

# SGI Sustainable Governance Indicators 2011

USA report

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## Executive Summary

The most important event during the period under review was the election to the presidency of Barack Obama, a black candidate from the Democratic Party. Coupled with the Democrat's gains in both houses of Congress, Obama's victory in November 2008 ushered in a period of unified party control, a situation that potentially promised the implementation of a progressive reform agenda that would set the new era clearly apart from the predecessor administration of George W. Bush. Given Obama's status as the first viable black candidate with wide appeal across racial and social lines, his victory was seen as a historic event, raising expectations considerably among supporters at home and audiences abroad that a new political era in the United States was underway and that the United States would pursue more balanced relations with the rest of the world. Prior to the elections, the United States witnessed an unprecedented political mobilization of voter groups, in particular young voters, women and minorities, bringing the voter participation rate to more than 60%. The 2008 national elections as well as the final months of the George W. Bush administration were overshadowed by the worst financial crisis since the Great Depression, which entailed the collapse in September 2008 of the leading investment bank Lehman Brothers and a virtual freezing of financial markets. The financial crisis originated in the real estate sector of the U.S. economy, which featured a considerable housing price bubble. Actions taken by the Bush administration and the Federal Reserve (the Fed), including the Troubled Asset Relief Program (TARP), resulted in a massive injection of public equity into troubled banks' balance sheets and public credit guarantees. The Obama administration continued and refined these programs, and in the end, financial markets were stabilized.

The incoming Obama administration had to choose between confining itself to crisis management and seriously pursuing its long-term reform agenda. It opted for the latter. The administration passed a massive stimulus program, including tax cuts. This program went beyond a mere stabilization of the real economy and contained signature elements of a progressive reform agenda with an emphasis on energy, health care and education. Although Obama shelved some of his reform proposals such as immigration, tax reform and a new minimum wage, and while his climate change proposals stalled in the Senate, he launched two major reform initiatives: health care reform and financial sector reform. The politics of these reforms were not easy. Obama, who at the outset of his presidency had vowed to pursue a strategy of bipartisanship, has run into the opposition of a regrouped Republican Party and some

centrist Democrats, both of whom have used the Senate filibuster to block action. Obama also had to cope with public discontent over deteriorating economic conditions, as unemployment has remained close to 10% since he has taken office. A pragmatist, Obama has pursued a centrist program, as is demonstrated by the bail-out and restructuring of two major automakers. The downside of government activism is manifest in a phenomenal federal deficit of more than 10% of GDP.

The change in tone regarding foreign policy, with its emphasis on diplomacy and multilateralism, has been most notable. Under the surface, there has been continuity with Bush administration policies, particularly regarding Iraq. Another sign of continuity was seen in the decision to retain Robert Gates as Secretary of Defense, a holdover from the Bush administration. Afghanistan was made a priority, and another 30,000 troops were committed in combination with an announced withdrawal date. Given stiff domestic opposition to the relocation and trials of suspected terrorists, Obama could not fulfill his promise to close Guantanamo, but he did bring an end to problematic interrogation procedures. The administration's new tone in diplomacy toward Muslim countries and endorsement of some of the claims of Palestinians clashed with the bitter realities on the ground in the Middle East and a well-organized pro-Israel lobby in Washington.

The most striking development observed during the review period was the continued polarization of the political process. The Republican minority opposed any measure the administration and its allies in Congress pursued. There was almost no chance in establishing broad consensus on reform measures, and debates frequently ended in bitter acrimony. Nevertheless, Obama, in close cooperation with the Democratic leadership in Congress, managed to pass a historic health reform package, extending coverage to most groups in need of coverage. A cap-and-trade bill to combat climate change passed in the House of Representatives, but efforts to pass a similar bill were abandoned in the Senate. In financial sector reform, Obama succeeded in pushing another historic measure through Congress, although it fell short of the hopes of many reform advocates. In all cases, the administration had to accept compromises. All in all, the administration has fulfilled its initial reform commitments, despite a major economic crisis, but this process has not helped its political standing. Political discontent remains high and damaged the Democrats' chances in the midterm elections. The political payoff may be distant. This situation is due to the fact that major problems remain unresolved. Unemployment remains high, despite some seasonal improvement. There is no new

economic growth model in sight after the end of a debt-fueled real estate boom. Budget deficits remain high and unsustainable over the medium term, requiring fiscal consolidation in the absence of political agreement between the parties. The financial sector remains fragile and undercapitalized, and banks continue to exert considerable political influence, making it impossible to deal with the too-big-to-fail issue. The major structural changes needed to make America's energy policy more sustainable and increase energy efficiency have only been touched upon. America's role in the world is uncertain in the view of public distrust over an interventionist policy and the challenges emerging from new powers. The resource base for an activist foreign policy is shrinking. No institutional reforms, such as reforming the Senate filibuster, which would permit a more predictable policy process and limit crippling partisanship, are on the horizon.

The election of President Obama raised high expectations at home and abroad, but the experience of his administration in the first 16 months proved that the constraints of the American political system remain in force, even for a charismatic politician. After the midterm elections of 2010, the period of united government will end in early January 2011, when the House of Representatives will again be controlled by the Republican Party.

## Strategic Outlook

The most worrisome phenomenon in the contemporary United States is the continuing polarization of the U.S. political system. This polarization explains why Obama received negligible support from Republicans on the economic stimulus package, and no support on health care. The present Congress is one of the most ideologically polarized in the modern era and there is no policy overlap between the parties. This situation is not confined to party elites and elected officeholders; it reflects changes in the electorate. In the 1980s, roughly 40% of voters were at the center of the political spectrum. In the last decade, the number of centrist voters has dropped to 28%. While cross-party voting has decreased, and the gap between voters' ideological position and their perception of the other party's position seems to have widened, the fact remains that partisan conflict is much more significant among members of Congress than voters. Both major parties have increasingly exploited the growing divisions in the electorate over highly charged issues. The clearest indicator of polarization is the declining number of marginal or contestable House seats, although in the 2010 midterm elections, the Republicans managed to gain 60 seats. There is also an increasing alignment between the outcome of presidential elections and the outcome of congressional races. The average of split election

results for House and presidential elections in the current era are down to 88 from 139 (through 1988). Until the 1980s, an average of 40% of House Democrats in any given election won seats in Republican-leaning districts, a number that has fallen to 15% for the current decade. As a result, the need for congressional candidates to take the other party's position seriously is diminishing. Voters in demographically homogenous geographical entities are confronting each other. Polarization in the U.S. political system can also be attributed to gerrymandering, or the manipulation of district boundaries to create safe seats for a given party, although some observers dispute the impact of this practice as it is not a factor in the Senate, which has fixed districts (the 50 states) and has experienced almost as much polarization as the House. In the end, however, polarization reflects deeper disagreements about issues of substance: cultural issues such as abortion, gay rights, and the role of religion in society; and in the current crisis context, the role of government in social and economic policy. At the same time, the number of policy areas with potential overlap (i.e., education, agriculture and energy security) is diminishing or such areas are simply losing salience.

One view argues that political polarization makes for a more cohesive party system that is reminiscent of dynamics in a parliamentary system, and leads to more distinct political agendas, clearer choices for voters, a greater relevance of elections, and possibly, greater participation. But it can also be argued that polarization makes resolving America's pressing policy problems more difficult, as polarization has coincided with new ideological divides and the collapse of the postwar consensus (i.e., containing communism, Keynesian demand management of the economy). Also, polarization is not well suited to the American system of separation of powers and other important non-majoritarian elements. Particularly, ideological polarization makes it impossible to find common ground on cultural issues such as abortion, where one side considers it murder and the other primarily a matter of personal choice. With regard to economic issues, it is hard to see how the country's long-term fiscal problems can be resolved if one side will allow for marginal reductions in major spending programs only, while the other dogmatically rules out any type of tax increase. Polarization leads to an unstable policy environment, as no issue is finally settled: the party in the minority will obstruct implementation of laws or work for their repeal when recapturing power, which may well happen to health care reform.

Today's polarized politics prevent effective action in many areas where reform or change is needed. There are certain institutional reforms that could mitigate polarization, such as the de-politicization of redistricting (through independent expert commissions), and possibly the

introduction of compulsory voting (on an experimental basis) to reach more ideologically uncommitted voters and thus wean politicians from appealing to their narrow base. California recently adopted a potentially major reform of the primary election process that is likely to strongly favor ideological moderates. An alternative strategy is to accept that polarization is the natural condition of two-party politics and find ways to make Congress more effective and responsive in a polarized context. Because Democrats have retained their majority status in the Senate in the 2010 midterm elections, they may attempt to adopt new rules that would moderate the ability of a minority to block action, making U.S. government somewhat more like a Westminster Parliamentary system. In the end, however, it is not clear whether U.S. policy-making institutions can in the foreseeable future be restored to a workable condition and made capable of addressing the country's serious policy challenges.

## Status Index

### I. Status of democracy

#### **Electoral process**

Candidacy  
procedures  
Score: 10

State laws set conditions for ballot access, such as specifying filing deadlines and the number of signatures required for nominating petitions. The requirements may be a burden for smaller third parties or independent candidates in general elections; or for weaker or late-starting candidates in primary elections (to determine party nominations). But parties and candidates that are otherwise able to win seats, or even symbolically significant vote shares, rarely have difficulty with ballot access. There have been no claims of patterns of discrimination on the basis of party, race, or other factors. Ballot access has not been controversial, and no major problems were reported in the last election cycle.

