork in Chapter Four is persuasive in his attack on the illogic of our society's "passion for equality." Again, he traces the evolution from the Declaration's ambiguous pronouncement that all men are created equal to the current state of radical egalitarianism. Radical egalitarianism provides rewards for status, not achievement and hard work. In the arena of economic inequality, for example, wealth gets redistributed through progressive tax schemes not because the poor have achieved and are therefore more deserving, but because the poor are poor. Bork concludes that envy is the only apparent explanation for objections to a wealthier person's retaining his wealth. Bork notes the egalitarian strategy of bringing down the superior, the dearth of respect for men of greatness, the presumption that hierarchies are illegitimate. The focus of the modern liberal is on group membership and the establishment of one's victim status, rather than on individual merit. To overcome the natural tendency of free societies to reward achievement and thereby create inequalities, government necessarily takes an increasingly active role.

32. Id. at 64.
33. Id.
34. Id. at 65. Cf. C.S. Lewis, The Abolition of Man 48 (1943) ("To 'see through' all things is the same as not to see.").
35. STG, supra note 5, at 68.
36. The Americans With Disabilities Act of 1990 is one of the most far-reaching recent examples of government intervention. See 42 U.S.C. § 12101-12213, Bork's modern liberal would too often sponsor a foot race and give a head start to those who are slower. Professional examinations with time limits are
The “chattering class” is the subject of Chapter Five. This is the class of intellectuals who trade in symbols and ideas and who today control the institutions of our culture. The great majority live on the left side of the political spectrum. Equality is the standard by which they measure most things, and the primary focus of their attacks is the culture of the American bourgeoisie. Politics is indeed their religion, the place where they find meaning. They seek utopia in an undefined and unstructured “politics of meaning,” to use the words of Hillary Rodham Clinton. And the hostility of many of them is manifest in their revised histories of and incessant offensives against Western civilization.

One of the bulwarks largely controlled by this chattering class is the American judicial system. The Supreme Court is the subject of Chapter Six. Consistent with the inferences of Bork’s earlier *The Tempting of America*, this chapter leaves little doubt, in light of the Court’s recent decisions, that had Bork been confirmed by the Senate, he would be challenging his predecessors for the title of “The Great Dissenter.”

According to Bork, the Supreme Court operates as a final arbiter of cultural mores. It is the power of judicial review, unchecked, that tempts the best of men and women to impose through judicial fiat their own vision of right and wrong, good and bad. And the Court had started down that path well before the Sixties. Bork summarizes the Court’s activity as follows: When liberty and society conflict, liberty usually wins. And when the
government argues for egalitarianism, the Court generally acquiesces. But what is most disheartening is the tortured twisting of the language of the Constitution that is required to justify the results. Bork is specific.

He uses first amendment jurisprudence as an example of the Court's commitment to radical individualism and the moral relativism by which it is justified. In *Brandenburg v. Ohio*, the Court held that the first amendment protects speech advocating violence and lawlessness. In *Cohen v. California*, the Court set aside the conviction of a man prosecuted for disturbing the peace by offensive conduct for wearing in a courthouse a jacket that said "F the Draft." According to the Court, "[O]ne man's vulgarity is another's lyric," and those offended could simply "avert[ ] their eyes." Then, in *Texas v. Johnson*, the Court overturned a con-

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40. STG, *supra* note 5, at 97.

41. On April 27, 1996, retired Supreme Court Justice William J. Brennan, Jr. expounded on his view that the Constitution is a wonderfully malleable document having as its first priority the autonomy of the individual.

Our Constitution is a charter of human rights, human dignity, and self-determination. The Constitution is a bold commitment by a people to the ideal of dignity protected through law. For me, that vision remains deeply moving.

... The genius of the Constitution rests not in any static meaning it may have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and present needs.

... If our free society is to endure, and I know it will, those who govern must recognize that the Framers of the Constitution limited their power in order to preserve human dignity and the air of freedom which is our proudest heritage.

... Continuous hard work is needed if we are to realize the true potential of our Constitution and its Bill of Rights.


42. 395 U.S. 444 (1969). The conviction of a Ku Klux Klan leader under a state statute proscribing the advocacy of violence to effect political reform was overturned because he was not "inciting or producing imminent lawless action." *Id.* at 447.


44. *Cohen*, 403 U.S. at 25. The Court explains: "That the air may at times seem filled with verbal cacophony is . . . not a sign of weakness but of strength." *Id.* "[T]he principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word?" *Id.* And now we have entertainment executives asking the same question about sado-erotic rap lyrics: "Who can say what art is?" *See* STG, *supra* note 5, at 131.

viction under a state flag-burning statute, making clear that the first amendment is to be read to protect not only speech, but conduct as well. And Bork emphasizes again the tendency of modern liberalism to press constantly outwards, noting the statements from an earlier time of none other than Chief Justice Warren and Justices Black and Fortas, in which they declared that the Constitution certainly allows for prohibitions against desecration of the flag.

The priority for individual autonomy is also apparent in the Court's treatment of religion and in its discovery of a constitutional right of privacy. Almost unbelievably, in Lee v. Weisman, the Court held that the Establishment Clause was offended by a brief non-sectarian prayer at an optional middle school graduation ceremony because of possible peer pressure that might coerce the apparent participation of an objecting student. In 1972 in Eisenstadt v. Baird, the Court struck down as violative of the Equal Protection Clause a state statute limiting the access of single persons to contraceptives. And, a year later, in Roe v. Wade, the Court discovered and established constitutional protection for abortion under the fourteenth amendment's Due Process Clause. According to Bork, Roe v. Wade "offered no constitutional reasoning" and "is nothing more than the decision of a Court majority to enlist on one side of the culture war." Pointing to the opinion of the dissenters in the 5-4 Bowers v. Hardwick decision, which opinion would have struck down laws prohibiting sodomy, Bork observes that the dissenters would reject the family as society's basic building block and elevate to first position "individual gratification." In a continuation of the assault, Roe and Bowers were

47. According to the Court, to be protected, conduct must "possess[ ] sufficient communicative elements." Johnson, 491 U.S. at 404.
48. See Johnson, 491 U.S. at 432-33 (Rehnquist, C.J., dissenting).
49. STG, supra note 5, at 101.
52. According to the Court, it is unconstitutional to distinguish between married and single people when privacy is at issue because "the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup." Eisenstadt, 405 U.S. at 453.
54. STG, supra note 5, at 103.
56. STG, supra note 5, at 104.
followed by *Planned Parenthood v. Casey* and its “judicial grandiloquence,” the meaning of which is unfathomable.

Bork notes the same priorities and trends in the criminal and education arenas, and observes:

Judicial radical individualism weakens or destroys the authority of what sociologists call “intermediate institutions” - families, schools, business organizations, private associations, mayors, city councils, governors, state legislatures - that stand between the individual and the national government and its bureaucracies. All of this has happened within the lifetimes of many Americans. We are worse off because of it, and none of it was commanded or contemplated by the Constitution.

Bork contends further that like radical individualism, radical egalitarianism has similarly motivated the Court. In *Harper v. Virginia Board of Elections*, the Court rejected state poll taxes. In *Reynolds v. Sims*, the Court forced upon the states a “one man, one vote” formula that outlawed the equivalent of the U.S. Senate’s geographic representation framework, which is intended to temper the excesses of majoritarianism. And regarding race and sex, the Court has approved affirmative action as a remedy that Bork asserts is illogical. Somehow, affirmative action is supposed to remedy past discrimination against one or more persons by preferring someone else in the present while discriminating against a third person completely unconnected with the victim of

58. STG, supra note 5, at 103.

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State. *Planned Parenthood v. Casey*, 505 U.S. at 851. This portion of the opinion of Justices O'Connor, Kennedy, and Souter is the so-called “mystery passage.” STG, supra note 5, at 103.
59. STG, supra note 5, at 105.
63. STG, supra note 5, at 106.
the past discrimination. In *United States v. Virginia*, the Court dissolved a 157-year tradition by forcing the admission of women to Virginia Military Institute. In sum, the Court through the Equal Protection Clause extends its supervision over the cultural decisions of the people.

