

Who Consents?
A Theoretical and Empirical Examination of Pivotal Senators in Judicial Selection

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Abstract

The salience of judicial appointments in contemporary American politics has precipitated a surge of scholarly interest in the dynamics of advice and consent in the U.S. Senate. In this paper, we explore the Senate confirmation process with two goals in mind. First, we offer four elaborations of a pivotal politics model, each capturing a different aspect of the institutional context in which the confirmation process takes place. Second, we marry models and data, using the spatial models to guide our analysis of patterns in the duration and outcomes of confirmation contests. Using data on the outcomes of all nominations to the U.S. Circuit Courts of Appeals between 1947 and 2002, we show that the preferences of the majority party matter the most for the fate of nominees, contrary to the most common assumptions of recent spatial models of advice and consent.

Students of American politics have applied considerable energy in recent years to explaining the politics of advice and consent under the U.S. Constitution. From a theoretical perspective, spatial models of presidential appointments have offered an analytically precise way to think about the array of preferences that may shape the selection and confirmation of presidential appointees (e.g., Weingast and Moran 1983; Nokken and Sala 2000; Moraski and Shipan 1999; Jacobi 2005). Such studies have largely focused on the influence of the Senate's median voter on the fate of appointees and have shown how the distribution of congressional preferences may constrain the president's autonomy in selecting appointees. From an empirical perspective, recent studies have offered competing accounts of the array of forces that influence the course of the confirmation process, suggesting that both electoral and institutional forces may matter (e.g., Binder and Maltzman 2002, 2004; Caldeira, Hojnacki and Wright 2000; Massie, Hansford and Songer 2004; McCarty and Razaghian 1999).

Spatial accounts of the appointments process have at times been coupled with empirical analysis. More often, models and data have been divorced. In this paper, we offer both a theoretical and empirical examination of the appointments process, building on previous efforts in several ways. First, drawing from the setter (Romer and Rosenthal 1978) and pivotal politics (Krehbiel 1998) models, we develop alternative spatial models of the Senate confirmation process, incorporating a range of potentially pivotal players in shaping Senate outcomes. Second, we explore how well the competing models capture the confirmation experiences of presidential appointments to the U.S. Courts of Appeals between 1947 and 2002. Our findings suggest that spatial models incorporating the preferences of the majority party median best capture the duration and outcomes of

appellate court confirmation contests over the past five decades—altering our understanding of the distribution of power within the Senate over the fate of presidential appointees to the federal bench.

Spatial Models of the Appointments Process

With rare exception, spatial models of the appointments process treat the Senate as a unitary actor. In such models, the range of acceptable nominees is determined by the array of pivotal preferences (those of the president and the Senate median) and the location of the status quo (or, in Snyder and Weingast's 2000 model, the reversionary policy for agency appointments). For example, Moraski and Shipan (1999) elaborate a model of Supreme Court appointments that specifies the conditions under which presidents are likely to be strategic in selecting appointees. Presidential strategies are determined by the location of both the Senate and Court medians, with the relative influence of each depending on the alignment of preferences among the president, Court, and Senate. Works focusing on appointments to executive agencies suggest a similar calculation, in which presidents are variably constrained by the Senate median, depending on the alignment of preferences between the agency, president, and Senate (e.g., Nokken and Sala 2000).

Jacobi's (2005) study of the dynamics of advice and consent for lower court appointees to the federal bench relaxes the unitary actor assumption, accounting for an additional pivotal player—one of the two home state senators for the vacant judgeship. Given the norm of senatorial courtesy, which encourages senators to defer to the views of the home state senators for the nomination, Jacobi's model gives the home state senator

an effective veto over judicial appointees.¹ Conditional on the distribution of senators' intensity of interest in the judgeship, Jacobi argues that the home state senator is the relevant pivot: Presidents in the model are compelled to select a nominee who the home state senator prefers to the status quo. In the absence of senatorial courtesy (when nominees are exceptionally salient to non-home state senators), the model suggests that the median senator will operate as the pivot for a successful confirmation.

Recent spatial models of the appointments process leave significant room for improvement. First, we question scholars' treatment of the Senate as a unitary actor. Given the Senate's cloture rule that allows a minority to block nominees it opposes, the preferences of the filibuster pivot should be incorporated into models of the confirmation process (e.g., Johnson and Roberts 2005). Second, for each nomination there are two home state senators. We raise the question of whether and how the preferences of both home state senators may come to influence the fate of judicial nominees. Third, given the status of senatorial courtesy as a norm—rather than a formal rule—of the Senate, it is reasonable to ask whether the leverage afforded to home state senators via the Judiciary Committee's "blue slip" practice counteracts the influence of the filibuster pivot established in Senate rules. Fourth, given the degree of agenda control afforded the Senate majority party in committee and on the floor, the majority party median is potentially pivotal in shaping the timing and outcome of the confirmation process.² Finally, efforts to assess the empirical reach of spatial models of the appointments process are limited. These considerations suggest that scholars might fruitfully elaborate

¹ The norm of senatorial courtesy is, in other words, treated like a rule.

