

Packing the Courts:

An Examination of Expansions to the Federal Judiciary from 1921 to 2012¹

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Abstract

The federal judge appointment process was designed to limit outside influences on judicial decision-making. One partisan mechanism with which politicians now influence the bench is through expanding the federal judiciary. In this paper we argue that ideological proximity between veto players in the House and Senate is the key variable in understanding expansions of the federal judiciary. Previous explanations for expansions to judiciary that focus on the theory of unified and divided government fail to account for time periods when, despite the existence of partisan alignment between the two branches of government, federal judgeships are not created. They also do not explain why the government has expanded the federal bench in times of divided government. In this paper, we argue that partisan alignment alone cannot sufficiently explain federal bench expansions, and that ideological distance helps to explain the magnitude of these expansions.

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Introduction

The federal government was designed so that Congress passes legislation, the President signs it into law, and federal courts review bills to ensure they comport with the U.S. Constitution. This mantra is taught in basic high-school civic classes. But what if one branch controlled another? Would this defeat the purpose of the Separation of Powers doctrine, which was designed to prevent the abuse of power on behalf of any of the federal branches by creating a system of checks and balances among these coequal branches? The existence of this doctrine has not stopped each federal branch from attempting to gain an upper hand by influencing the remaining two. The Executive and Legislative branches have managed to significantly increase their powers during the past century through various tactics; one of which is the manipulation of appointments for the federal judiciary, both through expanding the federal courts and by filling vacancies. The political logic behind these practices is that the two elected branches wish to fill the courts with judges that agree with them on important matters and who will rule accordingly. However, the tactic of expansions does not seem to be applied uniformly through time. On the contrary, there are peaks of expansions followed by years when no expansions occur at all. In this paper we provide an explanation for how the relationship between the House and Senate in the U.S. Congress dictates the extent of expansions to federal judgeships and how this consequently leads to political ramifications for what was once understood as the apolitical branch of the federal government.

Researchers have sought to provide a partisan understanding for the additions of judgeships in federal courts describing that they are more likely during times of partisan alignment among the House, the Senate and the President, i.e. a unified government, than with divided governments. This explanation, however, fails to account for time periods when, despite

the existence of partisan alignment between the two branches of government, federal judgeships are not created. It also does not explain why the government has expanded the federal bench in times of divided government. Specifically, the question we propose as significant is whether the expansion in the federal courts can be explained by preference congruence between key veto players in the House and Senate. In this paper, we argue that partisan alignment alone cannot sufficiently explain federal bench expansions. Our argument continues that ideological proximity among key players of the House and Senate, and not partisan factors or caseload as suggested by previous scholarship, is the key variable in understanding expansions of the federal judiciary.

The Politics of Federal Judgeships

The number of authorized Article III judgeships increased from 149 in 1921 to 860 in 2012 (Posner 1996: 10-11).³ This is approximately a six-fold expansion. Rather than a steady increase, however, the rise in judgeships expanded in a jagged fashion with instances including the authorization of over one hundred new judgeships in less than a five-year period (Ibid.). The uneven expansion of the judiciary has been explained by de-Figueiredo et al. (2000) and others based on the observation that judicial expansions occur more frequently during eras of unified rather than divided government (where a majority of both houses of Congress and the executive are of the same political party) (see Barrow, Zuk and Gryski 1996; de Figueiredo and Tiller 1996; Bond 1980).

The theory of expansions under unified government builds from the premise that the President and Congress struggle to shape the federal judiciary and that there is less conflict when there partisan alignment between the President and the majorities in both Houses of Congress.

³ <http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx> provides data on all authorized federal judgeships.

As Epstein and Segal assert, “The appointment of justices is now and has always been a contentious process – one driven largely by partisan and ideological concerns” (2005: 2). Under this theory, the legislative and executive branches of government have policy goals for shaping the judiciary (Peppers, Giles and Hettinger 2001). There is potential for such agendas to come into play during the phase when expansion is decided upon as a legislative measure as well as in judicial nominations and confirmations (Binder and Maltzman 2009).

Focusing on the driving mechanisms for the expansion of the federal bench, both branches of the legislature and the President must work together in the process as each has a respective role that alone is not sufficient for an expansion. The House must vote for an expansion, the President must sign the expansion and make a nomination, and the Senate must approve the expansion and confirm the nomination. The President can slow the process significantly if he does not present the Senate with a nominee that appeals to the senators and the potential for this may increase under a divided government (Law 2005). The Senate can also stall or prevent the addition of judges if it delays or does not vote on the nominations. (Binder and Maltzman 2002). Unified government potentially solves the problem of lack of interbranch agreement by setting an overt partisan point around which the branches can coordinate (Zuk et al 1993). With studies showing an increased polarization between Democrats and Republicans, the differences between the interests of the two parties have become even more pronounced over time (Abramowitz and Sounders 1998).

