

New Directions in Empirical Research on Appointees

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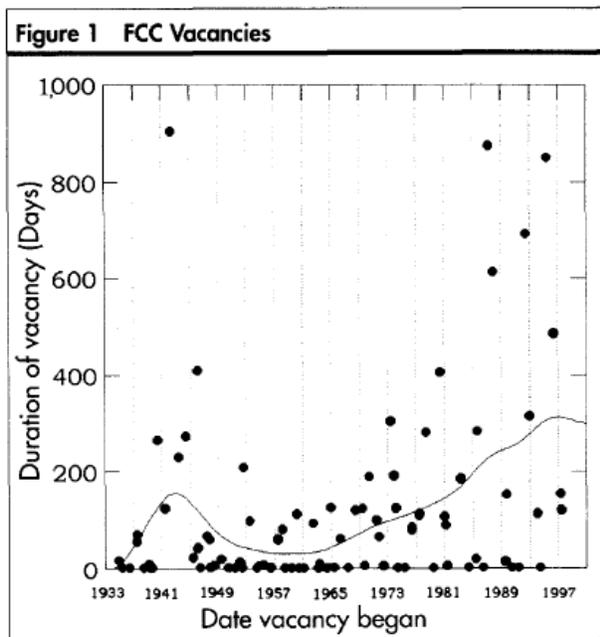
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With a nod to Donald Rumsfeld, I'll organize my remarks today into three categories: what we know; what we think we know; and what we don't know about the appointments process.

What We Know

We know from plenty of empirical evidence that there has been a dramatic increase in vacancy duration across all appointee contexts, and that the increase began and has continued unabated since at least the beginning of the 20th century. Here's two illustrations from published research:



Source: Nixon (2001) "Appointment Delay for Vacancies on the Federal Communications Commission." *Public Administration Review* 61:483-92.

President	Median Vacancy Duration (in days)	
	Replacement Seats	New Seats
Cleveland	23	45
McKinley	59.5	33
T. Roosevelt	12.5	24.5
Taft	43	226
Wilson	89	None
Harding	53	97
Coolidge	98	15
Hoover	118	86
FDR	90	157.5
Truman	76	73
Eisenhower	223	81
Kennedy	301	131
Johnson	197	171
Nixon	177	None
Ford	154	None
Carter	233	341
Reagan	250	290
Bush	327	881.5
Clinton	348	None

Source: Nixon and Goss (2001) "Confirmation Delay for Vacancies on the Circuit Courts of Appeals." *American Politics Research* 29:246-74.

The pace of filling appointments has slowed to the point that, according to the data presented yesterday by Dull, Roberts, and Resh, Senate confirmed positions in the executive branch are filled by a confirmed appointee only about half of the time, on average. For the other half, Hogue

and Carey at CRS tell us that the positions are filled by recess appointees, held by career civil servants designated as acting directors, or the offices are literally vacant. For anything other than the President's inner circle of cabinet appointees (and even they are not immune to confirmation difficulties), it takes a year or more to secure federal appointment in modern American politics.

We know that delay in filling appointive vacancies has become institutionalized, beginning around the 1980s, with dramatic changes in the use of holds and filibusters (Binder) and the multiplication of onerous, duplicative, and overlapping ethics disclosure requirements and investigation processes by EOP, FBI, OPM, Senate oversight committees, and others (see the reports and published research by the many scholars involved in the White House Transition Project - whitehousetransitionproject.org).

It's these latter kinds of factors that are the focus of S.679 this year - an effort to tackle delays in the appointment process for the bulk of appointments that appear to be, in retrospect, relatively routine and noncontroversial.

Now, it's worth pointing out that we also know, at least for prominent appointive positions, that selection of personnel really does drive policy outcomes. That is, whether we're talking about Supreme Court Justices or Administrators of the EPA, the partisan or ideological identity of the eventual appointee has been clearly shown to determine their decisions and therefore the direction of their agencies. The classic demonstrations of this phenomenon are Segal and Spaeth (1993; 2002) for court appointees and Wood and Waterman (1991; 1993) for executive appointees.

Thus, there is good reason for opposition to any one particular potential appointee in some important quarter. As Richard Neustadt famously noted, America is not really a system of separated powers - it's a system of separated institutions sharing power. And the most powerful voice in a system of shared power is the one who says "NO."

I know it is fashionable to say that the U.S. federal appointments process is broken. But without necessarily discounting the good aims of S.679, I'd like to present a contrarian view: that the U.S. federal appointments process is not really dysfunctional and is in fact functioning properly and about as one would expect, given what we hope it to accomplish. Here I'll turn my talk to the area where we think we know some things.

What We Think We Know

Formal models of the appointment process that political scientists have been developing over two decades posit that federal appointees exercise very substantial discretion, once they are confirmed. I'll cite Hammond and Knott (1996), but this thread probably began with Ferejohn and Shipan (1990). While there are many modern variations on the theme, the intuition behind these models is simple: once an appointee is confirmed, perhaps the only sure-fire way for the appointing powers (president, Senate) to interfere with or reverse their decisions is for the president to fire them or for Congress and the president to come to agreement on statutory instructions (ie pass a law). In a world where most appointees are making decisions reasonably consistent with the president's wishes, statutory reversals may often require a two-thirds veto-proof majority in Congress - something that's hard to do. In a world where oversight committees

continue to play an important gatekeeping role, there's an even wider range of decisions that an appointee might implement with relative impunity to statutory reversal. In a world conditioned by *Chevron*, the political branches have scant hope that the courts will enforce their wishes over any other reasonable interpretation adopted by a confirmed appointee. All of this is to say something very straightforward: we think that appointees have significant discretion and therefore the fight over filling an appointive slot with person X over person Y is politically consequential.

