nomic recovery pulls Canadians out of their economic despair.

Canadian-U.S. Relations Under Clinton

As for the Canadian-American relationship, speculation has to draw on such symbolic acts as the gestures of each head of government. When Prime Minister Mulroney goes out of his way to pay court to President Bush, visiting him at Camp David to make a pointed fond farewell, he is underlining his lack of either contact or rapport with the incoming administration. When President-Elect Clinton gives his first audience with a foreign head of government to President Salinas and manages to hold an open-air press conference about NAFTA with his Mexican counterpart without giving the impression that Canada exists, he is telling us something about the new administration's interest in its other neighbour.

Do these indications of non-communication between the new president and the old prime minister matter? Intimate, not to say fawning, relations between Brian and Ronnie, then Brian and George, did not prevent a severe worsening of trade relations between the two countries (as measured in U.S. countervailing actions against Canadian exports). Happy CanAm summitry produced a trade agreement so damaging to the fabric of the Canadian polity that the country's survival as a nation state is now an open question. Unfortunately, it does not follow that cooler feelings between the White House and 24 Sussex Drive will improve Canada's only crucial foreign relationship. More than Bill Clinton's pleasantries, it is better economic conditions in the United States that are needed to reduce the proclivity of beleaguered American businesses to harass their Canadian competitors.

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Where Clinton could make a difference is in moderating the American response should a Liberal/NDP government decide to abrogate the free trade deals. Although the two agreements he inherits give his government unprecedented powers to intervene in Canadian (and now Mexican) affairs, the former Arkansas governor has no personal capital involved in their negotiation, so he would be less vindictive in considering retaliation than would a re-elected Bush. Like Carter before him, Clinton's internationalism promises less gratuitous military adventurism in U.S. global policies and hemispheric initiatives. As a result, Canada should find itself, as in the 1970s, with more room should a new prime minister wish to pursue directions different from those of the State Department, and if the Uruguay Round of the GATT is brought to a successful conclusion, the Canadian business class may be able to raise its horizons from its continental fixation and test its capacities beyond the confines of Fortress America.

In sum, the end of the Reagan/Bush era and the arrival of Bill Clinton may offer Canada a new margin of manoeuvrability, giving it a chance to turn the clock back and return part of the way to the situation before Mulroney headed it toward the rocks.

Stephen Clarkson is Professor of Political Science at the University of Toronto.

What Did the Judges Know, And How Do They Know It?

by Thelma McCormack

Less than a decade ago, any textbook in criminology would have described pornography as a "victimless crime." Sociologists and social psychologists were studying the pathology of censors and various right-wing social movements, while the Law Reform Commission of 1975, chaired by the Honourable E. Patrick Hartt, recommended that obscenity be removed from the *Criminal Code*. The late chief justice of the Supreme Court, Bora Laskin, wrote: "We espouse this freedom [of expression] because of a conviction supported by experience, that individual creativity, whether in the arts or in the humanities or in science or in technology, constitutes our social capital."

Yet, in 1992, when the Supreme Court of Canada had an opportunity to remove obscenity from the *Criminal Code*, or at least pave the way to more enlightened regulation, it chose not to. In the *Butler* case, the court reviewed a Manitoba Court of Appeal decision that had found that a group of videos were protected by section 2(b) of the Charter even

though they were considered obscene under section 163(8) of the *Criminal Code*. The Supreme Court of Canada unanimously reversed the Manitoba Court of Appeal and held that section 163(8) of the *Criminal Code* is valid under the *Charter of Rights and Freedoms*.

In effect, the court slammed the door, at least for the time being, on the removal of obscenity from the *Criminal Code*. It strengthened the *Criminal Code*, weakened the Charter, and made it clear that (rental) videos, the most recently developed consumer communication technology, would no longer be left unregulated, the wild card in the deck.

Following the *Butler* decision, the enforcement agencies — Customs and Project P in Toronto — wasted no time in harassing the gay and lesbian communities, and ironically *Sex*, Madonna's coffee table book of S/M fantasies, hit the trade just in time for Christmas. The *Butler* decision, however, did more than just ruin our holidays and censure us for having libidinal fantasies. It took judicial thinking back a century to a time when the social sciences played no role in judicial thinking and moral considerations were paramount. "The grinch who stole Christmas" took the critical legal theory movement with it as well.

The Court's Approach

The court held that pornography was a moral problem, as distinct from a question of taste, but that morality must be grounded in social practices. The "degrading and dehumanizing" images of women found in pornography, it said, are conducive to anti-social attitudes toward women and acts of sexual assault. It was not necessary, the court said, to prove this cause-and-effect relationship — the possibility that pornography is an effect, not a cause, was not considered even for a moment. It was enough for Parliament to have a "reasonable basis for concluding that harm will result and this requirement does not demand actual proof of harm." If there is no empirical evidence, the court is saying in effect, there ought to be.

But can we trust legislators who are under various kinds of social pressures and are more likely to defend freedom of expression in political matters than in cultural ones? The concept of "community standards" was intended to take the burden off them and strengthen a commitment to the Laskin doctrine of creativity as social capital. True civil libertarians, however, have never liked the community standards test. Civil liberties, they argue, protect dissident minorities from "the tyranny of the majority." Critical theorists have not liked it either, because it represents a market concept; feminists have suspected it of being gender-biased; cultural elitists regard it as an acquiescence to popular low- and middle-brow culture; and fundamentalists see it as the means of legitimating an amoral permissive society. Recently, in a case involving rap music, the defence argued that vulgar and scatological lyrics are the authentic voice of the inner-city black ghetto. In short, no one really likes the community standards test except the consumers of easy-listening music, B movies, and other non-improving entertainment.

