

Back When Robert Bork Wasn't Religious Enough to Sit on the Supreme Court

By Nick Gillespie – 12/20/12

Reason contributor Walter Olson has a piece in [the New York Post](#) recalling one of the most hotly contested issues surrounding the recently deceased Robert Bork's 1987 Supreme Court nomination. He's not talking about the back-alley abortion stuff, either:

Here's something you may not know about the 1987 battle that kept Robert Bork off the Supreme Court: Opponents pursued a whispering campaign against him on the grounds that he wasn't enough of a religious believer.

Back then, many Democrats still held seats in the rural South, and the religion angle gave them an easier way to explain their stance to constituents than, *We've been asked to oppose him as a party-line matter.*

Thus Rep. John Bryant (D-Texas) warned that Bork was “an agnostic who is not a member of any church.”

And Sen. Bennett Johnston (D-La.), while disclaiming any “religious test for judges,” advised “fundamental religious people” back home to “look, in addition to what he has written, at [Bork's] statements on morals or lack thereof — and I don't mean to suggest he is immoral — but his lack of occupation with morals and with religion.”

Sen. Howell Heflin (D-Ala.) told constituents he was “disturbed by [Bork's] refusal to discuss his belief in God — or the lack thereof.” Heflin also alluded darkly to the nominee's beard and “strange lifestyle” as a Yale law professor.

You got that? *Bork wasn't religious enough!*

Olson notes that while the Bork nomination process set a new low in confirmation hearings and help push presidents toward appointees with less of a paper trail, Bork's general vision of originalism has won out, even among liberal jurists:

“Liberal originalism,” which takes seriously the insistence of critics like Bork that judges must adhere to what’s actually in the founding document, is making headway among scholars at places like Yale Law School.

[Read the whole thing.](#)

Over at the Daily Beast, former Reasoner Michael Moynihan recaps the most awful bits from Bork's 1997 best-seller [Slouching Toward Gomorrah](#), a book that called for quarantining the "libertarian virus" via censorship and other means. Read Olson's review [for Reason here](#).