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MASTERS

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*It is the people, and not the judges, who are entitled to say what their constitution means, for the constitution is theirs; it belongs to them and not to their servants in office—any other theory is incompatible with the foundation principles of our government.*

—THEODORE ROOSEVELT (1912)

Once considered “the least dangerous branch” of government, today’s Supreme Court wields almost unlimited power over the affairs of the nation. Consequently, the attitudes and opinions of nine justices of the Supreme Court can affect everything we do: how we live, how we raise our children, how we worship, even what we think and believe. These justices’ beliefs, responses to controversial social issues, and influences on their own thinking have a critical influence on how decisions are rendered and how the laws are interpreted and enforced. And for the past five decades, the Court has been moving in a frightening direction. Fortunately, there are still a few justices on the bench who care about constitutional principles, but too often those brave men are outnumbered by the majority on the Left who see the world through very different lenses.

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Thanks to fifty years of judicial activism, a lot of people believe that the Supreme Court is the custodian of the Constitution and that whatever a majority of black-robed justices declare is the law of the land. But this is a false and misleading idea. It's also a dangerous misunderstanding of the fundamental structures of government. This misconception has been encouraged by the Court, of course, but placing the Republic under a left-wing tribunal puts the sovereignty and integrity of the American people in great peril. As social critic Richard Lessner has written:

The notion of judicial supremacy, that the court has the final say on the meaning of the law and Constitution, is nowhere to be found in the thoughts of the Framers or the text of the Founding document. It is a power the courts have arrogated to themselves over time with little resistance from the legislative or executive branches of government. Federalist 78 by Alexander Hamilton contains not so much as a hint that the courts constitute the supreme branch of government or that judicial rulings irrevocably settle issues in dispute. Such a notion of unaccountable, unanswerable, unfettered judicial power does violence to the whole notion of separated powers.<sup>1</sup>

The Supreme Court was never meant to be the sole or final arbiter of the law, but merely the arm of government instituted to settle controversies of great substance within the framework of the Constitution. By the same measure, the framers intended for the federal courts to be held in check both by the Supreme Court and by the even greater authority of the executive and legislative branches. As Alexander Hamilton explained in Federalist 81, "There is not a syllable in the plan under consideration which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every state."

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The clear mandate of the Constitution is that Congress is the body responsible for establishing, framing, and amending laws, which they are to do in response to the wishes of the people and the requirements of the executive branch. It is, thus, the people, by means of their representatives in Congress, who have ultimate authority over the courts—and not the other way around. “Not only can the people amend the Constitution,” writes Richard Lessner, “but the Congress also can limit the courts’ jurisdiction under the Constitution’s ‘exceptions clause’ in Article III, Section 2, putting specific matters beyond the reach of grasping judges.”<sup>2</sup> And, in any case, the authority of the government was designed to be “distributed” among the three branches. It is certainly not the exclusive property of an out-of-control judiciary.

### THE GERM OF DISSOLUTION

Thomas Jefferson, who endured many clashes with the courts, understood the risks of judicial overreach as well as anyone. In a letter to a citizen who shared his concerns, Jefferson said, “It has long, however, been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our federal government is in the constitution of the federal judiciary . . . working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped.” I can think of no better description of the sort of judicial usurpation that confronts us today.

As we’ve seen throughout these pages, examples of heavy-handed judicial activism are not hard to find. In *Lawrence v. Texas* (2003), the Supreme Court overruled its own prior decision in *Bowers v. Hardwick* (1986) and not only struck down a 145-year-old Texas statute prohibiting homosexual sodomy, but at the same time the Court overturned comparable laws in thirteen other states. Then, when presented with an emergency appeal to respond to the 180-day stay

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order issued by the Massachusetts Supreme Court, in a case that allowed homosexual marriage in that state, the Supreme Court of the United States refused to intervene, thus giving tacit approval for the Massachusetts ruling to stand and condoning homosexual marriages not only in that state but, by implication, in every state.