² On majority party procedural powers generally, see Cox and McCubbins (2005); on the influence of Senate party leaders in particular, see Smith (2005).

more comprehensive models of the confirmation process, and then assess how well the models capture what is known about the course of judicial confirmation battles over the latter half of the 20th century.

Competing Models of the Nomination Process

To capture the full range of institutional forces that may shape confirmation outcomes, we elaborate four non-nested confirmation gridlock models. In each of the models, let judicial ideology be represented by a one-dimensional policy space, with a status quo court ideology q .³ There are 100 senators with symmetric, single-peaked preferences and ideal points x_i , $i \in \{1, 2, 3, \dots, 100\}$, where senators are ordered from left to right based on ideology. Preferences are common knowledge. Let $m = x_{50}$ denote the ideal point of the Senate median if the president is to the left of the ideological spectrum, and let $m = x_{51}$ if the president is to the right.⁴ The filibuster pivots, or senators who may be crucial to a nominee's success in the event of a filibuster, are $f_1 = x_{41}$ and $f_2 = x_{60}$.⁵ The

³ There are different ways to view the status quo ideology of a court, as well as the impact of a judicial appointment on the ideological composition of a court. Identifying the Court median during a Supreme Court term is relatively straightforward; the concept and importance of the status quo for the multi-court federal bench is more complicated, given that appellate court cases are typically heard by randomly drawn three-judge panels that may not include the newly appointed judge. Of course, the likelihood that a nominee will shift the court composition is greater with a divided panel, even when 3-member panels are drawn. This likely explains why conflict over nominations to ideologically-balanced circuit courts is particularly intense (Binder and Maltzman 2002). Senators, organized interests, and presidents understand the relevance of the status quo (see Ruckman 1993). We set aside these issues and assume that the effect of a judicial appointment is to move the court's ideology from the status quo to some other point on the one-dimensional policy space. This is sufficient for all the results that follow in the paper, both formal and methodological; how the status quo is defined does not impact the results. For a more detailed discussion of the importance of judicial status quo points, see Hammond, Bonneau, and Sheehan (2005).

⁴ Because tie votes are broken in the Senate by the vice president, 50 votes are sufficient for a nomination to pass, but 51 votes against it are necessary for it to fail. If the president is to the left, then the 50th senator is pivotal. If she supports the president, then the nomination is successful. The same logic holds if the president is to the right.

⁵ These positions are adjusted to x_{34} and x_{67} for the period between 1917 and 1975.

President has an ideal point denoted p and the median of the majority party has ideal point j .⁶

In addition, for each nomination assume that there are two home state senators with ideal points h_1 and h_2 , where without loss of generality $h_1 < h_2$. The identity of the home state senators varies by judicial vacancy. For instance, each seat on the federal appellate bench is historically associated with a particular state (Dewar 2003). Thus, when the president seeks to fill a vacant “California seat” on the 9th Circuit Court of Appeals, the two senators from California would become the home state senators for the vacancy. Although presidents have at times attempted to re-designate the home state for a vacancy, such efforts are rarely successful.⁷

There are four models to consider, each of which suggests that a different legislator or legislators is pivotal in the confirmation process: a majoritarian model in which the chamber median is the pivotal player, a party model in which the decisive actors are the median voter of the majority party as well as the chamber median, a filibuster model in which the relevant actors are the filibuster pivots, and a blue slip model in which the home state senators as well as filibuster pivots are relevant.⁸ In all cases, the president proposes a court composition to the Senate by proposing a new

⁶ When there is an even number of majority party legislators, it is possible for no legislator to be located at the median majority party ideal point, which may be the average of 2 ideal points. In the presentation of the formal theory, we assume that there are an odd number of majority party members.

⁷ Senators Barbara Mikulski and Paul Sarbanes in 2003, for example, objected to the president’s effort to shift a 4th Circuit seat from Maryland (represented by two Democrats) to Virginia (represented by two Republicans) (Dewar 2003). Sarbanes threatened a filibuster, and the nomination was killed by inaction; Allen was not re-nominated in the following Congress.

⁸ We term this the blue slip model, since the “blue slip” is a procedure used by the Senate Judiciary Committee to solicit the views of the home state senator (regardless of party) about the nominee before the panel reaches a decision on how to proceed with the nomination. Both home state senators receive a blue piece of paper that asks for their views about the nominee. The practice has been routine for decades, but it is not recognized in the formal rules of either the Senate Judiciary Committee or the full chamber.

member to the court. All that changes from model to model are the key decision makers. The number of rounds of bargaining will not change the model's outcomes, nor will the patience of the players, so we assume that there is just one round of bargaining (Primo 2002). The models build on the work of Romer and Rosenthal (1978) and Krehbiel (1998). If a nominee is rejected, then the court composition remains at the status quo q . We are interested in learning the conditions under which the court composition cannot move from q . This could occur either because a new judge is proposed who keeps the court's ideology roughly unchanged, or because a nominee is rejected.

