

# Reflections on the Recent Passing of Robert Bork

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One of my judicial heroes, Robert Bork, passed away on December 19th. Although he was nominated to the Supreme Court in 1987 by then President Ronald Reagan, the Democratically controlled Senate Judiciary Committee and full Senate failed to confirm his nomination. While he was a hero to me, he remains a villain in the eyes of the political left. In fact, during my law school days, the liberals who control most of legal academia, used his name in the same derisive manner that people employ when they use profanity.

Why was this man treated with so much vitriol? The answer is really pretty simple. Bork was an originalist. In other words, he believed that the American Constitution should be interpreted and applied in a manner consistent with the original intent of those who framed and drafted the document. While such an interpretive approach may seem like common sense to most Americans, it represents virtual heresy and blasphemy to the left. Why? The Constitution as originally written stands for limited government. After all, the document, including the Bill of Rights or the Constitution's first ten amendments, only encompasses around 11 pages. Such brevity stands in stark contrast to Obamacare's 2700 pages. Moreover, the Constitution only ascribes to Congress 20 enumerated powers or activities, which the national government is expressly authorized to perform. By the way, on this short list of enumerated powers, you won't find universal health care, public education, social security, Big Bird, or NPR. If one's political agenda is to "fundamentally transform" America away from the limited government vision of the founders and instead make our country into a cradle-to-grave European socialist style nanny state, then the Constitution as originally construed becomes an impediment and suffocating straight jacket. Thus, those who seek to interpret our national charter according to authorial intent are similarly viewed by the left as nuisances and obstructionists. Bork was despised by the left because his hermeneutic (method of interpretation) allowed no wiggle room or interpretive flexibility necessary to accommodate various left wing social experiments, such as abortion on demand or wealth redistribution.

Because Bork possessed the brilliance and intellectual acumen necessary to persuade the court's other members, his successful nomination would have been a "game changer" for America. I honestly believe that today's America would look quite differently with Robert Bork on the Supreme Court since a firm check would have been provided against runaway big government and liberalism. Thus, the left did everything within its power to derail his nomination.

In fact the contentious Bork nomination represented the first time in American history that a political campaign was waged against a judicial nominee. Every manner of slander, misrepresentation, and outright lie was directed against this man. Bork was charged with everything from racism to arrogance.

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Interestingly, his chief critics were the worst of all hypocrites. They included judicial committee members Ted Kennedy, who is guilty of murder in the minds of many, and noted plagiarizer Joe Biden. This circus also interjected into my vocabulary for the very first time the term RINO, which stands for "Republican in Name Only." Although he had an "R" standing for "Republican" in front of his name, Senator Arlen Specter also led the assault against Bork and was instrumental in his defeat. Suspicions about Specter's political loyalties were ultimately confirmed as the Senator from Pennsylvania eventually left the Republican Party and sought a losing bid for reelection as a Democrat. What made the war against Bork so grievous is that it took place during the days before the Internet and conservative talk radio (the Fairness Doctrine was not repealed until 1987). These alternative sources of media have allowed conservatives to counter slander by the liberal mainstream (lame-stream) media. Yet none of these sources were available during the Bork hearings thereby subjecting a good and decent man to numerous unfair attacks with no ability to set the record straight.

Bork was hated because he could show that the language of the Constitution's text does not support liberal politics or leftist ideology. In the area of Bible interpretation, literal interpreters are similarly subject to ridicule since their method of interpretation holds man's fallen ideas captive to the text rather than rewriting the biblical text in order to accommodate fallen man's current belief system. Just as Bork was, and still is, treated with scorn in many legal circles, names such as Charles Ryrie, J. Dwight Pentecost, Lewis Sperry Chafer, John Walvoord, and Henry Morris are similarly sneered at and smeared by many contemporary postmodern evangelical academics. Literal interpretation enthrones authorial intent and similarly dethrones the reader's ability to rewrite language in order to accommodate pre-existing presuppositions. Thus, those promoting an originalist hermeneutic always find themselves in the cross hairs. Disparaging terminology, such as racist, out of touch, naive, simplistic, etc., will always be hurled at those insisting on a literal, grammatical, historical, contextual hermeneutical framework.

The derailed Bork nomination has had several long standing effects on our society. First, it has become common place for all conservatives nominated for prominent positions within our judiciary to face unmitigated slander during the nomination and confirmation process. Examples of such victims include Clarence Thomas, Charles Pickering, Janice Rogers Brown, and Samuel Alito.

Second, because of the contentiousness of the battle, it has become increasingly difficult to get an originalist nominated to the bench. With a Democratic President there is zero chance. All of Clinton's (Breyer and Ginsburg) and Obama's (Sotomayor and Kagan) nominees have one thing in common: each of them could care less about what the Constitution actually says. During their confirmations they typically give long-winded discourses about empathy, compassion, and fairness, but say very little about the Constitution's original intent. Any future nominee that Obama puts forward is virtually guaranteed to have the exact same mentality and philosophy. With a Republican President, you have at least one in two chances of getting an originalist nominated. Although Reagan nominated originalists Anthony Scalia and Bork, he also nominated non-originalist Sandra Day O'Connor. O'Connor was

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Reagan's first nominee since he was making good on a campaign promise to place the first woman on the high court. Many believe that Bork would have sailed through the confirmation process had he rather than O'Connor been nominated by Reagan first. While G.H.W. Bush nominated originalist Clarence Thomas, he also nominated non-originalist David Souter. While the younger Bush nominated originalist Samuel Alito, he also nominated John Roberts, who was recently instrumental in upholding Obamacare. In fact, such a split record has been a pattern of Republican Presidents for some time. While Richard Nixon gave us originalist William Rehnquist, he also gave us Harry Blackmun, the author of the majority opinion in the infamous *Roe v. Wade* decision.

Third, Bork's failed nomination made him a household name in his latter years. In fact, his name is now commonly used as verb rather than a noun to describe presidential nominees who do not survive the confirmation process. However, this newfound fame made Bork a respected and best-selling author thereby giving him the ability to bring numerous issues of importance before the American people. Bork did this in his books "The Tempting of America" and "Slouching Towards Gomorrah." In his final book "Coercing Virtue" he warned almost prophetically of the current trend among judges to base the authority for their rulings on international sources of law rather than upon the American Constitution.

Robert Bork was a man of uncommon excellence who was persecuted due to his common sense approach to Constitutional Law. Had his ideas had a greater influence over the minds of our judges, they likely could have spared us from the fiscal cliff and crisis that we are on the precipice of hurling over. Now Bork speaks to us from the grave through his many writings. Unlike the Senators who sat in judgment on him back in 1987, this time Americans should listen before it's too late.



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