Nevertheless, unified government does not explain the differences in expansions of the federal judiciary over time. In theory, an efficient system of justice requires a sufficient number of judges to dispose of cases in a timely manner. An argument that previously dominated literature on federal judicial expansions focused on the notion that added judgeships were a

needed response to increased caseload (e.g. Phillips 1978, McCree 1981, Marcus 1978). Such articles, however, mainly spoke to the need for an expanded judiciary rather than observing such a proportionate response by the government. They based this need on two factors. The first as already mentioned was the observation of an expanding caseload. The second was based on recommendations from within the judiciary itself by a committee called the Judicial Conference, which was enacted by Congress and is composed of federal judges (Bond, 1980, Wheeler 1988). While this would seem a reasonable gauge for when to expand the federal judiciary, there is mixed evidence of whether the government uses the Conference as a resource when deciding if and when to expand judgeships.⁴ Thus there is at least no direct link between recommendations made by the Judicial Conference and expansions.⁵

Since other explanations for expansions of the judiciary do not adequately account for the timing of expansions, the commonly accepted trope is that expansions are likely during unified government because there is an alignment of all three bodies that interact in the expansion process (the House, Senate, and President). While the unified government hypothesis is used to explain bench expansions when certain conditions are met, it fails to account for time periods when, despite the existence of partisan alignment between the two branches of government, federal judgeships are not created. It also does not explain why there have been several occurrences of expansions during periods of divided government. In other words, party-based explanations are insufficient in explaining expansions of the federal judiciary. A reason for that short-falling is the assumption that aligned partisanship is equivalent to the equivalent ideology.

⁴ See discussion in De-Figueiredo et al. (2000:111) of how the government expanded the federal bench only 20 of the 70 times requested by the Judicial Conference from 1923 through 1993

⁵ We provide graphs of expansions and caseload as well as expansions and retirements in the Appendix. Neither force seems to drive retirements.

What we believe is missing from the current conception of what drives expansions of the federal judiciary is an explanation based on ideology of the political branches of the government. Attitudinal theory stipulates that the justices seek policy-related goals more than anything else in their rulings (Segal and Spaeth 2002). As Segal and Spaeth (Ibid.: 313) describe in this book, “...behavior may be said to be a function of the interaction between an actor’s attitude toward an ‘object’...and the actor’s attitude toward the situation in which the object is encountered. According to both the strategic and attitudinal approaches, federally appointed judges are guided by their policy preferences (Epstein and Knight 1998). This underscores the political ramifications of appointing like-minded judges. To the extent that other government actors are also rational, they will seek to place individuals with similar policy views to their own in other governmental posts, especially those with significant decision-making power.

While the House, the Senate and the President might be aligned at the partisan level, this does not directly translate into ideological alignment. According to de-Figueiredo’s theory, “the enacting House and Senate would be more inclined to pass expansion legislation when they knew the President and the confirming Senate would appoint and confirm like-minded partisans” (2000:108). “Like-minded”, however, is not identical to “belonging to the same party”. Ideology may tap into a deeper level of the motivations behind maneuvers involved in the judicial expansion process as it probes the policy level goals of the actors involved rather than the surface level partisanship. Ideology, therefore, has the potential to link individuals at the more central level of decision-making, where the actors’ actual, rational criteria for selecting judges come into play. For instance, conservative Democrats may be measured as ideologically closer to liberal Republicans than to other Democrats and vice-versa. This implies the possibility that party alignment may not reflect the goals of key players, but rather acts as an uncertain proxy for

ideological alignment (e.g. Scully and Patterson 2001). In other words, party identification might not be the best means to use to gauge ideological alignment, since it fails to account for differences in ideology that factor into decision calculi (Poole and Daniels 1985).

We theorize that the creation of judgeships is in many ways an attempt by political forces to control the judiciary. Nonetheless, this attempt is not constrained by partisan factors, but by ideological ones. As a result, bench expansions should be more likely to occur under periods of ideological alignment between the key players, regardless of the existence of a unified or divided government. In other words, we are interested in the way preferences influence federal bench expansions and we argue that these preferences will have a significant effect both under unified and under divided government.

Measuring Ideological Preferences

While absolute numbers measuring preferences are useful in gauging the relative positions of the actors involved, we are interested in distance measures. Ideology and preference distance measures help to explain decision-making and voting behavior (Cameron, Cover, Segal 1990, Grossback et al. 2004, Frymer et. al 1997, Sullivan and Minns 1976). Under the presumption that preferences matter more than party alignment in explaining bench expansion, we must define the relevant players for whom preferences matter. First, the House and Senate are the two bodies of interest as they determine whether and how the bench is expanded. The House makes the first move in the expansion process, by deciding whether or not to expand the judiciary. Then, this decision has to be approved by the Senate, which makes it the second relevant body. While the President needs to either sign or veto the legislation that deals with expansions, there have been no instances historically when the President indeed vetoed the

