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Constitutional History Independent Study

Gitenstein, Mark. Matters of Principle: An Insiders Account of America's Rejection of the Robert Bork Nomination to the Supreme Court. (New York: Simon and Schuster, 1992). 368 pages.

As Chief Counsel of the Senate Judiciary Committee in 1987, Mark Gitenstein had a look inside the Senate hearings on the nomination of Robert Bork that many Americans did not have. The result is *Matters of Principle* which attempts to detail why the conservative Ronald Reagan was unable to successfully nominate Bork to the Supreme Court. According to the author, Reagan failed at this nomination because the American people did not want Bork on the Supreme Court and that Reagan refused to get personally involved in achieving his goals for the future direction of the Court.

The first part of the author's thesis is faulty on the grounds that the American people did not reject the Robert Bork nomination, the Senate did. While the public opinion polls taken during the nomination saw Bork's approval rating consistently falling, most of this was due to the public relations campaign waged by the Democratic Party, which the author details throughout the Senate hearings portion of the book. Even the author, who was an anti-Bork supporter, admits that some of what happened to Bork was sad. While the attacks began on his legal record, which was extremely conservative, they soon became personal attacks on the man himself. Had the issue remained in classic Hamilton vs. Jefferson, strict interpretation vs. loose interpretation, form, the debates would have remained healthy for the future of the country. However, the Bork debates turned into an ugly affair and quite possibly set the stage for the ugly debates over the confirmation of Clarence Thomas. Unfortunately, the personal attacks on Bork did not

stop in the Senate, Gitenstein consistently refers to Bork as a “mean guy” and a “man with mean eyes and demeanor.” This bias against Bork work against the author in trying to give the reader an inside account of a highly controversial topic in American history.

The second reason for Bork’s failed nomination, according to the author, was Reagan’s lack of personal involvement in the nomination. While the author’s claim that Reagan took the American people for granted may be off-base, the author does show a Reagan that seemed overconfident in Bork’s nomination. The author believes, and probably correctly, the Reagan administration did not take the new Chairman of the Senate Judiciary Committee, Joseph Biden, seriously and thought Bork would just be able to overpower him. However, the Biden that is portrayed in the book was more than a worthy adversary. By the time the nomination was in trouble, Reagan could not act because he did not want to get personally involved in another controversial matter at the same time the Iran-Contra scandal was becoming public. This doomed the Bork nomination, which was the worst defeat of a Supreme Court nominee in the history of that body.

The author theorizes that Reagan wanted a man who was one-hundred-percent committed to the cause of the “Reagan revolution” at a time when the country was probably only ready for an “eighty-percenter.” While the author claims the Bork nomination would have still failed even if Reagan had gotten personally involved, this reviewer believes things could have been different. Despite the Iran-Contra problems, Reagan was still an enormously popular President. Had he went to the people to change their minds and get the people committed to the revolution, in the style of Andrew Jackson and FDR, the outcome may have been different. However, we will never know

because the Reagan administration chose not to get involved, which sealed the defeat of Bork. When Bork's rejection and the David Ginsberg nomination fiasco are taken together, these Constitutional responsibilities proved to be Reagan's greatest political failures.