The lower federal courts and the state courts have learned the method. Bork cites the Ninth Circuit's *Compassion in Dying v. Washington*, a decision finding in the Due Process Clause of the fourteenth amendment a right to assisted suicide. Bork describes the words of the opinion as "intended, through grandiose rhetoric, to appeal to a free-floating spirit of radical autonomy," confirming once again the anti-intellectual "mood" that is constitutional law. The Second Circuit likewise has discovered a right to die in the Equal Protection Clause, and the Hawaii Supreme Court recently paved the way for a lower court's decision sanctioning same-sex marriage. Given the Supreme Court's recent decision in *Romer v. Evans*, which struck down Colorado's attempt through amendment of its constitution to limit special preferences

64. *Id.* at 106-08.
66. Bork quotes Justice Scalia's dissent:

The virtue of a democratic system with a First Amendment is that it readily enables the people, over time, to be persuaded that what they took for granted is not so, and to change their laws accordingly. That system is destroyed if the smug assurances of each age are removed from the democratic process and written into the Constitution. So to counterbalance the Court's criticism of our ancestors, let me say a word in their praise: they left us free to change. The same cannot be said of this most illiberal Court, which has embarked on a course of inscribing one after another of the current preferences of the society (and in some cases only the counter-majoritarian preferences of the society's law-trained elite) into our Basic Law.

United States v. Virginia, 116 S. Ct. at 2291-92 (Scalia, J., dissenting); STG, supra note 5, at 108.


69. STG, supra note 5, at 111. Bork castigates the Court of Appeals for its reiteration of the *Planned Parenthood* plurality's "mystery passage." See supra note 58.

for homosexuals, Bork apparently would doubt that Congress' Defense of Marriage Act will succeed in protecting other states from having to recognize Hawaiian homosexual marriages. He concurs with Justice Scalia, who dissented in Romer, that the Court's decision "is an act, not of judicial judgment, but of political will." It is the successor to Roe v. Wade as the bellwether of judicial tyranny in America.

Bork asks the question: What can be done about the Court's "forcing Americans to adopt the Court's view of morality rather than their own"? He notes that careful screening of and selectivity in appointments have proven unsuccessful. Public criticism of judicial excess is important, but not enough. He is not persuaded that the removal of jurisdiction to whatever extent the Constitution might permit would be sufficient. He concludes that the only hope for restoring the balance intended by the separation of powers is a constitutional amendment making state and federal court decisions subject to override by a majority of each house of Congress. According to Bork, such a provision is essential as a check on the effective power to alter the Constitution that the Supreme Court has so freely, and oppressively, wielded in recent decades.

In Part II of his book, Bork describes the various theaters of the culture war and defines its fronts. In Chapter Seven, entitled "The Collapse of Popular Culture," Bork looks at music, art, television, and film, and sees a society spiraling into the depths of decadence, again because its dominant priority is individual autonomy without constraints. As it was said of the people of Israel in Moses' time before they crossed the Jordan River, everyone was "doing whatever [was] right in his own eyes." Bork declares that the "limit is now behind us" and that censorship

73. Scalia, dissenting, observes that the Court's decision in Romer "places the prestige of [the Court] behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias." 116 S. Ct. at 1629.
74. See supra note 14.
75. STG, supra note 5, at 112-14.
76. 116 S. Ct. at 1637 (Scalia, J., dissenting) (joined by Rehnquist, C.J., and Thomas, J.); STG, supra note 5, at 114.
77. See supra note 39.
78. STG, supra note 5, at 114.
79. Id. at 114-15.
80. Id. at 117.
81. Deuteronomy 12:8 (NAS).
82. STG, supra note 5, at 132.
would be called for "were it not already too late." He deplores the fact that all of it, a depravity at which the framers of the Constitution would shudder, is defended on first amendment grounds. According to Bork,

This is what the liberal view of human nature has brought us to. The idea that men are naturally rational, moral creatures without the need for strong external restraints has been exploded by experience. There is an eager and growing market for depravity, and profitable industries devoted to supplying it.

In Chapter Eight, he makes the case for limited censorship, challenging the popular premises that purportedly emanate from the first amendment. According to Bork, the first amendment was not adopted to protect individual autonomy and self-expression, but rather the communication of ideas. He maintains that we must acknowledge that there is material being disseminated in the media that affects behavior and that is harmful. He contends that the third prong of the Miller obscenity test makes it virtually impossible to restrict speech that by any reasonable traditional measure would be classified as obscene. One can almost always find someone else willing to declare that such speech has "serious . . . value." Stepping beyond Holmes' notion of the free "marketplace of ideas," Bork emphasizes the importance of distinguishing between the marketplace and the products that are marketed there. It is one thing to assure that the marketplace operates in its mechanics free of government influence, but it is another to place no restrictions on what is bought and sold in such a marketplace. Using the language of the economist, he reminds us of the externalities produced by the exercise of supposed first amendment rights and contends that "rights" ought not to "win every time."

83. Id. at 134.
84. Id. at 139.
85. But see Finley v. National Endowment for the Arts, 100 F.3d 671 (9th Cir. 1996). In Finley, a woman whose stage performances included stripping to the waist and smearing herself with chocolate was denied a fellowship grant under the NEA's solo performance program. The court upheld her first amendment and due process challenge to the statutory obligation of the NEA to consider "general standards of decency and respect" in the awarding of grants.
86. STG, supra note 5, at 144.
88. Id. at 24; STG, supra note 5, at 146.
89. STG, supra note 5, at 151.
In the next four chapters, Bork tackles the hotly divisive social issues of our time. He explains their genesis and the failed attempts to respond. In Chapter Nine, he makes the case for serious and significant reform of the welfare and criminal justice systems. According to Bork, the cause of the "pathologies" of high rates of crime, illegitimacy, and family dissolution is "the infatuation of modern liberalism with the individual's right to self-gratification along with the kind of egalitarianism, largely based on guilt, that inhibits judgment and reform." Appropriately, he identifies no-fault divorce and the subsidization of illegitimacy through the welfare system, along with the influence of the "elites" in the judiciary and elsewhere, as key factors underlying the modern phenomenon of high crime. Without the necessary reform, the authoritarian, fortress-like society that ours will become as the populace demands protection will make this "a most unpleasant society in which to live."

In Chapter Ten, entitled "Killing for Convenience: Abortion, Assisted Suicide, and Euthanasia," Bork takes on what has become perhaps the most strident debate of our generation. He concludes: "Convenience is becoming the theme of our culture. Humans tend to be inconvenient at both ends of their lives." He notes that abortion has been made a constitutional right, that assisted suicide is a statutory right in one state and a constitutional right in two federal circuits, and that the legalization of euthanasia is under discussion. As for abortion, Bork's argument is dispassionate. In fact, he humbly admits that his position is now different from that which he held for most of his life, a posi-

90. Id. at 171. As for crime, Bork asserts that what is needed is not "three strikes and you're out," but stiff first sentences and the serving of full prison terms. Id. at 167-68. And gun control, while according to Bork a bad idea in general, is a question "of policy, not constitutionality." Id. at 166. Bork echoes the popular bumper sticker declaring that when owning a gun is made a crime, only criminals have guns; the law-abiding are then left entirely to an often incapable government for defense against the emboldened criminals.

