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Many more questions than answers

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Amy Coney Barrett acquitted herself well at her confirmation hearings, which means, quite often, she refused to answer questions.

Barrett was an exemplary nominee, who was knowledgeable, clear and composed throughout the three days of questioning, but not always responsive.

She can't be blamed for this. She played the game as the rules have been established for decades, and played it well. It is to take nothing away from her to wonder whether this longstanding norm of nominees running away from many substantive questions serves the Senate or the country well.

The court has taken on an outsize role in our national life, while at the same time nominees say less than ever about their views during the one chance the senators have to vet them publicly. This is a bizarre disconnect. You'd think we'd want to hear more from a prospective member of a body that elections are explicitly fought over and that, for better or (mostly) worse, determines how we are governed.

It was the confirmation battle over Robert Bork, of course, that changed everything. As Ilya Shapiro notes in his recent book, "Supreme Disorder," there were five days of the hearings involving Bork himself, who was highly accomplished but acerbic and uncoachable.

The journalist Theodore White famously said upon hearing Barry Goldwater's unapologetic 1964 convention speech, "My God, he's going to run as Barry Goldwater!" Likewise, Bork testified as Bork — brilliant and provocative — and it was a political debacle.

Ruth Bader Ginsburg set the new standard. As Shapiro writes, Ginsburg executed a "pincer movement" at her hearings, refusing to discuss both specific fact patterns (because they might come before the court) and abstract matters (because "a judge could deal in specifics only").

This didn't leave much to discuss. Justices John Roberts and Elena Kagan deflected the same way Ginsburg had. For her part, Barrett relentlessly hewed to the Ginsburg rule. She commented on her own past writings and decisions and general legal philosophy, but wouldn't get drawn out on much else.

For long stretches, the only drama was whether she could say, once again, that she couldn't answer without betraying any impatience with senators asking the same thing over and over again.

The rationale for this, going back to Ginsburg, is that a judge can't comment on matters that might come before the court, a category so capacious that it includes almost anything of public interest.

This is much too far-reaching a standard. It's one thing to commit to vote a certain way in a given case; it's another to conceal basic views on the law behind a curtain of judicial impartiality.

On top of this, the Ginsburg rule makes what a nominee will talk about completely arbitrary. We know a fair amount about how Barrett views gun rights because she wrote a dissent in a gun case and couldn't avoid discussing it. But if she could talk about that in detail, why not other important questions?

No fair-minded person would conclude that, having engaged on the Second Amendment openly in a confirmation hearing, she is now unfit to hear gun cases on the Supreme Court. Indeed, if making your views clear on such matters is disqualifying, all the current Supreme Court justices — extensively on the record about all manner of legally fraught questions — should be replaced by people with no known views.

The Ginsburg rule is highly convenient to all administrations when they make appointments. A change would have to be forced by the Senate, acting collectively to demand that future nominees discuss and debate the law with a forthrightness we haven't seen since Bork. It won't happen. Neither party would want to make the process even harder on its nominees and, more broadly, Congress is the least self-respecting branch, almost never standing up for its prerogatives.

Senators can express great frustration at not getting answers to their questions, but this is a practice they've long tolerated and won't change.