The Court's record is all too clear. In *Santa Fe Indep. Sch. Dist. v. Doe* (2000), the Court struck down student-led prayer at public-school sporting events. In *Stenberg v. Carhart* (2000), the Court overturned Nebraska's ban on partial-birth abortions. In the majority opinion in that case, Justice Stephen Breyer was apparently alarmed that "all those who perform abortion procedures using that method must fear prosecution, conviction, and imprisonment." In other words, doctors who break the law by killing an infant at the moment of birth and then sucking out the baby's brain would have to deal with the legal repercussions. Unlike Justice Breyer and company, most Americans don't have a problem understanding the logic of that.<sup>3</sup>

As ardent defenders of a woman's right to kill her unborn child, Breyer and his liberal colleagues were incensed. For that reason, he wrote a tendentious opinion, saying that the Nebraska law places "an undue burden upon a woman's right to make an abortion decision." In an emotional dissent, Justice Scalia pointed out the illogical assumptions of Justice Breyer's reasoning, saying, "The notion that the Constitution of the United States . . . prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity is quite simply absurd."

The attitude of today's Supreme Court is deeply troubling. But, as George Will pointed out in a recent column dealing with the implications of *Brown v. Board of Education* (1954) fifty years later, that highly controversial decision (which ordered an end to segregated public schools in every state) may have helped to achieve the constitutional goals of liberty and equality for all Americans, but there were unseen and unanticipated consequences. "*Brown v. Board of Education*," Will writes, ". . . also encouraged the abandonment of constitutional

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reasoning—of constitutional law. It invested the judiciary with a prestige that begot arrogance. And it seemed to legitimize a legislative mentality among judges wielding an anti-constitutional premise. The premise is that ‘unjust’ and ‘unconstitutional’ are synonyms.”<sup>4</sup>

This insight helps to explain a lot of the arrogance we’ve seen during the past four or five decades. Because the Court has been right in taking bold and controversial stands in a few landmark cases, like *Brown*, they’ve come to believe they’re infallible and beyond the need for accountability. In rebuffing the people of Nebraska by judicial fiat, Justice Breyer made no apology for abandoning any reference to constitutional law. And, once again, the consequences of the Court’s action had far-reaching implications, voiding federal and state laws because, in Justice Breyer’s estimation, “a law designed to further the State’s interest in fetal life which imposes an undue burden on the woman’s decision before viability is unconstitutional.”<sup>5</sup>

### A CALL FOR REFORM

The American people have said repeatedly, as every major survey has reported, that we want the practice of partial-birth abortion outlawed once and for all. Still, the courts refuse to allow any challenge to be sustained—no doubt for fear that it will be the first step in a general assault on all forms of abortion. But not everyone is sitting on their hands waiting for the courts to wise up. In an effort to counter the Supreme Court’s resistance to the will of the people, the U.S. House of Representatives and the Senate both passed bills banning the practice—on four separate occasions. The politicians went to the mat for the people. They did their part, but Bill Clinton vetoed three of those bills. Then, when Congress passed a fourth ban on the procedure, President George W. Bush signed it, on November 5, 2003, only to have the law suspended the next day by an unelected federal judge in Nebraska. Thus the courts continue to desecrate the Constitution and silence the voice of the people.

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To date, at least thirty-one states have passed laws banning the partial-birth procedure, only to have them suspended by unelected federal judges. On September 5, 1999, the Missouri legislature passed a ban on partial-birth abortions, only to see it vetoed by then governor Mel Carnahan, a liberal Democrat. Not to be denied, however, more than fifteen thousand men, women, and children gathered on the grounds of the state capitol, where they knelt in prayer as legislators voted to override the governor's veto. But, once again, an unelected federal judge suspended the law, and Missouri's life-saving efforts remain in limbo.

