BOOK NOTES

REVIEWS OF *SLOUCHING TOWARDS GOMORRAH* by Robert H. Bork and *DEFENDING PORNOGRAPHY* by Nadine Strossen

MODERN LIBERALISM COUNTERED BY JUDICIAL ACTIVISM: IS A CONSTITUTIONAL AMENDMENT AN APPROPRIATE REMEDY? A REVIEW OF *SLOUCHING TOWARDS GOMORRAH by Robert H. Bork*, ReganBooks, 1996.

In *Slouching Toward Gomorrah*, Robert H. Bork, former United States Court of Appeals for the D.C. Circuit Judge and conservative constitutional scholar, writes of the decline of the American moral foundation, identifies modern liberalism as its cause, and describes the resultant threat to our nation's future. Bork defines modern liberalism as "the latest stage of the liberalism that has been growing in the West for at least two and a half centuries."[1] He describes the two defining characteristics of modern liberalism as "radical egalitarianism (the equality of outcomes rather than of opportunities) and radical individualism (the drastic reduction of limits to personal gratification)."[2]

I. WHERE LIBERALISM HAS STEERED US TOWARDS GOMORRAH[3]

Judge Bork warns that American life and, perhaps even Western civilization, is jeopardized by modern liberalism. The introduction and Part I lay the background for the thesis that this political/culture war was a long time in the making, and that the emphasis on liberty and equality which had been developing in Western culture climaxed in the Sixties. In Part II, he discusses how the destructive effects of radical egalitarianism and radical individualism are evidenced in current intellectual theories, feminism, racial politics, and the media. He also discusses how these two forces have led to our current state of societal decline. In Part

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[1] ROBERT H. BORK, SLOUCHING TOWARDS GOMORRAH 5 (1996).

[2] *Id.* at 5.

[3] "Gomorrah is an ancient city destroyed with Sodom because of its wickedness. Gen 19:24, 25." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 821 (2nd ed. 1983).

III, Bork provides a potent tonic as he believes our society can be reclaimed by the "optimistic will of the people."[4]

Bork begins by explaining the "birth of the Sixties"[5] and the evolution of modern liberalism from those who protested the "Establishment" and the war in Vietnam. He asserts that the passion for equality and the rise in hostility toward inequalities in status or condition became increasingly important in America between WWI and WWII. Bork posits that the growth of antiauthoritarianism in the 1940's provided the preparation for the Sixties generation attacking hierarchies and rejecting lines of authority resulting from merit and achievement.[6] The result is the modern enthusiasm for liberty; but the liberty sought is simply autonomy, with no limits on acceptable thought or behavior.[7]

This modern view of liberty is contrasted with the classic nineteenth century liberalism which was kept in bounds by strong institutions such as "family, church, school, neighborhood, [and] inherited morality."[8] What happened to these institutions? Bork argues that constant underestimation of the value of such institutions weakened them and their ability to provide restraints on individuals, and that our modern enthusiasm "for liberty forgets that . . . it is cultural suicide to demand all space and no walls."[9] Thus, without the structure provided by our now denigrated and weakened cultural institutions, autonomy is unrestrained.

Bork finds the search for liberty to be linked to the search for equality, a theme of philosopher John Rawls' work.[10] However, Bork argues that Rawls' determination to establish equality as one fundamental requirement of a just social order "does not consider the enormous bureaucratic despotism that would be required to enforce that principle."[11] Setting the unreachable requirement of extreme equality sets a society up for endless attacks on its hierarchies and lines of authority, regardless of their sources. The result is that equality, the triumphant passion of the century, "is having, and will continue to have, very unpleasant consequences . . . . '[R]ising egalitarianism will lower our standard of living, decrease our health, debase public discourse, lower the quality of public officials, weaken democracy, make people more suspicious of one another, and (if it be possible) worse.' "[12]

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4 BORK, *supra* note 1, at 343.

5 *Id.* at 25.