91. Id. at 154.


93. STG, supra note 5, at 170.

94. Id. at 192.

tion that "took . . . for granted" "the propriety of abortion." As for Roe v. Wade,

I objected to [the case] the moment it was decided, not because of any doubts about abortion, but because the decision was a radical deformation of the Constitution. The Constitution has nothing to say about abortion, leaving it, like most subjects, to the judgment and moral sense of the American people and their elected representatives. Roe and the decisions reaffirming it are equal in their audacity and abuse of judicial office to Dred Scott v. Sandford. Just as Dred Scott forced a southern pro-slavery position on the nation, Roe is nothing more than the Supreme Court’s imposition on us of the morality of our cultural elites.

It was reading about fetal pain that first led Bork to consider the humanity of the unborn. Debunking the attempts of abortion advocates to redefine human being so that the unborn are excluded, he notes the more recent tendency of many, including promoters of human embryo and fetal tissue research, to argue a distinction between humanness and "personhood." It is only "persons" who are deserving of protection, according to that argument. The problem is, of course, that "person" is defined by those in the positions to provide or withhold protection. In addition, emphasizing that almost all abortions take place for the sake of convenience, as a technique of birth control, Bork asserts that "[t]he philosophical separation of humanity and personhood carries ominous overtones for the very ill, the very old, the senile, and perhaps for others." There are all kinds of people who are inconvenient to others. But again, the impetus for the abortion movement lies in the radicalized and powerful premises of modern

96. STG, supra note 5, at 173.
97. Id. at 173-74. That the Supreme Court has imposed its own view of morality on the nation is evident from the lack of any language whatsoever in the Due Process Clause of the fourteenth amendment to the United States Constitution suggesting a right of privacy: "nor shall any State deprive any person of life, liberty, or property, without due process of law." If anything, the amendment as written protects the fetus through its inclusion in the definition of the word person. The only reasonable rationale opposing that conclusion is that it may not have been contemplated by the drafters. And that rationale does not lead inevitably to the conclusion that states lack the constitutional authority to regulate abortion.
98. STG, supra note 5, at 183-84.
99. Id. at 184.
liberalism: abortion rights are the necessary and appropriate outcome of freedom and equality for women.\textsuperscript{100}

As for those "ominous overtones" in the context of assisted suicide and euthanasia, Bork notes that with the legalization of abortion for convenience sake, "a moral line has been crossed."\textsuperscript{101} Human life, whether unborn or born, is no longer sacrosanct. So-called assisted suicide is more assisted than it is suicide, or at least it tends quickly in that direction, and euthanasia is the logical consequence, with the autonomy of the patient being increasingly compromised to the point of its elimination altogether. It becomes a question of whose autonomy is protected. Bork recounts the macabre experience of the Netherlands\textsuperscript{102} and summarizes:

Abortion has coarsened us. If it is permissible to kill the unborn human for convenience, it is surely permissible to kill those thought to be soon to die for the same reason. And it is inevitable that many who are not in danger of imminent death will be killed to relieve their families of burdens.\textsuperscript{103}

Chapter Eleven is entitled "The Politics of Sex: Radical Feminism's Assault on American Culture." According to Bork, the work of the feminist movement is done-no longer are there artificial barriers to the achievement of women.\textsuperscript{104} It is the qualifier artificial, however, that explains the continuing destructive energy of the movement, energy that is evidenced in the proliferation of women's studies programs at universities, and the assault on the family and the military. Yes, all artificial barriers have been removed. But radical feminists, who would be left without a cause were they to acknowledge the success of the women's movement over the twentieth century, seek the removal not only of artificial barriers, but of all obstacles to equality with men, including the natural. Of course, in their view, the natural barriers are not

\textsuperscript{100} Id. at 183. There is now a significant movement calling for the legalization of prostitution on the grounds that there is no rational basis for affirming a woman's "reproductive rights" in the context of abortion while denying her the choice to engage in sexual activity for compensation. With equality as the standard, the argument is being made that just as men are permitted to sell their bodies in the football stadium, so should women be allowed to sell theirs in the bedroom. R.L. Pollock, \textit{My Body, My Business}, \textit{Wall St. J.}, June 21, 1995, at A19; 20/20 (ABC television broadcast, Jan. 31, 1997).

\textsuperscript{101} STG, supra note 5, at 186.

\textsuperscript{102} See id. at 189-91.

\textsuperscript{103} Id. at 192.

\textsuperscript{104} Id. at 194.
natural at all, but culturally imposed. And as Bork notes, since culture at its most fundamental levels tends to resist outside influences, coercion is necessary to implement the broader feminist agenda.

What is the result? Discrimination against deserving and better qualified males, weaker armed forces, women graduates unprepared for the world of work (who criticize everything about the supposedly male-dominated world except the women’s studies programs that made them unprepared), and mothers shamed and guilt-ridden. The excesses and anomalies are instructive. The National Endowment for the Arts is required by the Ninth Circuit Court of Appeals’ construction of the first amendment to fund stage performances by a half-naked woman who smears herself with chocolate and rails against men. Physical strength standards in the military are quietly lowered to allow women to join combat ranks and, not surprisingly, what follows is a decline in morale among the troops and a reduction in readiness.

Chapter Twelve deals with “The Dilemmas of Race.” Though pessimistic about the future of race relations given human nature and the evidence of ethnic hostility worldwide, Bork asserts that things could and should be better. Once again, he blames modern liberals for the present state of affairs. While applauding their good intentions, he criticizes their lack of understanding. According to Bork, self-esteem comes from achievement - achievement is not a result of self-esteem. Thus, the early successes of the civil rights movement, which assured equality of opportunity, were appropriate and good. The perpetuation of the movement, however, through the adoption of an agenda of equality of results, and hence affirmative action and preferences, has served to shackle minorities. A self-fulfilling lack of achievement, excuses, low self-esteem, and hostility are the end products. He objects to the current movement’s premises that all cultures are morally or otherwise equivalent and that equality of results is the necessary consequence of a lack of discrimination. In addition, he notes

105. Id. at 218.
106. See Finley v. National Endowment for the Arts, 100 F.3d 671 (9th Cir. 1996); STG, supra note 5, at 203.
107. A. Mersereau, ‘Diversity’ May Prove Deadly on the Battlefield, WALL ST. J., Nov. 14, 1996, at A22. Bork notes, in addition, that “[t]he military is training men to be more sensitive to women in order to prevent sexual harassment and also training men to be insensitive to women being raped and sodomized or screaming under torture. It is impossible to believe that both efforts can succeed simultaneously.” STG, supra note 5, at 223.
again that the illogical and immoral consequence of preferential treatment as a solution to historical racism means discrimination in favor of those who have suffered no real discrimination enforced against those who are not guilty of discriminating.

Bork raises a litany of specific objections to affirmative action. But, “[t]he most basic objection is that it is destroying what America means, changing us from a society whose rewards may be achieved by individual merit to one whose rewards are handed out according to group identity.”

In Chapter Thirteen, Bork deals with the declining state of intellectual enterprise in the nation. Education in general and scholarship in particular have become politicized and are driven by ideological commitments to the destruction of the culture that flow directly from the rebel heritage of the Sixties. Rationality has given way to the raging emotions of political correctness. Even science, because it presupposes an objective reality, has become an enemy; the ideology of the left is unable to stand before the scrutiny of empirical testing. Bork notes that there is not an “academic right,” but only a few academic conservatives who seek nothing more than the preservation of that culture which the left for thirty years has been bent on destroying.