Media access  
Score: 7

In a formal sense, media access is fair. When it comes to posting election ads, however, access is a function of money, as the overwhelmingly private electronic media charge for election commercials, and competitive races require heavy expenditures. The major parties have never had difficulty in raising generous amounts of money for media advertising, although one party (most often the Republicans) sometimes has a sizable advantage. At the level of individual candidates, incumbents often have a very large fund-raising advantage over their challengers. But otherwise strong challengers can usually raise enough money to compete effectively. Some candidates for the Senate have been able to spend \$10- million from their personal fortunes, giving them very large advertising advantages. Increasingly, Internet-based information media play a role. In the most recent election cycle since the 2008 national elections, candidates have linked themselves to voters and supporters through social media networks.

Voting and  
registrations rights  
Score: 9

Voter registration is administered by the states, subject to regulation by the federal government. Racial and other discriminatory practices – rampant in the Southern states a half century ago – have been essentially eliminated through federal regulation and enforcement. However, in most states, registration requires a separate act; it does not

come automatically with residency. Some observers link requiring active registration to lower voter turnout rates, in particular among minorities and lower income voters. The states and the federal government have made efforts to facilitate registration. Many states now link driver's license records with voter registration and social security card information. Nine states permit same-day registration, in which the voter registers at the polling place just before voting. The Help America Vote Act of 2002 seeks to establish minimum election standards ( including procedures for voter identification), mandates the replacement of punch-card voting equipment (which sometimes fails to record individual votes accurately), sets up an Election Assistance Commission, and makes available to the states grants for modernizing their voting systems. The act sets standards for voter identification (which can be as minimal as presentation of a utility bill with a valid address). The Supreme Court in 2008 upheld an Indiana law that required an official photo ID for registration. In the 2008 elections, which saw a great expansion of voter registration, particularly among first-time voters, youth and minorities, only occasional problems with voter registration were reported.

Citation:

See Supreme Court Upholds Voter Identification Law in Indiana, in New York Times, 29.4.2008, [www.nytimes.com/2008/04/29/washington/28cnd-scotus.html](http://www.nytimes.com/2008/04/29/washington/28cnd-scotus.html).

Party financing  
Score: 8

Transparency is not a problem in American party financing. Indeed, one can enter a name in a search engine and find out how much an individual or organization has contributed to a party (outright corporation and union contributions to individual candidates are barred in the United States). Parties and candidates also must account regularly and in detail for their receipts and expenditures, and are subject to auditing. However, much of political fundraising and spending occurs outside this system, by means of independent political advertising by private groups. Efforts to regulate independent spending have run afoul of judicial policies concerning the freedom-of-speech guarantee of the Constitution, with the Supreme Court ruling that political spending is in effect a form of protected speech. A recent Supreme Court decision (January 21, 2010) rejected limits on private advertising in favor of or against candidates, which the McCain-Feingold Act of 2002 had applied to the period leading up to an election. The consequence is that corporations and unions (as well as other private organizations) can raise and spend unlimited amounts of money for political advertising, even during the "hot" phase of an election. The decision is shifting the balance toward private influence in election campaigns in ways that

could have a major impact on such issues as climate change, and is removing a larger part of campaign spending from the potential for public scrutiny.

Citation:

Ronald Dworkin, The "Devastating" Decision, in *The New York Review of Books*, Vol. 57, No. 3, Feb. 25, 2010.

### **Access to information**

Media freedom  
Score: 10

The media sector in the United States is overwhelmingly private; the public sector on the national level (TV and radio) is small, and its public funding base is shrinking. There were isolated scandals involving government agencies secretly paying certain local news commentators for favorable stories during the George W. Bush administration. The Obama White House briefly attempted to punish the blatantly biased and often inaccurate Fox News network as an "illegitimate" news organization by providing inferior access to the president. But in general, government interference in the media sector has been nearly non-existent. The Internet is increasingly becoming the source of information for many citizens. Not only do traditional print and electronic media go online, but there are a number of high-quality Internet-based publications such as the Huffington Post, Politico and Slate. Television and radio broadcasters are regulated by an independent commission, the Federal Communications Commission, on the basis of public interest and market concentration considerations.

Media pluralism  
Score: 8

The media market is overwhelmingly private, and pluralism and diversity characterize the American media scene. Only the over-the-air electronic media are regulated by the Federal Communications Commission. The Commission has a mandate to oversee ownership concentration and, to a slight extent, program diversity. Since the mid-1990s, ownership restrictions have been relaxed, with consolidation in the radio market increasing as a result. But there are few signs that diversity has suffered. There are well over 1,500 TV stations in the United States, most of which (1,409) are affiliated with one of the national networks. The traditional major networks pursue a policy of pluralism, while the more recent entrant, Fox News, in its political programming, takes an openly conservative point of view. There are additional outlets that tend to serve educated viewers. Non-advertisement-revenue based stations include affiliates of National Public Radio and the Public Broadcasting Corporation. Public funding has been decreasing steadily and has had to be replaced by contributions from listeners or viewers and by

sponsorship funds. In some cable networks, international news outlets such as BBC World and Deutsche Welle are available. The network of public stations is available in all parts of the country.

The digital revolution has drastically changed the ways in which the cable market is regulated, as regulations have decreased and the delivery of services (cable, TV) converged. The market is characterized by growing competition, a process that the FCC currently supports. Internet media services are becoming important sources of information, particularly among the elite segments of public opinion. The dominance of a local newspaper over larger metropolitan areas has been broken by the availability of national newspapers (New York Times, Washington Post, Los Angeles Times, Wall Street Journal) ever since the introduction of satellite transmission. The larger metropolitan newspapers are characterized by an internal pluralism, particularly on the commentary pages.

Economically, newspapers have come under pressure. Readership among adults has dropped by 10 percentage points in this decade. Advertising revenues are falling, consumers are increasingly turning to the Internet, and many newspaper chains are burdened by debt. Between 2007 and 2010, there have been eight major newspaper bankruptcies, including well-established papers such as the Los Angeles Times, the Chicago Tribune, and the Philadelphia Inquirer. Some of these papers have been taken over by private equity funds. Newspapers have reduced reporting and editorial staff as well as the space available for news coverage. During the same period, 10 papers closed altogether or went exclusively online. How these developments will affect media pluralism and the volume and quality of information available remains unknown. The quality of Internet-based sources varies and exposes readers to large amounts of unreliable information.

Citation:

Newspaper wars, in Financial Times, April 26, 2010, 15, CRS, The U.S. Newspaper Industry in Transition, Washington D.C., July 8, 2009.

Access to gvmt.  
information  
Score: 8

On the federal level, the Freedom of Information Act allows citizens a high degree of access to documents and files held by the federal government and its agencies. Various categories of information are exempt, such as information related to national defense, personnel rules and practices, ongoing criminal investigations, and participation in legal cases. A formal request is required and appeals to courts possible. An Obama administration executive order has authorized the retroactive reclassification of information on national security grounds. The Patriot Act of 2001, renewed with Obama's support in 2010, has allowed some additional restrictions to be placed on disclosure. The Obama administration, however, has not continued the Bush administration's

frequent appeals to executive privilege as a means of limiting access to information.

### Civil rights

Civil rights  
Score: 7

The emphasis on civil rights has been somewhat compromised by U.S. anti-terror legislation following the events of 9/11. There has been a basic clash between two very important goals of U.S. politics: strengthening national security versus the protection of civil liberties. The Obama administration, in one of its first actions, signed an executive order barring unlawful interrogation practices to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions. But it has refrained from prosecuting or revealing the identity of CIA officials involved in illegal interrogations under the Bush administration. The administration reversed the Bush policy of denying access of the Guantanamo prisoners to civil courts, but failed to get Congressional authority to close the Guantanamo base, a move that President Obama had envisaged when he assumed office. Emergency legislation making NSA wiretapping legal, as long as it involves foreign suspects, remains on the books. Under the impact of recent terrorist attacks such as the Fort Hood shooting, the Obama administration has basically continued the policies of the Bush administration and signed the extension of the Patriot Act, allowing controversial measures such as secret searches, which had been of concern to privacy advocates and liberal Democrats in the House.

Citation:

Christian Science Monitor, Obama signs Patriot Act extension without reforms, March 1, 2010, available on <http://www.csmonitor.com/USA/Politics/2010/0301/Obama-signs-Patriot-Act-extension-without-reforms>.

Political liberties  
Score: 10

Political liberties are well protected in the United States. The protection includes all of the recognized political and religious freedoms of speech, association, voting, and pursuit of public office, and extends almost unconditionally, even to freedom of speech for extreme groups such as neo-Nazis. Religious freedoms are protected even for religious fringe groups. In contrast with most of the developed democracies, the freedom of speech provision of the U.S. Constitution has been held to invalidate laws proscribing hate speech. In one significant limitation of political rights, convicted felons are barred from voting in nearly all states, although usually not permanently. Local police sometimes confine demonstrators to locations far removed from the target events (e.g., G-8, G-20, or WTO meetings), which is arguably an infringement of freedoms of speech and assembly. But these episodes are irregular and fairly marginal, and are connected with genuine risks of property

Non-discrimination  
Score: 9

damage, disruption of international meetings, and the like.

The legal framework protecting against discrimination has been extended since the 1960s and nowadays covers not only racial minorities and gender cases, but also the aged and disabled, and in some state and local contexts, homosexuals. It not only applies to the public sector, but plays an enormous role in labor and contract law, giving extraordinary protection to minorities or groups threatened by discriminatory behavior. It has practically rendered ineffective any mandatory retirement age limits. The penalties, including job protection guarantees, are substantial. Nevertheless, in view of persisting social and economic disadvantage among minorities and women, the prevalence and importance of current discrimination in education, labor markets, and various social contexts is highly controversial. Affirmative action policies seem to be in decline. There were some expectations among minority civil rights groups that President Obama, as the first black president, would deliver renewed emphasis on issues of racial discrimination. But he deliberately chose not to place racial discrimination near the top of his agenda which was dominated by other concerns such as health care and the financial crisis. According to recent polls, black Americans feel race relations have not improved under Obama. In a 2009 CNN poll, 55% of respondents said that discrimination is still a problem, up from 38% in 2008, and a return to the levels before Obama appeared on the political scene. The deterioration may represent disappointment over weak job prospects. White Americans saw a greater improvement in race relations than blacks during the same period.

