

Yalof, D. A. (2001). *Pursuit of justices: Presidential politics and the selection of Supreme Court nominees*. University of Chicago Press.

General Overview of Book

Up to this point in the course, we've been primarily focused on how justices and the courts behave. However, this week shifts the focus away from the behavior of judges that are already on the courts and more on the process for how they get selected to become justices in the first place. Yaloff (1999) argues that presidents, while taking into consideration political preferences and a candidate's qualifications, do so through a complex and ever evolving system to get their nominations considered. In essence, presidents have a lot of flexibility in terms of the selection process, but are ultimately restrained by many factors that extend beyond what they can reasonably control (Yaloff 1999, pp.4). With these constraints in mind, Yalof puts forth three frameworks for looking at how presidents select candidates for the Supreme Court (Yalof 1999, pp.6-7). The first, known as the open framework, paints the judicial selection process as something that is reactive in its response to a potential vacancy, only considered once a vacancy becomes known. The second framework, the single-candidate framework works inversely to this and the candidate is typically already known prior to a vacancy. And lastly, the criteria-driven framework outlines a specific criteria to be met in order for a candidate to be considered should a vacancy occur. Another component presented here is this notion of the growing complexity of the political system, which in turn adds complexity to the process of nominating candidates to the supreme court. Yaloff (1999) points to the growth and bureaucratization of both the justice department and white house council as contributing factors alongside growth of the courts, divided party

government, increasing public confirmation hearings, the rise of an organized bar, interest group participation, increased media attention, and advances in how we research the courts. With these factors and three frameworks in mind, Yalof (1999) takes a look at presidential nominations from 1945-1987 to serve as examples of both.

Research Question(s)

The central research question that this book puts forth is how do presidents select the candidates they do. Additionally, to what degree do outside influences and politics play into those decisions? The assumption is that presidents mainly select candidates based on ideological preferences and a candidate's qualifications, but Yaloff (1999) asserts that while presidents may have particular candidates in mind, they often contend with outside influences and individuals who also have policy and candidate preferences who seek to insert their influence into the decision making process. I see these as important questions to consider in that if presidents were solely looking for ideological counterparts, wouldn't such a choice be obvious? Also, what would motivate a president to select someone who is not exactly an ideological match? What influences those decisions?

Methodological Framework

In the opening of the book, Yaloff (1999) outlines that a majority of the book would consist of research and case studies depicting the judicial selection process from 1945-1987. Each president is looked at in terms of how they go about each selection and then placed into one of the three frameworks that best fits them. Additionally, Yaloff (1999) opens up into a more empirical analysis through the use of Howard Ball's relevant patterns of behavior model for understanding judicial selection (Yaloff 1999, pp.172). As described in the text, Ball argues that there is a great deal of regularity that can be observed in the judicial selection process despite increasing complexity. Yaloff (1999) takes Ball's model and adjusts it to accommodate the three specific frameworks (Yaloff 1999, pp. 173).

Main Argument

Each chapter features a president and their nominations as examples of each of the outlined frameworks. Yaloff's starting point is President Truman, whom which he suggest featured more of a single candidate system of judicial selection that valued the rewarding of political loyalty (Yaloff 1999, pp. 20). As support for this assertion, during the Clark appointment, Truman's aide viewed this selection as being motivated by having a personal relationship with Truman, rather than solely based on qualifications (Yaloff 1999, pp.37). Further, when looking at the nomination of Minton, what Yaloff (1999) describes as a single-candidate framework is front and center with many politicians raising concerns of cronyism in that individuals who had favorable

relationships both personally and politically with Truman were being considered for such posting regardless of qualifications.

In the discussion of both Truman and Eisenhower, Yaloff (1999) shows the influence that outside factors (including prior presidents) have on the overall process. This comes into focus later on in the book when discussing the potential for presidents to “overreact” regarding criticisms directed toward their predecessor (Yaloff 1999, pp.169). To highlight this, the Eisenhower years, whom Yaloff (1999) paints as “impersonal,” shows a selection process much more concerned with selecting candidates based on criteria aside from ideological positions. Meaning, adopting a philosophy of selection opposite of Truman’s seems too intentional to ignore. Additionally, Eisenhower allowed for the influence of his Attorney General in the selection process, but provided a series of strict criteria to be met by prospective candidates. Where Truman was very much single candidate driven, Eisenhower’s selection process could be looked at as being in line with the criteria-selection framework. Shifting away from just looking at the framework, Yaloff (1999) looks to Eisenhower as being both an increase in the influence of the Attorney General in the selection process, but also Eisenhower’s presidency marked a substantial increase in the influence of the American Bar Association as Attorney General Brownell consulted them on potential candidates (Yaloff 1999, pp.42).

Kennedy and Johnson both show a return to ideological preferences in judicial selection, but the author shows that they both went about it in different ways. Kennedy suggested a much more open selection system that allowed for outside input and influence, which then ends up rewarding those viewed favorably by the administration and other agencies (Yaloff 1999, pp.80-81). This is a stark contrast from President Johnson's approach. The nomination of Fortas (on two separate occasions) showed a preference toward a candidate in a more closed system of judicial selection (Yaloff 1999, pp.90-96; 177).

Of the Presidents discussed, Eisenhower, Nixon, and Reagan are all considered to be criteria driven selection processes. Yaloff (1999) asserts that in the wake of the social activism of the 1960's and the 1968 Fortas confirmation, we see a growth in the contentiousness between both the presidency and congresses regarding judicial nominations as well as increased interest group involvement in the process. This makes it necessary that in order to get a judicial nominee through, a president must be keenly aware of outside influences rather than just the input from their advisors (Yaloff 1999, pp.96). Reagan himself, while a criteria-driven decision maker, he does so with the main factor of selection being ideological similarities. During his tenure, Yaloff (1999) sees the main factor in selection being ardent conservatism, which leads to O'Connor's appointment and a contentious nomination of Bork.

Relation to broader field

Placing this text in relation to what we've already read for this class, as mentioned briefly, this book focuses on the selection process. Whereas the other books focus more on the behavior of already confirmed judges. I see this as important because it points out reasons behind why a candidate might be selected that isn't a perfect ideological match, which has a lot to do with the external realities that influence judicial selection.

Questions/Comments/etc.

Thinking about this in terms of last week's readings that suggest that attorneys at least view legal precedents as affecting a judicial outcome, can we look to the judicial selection process as being an indicator that to many (presidents, advisors, Senators, etc) that ideological preferences matters in process and therefore, judges are not solely calling "balls and strikes?"