
BOOK REVIEWS

THE TEMPTING OF WESTERN CIVILIZATION: A REVIEW OF ROBERT H. BORK'S *COERCING VIRTUE: THE WORLDWIDE RULE OF JUDGES*

BY WILLIAM H. PRYOR JR.*

Judge Robert Bork's latest book, *Coercing Virtue: The Worldwide Rule of Judges*, is by far his slimmest volume (139 pages plus endnotes), and it is a variation on his long-running criticisms of judicial activism. This latest variation is nevertheless important and not well understood. In an introduction and four short chapters, Bork explains and dissects the problem of international judicial overreach.

Bork begins with the observation, "Judicial activism results from the enlistment of judges on one side of the culture war in every Western nation." He explains that liberal elites from the news media, academia, arts and entertainment industry, mainline churches, and environmental lobby have formed what Bork calls a "New Class" to wage a cultural revolution. Bork charges that the New Class has enlisted successfully the judiciary in promoting an agenda of socialism and hostility to religion and traditional morality.

Bork observes this agenda first in the context of international law, which he argues "is not law but politics." Bork lays out his case that the international law of human rights is a tool of the cultural left and the international law of the use of armed force is a dangerous instrument of anti-Americanism. Bork concludes, "international law poses a real threat to every nation's ability to make its domestic laws and to act abroad as its national interests dictate."

Bork then turns to case studies of judicial activism in three Western countries: the United States, Canada, and Israel. He compares and contrasts this phenomenon in controversies about freedom of speech, religion, homosexuality, and feminism, among others. Bork's discussion of judicial activism in the United States is a well-worn subject, but its contrast with the judicial chicanery in Canada and Israel is startling. Although the United States gave birth to judicial activism, its abuses are, Bork argues, surpassed in other countries, especially in Israel, under the leadership of Aharon Barak, President of the Supreme Court of Israel. The judicial involvement in matters of national security in Israel is especially surprising.

If you desire to shun a rosy scenario, Bork, as usual, does not disappoint. He revisits the subject of censorship, with which he still sympathizes, and legislative review of judicial decisions, which he now views as impractical. Bork also discusses other remedies for judicial activism, but discounts the likelihood of success. Recent events underscore the course for Bork's pessimism.

Coercing Virtue was written before the decision of the Supreme Court of the United States in *Lawrence v. Texas*, which recognized a constitutional right to engage in consensual homosexual sodomy. In the light of Bork's critique of *Romer v. Evans*, one can imagine Bork's lament of *Lawrence* and especially the reliance by the Court on the laws of other nations. It is ironic that, in *Coercing Virtue*, Bork singles out for praise the author of the majority opinion in *Lawrence*, Justice Anthony Kennedy, who at the annual meeting of the American Bar Association in London in 2000 rejected the critique of a London barrister regarding the need for American courts to cite the decisions of European courts. Bork writes, "Kennedy, to his credit, did not succumb to this combination of insolent foreign browbeating and pusillanimous American response."

Bork's description of Justice Kennedy's defense of the American judiciary is worth repeating. Bork recounts, "If American courts cede authority to remote courts unknown to the public, [Kennedy] said, there is a risk of losing the allegiance of the people." Bork's gloomy retort probably would be "Don't bet on it."

For those concerned about both American sovereignty and judicial activism, an afternoon reading of Judge Bork's latest work is both enlightening and sobering. This book also serves well as an introduction for students to international law and the role of the judiciary, from a conservative perspective. Judge Bork provides a solid foundation for even more work, which will surely follow.

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