

Robert Bork, 1927-2012

By Damon W. Root – 12/19/12

Robert Bork, a former federal appeals court judge and one of the central figures in the modern conservative legal movement, [died this morning](#) at age 85. A Yale University law professor who also served as solicitor general and acting attorney general under President Richard Nixon, Bork was best known for his controversial 1987 nomination to the U.S. Supreme Court by President Ronald Reagan, which ended in defeat.

Bork's contributions to American law and politics were extensive. His 1971 *Indiana Law Journal* article "Neutral Principles and Some First Amendment Problems," which questioned the constitutional underpinnings of the Supreme Court's privacy jurisprudence in *Griswold v. Connecticut* (1965), remains one of the most frequently cited articles published by a legal scholar and also a touchstone for conservative legal thinking.

His popular writings had an equally far reach. In his 1990 bestseller *The Tempting of America: The Political Seduction of the Law*, Bork advanced a dual case for judicial restraint and constitutional originalism, an approach that proved highly influential on conservative lawyers, politicians, and activists. Although Bork's emphasis on judicial deference to majority rule has become less influential on the right in recent years, due in large part to the [powerful criticisms](#) of his work made by legal scholars such as Roger Pilon of the Cato Institute and Randy Barnett of the Georgetown Law Center, Bork's approach still has its adherents. His influence was demonstrated most recently in Chief Justice John Roberts' opinion upholding the Patient Protection and Affordable Care Act, which [Roberts framed](#) as a Borkian exercise in judicial deference.

As I [remarked](#) in October on the 25th anniversary of Bork's failed Supreme Court confirmation, "whether you're a fan or foe of Robert Bork, there's no question he has had a tremendous influence on American politics."