Citation:

CNN Politics, Blacks in survey say race relations no better with Obama, July 20, 2009, available on <http://edition.cnn.com/2009/POLITICS/06/25/obama.poll/index.html#cnnSTCOther1>.

### **Rule of law**

Legal certainty  
Score: 9

Administrative and executive action has generally been firmly and often narrowly bound by law. It is subject to judicial review, with courts having broad authority to overrule executive action on statutory or constitutional grounds. In areas of controversy, such as environmental regulation, all major administrative actions are appealed by various affected parties and thus are extensively reviewed by courts. In addition, because of the separation of powers and the independence of the legislature, Congress has closely monitored executive behavior. It has also tended to enact massively detailed statutes, leaving relatively few matters to agency discretion. The extensive monitoring and review arguably does not

provide a high level of legal certainty, however, because procedural requirements and judicial appeals routinely take several years to complete. Once appeals in a rule-making process are completed, agency decisions in individual cases are highly predictable. In the years since 2001, a particular source of uncertainty has been the scope of presidential power, particularly in matters of national security. The Bush administration asserted extraordinary unilateral authority, under the novel constitutional doctrine of the “unitary executive.” It also ordered major expansions of surveillance policies, secretly, without statutory authority. The increasingly partisan Congress has been less aggressive in monitoring executive action during periods of unified party control of the government. Although generally more committed to the separation of powers, the Obama administration has maintained some of the Bush administration’s claims of executive privilege with respect to information and issues of national security.

Judicial review  
Score: 10

Judicial review of administrative action is well established in the U.S. system, either through the general court system or special administrative courts. All decisions are subject to review by the U.S. Supreme Court. Court decisions are accepted as authoritative, including critical decisions such as the highly controversial decision of the Supreme Court that handed George W. Bush the victory in the 2000 presidential election. Decisions that are reached on statutory grounds can be reversed by amending the relevant statutes; decisions that are reached on constitutional grounds can be reversed only by amendment to the Constitution, almost never a feasible option. The statutes establishing programs and agencies generally specify some standards for judicial review – calling for greater or lesser deference to the agency, and on the other hand, requiring greater or lesser justification for the agency decisions. The standards often require elaborate showings of fact, resulting in lengthy, data-intensive decision processes. Because of their considerable policy-making authority, the process of appointing and confirming federal judges is politically highly contentious, and deep ideological division among the Supreme Court judges creates controversial decisions such as the recent decision on the role of corporations and unions in campaign finance, a decision that President Obama criticized sharply in his State of the Union Address. But such divisions do not seem to hamper the general acceptance of Supreme Court decisions, even in such cases as *Bush vs. Gore*, which was accepted with equanimity among the population at large.

Citation:

Cass Sunstein, *Judges and democracy: The changing role of the United States Supreme Court*, in Kermit L. Hall/Kevin T. Mcguire (eds.), *The Judicial Branch*, Oxford, New York 2005, 32-59.

President Barack Obama, *State of the Union Address 2010*, <http://www.nytimes.com/2010/01/28/us/politics/28obama.text.html>

Appointment of  
justices  
Score: 8

Judicial appointments and Senate confirmation processes are now highly politicized affairs able to mobilize elites and ordinary citizens alike. They are occasions for intense political maneuvering and debate, and have become considerable factors in election campaigns and electoral calculations. These appointments now influence political fundraising and spending as well as plays of intrigue and power politics. Professional considerations play an important role, with nominees generally having prior judicial experience (especially for Supreme Court appointments) or extensive legal experience. Each of the nine current Supreme Court justices (including Elena Kagan, confirmed August 2010) attended either Harvard or Yale law school. And both sides of the ideological divide can muster enough judicial talent. Until 2001, however, presidents submitted their nominations to the American Bar Association's (ABA) Standing Committee on Federal Judiciary. The Bush administration in 2001 dispensed with this practice, arguing that the ABA had become too liberal in their assessments. The Obama administration returned to the established practice with the nomination of Sonia Sotomayor to the Supreme Court, thus reintroducing an element of professional review. With Elena Kagan, currently the solicitor general, who replaced outgoing liberal Justice John Paul Stevens, President Obama had his second chance to leave an imprint on the court. The appointment will not immediately alter the ideological balance of the court. Kagan, an eminently qualified jurist, previously was dean of the Harvard Law School, but never served as a judge.

The politicization of the appointment process is not due to a malfunctioning institutional design, but to the powerful political role of the Supreme Court. A de-politicization of the appointment system along the lines of the Missouri Plan, where a bipartisan commission would present the president with a list of candidates to choose from, would be blocked by any president. In recent years, the presidential-opposition party in the Senate (e.g., the Republicans during the Democratic Obama administration) has demonstrated a willingness to filibuster judicial appointments, resulting in an effective requirement for 60 (out of 100) positive votes to achieve confirmation. Although the filibuster produces some pressure for relatively moderate appointments, the main factor moderating recent Supreme Court decisions has been the frequency of highly contentious 5-4 decisions, with the moderate conservative Anthony Kennedy casting the pivotal vote. Depending on the timing of deaths and retirements on the Court and election results,

the Supreme Court could swing very sharply, either to the left or the right, in the near future.

Citation:

Joel B. Grossman, Paths to the bench: Selecting Supreme Court Justices in a "juristocratic" world, in Kermit L. Hal/Kevin T. Mcguire (eds.), The Judicial Branch, Oxford, New York 2005, 142-173.

American Bar Association, Standing Committee on Federal Judiciary. See <http://www.abanet.org/scfedjud/home.html>.

Kagan would emphasize Supreme Court moving in new direction, in: Washington Post, May 11, 2010, available on <http://www.washingtonpost.com/wp-dy>

Corruption  
prevention  
Score: 9

In general, the U.S. political system is fairly responsive to narrowly based private interests, but this influence results mostly from decentralization of decision-making and the influence of lobbying, and is not appropriately identified as abuse of office. The large number of political appointees leads to a large number of private sector actors filling senior executive positions. While strict conflict of interest laws exist, including provisions demanding a separation from one's own assets and bars on contact, private influence in decision-making cannot be fully precluded. Auditing of state spending is well established through congressional oversight of agencies' spending decisions as well as through independent control agencies such as the General Accountability Office (GAO). The GAO also oversees public procurement in the United States and recently played a big role in reversing a U.S. Air Force contract to build tanker aircraft. The GAO, however, is powerless to control spending directed at special projects in congressional representatives' districts or states, so-called pork-and-barrel-spending, which is deeply engrained in the U.S. political system and enshrined in legislation.

An apparent weakness in containing the improper influence of private interest is the nature and state of election finance. Because of the needs for election fundraising, incentives for members of Congress to be responsive to private interests would seem to be strong. However, dozens of carefully designed political science studies have failed to demonstrate a significant effect of campaign contributions on legislative behavior. Flagrant cases of corrupt influence of lawmakers, including outright bribery, are quite rare. There have been no high-level corruption cases.

## II. Policy-specific performance

### A Economy

#### Economy

Economic policy  
Score: 7

In spring 2008, the Bush administration implemented a modest stimulus program, based on tax credits, and then undertook measures to bail out financial institutions to stem the financial panic. The major plank involved was the Troubled Asset Relief Program, which was to ring-fence toxic assets or to re-capitalize banks. The Obama administration continued the bail-out policy, and coupled this with a stress test for banks. In addition, the Obama administration in the spring of 2009 passed a comprehensive fiscal stimulus package, which consisted of government spending and tax cuts. In unprecedented industrial policy action, it also restructured major parts of the auto industry and became shareholder in General Motors and Chrysler. The stimulus program did not stop the downturn, but helped cushion against an even more severe slump. It largely helped to avert worse outcomes. According to Congressional Budget Office (CBO) estimates, the stimulus program helped stabilize the economy and boosted output by between 1.5% and 3.5%. As spending in state governments was contractionary, an even greater package would have been justified. Since the summer of 2009, growth has picked up, but there have been signs of weakness. Growth was at 3.7% on an annual basis in the first quarter of 2010, but slowed to 2.4% in the second quarter, prompting fears of an impending stall in the recovery.

While the ultimate success of the stimulus package will be debated for years, there are many indications that the general structure of the plan was constructive. The stimulus plan clearly needed to be large because the economic problem was enormous. A diversified plan was required because it was not clear exactly what would work. And finally, it had to be prolonged, because estimates showed the economy to remain weak for several years. The Obama administration acted quickly and boldly in combating the economic downturn with a fiscal stimulus, sending a message that it would actively use policy to get the economy on the right track. The administration deserves credit for getting the economic priorities right and for stimulus design.

