# Reigning Supreme

The Supreme Court decision striking down state anti-sodomy laws seriously escalates the culture war — and grievously undermines our constitutional order.

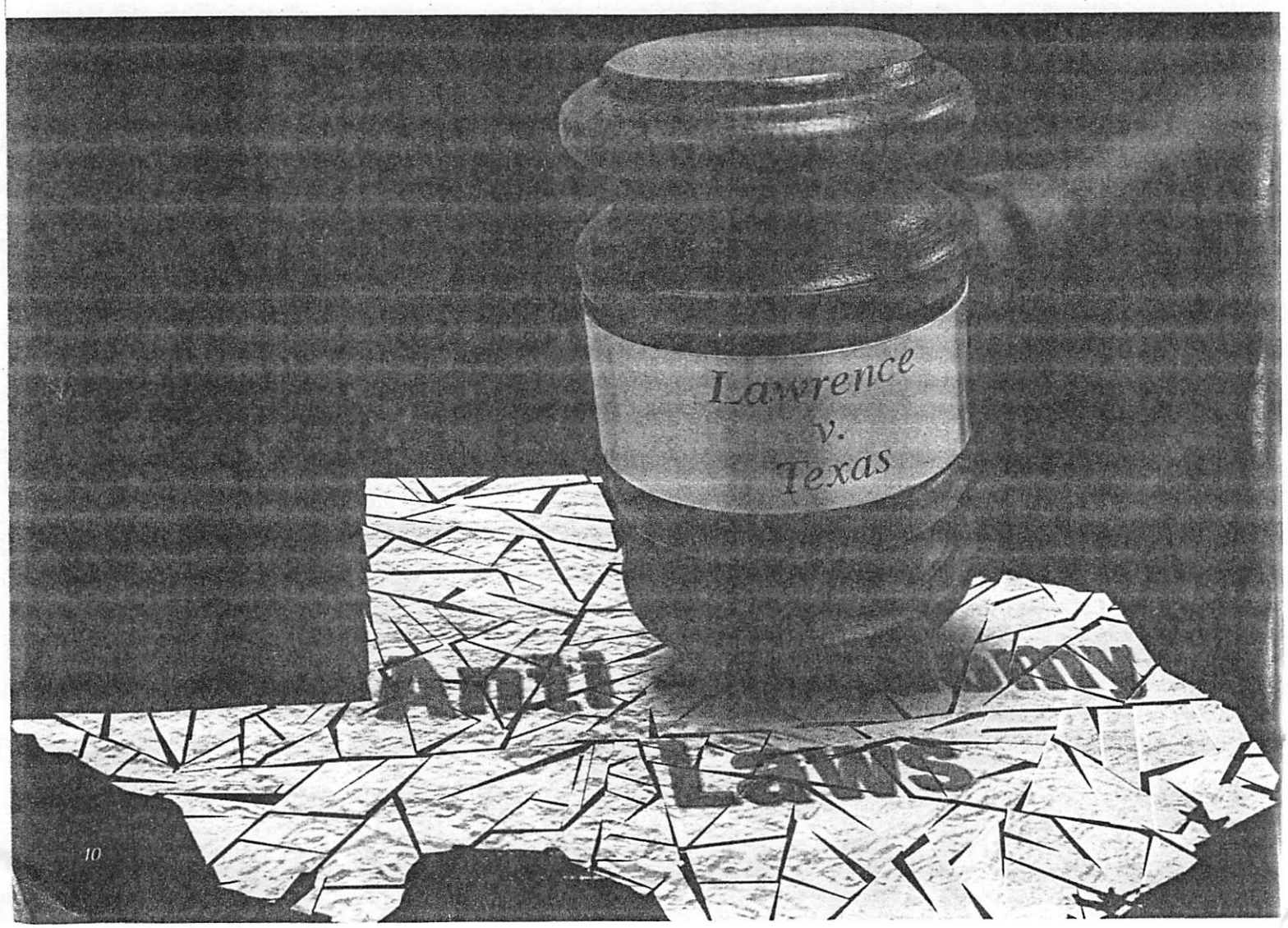
*by William Norman Grigg*

Justice Antonin Scalia was devastatingly blunt in his dissenting opinion in the Supreme Court's June 26th decision *Lawrence v. Texas*. "It is clear … that the Court has taken sides in the culture war, departing from its role of assuring, as neutral observer, that the democratic rules of engagement are observed." The Court's revolutionary ruling struck down laws in 13 states criminalizing homosexual conduct. That incredible usurpation by the High Court was "the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda," wrote Scalia.