It is primarily a commitment to radical egalitarianism that necessitates the dishonesty and irrationality of the modern liberal. When all preferences and theories are accorded equal standing, regardless of objective standards, or when objectivity is denied altogether, truth and competence must disappear. Accordingly, intellectual standards have eroded across the country, education at all levels has deteriorated, and politically expedient,

108. STG, supra note 5, at 249.
109. Id. at 266.

In law, philosophy, literary studies, and history, among other subjects, we are raising generations of students who are taught by the ‘cutting edge’ professors that traditional respect for logic, evidence, intellectual honesty, and the other requirements of discipline are not merely passe but totalitarian and repressive, sustaining social, political, and economic arrangements to the benefit of white, heterosexual males. Id. at 268-69. Bork cites as sadly amusing evidence the ready acceptance by so-called intellectuals of New York University physicist Alan Sokal’s spoof that asserted in effect that gravity is nothing more than a “social convention.” Id. at 269. See P. Berkowitz, Science Fiction, THE NEW REPUBLIC, July 1, 1996, at 15.

110. Television has contributed to the decline, and the recent debacle regarding the first iteration of the “National History Standards” reveals how desperate is the situation. STG, supra note 5, at 253-55. See L. Cheney, The National History (Sub)Standards, WALL ST. J., Oct. 23, 1995, at A18.
unsound policies are the resulting norm. That Bork's critique is politically unbiased is evidenced by his examples of misguided policy. He includes in his list the efforts to adopt a balanced budget amendment, to raise the minimum wage, and to limit the federal government to the enumerated powers. He also notes as sadly telling the mediocre quality of presidential debates.

Religion is the subject of Chapter Fourteen. Bork contends that religion, as the source of first principles, is essential to the success of democracy. Religion provides the constraints that make liberty viable. Unfortunately, religion in America has suffered from the same attacks of secular humanism that have been leveled against society in general. And, in the mainline denominations, the governing hierarchies, as well as the laymen, have capitulated. Moreover, the Supreme Court in its decisions and the media in their editorializing have marginalized religion.

Bork suggests that to the extent civility and morality still exist in the unbelieving population, we are "living on the moral capital of prior religious generations." He urges churches not to change to accommodate the preferences of their members and notes the strength of those religious bodies that have stood firmly on historical orthodox principles. The "intellectual classes," urging atheism as the only reasonable response to Marx, Freud, and Darwin, are the main impediment to revival. Bork notes, however, that the writings of Marx and Freud have been discredited and that suspicions about the theory of evolution continue to grow. He concludes:

The presumption has shifted, and naturalistic atheism and secular humanism are on the defensive. Evidence of a designer is not, of course, evidence of the God of Christianity and Judaism. But the evidence, by undermining the scientific support for atheism, makes belief in that God much easier. And that belief is probably essential to a civilized future.

111. According to Bork, C.S. Lewis erroneously postulated the derivation of first principles independent of religion, suggesting a sort of natural law of ethics and morality. STG, supra note 5, at 274-75. Regardless of Lewis' belief about the source of first principles, however, he would concur with Bork that first principles should not, but can be, ignored. That is the primary thesis of Lewis' THE ABOLITION OF MAN.


113. STG, supra note 5, at 289-92.

114. Id. at 275.

115. Id. at 295.
In Chapter Fifteen, Bork completes his analysis of the insufficiency of the French revolution’s slogan. Entitled “The Wistful Hope for Fraternity,” the chapter addresses multiculturalism or, to use its newer label, diversity. Multiculturalists are set against that cultural unity that is essential to the survival of any nation. They would have everyone (except those of Western European descent) study himself, rather than others, and they begin with the premise that no one outside the group with which another identifies can understand the other. The perverse result of an educational enterprise so grounded is the intellectual, emotional, and moral handicapping of the other. Even more troubling, however, is the ultimate consequence of societal division.

Bork urges not only the acknowledgment of America’s historical Eurocentrism, but its preservation. To a great degree, the freedom and prosperity experienced in America and around the world have their roots in Europe. According to Bork, traditional Western culture as modeled in the United States is “the best the world has to offer, if one judges by where the people of the world want to immigrate.” But he is not optimistic. The fragmentation engendered by multicultural priorities leads quickly to tension, hostility, and violence.

Part III of Bork’s book consists of two chapters of prognostication. In Chapter Sixteen, he suggests that democracy itself is what is at stake and that it may well not survive. Modern liberals have managed to coopt the courts and the federal bureaucracies and from those vantage points have usurped the people’s power to govern themselves. And in their pursuit of the liberal agenda, the courts “have . . . resorted to increasingly abstract and meaningless

116. Id. at 306.
117. So powerful has the fantasy world of multiculturalism become that many of us have accepted the myth that only a minority person can understand the thoughts and emotions of a person of the same minority. That is a denial of the universality of human qualities. If that were true, a common culture and a peaceful society would be impossible. Id. at 310-11.
118. Id. at 307-08. Bork also expresses concern about the priority given bilingual education. See id. at 301-02. News reports throughout the nation regarding the recent “Ebonics” initiative of Oakland, California’s school board highlight the tensions. See, e.g., Jackson Shifts Stance on Black English Effort, WASH. POST, Dec. 31, 1996, at A6.
119. STG, supra note 5, at 312.
120. Id.
moralistic arguments and to lifeless legalisms." He sees little hope for reversing the direction and influence of the Supreme Court short of a constitutional amendment, and he acknowledges that the likelihood of such an amendment is extremely low. Given current tendencies, it is also unlikely that in response to judicial activism legislatures and executives will engage in civil disobedience, so Bork reluctantly concludes that the most likely scenario is that the public will passively accept the courts as de facto governing bodies.

With regard to bureaucracies, Bork identifies an increasing willingness to delegate to government the responsibility for security. Since these regulatory bodies are staffed largely with radical liberals or others inculcated with the liberals' philosophy, the tendency of administrative agencies is to seek equality of outcomes and to engage in an enterprise of leveling that dilutes the self-confidence of the citizenry and weakens society generally. One troubling consequence is society's increased vulnerability to authoritarianism.

In his final chapter, Bork sounds a restrained note of optimism. It is an optimism derived, however, not from any strong evidence of present countervailing trends, but from the "optimism of the will." Our only hope, Bork suggests, is in a unified decision to reverse the course.

Short of a willful reassertion of traditional virtues, Bork sees no evidence that the decline will be halted. Individualism continues unchecked and egalitarianism borne of envy continues its spread. "[T]he rise of [a] . . . politically sophisticated religious conservatism," wrongly denominated as extremist, is a "promising development," but the general public must be persuaded and the culture itself, the context within which politics exists, must be

121. Id. at 319.
122. Id. at 321.
124. STG, supra note 5, at 321.
125. See id. at 322-23.
126. Id. at 327-28. Charles Colson has expressed a similar concern for growing authoritarianism as the general population willingly cedes its liberties to the government in exchange for protection against an increasingly criminal society.
127. Id. at 331, 343.
128. Id. at 332.
recaptured. Referring to the character of the man elected president in 1992, Bork speculates that the general public's priorities have changed markedly in the last thirty years and "[i]f that change is permanent, the implications for our future are bleak." Indeed, the reelection of President Clinton in 1996, after the publication of Bork's book, suggests something disheartening about the permanence of the change.

According to Bork, "[t]his is at bottom a moral and spiritual struggle." As he stated at the start, "[a] nation's moral life is... the foundation of its culture." What must occur?

Religion must be recaptured church by church; and education, university by university, school board by school board. Bureaucracies must be tamed. The judiciary must be criticized severely when it oversteps its legitimate authority, as it now regularly does. A few of the necessary actions must involve the government, as in capturing and punishing criminals, and, perhaps, in administering censorship of the vilest aspects of our popular culture; otherwise, government must be kept at a distance.