## Labor market

Labor market  
policy  
Score: 6

The U.S. continues to have one of the least regulated and least unionized labor markets, with union membership having declined in recent years to constitute only about 13% of the labor force. However, the Obama administration may try to tilt the balance somewhat towards more regulation and union rights. The stimulus program, enacted in February 2009, increased the level and duration of unemployment benefits. In addition, the earned-income tax credit was increased. However, all these measures could only ease the unemployment situation. Unemployment remains stubbornly high, at 9.7% in March 2010. There has been a silver-lining, namely that non-farm payroll employment has increased by 570,000 jobs in the first two months of 2010, mostly in health care and government. Most worrisome is the doubling of long-term unemployment (i.e., those unemployed for more than six months) from 3.2 million in March 2009 to 6.5 million in March 2010. In that month, 44% of all unemployed were in that status for more than half a year and are thus classified as long-term unemployed. Unemployment rates among young workers have also reached unprecedented levels of near 20% in April 2010 – the highest rate recorded since 1947. The labor market problems are mostly due to severe permanent job cuts in the real estate, construction and financial sectors, which were the backbone of the U.S. economic model. In short, it is a post-real-estate bubble phenomenon. There are no quick fixes, but the numbers state that the United States is having a long-term unemployment problem similar to European proportions. Most experts reckon that it will take a prolonged upturn to rectify the situation. Basically, there has been little private job creation during the period under review. Most new jobs were due to the stimulus program. There is very little fiscal leeway for public employment programs. As a matter of fact, public employment in state and local governments continues to be under pressure.

## Enterprises

Enterprise policy  
Score: 10

There has been very little impact of the recession on the ability of the United States to foster innovation, entrepreneurship and competitiveness in the most advanced sectors of the U.S. economy. The downturn primarily hit the real estate and financial sectors. The high-tech sector was less affected, and the largest technology companies have been doing well. Evidence for this is a massive build-up of liquidity, having increased by more than 40% over the past year, led by Apple. The 10 largest tech companies including Apple, Microsoft,

Dell and Intel added more than \$65 billion since the recession. This will enable such companies to strengthen their technological base by acquisition of smaller companies. The expected shake-out in the industry did not take place.

The other factor that has strengthened a significant portion of large American corporations is the strength of their brands. According to the BrandZ ranking, 17 of the top 20 global brands were American. There has been a clear shift among these top brands toward technology companies, at the expense of consumer groups. Top brands also emerged from the recession much stronger than their rivals. The strengthening of American brands is due to vigorous international property rights (IPR) protection, particularly trademark and patent protection, in the United States (and abroad).

The stimulus package of February 2009 is expected to foster innovation and entrepreneurship in the energy sector with positive implications for existing companies and startups in this sector. The Obama administration also decided to stabilize the automobile industry and prevented the possible liquidation of Chrysler and General Motors. Since these companies have been restructured, the United States Treasury is now GM's largest shareholder (61%) and also holds 10% of Chrysler shares. Total assistance to the automobile industry amounted to \$81 billion, of which 50% were outright subsidies. This is the most extended industrial policy action in U.S. history and is based on the assessment of the administration that, barring such action, employment and income in the Midwest would have collapsed.

## Taxes

During the election campaign, candidate Obama promised to reverse the Bush income tax cuts and reintroduce tax brackets of 36% and 39.6% as well as an increase in the capital gains tax for households with an income of more than \$250,000, which would have increased vertical equity. Other proposed measures included reversing the abolition of the estate tax and tax deductions for social security contributions. But political pressures prevented the inclusion of these changes, as the administration wanted to pass the stimulus bill with the support of Republicans. The Obama administration is committed to greater tax equity, but with the Republicans being able to sustain a filibuster, any return to Clinton-era income tax rates is currently unlikely. This constellation blocked any attempts to restore greater equity to the tax system. The Make-Work-Pay tax credit in the stimulus package did help lower income households. The argument has been that it was important to stabilize the economy, before consolidation would have to set in. Tax revenues are clearly not sufficient to ensure that public

Tax policy  
Score: 5

services are financed in the long term. The gap between public revenues and expenditures remains a major challenge. In the fiscal year 2009, the gap between revenues and outlays is \$1.4 trillion or 9.8% of GDP. The focus on the recession has prevented the pursuit of systematic tax reform and fiscal sustainability. The administration and the Congress have temporarily extended the Bush tax cuts during a period of fiscal stimulus and massively reduced the Alternative Minimum Tax, without indicating how to pay for it. What the U.S. system is lacking is an effective consumption or turnover tax such as a value-added-tax on the federal level. Many experts see the introduction of such a tax as inevitable, but there is little political support for it. Hopes of the administration that a cap-and-trade climate change regime would generate additional income have been dashed, as most pending legislation allocates almost all emission allowances for free, and passage of a final bill remains uncertain.

Citation:

Klaus Deutsch, Obamas Agenda. Die Stabilisierung der Wirtschaft im ersten Amtsjahr, Deutsche Bank Research Frankfurt, 1. Dezember 2009, 18 f.

CBO, The Budget and Economic Outlook: Fiscal Years 2010 to 2020, Summary, table 1, January 2010 available on <http://www.cbo.gov/ftpdocs/108xx/doc10871/Summary.shtml#1045449>.

## Budgets

Budget policy  
Score: 3

There is now a clear consensus emerging that the Great Recession has led to a fiscal crisis in the United States that needs a sustained response and a concerted effort to bring down burgeoning deficits. In fiscal 2009, the budget deficit was \$1.4 trillion or 9.9% of GDP, the largest ever since the end of World War II. For FY 2010, a deficit of \$1.3 trillion or 9.2% of GDP is expected – representing only a slight improvement. These deficits are the result of sharply lower revenues due to the recession, spending associated with the downturn (economic stabilizers) and the cost of programs to combat the downturn. In addition the budget deficit is in large part caused by Bush era policies, with tax reductions, especially for upper income groups, along with spending increases, especially for Medicare (prescription drug coverage) and the wars in Iraq and Afghanistan.

The Obama administration's fiscal and budgetary policies may have been fully justified given the severity of the downturn. But whether the United States can converge on a path of long-term fiscal consolidation appears doubtful: both parties have ruled out broad tax increases, the bulk of spending occurs in untouchable programs such as health programs, pensions and defense and net interest payments. The politics

of such adjustment processes are unpredictable. The Great Recession had made the need to impose fiscal discipline a less urgent problem, but it will need immediate consideration once the economy fully recovers. Whether the U.S. political system can deliver the necessary actions remains doubtful. In addition, some economist have argued for postponing the actual imposition of tax increases or spending cuts until the economic recovery is firmly established.

## **B Social affairs**

### **Health care**

Health policy  
Score: 7

In March 2010, Congress enacted a major plank of the Obama administration's reform program when it passed a historic health care reform package, the Patient Protection and Affordable Care Act, which was the result of a protracted and complicated legislative struggle lacking broad consensus. It was enacted over the concerted opposition of Republicans in Congress, thus laying out in the open a deep societal discord over the direction that health care policy should take. Public opinion is divided, and it remains to be seen whether long-term majority support or a sustainable consensus for the reform can be achieved. Many provisions of the bill are not well defined and will only become clear in the process of implementation. The most important provisions will not take effect until 2014, others not until 2019. This leaves time to water down the reform or even reverse the major provisions, although Democrats will be able to defend their handiwork while in control of the White House and potentially longer through the Senate filibuster. The bill's effect consists basically of filling the many gaps of coverage in the existing system, although it does not eliminate all the gaps. Outside the health care system for the elderly (i.e., Medicare) the bill succeeds in expanding coverage to 94% of legal residents (up from 83%), adding about 34 million people.

Because of its magnitude and complexity and the uncertainty of its effects, the new law can be expected to create winners and losers, and it will surely have unintended consequences. This explains the polarized discussion about the reform that is not settled with its passage. Public opinion has been sharply divided, with a modest majority disapproving it. A good deal of opposition centers on the requirement for individuals who are otherwise not covered to purchase health insurance under threat of penalty. The big-ticket items of the reform such as employer mandate or insurance market reform will not start until 2014, giving opponents an incentive to reverse the reforms. Because of the Republicans' united opposition and their anger about the legislative

process, it can be expected that the reform will remain on the agenda beyond the 2010 congressional election and in the 2012 presidential contest. Constitutional challenges against important provisions of the reform package will ultimately be resolved by the Supreme Court.

## Social inclusion

Social inclusion  
policy  
Score: 6

The United States ranked 24th among 25 countries in economic equality, measured in terms of the proportion of the population below 50 percent of median income. Inequality has reached record highs. The richest one percent of Americans in 2005 claimed since 1929 the largest share of the nation's income (19%). At the same time, the poorest 20% of Americans had only 3.4% of the nation's income. In international comparison, particularly cash benefits for working age people and children are dramatically lower than in most OECD countries. Based on 2008 data, 39.8 million people in the United States lived below the poverty line. In 2008 the poverty rate increased for the first time since 2004 when it rose to 13.2%, up from 12.5% in 2007. This was the highest rate since 1997. Most of the increase fell on non-Hispanic Whites (8.6% in 2008, up from 8.2% in 2007), Asians (11.8% in 2008, up from 10.2% in 2007) and Hispanics (23.2% in 2008, up from 21.5% in 2007). For Blacks, the rate remained unchanged (24%). These numbers lend support to the assumption that the increase was mostly due to a severe recession and the downturn in the construction and real estate markets. The greatest increases occurred in the states of California, Connecticut, Florida, Hawaii, Indiana, Oregon, Michigan and Pennsylvania. Many elements of the stimulus package (the American Recovery and Reinvestment Act, or ARRA) tried to address the hardship caused by the recession. ARRA contained several measures, including: the extension of employment benefits and increases in benefits; transfers to the states for Medicaid, education and housing; increasing benefits for families with children; increasing food stamp benefits and expanding tax credits for the working poor. ARRA contributed measurably to the attempt to increase social inclusion during a serious economic downturn, but did not dramatically reduce the number of people falling under the poverty line. The expansion of health care coverage should make a significant contribution to social cohesion. The Earned Income Tax Credit was, in the past, a significant factor in lifting families out of poverty. Currently, it fails to help workers without children. Providing help to such workers would lift up to two million out of poverty. There is no sign that the Obama administration plans to pursue this. The Obama administration pursues a piecemeal approach that does not drastically reverse the course in social policy. It continues to be less generous to the non-working poor, and much more generous

to working poor households. This state of affairs probably reflects societal consensus.