"The MacKinnon/Dworkin view is based on a deeply reactionary Skinnerian concept of human nature — a model that removes values, judgment, critical reflection, and, indeed, thought itself. Through operant conditioning — in this case, extensive exposure to pornography and light sentences for sexual offenders — we can become anything and do anything."

The court accepted the test of community standards, but operationalized it to mean the least tolerance: not what you or I might accept, but what we think others in our community would and should tolerate. The court gutted what was good about the community standards test — its democratization — kept what was bad — its majoritarianism — and redefined the whole as the "moral majority."

The Role of LEAF

No one was too surprised by the conservative thinking of the court. More controversial and surprising to many was the submission by LEAF (Legal Education and Action Fund), the feminist organization of women lawyers. Written by Kathleen Mahoney and influenced by the work of Catherine MacKinnon and Andrea Dworkin, the LEAF factum took the following positions:

1. Pornography is not a work of imagination, an expression, but an overt act of discrimination and harm. [Life doesn't imitate art, or art imitate life; they are one and the same.]
2. Pornography harms women by undermining their physical safety and reinforcing subordination or inequality.
3. Censorship, far from being a necessary evil or the lesser of two evils, contributes to progress. "Prohibiting pornography," it said, "promotes equality."

On the first point, the MacKinnon/Dworkin notion that there is no distinction between thought and action, fantasy and fact, dream and deed, is the view held by the Ayatollah Khomeini. Salman Rushdie's *The Satanic Verses* is not, he said, a work of art, but an act of blasphemy. More generally, the distinction between thought and deed is the cornerstone of both liberal democracy and a humanistic model of human nature. The MacKinnon/

Dworkin view is based on a deeply reactionary Skinnerian concept of human nature — a model that removes values, judgment, critical reflection, and, indeed, thought itself. Through operant conditioning — in this case, extensive exposure to pornography and light sentences for sexual offenders — we can become anything and do anything. There are no inhibitions, no self-imposed restraints. Nothing, except fear of external social controls, could deter us from engaging in any anti-social act if we thought we could get away with it. In the end what we have is a police state with a liberal gloss.

On the second point, that pornography is a harm, there is no credible evidence from studies of either pornography or sex offenders, but the case for equality is a different matter. Both LEAF and the court were concerned about gender equality, which they regarded as endangered by pornography. They cited no evidence and, indeed, there is nothing in the vast social science literature — economics, political science, anthropology, sociology — to support any connection between pornography and the various forms of inequality: race, gender, or class. A cursory review of recent cases on equality indicates that it is the idealized woman, the stereotyped mainstream, family-centred woman, who is used by employers to justify pay inequity, hiring discrimination, lack of daycare, limited mobility, etc., not the lust-driven nymphomaniac of pornography.

"Equality in the feminist context is a transformative concept that challenges the patriarchal social order. It cannot be separated from freedom of expression any more than mind can be separated from body. Sections 2(b) and 15 of the Charter are one and the same."

LEAF failed to make a distinction between *degradation* and *devaluation*, and it is devaluation that supports the 66 cent dollar, job segregation, and underemployment. A greater fallacy is to define equality in narrow terms. Equality in the feminist context is a transformative concept that challenges the patriarchal social order. It cannot be separated from freedom of expression any more than mind can be separated from body. Sections 2(b) and 15 of the Charter are one and the same. The tradeoff theory, implicit in liberal theory and explicit in the court's decision as well as the LEAF factum, creates a split not only between equality and liberation, but between the women's movement as an interest group and feminism as an insurgent social movement.

Censorship, as advocated by LEAF and upheld by the court, overprotects women, deprives us of our own repatriation, and puts a human face on gender inequality. That is what the Supreme Court, seeking to extend its control over new communication technology and reflecting a neo-conservative political atmosphere, has learned and how it learned it.

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Women's Fear of Male Violence

by Michael D. Smith, Tracey Smith, Rachel Osborne, and Valorie Hemminger

How pervasive is women's fear of men's sexual and physical violence in public places? What strategies do women employ to make themselves feel safer? What is the relationship between sexual harassment in public and fear?

We address these questions using data from a recently completed survey of women in Canada. The survey was conducted in English and French by means of computer-assisted telephone interviewing (CATI) with a national probability sample of 1,990 working women. Female interviewers employed by the Institute for Social Research, located at York University, conducted the interviews in spring and summer 1992.

In an effort to encourage respondents to answer sensitive questions honestly and fully, we employed a woman-centred approach to interviewing. This included using broad definitions of sexual harassment based on women's subjective experiences; following up reports of victimization with detailed questions about social context, consequences, and the like; making extensive use of open-ended questions to allow respondents to relate their experiences in their own words; and identifying and selecting the best interviewers available and training them with particular care. Our goal was to elicit data that did some justice to the delicacy and complexity of the subject matter while adhering to the fundamental principles of mainstream survey research, such as those that regard getting a representative sample.

The Pervasiveness of Fear

The first part of the survey focused on women's fear of sexual and physical violence in public places. Respond-