6 *Id.* at 76-77.

7 *Id.* at 65.

8 *Id.* at 64.

9 *Id.* at 65.

10 *Id.* at 79.

11 *Id.*

12 *Id.* at 81, (quoting AARON WILDAVSKY, THE RISE OF RADICAL EGALITARIANISM xxx (1991)).

The "intellectual class," as described by Bork, has a mindset similar to the student radicals of the Sixties: hostility to our culture and dreams that "reality be something other than what it was or could be."[13] He also presents this class as an important cultural force, out of proportion to their numbers, due to their power to broadcast their ideas through the media, educational settings, and many churches.[14] Examples from the popular culture, for instance rap music, exemplify the deterioration in our society, and the rejection of and rage against authority. Popular entertainment, "celebrates the unconstrained self, and savages those who would constrain. . . . [and is described as] perfect for today's independent generation: 'people who only do what they want to do.'"[15] The illustrations presented from today's music, movies, television, and art demonstrate that "our popular culture has gone far beyond propagandizing for fornication. . . . What America increasingly produces and distributes is now propaganda for every perversion and obscenity imaginable. . . . The idea that men are naturally rational, moral creatures without the need for strong external restraints has been exploded by experience."[16]

In Judge Bork's view, our cultural moral indifference to the taking of individual lives is evidenced by our acceptance of abortion, assisted suicide, and euthanasia. He concludes that radical individualism is the cause; but he contrasts these acts with our cultural view on the deliberate taking of a life, for instance through use of the death penalty, which has never been regarded with moral indifference. Bork points to the underlying "philosophical separation of humanity and personhood [which] carries ominous overtones for the very ill, the very old, the senile, and perhaps for others."[17] He notes the acceptance of the abovementioned medical deaths indicate that "[c]onvenience is becoming the theme of our culture. Humans tend to be inconvenient at both ends of their lives."[18]

Radical feminism is one of the most destructive forces to emanate from the Sixties, according to Bork, and it is "deeply antagonistic to Western culture and proposes the complete restructuring of society, morality, and human nature."[19] The essence of radical egalitarianism is seen in the feminists' goal to remove "all differences between men and women in the roles they play in society."[20] He states that feminism suf-

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13 *Id.* at 84.

14 *Id.*

15 *Id.* at 125, quoting a Calvin Klein spokesman in regard to an ad campaign which was canceled after protests and threatened boycotts. *See generally* Margaret Carlson, *Where Calvin Crossed the Line*, TIME MAGAZINE, September 11, 1995, at 64.

16 *Id.* at 139.

17 *Id.* at 184.

18 *Id.* at 192.

19 Id. at 193.

20 *Id.* at 198.

fers an intellectual collapse in that basic differences between men and women are not *solely* due to culturalization and also that trying to change a culture can have a corrupting effect.[21] He also argues that the politics of radical feminism, with its aspiration to remake humanity, attacks capitalism, families, religion and intellectualism because radical egalitarians hate hierarchies by nature.[22]

Lastly, Judge Bork questions whether democratic government can survive and whether America can save itself from its decline. He states that "[m]odern liberalism is fundamentally at odds with democratic government because it demands results that ordinary people would not freely choose. Liberals must govern, therefore, through the institutions that are largely insulated from the popular will. The most important institutions for liberals' purposes are the judiciary and the bureaucracies."[23]

With regard to hope for America, Judge Bork believes that optimism is well founded and that it rests on the will of people.[24] He states that a moral and spiritual regeneration may be produced by one of four events: "a religious revival; the revival of public discourse about morality; a cataclysmic war, or a deep economic depression."[25] Judge Bork restates that the decline in our culture has a common cause, modern liberalism; that we must resist radical individualism and radical egalitarianism in every area of our culture; and that, rather than surrendering to the pessimism of the intellect, we must garner our determination and courage from "the optimism of the will."[26]

II. ON THE JUDICIAL ADVANCEMENT OF LIBERALISM

Much like Thomas Jefferson, Bork is convinced that judges exercising judicial review are mainly imposing their own political and policy views[27] and asserts, "it is the courts that are not merely endangering our freedoms but actually depriving us of them, particularly our most pre-

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21 *Id.*

22 *Id.* at 201.