### **Families**

Family policy  
Score: 7

Government family support programs in the United States are far less generous than those in other industrial countries. The Family and Medical Leave Act, which requires employers with at least fifty workers to allow twelve weeks of unpaid leave for child care, is not a very ambitious program. In order to make child care available to low- and moderate-income families and thereby facilitate entry into the labor market, the Obama administration has increased by \$2 billion support through the Child Care and Development Fund (CCDF), a block grant going to state governments. In its 2011 budget proposal, the Obama administration has also proposed to double the child and dependent care tax credit, which could reach up to \$6,000 per household. In addition to federal tax breaks, there are myriad state and local programs helping women to make work and raising children compatible. In addition, private and public employers who want to retain female workers have increased flex-time and part-time working arrangements. But in reality, the compatibility of work and family for women is greatly facilitated by flexible private arrangements based on the availability of immigrant women for child care services. Despite this very patchy picture, the United States enjoys an exceptional birth rate among industrial countries—close to the replacement level, at 2.04 births per woman for the current decade—a circumstance that is not accounted for exclusively by the higher birth rates among immigrants.

### **Pensions**

Pension policy  
Score: 7

No major changes have been made to the U.S. Social Security system during the Obama administration. The system, which is funded by mandatory employee and employer contributions, serves as only one prop of the pension system, complementing a private system of company-based saving plans (so-called 401k plans) that receive tax subsidies, and a variety of private retirement accounts. The wage replacement rate of the public system is at 45%, below the OECD average, but benefits from company-based and private accounts raise the rate to 80% for those who participated in these programs. However, 78 million Americans have no access to company-based insurance schemes. Particularly small companies do not offer any or only incomplete plans. The financial crisis has hit the asset base of pension funds, which primarily invested in stocks and investment funds, with losses of up to 25%, a trend that is being reversed with the recovery.

Obama rejects the efforts by the Bush administration to partly privatize the system and instead favors incremental reforms, such as raising the ceiling on an employee's earnings subject to the social security tax. For company-based plans, the administration favors automatic participation in private plans if participation is below average or no plans are offered. Subsidies would provide the necessary incentives.

## Integration

Integration policy  
Score: 8

The main issues concerning the status of immigrants in the United States are less about cultural, education and social policies that either succeed or fail in integrating immigrants, and more about the ways in which immigration is managed and the handling of illegal immigrants, who account for nearly one-third of all current immigrants (roughly 12 million, though some studies estimate up to 15 million). The issue of the status of illegal migrants is closely connected to the issue of improved border security. Increased immigration in the last decade has created competition among ethnic groups for resources relating to housing, jobs and health care, a trend that predates the recession, particularly in states heavily affected by illegal immigration.

The issue was put on the agenda in late April 2010 by a controversial bill passed in Arizona that will make it a state crime to be in the country illegally. Interestingly, a federal law requires non-citizens to carry papers at all times, but it is not enforced. The Arizona measure would require migrants to produce papers verifying their status when asked to do so by a police officer. If found to be in violation of the law, these individuals are subject to fines and deportation. Critics fear that such action will lead to racial profiling. Arizona has been heavily affected by immigration, with the Latino population having grown by 180% in the past two decades and the share of the white population having dropped from 72% to 58%. There are strong anti-immigrant, anti-Latino sentiments among many senior citizens and retiring baby-boomers. Polls show that Arizona residents favor the law by wide margins. Democratic Party politicians, including President Obama, have come out against the law, and a federal district court judge in July 2010 issued a temporary injunction blocking enforcement of the most important provisions of the law. The state of affairs in Arizona can be attributed to a tradition of incoherent and ineffective policy-making on immigration. On one level, the federal government commits to exerting tight control on immigration, but then is unwilling to enforce it. Effective enforcement would require, most likely, a vastly enhanced infrastructure capable of monitoring and enforcing the requirements set for employers to verify immigration status. But such measures are opposed by business, and in fact, would disrupt production in various sectors, especially agriculture.

As Washington lacks credibility in its commitment to enforcement, voter distrust grows. It is difficult to achieve a grand bargain based on a three-pronged strategy of improving the enforcement imposed on employers, developing behind the border, expanded legal immigration (perhaps through a guest worker program), and establishing conditional amnesty for those already in the United States. Given the role of Latinos as a decisive swing-vote, immigration reform will have to be dealt with, leading to difficult choices for Republicans and Democrats alike. If there are no credible solutions, unilateral attempts at the state level will continue. The fact remains that the U.S. political system has been unable to come up with credible immigration reform.

## C Security

### External security

External security  
policy  
Score: 7

The Obama administration has changed the tone of American foreign and security policy by emphasizing that the Muslim world is not the enemy in crucial world conflicts and that the war on terror does not define American policy objectives. President Obama has also stressed the U.S. role in the Middle East conflict as an honest broker and has stated that diplomacy should be the means of dealing with Iran. With regard to Afghanistan, a neutralization of the conflict with the Taliban is probably the greatest challenge for the Obama administration. The administration has articulated a comprehensive approach to the region, based on the relationship between the security threats posed by the Taliban in Afghanistan and Al Qaida in Pakistan. The administration has pursued a policy of military escalation in Afghanistan, increasing troop levels by more than one third. It favors a counter-insurgency strategy coupled with nation-building. In Pakistan, the administration has focused on defeating Al Qaida and engaging the Pakistani government in preventing the Islamic threat from spilling from the border regions into the Pakistani mainland.

The situation in Iraq was characterized by election-related infighting and violence, evidenced most notably by major bombings in Baghdad. The results of the March elections are inconclusive, but they do not seem to jeopardize the Obama administration's announced reduction of the U.S. troop presence to about 50,000 by August 2010. Under the United States-Iraq Security Agreement that took effect January 1, 2009, and which President Obama has said would be followed, all U.S. forces are to be out of Iraq by the end of 2011. On Iraq, there are continuities with the Bush administration's approach in its second term.

Although the turmoil associated with the Iranian elections did affect the

prospect for a new diplomacy toward Iran, the Obama administration has exercised caution and demonstrated toughness vis-a-vis Iran, also exploring the use of an enhanced sanctions regime. It has made some progress in bringing Russia and above all China along without reaching a final common position. The administration has not taken any options off the table. But it is clearly aware of the serious risks that an outright confrontation would entail.

### **Internal security**

Internal security  
policy  
Score: 7

Home-grown terrorism and organized crime have become the major challenges for law enforcement during the period under review. Recent cases, such as the assassination of 13 people by an Army major of Arab descent and the attempt to blow up an airliner approaching Detroit, have shown that the heightened security measures are not waterproof. It is unclear whether these cases indicate failed coordination and communication within the sprawling U.S. intelligence community. Sometimes, as in the case of a Nigerian national who tried to blow up an airplane in December 2009, the failure of reasonable visa screening betrayed a lack of common sense on the part of operating-level officials, rather than a lack of sophisticated bureaucratic procedure.

An additional question is whether the organizational resources and structures of law enforcement and anti-terrorism agencies are up to the challenge presented by criminal syndicates and terrorist groups that have expanded their size, scope and ambitions. These groups employ global networks for technological capability, financing and information. Of particular concern is the growing confluence of organized crime with terrorist groups (in a drug-terrorism link), although the extent of this cooperation is disputed. Measuring success in combating terrorism is extremely difficult as reliable quantitative indicators are lacking or may be highly misleading. One problem is that the terrorist threat is diffuse and based on dispersed autonomous cells, rather than a defined unitary organization. Some observers have noted that the emphasis on anti-terrorism has weakened efforts in fighting more traditional crimes, particularly organized crimes. Transnational organized crime from Russia, the Balkans, Italy, the Middle East and Africa continues to be a problem. One of the greatest threats is coming from drug-related crime and extreme violence in the border region with Mexico that threatens to spill over into the southwestern United States, as a recent spate of killings on both sides of the border has demonstrated.

## D Resources

### Environment

Environmental  
policy  
Score: 6

The Obama administration came into office pledging to fundamentally reform environmental and energy policies. Together with health care reform, these policies promised the clearest break with those of the Bush administration. First steps were taken in February 2009's stimulus package, which included roughly \$100 billion for environmental and energy efficiency measures, ranging from support for building insulation to incentives for renewable energies and the construction of a smart grid. The Obama administration indicated its intention to push for climate change policy in its first budget message to Congress, but left most specifics to the legislative process. In June 2009, the House of Representatives passed the American Clean Energy and Security Act (ACES), which mandated the introduction of a cap-and-trade system with a binding ceiling for greenhouse gas (GHG) emissions. The cap would reduce emissions by 17% below 2005 levels by 2020 and by 83% by 2050. Initially, only 17% of certificates would be auctioned, while the rest would be distributed for free, primarily to regulated public utilities to soften the impact on electricity prices for consumers. By 2030, 70% of certificates would be auctioned. The bill also includes off-setting and other cost containment mechanisms, as well as a border tax adjustment mechanism to deal with carbon leakage and competitiveness issues. In addition, the law requires new targets for the use of renewables by utilities. The bill would impact most significantly the energy sector, which would comprise 80% of GHG reductions, but the final effect would depend on the efficacy of carbon capture and sequestration, and the extent to which atomic energy use can be expanded.