In a complete information spatial model, delay or nominee failure should never occur. Others, like Krehbiel (1998) and Gerber (1999), have used similar setups to study the filibuster, presidential vetoes, and citizen initiatives, none of which should occur in equilibrium either. We do the same for judicial nominations, and we conjecture that the larger the gridlock interval, or set of status quo points for which no change in the court's ideological disposition can occur, the more likely is any given nomination to be contentious and to fail. Intuitively, the farther apart are the relevant players, the more likely is a status quo court to be located between the two players, making any changes to its composition difficult and, hence, more likely to fail.

For presentational ease, we do not characterize equilibrium behavior. Instead, we focus on the gridlock intervals that correspond with the equilibria. In each of these models we assume that the rules are binding; in other words, we treat the blue slip as a perfectly enforced rule rather than a norm or a rule that could be disputed. This allows us to sidestep debates about whether judicial nominations can be subject to filibuster and

whether the blue slip is binding. The question is whether these institutions have an impact, and we maximize their likely impact in these models.

The notions of Pareto optimality and a Pareto improvement will be helpful as we think about which status quo points cannot be changed. An outcome is Pareto optimal if no player can be made better off without making another player worse off. An outcome is a Pareto improvement if at least one player is made better off, relative to the status quo, and all players are at least as well off as under the status quo. Gridlock will occur when the status quo is Pareto optimal for the pivotal players in the model, since the players in the model have the power to prevent a nominee from being confirmed. The president can choose not to propose a particular court composition, and those actors in the Senate who are pivotal can choose to reject a nomination, and by extension a court composition. This also implies that any appointment must be Pareto-improving for the pivotal players.

Median Voter Model

The relevant players in the median voter model are p and m . In this model, the president proposes a court composition to the chamber median, who either accepts it or rejects it. If $p < m$, then the gridlock interval is $[p, m]$. If $p > m$, then the gridlock interval is $[m, p]$. To see why, consider the case where $p < m$. For any status quo points to the left of p , the president can propose a court composition at his ideal point, and the median voter will accept it since she prefers it to the status quo. A Pareto improvement can also be made if $q > m$. For any status quo point in between p and m , however, any change in court ideology makes at least one player worse off. Therefore, either the president would not propose such a change or the chamber median would reject it. In this case, successful nominations would most likely be located at the status quo point.

Majority Party Model

Here the players are p , j , and m . This model is identical to the median voter model, except that the majority party median can act as a veto player or gatekeeper (Cox and McCubbins 2005). Therefore, any change must make both the majority party median and chamber median better off. If the majority party median's ideal point is between those of the chamber median and president, the majority party median has no impact on the outcome. When the majority party median is more extreme than either the president or the chamber median, this implies that the gridlock interval will be larger than in the median voter model. Formally, if $p < j < m$, then the gridlock interval is $[p, m]$. If $m < j < p$, then the gridlock interval is $[m, p]$. If $m < p < j$, then the gridlock interval is $[m, j]$. If $j < p < m$, then the gridlock interval is $[j, m]$. If $j < m < p$, then the gridlock interval is $[j, p]$. If $p < m < j$, then the gridlock interval is $[p, j]$.

Filibuster Model

Here the relevant actors are p , f_1 , and f_2 . In this model, the president proposes a court composition to the Senate, where the nomination must secure the votes of 60 legislators to be successful. (Assume that at least one senator can credibly threaten to filibuster any nomination.) There are three cases to consider. If $p < f_1$, then the gridlock interval will be $[p, f_2]$. If $p \in [f_1, f_2]$, the gridlock interval is $[f_1, f_2]$. And if $p > f_2$, then the gridlock interval will be $[f_1, p]$.

To illustrate this model at work, suppose that $p < f_1$. Then any status quo point to the left of p can be moved to the president's ideal point, since at least 60 senators are made better off. Any status quo point to the right of f_2 can similarly be moved to the left so that the president and at least 60 senators are also made better off. However, any

status quo point between p and f_2 cannot be moved. To see this, suppose that the policy was moved to the right. This cannot be an equilibrium proposal, because this makes the president worse off than the status quo. Now suppose that the policy is moved to the left. This cannot be an equilibrium, either, because more than 40 senators will oppose this shift, making a filibuster threat credible. A similar logic can be applied to the other two cases.