decision of the Legislature to expand the judiciary.⁶ Consequently, ideological proximity between the President on the one hand and the House and Senate on the other is not a necessary condition for the initial expansion of the judiciary. After the positions have been created, the President nominates judges to fill them and the Senate has the last word in the process, by confirming or rejecting each nominee. While the President can anticipate the Senate's reaction to the nominations and, thus, is expected to choose judges who are not going to cause a negative reaction in the Senate, we argue that, even at this stage of the expansion process, it is the ideological proximity between House and Senate that dictates the likelihood of a success. Due to the fact that the House initiates the expansions, key players in the House would not vote to expand if they assumed the Senate would confirm Presidential nominees who did not fit their ideological expectations. Conversely, increasing ideological proximity between House and Senate veto points enhances the likelihood that the Senate would reject candidates that fall outside of the House's preferences, notwithstanding the President's nominee. The President's choice thus becomes irrelevant in this equation.

Second, we assume the players involved have some level of understanding of the preference levels of the other players involved and that they make strategic decisions based on this knowledge. The individuals that are relevant in determining if the federal judiciary expands are the veto players, those who can directly influence the decision-making process in House and Senate (Tsebelis 2002; Saeki 2009). If our theory holds true veto players essentially control the fate of judicial expansions.

Who are the relevant veto players in this model? Since the House vote is based around a majority rule, the House median is the initial check on whether proposed legislation for judicial expansion becomes law. When it comes to the Senate, we focus on the pivot player that is

⁶ Data on presidential vetoes was retrieved from <http://www.presidency.ucsb.edu/data/vetoes.php>.

created by the filibuster rule, where a bloc of senators may prevent the confirmation from coming to a vote without a supermajority of 3/5ths of the senators voting for cloture, a procedure that puts a halt to the filibuster. Since the Senate currently consists of 100 senators, the 60th senator in a given direction is the filibuster pivot that can move for cloture and end a filibuster.⁷ The Senate filibuster pivot can also dictate whether or not a judge is added to the federal bench and is therefore also a relevant veto-player.

As strategic veto players account for their counterparts' preferences, we believe that a smaller distance in preferences between veto players with relevant connections will lead to a greater likelihood of judicial expansions, and vice-versa given larger distances. For our purposes, the relationship of most significance is that of the House median and the Senate filibuster pivot most distant from the House median's preference position. Building on this assumption, the main hypothesis of this paper is: *As the ideologically distance between the House median and the Senate pivot player most distant from the House median decreases, we expect larger expansions of federal judgeships*

As an alternative hypothesis we posit: *Increasing judicial caseload and internal judicial turnover should influence the likelihood and extent of judicial expansions.* This internal turnover is essentially the endogenous counterpart of the exogenous expansions which leads to a similar appointment power. The difference between retirements and expansions though is that the number of judges remains the same in the case of retirements so that if the goal is introducing new personnel into the system, this cannot be accomplished through turnover alone.

⁷ Prior to 1975, the cloture rule was based around a 2/3 of the Senate requirement, so the 67th senator was the relevant filibuster pivot in a 100-seat senate. Finally, Alaska and Hawaii became states in 1959, and prior to this, there were 96 senators. The 64th senator acted as the pivot when the Senate was 96 seats.

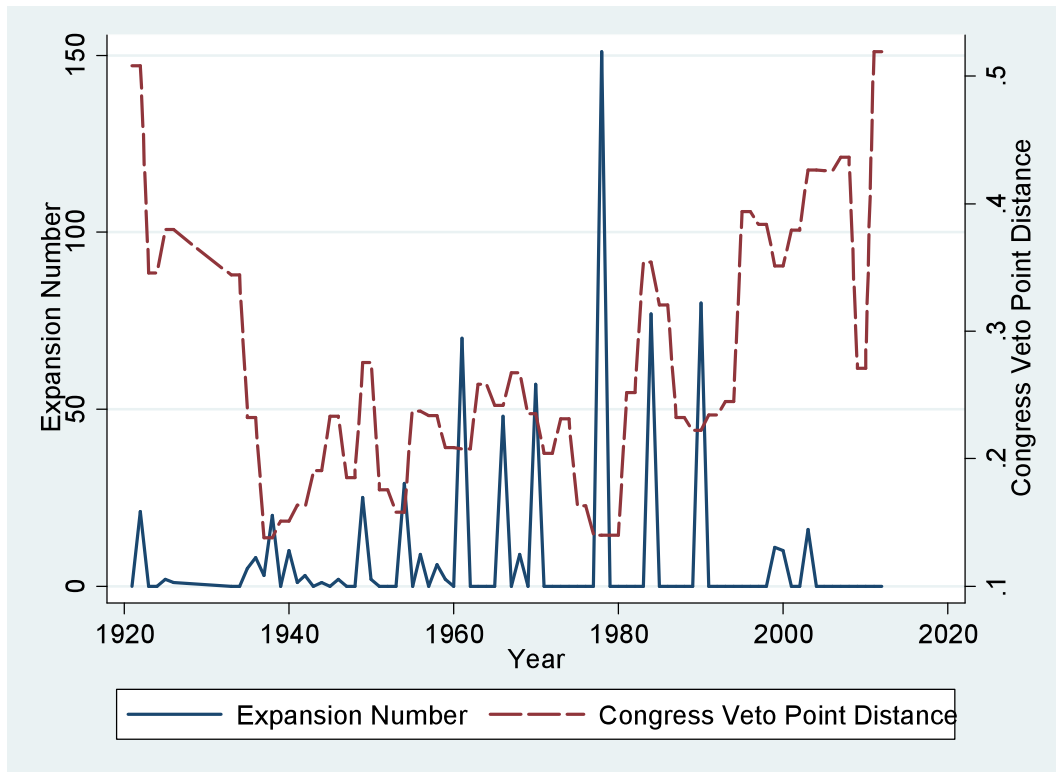
If internal turnovers can fulfill a similar goal to bench expansions, then we predict that when such internal turnover is greater, the need for expansions will lessen. Thus the President's and Congress' motivations to expand the judiciary when their preference range is at a minimum may not be as great when the appointment power arises through internal judicial processes. Such internal mechanisms leading to appointment power may also be perceived as a more legitimate means of making appointments, since it is not through an exogenous process, even if the goal of the veto players is the same.