In September 2000, Missouri legislators passed a bill entitled A Woman's Right to Know, designed to ensure that those seeking abortions would be informed of the medical risks and the realities involved, as well as their options. But Governor Holden vetoed the bill. Once again, legislators overrode the governor's veto, and a district judge overruled them.

Elsewhere, the citizens of Arizona passed Proposition 106 in March 1997 to recognize English as the state's official language, but federal judges of the Ninth Circuit Court overruled them. In March 1996, citizens of the state of Washington voted against physician-assisted suicide, but federal judges of the Ninth Circuit overruled them. The very next month, the citizens of New York voted against physician-assisted suicide, but federal judges of the Second Circuit ruled against them. In May 1995, Washington voters wanted term limits for politicians, but in the case of *Term Limits v. Thornton*, the Superior Court took the opposite view. And the list goes on.

Citizens of Arkansas passed a term-limits bill, but federal judges overruled them. In 1995, Californians passed Proposition 187 to stop state-funded taxpayer services to illegal aliens, but federal judges overruled them. In a 1995 statewide referendum in Colorado, voters passed Amendment 2, which said that while homosexuals are already entitled to full and equal protection under the law, they are not entitled to "special status" under the law. However, a federal

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district judge denied the will of the people and overturned the election results. That decision was challenged but was later upheld by the United States Supreme Court, which, in the case of *Romer v. Evans*, went a step further by accusing the voters of Colorado of animosity toward homosexuals.

In still other acts of judicial overreaching, a federal judge overruled California's Proposition 209—a hard-fought case that ended affirmative action at the University of California—while in San Antonio, Texas, a federal judge ordered that election ballots completed by the county's military personnel had to be thrown out. Why? Because the military is generally conservative, and this liberal judge was intent on blocking the duly elected Republican sheriff and county commissioner from taking their seats.

### THE BREAKDOWN

How do these blatant acts of judicial overreaching happen? In large part, they happen because Congress and the president have so far refused to use their authority to reign in the courts. William J. Quirk and R. Randall Birdwell, authors of the book *Judicial Dictatorship*, take this view a step further, saying that the reason the other branches of government don't stop the courts is for fear of the people and the press, who have bought into the idea that the Supreme Court is "supreme."<sup>6</sup>

Some commentators have suggested that one reason politicians don't complain is that they prefer for these unelected judges to take the blame for divisive legislation. Whatever is actually at the root of such behavior, the doctrine of judicial supremacy simply does not exist. The Constitution gives Congress the power to create the federal courts or to abolish them if they so desire. The framers gave the legislature the power to limit the Supreme Court to "cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party." But so far Congress has not

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been willing to take any such actions. Legislators are good about complaining when their authority is stepped on by the courts, but they have assiduously avoided using their legitimate powers in defense of the “common good.”

The result is that the Court has gotten more and more aggressive over time, entering areas of social legislation where they have no business or authority. And now, especially disturbing, is the fact that the decisions of some justices refer to “international law” and thus threaten to surrender American jurisprudence to the rulings of courts in countries whose customs, beliefs, history, and traditions have no relevance or authority in this country. If this is not overreaching, I don’t know what is. And if the trend continues, there really will be a culture war in America.

Anyone looking at the nature of recent federal court rulings would have to wonder if these men and women even inhabit the same planet with the rest of us. These judges have defended almost unrestricted access to pornography, defended the rights of anarchists and protesters to burn the American flag, defended the right to partial-birth abortions, and have given schools the right to forbid voluntary, student-led prayers at public-school football games, which is certainly not a constitutional right. Furthermore, they have ruled that atheists have a right not to be offended by the Ten Commandments and that homosexuals have a right to sodomy, and the future of the words “under God” in the Pledge of Allegiance are anything but safe from their grasp. Who knows what’s next on their hit list?

There are only a few possible explanations for such irrational conduct. One may be that the judges enjoy such elevated status, so far above the common man in their knowledge, wisdom, and level of enlightenment, that they feel they’ve been granted a “divine right” to shape our laws and social policy as they wish. In this case, the Constitution and judicial precedent are merely inconveniences for them, to be used or not used as our black-robed rulers see fit.