23 *Id.* at 318.

24 *Id.* at 331.

25 *Id.* at 336.

26 *Id.* at 343.

27 Robert Reinstein, *Anti-Federalism and Judicial Review*, 4 CORNELL J.L. & PUB. POL'Y 515, 521 (1995). *See generally* ALBERT J. NOCK, JEFFERSON (1985).

> Mr. Jefferson apparently never believed that the important function of constitutional interpretation should be vested in any one branch of the government, probably perceiving that such an investiture would be equivalent to the establishment of an oligarchy. He seems to have regarded the Constitutional interpretation as an occasional function in the general system of checks and balances, to be exercised by the legislature, judiciary or even by the executive, whenever one or another should display any tendency to usurpation or tyranny.

Id. at 138-39.

cious freedom, the freedom to govern ourselves democratically unless the Constitution actually says otherwise."[28] Hence, it is the Supreme Court that has served as a conduit for liberalism's advancement.

Judge Bork argues that a vigorous counterattack is called for to forestall a chaotic and unhappy society, and he posits that this attack must entail the use of censorship to remove the most violent and sexually explicit material now offered. He presents the Supreme Court's 1942 *Chaplinsky v. New Hampshire*[29] ruling as a way to distinguish the First Amendment's protection for ideas and states that "First Amendment jurisprudence has shifted from the protection of the exposition of ideas towards the protection of self-expression - however lewd, obscene, or profane."[30] Nevertheless, Bork embarks on a penetrating attack of the Supreme Court's most recent approach to First Amendment issues to advance his conviction that liberalism tries to govern through the judiciary.

Bork attacks the Supreme Court's First Amendment jurisprudence for its inflation of individual rights when it ignores the First Amendment's purpose of protecting ideas and instead grants protection to "self-expression, personal autonomy, or individual gratification."[31] Moreover, one of Bork's favorite targets is the Supreme Court's opinion in *Texas v. Johnson*.[32] When the defendant Johnson burned an American flag he was quickly arrested, indicted and convicted in Texas for burning the flag. In a 5-4 decision the Supreme Court held his conviction could not survive First Amendment scrutiny on two grounds. The Court's first reason was Johnson's freedom of expression could not be curtailed simply because the government disagreed with the idea behind the expression.[33] Bork agrees but aptly points out that Texas arrested Johnson not for his ideas but rather for his mode of expression.[34] Bork asserts that the government can prohibit certain kinds of expression such as the use of a loud speaker to express obscenities at three in the morning in a residential neighborhood.[35] Needless to say, Bork is not entirely sure that today's court would agree.[36]

The Court's second reason comes under even greater criticism from Bork. The Supreme Court was concerned with the government's power to designate symbols, thus questioning what other symbols could be pro-

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28 *Id. at 117.*

29 315 U.S. 568 (1942).

30 BORK, *supra* note 1, at 148.

31 *Id.* at 99.

32 491 U.S. 397 (1989).

33 *Id.* at 414.

34 BORK, *supra* note 1, at 100.

35 *Id.*

36 *Id.*

tected if the conviction withstood First Amendment protections.[37] Bork reiterates his point that burning the flag is not speech.[38] Moreover, Bork contends that the flag is unlike other symbols since nobody pledges allegiance to the presidential seal,[39] and U.S. marines did not scale Mount Suribachi to hoist a copy of the constitution.[40] Bork continues his polemical attack, criticizing the Supreme Court's equal protection jurisprudence and approach to the constitutionality of statutes prohibiting abortion. Is this failed jurisprudence to blame for society's moral forays? Not entirely, Bork concludes, but he finds the Supreme Court "responsible in no small measure."[41]