As something other than coincidence would have it, the decision was handed down on the eve of nationwide "Gay Pride" marches. It also came shortly after the Canadian federal government's June 17th approval of a national policy intended to bring about homosexual marriage. The media cartel eagerly exploited the opportunity to embed in the public mind that our nation will inevitably follow suit. "Is Homosexual Marriage Next?" asked the cover of the July 7th *Newsweek*, as CNN reported a "Gayby Boom" — an increase in the number of homosexual partners toting trophy children to "Gay Pride" rallies.

Those who mistakenly equate freedom with license hailed the ruling as a landmark in the progress of human liberty. But the decision actually expands the homosexual lobby's ability to use federal power to reconfigure private institutions. As noted above, this would ultimately include marriage — the first and most important human institution, one whose existence precedes that of the state.

"Many Americans do not want persons who openly engage in homosexual conduct as partners in their businesses, as scoutmasters of their children, as teachers in their children's schools, or as boarders in their homes," observed Justice Scalia. "They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive." On



the other hand, noted Scalia, "the Court views it as 'discrimination' which it is the function of our judgments to deter."

The federal anti-discrimination mandate claimed by the Supreme Court in *Lawrence* "effectively decrees the end of all morals legislation" by states, Scalia continued. In the decision, the majority held that laws forbidding homosexual conduct have no "rational basis," apart from supposedly archaic moral standards and prejudices. State and local laws forbidding adultery, incest, bestiality, child pornography, and similar matters "cannot survive the rational-basis review" used in the decision, Scalia warned.

*Lawrence* offers oblique but unmistakable foreshadowing of homosexual "marriage." Scalia acknowledged that "the Court says that the present case 'does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.'" But he warned: "Do not believe it.... Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as legal recognition of marriage is concerned."

Reuters

**John Lawrence and Tyron Garner** (center and right, respectively), applaud the news that the Supreme Court had overturned their 1998 conviction on a misdemeanor sex charge. The Court's decision, which struck down Texas' anti-sodomy statute, threatens all state laws regulating morality — and may set the stage for homosexual marriage.

## Anatomy of Usurpation

The central figures in the *Lawrence* decision were two homosexual men caught in the act by Houston police during an investigation of an unrelated weapons disturbance. The homosexual pair was arrested and convicted of violating a Texas law forbidding homosexual conduct. The Texas State Court of Appeals validated the conviction, citing the Supreme Court's 1986 decision *Bowers v. Hardwick*, which upheld a similar law in Georgia.

The majority decision in *Lawrence*, written by Reagan appointee Anthony Kennedy, actually acknowledged that the Texas anti-sodomy law was constitutional, and in harmony with existing Supreme Court precedents, at the time of its enforcement. However, continued the majority opinion in *Lawrence*, the Court's ruling in the 1986 *Bowers* decision "misapprehended the claim of liberty" made by the plaintiffs in that case.

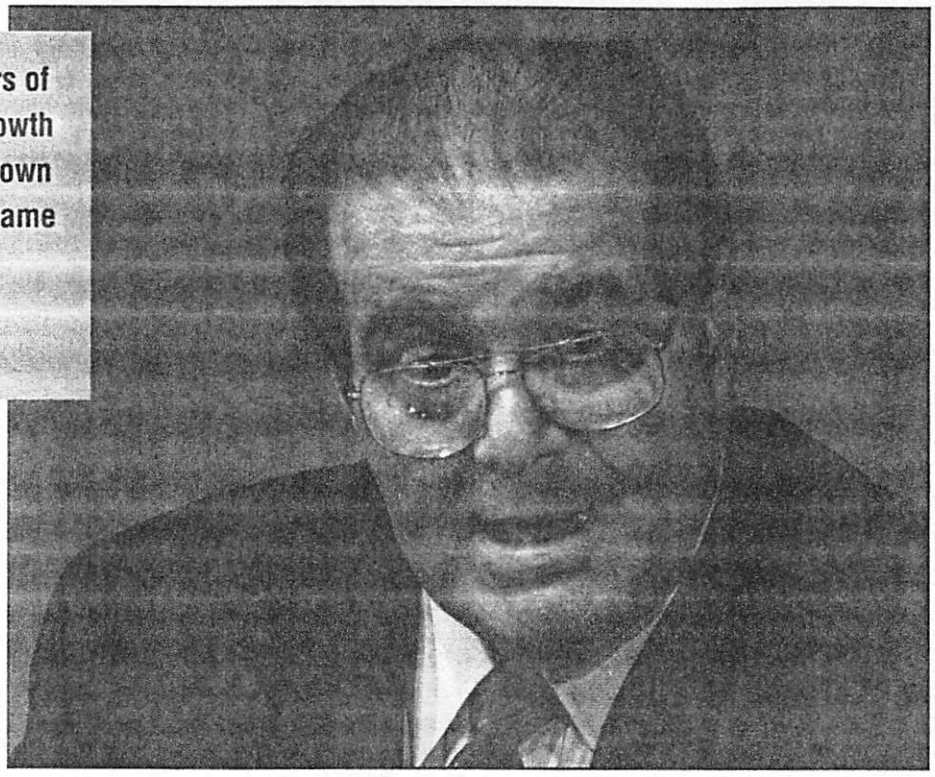
In *Bowers*, the Court framed its decision as a matter of upholding the reserved powers of states to pass laws reflecting, and protecting, standards of community morality. The *Bowers* majority also noted that anti-sodomy laws reflect a Western moral consensus that has endured for centuries. However, in *Lawrence*, the majority brushed aside the earlier ruling by asserting the newly minted principle that "the liberty protected by the Constitution allows homosexuals the right to make [the] choice" to engage in sodomy and similar practices.