Otherwise, "Gomorrah is our probable destination."

B. Culture and Proximate Cause

Slouching Towards Gomorrah lends itself to the kind of criticism regularly leveled by modern liberals against those who would exalt virtue and preserve tradition. Bork's statements will no doubt be dismissed as conclusory, notwithstanding 343 pages of text and hundreds of endnotes. Bork does include anecdotes and summaries and statements of generality. But to take snippets from his book and assert that he has relied on cliche or resorted to partisan harangues or that he is philosophically biased would be to mislead. Such criticism ordinarily comes from those who fail to see the problem or whose premises are different. Bork's anecdotes are representative, his summaries are based on careful research, and his general statements emanate from thoughtful analysis. He

129. Id. at 336-39.
130. Id. at 341.
131. The vitriolic tone of the President's heir apparent, Vice President Gore, in affirming abortion rights at a gathering commemorating the 24th anniversary of Roe v. Wade on January 22, 1997, is not an encouraging sign. Remarks of Al Gore, National Public Radio broadcast.
132. STG, supra note 5, at 340.
133. Id. at 12.
134. Id. at 342.
135. Id. at 343.
has blown away the fog and smoke that so often shrouds public conversation and the rhetoric of the politician.\(^\text{136}\)

A public school administrator friend of mine recently lamented the obstacles to explaining to others why, given the state of the culture, one course of action is better than another. He said that it just takes too long. As another has said about Marxism, "it won't work because there aren't enough evenings." The reason it takes too long is that you cannot explain first principles.\(^\text{137}\) You can show what happens when they are ignored, but by definition they cannot be rationalized. They are the beginning point. *Slouching Towards Gomorrah* begins with first principles - and it is no more biased by those premises than are any other conclusions drawn from a different worldview.

There is little doubt that many will be offended by the book. They will assert, among other things, that the tone is spiteful and condescending. They may even cite the apostle Paul's exhortation to the Christians at Ephesus to "speak the truth in love." The reader must be careful, however, not to mistake truth for a lack of love. Bork speaks much truth. Indeed, truth is one of his major themes. Whether he also writes with love is a matter only he can tell, but the intensity of his tone and the import of the subject strongly suggest that he would welcome honest inquiry by and frank discussion with those to whom he directs his harshest criticism.

The spiritual roots of the decline that Bork describes cannot be overstated. He has presented a philosophical perspective that is grounded in an understanding of human nature, and it is a perspective that both explains and judges. To be judged and found wanting is not, of course, a comfortable thing. And criticism of the messenger, rather than his message, from those so assessed is to be expected. But, at bottom, the twin ideologies of radical individualism and radical egalitarianism spring from sin. They find their origins in selfishness and pride, in materialism and greed, in envy

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136. For example:

The gender perspective of radical feminism is easy to ridicule but it must be taken seriously. It attacks not only men but the institution of the family, it is hostile to traditional religion, it demands quotas in every field for women, and it engages in serious misrepresentations of facts. Worst of all, it inflicts great damage on persons and essential institutions in a reckless attempt to remake human beings and create a world that can never exist. 

*Id.* at 197.

137. *See infra* note 148.
and lust for power. One's convenience and comfort, and one's independence and control and authority, become paramount. Ultimately, they amount to a rejection of God and an aggrandizement of man. And, of course, we are all guilty. It is a matter of degree and whether we recognize our culpability.

That we cannot avoid the battle for the kingdom even at the grassroots level is all too apparent. Television news stories and impromptu interviews, letters to editors and responses to those letters, discussions in classrooms and conversations on sidewalks - all of these regularly reveal an extraordinary range of perspectives, and they are often characterized by a stridency that is vicious in its intensity and a rhetoric that is astounding in its illogic and disengenuousness. Most disturbing, perhaps, is the willingness with which people, whether they be knowledgeable ideologues or ignorant mimics, disregard the empirical data contrary to their positions. Multitudes either take refuge in pretextual objections or invoke the mantras of modern liberalism. Their responses range from the insinuating of conspiratorial dominance on the part of white males to the ridiculing of those who seek to live lives informed by God-fearing religious faith.

To advocate traditional morality and democratic government is not at all inconsistent with a high regard for those tenets of classic liberalism that are embodied in the Bill of Rights. The two are entirely consistent, and Slouching Towards Gomorrah dispels any suggestion to the contrary. In fact, it is evident from Bork's steady focus on the misalignment of the public perception and his consistent emphasis on the need to redeem the culture that he is no knee-jerk majoritarian. At the same time, however, he makes clear who it is that is doing the legislating. Regardless whether the courts (and juries) and the bureaucrats are aligned philosoph-

138. The apostle Paul has sounded a warning:

But realize this, that in the last days difficult times will come. For men will be lovers of self, lovers of money, boastful, arrogant, revilers, disobedient to parents, ungrateful, unholy, unloving, irreconcilable, malicious gossips, without self-control, brutal, haters of good, treacherous, reckless, conceited, lovers of pleasure rather than lovers of God; holding to a form of godliness, although they have denied its power. . . . [E]vil men and impostors will proceed from bad to worse, deceiving and being deceived.

II Timothy 3:1-5,13 (NAS). "[W]anting to have their ears tickled, they will accumulate for themselves teachers in accordance to their own desires; and will turn away their ears from the truth, and will turn aside to myths." II Timothy 4:3-4 (NAS).
ically with the majority, their decisions lack the corroboration of a referendum. And because votes by the people are the quintessential measure of self-government in a pluralistic, democratic society, judicial and bureaucratic legislation is illegitimate.

The culture that Bork describes is a culture motoring towards destruction, and one of its engines is indeed the judicial subculture. In the federal context, that subculture declares that the Constitution means whatever the judiciary says it means. The language of the document is secondary. In recent terms of the Supreme Court, for example, it has seemed to be of little relevance that the Constitution nowhere articulates a right of privacy, much less a right of abortion. Likewise, notwithstanding the Court’s decision last term, nowhere does the Constitution address “sexual orientation.” Similar examples abound, and while the potential influence of modern liberalism is perhaps more subtle in cases to be decided by the Court during the 1996-97 term, it is no less significant.

During the current term, the Court is to decide the constitutionality of the Religious Freedom Restoration Act (RFRA). Should RFRA be struck down, it will not be a surprise. Congress’ effort to reconstruct legislatively the Court’s traditional analytical approach to the religion clauses of the first amendment threatens the relativistic philosophy of humanism on which modern liberalism is based. Religious freedom tends to dilute allegiance to the secular welfare state because religions are largely accountability-based reward systems, systems that measure individual worth by standards of character and conduct rather than status. Indeed, serious religion is anathema to the authoritarian statist regimes toward which modern liberalism tends.

The Court is also faced with deciding the constitutionality of Congress’ attempt to restrict indecency on the Internet through

139. In November 1996, a federal district court in San Francisco enjoined the implementation of California’s Civil Rights Initiative (Proposition 209), ruling that the measure likely violates the fourteenth amendment’s Equal Protection Clause. Ironically, Proposition 209 seeks simply to eliminate the unequal treatment sanctioned in race-based and sex-based state affirmative action programs.


the 1996 Telecommunications Act.\footnote{143} If, according to the Court, self-expression rather than speech describes the scope of the first amendment protection, once again the people through their elected representatives will come out the loser in their efforts to slow the cultural decline.

Assisted suicide is likewise on the Court's agenda this term. The Court heard oral arguments on January 8, 1997.\footnote{144} Where the Court might turn in the Constitution to proscribe state efforts to restrict such conduct is anybody's guess. But the fourteenth amendment is a likely candidate and the opinions that would establish such proscriptions will undoubtedly bear similarities to the mystery passages of the abortion decisions.