I'll mention one more thing that we think we know about appointments: that they have been increasingly employed by presidents in a strategic way to advance what is widely referred to as the "administrative presidency." (Nathan 1983). There has been an expansion in the breadth and depth of the appointment ranks, in an effort to infuse the president's political orientation into the vast apparatus of the federal bureaucracy. Appointive positions now spread deep down into the leadership structure of executive agencies, to include many Schedule C positions and posts like the Assistant to the Deputy Undersecretary of Commerce and the like (I haven't verified that's an actual position, but you get the idea). Most scholars point to Nixon's administration as the beginning of this effort (though it probably has roots much earlier), and point to Reagan's administration as the perfection or acceleration of this strategy to nominate only people who share the president's policy agenda.

What We Don't Know

While we think that presidents and Congress have good reason to fight over the ideological character of potential appointees, and while we perceive that such fighting has taken on a much greater intensity over the past 30 years or so, we don't have a lot of empirical basis for delving into these dynamics in a serious way. From my vantage point, the missing ingredient for such research is valid and accurate empirical measures of the policy predispositions of appointees. Because the title of this panel is "new directions in empirical research on appointments", I'll briefly describe four recent approaches scholars are using to estimate the ideological predispositions of potential appointees and the political actors responsible for deciding whom should be confirmed.

Lewis and Clinton (2008) have published work, based on assessments by policy experts, that estimates the ideological tenor of a wide number of federal agencies, with the agency itself as the unit of analysis. That work doesn't help us dig into the specific fights between potential appointee X and potential appointee Y, but it does help us distinguish different kinds of appointive contexts with an eye towards searching for different kinds of appointment dynamics.

Bertelli and Grose (2011) and Snyder and Weingast (2000) each have published work that estimates ideological preferences of individual appointees to executive agencies. Those projects provide estimates of ideology for all the actors in a system (president, members of Congress, cabinet Secretaries) that are directly comparable, so that one can examine whether the appointment dynamics for Secretary W (who was ideologically proximate to the oversight committee) were different from the appointment dynamics for Secretary Z (who was more distant). These clever data innovations are based on scaling techniques applied to congressional testimony of the secretaries. But as such, the data is limited to already-confirmed appointees, at the very highest levels of organizations.

My Political Ideology Measurement Project (available at www2.hawaii.edu/~dnixon/PIMP) tackles the task of estimating appointee ideology from a

different tack. Drawing from a dataset for a different project (Nixon 2004), I estimate ideology for every confirmed appointee to the judiciary and independent board/commission, scaled in the same metric as Keith Poole's (1998) "common space". The technique extrapolates ideology estimates from a useful subset of about 200 political appointees who have also served in Congress at some point in their careers (and for whom there is thus a legislative roll call history). These data allow a rich set of comparisons of preferences across time and across institutional settings, for a wide variety of investigations.

Clinton, Bertelli, Grose, Lewis and Nixon (we're calling it the "gang of 5") have new work coming out in AJPS this month that estimates the ideological predispositions for a much wider range of executive branch appointees, based on a survey of all federal executives in the Federal Yellow Book. That's a population of 7500 PAS, PA, Schedule C appointees, noncareer and career SES, and senior civil servants in leadership posts (typically at the GS14+ range). We have survey responses from about a third of them, conducted in 2007. The work follows in the tradition of Maranto and Hult (2004). But where Maranto and Hult solicited partisan ID and ideological self-placements from bureaucrats, we asked them for their preferences about the 14 Key Votes in Congress that year, and use IRT methods to scale them ideologically, alongside the members of Congress and the President. In this approach to estimating ideology of bureaucrats, it's actually easier to obtain estimates for lower-level bureaucrats than for higher-level appointees (cabinet secretaries responded to our survey, but not as often as lower-level bureaucrats). Importantly, this approach also allows us to estimate ideology for career civil servants, opening up some exciting opportunities for examining the impacts of appointees in the bureaucratic milieu.

That's a set of approaches, merely a beginning, to be sure, to being able to empirically examine some previously intractable questions about appointees and the appointments process. My aim is not to lay out an agenda of such questions or even to identify them specifically. The appointments process is at the nexus of many subfields in political science, law, and public administration, so the diversity of questions and approaches is hard to anticipate.

I'll conclude by offering a caveat to my overall thesis that the appointments process is functioning just fine - I'm open to being convinced otherwise. I just haven't seen any compelling evidence that the delays we see in the appointment process are harmful to the functioning of our democracy. From my perspective, the delays seem a way to slow changes in policy direction, and are to be expected in a healthy democracy focused a bit more heavily than most on policy stability. But both perspectives fall squarely in the category of "what we don't know."