This is not to say that the Supreme Court discovered or invented a fundamental "right" to engage in homosexual conduct. As Justice Scalia points out in his dissent, the *Bowers* case concluded that a right to practice homosexuality "was not 'deeply rooted in this nation's history and tradition.'... The Court today does not overrule this holding. Nor does it describe [the license to engage in homosexuality] ... as a 'fundamental right' or a 'fundamental liberty interest.'" Instead, the Court simply insists that the Texas law — and similar laws in other states — "furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual."

Will our esteemed Supreme Court justices eventually make the same claim to justify throwing out state laws limiting

**The *Lawrence* decision illustrates that a solid majority of the Supreme Court has overstepped its constitutional authority and now sees itself as essentially a dictatorial body. By decree the Court can abolish any state law provoking its disfavor or obstructing its desired course of social revolution.**

**By striking down the reserved powers of the states, the courts abetted the growth of the federal leviathan; by cutting down state laws regulating morals in the name of fighting oppression, the courts created a free-fire zone for federal assaults on individual liberties.**



AP/Wide World

**Voice of warning:** With its *Lawrence v. Texas* ruling, warned Justice Antonin Scalia in his dissent, the Supreme Court "has taken sides in the culture war, departing from its role of assuring, as neutral observer, that the democratic rules of engagement are observed." Rather than applying the law and protecting the Constitution, the Court "signed on to the so-called homosexual agenda," advancing the revolutionary assault on our traditional institutions.

marriage to a union between a man and a woman? Canadian Prime Minister Jean Chretien, in announcing his cabinet's approval of a framework for homosexual marriage, invoked the Marxist conceit that those who oppose such a development stand on the "wrong side of history." "You have to look at history as an evolution of society," he claimed. The Supreme Court's decision in *Lawrence* strikes the same pose, contending that the earlier *Bowers* decision was incompatible with "an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex."

The "emerging awareness" referred to by the Court has inspired a string of relatively recent Supreme Court decisions dealing with contraception (*Griswold v. Connecticut*, 1965; *Eisenstadt v. Baird*, 1972; *Carey v. Population Services International*, 1977) and abortion (*Roe v. Wade*, 1973, and *Casey v. Planned Parenthood*, 1992). Each of those decisions resulted from the Supreme Court usurping the state governments' reserved powers to set social policies regarding moral issues. The 1986 *Bowers* decision, in which the Court observed its constitutional limitations by deferring to the states' reserved powers, was indeed out of step with that string of presumptuous precedents — so it was brushed aside in *Lawrence* by a Court determined to inaugurate a new phase in our ongoing social revolution.

### The Revolutionary Judiciary

Under our Constitution, as James Madison explained in *The Federalist*, No. 45, Washington's powers are "few and defined," while those retained by the states are "numerous and indefinite." As a creature of the states that created it, the central government can set national policy in only a relative handful of specifically defined instances. No branch of the federal government — the judiciary least of all — has the constitutional authority to tell Texas or any other state what its policy should be regarding anti-homosexuality laws, or similar laws against pornography, abortion, or other evils.

The *Lawrence* decision illustrates that a solid majority of the Supreme Court has overstepped its constitutional authority and now sees itself as essentially a dictatorial body. By decree it can alter or abolish any state law it disfavors; through judicial fiat it can imperil fundamental social institutions — such as marriage and the family — that obstruct the course of the unfolding social revolution.