III. BORK'S ANSWER TO CONTROLLING THE COURT

Despite Bork's astute commentary on the increasing decadence of our society, his remedies for handling the Supreme Court deserve the same scrutiny with which he criticizes the Court's decisions. Bork cites Lino Graglia, a professor of law at the University of Texas, for the proposition that "the effect of rulings of unconstitutionality over the past four decades has been to enact the policy preferences of the cultural elite on the far left of the American political spectrum."[42] Is the only remedy to nominate more judicial conservatives for the Supreme Court? Some legal commentators don't think so, and have suggested the following: 1) that Congress remove the jurisdiction of federal courts for cases where courts are likely to strike down certain statutes;[43] or 2) adopt a constitutional amendment making a federal or state court decision subject to being overruled by a majority of each House of Congress. Bork is quick to excuse the former as impermissible pursuant to Article III,[44] but endorses the latter. However, this clashes with Separation of Powers principles:

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37 491 U.S. at 417.

38 BORK, *supra* note 1, at 100.

39 *Id.* at 100.

40 *Id.* at 101.

41 *Id.* at 119.

42 *Id.* at 114. *See* Lino Graglia, *"It's Not Constitutionalism, It's Judicial Activism,"* 19 HARV. J.L. & PUB POL'Y 293, 298 (1996).

43 *See* Robert P. George & Ramesh Ponnuru, *Rule by Law: Conservatives Yearning to Rein in the Courts Have a Long-neglected Tool Ready at Hand*, NAT'L. REV., February 26, 1996, at 54.

> Under Article III, Section 2 of the Constitution, the Congress has the power to make exceptions to and regulate the appellate jurisdiction of the Supreme Court. . . . Since the "inferior" federal courts are created by Congress, their jurisdiction is also subject to congressional limitation. . . . But a Congress that is serious about reclaiming the constitution could rehabilitate Article III, Section 2 by regulating the federal judiciary's jurisdiction in three strategic areas: prison management, school prayer, and term limitation.

Id. at 55.

44 BORK, *supra* note 1, at 114-15. "The power to make 'Exceptions' is probably a housekeeping power, a power to control the appellate jurisdiction in the interest of efficiency and

"All legislative Powers . . . shall be vested in a Congress,"[45] "the executive Power shall be vested in a President,"[46] and "the judicial Power. . . shall be vested in one supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."[47] Bork would assert that these very principles have been subverted by an activist judiciary. Nonetheless, granting Congress judicial review seems to be even more violative of the intentions of the Framers. Clearly, the Framers foresaw that certain amendments would be necessary and provided a mechanism for making them, Article V.

The proposed amendment would subvert the Framers' intent to create a government with powers divided among branches. James Madison addressed the encroachment of one branch on the other when he wrote, "The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many. . . may justly be pronounced the very definition of tyranny."[48] Clearly, Madison spoke of all three powers being concentrated in one branch. However, limiting these powers to only two branches presents danger as well. Madison's concerns extend beyond complete accumulation of powers, "were the federal constitution therefore really chargeable with this accumulation of power or with a mixture of powers having a dangerous tendency to such an accumulation, further arguments would be necessary to inspire a universal reprobation of the system."[49] Moreover, Hamilton wrote:

> The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.[50]

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convenience as circumstances change. It was certainly not a power to assert democratic supremacy over the judiciary." *Id.* at 116.

45 U.S. CONST. art. I. §1.

46 U.S. CONST. art. II. §1.

47 U.S. CONST. art. III. §1.

48 THE FEDERALIST No. 47 at 324 (James Madison) (Jacob E. Cooke ed., 1961).

49 *Id.*

50 *Id.* No. 78 at 524 (Alexander Hamilton).

