

## REMEMBERING JUDGE BORK

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With the recent death of Judge Robert Bork, we have lost one of the most distinguished and significant figures in American legal history. Most of us in the legal profession hope to make some small contribution to some area of law. Judge Bork made profound and seminal contributions in our understanding of two important areas of law—Constitutional Law, and its proper philosophical underpinnings, and Antitrust law. He deservedly is called the “Father of Originalism.” His influence was so profound that even Ronald Dworkin, once a colleague of Judge Bork’s at Yale Law School, and also recently deceased, was heard to say that we now are all “Originalists.” I’m sure Dworkin didn’t mean that in the proper sense, but I think it is a measure of Judge Bork’s influence that the subject was even addressed that way. His groundbreaking book, *The Antitrust Paradox*, revolutionized the understanding and application of Antitrust Law by judges, practitioners, and legal educators. The emphasis is now on consumer welfare and not on inefficient attempts to manage competition by government regulators.

Judge Bork’s legacy also includes his manifold contributions to the founding and development of Ave Maria School of Law. When I was organizing Ave Maria School of Law, he was the first faculty member announced as part of our law school. The significance of that appointment cannot be overstated. He gave us instant credibility as a serious institution, one committed to serious legal study, and his appointment enabled us to attract outstanding law students who wanted exposure to him. I have recounted numerous times how he came to accept the offer to join our faculty. Judge Bork, who was suggested to me as a possible faculty member by Justice Antonin Scalia, turned me down three times for an appointment to our faculty. On my fourth try, as Tom Monaghan and I were driving to the press conference to announce the formation of Ave Maria School of Law, he finally accepted the offer, thus enabling us to announce his appointment at the same time we announced the brand-new law school.

When discussing his appointment to our faculty, Judge Bork made it clear to me that he did not want to teach a regular law course, not even

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Antitrust, which he had so profoundly shaped. Rather, he wanted to do something different. Out of our conversations developed a special course called “Moral Foundations of Law,” a course that was required of all first-year law students. Although it covered such subjects as natural law, legal enforcement of morals, capital punishment, and similar issues, the thrust of the course was the wit and wisdom of Judge Robert Bork.

He and I team-taught the course; I was as much a student as any other member in the class. Judge Bork’s point of view was that judges were bound by the text of the statute and were required to follow it—in contrast to judicial activists who would search for ways to avoid following the dictate of the statute. He showed the students how legal philosophy would likely influence their future decisions if they served on the bench.

The United States Supreme Court’s decision in *Roe v. Wade*<sup>1</sup> helped to clarify this point. There is nothing in the Constitution that upholds the right to abortion. It was clearly fabricated by a group of judges who wished to impose their moral views on the country without any constitutional grounding.

Each year at the end of the course, we would open up the last class to any questions the students wanted to ask him about his career, the law, the culture, the battle over his Supreme Court nomination, and any other subject they wished. Judge Bork would sit and answer directly each and every inquiry, no matter what the nature of the question was.

What a joy it was to participate in that class with Robert Bork. He was without a doubt one of the finest legal minds of the Twentieth Century, and he coupled that with the ability to speak and write with a precision and clarity matched by very few. He also was a formidable debater. It was particularly interesting in class to watch him debate students who wished to challenge him, challenges he encouraged, to draw from them the legal thinking required by good lawyers and to teach them to think with the precision and clarity that he did.

In my forty years in legal education, Bob Bork was the best teacher I encountered. What a benefit he was to our students. One of the great joys in my life was getting to know him and call him a friend.

As I got to know him, I also realized how wrong the caricatures were of him offered by political opponents or in the media. Beneath that gruff exterior was a very funny human being. He truly enjoyed the give-and-take with others and did it with levity and wit.

In all the years that we worked together, I can only remember one serious disagreement with Judge Bork. That disagreement was a profound one, and

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1. 410 U.S. 113 (1973).

it was over the proper nature of the martini, a subject which was near and dear to his heart. He was appalled that I preferred a vodka martini with olives and anchovies, and even better if the olives had bleu cheese. To the contrary, he insisted that the only proper martini was made with gin (preferably Bombay Sapphire gin), a small amount of vermouth, up, and with a lemon twist. Anything else was a sign that you had activist tendencies. A true originalist, he claimed, would only order and drink the martini as he described it. What I was drinking was a liquid salad, not a martini.

I will miss him greatly for his friendship and his participation as a member of the faculty of Ave Maria School of Law. I will also miss him for his kindness, good humor, and ability to handle adversity with grace and dignity.