In the Senate, there are various bills in discussion which need to be consolidated in one measure. The Clean Energy Jobs and American Power Act of 2009, which draws heavily from the ACES Act and establishes a cap-and-trade system, has been reported out of committee, but final passage is uncertain as Republican support is dwindling and 14 Democratic senators from coal and industrial states are pushing for much weaker GHG-reduction levels and special treatment for coal through CCS-support. The Senate bill, introduced by Senators John Kerry and Joe Lieberman in early May 2010, is also based on reductions of 17% and 80% for 2020 and 2050 respectively, but seeks carbon reductions from separate sectors of the economy rather than imposing a nationwide limit. It also provides greater support for nuclear energy (regulatory insurance) and for off-shore drilling, with

an opt-out for states. The measure died in the Senate in July 2010. In international climate diplomacy, the Obama administration has made it clear that it will not sign the Kyoto Protocol, but will look for a new treaty architecture that entails legally binding commitments for emerging market countries. The administration is also not wholly wedded to the U.N. process, but would consider alternatives such as a forum of the largest 18-20 emitters. This represents a continuation of Bush administration policies.

### **Research and innovation**

Research and  
innovation policy  
Score: 9

The basic research and development base of the United States remains strong due to a good mix of private and public institutions. Among public institutions, the National Science Foundation, the various federal laboratories, the National Institute of Health, and various research institutions attached to federal agencies stand out. In addition, there is a vast array of federally supported military research, whose spill-over benefits are hard to pin down. According to the most recent figures, total U.S. R&D stood at roughly \$400 billion, or 2.75% of GDP, of which about one-third (7.3 billion) was direct federal R&D funding. President Obama has put forward the goal of raising total R&D spending to 3% of GDP. Quite notable is also the sustained public investment in nanotechnology. Since the launch of the National Nano Technology Initiative in 2000, Congress has appropriated more than \$10 billion through 2009. The Obama administration budget for FY 2010 added another \$1.6 billion. Most available data point out that this level of support has made the United States the overall global leader in nanotechnology. However, studies point out that commercially productive nano-manufacturing is still a long way off and will require major advances in technology, process tools and instruments as well as safety standards. But there are clear indications that the United States is taking up the nanotechnology challenge.

### **Education**

Education policy  
Score: 7

The quality of primary and secondary education in the United States is often judged mediocre. High school graduation rates, although rising from 1996 to 2006, remain low, at about 70%, in an education system that largely lacks vocationally oriented alternatives to high school. High students' performance in science, math and reading is below average compared with other OECD countries. The shortcomings cannot be attributed to a lack of resources, as per pupil expenditures have been growing in real terms, and student/teacher ratios have declined since the 1960s. The problems of the U.S. educational system are primarily

the result of cultural and social change, the impact of unionization and collective bargaining on teacher performance, and deficiencies in the home environments of many children in low-income, minority neighborhoods. The excellence movement in education has brought some changes through accountability checks and test measures to identify good schools and sound methods to motivate higher teacher and student performance. But no reliable measuring sticks have been developed. Reform of the teaching profession has encountered intense union opposition. School vouchers play a marginal role, while charter schools, which are exempt from some state regulation and operate under more parent involvement, are the most dynamic institutions in the system. They enroll only 2% of the student population and have had only a small impact on the system. The impact of student testing on teacher performance is unclear.

Federal involvement in education has increased under the Obama administration. The American Recovery and Reinvestment Act of 2009 (ARRA) provided additional funds for stabilizing the education budgets of state governments in order to restore displaced education spending in K-12 schools and higher education institutions, as well as to make funds available for school construction and modernization. Altogether, \$73 billion was provided for education and training. But this has to be taken in the context of substantial cuts in state education budgets. The Obama administration continued the most ambitious effort at educational standard-setting by reauthorizing the No Child Left Behind Act initiated by the Bush administration, which mandates testing, teacher evaluations tied to test scores and sanctions (closing nonperforming schools or turning them into charter schools). Under Obama, the terms were somewhat modified, but the goal is still quite ambitious: to prepare all students for college and careers. How this is to be measured is left to the states.

# Management Index

## I. Executive Capacity

### A Steering capability

#### Strategic capacity

Strategic planning  
Score: 9

The resources for strategic planning directly available to the president are impressive. Other than the formal structures in the Executive Office of the President, which have a statutory basis, the White House has an impressive number of senior policy assistants, the most well-known of whom is the assistant to the president for national security affairs, who chairs the National Security Council with a staff of 250. In addition, there are assistants for health care, climate change and energy, intergovernmental relations, urban affairs, political affairs and a legislative liaison with a staff of 440 professionals alone. How much influence is given to long-term, general plans varies with the president and with circumstances. For example, during the Obama administration, long-term fiscal planning considerations have been sacrificed to short-term anti-recession goals. Legislative measures that affect spending and revenues are required to be accompanied by 10-year projections of fiscal impact, approved by the nonpartisan Congressional Budget Office. Nevertheless, the projections often assume future actions (such as permitting the expiration of a tax cut) that are unlikely to transpire. Policies are often designed with heavy emphasis on short-term electoral considerations. For example, the mandates for individual purchases of health care insurance in the Obama Health Care reform will not go into effect until 2014.

Scholarly advice  
Score: 8

Non-governmental academic experts are influential as long as they share some of the ideological assumptions and goals of the government in power. The real avenue of influence for scholars and experts in the U.S. system is to be appointed to a government position or serve in formal or informal advisory roles. This system also affords the research networks or traditions from which these experts come a degree of influence. The Obama administration has made extensive use of tapping the scholarly talent pool, as a number of its high-level appointments show: Larry Summers of the National Economic Council, Secretary of Energy Steven Chu, or Susan Rice, the U.N.

Ambassador, are distinguished academics or researchers from universities or think tanks. The use of academic experts inside and outside of government may best be described as “issue networks” that are based on scholarly credentials, but at the same time serve certain ideological and value positions. It is only the latter that gives issue networks entry into the political arena. There is every indication that the exchange between academic experts and the Obama administration has been intensified. This is particularly true for the fields of economics, environment, climate change and energy, and health care. The Bush administration was widely criticized as ignoring scientific and academic research, and manipulating the membership of advisory committees, to favor conservative ideological positions and business interests—on issues such as stem cell research, the effectiveness of abstinence-only sex education, tax cuts and climate change. The Obama administration demonstrated a more sophisticated recognition of scientific and academic expertise in all these areas and more.

### **Inter-ministerial coordination**

GO expertise  
Score: 9

The closest analogue to a GO or PMO in the U.S. system is the White House Staff. It has vastly extensive resources for assessing and developing legislation – including separate, large staffs for economic policy, foreign and national security policy, and domestic policy. The White House (or the White House Staff, provided it has presidential support) not only has the expertise and authority to return or reject cabinet proposals, but it is itself frequently the source of major policy proposals, with departments and agencies playing only an auxiliary role. The White House is essentially sovereign vis-a-vis the line agencies. It decides how much participation to permit the line agencies, and has generally dominated policy-making on major issues in recent years. In some cases, however, the executive leadership may deliberately decide to leave the formulation of policy to a department or interdepartmental committee, as in the case of the reform of the financial sector, because of the complexity of the issue. In this case, the Treasury Department played a prominent role. On complex legislation, because specific provisions are negotiated within Congress, effective White House influence requires leading or at least overseeing the negotiations between the executive branch, the key congressional committees, and the party leaders in Congress. Obama has been largely successful in this. In the enormously complex economic stimulus, health care, and financial reform negotiations, executive branch negotiators were consistently reasonably attuned to the president’s priorities.

GO gatekeeping  
Score: 9

Cabinet meetings are rarely used for decision-making. The important question is whether legislative proposals from line departments are (a) accepted as presidential proposals; (b) permitted to be submitted as departmental (but not White House) proposals; or (c) blocked from being submitted to Congress. These decisions are made by the president's top aides (i.e., the White House Staff) or by the president. Among White House Staff and departmental officials, the relationships of authority and relative access to the president vary considerably, even within one administration. These things depend on the president's overall strategy and for a particular piece of legislation. The White House is basically sovereign vis-a-vis the line departments and agencies.

Line ministries  
Score: 10

Given that the center of political gravity is the presidency itself, the issue to explore here is the extent to which the White House and the Executive Office of the President involves the line departments and agencies in policy-making. The example of the health reform process demonstrates that this involvement is highly selective. One of the more relevant dimensions in administrative conflict is the cleavage between the career civil service and political appointees within ministries. This conflict has been present ever since the Reagan administration came to power in the early 1980s. The layer of political appointees is generally so thick that civil servants will only thrive on the basis of accommodation.

Citation:

Colin Campbell, "The Complex Organization of the Executive Branch", in: Joel D. Aberbach/Mark A. Peterson (eds.), *The Executive Branch*, New York: Oxford UP, 2005, 243-282.

Cabinet committees  
Score: 9

Compared to cabinets in parliamentary system, the president's cabinet – although an advisory body – plays a relatively limited role in policy-making. This does not mean that there is no preparation of top-level (i.e., involving the president) decision-making meetings. Rather, these advisory processes are structured differently for each president and vary as well from one policy measure to another. The relevant meetings may be chaired by a cabinet member or a high-level White House staffer; this depends largely on the particular personnel and their relations with the president. Under recent presidents, these meetings have been arranged by the president's closest aides in the White House, although Treasury Secretary Timothy Geithner spearheaded the financial system reform. Within the context of the U.S. presidential system, the issue is whether presidential advisory processes, however structured, effectively filter out or settle issues so that the president can focus on strategic policy debates. As long as the president supports the process, the answer to this question is yes,

as is the case with President Obama. In contrast, President Clinton often engaged in massively detailed and wide-ranging policy discussions, demonstrating that this is a matter of personal preference.

Senior ministry  
officials  
Score: 9

Central White House-based actors may include in central decision-making processes senior officials (i.e., career and non-career civil servants) from the 15 departments. This is particularly true for foreign affairs and international economic policy.

