BLIND TRUST

VIRGINIA I. POSTREL

The debate over a proposed law is usually simple. One side wants to ban smoking in restaurants. The other side doesn't. One side wants a higher sales tax. The other side doesn't. One side thinks a bill is good. The other side thinks it's bad.

Sometimes, however, the debate gets more complicated. The bill itself—what it says, what it would mean—becomes the issue. Its language is vague, or complicated, or both. In such cases, the debate changes from a discussion of issues to a competition for trust.

The bill's supporters argue both that it will right tremendous wrongs and that it will have little or no effect. Opponents, by contrast, construe its language in the broadest possible way and argue that it will have sweeping results but won't solve the problem. Proponents accuse opponents of exaggeration; opponents accuse proponents of hiding their intentions. Each side says the other is not to be trusted.

Take the Civil Rights Act of 1990. The bill itself was extremely technical, focusing on burdens of proof and other rules of litigation. It didn't say, "Employers shall adopt hiring quotas for racial minorities" or "Racial quotas are prohibited." Such clarity could never get out of committee.

As a result, the debate over the bill often sounded like a couple of bratty kids arguing: "It is a quota bill." "Is not." "Is so." "Is not." "Is so."

Not surprisingly, such vague bills are often crafted by people who can make a very intimidating claim to represent absolute virtue. "Trust us," the proponents say, "we're the good guys. You know that."

That's why most such bills fall into two good-guy categories: civil rights laws and environmental statutes. Slap one of those labels on a bill and it gets awfully hard to oppose in public.

The Americans with Disabilities Act is a particularly egregious example of vague legislation backed by peer pressure worthy of a junior-high clique. To question the ADA—even to ask for specifics—was to declare oneself an insensitive boor.

The ADA requires employers to make "reasonable accommodation" for disabled employees. But it does not define "reasonable." Under the ADA, I could, for instance, file an extremely credible suit against the Reason Foundation, demanding that it pay for my contact lenses, or at least glasses. I cannot do my job if I cannot see, and I cannot see without corrective lenses. Such lenses are inexpensive; I can afford them. But if I can afford them, can't my employer as well? Doesn't their very cheapness make them a "reasonable accommodation"?

I won't bring such a suit. But someone else eventually will. It will be only one of thousands of suits encouraged by the law's sweep and vagueness. Such litigation is the necessary byproduct of irresponsibly drafted, feel-good laws. Congress and the president get to declare that they've done good. Somebody else gets to decide what the law really means.

Then there are bills that aren't vague but are so complicated that not even their backers understand them. They ask not only the public but the legislators themselves to substitute trust for judgment.

The 1990 Clean Air Act is 1,110 pages long. It was passed by people who haven't the smoggiest idea what it means. Reports *National Journal*, "The legislation, with its often esoteric standards—for 'maximum achievable control technology,' for example—is so far-reaching and filled with scientific jargon that even the most knowledgeable Members were forced to rely on the few congressional aides who understood its details and its potential effect; on many occasions, a few senior lawmakers watched as aides crafted the language."

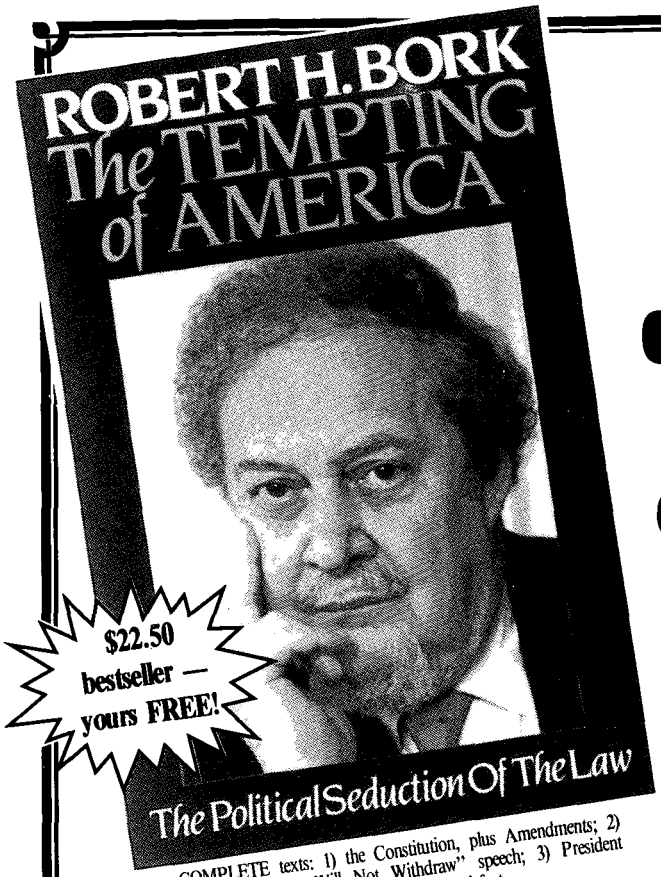
Sure, Congress can say it passed a law to clean the air. But executive-branch regulators must now spend months crafting rules to implement this massive law. Then private attorneys will spend years of billable hours to interpret and litigate those regulations. The actual cost of pollution-control equipment will be only a fraction of the total bill.