This process may be iterative as there is evidence that judges retire for strategic purposes as well (Barrow and Zuk 1990, Hagle 1993). Strategic departure may, however, diminish the potential effect of internal turnover as those likely to retire from the federal bench might wait to do so until an opportunity arises where the veto players have similar preferences to their own. As not all departures from the bench are voluntary, even with strategic retirements, there will be some amount of turnover from involuntary sources leading to the appointment power that parallels that created by judgeship expansions. At a minimum, we expect to see internal turnover diminish the need for expansions.

Methods

We set out to test whether political strategy plays a role in judicial expansions and confirmations. We do this by employing a variable that measures the ideological distance between the veto points in the two Houses of Congress. With this in mind our first dependent variable is the number of expansion of the bench measured by the number of judgeships added in a calendar year. Figure 1 plots the number of expansion per year along with the annual ideological distance between the Congressional veto points in both Houses.

Figure 1: Expansion/Ideological Distance Plot



In Figure 1, we focus on the instances where the ideological distance shown with the broken line is at low levels while the number of expansions is at a high point. This is most evident with the largest expansion of 151 judgeships in 1978 when the ideological distance between the two points was near its minimum at .14. A binary approach to understanding the expansion of federal judgeships does not capture the magnitude of each expansion as an expansion of one judgeship is observationally equivalent to the expansion of 151 judgeships in such a model.

Our approach differs from binary models in past works that focus on whether the government chose to expand the judiciary or not (Barrow, Zuk, and Gryski 1996) and that focus on political alignment of the government as the main mechanism driving judicial expansions (De-Figueiredo et al. 2000). We instead look at the magnitude of each expansion and the

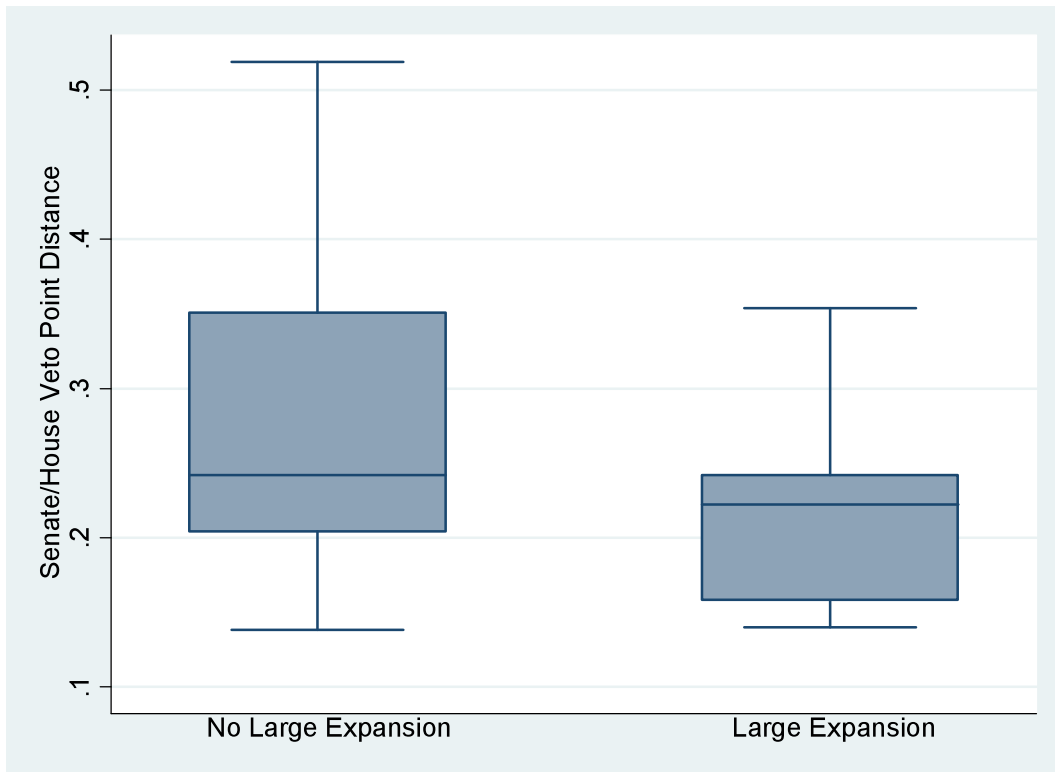
influence of ideology on this process. We are therefore interested in yearly rather than in the bi-yearly observations present in the other studies which base each observation on a session of Congress. The federal courts may expand on a yearly basis, and have expanded in consecutive years in the past. Moreover, the number of expansions has varied from year to year, and the difference in expansion number could very well be a product of the different mixture of factors involved in any given year. Our second dependent variable focuses on the Senate side of the process. This variable, *Percent Confirmations*, is a measure of the annual number of judicial nominees the Senate confirms over the total number of nominees up for Senate vote.¹⁰