Bork's amendment would be a sweeping alteration of the allocation of powers among the separate branches. Furthermore, what would stop Congress from, for example, canceling elections,[51] having such act declared unconstitutional by the Supreme Court, and then overriding the decision? Should this notion appear too far fetched, what would have been the eventual saga with *United States v. Lopez*[52] where the court struck down the Gun Free Schools Zones Act? If Congress had voted on the constitutionality of its own act, it is unlikely that the act will be found unconstitutional. Despite Bork's understandable frustration with the judiciary, perhaps this book would be better named: *Slouching Towards Article V Temptations.*

Melinda L. McElroy and Christian O. Nagler

FEMINISTS AND PORNOGRAPHY: THE OTHER VIEWPOINT. A REVIEW OF *DEFENDING PORNOGRAPHY by Nadine Strossen*, Scribner, 1995.

Nadine Strossen is many things: professor of law at the New York Law School, president of the ACLU, a Phi Beta Kappa graduate of Radcliffe, and an ardent feminist. More precisely, Strossen is an ardent feminist who opposes censoring pornography.

Now the first year law student may, after reading Catharine MacKinnon's scholarship,[1] doubt that there is such a thing as a feminist who opposes censoring pornography. In *Feminism Unmodified*, for example, MacKinnon writes that "[p]ornography, in *the* feminist view, is a form of forced sex,"[2] clearly implying that all true, "unmodified" feminists unanimously support censorship.[3] *Defending Pornography,*[4] however, is proof that MacKinnon is wrong. Nadine Strossen, of course, joins forces

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51 John O'Sullivan, *The Lotus Eaters,* NAT'L REV., October 28, 1996, at 6.

52 115 S.Ct. 1624.

1 It is a safe bet that by the end of Constitutional Law, most first year law students know who Catharine MacKinnon is and about her stance against pornography. *American Booksellers Ass'n v. Hudnut*, in which Judge Easterbrook struck down MacKinnon's pornography ordinance as "thought control," 771 F.2d 323, 328 (7th Cir. 1985), is in the standard Constitutional Law casebook. *See, e.g.*, LOCKHART, ET AL., CONSTITUTIONAL LAW 751-55 (8th ed. 1996) (excerpt of case and excerpt of one of MacKinnon's articles). Also, MacKinnon is famous outside of legal academia. *See, e.g.*, James R. Peterson, *Catharine MacKinnon: Again*, PLAYBOY, Aug. 1992, at 39 (describing MacKinnon's widespread publicity in the media). Indeed, MacKinnon has so zealously taken center stage in the debate on pornography that one of her critics remarked that MacKinnon "is on a star trip." Carlin Romano, *Between the Motion and the Act*, 257 THE NATION 563, 564 (1993) (book review).

2 CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 148 (1987) (emphasis added).

3 The media have taken MacKinnon's bait. One *New York Times* reporter, for example, wrote that "virtually all feminists agree that pornography is detrimental to women." Isabel Wilkerson, *Foes of Pornography and Bigotry Join Forces*, N.Y. TIMES, Mar. 12, 1993, at B3.

4 NADINE STROSSEN, DEFENDING PORNOGRAPHY (1995) (320 pages).

with such renowned legal scholars as Richard Posner[5] and Ronald Dworkin[6] when she criticizes the pornography ordinances of Catharine MacKinnon and Andrea Dworkin.[7] But what makes Strossen's scholarship unique is that she gives her reasons on *behalf* of women and *in the name of feminism*; her task in *Defending Pornography* is to show that any censorship would ultimately force women back "along [their] hard-forged path"[8] to equality. Strossen, then, directly opposes Catharine MacKinnon and Andrea Dworkin, who advocate censoring pornography for the exact same reasons.[9]