Blue Slip Model

The relevant actors are $f_1, f_2, h_1,$ and h_2 .⁹ The president again proposes a court composition to the Senate. The two home state senators have an absolute veto, and again 60 votes are needed to overcome a credible threat to filibuster the nominee. The home state senators will only make a difference if one or both of them are either more left-wing than the leftmost filibuster pivot or more right-wing than the rightmost filibuster pivot. To see why, suppose that both home state senators are between senators 41 and 60 (the filibuster pivots). Then, any status quo point that falls outside of the gridlock intervals in the filibuster model can be moved such that it makes $p, f_1,$ and f_2 all (weakly) better off. Because we are working with single-peaked preferences, any point that makes both f_1 and f_2 at least as well off must do the same for the home state senators when their ideal points are located between those of the two filibuster pivots.

There are three cases to consider. If $p < f_1$, the gridlock interval will be the largest of $[p, f_2], [p, h_2], [h_1, f_2],$ and $[h_1, h_2]$. The maximum distance will depend on whether the home state senators are inside or outside $[p, f_2]$, the gridlock interval from the

⁹ See Jacobi (2005) for another model of the blue slip. Her model assumes only one home state senator has veto authority and does not account for filibusters. Also, it assumes that judges can get through the Senate even if a majority of senators oppose the nomination. Because of these and other differences, we build our model from first principles.

filibuster model corresponding to this case. If both home state senators are moderate relative to these endpoints, then they have no effect on the fate of the nominee. If one or both lie outside this gridlock interval, then they will form one of the new endpoints. For example, if h_1 is further to the left than the president, then status quo points between $[h_1, p]$, in addition to $[p, f_2]$, cannot be changed. This means that the new gridlock interval is $[h_1, f_2]$. Similarly, if $p \in [f_1, f_2]$, the gridlock interval will be the largest of $[f_1, f_2]$, $[h_1, f_2]$, $[f_1, h_2]$, and $[h_1, h_2]$. Finally, if $p > f_2$, then the gridlock interval will be the largest of $[f_1, p]$, $[h_1, p]$, $[f_1, h_2]$, and $[h_1, h_2]$.

Example

Figure 1 characterizes the equilibrium outcomes for one particular location of senator and presidential ideal points: $h_1 < f_1 < p < m < f_2 < j < h_2$, where senators are equally distributed along the policy space from $[1, 100]$ and the president is assumed to have an ideal point of 45. Home state senators have preferences of 30 and 80; the majority party median, 70. The filibuster pivot medians are prescribed by Senate Rule Rule 22 at 41 and 60 (but see note 6 for the period before 1975). The median's location is 50 based upon simple majority rule. For each of the models, we assume that the president nominates an individual who is both closest to his preferred point and makes all pivotal players at least as well off as the status quo. In other words, the president selects a nominee who is as close to him as possible and who the pivotal players would view as no worse than the status quo (and possibly better).

[Figure 1 about here.]

The x-axis identifies possible status quo points. The y-axis illustrates equilibrium outcomes. The portion of the figure along the 45-degree line sloping up represents the

gridlock intervals for the four cases. Thus, for the median voter model, the gridlock interval contains all status quo points between the president's preferred outcome (45) and the median's (50). If the status quo is between these two points, the median would prefer the status quo to any individual that the president is likely to nominate. The y-axis reveals that if the status quo is either less than 45 or greater than 55, the outcome will be at the president's preferred point. If the status quo is between 45 and 55, the outcome will be between the p and m (at m if the status quo is 50). For the blue slip model, the pivotal players are the president, located at 45, and the two home state senators, located at 30 and 80. In this model, the gridlock interval covers any status quo points that fall between the two home state senators. The y-axis also indicates that the outcome will be at p for a very narrow set of status quo points on the far left (< 15). The axis also shows that if the status quo is at h_2 , the outcome will also be at h_2 . This occurs because any other proposal would be blocked by this pivotal senator.

The model makes clear that for many status quo points, the different models predict identical outcomes. For example, all four models predict an outcome at p for status quo locations less than 15. Likewise, all four models predict failure when the status quo is between the president and the median. In addition, both the majority party and blue slip models predict failure for any status quo location that is between the president's preferred point (45) and the majority party median's preferred point (70). In spite of the overlaps, the figure shows that the sizes of the gridlock intervals vary by model and by the location of the pivotal players. This provides us with leverage that can be used to determine the degree to which expansion of the size of the gridlock intervals slows down the confirmation process and makes confirmation less likely.