In addition, several of our independent variables change on a yearly basis as well. Our independent variables are, first of all, the ideological distances between the House median and the Senate Pivot ideologically furthest from the House median. The variable *House-Senate Distance* is the absolute value of the difference between these points. To measure ideal points we use Common Space scores developed by Poole and Rosenthal (1985) which bridge ideal points across members of the House, the Senate and the President. Common Space scores cover all senators and congressmen from 1789 forward. Ideology is measured on a left-right continuum from -1 (extremely liberal) to 1 (extremely conservative).

The box plot in Figure 2 below shows that this ideological distances tend to be significantly smaller in instances where there is a large expansion (of 25 judgeships or more). This provides initial evidence supporting our hypothesis that minimizing the ideological distance between these veto points is essential to increasing the magnitude of judicial expansions.

¹⁰ We also test this variable with the depending variable as the absolute number of confirmations and using the total number of nominees up for Senate vote as an independent variable.

Figure 2: Box Plot of Ideal Point Distance and Likelihood of a Large Expansion



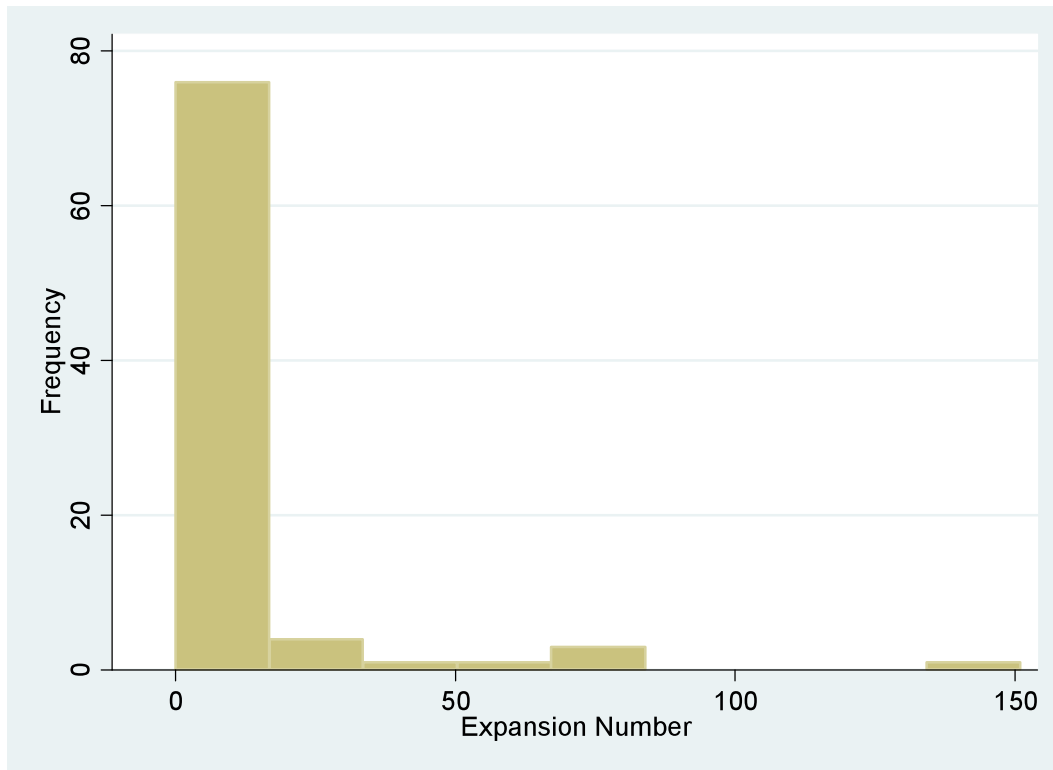
We also included several control variables in our analysis. The first is *Caseload per Judgeships* which is an annual measure that divides the total caseload value by the total number of then-current judgeships. We also created a variable *Retirements* in order to measure the effect that annual retirements have on the number of expansions (the retirements variable also encompasses all rationales for stepping down from the bench including death).¹¹ Finally, we include a dummy variable in our model, *Unified*, which is coded “1” if both Houses of Congress and the President are of the same political party and otherwise is coded “0”.