In the state judicial context, the influence of modern liberalism is also frequently demonstrated. The development of tort law, for example, has been markedly influenced by the prevailing cultural philosophy. Injury or loss has become nearly synonymous with wrong. The proximate cause of suffering must inevitably be wrongdoing or error on the part of someone other than the victim - it is certainly nothing for which to give thanks to a sovereign and loving God.\footnote{145} Still, the inconsistencies between the prevailing modern perspective and traditional values are obvious. In the context of unborn children, for example, notwithstanding the right of abortion on demand, the great majority of jurisdictions has approved wrongful death actions on behalf of the survivors in the event of the death of a fetus. How an unborn child can be a person for purposes of tort recovery, and at the same time be devoid of legal interests at the whim of the mother, is a proposition that I have yet to be able to explain satisfactorily to my students.

The cultural ethos in turn has a significant impact on the making of lawyers. Too many law graduates have no answer to the question of what they are living for. Who is to blame for the vacuity? Law schools bear some responsibility, but the many

145. Thanksgiving in all things and assurance in the mercy and compassion of God are attributes that have been identified with the faithful for millennia. James wrote: "Consider it all joy, my brethren, when you encounter various trials, knowing that the testing of your faith produces endurance. And let endurance have its perfect result, that you may be perfect and complete, lacking in nothing." James 1:2-4 (NAS).}
dimensions of the broader culture, from the hospital obstetrics wing to the funeral home, also leave their mark.

A new law graduate has been affected by his professors and other lawyers, and by countless others, many of whom will continue with yet others to have an impact. He is affected by his clients, by bar associations, and by judges. He is affected by his church, by television, and by magazine editorials. His kids and neighbors affect the way he looks at things. And government has an impact.

If Mother Goose is right, and the doctrine of proximate cause would say that she is, then none of us should take lightly our influence on others. Whether a first-year law student becomes an Atticus Finch or a hollow manipulator may turn on the nail that is a law professor's statement about the legitimacy of a particular court decision. That statement may hold the shoe that is an employment application to the winning law firm, with its particular clients and mentor lawyers. That firm may carry a certain horse that is the court to which the new lawyer and his firm address argument in a significant case. The rider of that horse which is the court may be the news media that cover the outcome of the case and interview the lawyer on nationwide television. The battle lost may be the election to public office of the lawyer that is bought through donations spurred by the news media's coverage of the case and the legislation that now passes because of the deciding vote cast by the new legislator. And the kingdom may be a country jeopardized by the modern liberalism of a deceitful and now powerful politician.

C. Reversing the Engines

It is a popular rhetorical device to call on the metaphor of a crossroads when arguing that far-reaching ramifications will follow a particular decision. "We are at a crossroads. Choose your path carefully." In this case, however, I am convinced that it is more apt to assert that we have gone beyond the crossroads, that a reversal in course is essential. The problem is that our culture has the inertia of an oceanliner and millions either are blind to the proverbial iceberg or have confused it with a harbor. And even if we were to reverse the engines immediately, I am not sure that we could avoid the collision. Even so, we seem to have no other options but to try.

146. HARPER LEE, TO KILL A MOCKINGBIRD (1960).
The law, of course, as Bork implies, is only one area that needs to be addressed. Nonetheless, it is a highly important area, and especially so because of what it represents about who we are and where we are headed. Where as a society do we begin the remediation efforts in the law, and elsewhere? I am persuaded that we must do at least five things.

1. Identify First Principles

First, while all of the answers to questions about such matters as crime, sexual promiscuity, and racial hostility are not self evident, there can be no doubt that we need changed hearts and minds, and we need statutes, judicial decisions, and a Constitution that set certain hard, immovable boundaries. Being careful to identify our prejudices and the biases of our information sources, we must be sure to approve and defend those premises on which a virtuous society is built.147 Our legal foundation is in dire need of reinforcement and those premises must inform the substance of our laws.

First-year law students come to Torts class wanting to know where to draw the lines that define liability. At the same time, they come fully prepared to apply the uncertainty principle that emanates from moral relativism. So, on the one hand, as they insist on knowing the boundaries, I find myself explaining the grayness in the law, and on the other hand, as they begin almost immediately to answer questions with “It could be argued . . . ,” I find myself repeatedly reminding them that that alone is not enough because anything could be argued.

Last semester, within the first week, as I encouraged discussion on the reasons for imposing civil liability, we went back and forth on such matters as causation and policy. But to the questions “Why is that good policy?” or “Why is compensation fair?” I received no answer. Either it did not occur to the students or they were embarrassed to suggest that certain conduct is right or good, to be rewarded and encouraged, and that other conduct is wrong or bad, to be punished and discouraged and for which one should be held accountable. Finally, in my second class of the day, someone tentatively suggested that the Golden Rule might be the starting premise.

What are the important premises, these first principles?\textsuperscript{148} For starters, we probably should assume that there is a God. Why? First, because of the evidence.\textsuperscript{149} But second, because if there is not, we as individuals or as a society have no good reason for doing or refraining from doing anything, except perhaps because it either feels good or hurts. We should also assume that man's nature tends toward evil, not good, that left alone people are selfish, lazy, proud, lustful, even murderous. That the Nazis were not unique has been demonstrated yet again by the recent reports of the massacres in Europe's Bosnia and Africa's Rwanda.

Is it possible to be more specific? The foundation of the Judeo-Christian ethic is not a bad place to look. The Ten Commandments originate from the propositions that there is a God who has created us, that He knows what is best for us, and that He has instructed accordingly. The first four commandments focus on the giving of that God His proper due. Even in the limiting context of a secular state, this would suggest at least that neither man nor the state should be the measure of all things.\textsuperscript{150} The remaining six commandments have to do with relationships between people, and we could do far worse than adopt those six as a blueprint for societal standards.\textsuperscript{151}

Of course, most would profess allegiance to the traditional values emanating from the Ten Commandments. The problem lies in the qualifications. For many, the scriptural tenets apply as long as they are convenient and comfortable. They apply unless they are contrary to public policy. Or they apply to the extent con-

\textsuperscript{148}. First principles are propositions that cannot be proven true or false through any wholly independent objective measure. For example, that beauty is good or that nonconsensual sexual intercourse is bad are matters not susceptible of proof. As C.S. Lewis observed, there are some propositions that must be taken as givens, matters about which certain questions should not be asked. See C.S. Lewis, The Abolition of Man 31 (1943). Presumably, Lewis would agree that there are some propositions that even lawyers and judges should not question.\textsuperscript{149} That which is known about God is evident within them; for God made it evident to them. For since the creation of the world His invisible attributes, His eternal power and divine nature, have been clearly seen, being understood through what has been made, so that they are without excuse. Romans 1:19-20 (NAS).

\textsuperscript{150}. See Exodus 20:3-11.

\textsuperscript{151}. The last six commandments call for the honoring of parents and prohibit murder, adultery, stealing, lying, and coveting. See Exodus 20:12-17. Read in the context of the rest of Scripture, without the qualifications urged by the "modern liberal," they deal with many of the social ills addressed by Bork.
sistent with individual freedom or notions of equality. Oftentimes they are rendered inapplicable because of their supposed historical context or through the manipulating device of statutory construction. All of that is to say, however, that they are not first principles. Such qualifications subordinate the commandments to the wiles and will of man. The question that must be answered is this: Who is God? - is it man, or is it God?