How is censorship a bad idea for women? Strossen counts the ways. First, giving women the special protection of the government reinforces Victorian stereotypes of feminine helplessness — the same stereotypes, Strossen reminds us, that once supplied the basis for excluding women from the legal and medical professions.[10] Indeed, Strossen observes that the MacDworkinites' political efforts heavily overlap with the crusades of right-wing conservatives like Edward Meese, who was the chief architect of the 1986 Pornography Commission, and Jesse Helms, who condemned Robert Mapplethorpe's homo-erotic photographs.[11] Second, arming the government with the power to censor is an illogical way of protecting women from men because, as MacKinnon herself writes,[12] men dominate the government. "The fundamental premise in the procensorship's philosophy," Strossen observes, "that our entire societal and legal system is patriarchal, reflecting and perpetuating the subordination of women — itself conclusively refutes [the procensorship feminists'] conclusion that we should hand over to that system additional power."[13] Third, banning pornography because it "causes" rape indirectly argues that the rapist is not accountable and therefore should not be punished.[14] Rapist and murderer Thomas Schiro, according to MacK-

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5 *See generally* Richard A. Posner, *Obsession*, NEW REPUBLIC, Oct. 18, 1993, at 31 (book review of Catharine MacKinnon's *Only Words*).

6 *See generally* Ronald Dworkin, *Women and Pornography*, NEW YORK REVIEW OF BOOKS, Oct. 21, 1993, at 36.

7 Strossen calls the followers of MacKinnon and Dworkin "MacDworkinites." STROSSEN, *supra* note 4, at 13.

8 *Id.* at 279.

9 *See generally* CATHARINE A. MACKINNON, ONLY WORDS 3-41 (1993).

10 STROSSEN, *supra* note 4, at 107.

11 Strossen remarks that MacDworkinites and conservatives are "strange bedfellows," *id.* at 81, and dubs this political alliance "the Feminist-Fundamentalist Axis," *id.* at 90.

12 *See* MACKINNON, *supra* note 9, at 39-40 ("The power of pornography is more like the power of the state. It is backed by power at least as great, at least as unchecked, and at least as legitimated. At this point, indeed, its power *is* the power of the state.") (citations omitted) (emphasis in original).

13 STROSSEN, *supra* note 4, at 217.

14 *Id.* at 270-71.

innon, is nothing but the "product" of pornography.[15] Fourth, the MacDworkin laws are inherently vague and therefore also censor medical textbooks, pamphlets that offer advice on how to practice safe sex, or other informative publications that are essential to the task of fighting lethal venereal disease and domestic violence.[16] Indeed, Strossen shows us that even the books of MacKinnon and Dworkin themselves would fall prey to the radical feminists' own pornography statute.[17] And Strossen's list continues.

Pay special attention, however, to Chapters nine and eleven, in which Strossen concentrates on public policy arguments. First, in chapter nine Strossen tells us how censorship would change the pornographic industry and demonstrates that the MacDworkin ordinance would actually hurt the women that it is supposed to protect. "Driving many pornographic industries out of business," Strossen writes, "would deprive women of occupational options that many now affirm they have freely chosen."[18] Even worse, the businesses left would go underground and fall in the hands of underworld operators who do not obey laws about coercion and duress, wages and hours, insurance and pensions, sanitation and health.[19] As Posner wrote in his book review of MacKinnon's *Only Words*, the pimp would not exist if prostitution were legal and the police could protect prostitutes from their johns.[20] Small wonder, Strossen writes, that pornographic models and actresses have unanimously lobbied the *National Organization of Women* (NOW) not to support the MacDworkin laws;[21] if, as MacKinnon asserts, all pornography models experience the violence and duress that Linda Marchiano suffered while she was making the film *Deep Throat*,[22] this lobbying is strange behavior indeed.

Then in chapter eleven Strossen examines censorship in Canada. In 1992, the Canadian Supreme Court upheld a criminal version of the MacDworkin law[23] — a decision that MacKinnon hailed as a "stunning victory for women."[24] Strossen shows us, however, that Canada's record of enforcement is actually an embarrassment for all MacDworkinites.