When we plot a histogram of the number of expansions per year as displayed in Figure 3, there is a cluster at the zero value. Because of the large number of zeros indicating years with no

¹¹ We include plots of retirements against expansion number and caseload per judgeship against expansion number in the Appendix.

expansions, and because the expansion number is a count measure, we use a zero-inflated poisson regression in our count models (Zorn 1996).

Figure 3: Histogram of Expansion Numbers



In these models, we treat the dependent variable, *Expansion Number*, as a continuous variable as well as a dichotomous variable for the purpose of the zero-inflation. This allows us to account for the high number of zeroes present in this variable.

Table 1: Expansion and Confirmation Models

Model Number	1	2	3	4	5	6
Regression Type	Poisson	Poisson	OLS	OLS	OLS	OLS
Dependent Variable	Expansions	Expansions	Confirmation	Confirmations α	% Confirm α	% Confirm
Unified	0.634	1.467	0.198	0.773	0.0504***	0.043
	-1.030	-1.790	-0.090	-1.770	-3.930	-0.900
Retirements	0.183*	0.317*				
	-2.370	-2.090				
Caseload/Judgeship	0.005	0.0167*	-0.014	-0.00854***	-0.000328***	0.000
	-1.870	-2.470	(-0.85)	(-6.36)	(-6.70)	(-1.18)
Senate House Distance		-10.79*	-24.33*	-28.20***	-0.375***	-0.371*
		(-1.99)	(-2.16)	(-14.70)	(-3.95)	(-2.03)
All Confirmation Votes			0.753***	0.742***		
			-11.400	-377.420		
Constant	0.878	0.019	11.17**	11.13***	0.977***	0.998***
	-0.870	-0.010	-2.670	-17.910	-26.790	-9.650
inflate						
Expansions	-39.39***	-56.88***				
	(-66.08)	(-96.19)				
_cons	21.06***	29.80***				
	-156.680	-210.890				
N	84	84	86	86	86	86
α = fixed effects included (but not listed) in model for each expansion.						
t statistics in parentheses; robust standard errors included in all models						
* p<0.05	** p<0.01	*** p<0.001				

With our models, we examine whether the Houses of Congress are strategic when deciding to expand the federal judiciary.¹² Before testing strategy, however, in Model 1 we looked at the significance of the unified/divided government used in prior studies. Only one of the independent variables, retirements, met the $p < .05$ threshold of significance in this model. This signifies that party alignment in the form of unified government may not be the key explanatory variable for the number of federal judicial expansions per year.

Next we added in our distance variable in accordance with our theory. We focus our distance measure between the two Houses of Congress as the House of Representatives has a strategic incentive to expand the judiciary when the distance is at a minimum. Conversely, based on our hypotheses we expect that higher ideological distances between the veto players in House and Senate will decrease the possibility of an expansion of the judiciary.

The distance variable in Model 2 is significant at the .05 p-level. The coefficient is moving in the expected negative direction, which follows from our theory that as ideological distance increases, the likelihood of an expansion will decrease or in the opposite sense, veto players will most likely expand the federal bench when there is a minimum of ideological distance between them. If the distance between the House and Senate pivot points is large, there is little incentive to expand because the nominees will likely be ideologically distant from the House median.

Our next set of models looks at the confirmation stage of the expansion process. We tested this in two ways to ensure the robustness of results. Models 4 and 5 are the same as models 3 and 6 except these models include fixed effects for every expansion. Models 3 and 4

¹² We also ran a logit model for the years of our study based on De-Figueiredo et al.'s theory with the dependent variable as expand or not expand and the independent variables as unified vs. divided government and caseload. Although caseload showed minor significance, the unified government variable did not.

use the absolute number of federal judges confirmed annually as the dependent variable. Models 5 and 6 use a percent measure as the dependent variable where the number of confirmations is divided by the sum of the annual number of nominated judges with confirmation votes. The distance measure is significant at either the .05 or .001 p-level in each of the four models in the predicted negative direction. This indicates that the ideological proximity of the veto points in the House and Senate is significant not only in the decision of how many judgeships to add, but also in the success rate of confirmations.

The distance variable carries the strongest magnitude of all variables in all six models. While the other previously hypothesized factors, retirements and caseload per judge are generally significant in the models they are of a much lesser magnitude. We believe that the reason for is that as the judiciary shrinks through retirements or as the judges' caseloads increase there is pressure to expand the federal judiciary, but that the real driving factor behind these expansions is the ideological distance between the House and Senate. Unlike the distance variable, the unified government variable did not add any additional insights into the mechanisms that drive judicial expansion as it is generally insignificant and only carries a small positive coefficient that is quite minimal compared to effect of ideological distance.