And that, it seems, is exactly how legislators want things. Leave the tough decisions to the bureaucrats and judges—they don't have to face reelection, or Ted Koppel.

Cowardice is one reason for "trust me" laws, but it isn't the only one. Passing a vague law can prove a very effective way to enact an otherwise unpopular agenda. That's why you won't find narrow interpretations actually written into law.

Understanding this, opponents equate a vague bill with a worst-case interpretation. Proponents respond by denouncing exaggeration and scare tactics. They may point to previous dire predictions that didn't come true.

If the bill passes, the two sides switch arguments. The bill's former proponents argue for the broadest construction possible—"it is a quota bill." The opponents argue for a narrow reading—"is not." Ultimately, the courts make the law.



COMPLETE texts: 1) the Constitution, plus Amendments; 2) Judge Bork's "I Will Not Withdraw" speech; 3) President Reagan's warm letter after Judge Bork's defeat.

National bestseller — and the most important conservative book of our time

"Belongs among the few masterpieces of American political reflection"
—GEORGE WILL in *Newsweek*

Now it's Judge Bork's turn, and he doesn't disappoint. Listen to this chorus of praise, each review vying with George Will's in enthusiasm...

"Brilliant ... profound, learned, and sophisticated, yet written with a style and passion that make it absorbing."—MILTON FRIEDMAN

"A blockbuster ... may well alter the course of our legal and social history ... Judge Bork, in writing it, has served his country almost as well as he would have served it on the court."—WILLIAM A. RUSHER, syndicated column

"Punctures liberalism's claim to moral superiority by showing the left as the source of today's anti-intellectual yahooism."—*Wall Street Journal*

"The most powerful, most readable — and wisest — book on constitutional law to have been published in this century."—IRVING KRISTOL

How to get this $22.50 bestseller FREE

How the Club Works

Every 4 weeks (13 times a year) you get a free copy of the Club Bulletin which offers you the Featured Selection plus a good choice of Alternates — all of interest to conservatives. ★ If you want the Featured Selection, do nothing; it will come automatically. ★ If you don't want the Featured Selection, or you do want an Alternate, indicate your wishes on the handy card enclosed with your Bulletin and return it by the deadline date. ★ The majority of Club books will be offered at 20-50% discounts, plus a charge for shipping and handling. ★ As soon as you buy and pay for 3 books at regular Club prices, your membership may be ended at any time, either by you or by the Club. ★ If you ever receive a Featured Selection without having had 10 days to decide if you want it, you may return it at Club expense for full credit. ★ Good service. No computers! ★ The Club will offer regular Superbargains, mostly at 70-90% discounts plus shipping and handling. Superbargains do NOT count toward fulfilling your Club obligation, but do enable you to buy fine books at giveaway prices. ★ Only one membership per household.

CONSERVATIVE BOOK CLUB
15 OAKLAND AVENUE • HARRISON, N.Y. 10528

Please accept my membership in the Club and send FREE my copy of Robert Bork's $22.50 bestseller, *The Tempting of America*. I agree to buy 3 additional books at regular Club prices over the next 18 months. I also agree to the Club rules spelled out in this coupon. **R-91**

Name _____

Address _____

City _____ State _____ Zip _____

At first glance, the "trust me" strategy sounds brilliant: Write a vague or complicated bill that can be interpreted in a sweeping way. Tie it to a righteous cause. Equate doubting the bill with doubting the cause. Woo swing votes by arguing for a narrow reading. Get the bill passed. Then maneuver the regulations and courts to enact the broadest possible interpretation.

Problem is, this doesn't always work. Cases in point: the 1990 Civil Rights Act, California's Big Green environmental initiative, and the grandmama of them all, the Equal Rights Amendment.

