

Brannon P. Denning

*Reforming the New Confirmation Process:
Replacing “Despite and Resent” with “Advice and Consent”*

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Abstract by Lisa Hodes

Brannon P. Denning’s article examines the evolution of the confirmation process in the United States. The article begins by illustrating the controversies that arose after recent nominations and appointments. Describing the political storms surrounding the nominations of Bill Lann Lee, Richard Holbrooke, James Hormel, and Robert Bork, the author supports the contention that the confirmation process has spun out of control.

The author compares the “old” confirmation politics of the mid-twentieth century with the “new” confirmation politics that began with the rejection of Supreme Court nominee Robert Bork in 1987. The author describes the transformation of the conformist freshman senator of old to the modern, active younger members. The implications of these changes reach the confirmation process: individual senators will use their power to delay or stop a nomination. The balance of power over confirmation sways between the executive and legislative branches with each side taking full advantage of constitutional loopholes to push or pull a nomination. As a result, we are left with a “reconstructed” confirmation process that is neither efficient nor effective.

To remedy the fragmented executive and legislative power, the author offers several suggestions for reforming the confirmation process. First, the author recommends amending the Senate’s rules to (1) restrict the ability of individual members to “hold” up a nomination, (2) reform cloture rules for nominations, and (3) curtail the power of committee chairs who block nominations by refusing to hold hearings on nominees. Furthermore, the author recommends installing an advice-giving mechanism from the senate to the President regarding nominees. This structure, which the author calls the “return,” creates a structure to provide “advice” to the President should members of the Senate prefer another nominee or wish to articulate reasons the nominee is unacceptable. These reforms, the author concludes, will help the confirmation process become more sane, civil, and respectable.