

EXCEPTED APPOINTMENTS AND PRESIDENTIAL UNILATERAL POWER

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PRESIDENTS INFLUENCING POLICY

- Presidents need ways to both pursue their agendas and keep the government running without relying exclusively on Congress.
- Presidents have many tools for influencing legislative and administrative policymaking.
- Appointment power is one of these tools (e.g., Moe 1985; Lewis 2008).
- Scholars and journalists have increasingly turned their attention to unilateral powers, but excepted appointments have gone largely unrecognized as one of these powers.

WARREN AND WEISS



PHOTO: BILL O'LEARY; JIM LEE/GETTY IMAGES

Elizabeth Warren and Antonio Weiss

LESSONS FROM THE WARREN AND WEISS STORY

Excepted appointments allow the president to...

- avoid the lengthy confirmation process and the embarrassment of unconfirmed nominees.
- staff agencies quickly.
- staff agencies when Congress is unable to come to a consensus about a nominee.
- utilize talented potential nominees who cannot go through the confirmation process.

WHY DO PRESIDENTS NEED EXCEPTED APPOINTEES?

- The length of time to confirmation has increased substantially since the 1980s. Appointees wait an average of nine months for confirmation.
- Over 25 percent of nominees are never confirmed.
- Top positions in agencies are vacant or filled by acting officials 15-25 percent of the time.
- Long wait times discourage talented people from working in the government.

THEORY 1

- Consistent with other literature on unilateral powers, presidents would prefer to work with Congress as much as possible, but when Congress is gridlocked, presidents are willing to act alone.
- *H1: When ideological conflict within the Senate is high, presidents will utilize Schedule C appointees more frequently.*

THE CASE OF SCHEDULE C

Schedule C appointees...

- are a unique type of excepted appointment created by Eisenhower.
- serve in special positions created just for them.
- serve in “confidential or policy-determining” positions.

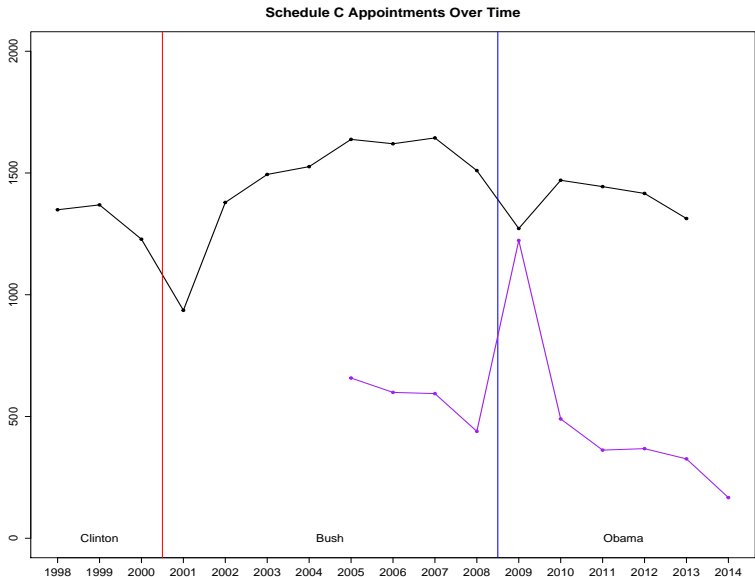
Like all excepted appointees, they do not undergo advice and consent nor are they subject to competitive hiring processes.

EXAMPLES OF SCHEDULE CS IN THE LARGER SYSTEM

- PAS appointees serve as department secretaries and undersecretaries as well as heads of independent agencies.
- Deputy Undersecretaries are often non-career SES.
- Schedule Cs have many different jobs, but often serve as advisors on specific policy matters and sometimes approve the rulemaking activities of career staff or serve as liaison between political and career appointees.

- Data come from OPM, including all appointees who do not undergo advice and consent from 1998-2013.
- Few studies utilize these data.
- 692 agencies exist over the period with varying levels of agency aggregation.
- Within the agency, we can determine total employment broken down by appointment type.

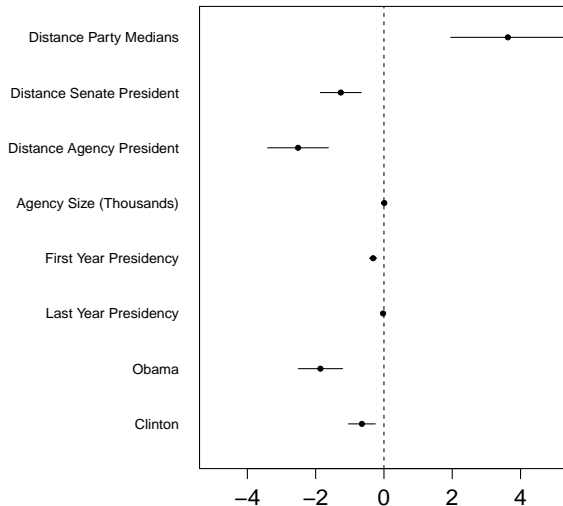
TOTAL SCHEDULE CS AND NEW HIRES OVER TIME



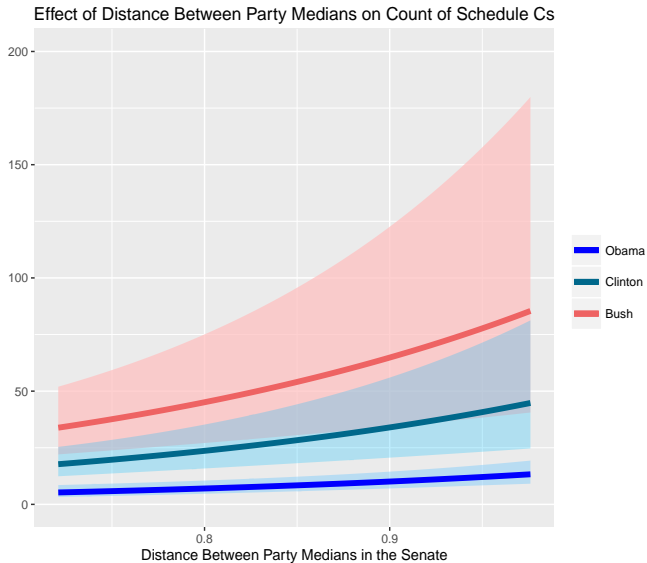
METHOD

- Negative Binomial regression model with clustered standard errors.
- **Dependent variable:** number of Schedule C appointees in an agency each year, 1998-2013.
- **Intra-branch conflict in the Senate:** Ideological Distance between party medians.
- Controls include agency ideology (Chen and Johnson scores), distance president to 60th senator, agency size (total appointments), first and last year of presidency and president dummies.

Regression Results



RESULTS PLOT



CONCLUSION

- Excepted Appointees—and especially Schedule C appointees—are a consequential but understudied unilateral policy tool.
- With the increasing length of time to confirmation and increasing polarization in Congress, presidents need the flexibility excepted appointments provide.
- Because presidents need to continue to pursue their agendas and keep the government running when the Senate faces internal conflict, presidents will utilize Schedule C appointees more frequently when conflict within the Senate is high.

FURTHER RESEARCH

- Looking at how leadership vacancies in agencies affect Schedule C appointees is a natural extension.
- In addition, little is known about how appointees—both Schedule C and other appointment types—are related to regulatory output.
- This rulemaking dataset also includes a number of interesting variables itself, including each rule's citation to authority in the U.S. Code, CFR, and executive orders.