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Another reason could be that these judges actually despise this country and all it stands for; therefore, they believe that the best way to undermine and humiliate America is to break down its laws, morals, beliefs, and standards, and to bring about as much cultural anarchy and chaos as possible, so that the nation will eventually destroy itself and make way for a “new order of the ages.”

A third reason may be that the liberal view of the Constitution as a “living, breathing document” makes Supreme Court justices not simply judges but framers of an all new “Constitution in the making,” a document that is evolving, always changing, and always subject to the latest vogue of elite doctrine. And a fourth possibility is that the justices don’t recognize or understand the dramatic consequences that may result from their actions. Maybe it’s one of these possibilities—framed as forms of oligarchy, nihilism, relativism, or ignorance—or, more likely, it’s a combination of all of them. But whatever is behind the breakdown of American justice, it’s wrong, and it has to stop.

### WHAT ARE WE THINKING?

In response to the Court’s sodomy ruling in *Lawrence v. Texas*, conservatives in many places are now pushing for a constitutional amendment to define marriage very specifically as a covenant between “a man and a woman.” One of my deepest concerns is that Christians and other conservatives keep trying to figure out what we can do to force the courts to abide by the Constitution. But when these same justices persist in believing that their own words and opinions are, in fact, the essence of a “living, breathing Constitution,” it is nearly impossible to hold them to the language of a document written by a group of dead, white European males in the eighteenth century.

No reasonable person would vote for the vast majority of leftist social policies supported by the courts today. Federal judges have turned the nation upside down in the name of social justice.

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Whatever legitimate risks there may be in a government “of the people, by the people, and for the people,” the American people would never have passed laws that have led to the slaughter of more than forty million unborn children. Yet these are the values of today’s federal courts.

Federal judges may be granted life tenure, but the Constitution specifies, as we have already seen, that their term in office is based strictly on the condition of “good behaviour.” A presidential appointment does not entitle federal judges to act as tyrants and dictators for life. The reason the American people abide by the Court’s rulings in the first place is because we believe in the authority of the Constitution that these same federal judges are sworn to uphold. When will we realize that a large majority of the men and women on the federal bench have failed any reasonable standard of good behavior and are making judgments that are so outlandish we’re no longer responsible for paying attention to them? When will we begin to hold the federal courts and the Supreme Court of the United States accountable for their *bad* behavior?

It’s high time Congress and the president stood up to the bullying of the courts. Abraham Lincoln certainly understood that United States presidents are entitled to make constitutional judgments independent of the courts. In his first inaugural address, Lincoln said that rulings of the Supreme Court should be considered binding on the parties to the particular case, and as such they deserve “very high respect and consideration in all parallel cases by all other departments of the government.” But it goes no further than that. If the president or the legislature were forced to defer to the Supreme Court’s decisions in every case, Lincoln said, “the people will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of that eminent tribunal.”

As I said earlier, the authority of the United States government was designed to be distributed among three branches. It was not

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vested in an unaccountable judicial aristocracy. We were not meant to be under the thumb of a judicial oligarchy, or an out-of-control Congress for that matter. When confronted by an act of Congress he could not obey, Thomas Jefferson simply refused to enforce it, as was the case with the Sedition Acts. Andrew Jackson vetoed the reauthorization of the Second Bank of the United States because he believed it was unconstitutional. He said, "Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others."

The problem today is that too many Americans have accepted the view that we are indentured servants of the courts. Too many of us have decided to bow rather than to fight the loss of our sovereignty. But it is perfectly clear that the world-view of the Supreme Court is no longer the world-view of the American people. As the red and blue maps in the 2000 election demonstrated so clearly, we live in a divided nation, with roughly half of the voting public taking sides with those on the Left, who are behind the slide into moral relativism and social anarchy, and the other half fighting to hold onto standards that have been tried and proven over time but are deemed by the cultural elites to be against the law.