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15 MACKINNON, *supra* note 9, at 97. Actually, MacKinnon wants to punish both the rapist and pornographer. *See id.* at 96 (stating that rape law should turn "on what the perpetrator did rather than on what he thought" and recommending that the law hold pornographers "jointly responsible for the rapes they can be proven to have caused").

16 STROSSEN, *supra* note 4, at 203-06.

17 *Id.* at 158-59.

18 *Id.* at 191.

19 *Id.* at 192.

20 Posner, *supra* note 5, at 34.

21 STROSSEN, *supra* note 4, at 193.

22 *Id.* at 183.

23 Butler v. The Queen, 1 S. C. R. 452 (1992).

24 STROSSEN, *supra* note 4, at 229.

Here are the sobering facts: Within two and a half years after *Butler*, customs officials seized or detained materials from over half of all Canadian feminist bookstores.[25] One major target of Canadian law enforcement, for example, was the lesbian magazine *Bad Attitude*, which was published by and for lesbian women.[26] Meanwhile, officials ignored heterosexual publications like Madonna's *Sex*, which includes explicit scenes of rape and bestiality,[27] and Bret Easton Ellis's *American Psycho*, which describes graphically the protagonist's murder, mutilation, and rape of women (often in exactly that order).[28] Canada's record of disparate enforcement, in fact, extends even to the bookstores that carried singled-out literature; Canadian officials raided the lesbian and gay bookstore *Glad Day Bookshop* for selling *Bad Attitude* but ignored a nearby mainstream bookstore that also sold the same magazine.[29] Indeed, just as Strossen predicted in a previous chapter, the works of even Andrea Dworkin herself did not survive the radical feminist's own law; Canadian customs officials seized *Pornography: Men Possessing Women* and *Woman Hating* because they believed that the works "illegally eroticized pain and bondage."[30] The bottom line, Strossen concludes, is that Canada focused — almost exclusively, it seems — on feminist and lesbian publications, a fact that even MacKinnon herself conceded in an interview after 1992.[31]

Strossen also highlights other events in Canada which are simply Orwellian — truly egregious censorship that would horrify anyone, whether or not she is a cultural or radical feminist, whether or not she is a feminist at all. One victim of *Butler*, for example, was a psychologist who had studied child molesters and written a documentary to educate and alert people about pedophiles.[32] Nevertheless, Mounties raided the home of this "alleged porn kingpin" to confiscate the unpublished manuscript of his "pornographic" book.[33] Here are some of Canada's other targets: Kathy Acker, Ambrose Bierve, Langston Hughes, David Leavitt, Audre Lorde, Anne Rice, Oscar Wilde.[34] Sometimes Canadian authorities actually judged books by their covers. Officials went after a video tape that was entitled *Doing it Debby's Way* because they believed it was the sequel to the infamous *Debby Does Dallas*. It turned out to be an

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25 *Id.* at 231.

26 *Id.* at 232.

27 MacDworkinites found this book so offensive that they ripped it to shreds at a University of Chicago Law School conference. *Id.* at 235.

28 *Id.*

29 *Id.* at 232.

30 *Id.* at 237.

31 *Id.* at 239.

32 *Id.* at 238.

33 *Id.*

34 *Id.* at 238-39.

exercise tape by Debby Reynolds.[35] The book *Hot, Hotter, Hottest* also fell prey to the MacDworkin law; it turned out to be a cookbook for spicy cuisine.[36]

Finally, in chapter thirteen, Strossen points us in the direction of the real solutions to women's subordination. Women can fight their subordination, Strossen argues, not by censoring pornography, but by holding accountable the men who rape them on the streets and sexually harass them in the office.[37] Women can educate their children and, thus, beat our sexist society to the punch.[38] Before adopting MacKinnon's sledgehammer of an ordinance, the government should open more shelters for battered women and more rape crisis centers for rape victims.[39] And, ultimately, Strossen gives the opposite advice of MacKinnon: "More speech about sex — education, information, and the development of critical viewing skills — not less, is the answer."[40] To be sure, Strossen's solutions do not offer the "quick fix" that censoring pornography does[41] and might require generations of dedication and back-breaking work. But when the alternative is MacKinnon's Canada, Strossen's solutions look attractive indeed.