On a related matter, it is necessary that we distinguish between temptation and conduct. All are tempted to wrongdoing and excess. We should not, because God does not, hold others accountable for their temptations. We should, however, because God does and expects governments to, require conformance to certain standards of conduct. Our presumption must be that people are free to choose, and therefore accountable for, their conduct. This has been the presumption under which governments have operated for millennia in imposing criminal and civil liability. Biology or chemistry or the environment cannot be made an excuse. All human conduct has those as proximate causes, but they are not the only causes. To use the language of the Torts professor, they may be concurrent or intervening causes, but they are not unforeseeable superseding causes. To allow biology or chemistry or the environment to excuse conduct would be to make the will irrelevant and to remove all legal limits on conduct.

We need to look and listen, and we need to be discerning. Our parents were right when they warned us not to believe everything we read or hear. We need to reject the argument that “you haven’t walked in my shoes.” There is an abundance of principles that provide solid guidance regardless of personal experience and, indeed, that help avoid those disastrous experiences from which too many people draw their philosophies of life. We also need to reject other fundamental tenets of modern liberalism, most particularly that society will evolve naturally into that which is good.

152. [R]ulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good, and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath upon the one who practices evil.

Romans 13:3-4 (NAS).

Parents know that children in the society of others do not need training to be bad. It works the other way around.

We need to reject arguments that all cultures are equally good, equally valuable, and equally worthy of respect. Unless one throws out all standards of virtue, we can only conclude from history that some cultures are better than others and that judgments about them in the present are therefore appropriate. We must deal with history in its unrevise form, and we must act consistent with objectively verifiable facts. For example, all other things being equal, democratic capitalism is better than cannibalism.

We also need to accept responsibility for our actions, to admit with humility the wrongdoing of which we are guilty, and to accept the providence of God (or what the atheist might call "bad luck"). The contrary victim mentality is a product of individualism and egalitarianism run rampant. And we need to expose the deception that is veiled by the label of "moderate." Politicians described as moderates are typically either modern liberals with patience or materialistic individualists.

2. Demystify the Judiciary

Second, the law enunciated by judges must be demystified. When Samuel Rutherford wrote Lex Rex in the seventeenth century, he was challenging an oppressive monarchy. He asserted that the law was king and that the king himself was subject to the law. And when in September 1957 President Eisenhower sent federal troops to Little Rock, Arkansas to enforce the Supreme Court's 1954 decision in Brown v. Board of Education, it was a response appropriate to the proposition that we are a nation ruled by law, not men. But the deference to the judiciary of more recent years is something altogether different. For too many, the law has become not only king, but god, and, to our detriment, the judiciary has taken advantage of its exalted position.

We must not forget that judges are mortal, and we must insist that judges remember that too. For too long we have allowed the judiciary in its role as gap-filler to have free rein in defining

154. See STG, supra note 5, at 333.
155. Dissenting in Bridges v. California, 314 U.S. 252 (1941), Justice Frankfurter asserted that the first amendment forbids punishment of speech whose subject is the judiciary when the proscription seeks merely "to protect the court as a mystical entity or the judges as individuals or as anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed." Id. at 274.
the size of the gaps. We have also acquiesced too long in the application of a judicial doctrine of "judge not" that amounts to a failure or a refusal on the part of the courts to draw lines and establish boundaries except to exclude from consideration those who do. One result, among many, has been the malignant virtually unchecked growth of bureaucracies; another is the increase in tort-based liability claims. And we have responded ineffectively to the arrogance of judges who issue decisions that assume either that virtue originates with the judiciary or that virtue is irrelevant altogether to the matter of judging. Virtue does not originate with the judiciary, it comes from outside, and as Solzhenitsyn has reminded us, law without virtue is cold and dead and useless. Indeed, law without virtue is destructive.

I concur with Bork in his contention that the survival of what is good about this republic depends on checking the Supreme Court. And I am persuaded that a constitutional amendment, itself subject to little or no interpretation by the Court, is the needed mechanism. I would modify Bork's proposal slightly, however.

In my view, in recognition of the need to preserve state autonomy, the amendment should be limited to federal court decisions. State courts and state legislatures are equipped to deal with matters of parochial state interest. That assumes, of course, that the Full Faith and Credit Clause does not operate to impose on one state the unpalatable decisions of another state. Presumably,

156. 42 U.S.C. § 1983 (1994) provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . ., subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." The explosion in the number of section 1983 claims in recent years is yet another example of the judicial system's inveigling its way into the role of cultural policeman through the victimization mentality.

157. I have spent all my life under a Communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is also less than worthy of man. . . . A society based on the letter of the law and never reaching any higher fails to take advantage of the full range of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relationships, this creates an atmosphere of spiritual mediocrity that paralyzes man's noblest impulses.

however, final determinations adverse to the former state's interests would arise only in federal court anyway.

The amendment should also protect against abrupt congressional swings of passion. Accordingly, I would require that two successive Congresses approve the override. During the interim period between the actions of the two Congresses, after one Congress has voted to override, the court decision at issue would be rendered ineffective. And the new Congress would be required to vote within, say, sixty days of its convening, absent which the court decision would take effect.

Congressional review of judicial decisions would probably be limited for the most part to constitutional questions. It is unlikely, for example, that Congress would concern itself with the conviction of a criminal defendant except to the extent that matters of constitutional significance are involved. Likewise, decisions involving statutory interpretation would be unlikely subjects of congressional review under the amendment since Congress already has the power to clarify in a single session legislation that a court might misconstrue.

Importantly, Congress would not be accorded any more authority than the Supreme Court has to amend the Constitution. Article V would remain the exclusive mechanism. The new amendment would simply authorize Congress to say in effect that the Constitution does not mean what the particular court in the subject decision said it means. If Congress were to set aside Roe v. Wade, for example, that alone would not be enough to make abortion illegal as a matter of federal or constitutional law. It would simply be to say that the Court erred in concluding that the Constitution contains a right of privacy sufficient to trump state interests in protecting unborn children.

As another example, if Congress were to override the judicially created exclusionary rule for wrongfully seized evidence, it in effect would be saying simply that the fourth amendment does not require the release of criminals when the police err. Or, as an alternative, cognizant of the threat presented to the innocent by police or prosecutors whose investigative powers are unchecked, Congress might well preserve the exclusionary rule as a general proposition and deal on an individualized basis with those especially egregious cases in which the defendant's obvious and substantial culpability overcomes the need to deter the police from future wrongful conduct. Or, as yet another alternative, having rejected the exclusionary rule, Congress might deal statutorily
with fourth amendment violations through the application, for example, of employment related sanctions leveled against the guilty officer.

Obviously, such a constitutional amendment would serve to protect the right of citizens to govern themselves in areas not clearly addressed by the Constitution. With Congress’ intervention, the efforts of Colorado’s citizens to amend their state’s constitution might ultimately prove successful, and state judgments about limiting congressional terms likewise might be upheld.

The danger that two successive Congresses would effectively amend the Constitution by ignoring its clear language is a lesser danger than that posed by the Supreme Court’s present ability to make constitutional pronouncements without review. What would be most threatened by the amendment that Bork proposes is the tendency of the courts to assemble a constitutional construct that is wholly disconnected from the language of the document itself.

As for the judiciary generally, notwithstanding the importance of limiting the political activism of the Supreme Court and numerous other courts, as noted above, we need a great many more judges willing to judge. In torts and many other areas of the law, for example, standards devolve eventually to what is “reasonable.” Increasingly, softened by the decades-long pounding of radical individualism, judges are disinclined to pass judgment on such questions. The boundaries of what is reasonable have continued to expand as we allow ever greater leeway to the value judgments and opinions of all manner of people. If reasonable minds can differ, and who is to say that another’s mind is not reasonable, the case goes to the jury. The result is liability that is limited only by the happenstance of whatever collection of six or eight or twelve minds constitutes a particular jury. We read regu-

160. Brown v. Kendall, 60 Mass. (6 Cush.) 292 (1850), was one of several cases marking the arrival of fault-based liability. But courts increasingly disinclined to pass judgment on conduct under a reasonableness standard wind up sending most negligence claims to juries. The effect is that fault has come to be equated with causation, taking us back to the days prior to Brown v. Kendall. That effect is even more prevalent in the context of strict products liability. Ironically, the consequence is not that manufacturers are more careful about how they manufacture, but because of the increased cost of doing business, whether they manufacture.
larly about the ludicrous results, and those results are assured additional credence through the operation of stare decisis.