### WHERE ARE WE GOING?

In this environment, the justices of the United States Supreme Court have become what journalist and author Max Boot calls "the high priests of our civic religion."<sup>7</sup> But this is precisely what the founders wanted to avoid. They saw the potential for unelected judges to exceed their authority, but they believed that a system of checks and balances would be enough to restrain the courts from doing very great harm. Unfortunately, the founders had not foreseen what would happen when the cultural Left, abetted by an activist liberal media, began the insidious process of transforming these "high priests" and their unelected allies in the federal court system

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into an army of unaccountable oligarchs. But that's precisely what we have today.

In his introductory essay to Max Boot's book *Out of Order*, Judge Robert Bork writes that the federal courts have pushed the idea of an independent judiciary far beyond anything the Constitution allows. Judicial independence, he says, was designed to prevent political pressures from affecting the interpretation of the law. Today, however, *judicial independence* is simply a buzzword meaning that neither Congress nor the American people are allowed to interfere with the social and political judgments of the courts. But this is a big mistake. Bork writes:

Judicial independence was never intended to make courts what they have become, unaccountable and uncheckable partisans in our culture wars. As for the system of checks and balances, there is no check upon the federal courts provided by the Constitution precisely because it was assumed, as Alexander Hamilton, James Madison, and others put it, that there was no need for such a check. The courts were to interpret, not create the law. Placing the federal courts under democratic restraints would in no sense violate the original understanding of their place in our government.<sup>8</sup>

Unfortunately, whenever the subject of democratic restraints or accountability comes up, judges and lawyers—along with their professional associations and the elite law schools—react with shock and alarm. Even the slightest hint that the federal courts ought to be more responsible to the republican principles of government is interpreted as an assault on judicial independence. But as Judge Bork argues, “Suggestions for the serious reformation of the judicial system ought not be treated with the combination of alarm and scorn that is their usual lot. People forget that such proposals have been consistently offered throughout our history and that they were put forward by some of our most revered public figures.”<sup>9</sup>

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In fact, if some of those historic proposals had actually been carried out, many of today's problems might have been avoided. Thomas Jefferson, for example, proposed reigning in the courts by impeaching and convicting judges who exceeded their authority. He also proposed that Supreme Court decisions dealing with constitutional issues should only be binding on the judicial branch itself. As I've said, Andrew Jackson and Abraham Lincoln ignored court orders they found to be objectionable, and the feisty Wisconsin congressman Robert LaFollette proposed in the 1890s that decisions of the Supreme Court that went too far into policymaking and legislation should be overturned by a two-thirds vote of the Senate. These men would have found the notions exalted by today's liberals, that the Supreme Court and the federal courts are some kind of sacred institution, to be utterly laughable.

When I interviewed Judge Bork about his new book, *Coercing Virtue*,<sup>10</sup> on my television program, *The 700 Club*, I asked him what he thought the courts were trying to do with their radical social agenda. I asked him, "Who's driving this train?" He replied that the train is being driven by the so-called intellectual elite, made up of the cultural Left and the mainstream media. "They're not very elite," he said, "but I can't think of a better name other than the 'chattering class' or the 'Olympians' or something of that sort. I'm talking about university professors, law school professors, journalists (print and electronic), Hollywood celebrities, much of the clergy, church bureaucracy, foundation staffs, and so forth. These are people who shape opinions, people who are verbalists, and they are well to the left of the American public.

"The most distinguishing feature," Judge Bork told me, "is that they are much less religious. In fact, they have a real animosity toward religion—more than the American public in general. They are doing their best to drive public religion out of the public square and they've just about succeeded." I wasn't surprised by his answer, I'm sad to say, since I've been seeing the same thing for years, and I

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have often said so on the broadcast. But I followed up by asking the judge what he thought the next step would be if these so-called elites actually get their way. “If they get rid of religion,” I said, “they’re sort of idealistic. What is it they’re trying to do?”