Connecting the Models to Data

These models can be used to inform data analysis that seeks to establish the comparative importance of the blue slip, the filibuster, majority party preferences or majoritarianism in shaping the Senate's treatment of lower court nominees. As suggested above, we want to use the models to learn the conditions under which the composition of the court cannot be moved off the court status quo. When nominees are rejected, clearly the status quo remains unchanged. Hence, our key conjecture from the models is that as the size of the gridlock interval increases (thereby increasing the number of status quo points for which no change in the court composition can occur), the more contentious the nomination and thus the higher its probability of rejection.¹⁰

Our empirical analysis thus focuses on two characteristics of the lower court confirmation process: the rejection rates for nominations to the U.S. Circuit Courts of Appeals and how long it takes for the Senate to act on a given nominee. Confirmation delay typically signals conflict over the nominee, as opponents attempt to drag out the nomination until the end of the Congress when the nomination automatically dies (Binder and Maltzman 2002). By comparing the relative strength of the models in matching the patterns of confirmation duration and outcomes, we will be able to identify the key players in federal judicial selection.

¹⁰ To relate gridlock intervals, the status quo, and confirmation success, we need to assume that the status quo is drawn from a uniform distribution. This is a relatively innocuous assumption, common in tests of this sort. See Chiou and Rothenberg (2003) for further details.

Data

Measuring the gridlock intervals. For each model, we use DW-NOMINATE scores to measure the relevant gridlock interval.¹¹ First, for each Congress we identify DW-NOMINATE scores for the relevant home state senators, filibuster pivots, chamber and majority party medians, and the president.¹² Second, following the model explanations above, we determine the relevant gridlock intervals, based on the alignment of preferences for the pivotal players. For the median model, we calculate the absolute distance between the president's ideal point and the relevant Senate median; we term this variable *median gridlock*.

The majority party gridlock interval is calculated based upon the six potential alignments of the president, chamber median, and majority party median. For congresses in which $p < j < m$ or $m < j < p$, we measure the absolute distance between the president's DW-NOMINATE score and that of the chamber median. For congresses in which $p < m < j$ or $j < m < p$, we measure the absolute distance between the president's and majority party median's score. Finally, for congresses in which $m < p < j$ or $j < p < m$, we measure the absolute distance between the chamber median's and majority party median's DW-NOMINATE scores. We denote this variable *majority party gridlock*.

The filibuster gridlock interval is calculated based on the three potential alignments of filibuster pivots and the president, as outlined above. For congresses in which $p < f_1$, we measure the absolute distance between the president's DW-

¹¹ DW-NOMINATE scores are made available by Keith Poole on <http://www.voteview.com>. We use the version of DW-NOMINATE dated December 10, 2004, which provides scores for senators serving between the 1st and 108th Congresses.

¹² DW-NOMINATE scores are made available for each president since 1955. For President Dwight Eisenhower's first Congress (1953-54, 83rd Congress), we use his score from the 84th Congress. For President Harry S Truman's DW-NOMINATE scores, we use his Senate DW-NOMINATE score from the 78th Congress, the last Congress in which Truman served as a senator from Missouri.

NOMINATE score and that of the far right filibuster pivot. For congresses in which $p \in [f_1, f_2]$, we calculate the absolute difference between the two filibuster pivots' DW-NOMINATE scores. And if $p > f_2$, we measure the absolute distance between the scores of the president and the far left pivot. For each nomination, these values provide the variable that captures the effect of the filibuster pivots on the president's choice of nominees, and we term this variable *filibuster zone*.

To measure what we call the *blue slip zone*, there are again three cases to consider as outlined above. First, in cases where $p < f_1$, we measure the blue slip zone as the largest absolute DW-NOMINATE distance between $[p, f_2]$, $[p, h_2]$, $[h_1, f_2]$, and $[h_1, h_2]$. Second, in cases in which $p \in [f_1, f_2]$, we measure the gridlock zone as the largest of $[f_1, f_2]$, $[h_1, f_2]$, $[f_1, h_2]$, and $[h_1, h_2]$. Finally, if $p > f_2$, we determine the largest of $[f_1, p]$, $[h_1, p]$, $[f_1, h_2]$, and $[h_1, h_2]$.

Confirmation duration and outcomes: The length of the confirmation process is calculated as the elapsed time between the announcement of a nomination and the date of confirmation, withdrawal, or the end of the Congress (for those nominees on whom the Senate takes no action). These data are drawn from the Senate Judiciary Calendars, as noted in Binder and Maltzman (2002), providing us with data on the length of the confirmation process for each nominee for the U.S. Circuit Courts of Appeals between 1947 and 2002. The calendars also indicate whether or not a nominee was eventually confirmed in the Congress in which he or she was nominated; we code failed nominations as 1, 0 otherwise. Excluding nominations to the D.C. Court of Appeals, for which there are no home state senators for the vacancy, the data include 482 nomination opportunities.