What we need are judges with wisdom and a philosophy of restraint. They are the only line of defense against jury legislation. On the civil side, in particular, we need judges willing to grant motions to dismiss, motions for summary judgment, and motions for directed verdicts. I was struck in grading my most recent set of Torts exams at how deeply embedded in the psyche of the American public is the notion that any questions about which there might be disagreement are supposed to go to the jury for resolution. What law students must learn (and what judges must remember) is that juries are supposed to decide only questions of fact; it is judges who are supposed to decide questions of law. 161

We must also be wary of those who contend that to assure independence in decisionmaking judges should be appointed rather than elected. The lack of accountability of appointed judges only encourages that kind of freewheeling judicial policymaking that erodes traditional standards of morality. Everyone has ideas about how to fix things, and most would like the power to legislate. To the extent that one has the power, in whatever may be his field of endeavor, he seeks to mold the world to his liking. And with the power, human nature tends to assume that there exists the requisite authority. If in assuming the existence of that authority, there is uncertainty about whether to act or to refrain from acting, we tend to err in favor of acting because it is human nature to exercise whatever authority one has. 162 Moreover, when others possess greater power, our tendency because of envy is to act, rather than to refrain from acting, even though our authority may be questionable. Judges are no different.

The election of judges affords us, the governed, some small measure of protection against those judicial candidates who either believe that things are getting better or, while decrying our state of affairs, have become convinced that such a state is the sacrifice demanded by liberty. Judicial recall or impeachment mechanisms are additional tools available for our protection, and we should be more ready and willing to employ them. Whether judges are


162. See In the Matter of the Court v. Us, U.S. NEWS & WORLD REP., Oct. 7, 1996, at 28 (Supreme Court justices seek approval from and bow to pressure of the elite through judicial activism.).
elected or appointed, they must be held accountable. A "Judicial Contract With America" initiated by the judiciary would be a helpful first step in restoring the American public's confidence in our courts.

3. **Legislate With Clarity and Conviction**

Third, on the legislative front, in enacting statutes, legislatures should make their intent clear. Given chronic judicial philandering, the importance of declarations of intent is manifest.

As for legislating with conviction, guided by the appropriate premises, legislatures should continue to roll back in all its permutations the welfare-state apparatus that has proven so debilitating. The federal welfare reform of 1996 is a step in the right direction and is consistent with the biblical admonition that if a man will not work, neither shall he eat.\(^{163}\) As a corollary to welfare reform, government would do well to have as a high priority the encouragement of private charity. The arguments are old but accurate: private efforts are more efficient and more cost effective; and private charity, because it is not coerced, benefits both the donor and the recipient.

With respect to social programs in general, there must be firm resistance to the proposition that a person can be entitled to something that he has not earned or inherited or otherwise been given. More specifically, the claims of victimization should be largely ignored since everyone is a victim of something most of the time. Victim status cannot be the basis for government largesse because there is simply not enough to go around, and the bureaucratic monoliths required to serve all the assorted claimants make demands of the unprotected that are virtually impossible to fulfill. The Americans with Disabilities Act is a recent poignant example. Even more importantly, the victimization mentality promoted by the modern liberal tends too often to reflect a belief that God is not ultimately sovereign in the lives of people, and to represent an attitude that the state knows better than God what is best for an individual.

Campaign finance reform should also be a legislative priority. There are too many good people who because of the financial demands of serious campaigns and the corrosive effect of donated money are discouraged from running for office. And the conflicts of interest faced by those who choose to run compromise the public

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163. II Thessalonians 3:10.
trust. In addition, misleading or deceptive political advertising should be dealt with firmly. Such advertising is a major reason for the public's disenchantment with the political process.

Finally, state legislatures should eliminate no-fault divorce. Marriage is the bedrock of the family, which is the foundation of society. No-fault divorce cheapens the marriage vows that constitute the commitment on which virtuous community living depends and without which culture inevitably disintegrates.

4. Constrain Lawyers

Fourth, in the practice of law, it is time to hold lawyers and their clients accountable for frivolous claims. And it is time for claimants to check themselves. Although the availability of judicial sanctions remains important, the authority to impose such sanctions has existed now for years, and judges steeped in the mythology of victimization and judicial legislative authority have been too unwilling to apply them. The longstanding British rule of "loser pays" would encourage the necessary self-assessment. In tort law, regardless of the merits in the dispute about whether there has been a "litigation explosion," the argument that such a rule would squelch the development of good law has lost its relevance. The limits of liability have been pressed outward now for centuries, and the need for new court-created legal theories, if there is a need, is clearly not what it used to be. Our premise should not be that where there is an injury, there is a wrong. To the extent that additional protections are required, we can leave those matters to the legislatures. Such fee shifting would tend to reduce discovery abuses, and the abundance of hungry lawyers assures us that potential plaintiffs with worthy traditional claims will not be left remediless.

In addition, as long as lawyers are self-policing and maintain a virtual monopoly on access to the judicial system, the minimum standards of ethics should be raised. The codes of ethics as presently constituted allow too much leeway to engage in sharp and destructive practice. There are simply too many lawyers who are unprincipled, who foment strife, and who seek to win at any cost. At the same time, lawyers should be more discriminating in the cases they pursue, the clients they represent, and the argu-
ments they espouse. But of course real reform will never occur until the culture about which Bork writes is redeemed. Lawyers are as subject to the economic principles of supply and demand as any good or service. Clients hire lawyers, and as long as the culture motivates and affirms the clients who demand the lawyers, and as long as judges fail to supervise, there will be lawyers available to satisfy the demand.

5. **Pray**

Finally, whether a single mother in the ghetto, or a farmer on his tractor, or a physics professor in his lab, or a Supreme Court justice in her chambers, we need to pray. We all need to pray to the One “from whom all blessings flow.” The apostle Paul wrote that we should pray for “all who are in authority, in order that we may lead a tranquil and quiet life in all godliness and dignity.”

**CONCLUSION**

It is time to drive home the nails. The enemy is advancing on all fronts, and the kingdom is collapsing. We need to resist, to shore up the defenses, and to recapture lost territory. We are far beyond the crossroads. If there is hope, it lies in our insistence on an objective reality defined by first principles.

Having conveyed the Ten Commandments to the people of Israel, Moses led them to the edge of the Promised Land and reminded them of the destruction of Sodom and Gomorrah. He urged them then to obey the commandments of the Lord, to “choose life.” Their submission to first principles was presented as a matter of life and death, a matter of blessing and curse.

The implications are no less significant today. We must say what is right and good, and the institutions of authority must not be neutral. Government is to encourage good and to punish evil. Consistent with Bork’s urgings, we must also be careful about imposing constraints upon religion, for the Church is “the pillar and support of the truth.” And truth is essential to self-government.

166. *I Timothy* 2:2 (NAS).
170. *I Timothy* 3:15 (NAS).
Abraham Lincoln spoke at Gettysburg, Pennsylvania in 1863:

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation so conceived and so dedicated, can long endure.

In 1997, war in the nation continues. It is now eleven score and one years since the Declaration was issued. But the question remains: Can such a nation long endure?