To beat a vague bill, there first have to be people to challenge the bill's underlying agenda, to say the bill is not what it seems. They do not have to convince legislators or the public; they merely have to arouse doubt. Few people actually accepted Phyllis Schlafly's contention that the ERA would require unisex bathrooms. But that hypothetical did raise doubts that the ERA was as innocuous as its backers claimed. And since the amendment's most strident supporters did endorse sweeping changes in American society, extreme scenarios did seem possible if not likely.

Second, someone with political power has to be willing to oppose the seemingly unassailable. Supermajority requirements help. Legislators in conservative states could block the ERA. Republican senators could sustain Bush's Civil Rights Act veto.

In the case of a ballot initiative, summoning political courage is even easier. The ballot is secret. No one need know that you voted against the Sierra Club and in favor of the evil chemical companies. Big Green's surprise 2-to-1 defeat suggests that some Californians lied to pre-election pollsters.

It would be great if courts started to throw out vague laws. But the system is somewhat self-correcting. By refusing to say what they mean and forcing citizens to spend years in court, trust-me laws generate contempt for lawmakers. Ultimately, they erode the public trust that makes their passage possible.

VOTER REVOLT?

RICK HENDERSON

The ink has dried on the pundits' assessments of the recent elections. But there may be a few longer-term lessons we can glean from the November 6 ballot:

• *Honesty is the best policy.* Even in an environment that normally punishes adherence to principle, in this election the most blatantly hypocritical candidates took it on the chin.

Rep. Ron Dyson (D-Md.) became a born-again hawk, thanks to Saddam Hussein. But when Maryland voters found out that Dyson was a conscientious objector in the Vietnam years, he lost to a distinguished veteran.

In March, California gubernatorial candidate Dianne Feinstein noisily rejected negative campaigning. She then launched attack ads against Atty. Gen. John Van de Kamp and won her primary. During the fall campaign, Feinstein took the ultimate cheap shot—portraying Sen. Pete Wilson as a sedated buffoon when he virtually voted from his hospital bed just following an emergency appendectomy.

Feinstein also flip-flopped on the Big Green environmental initiative—attacking the measure until Earth Day, then acting as if she had authored it—and on job quotas for government employees; California voters remembered both of her faces.

Jesse Helms didn't win his fourth Senate term with Bubba's vote alone (even though his legitimate campaign against racial quotas assured him of every racist vote in North Carolina); he won by accurately portraying media darling Harvey Gantt as a glutton for political pork. Gantt used government programs to get rich by obtaining a broadcasting license and building contracts. Gantt's campaign claimed he could "make government work." Helms agreed: Harvey Gantt could make government work—for Harvey Gantt. Early on, urban, middle-class voters fled from Helms. But by tying Gantt to corruption, Helms cruised to victory, ending up with 46 percent of upwardly mobile Tar Heel votes.

• *Listen to the home folks.* As Tip O'Neill said, all politics is local. Fixation on the Beltway nearly cost Newt Gingrich and Bill Bradley their jobs. Massachusetts voters derailed John Silber's express train to Pennsylvania Ave.

And in North Carolina, when Helms ran his campaign from Washington, Gantt surged ahead. Once Helms focused on his formidable local constituency, Gantt was a goner.

Abortion, the S&L scandal, and other national issues had little impact on the vote—unless they were tied to specific candidates. Rep. Chip Pashayan (R-Calif.) took campaign contributions from Charles Keating and lost. Massachusetts elected a pro-choice Republican governor; Kansas, a pro-life Democrat. But neither campaign focused on abortion.

Election reform? In Florida, Lawton Chiles tells the media he squeaked past Gov. Bob Martinez because he refused campaign contributions larger than $100; Chiles might even believe it. But as Fred Barnes noted in *The New Republic*, Chiles is a statewide hero. And in 1987, Martinez backed an unpopular services tax that lowered his favorable rating to 15 percent. It's a miracle Martinez was close.

• *If there's a huge constituency calling for activist government, it didn't vote on November 6.* Nowhere was this more true than in California, where most of the 25 ballot initiatives that promised to increase government power went down in flames.

Big Green lost 2 to 1, getting only 34 percent of the vote. Two other environmental measures garnered less than 40 percent each. Voters approved only 3 of 20 other initiatives calling for new taxes or government bonds. Yet last June, all the bond issues on the primary ballot