So in *Defending Pornography*, Strossen shows us why censoring pornography is, at best, a pyrrhic victory for women and a horrible idea for everyone in general. Again, many of Strossen's points are not original; Richard Posner, for example, also argued against driving pornography underground in *New Republic*,[42] and Carlin Romano also charged that MacKinnon's own scholarship was pornography itself.[43] Posner and Romano, however, are not feminists. Strossen is, and in *Defending Pornography*, this feminist forcefully and eloquently makes these same arguments on behalf of feminism and on behalf of women. *Defending Pornography*, then, is valuable not only because it tells us yet again all the reasons why censoring pornography is simply a bad idea — reasons we need to hear over and over again as MacKinnon becomes increasingly dogged in her crusade.[44] *Defending Pornography* is also valuable

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35 *Id.* at 97.
36 *Id.* at 238.
37 *Id.* at 270-71.
38 *Id.* at 271.
39 *Id.* at 277-78.
40 *Id.* at 273.
41 *Id.* at 13.
42 Posner, *supra* note 5, at 34.
43 *See* Romano, *supra* note 1, at 563 (describing *Only Words* as a "good court prop to demonstrate a 'hostile environment' sexual harassment claim").
44 Indeed, MacKinnon's increasing "obsession" with censoring pornography "surprised" Richard Posner. Posner, *supra* note 5, at 36 ("I do not know what has caused MacKinnon to become, and, more surprisingly, to remain, so obsessed with pornography, and so zealous for censorship. But let us not sacrifice our civil liberties on the altar of her obsession."). And MacKinnon's efforts have been successful; one commentator wrote in 1991 that "a few leading

because it shows us that a person can sincerely make these arguments and still oppose the subordination of women. Believe it or not, this simple concept — that a feminist can oppose censoring pornography[45] — is not obvious to the first year law student, largely due to the conduct of MacKinnon herself, who refuses to debate other feminists on this subject (she dismisses any debate within feminism as "the pimps' current strategy for legitimizing a slave trade in women"[46]). As Strossen notes, MacKinnon's tactics perpetuate the myth that all feminists are MacDworkinites:

> The widespread misperception that Dworkin and MacKinnon speak for feminists generally concerning sexual speech is fostered by their own divisive rhetoric, which suggests that their censorship campaign is the one and only feminist position. Catharine MacKinnon has stated that "Pornography, in *the* feminist view, is a form of forced sex . . . an institution of gender inequality" (emphasis added). Moreover, Dworkin and MacKinnon have charged that those who disagree with them are not true, but "liberal, so called" feminists. MacKinnon has compared feminists who oppose censorship to "house niggers who sided with the masters," and has denounced a leading feminist anticensorship group, the Feminist Anti-Censorship Taskforce (FACT): "The labor movement had its scabs, the slavery movement had its Uncle Toms and Oreo cookies, and we have FACT."[47]

In *Defending Pornography*, Nadine Strossen debunks all of Catharine MacKinnon's myths.

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constitutional theorists now predict that, within a decade, [MacKinnon] will have carved out a new exception in constitutional protection of speech." Fred Strebeigh, *Defining Law on the Feminist Frontier*, NEW YORK TIMES MAGAZINE, Oct. 6, 1991.

45 In fact, Strossen lists other feminists who also oppose censorship: among many others, Anne Rice, Adrienne Rich, Jamaica Kincaid, president of Planned Parenthood Faye Wattleton. NOW president Karen Decrow, founding president of NOW Betty Friedan. STROSSEN, *supra* note 4, at 34.

46 STROSSEN, *supra* note 4, at 85.

47 *Id.* at 32 (footnotes omitted).