In case you haven't noticed recently, there's been some national attention paid to how the US Senate operates. In particular, a lot of attention has been focused on the filibuster, the requirement that for legislation (as opposed to judicial or executive nominees), 60 Senators must vote to close debate on the legislation for a vote to occur, effectively creating a supermajority requirement for legislation. Right now, it's people like President Trump to call for it to be eliminated. But in the past, there were some people on the left arguing for eliminating the filibuster. For instance, some have argued that it would be easier to enact environmental legislation without a filibuster.

I've written in the past about why eliminating the filibuster might not be a good idea from an environmental law perspective – based on the idea that it is better to have less legislation that is long-lasting than more legislation that is easy to repeal.

However, there is another angle to consider about the role that the filibuster might play in environmental law in the United States. The filibuster is simply one example of a broader theme in the United States political system. It's really hard to enact legislation because there are a lot of players who have to sign off on legislation – two houses of Congress and the President all must agree to the exact same legislative text (with some complications, like the uncommon override of a Presidential veto by Congress). In contrast, in a parliamentary system like Canada's, all you really need is a majority in one house of Parliament.

The question is, does this difference in political structure matter for environmental law? Working together with a legal scholar in Canada (Sari Graben at Ryerson University), we recently published a comparative analysis of environmental law in the United States and Canada. What we found was striking: In the United States, legislation is much longer and more detailed; it is much more likely to authorize private parties to sue to enforce the law (or challenge the government's implementation of the law); and it is much more likely to constrain how the agencies implement the law.

Why might US and Canadian law differ in these ways? And why might those differences matter for how environmental law works?

Our analysis finds outcomes that are consistent with the differences in political structures in US and Canada that make it harder to enact legislation in the US, such as the filibuster (which Canada definitely does not have!). If it is hard to enact legislation in the first place, legislation has staying power. That matters in a couple of ways. First, it means that it's worth your time and effort as a legislator to put in lots of details in the legislation – if they go in, they'll last. In particular, it's worth your time and effort to put in details so that you can constrain future implementation of the law by the President – including constraining

how the agencies implement the law. Even if a future Congress or President disagrees with the law, it will be hard for them to undo what you've done. (Witness, for instance, the resilience of Obamacare so far.) So you can constrain both Congress and the President in the future. Moreover, in a presidential political system like the United States, where the President and Congress are separately elected, there are good reasons for members of Congress to be concerned that the President, now or in the future, might have different policy preferences about how to implement the law. So legislators also have an interest in enacting legislation that constrains present and future Presidents. Of course, a current President might object to being constrained – unless that current President agrees with the policy preferences of the current Congress, and is happy to constrain future Presidents as well.

None of these dynamics exist in a parliamentary system like Canada's. Legislation is relatively easy to amend. The political party that controls Parliament also controls the executive, so there is unlikely to be major policy differences between the two branches of government. So simple legislation that gives lots of discretion to the executive is much more appealing.

How might this matter for environmental law? Well, if you are skeptical of how agencies might implement the law over time, perhaps in response to political pressure from interest groups, then you might be interested in having strict controls over how agencies interpret and apply the law, and have courts enforce them. That approach is much more likely to work in a system like the United States, than in a system like Canada's. And if you believe political pressure is likely to skew against environmental pressure – perhaps because of the relative power of industry in the political process – again, this approach may have an appeal.

The take-home message is that again, repeal of the filibuster and other efforts to make legislation easier to enact in the United States may not necessarily produce better environmental outcomes – because of the broader implications of how the political structure of the American system of governance affects how legislation is written.