Judge Bork said, “Well, they’re trying to have their own version of utopia, manifested largely through the courts. They have a value system that, when you put it up for election, when someone confesses to it as a candidate, he loses. They can’t get the more extreme items through the legislatures. So the courts, being part of the intellectual class, and responding to that class, have by and large joined that side of the ‘culture war.’ Not all judges, of course, but enough of them to make theirs the winning side in the courts.”

I couldn’t help thinking that many of these judges seem to be trying to rival God Himself, acting out roles as the benefactors and healers of society, repairing all our social ills, and building a better world. If that’s what they think, it would be the ultimate form of blasphemy.

Then I asked Judge Bork to describe what he perceived to be the primary goals of these socialist utopians, and he said, “It would be strict separation of the church and state, which is contrary to the Constitution’s original meaning. It would be abortion-on-demand. It would mean the normalization of homosexuality, and a whole list of cultural aims that the majority of Americans don’t agree with.”

## WHO’S RUNNING THE SHOW?

A *utopia*, as the word connotes in its original form, is a grand and idealistic scheme of some sort, a perfect world or society. That’s the dictionary definition, but the original Greek words (*ou topos*) mean “no place,” which is a fitting description of most of the Left’s ideas. But if they’re really intent on pushing their unrealistic plans through the courts or the Congress, you have to wonder how they expect to make their radical agenda work in the real world. So I asked Judge

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Bork about that. I said, "How do they keep the trains running? How do they balance the budget? How do they do all the mundane things of government? They don't seem to have much interest in that."

And he told me, "Well they don't balance the budget, certainly, and I don't think they have much to do with the trains. I think right now, the Left in America, the liberal Left, is less concerned with economic issues than with lifestyle issues. And they're determined to have a very permissive morality, particularly in matters of sexuality. And they're determined to have very permissive laws about that achieved through the courts."

Most responsible Americans are concerned about the left-wing agenda they see behind the move to normalize homosexuality. Hollywood and the mass media are huge boosters of this sort of thing, of course. We would expect that, but the Court's advocacy of such behaviors is more troubling. The Court's *Lawrence* decision may be the most notorious example, but it's only the latest in a long string of abuses. I wanted Judge Bork to comment on that as well, so I asked him, "Where does the Supreme Court come off saying that homosexuality is a constitutional right?" What surprised me most of all in that decision, I told him, was the fact that a Roman Catholic justice, Anthony Kennedy, had written the decision. How could that be?

Judge Bork responded, "One of the really terribly disturbing features of the Supreme Court, and this is true of the courts of all Western nations, is that they are making up constitutional rights that are nowhere in the Constitution. There is nothing in the Constitution one way or another about homosexual sodomy, yet the Supreme Court finds it's a constitutional right. There's nothing in the Constitution one way or another about abortion . . . but the Supreme Court made up a right to abortion. Now, that's the most disturbing thing. They are constantly making up the Constitution as they go along, and they're making it up according to the agenda of the Left-liberals. The ACLU might as well be writing the Constitution these days."

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In his book *Coercing Virtue*, Bork goes into detail about some of the more dangerous trends in the justice system, including the use of precedents from foreign courts—in Europe, Africa, and beyond—as well as the practice of granting legal standing to litigants who would not have been allowed to bring suits in any previous era. So I said, “You’ve pointed out that the courts today give standing that was never given before. They find aggrieved persons that really have no legitimate claim in a particular case, but the justices let them intervene, and they hear their point of view. What’s going on there?”

“Yes, that’s troubling,” Bork said, “because in order to have standing to sue you usually have to suffer some injury either to your person or your wallet or something of that sort. The mere fact that you’re offended, or that you don’t like something the government is doing, is not grounds to sue—except in one case. The Supreme Court made one exception, and that is for people who are offended by *religion*. They may sue without showing any particular harm to themselves other than the fact that they are offended by looking at something.” This is of course the motivation for the *Lemon* test and all the others, invented out of whole cloth by the Court.