For roughly a century, at least since the "progressive" era of the 1890s and early 1900s, the judiciary has artfully subverted our constitutional system through the use of a doctrine called "substantive due process." This doctrine is based on an Orwellian manipulation of language: "process" refers to *rules* and *guidelines*; "substantive" refers to *outcomes*. Simply put, the notion of "substantive due process" authorizes the federal judiciary to invalidate any state or local law, however properly enacted, leading to an outcome the feds don't like. In this way the feds have transmuted the 14th Amendment's guarantee that no state can deprive its citizens of life, liberty, or property "without due process of law" into a warrant for the federal government to demolish the states' reserved powers.

In his recent book *The Secret Constitution*, Marxist legal scholar George P. Fletcher of the Columbia University School of Law describes this judicial revolution as an outgrowth of a radical view of the Civil War. Although the present Constitution resembles, in many ways, its pre-Civil War version, it has actually undergone what historian Garet Garrett called a "revolution within the form," according to Fletcher. "The new order inherits an operating Congress, Executive and Judiciary," he observes. Although they

have been "recast in new functions, the forms remained the same." One significant change is the mindset of the governing elite, who now act on "the consciousness of setting forth a new framework of government, a structure based on values fundamentally different from those that went before."

"The heart of the new consensus is that the federal government, victorious in warfare, must continue its aggressive intervention in the lives of its citizens," Fletcher declares. The 1787 Constitution gave the federal government no power to reconfigure the social customs of the states that created it, much less a role in policing private relationships. However "the liberty that comes to the fore in the intended postbellum constitutional order and under the Secret Constitution requires the intervention of government," argues Fletcher. "Liberty is born in the state's assertion of responsibility to oversee and prevent relationships of oppression."

Mussolini put the proposition much more concisely: Everything within the state, nothing outside the state, nothing against the state. What Fletcher describes is a formula for federal totalitarianism disguised as liberation. By striking down the states' reserved powers, the courts abetted the growth of the federal leviathan; by cutting down state laws regulating morals in the name of fighting oppression, the courts created a free-fire zone for federal assaults on individual liberties.

### Lavender Long March

The *Lawrence* decision offers a critically important warning that the revolutionary Left has nearly completed its "long march through the institutions" that began five decades ago. That campaign has followed a battle plan composed by Italian Communist theoretician Antonio Gramsci, who

# Internationalizing the Court

*by William Norman Grigg*

There is, of course, nothing in the Constitution to justify overturning state laws against sodomy. That is why the Supreme Court's *Lawrence* decision was necessarily based on an "emerging awareness" springing from (among other supposed fountainheads of wisdom) foreign judicial bodies. The European Court of Human Rights, the *Lawrence* majority pointed out, "considered [in 2001] a case with parallels to *Bowers* and [the *Lawrence*] case." In that decision, the European court "held that the laws proscribing the [homosexual] conduct were invalid under the European Convention on Human Rights." That decision, insisted the *Lawrence* majority, is binding "in all countries that are members of the Council of Europe (21 nations then, 45 nations now)," thereby supposedly illustrating that a license to practice homosexuality is now firmly entrenched in Western Civilization. Elsewhere the *Lawrence* decision cites a brief filed by former UN Human Rights Commissioner Mary Robinson to validate the claim that there is an international consensus supporting "the protected right of homosexual adults to engage in intimate, consensual conduct."

In his dissent, Scalia dismisses these citations of international authorities as "meaningless dicta." That they have no standing under our constitutional law is obvious — but their presence in this decision is neither meaningless nor harmless. They reflect an ongoing effort to harmonize our judiciary with the unfolding, UN-dominated system of international law, a campaign that would destroy the embattled remnants of our federal system.

As The New American warned five years ago (see our Insider Report item entitled "Globalizing the Supreme Court" in our August 17, 1998 issue), three members of the Supreme Court — Sandra Day O'Connor, Stephen Breyer, and Ruth Bader Ginsburg — were among a delegation of American judges who took a 10-day, four-nation European tour in 1998. (Not surprisingly, those three Supreme Court judges belong to the globalist Council on Foreign Relations, and all three of them voted with the *Lawrence* majority.) That visit's purpose was to begin the process of integrating European judicial precedents into U.S. court decisions.

"In the next century, we are going to want to draw upon judgments from other jurisdictions," commented O'Connor during the tour. "We are going to be more inclined to look at the decisions of [the European] court ... and perhaps use them and cite them." She also predicted that "we are going to see in the next century a considerable amount of litigation coming out of [international] treaties."