Line ministry civil  
servants  
Score: 10

Career civil servants are rarely involved in providing policy proposals related to legislation. In administrative terms, civil servants can be somewhat involved in developing policy proposals, though not without strict supervision by political appointees. Executive branch policy-making is often coordinated by ad hoc interagency committees when it comes to issues not central to the president's agenda. Such committees are chaired by a political appointee in one of the participating agencies, not by a civil servant. The large number of political appointees in the U.S. executive branch is demonstrative of the limited role played by civil servants in this context.

Informal coordination  
procedures  
Score: 10

If White House coordination of policy is seen as an informal mechanism, then most policy coordination is done informally, with teams of shifting members and ad hoc structures. A good example is the Obama administration's policy toward Afghanistan and Pakistan, which was developed primarily by a White House-centered team of national security officials. However, White House coordination is generally not "informal," in the ordinary meaning of that word. Although practices vary enormously, from president to president, and issue to issue, it is likely to involve an advisory committee (sometimes ad hoc) of defined membership (i.e., including an individual performing the function of chair) that holds scheduled meetings with pre-specified agendas, involves staff preparation and briefing papers, and a person responsible for briefing the president with options and recommendations. Given the limited amount of long-term institutionalization of these arrangements, the president's success in setting up and leading effective advisory processes is an important factor in his performance. Understanding these processes requires analyzing particular decisions in blow-by-blow detail and requires inside information, such as extensive interviewing in the White House.

## RIA

RIA application  
Score: 10

The U.S. government provides for extensive analysis of major decisions, within both the legislative and executive branches, and for administrative or regulatory decisions as well as legislation. Regulatory impact assessment is performed by the Office of Management and Budget (OMB) on the executive side and by the Government Accountability Office, the Congressional Budget Office (CBO) and the Congressional Research Service on the legislative side. RIA activities are centrally registered. Under an executive order from the early 1980s, the OMB has a mandate to assess all regulations that executive agencies seek to promulgate. Regulations cannot take effect before a cost-benefit analysis has been performed by the agency and approved by the OMB; the OMB may reject a regulation either because the benefits are insufficient or the costs excessive or because the agencies' analysis is inadequate. This is a highly political process. Under Republican presidents, it was frequently directed towards containing or curtailing the issuing of environmental and work safety regulations by the Environmental Protection Agency and Occupational Health and Safety Agency. Under Obama (as in the Clinton administration) the disposition toward new regulations is far more supportive, as the administration's attitude to the regulation of greenhouse gases by the EPA has shown.

The most ambitious projects in policy analysis were the studies by the CBO on health care reform and climate change. These were not limited to the budgetary impact, but addressed the wider policy consequences, including distributional and employment effects of climate change legislation as well as a study on the regional impact of global warming in the United States. The Congressional Research Service also conducted several notable studies on climate change. The CBO study on health care focused primarily on issues of budgetary impact, but it did touch on many other issues, including coverage.

Needs analysis  
Score: 10

The analytical depth of impact assessment is high, particularly by the non-partisan Congressional Budget Office (CBO) and Government Accountability Office. Even though an Office of Management and Budget (OMB) impact analysis is subject to political strictures reflecting the priorities of the presidential administration, the level of quality required from the agencies is also high. For example, during the debate on health care reform, the CBO developed analytically sound, sophisticated estimates of numerous features of each major proposal in the debate, updating these as significant revisions were

made. These include budget costs, effect on the budget deficit, costs of private insurance coverage, employment, and percentage of the population receiving coverage, health care costs, among other aspects—over various time periods. With respect to regulatory analyses, narrowly defined, agencies are required to provide quantitative estimates of costs and benefits. The analysis on the benefit side includes specifying the need for action.

Alternative options  
Score: 9

Alternative options are usually identified, and assessed in varying degrees of depth. Cost-benefit analysis is a central feature of RIAs within the U.S. system. In a legislative context, the CBO will carry out analyses of major alternative proposals, provided they have significant sponsorship or political support (rank-and-file members can introduce bills, many of which do receive any consideration). However, Congress is under no obligation to consider any alternatives or act on the basis of analytical findings.

### **Societal consultation**

Negotiating public  
support  
Score: 9

The policy process in the United States is open and characterized by the participation of the entire pluralistic spectrum of social and economic actors. The White House maintains direct relationships with interest groups and the media and generally consults widely in the development of presidential proposals. It usually will include likely opponents of these measures, such as utility companies in the case of potential greenhouse gases measures. It will certainly line up the likely supporters. It may or may not use these consultations to shape its proposals, as opposed to merely seeking support. The main focus of political participation, however, is the legislative process in the U.S. Congress. Hearings are scheduled on most legislative initiatives and on general policy issues. The president's program is promulgated through media-based strategies to reach the public or crucial segments of the public that are expected to support presidential initiatives – mobilization is therefore selective. Targeting strategies are crucial to ensuring that interest groups supporting the president are placed on alert in advance of the congressional policy process. The Bush administration usually pursued a strategy of sharp polarization that precluded consensus-based strategies. The Obama administration, in contrast, has gone out of its way to reach a consensus, in the sense of bipartisanship. That is, it has reached out to groups opposed to its line of policy. This was particularly evident in the formulation of the stimulus package and somewhat so in the case of health care policy. In the latter case, the Obama administration communicated not only with service providers, but also with religious groups (on abortion) and unions. The Obama administration's efforts

largely won the support of the pharmaceutical firms and health insurance companies. And although this support constrained the final measure on health care, it was likely a crucial factor in getting the legislation enacted. The administration had little success with the strategy of bipartisanship, as only a few Republicans supported the bill at any stage of the process. In any case, there is no expectation that presidential or congressional consultation with societal groups will lead to consensus among those groups.

### **Policy communication**

Coherent  
communication  
Score: 9

Ever since the more fractured administrations of the 1970s, a coherent communication strategy within an administration that is based on presidential goals has become the norm. This is particularly true with reference to communicating the administration's goals to the public. The Bush administration excelled in managing its public communication strategy in a coordinated and cohesive manner ("staying on message"). To a degree, however, this also reflects an administration that does not tolerate dissent from the core White House position. The Bush administration demonstrated a strong tendency towards "narrow-casting" in an attempt to target and expand his base of conservative voters. This tendency lessened in the final year of the administration, when the financial crisis hit. Here the communications strategy was less coherent as events and reactions became unpredictable.

The Obama administration's communication strategy has also displayed a remarkable amount of discipline and focus, and has been much less polarizing. The attempt at bipartisanship produced a more conciliatory rhetoric. It can be questioned, though, whether the Obama administration managed to explain health care reform effectively to the electorate, particularly how extension of coverage would coincide with cost savings.

## **B Policy implementation**

### **Effective implementation**

Government  
efficiency  
Score: 7

The basic make-up of the U.S. system with its separation of powers is designed to make policy achievement of the president's or any other coherent set of goals difficult. This is true even when the president's party has the majority in Congress given the nature of differing incentives and voter bases. One also has to take into account that an administration can modify its approach to a policy during the

legislative process when compromises with the legislature become necessary. For instance, the Bush administration's initial efforts to stabilize the financial market failed. Only in October did Congress pass the Troubled Asset Relief Program, which was then used to recapitalize the banking sector instead of removing bad assets from banks' balance sheets. The Obama administration also faced resistance to its stabilization program by those objecting to assistance being given to the banking sector. In the end, the financial system was successfully stabilized, and securities markets began to work properly. Altogether, the administration's record on this issue is impressive for the American context.

Ministerial  
compliance  
Score: 10

Department heads serve at the discretion of the president, that is, the chief executive has full control over his appointments. The issue is not so much that ministers get out of line, but that they may get sidelined. Conflicts between the department heads and the White House occasionally emerge, but they are usually limited to a speech or remark that conflicts with presidential policy. Conflicts were expected to arise under the Obama administration between Secretary of State Clinton and the White House, and possibly between Treasury Secretary Tim Geithner and the head of the National Economic Council, Larry Summers. But none of these predictions came true. Department heads toed the White House line, and there was very little open inner-administrative conflict or warfare. There were, however, conflicts between Summers and Christina Romer, who resigned in frustration from her position as Chair of the Council of Economic Advisers. However, department heads have to be cognizant of the wishes of members of Congress, which has strong leverage over their budgets. In minor, administrative and regulatory matters, where there is no clear White House guidance, they may tilt towards pleasing legislative actors.

Monitoring line  
ministries  
Score: 9

Monitoring of departments and agencies is far-reaching, and does not only apply to legislative proposals but also to rule-making. However, monitoring may vary according to the saliency of the issue and the nature of the problem. During the Bush years, the OMB reviewed the performance of more than 1,000 distinct programs, collecting data on more than 6,000 performance measures. President Obama has generally endorsed a strong emphasis on performance measurement, but his administration's methods in this area are not yet well defined.

Monitoring agencies  
Score: 8

There are no semi-autonomous agencies in the U.S. administrative system. Independent regulatory commissions are deliberately set up by Congress outside the departmental system. Regular line agencies without departmental status such as the Environmental Protection Agency (EPA) are not subject to department supervision. Instead, they are accountable directly to the White House and are closely

watched by White House Staff. The same is true for their rule-making authority. The best example of this situation under the Obama administration is the close cooperation of the White House and the EPA in classifying CO<sub>2</sub> as a pollutant to be regulated under the Clean Air Act. The White House explicitly endorsed the EPA's "endangerment finding," which set the regulation of greenhouse gases in motion. Large complex departments with heterogeneous units may display centrifugal tendencies among their units, a problem that the new Department of Homeland Security with heterogeneous units such as the customs service, immigration and naturalization service may be exposed to.

