Robert Bork's The Right of Privacy examined the landmark case Griswald v. Conneticut. Bork's "originalist" view proclaimed that Justice Douglas erroneously interpreted the right of privacy from the Constitution. The originalist view is that judges must strictly adhere to the language of the Constitution, thus people do not have a general right to privacy because it was never actually written into the Constitution. This view severely restricts judges in dealing with new issues that our forefathers could not have possibly envisioned. The inability of "originalist" to deal with modern and future problems displays a need for Supreme Court judges to be able to interpret laws from the Constitution. Without this ability it would be doubtful if people today could claim a general right to privacy.

The Griswald case involved a bizarre law that forbade the use of condoms in the hope that it would prevent adulterous affairs. This deduction is as absurd as banning all sales of chocolate in order to prevent obesity.

Robert Bork admitted that this law did not make sense, especially in the ability of government officials to enforce the law. Yet, Bork disagreed with the method used by Justice Douglas to overturn the conviction of two doctors distributing information on condoms. Bork felt that Douglas's liberal use of penumbras to create a zone of privacy was an excessive use of judicial power. Bork feels a judge must follow the Constitution and should not imply anything from the various ideas in the Constitution. This poses problems when trying to deal with cases that the Constitution does not specifically mention. For example, without the ability to interpret some of the various amendments in the constitution it would be virtually impossible for a judge to decide cases dealing with the on-line world. Is an on-line service provider similar to a magazine publisher (Responsible for the information that it disseminates) or like a bookstore (That is not specifically liable for the information that it disseminates)? These types of decisions cannot be solved with an "originalist" view, because the Constitution did not have the foresight to deal with such issues. In this same manner Justice Douglas implements penumbras to arrive at a general right of privacy that is not explicitly written into the Constitution. These penumbras are all valid within the spirit of the Constitution and does not go against anything specifically forbidden in the document. Thus, the justification of Justice Douglas to create a zone of privacy is legitimate and the old archaic Griswald laws is forever vanquished into the history books. Justice Douglas writes;

"Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment...The Third Amendment in its prohibition against the quartering of soldiers...The Fourth Amendment explicitly affirms 'the right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures'...The Fifth Amendment in its Self Incrimination Clause...The Ninth Amendment provides: 'The Enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." (Pg.124)

Bork also complained that Justice Douglas was being quite the alarmist by implying that the Griswald case would never be enforced. "There was, of course, no prospect that it ever would be enforced." (Pg. 133) It is not very assuring to my own peace of mind, when one defends an offensive law by stating that it's never going to be used. It only takes one ambitious politician to selectively enforce these laws for their own prejudice or gain. Bork complained that Douglas imagined "horrible events...that never happened, never will, and could be stopped by the courts if they ever seemed about to happen." (Pg. 134) It should have dawned upon Mr. Bork that Justice Douglas and his colleagues was precisely the court that would stop those horrible events from ever happening.

The "originalist" philosophy is admirable in its use of such a strict discipline in interpreting the Constitution, yet the ultimate lack of flexibility in addressing modern problems in the Constitution is far to binding. The role of

judges is ultimately based upon arbitrating what is right or wrong from the laws themselves, but when a problem arises that is not addressed within the laws/Constitution, then judges must be able to imply decisions based on the general spirit of the original document. Basically, if the Constitution does not specifically prohibit a right, and most amendments concur with that right, then it is permissible for judges to create rights like privacy. It would be most problematic if we had a strict "originalist" judicial history because blacks would be only 3/5 of a person, women would never have been enfranchised, and the Senate would still be chosen by the House of Legislature.

The Supreme Court (consisting of the most learned and able legal experts in the country) should have the ability to interpret certain aspects of the Constitution in order to prevent the Constitution from becoming a dated, historical document. Problems will continue to rise that the fathers of this country could not have possibly envisioned. Robert Bork's "originalist" view is far too restrictive in practice to allow the Constitution to be as vital today as it was 200 years ago.