During one stop on the European tour, Justice Stephen Breyer made the telling observation that many Europeans complain, "Why should people in Brussels be telling us what to do?... That sounds like people in Tulsa asking, 'Why should Washington tell us what to do?'" The European complaint reflects a surrender of national sovereignty to a supra-national ruling elite, while the American complaint protests the perversion of our federal system.

**The Supreme Court's recent citation of a European court ruling reflects an ongoing effort to harmonize our judiciary with the unfolding, UN-dominated system of international "law."**

In a July 6th interview on ABC's *This Week* program, Breyer candidly expressed the view that the U.S. Constitution is unsuitable for the age of "globalization." Claiming that "the world really, it's trite but it's true, is growing together, that through commerce and through globalization, through the spread of democratic institutions, through immigration into America, it's becoming more and more one world of many different kinds of people. And how they're going to live together across the world will be the challenge and whether our Constitution and how it fits into the governing documents of other nations I think will be a challenge for the next generation."

Breyer, like his colleagues, swore an oath to uphold our Constitution, not to vandalize it in the service of globalist ideology. The ambitions expressed by Breyer in his interview on *This Week* are adequate grounds for impeachment. ■

**In due course, the American Law Institute's Model Penal Code either eliminated or trivialized sex crimes, from homosexuality to public indecency, and set the stage for legalizing pornography, abortion, and (eventually) infanticide in the form of partial-birth abortion.**

stressed the need to subvert, capture, and reconfigure cultural institutions to build the Total State. Although the pro-homosexual Lavender Revolution claims the mantle of liberation, it is actually a key element of this long-term drive to destroy individual rights by removing anything keeping the state from exercising total power.

Writing in the Winter 1996 issue of the Marxist journal *Dissent*, Michael Walzer provided several key illustrations of the Gramscian revolution's progress. Among the victories won by cultural Marxists in the "Gramscian war of position," Walzer noted, is "the transformation of family life," including: "rising divorce rates, changing sexual mores, new household arrangements — and, the portrayal of all this in the media"; "The progress of secularization; the fading of religion in general and Christianity in particular from the public sphere — classrooms, textbooks, legal codes, holidays, and so on"; and "the emergence of gay rights politics, and ... the attention paid to it in the media."

For at least five decades, Gramscian change agents in the legal system, academe, media, social sciences, and tax-exempt foundations have pursued these radical cultural changes. The influence of these cultural subversives is specifically acknowledged by two references in the *Lawrence* decision — one in the dissenting opinion, and the other in the majority opinion.

In his dissent, Justice Scalia pointed out that the American Association of Law Schools, "to which any reputable law school *must* seek to belong," refuses admission to "any school that refuses to ban from its job-interview facilities a law firm (no matter how small) that does not wish to hire as a prospective partner a person who openly engages in homosexual conduct." This has had an obvious impact in engineering a pro-homosexual consensus in the legal system — an important victory in what Michael Walzer calls the "Gramscian war of position."

AP/Wide World

**Prophet of perversion:** Renowned sex researcher Alfred Kinsey, according to his former associate James H. Jones, was a militant homosexual determined to abolish America's biblical standards of morality. Kinsey's research, which was drawn on the experiences of sex offenders and the "scientific" molestation of children (including newborns), fueled a revolutionary effort to abolish state laws against homosexuality, indecency, and pornography. The Supreme Court's *Lawrence* decision draws heavily on Kinsey's bogus science.

A much more significant reference to the work of Gramscian change agents is found in the majority opinion, which notes: "In 1955 the American Law Institute [ALI] promulgated the Model Penal Code and made clear that it did not recommend or provide for 'criminal penalties for consensual sexual relations conducted in private.'"

Underwritten by grants from the Carnegie Endowment and various Rockefeller foundations, the ALI was the education arm of the American Bar Association. According to Dr. Judith Reisman, an authority on the long-term effort to subvert America's conventional moral standards, the chief author of the ALI's Model Penal Code "was Professor Herbert Wechsler, acclaimed legal scholar at Columbia University and formerly a confidential assistant to President Franklin Roosevelt." He was also a member of the National Lawyers Guild, officially cited by a congressional committee as a legal front group for the Communist Party.

Dr. Reisman observes that Wechsler collaborated with Alfred Kinsey, whose 1948 studies on human sexuality were intended to demolish the Judeo-Christian foundations of American morality. Kinsey, also a beneficiary of Rockefeller largesse, was portrayed in a recent biography by former Kinsey Institute adviser James H. Jones as a militant homosexual at war with American society.