Discussion

According to our results, the ideological distance between the veto players in the Houses of Congress is highly predictive of not only whether the Congress will expand the number of federal judgeships, but also the extent of the expansion. Our results show that at least for the period when NOMINATE data is available for the President, ideological distance plays a much greater role in the judicial expansion process than does partisanship. We do not argue that ideological distance is the only factor involved in this process, but our results do show that

ideological distance is a much more significant explanatory variable for the expansion process and especially for the extent of expansions.

The overall caseload per judge also plays a part in the likelihood of expanding the judiciary over time, yet caseload increases on a general upward trajectory, and so it does not account for the sometimes jagged looking increases in the number of judges on the federal bench. Caseload is a significant variable of a sufficient magnitude to have a notable effect in only one of our models (Model 2), and its coefficient was exponentially smaller than the coefficient for the also significant ideological distance between the House median and the Senate filibuster pivot.¹³

¹³ While our results portend the probability that ideological distance plays a key role in determining when and to what extent federal judicial expansions occur, our method is not without its flaws as our decision to space out our observations on a yearly basis does not come without its drawbacks. The NOMINATE data that we used to measure distances is measured every other year, and so it does not differ between consecutive years in a congressional term. This combined with our use of interaction terms likely led to measurable levels of multicollinearity. For both of these reasons, our independent variables bared relationship to each other for many of the years included. As we predicted some level of correlation between terms due to the interaction, we knew this would likely be the case, but this is a necessary consequence of our choice of utilizing interaction terms (for the second dimension's limited years). It does not, however, solve the issue that such correlated variables may bias our results (Brambor et al. 2006).

The yearly distance observations as well as the use of time-series data may have also created heteroscedasticity in our models. Time series data often leads to correlated residual terms as errors in sequential time are not entirely independent of one another (Beck and Katz 1995). As our observations are on a yearly basis, we could not escape the issue of heteroscedasticity. The use of bi-yearly data for each individual year most likely exacerbated the correlation among error terms, and yet many of our independent variables and our dependent variable are measured on a yearly basis. Thus, while multicollinearity and heteroscedasticity may have arisen due to our choice in the unit of analysis, taking an every other year approach would have missed the yearly distinctions in the process of expanding the federal bench. Thus while attempting to solve some of the problems in earlier studies, we caused some of our own. Since our theory is based around factors that occur and vary on a yearly basis, however, observations based on every other year would distort the yearly changes that are at the heart of our study.

Conclusion

The separation of powers among the three federal branches has received ample scholarly attention, mostly due to the attempts made by the branches to shift this balance of power to their respective advantage. When it comes to the federal judiciary, most of the literature focuses on the Supreme Court and, as a result, on the process of appointments. In this paper the center of attention is the lower courts of the federal judiciary and the process of and explanations for expansions of the federal bench.

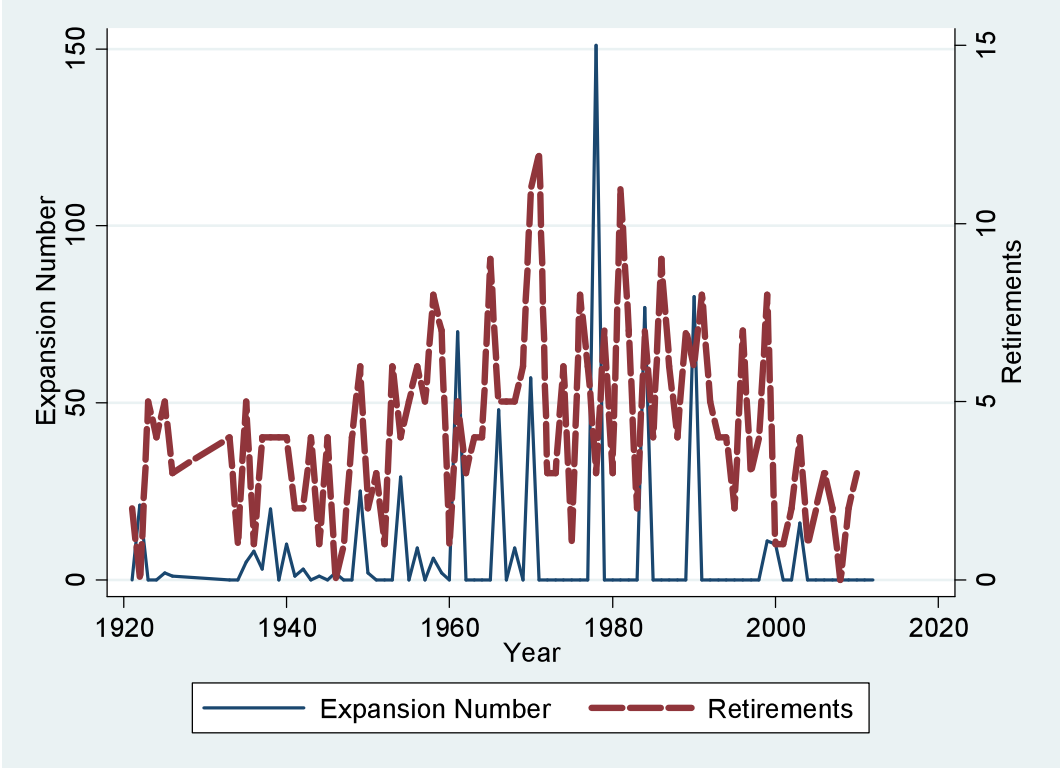
Previous attempts to account for these expansions try to connect them to partisanship and unified versus divided government. This justification, however, does not explain expansions that occur in times of divided government, or the lack of expansions in periods of unified government. We believe that this gap in the theory is a result of the use of partisanship as a proxy for ideology. When the ideological distance between important veto players in the expansion process is used in order to account for the expansions, this study shows that the distance between the House median and the Senate filibuster pivot is highly significant and affects expansions in a negative way. Consequently, we feel that expansions of the federal judiciary can be more precisely explained by an analysis of the preferences of the important veto players and their consequent ideological distance.

