

ANTONIN SCALIA*

I was a friend of Bob Bork's for many years. I worked with him, under Attorney General Edward Levi, in Gerald Ford's Justice Department, where he was Solicitor General and I was Assistant Attorney General for the Office of Legal Counsel. Our other colleagues included Carla Hills and, later, Rex Lee as heads of the Civil Division, Richard Thornburgh as head of the Criminal Division, and Stanley Pottinger as head of the Civil Rights Division—a distinguished group, but none more distinguished than Bork. Later, I worked with Bob as a colleague on the United States Court of Appeals for the District of Columbia Circuit, where I very much liked the high diet of administrative law cases, and he not so much (I always thought he should have accepted the Administration's earlier offer to nominate him for the Second Circuit, where his interests in antitrust and business law would have had fuller play).

Robert Bork was a rare combination of integrity and intellectual brilliance. And it was both of those qualities that led to the regrettable rejection of his nomination to the Supreme Court. His integrity caused him, as the ranking officer at the Department of Justice after the resignations of the Attorney General and Deputy Attorney General, to execute President Nixon's directive to fire Archibald Cox. As he explained it, the President had the lawful authority to fire Cox (who had no independent status protected by law, as later Independent Counsels had); and while it was appropriate for some of the President's appointees to register their disagreement with that action by resigning, it was not appropriate, or, indeed, compatible with the Constitution, for all presidential appointees to denude the Justice Department of leadership, thereby frustrating lawful presidential action. I never knew Bob to be a man who deeply admired Richard Nixon, but he became The Man Who Fired Archibald Cox.

As for intellectual brilliance, Robert Bork's scholarship led the rationalization of antitrust law that has endured until today. And more importantly, he was the intellectual point-man for the movement to curb the pretensions of the Warren Court and return the meaning of the Constitution to what it said. All

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discussions of “original intent” relied heavily upon his fertile and often combative scholarship. He became more than a leader of change; he became, for the opposition, the very *symbol* of change. His views were not, to tell the truth, much different from my own, but when his nomination to the Supreme Court came up, that symbol (“Robert Bork’s America”) had to be rejected.

History will treat Robert Bork more kindly than Congress has. Those of us who were his friends or intellectual allies are grateful that he was with us.