Every presidential election brings reminders of how politicized Supreme Court nominations have become. There is certainly no shortage of unseemly stories about politicians and the nation’s highest court. During the 2016 season, pundits speculated that conservatives uneasy about Donald J. Trump’s candidacy overcame their doubts because the next president would likely be able to fill several vacancies on the bench. Prior to Trump’s ascendency, Senate Republicans prevented Barack Obama’s final nominee, Merrick Garland, from receiving a confirmation vote.

We often assume that these problems began with the now-notorious 1987 nomination of Robert Bork, the failed selection of Ronald Reagan. Bork was one of the most outspoken proponents of originalism, an interpretive theory based on the presumed intentions of the Constitution’s framers. In his academic writing, Bork had criticized well-known decisions, including Roe v. Wade. As important, when Reagan announced his nomination, Bork seemed likely to hold the deciding vote in a host of divisive cases. Progressive interest groups formed a coalition to block the nomination, and those on either side spent record-breaking amounts of money. Although Bork’s nomination failed, the story goes, his nomination forever changed the way the country handles Supreme Court appointments. The choice — and success — of a Supreme Court nominee is one of the most closely-watched and hotly-contested political events in modern American politics, and it seems that we have Robert Bork to thank.

Laura Kalman’s richly-researched, thought-provoking book, The Long Reach of the 1960s: LBJ, Nixon, and the Making of the Contemporary Supreme Court, tells a very different story. The ugly politicization of federal judicial nominations, she argues, began not with Bork but much earlier. In the 1960s, consensus that senators should not interrogate nominees broke down. Media scrutiny intensified, and senators homed in on nominees’ ethics and personal lives. Nominations failed because of the expected impact that a candidate would have on the Court’s future jurisprudence. The Warren Court, known for its decisions on school prayer, school desegregation, vote reapportionment, and rights for criminal defendants, became the centerpiece of a political debate about the future of the Court.

Kalman starts The Long Reach of the 1960s with the presidency of Lyndon Johnson, a president who unwittingly ushered in a new era in Supreme Court nominations. Throughout the book, Kalman makes savvy use of recently-released tapes from both the Nixon and Johnson Administrations, making the reader part of many of the off-color conversations that unfolded in the White House. Johnson, she showed, assumed office eager to make a mark on the Court. Following the successful nomination of Abe Fortas in 1965 as associate justice, Johnson had a majority that would likely be sympathetic to his Great Society reforms. But John F. Kennedy’s nomination of Arthur J. Goldberg in 1962 was the last to fit the model to which Johnson and his predecessors had become accustomed.

Thurgood Marshall, Johnson’s next nominee after Fortas, experienced a very different kind of confirmation hearing. Kalman shows that in the summer of 1967, when Johnson got the chance to fill a second Supreme Court vacancy, a few Southern senators vowed to make Marshall’s nomination a referendum on the ideology of the current Supreme Court majority. Marshall’s record of bringing cases on behalf of the NAACP Legal Defense Fund certainly did nothing to appeal to segregationists in the Senate, but their interrogation of Marshall went beyond any of the nominee’s own experiences. Instead, Marshall’s confirmation hearings put ideology center stage for the first time, and Southern senators worked to make the Warren Court, as Kalman puts it, “the bogeyman.”

Although Marshall joined the Court, other nominees would not be so lucky. The Long Reach of the 1960s
Kalman's study is especially timely given the profound controversy sparked by the nomination hearings of Justice Brett Kavanaugh. Dr. Christine Blasey Ford, a former acquaintance, accused Kavanaugh of attempting to sexually assault her while the two were in high school. Additional accusations followed, along with an FBI investigation and an extraordinary hearing at which Kavanaugh accused Democratic senators of orchestrating a political “hit.” The Kavanaugh hearings struck some as unprecedented. Kalman's book, however, shows us that the partisan rancor and high-stakes drama that characterized those hearings have roots that reach back decades.

Kalman's book plunges readers into the strategy discussions and inner thoughts of those who lived through the transformation she studies. The characters in her story, both familiar and unfamiliar, jump off the page. While *The Long History of the 1960s* provides a much-needed explanation of the evolution of our own confirmation battles, Kalman never loses sight of the humanity of the politicians, judges, and reporters she studies. Ultimately, Kalman shows that there was nothing preordained about how Supreme Court nominations changed before. And as much as it may seem that nominations will inevitably become more political, the story Kalman tells reminds us that Supreme Court selections have always reflected the political exigencies of a particular moment in time. The nature of the Supreme Court battles we know now could easily change again.

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