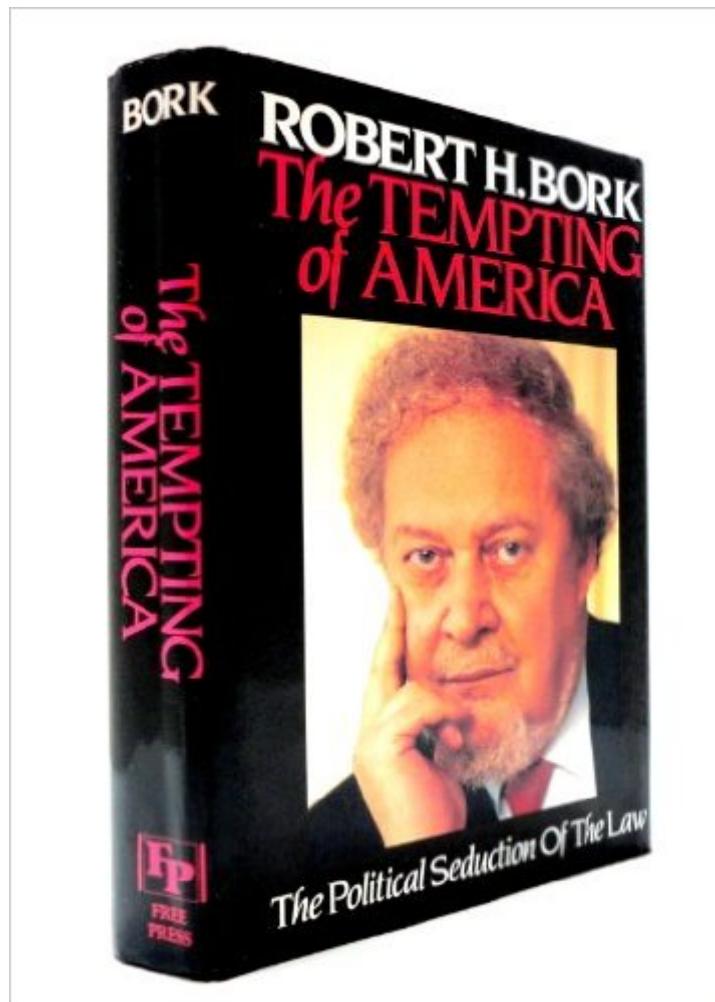


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# The Tempting Of America (The Political Seduction Of The Law)



## **Synopsis**

The author offers a statement of his social and legal philosophy, and presents his view that we are witnessing the ultimate "tempting of America" - the triumph of the invitation to place politically desired results above legitimate process in law whenever possible. --This text refers to an out of print or unavailable edition of this title.

## **Book Information**

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## **Customer Reviews**

Robert Bork has written a masterpiece defending the "original understanding" of the American constitution as the ONLY valid approach to constitutional understanding. In his introduction, Bork describes how American institutions have struggled with the temptation of politics and egalitarian outcomes. He sets the tone with the following passage:"In law, the moment of temptation is the moment of choice, when a judge realizes that in the case before him his strongly held view of justice, his political and moral imperative, is not embodied in a statute or in any provision of the Constitution. He must then choose between his version of justice and abiding by the American form of government. Yet the desire to do justice, whose nature seems to him obvious, is compelling, while the concept of constitutional process is abstract, rather arid, and the abstinence it counsels unsatisfying. To give in to temptation, this one time, solves an urgent human problem, and a faint crack appears in the American foundation. A judge has begun to rule where a legislator should."Judge Bork traces many movements of the Supreme Court from its beginning, through the new deal and into the Warren, Burger and Rehnquist courts, focusing on the slow slide away from original understanding the framers intended. He then devotes several chapters to original

understanding, objections to original understanding and various alternative constructions to original understanding. He completes the book with an examination of the political processes mobilized to keep him from being appointed to the Court by President Reagan. I'm no lawyer, and hardly a major student of the constitution. Still, I found this a compelling book which I pick up again and again. I must agree with the Chicago Tribune's review, "A conservative legal classic"!

How I wish I had read this book before I took con law. Not only would it have been good preparation, but it would also have given me the ammunition to argue positions that I felt were intuitively correct. Even at my school, the Constitution is presented to students loaded with assumptions the framers never had in mind. And although I think that, given the political reality of the world, our professors would be doing us a disservice if they didn't present it so, it is still hard to reconcile the discrepancies that surface while staying within the parameters of modern constitutional thought. Robert Bork masterfully and eloquently blows away all the false assumptions and everything begins to make sense. This book is truly a classic of American legal thought. It is the best argument for an original intent understanding of the Constitution that I have ever read. Bork also illustrates the politicization of our law in vivid detail by recounting his nomination for a seat on the Supreme Court and his defeat in the Senate. Still, though I understand the the slippery slope concomitant with looking beyond the four corners of the Constitution, Bork couldn't convince me that the Ninth Amendment is superfluous. Everyone in law school should read this; especially before taking con law. You'll thank me for the tip!

To make a long story short, the media did an first-rate hatchet job (one of the best of all time) in painting this balanced, admittedly conservative (judicial restraint etc.), and extremely fair minded jurist as some sort of crazy, backwards racist. Judge Bork has more legal acumen than several justices sitting on the Court right now. His clear and concise overview of substantive due process and the slippery slope of unwarranted judicial expansion that began with *Lochner v. New York* (where the Court overturned a state law which set hourly labor standards) to *Griswold v. Conn.*, which created a "right to privacy" out of thin air, is basic Constitutional Law 101 that even non-lawyers or the general public should be familiar with. Bork makes in this book the same case that he was simply unable to fully articulate on TV and in the Senate confirmation hearings: The Constitution gives the power of the Judicial Branch to interpret, not to make the law. It sounds plain enough, but when you read this, you (should)realize that one of the all-time biggest media smears caused an injustice to be done to this wise judge. Bork is dry in spots here, but certainly not as dry

as your average law school textbook or basic court opinion.

This book has forever changed how I look at the judicial branch of government, namely by showing that the greatest threat to the rule of law in the United States occurs when the judiciary takes on legislative functions. As Robert Bork explains in this book, there are key differences between legislators and judges which make it vital that judges do not usurp legislative authority. When the judiciary creates the law instead of merely applying it, democratic representative government is replaced by judicial oligarchy. Because Supreme Court judges are unelected, appointed for life, and exercise a governmental power which is virtually unchecked, their decisions can threaten the rule of law when the justices choose to depart from the law in favor of their own moral philosophies. Robert Bork presents a litmus test for all judges to use when extrapolating legal principles from legislation and the Constitution: these principles must be neutrally derived, neutrally defined, and neutrally applied. This doesn't mean that the Constitution itself or other legislation is neutral, but it does mean that when judges hear a case, they must defer their personal moral philosophies to the rule of law. The law must provide the standard of neutrality which the judge is to apply, not the judge's own subjective views. This book is a masterpiece of judicial analysis. Robert Bork not only builds an excellent case for his thesis, but addresses the major arguments against his thesis in a way that bolsters his argument's credibility. This book examines the phenomenon of judicial activism superbly, not only offering criticism, but presenting a logical solution.

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