Methods

Because the four models are non-nested alternatives, we estimate separate equations for each of the four models (Clarke 2001). To evaluate the fit of the models to data on confirmation outcomes, we estimate four logit models, using the relevant gridlock zones for each of the four models. To determine the model that best captures the pattern of confirmation outcomes, we compare the Bayesian Information Criterion (BIC) for each of the four models (Clarke 2001).¹³ The model with the lowest BIC best fits the patterns of confirmation outcomes we observe. To assess the fit of the models to data on the duration of the confirmation process, we estimate four Cox regression models, using the relevant gridlock zones for each of the four models.¹⁴ Again, we rank the models by their BIC scores, and determine which model produces the lowest BIC. We use robust standard errors, clustering on the Congress number, for each of the estimations.

Results

Over the 55-year period studied here, the average rejection rate for nominations to the federal Circuit Courts of Appeals was 17.64%. Over the 28 Congresses, the failure rate ranged from zero (between the 80th and 89th Congresses, and again in the 92nd, 95th, and 99th Congresses) to a high of 60% in the 107th Congress. Successful appointees to the federal appellate bench over that half-century waited on average 82 days to be confirmed by the Senate. The swiftest Senate was the 82nd (1951-2), which took on

¹³ BIC values are essentially goodness-of-fit values that allow for the comparison of non-nested models with or without different numbers of parameters. BIC values are adjusted (or “penalized”) by the number of estimated parameters and the sample size. On the use of BIC values in political science research, see Clarke (2001).

¹⁴ The use of survival analysis to analyze confirmation duration data is now well-established. For appellate court duration analysis, see Binder and Maltzman (2002); for confirmation duration for executive branch appointees, see McCarty and Razaghian (1999); for confirmation duration for Supreme Court justices, see Shipan and Shannon (2003).

average just 14.5 days to confirm pending nominees; the slowest Congress was the 107th Congress (2001-2), which took on average over 270 days to confirm presidential appointees to the bench.

Table 1 displays the parameter estimates for the four non-nested logit models predicting the likelihood that a nomination is rejected. The coefficients for each of the relevant gridlock intervals are statistically significant and in the expected positive direction. In other words, as the ideological distance between the pivotal players increases, the likelihood of rejection increases. To determine which model best fits the patterns of confirmation outcomes between 1947 and 2002, we generate BIC scores for each model and rank-order the models by their scores in ascending order. The rank ordering of the models shows that the majority party gridlock model provides the best match to the data on confirmation outcomes over the period. The filibuster gridlock model provides the next best fit, followed by the median gridlock and blue slip gridlock models.

[Table 1 about here.]

Raftery (1995) provides a scheme for interpreting the differences in the BIC scores, with differences over 10 points indicating “very strong” evidence in support of the model with the lower BIC score. Given the range of BIC scores, the differences between each of the models are clearly substantial. The preferences of the median voter of the majority party are thus pivotal in shaping the fate of judicial nominees before the Senate, and they outweigh the importance of the chamber’s median voter who is often the focus of spatial models of the appointments process.

We can also compare the relative explanatory power of the models by comparing the substantive impact of each of the different gridlock intervals on the probability that a nominee is rejected. In the far right column in Table 1, we show how changes in the size of the gridlock intervals affect the probability of rejection, varying the size of the gridlock intervals from one standard deviation below to one standard deviation above their mean values. Changes in the majority party and filibuster gridlock intervals have the greatest substantive effect on the likelihood of rejection, each increasing the chances of a nominee being rejected by about 30%. Increases in the size of the median gridlock interval raise the chances of rejection by 26%, while expansion of the blue slip interval yields only a 16% increase in the probability of rejection.

One reasonable criticism might be that recent advice and consent politics—in which intense partisan differences between the president and the opposing Senate majority have strongly colored the politics of judicial selection—skew the results in favor of the majority party gridlock model. If purely partisan electoral differences—as opposed to differences in policy preferences—have come to the fore in shaping the experiences of nominees appointed by presidents Bill Clinton and George W. Bush, then the explanatory power of the majority party gridlock model should fade when the most recent congresses are dropped from the analysis.

To control for this possibility, we re-estimate the logit models for the period 1947 through 1992 (see Table 2). We find three interesting results. First, the rank ordering of the new BIC scores is quite similar to that generated in Table 1 for the full time series. The majority party gridlock model again provides the strongest fit to the confirmation data for this period, and the blue slip gridlock model provides the weakest. The 17-point

difference in BIC scores between the two models provides very strong support for the party model, even in the period before the more partisan Clinton and Bush II administrations.

[Table 2 about here.]

Second, the small difference in BIC scores between the majority party median and median voter models in Table 2 provides only weak support in favor of the party model, according to Raftery's (1995) criteria. However, both the median voter and majority party models provide a strong improvement over the filibuster and blue slip models. This may be because dissenting senators have been more aggressive in threatening filibusters since the early 1990s. And third, the coefficient for the blue slip gridlock zone narrowly misses statistical significance, suggesting that our empirical claim for the blue slip model is not strongly supported during all time periods. However, if we narrow our analyses to those nominations submitted by presidents Clinton and G.W. Bush, the coefficient for the blue slip gridlock interval is statistically significant, indicating that ideological differences between home state senators and the president have consequences for the fate of nominees appointed by those presidents.