“You also refer in your book to something called ‘the American disease,’” I said. “And some people have stood in some horror to see a democratic nation like the United States being seized by what amounts to a judicial coup d’état. And yet, you say this disease is spreading. As a matter of fact, we’re seeing judges making reference to cases from Zimbabwe or from the European Court of civil rights.”

“That’s right,” he said. “That phrase actually came from the Canadians. When they framed their constitution in 1982, they said they didn’t want to undergo ‘the American disease.’ But of course their court is at least as activist as ours, and they should have discovered that it’s not just an American disease; it’s a judicial disease. Everywhere courts have been given the power to override legislatures, they’ve begun to make up the Constitution to fit their Left-liberal desires. That’s because the culture war runs across all

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Western nations, and the forces in that war are the same everywhere.”

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I think most Christians understand that perspective. The culture war really is universal in scope. It may seem more pronounced in the United States simply because we've had such a high standard of public virtue until recently. As I mentioned in previous chapters, it wasn't until the *Everson* decision of 1947 that the courts began their assault on the free exercise of religion. And then it wasn't until the school-prayer and Bible-reading cases of the 1960s that judges were able to begin forcing God out of our public institutions. Nevertheless, because the culture war is ultimately a spiritual contest between those who love God and those who want to eradicate all evidence of religion from society, it's a bigger problem than most of us realize.

As Judge Bork and I came to the end of our conversation, I mentioned our special weeklong broadcasts on *The 700 Club*, called Operation Supreme Court Freedom, in which we were asking people to pray, to appeal to the Supreme Judge of all the earth, that He might overrule some of these unjust judges. None of the sitting justices of the Supreme Court resigned that week, and we didn't expect them to. But we did discover that millions of people who had paid little attention to the courts were suddenly aware of the urgency of the situation, and they were concerned about what's happening. So as I spoke briefly about that with Judge Bork, I asked him if he thought there's anything we can do to turn things around.

“In your book,” I said, “you pointed out several things that could be done to change things, but for each one of them you said it wouldn't work. What we're seeing is obviously a usurpation of power that doesn't appear in the Constitution. So how do we get rid of these guys?”

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Bork's reply was simple but disturbing. "I don't know if it can be done," he said. "The only way to do it would be through political means. That is, having a president who understands who he's nominating and a Senate that's willing to confirm people who stick to the Constitution. The Democratic Party has displayed complete hostility to the idea of judges who stick to the actual Constitution. They view the Supreme Court as a political prize and a political weapon, and they want to control it. And hence you see these filibusters against President Bush's nominees to the federal courts. The Left wants Left-liberal justices or none, and that's a problem."

I certainly appreciate the wisdom and courage of this great man, and I understand that by any standard of history or common sense, Judge Bork was absolutely right in his assessments. But I also understood that God doesn't depend on history or common sense to work His will. I'm not overstating the case when I say that the challenge before us today—an out-of-control federal judiciary abetted by legions of left-wing culture warriors—is the most serious threat America has faced in nearly four hundred years of history.

If the courts succeed in unraveling our great Constitution, which has protected our heritage of faith, family, and freedom for so long, there will be nothing but God's sovereign grace to prevent the utter collapse of everything we hold dear. And unless something changes soon, that would seem to be our fate.

But I am not willing to accept that judgment. Furthermore, I don't believe that's what God has in mind for our nation. There is every reason to believe that this situation can be turned around, that the courts can be reprimanded, brought back into line, and forced to become more accountable. I believe also that, in God's own time, the moral foundations of our nation can be restored. But it won't happen overnight, and it won't happen without a fight.

Before we can enlist in that fight, we need to know our adversaries. We need to know where they're coming from and what they're up to. And that will be the subject of the next chapter.

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TABLE OF CASES

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*Lawrence v. Texas*, 539 U.S. 558 (2003).  
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