The subjects used by Kinsey as a supposedly representative sample of the American mainstream were recruited from homosexual bars and gathered from the ranks of sex offenders. As Jones observes in his biography, *Alfred Kinsey: A Public/Private Life*, the sex researcher's role was to free America from Victorian "repression." But this is too modest a description: Kinsey and his allies sought nothing less than a new social order devoid of any vestiges of biblical morality.

Kinsey's collaborators included Rene Guyon, a left-wing French lawyer and pederast who coined the saying, "sex by age eight or else it's too late." Recalls international sexologist Dr. Harry Benjamin (an

associate of both Kinsey and Guyon), "Guyon developed a deconstructed legal theory [of sexual liberation], fortifying it with Kinsey's 'scientific' data. It was put into the hands of legal radicals like Morris Ernst, an advocate for the new sexual order, who handled revolutionary cases in his war against the American legal order." In Ernst's 1948 book *American Sexual Behavior and the Kinsey Report*, Kinsey colleague Robert Dickinson claimed that "virtually every page of the Kinsey Report touches on some section of the legal code ... a reminder that the law, like ... our social pattern, falls lamentably short of being based on a knowledge of facts." Harmonizing American law with Kinsey's perverted vision of sexual emancipation became the mission of Ernst and his revolutionary associates.

Ernst was hardwired into the Gramscian network: He was affiliated with the American Civil Liberties Union (ACLU), the Sex Information and Education Council of the United States (SIECUS), and Planned Parenthood of America. He also enjoyed close ties to Supreme Court Justices Brandeis, Brennan, and Frankfurter, and Judge Learned Hand — all of whom were key judicial change agents in removing legal protections for conventional morality, the traditional family, and the sanctity of life.

Reuters

**A burlesque of matrimony:** Steve and Brent, a "couple" from Kansas City, were among many homosexuals who traveled to Toronto to get married after Canada's highest court ruled that traditional marriage discriminates against homosexuals. The Supreme Court's *Lawrence* decision opens the door to a similar redefinition of marriage in America.

## Finishing the Revolution

In an abortive investigation conducted in 1954, Tennessee Congressman Carroll Reece exposed elements of the embryonic Gramscian onslaught on American culture. Reece's investigations of Kinsey's work exposed the money trail leading back to the Rockefeller Foundation. In short order, the Reece Committee's valuable inquiry was derailed, but not before it offered a timely warning that there was an organized, covert effort — funded by tax-exempt foundations, and driven by left-leaning social scientists and legal activists — to destroy our country's moral foundations. These cultural revolutionaries, warned Congressman Reece, sought to create a public culture in which "there are no absolutes, that everything is indeterminate, that no standards of conduct, morals, ethics, and government are to be deemed inviolate, that everything, including basic moral law, is subject to change, and that it is the part of the social scientists to take no principle for granted as a premise in social or juridical reasoning, however fundamental it may hereto have been deemed to be under our Judeo-Christian moral system."

The next year, the ALI Model Penal Code, built entirely on the bogus assumptions contained in the Kinsey reports, was unveiled and submitted as a model to state legislatures. Ernst urged his Gramscian comrades to "establish a Committee on the Laws of Sexual Behavior and consider its own State's legal system in this field...." Following the familiar pattern, those committees were soon established with funding from the Rockefeller Foundation. In due course the Model Penal Code either eliminated or trivialized sex crimes, from homosexuality to public indecency, and set the stage for legalizing pornography, abortion, and (eventually) infanticide in the form of partial-birth abortion.

The majority decision in *Lawrence* is amazingly candid about its debt to the sexual revolution's conspiratorial architects. Disdaining former Chief Justice Warren Burger's observation, in the 1986 *Bowers* decision, that homosexual practices "have been subject to state intervention throughout the history of Western civilization," the *Lawrence* majority pontificates:

> In all events we think that our laws and traditions in the past half century are of most relevance here. These references [recent Supreme Court precedents and the 1955 ALI Model Penal Statute] show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.... This emerging recognition should have been apparent when *Bowers* was decided.

As Justice Scalia correctly noted, this is the authentic voice of the Gramscian cultural revolution, which has captured the Supreme Court en route to the total conquest of our society. ■

*The checks and balances the Founding Fathers so carefully crafted into the Constitution include powerful means for reining in an out-of-control judiciary.* *For more, see the article on page 21.*