

Danny, Ryan, and Ellie,

This paper is fairly polished, to the point, and shows interesting findings. The paper is framed narrowly, focusing on judicial confirmation. While these votes are somewhat unique, it seems to be an interesting case of change in Senate procedural rules that may be illustrative for Senate decision-making, especially the filibuster, more generally.

My main note is that I would like to see more discussion of the context, interpretation, and implications of these findings for the broader Congress literature. Similarly, your data on pivots seems to be a contribution in itself—not just for the purposes of this paper, as it seems in the abstract and introduction—but for studies of the Senate much more broadly.

Observation:

The abstract suggests that even in the post-filibuster Senate, senators can exploit other parliamentary procedures to block nominations, but it is not clear if the paper discusses this. Does this refer to your support for the party gatekeeper model? If referring to procedural tactics other than the filibuster that minority senators may use, these are not discussed and potentially in tension with your findings. Individuals exploiting parliamentary procedures should pull away from the majority median—perhaps the effects of individual senators are equal in both directions, but it seems plausible that parliamentary procedures are biased either in favor of the majority or minority.

The Gridlock Model:

Given your description of the model on page 13, I think this is more an issue with how gridlock is first described rather than how it is measured. On page 9 right below the first gridlock interval figure, you say that the senate “would reject a nominee when the revisionary point is SQ1 but would approve a nominee when the reversionary point is SQ2.” Technically, they should only accept under SQ2 if the nominee is between R-SQ2 and SQ2. You could fix this either by including such a caveat or by saying that the senate would “always reject” under SQ1, but “may approve” under SQ2. Similarly, below, technically it is not “any movement away from SQ2.” Anywhere between R-SQ2 and SQ2 should work, not L and R, correct?

Similarly in describing the *Blue Slip Model*, the two senators are only the pivots if the president (and perhaps judiciary chair) is between them, correct? Otherwise the interval should be the president and furthest home state senator. Conceptually, I wonder if senators not from the president’s party should be assumed to have the same weight/veto power. They may know the limits of their power and thus moderate their use of it.

I would be interested to see a model with just the majority median and blue-slips and/or the majority median, committee, and blue-slips. If this has poor fit it would rule out that the blue slips are a source of minority say. I think that is one of the most interesting questions here: who, if anyone, is the minority pivot? We should see tests of all possible minority pivots before

we can rule out minority party effects, as your modeling seems to show. There are many reasons that we should expect confirmed nominees to be near the majority median, but there is a narrative that minority pivots are important—I think you can comment on this broader dynamic more explicitly.

It seems the ideology of nominees is not available and thus not in the model. You write on page 15 “a well qualified nominee to a circuit with a status quo inside the majority party gatekeeping gridlock interval has a 40.8% chance of failing to be confirmed. A well qualified nominee to a circuit with a status quo outside the window has a 25.7% chance of failing to be confirmed”—this would be much more powerful if we knew where the nominee was? If the status quo is outside the gridlock, it means that it is possible to get a nominee confirmed, but how often do nominees fall outside of the (SQ, the nearest pivot+(-)SQ) interval? The analysis in Figure 4 would similarly be more powerful if it included the ideology of nominees as well as their qualification.

Clarity:

This paper is a very well written and clear. A few minor things that could use clarification in my opinion:

The last sentence in the second paragraph of page 1 seems to sum up the implications as “the majority party retains extensive control”—it might be more accurate to say “the majority party has long had extensive control” as your findings are more about the past than the future. No one is suggesting that the majority now has less control, but it has been said that they have significantly more, which your findings somewhat refute.

Why does Figure 3 only include these three models? Are they most frequently ranked first among the 13 in Table 1, or is it because they are the pure versions of your theories? It could be interesting to explore other variations of this. For example, how does it look if the first ranked is a solid circle and the second rank is an empty circle? Is the story consistent across variations? The overall trend is not that clear from this figure alone, but I imagine that it could be with a more convincing figure (this is really interesting, key to your overarching conclusions, and, I think, deserves more space).

Questions:

A slightly different telling of your story (one you allude to on page 7) is that the filibuster was not important until near 2015. When it became important, it was removed. Do we know if the filibuster becomes more important in 2015 or in the years prior?

What percent of nominations are unsuccessful? What determines whether they get rejected, blocked from a vote until the gridlock interval changes, or just delayed? How do the averages on page 4 account for withdrawals? Does this affect the interpretation of your results?

Is the existing distribution of judges the right way to think about the status quo? In a basic sense, it clearly is. But is this really the status quo as it is known to senators? I wonder if it might be complicated by a few other factors:

1. It might not be strictly rational, but senators may be comparing nominees to the pool of past and/or likely future nominees. Presumably senators know more about nominees than sitting judges and may use this as their reference point. This might imply that senators are more or less likely to accept nominees in the gridlock interval when an election is near depending on their expectations for the election.
2. Relatedly, as you allude to on page 17, minority senators may be considering the threat of decision-rule changes and its implications. Most nominees likely fall in the gridlock interval, but many still get a vote because the gridlock interval is conditional upon the current rules. This would imply that minority senators would be more likely to accept nominees that make them worse off when the threat of rule change is high and likely nominees (given a rule change) are much worse.

Best,
Devin