As we used numerical ideological data to measure the preferences of members of Congress and the President, we feel that future studies could incorporate ideological data for judges as well. The theory of moving the median (Krehbiel 1998) provides another perspective on judicial expansions. This is based on the notion that the median on a court is the most significant ideological point used in determining the direction the court may rule. Although there is limited data available for the ideological preferences of lower court judges (see “The

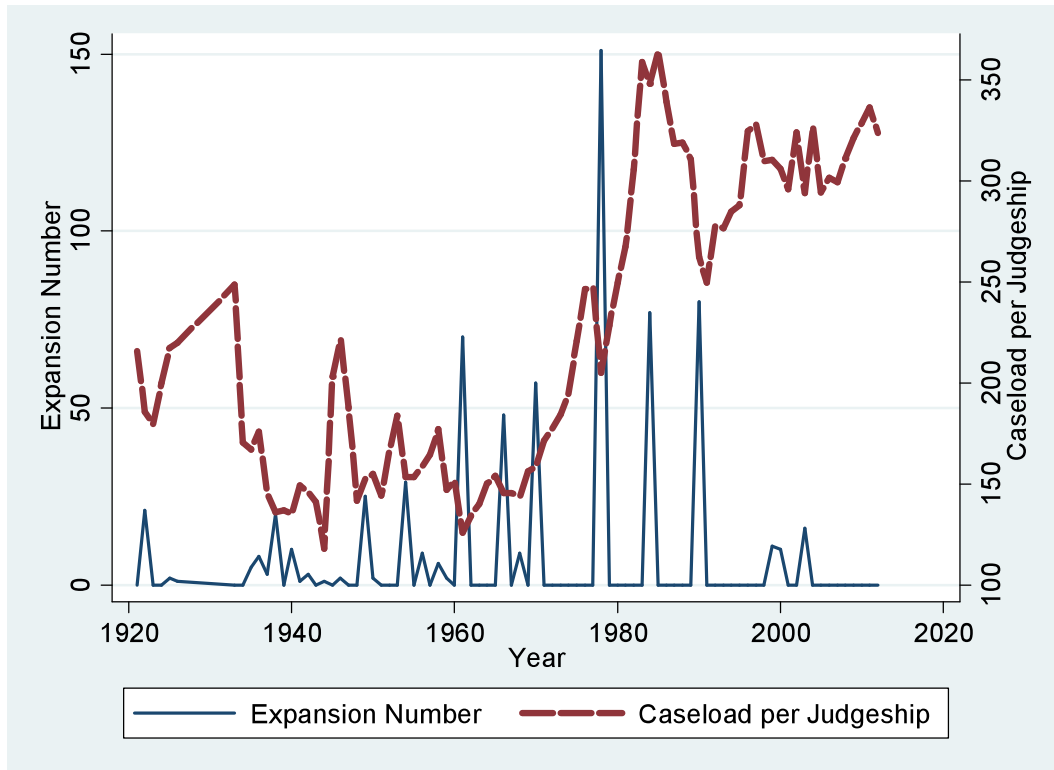
Judicial Common Space” by Epstein et al. 2007), this data does not cover all of the years of our study and is not sufficiently comprehensive of the judges represented in our models. With updated data, we would be interested in testing the move the median theory in conjunction with our distance-based theory. One other potential addition could be made with Presidential ideological data that predates our own. With this information, we would be interested in testing our theory farther back in time and thus with a greater number of observations. Essentially, future studies could increase the longitudinal range and the breadth of this study to investigate if our theory holds up across time and when additional ideological data is in play.

Appendix

1) Graph of Retirements versus Expansion Number



2) Graph of Caseload versus Expansion Number



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