In Table 3, we display the estimates for the four Cox regression models of confirmation duration, again rank-ordering the models in ascending order by their BIC scores. Each of the coefficients for the relevant gridlock interval is statistically significant, confirming our expectations about the impact of pivotal preferences on the hazard of confirmation. The greater the ideological difference between the president and a pivotal senator, the longer it takes the Senate to act and thus the lower the hazard of confirmation. Because lower court nominations are rarely killed by an outright vote and

because nominations must be resubmitted if the Senate fails to act on them in a given congress, foot-dragging on a nomination makes it far more likely that the nomination will be rejected.

[Table 3 about here.]

To compare the differences in the fit of the models, we again use Raftery's (1995) scheme for interpreting the differences in the BIC scores. The data provide very strong support for the fit of the majority party model compared to each of the other three models. The blue slip model again is the weakest performer. The data, however, only provide what Raftery terms "weak" support for the fit of the filibuster model compared to the fit of the median voter model. With a difference in BIC of less than one, we lack strong grounds on which to judge the impact of the filibuster pivot as compared to chamber's median voter.

Restricting our analysis to the years 1947-1992 in Table 4, we again find a similar pattern of results, with the majority party model being strongest. Interestingly, the filibuster model performs far better than the median model in this case, though the filibuster gridlock interval is not statistically significant. The blue slip performs far worse than the other models and does not have a statistically significant impact on duration. The one clear conclusion emerging from Table 4 is that ideological differences between the president and the majority party are critical in shaping the Senate's treatment of judicial appointees, with increases in ideological differences lowering the hazard of prompt action by the Senate and thus increasing the likelihood of rejection.

Discussion

The construction of four spatial models has provided a valuable reference for understanding patterns in the Senate's treatment of appointees to the federal appellate bench. Ideological differences between the president and potentially pivotal Senate players—the home state senators, the senator(s) whose support is necessary to sustain a filibuster, the chamber's median voter, and the median of the majority party—clearly have consequences for the fate of nominees sent up to the Senate. However, the connection between the model and the data is strongest for the majority party gridlock model. Although the willingness of ideologically distant home state and other senators affects the likelihood of confirmation, ultimately confirmation outcomes are shaped by the preferences of the majority party.

Why might the preferences of the majority party matter so much more than the preferences of other central Senate players? It may be simply that there is some strong element of presidential deference to senators of his party in selecting court nominees. If nominees face a longer confirmation process in the Senate and if their chances of confirmation go down in face of ideological disagreements between the president and the majority party, this most likely reflects the president's hesitation to consult with the opposition party during periods of divided government. When we estimate the probability of confirmation and the duration of the confirmation process as a function of party control, confirmation is significantly less likely and the process takes significantly longer when the opposition party controls the Senate. In such periods of divided government, the Senate majority party appears to drag its feet in hopes of preserving the judicial vacancy for a president from their own party.

The results also have implications for our understanding of advice and consent practices and their impact on the president's ability to move the court towards his preferences. Jacobi (2005) argues that senatorial courtesy (protected through the blue slip) under certain conditions can impose a check on the president's appointment power by shaping the range of nominees that the Senate will confirm. Our results lead us to infer otherwise. A model treating the home state senator as a veto player provides a worse match to the pattern of rejections and confirmations we observe, compared to models that exclude the home state senator as a veto player. Since the additional information about the preferences of the two home state senators does not produce a better fitting model, our results cast doubt on the importance of the blue slip as a binding veto.

The blue slip practice instead appears to be an advisory procedure, rather than an absolute veto. Objections to a nominee from a home state senator signal to other senators and the president that a nominee may be in trouble, but only if the objections are backed by other actors whose procedural prerogatives hold more force—such as the filibuster pivot's ability to block cloture on a confirmation vote or the majority party's control of the executive session agenda that allows the majority to determine whether the Senate will proceed to consider a pending nominee. Ultimately, the Senate's treatment of judicial nominees appears to be driven by the calculations of the majority party. In face of increasing ideological differences between the party and the president, the majority party is likely to drag its feet on confirmation and is more likely to reject any nominee whose confirmation would substantially shift the status quo composition of the appellate bench.

Conclusions

Spatial models of advice and consent have produced new insights into the constraints imposed by the Senate on the president's appointment power. We contribute to these efforts along two dimensions. First, we have sought to use the tools of spatial analysis to devise models of judicial confirmation politics that take closer account of the array of institutional rules and practices that senators exploit to increase their influence over the shape of the federal bench. Existing models largely focus on the power of the chamber's median voter in constraining the president's ability to alter the composition of the federal courts. By elaborating four competing models, we offer a theoretical portrait of the confirmation process that more closely resembles the institutional context in which presidential appointees are considered in the Senate.

