Earl M. Maltz. *The Coming of the Nixon Court: The 1972 Term and the Transformation of Constitutional Law*. Lawrence, KS: The University Press of Kansas, 2016. vii, 250 pp. ($34.95 cloth).

Judicial politics scholarship can exhibit a tendency to relegate Supreme Court opinions -- that is, the legal arguments of the justices -- to the periphery. This is to our detriment. Thus, it is worthwhile to be reminded that the justices are more than their votes, or putatively passive actors, in a political regime. This is the central contribution of legal historian Earl Maltz's new book. While a slim volume (193 pages of text), it is a deep dive into many Supreme Court decisions from the consequential 1972-73 term (OT 1972). This term marked the arrival of the "Nixon Court," when all four of the president's appointees, Justices Burger, Blackmun, Powell, and Rehnquist, were in place, joining Justices Brennan, Marshall, Douglas, Stewart, and White.

The argument Maltz sets out to make is persuasive: OT 1972 signaled a reorientation of Supreme Court doctrine away from a capacious reading of the Constitution toward a jurisprudence more conservative and cabined, intent on "resist[ing] efforts to involve the Court in major structural reforms" (p. 193). To provide the proper context for the shift manifesting in OT 1972, each chapter, after short but interesting biographical sketches of the relevant justices, situates the Nixon Court's rulings vis-à-vis Warren Court doctrine. The chapters then chronicle OT 1972 cases dealing with reapportionment and voting rights, obscenity, criminal procedure, school desegregation efforts, equal protection, wealth and sex discrimination, aid to parochial schools, and abortion. Listing only a handful of decisions from OT 1972 indicates why a book-length treatment of this term is called for: *Roe v. Wade*, *Frontiero v. Richardson*, *San Antonio Independent School District v. Rodriguez*, *Miller v. California*, *Keyes v. School District No. 1*, and so on.

But the book is much more than an assemblage of selected quotations from various justices' opinions foreshadowing the doctrinal foundation for the conservative turn in the Court's jurisprudence. For example, the reader is reminded that New Deal Era senators voting against Justice Douglas's nomination were worried he was "a reactionary tool of Wall Street interests" (p. 6), and that, contemporaneous to his confirmation, Harry Blackmun was described by *Newsweek* as "a judicial superblend of intelligence, industry, fairness, excellence, and probity" (p. 11), an assessment that might elicit a wry smile from readers familiar with Blackmun's *oeuvre*. Maltz also uncovers a draft dissent from the grant of certiorari in *Furman v. Georgia* (1972) by the famously assertive Douglas shrinking from taking on the death penalty: "I do not see any mandate under the Constitution for judges to be arbiters of the wisdom or folly, the ethics or barbarity of capital punishment. These are issues with which the people must wrestle . . . Indeed, I can think of no class less qualified than judges to bring light to these problems" (p. 26).

The chapter on equal protection and wealth discrimination cases is notable as it bristles with insights from the archives. Liberal hopes of constitutionalizing the welfare state, e.g., Frank Michelman's 1968 Supreme Court *Foreword* in the *Harvard Law Review* (p. 110), would be rendered largely moot by OT 1972. In *United States v. Kras* (a wealth discrimination rights claim brought by a penurious debtor in regard to required bankruptcy court filing fees),

Blackmun privately remarked that the appellant was "obviously a phony" (p. 113). In the more well-known school financing decision (*San Antonio Independent School District v. Rodriguez*), Blackmun mused (again privately) that local control of the schools was crucial and the proposed remedy "just another step leading toward big government and centralized control in another field, to wit, education" (p. 120). Indeed, Powell deemed the legal theory undergirding the litigation "communist" in nature (p. 118). Even though Blackmun would drift left over the years and Powell was a relative moderate, Maltz's research reveals that Nixon effectively installed a judicial firewall preventing an expansion of liberal rights claims. This formula — an elegant weaving of the various justices' opinions, relevant archival material, and delineating the larger social and political context of OT 1972 — is repeated throughout the book.

Convention dictates that I now shift to a critique of select aspects of the book under review. I reluctantly follow this convention as it incentivizes negativity (no work of scholarship is perfect after all). Hence, puzzlingly, Maltz insists on labeling Justice Rehnquist an originalist (p. 14, 187). Despite penning an attack on living constitutionalism in a 1976 *Texas Law Review* article, Rehnquist was a standard Goldwater conservative who showed little interest in the ostensibly theoretical precepts that self-conscious originalist judges invoke. Finally, the chapter on abortion adds little that is new and fails to make clear the "backlash" against *Roe*, even among elites, was secular in nature and simmered on relatively low boil until the late-1970s (p. 188-89).

But these are quibbles. The payoff of Maltz's book is found in his careful elucidation of the import of OT 1972's cases, many of which rarely receive much notice or analysis. Of equal interest to judicial politics scholars will be Maltz's archival work — the examples from above are only a small sample found in the book. Maltz's latest effort is worth reading and offers a template for future scholarly work in this vein.

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