Second, we have sought to bring together models and data, using formal models as “devices for understanding reality” (Brady 2004). In this case, we use the formal models to evaluate different senators' abilities to influence the course of judicial selection. Our findings confirm the importance of looking beyond the median voter to explain patterns in the Senate's treatment of judicial appointees, suggesting that the president's autonomy in shaping the federal bench is curtailed most strongly by the preferences of Senate majority parties. In contrast, home state senators—though given a privileged role in the Senate's review of judicial nominees— may play more an informational than a pivotal role in shaping the timing and outcome of Senate action. Together, these results reinforce the importance of elaborating competing models and leaning on them to help us detect critical patterns in American national politics.

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Table 1
Comparison of Models: Likelihood of Rejection
1947-2002

Model	Gridlock zone coefficient estimate (robust s.e.)	Constant coefficient estimate (robust s.e.)	N	Log likelihood	BIC	Change in prob. of rejection
Majority party gridlock zone	5.607** (1.828)	-5.605*** (1.469)	482	-189.386	-2587	+30.5%
Filibuster gridlock zone	8.697** (3.173)	-7.586*** (2.331)	482	-195.739	-2574	+29.0%
Median gridlock zone	6.289*** (1.693)	-4.967*** (.995)	482	-202.300	-2561	+26.1%
Blue slip gridlock zone	3.134*** (.939)	-4.145*** (.670)	482	-213.096	-2539	+16.4%

Notes: Parameter estimates generated via Stata 8.0's *logit* routine. *** p<.001, ** p < .01; all one-tailed tests. We report robust standard errors clustering on the Congress number. A lower BIC score generally indicates stronger support for one model over another, with differences over ten indicating very strong support (Raftery 1995). Change in the probability of rejection is calculated via Stata 8.0's *mfx* routine. The table shows the change in the probability of rejection as the value of the interval moves from one standard deviation below to one standard deviation above the mean value of the interval.

Table 2
Comparison of Models: Likelihood of Rejection
1947-1992

Model	Gridlock zone coefficient estimate (robust s.e.)	Constant coefficient estimate (robust s.e.)	N	Log likelihood	BIC
Majority party gridlock zone	4.252* (2.004)	-5.171*** (1.500)	353	-93.241	-1873
Median gridlock zone	6.193* (3.216)	-5.654*** (1.842)	353	-93.918	-1871
Filibuster gridlock zone	5.187* (3.019)	-5.750** (2.036)	353	-97.435	-1864
Blue slip gridlock zone	1.646 (1.84)	-3.695*** (.821)	353	-101.285	-1856

Notes: Parameter estimates generated via Stata 8.0's *logit* routine. *** p<.001, ** p<.01, * p<.05; all one-tailed tests. We report robust standard errors clustering on the Congress number. A lower BIC score generally indicates stronger support for one model over another, with differences over ten indicating very strong support and differences under two indicating "weak" support (Raftery 1995).

Table 3
Comparison of Models: Hazard of Senate Action on a Nominee
1947-2002

Model	Gridlock zone coefficient estimate (robust s.e.)	N	Log likelihood	BIC
Majority party gridlock zone	-2.206*** (.577)	482	-2103.379	1241.3
Filibuster gridlock zone	-3.107** (1.071)	482	-2120.466	1275.5
Median gridlock zone	-2.737*** (.730)	482	-2120.606	1275.8
Blue slip gridlock zone	-1.395* (.630)	482	-2147.405	1329.4

Notes: Parameter estimates generated via Stata 8.0's *stcox* routine. *** p<.001, ** p < .01, * p < .05; all one-tailed tests. We report robust standard errors clustering on the Congress number. A lower BIC score generally indicates stronger support for one model over another, with differences over ten indicating very strong support and differences under two indicating “weak” support (Raftery 1995).

Table 4
Comparison of Models: Hazard of Senate Action on a Nominee
1947-1992

Model	Gridlock zone coefficient estimate (robust s.e.)	N	Log likelihood	BIC
Majority party gridlock zone	-1.242* (.661)	353	-1609.338	1160
Filibuster gridlock zone	-1.146 (1.163)	353	-1618.602	1164
Median gridlock zone	-1.513* (.743)	353	-1611.811	1178
Blue slip gridlock zone	-.366 (.501)	353	-1621.983	1185

Notes: Parameter estimates generated via Stata 8.0's *stcox* routine. * p < .05; all one-tailed tests. We report robust standard errors clustering on the Congress number. A lower BIC score generally indicates stronger support for one model over another, with differences over ten indicating very strong support and differences under two indicating "weak" support (Raftery 1995).

Figure 1: Comparison of Nomination Process Outcomes