Task funding  
Score: 6

Governors and other state officials often complained that federal mandates require substantial expenditures without providing the necessary funds. In 1995, following the Republican takeover of Congress, Congress passed the Unfunded Mandates Reform Act to curb the practice of unfunded mandates. The act provides for certain incentives for Congress and regulatory agencies to identify potential unfunded mandates in the legislative or rule-making process, but does not prevent Congress or agencies from setting mandates. Coverage is narrow and judicial review limited. There are also exclusions and thresholds in the act, above all exceptions for mandates that are conditions of federal assistance or that arise out of the voluntary participation in federal programs. The act has not done away with mandates, but has curbed direct orders and drawn attention to the issue. The problem of unfunded mandates can best be seen as the result of the attempts to bridge the gaps that exist because of the lack of linkages between federal and state administrative systems. The Obama administration has implemented few measures that impose mandates on state governments. The one exception is health care reform, where there are likely to be substantial additional costs for some states in the expansion of the Medicaid program after 2016, when the federal government will not cover the full costs of such expansion. Some states plan to sue the federal government over a supposed intrusion into state sovereignty, others are planning laws and state constitutional amendments to limit the impact of the reform. The federal government does not take responsibility for ensuring the financial capacity of state governments to perform their functions. State governments have their own revenue sources (not created by the federal government), except insofar as the Constitution maintains and protects and, as independent governments, make their own decisions about taxing and spending in performing them.

Constitutional  
discretion  
Score: 7

The dual nature of U.S. federalism assures a large amount of discretion for lower level governments. Limitations enter through the system of grants-in-aid, the impact of cooperative federalism, the

constitutional authority of the federal government to pre-empt areas of policy or impose obligations on state governments. The relative authority of the state and federal governments is a chronic source of controversy. The federal constitution is “the supreme law of the land.” It reserves authority to the states in many areas, but the interpretation of the constitutional division of authority is controversial and subject to change. In July 2010, a federal court, agreeing with the Obama administration, invalidated an Arizona law that provided for aggressive state level investigation and prosecution of illegal aliens. The U.S. political and legal elite are sharply divided over the question whether the federal government pervasively exceeds its legitimate constitutional authority in imposing decisions on state governments.

National standards  
Score: 6

Due to the dual nature of the U.S. federal system, this question overwhelmingly applies to co-financed federal programs, where the federal government is entitled to set standards. Here the central government asserts its rights to set and monitor compliance with national standards. This applies also to civil rights. The national government has asserted standards of civil rights to most of its grant programs in health, education and welfare. However, there is also a strong movement to give subnational governments more discretion in the delivery of services. The bulk of public services are delivered by the respective local and state agencies, and standard-setting and compliance are carried out local levels with minimal intervention at the hands of the federal government. The most ambitious effort to set standards has been observed in education policy under the “No child left behind” act initiated by the Bush administration. This act mandates various measures including a teacher and schools evaluation process tied to test scores and sanctions (e.g., closing schools or turning them into charter schools). The Obama administration continued this policy by re-authorizing the act.

## C Institutional learning

### **Adaptability**

Domestic  
adaptability  
Score: 8

In a narrow sense, the United States as a world power and creator of many international organizations has naturally developed institutional structures (e.g., from the National Security Council to the United States Trade Representative) that are able to respond to its international obligations. Climate change negotiations have been firmly institutionalized in the Office of Global Affairs in the State Department. The creation of the Department of Homeland Security can be seen as a domestic structural response to the challenges of

international terrorism. As a whole, the international focus on anti-terrorism units and law enforcement strategies has grown considerably. This remains true for the Obama administration. Whether the policies of these units and agencies have been successful or have stuck to multilateral norms is a totally different issue and dependent on the policy choices of each administration. The Obama administration has emphasized multilateralism, although this has led to only minor structural change. The best indication of change is the establishment of the White House Office of Energy and Climate Change Policy, directed by Carol Browner, the former head of the EPA under the Clinton administration. Multilateralism is therefore more a matter of spirit or policy direction than of structural changes. The United States has been less successful (or less willing) in adapting domestic policy-making structures to the nominal requirements of the international trade regime, in some cases resisting compliance with fully adjudicated obligations under the World Trade Organization and the North American Free Trade Agreement. Given the domestic political orientation of most members, Congress has placed low priority on compliance with international obligations.

As a world power, the United States will participate in international coordination and joint reform initiatives to the extent that these fall within the range of its interests. The position of the United States in the international system implies that transnational integration is of less relevance for American strategy. Consequently, the United States not only collaborates in reform initiatives promoted by international fora, but actively tries to determine their agenda. That is, the United States actively seeks and promotes international cooperation on its own terms. Examples include reform of the U.N. Security Council, the U.N. Human Rights Commission as well as reforms of the IMF and the World Bank, and most recently the reform of the international financial system. The United States is also an effective participant in the G-7/8 process. In all areas mentioned above, from international security to human rights, the United States has made contributions. During the Bush administration, the glaring exceptions were international climate change policy and the Rome Statute, the basis for the International Criminal Court. On climate change, the Obama administration has reversed the course, although it is unclear whether Congress will follow its lead. There is little movement toward ratifying the Rome Statute. The most notable change under the Obama administration is the move toward broader international fora such as the G-20 that include emerging market countries such as China, Brazil and India. This trend is also visible in the Major Economies Forum for Climate Change. Altogether this signals a departure from the focus on Europe and the transatlantic arena. This may also imply a reduced reliance on

International  
coordination  
Score: 7

NATO.

### **Organizational reform capacity**

Self-monitoring  
Score: 7

Because incoming administrations have to invent themselves when taking office in the United States, institutional arrangements in the U.S. system are regularly probed and revised. This is particularly true for the administrative bodies at the executive level, where institutional arrangements including those with a statutory basis undergo extensive change with each new president's administration. These institutions also undergo formal as well as informal changes during the course of an administration. The key mechanisms of self-monitoring involve the president's discretionary powers in choosing personnel and defining the structures of authority and access to the president and his closest associates (who act as final arbiters). Administrative and organizational changes under the Obama administration have thus far been minor (e.g., the independent re-establishment of the National Economic Council under Larry Summers). Some more pronounced changes targeting increased oversight in the financial sector were expected as part of the federal government's financial regulatory reform introduced in the fall of 2009. Expected changes included the introduction of an independent consumer protection office to protect borrowers from lending abuses. Contrary to some expectations, however, financial reform did not substantially consolidate existing regulatory responsibilities in the financial services industries or make fundamental changes to the structure of the regulatory agencies.

Institutional reform  
Score: 6

Every U.S. administration is an exercise in self-invention. In this sense, institutional arrangements come under scrutiny every four years. Institutional arrangements, particularly at the top level, are flexible and can be adjusted to the needs of the chief executive. This is also true within departments and agencies. However, the entire institutional set-up can only be changed with the consent of Congress. Congress resists structural change in the executive branch largely because it disrupts the jurisdictions of congressional committees, whose members develop expertise and cultivate political relationships that depend on those jurisdictions for many years. The constraints on institutional change became clear in attempts to change the fractured structure of financial oversight.

## II. Executive accountability

### D Citizens

#### Knowledge of government policy

Policy knowledge  
Score: 6

As one knowledgeable observer recently put it: “The political ignorance of the American voter is one of the best-documented data sets in political science”. Although many of the survey measures, for the sake of long-term comparability, focus on factual knowledge about political institutions, processes and officeholders, there have been many demonstrations that the lack of information extends to matters of policy. However, some scholars have insisted that polarization in American politics has led to greater issue attentiveness among voters interested in politics. George W. Bush was a major figure in both polarizing and energizing the electorate. Polling showed that 50% of voters followed the 2000 election “somewhat closely.” In 2004, the percentage following “somewhat closely” jumped to 66%. In 2008, it increased further to 79%, with 32% following the election “very closely.” What remains unclear, however, is whether increased attentiveness leads to a stronger understanding of policy. The financial crisis, which peaked during the election campaign, elicited an unusual interest in economic and financial issues, though that interest was driven by fears and worries. The debates among presidential candidates also responded to interest in health care legislation. The use of Internet sources, text messaging and social networks helped to address information needs and may have increased the amount and quality of information voters acquired.

Scholars debate how important citizens’ lack of information is for their ability to perform their role effectively. But it seems unlikely that citizens with such large information gaps and misperceptions can be a reliably constructive force in policy-making in the United States.

### E Legislature

#### Legislative accountability

Obtaining  
documents  
Score: 10

The legislature’s right to government documents is well established in the U.S. system of government. Congressional committees have

subpoena power to request documents. However, this power is sometimes limited by claims of executive privilege – which, with respect to confidentiality, was established judicially in the Watergate cases. The privilege applies to documents that reflect presidential decision-making and deliberation that the president believes should remain confidential. During the final months of the Bush administration, there was conflict regarding government information relating to financial institutions under the planned Troubled Asset Relief Program. Under the Obama administration, a similar conflict erupted over the data derived from the stress test for banks. Both of these conflicts were settled by compromise.

In most cases, the information Congress needs for policy-making – including the assessment of presidential proposals – does not fall under any plausible claim of executive privilege, and Congress can obtain almost any information that exists.

Summoning  
ministers  
Score: 10

Department secretaries and other high level officials of the executive branch appear with great frequency and regularity, essentially on request, before legislative committees. In the context of an investigation, committees sometimes subpoena executive branch members to make an appearance. But most appearances are voluntary, motivated by the desire to maintain strong relationships with the congressional committee. This is true even though burdens on high level executives become considerable, with preparation for congressional appearances and the appearances taking up a significant share of executives' time.

Summoning experts  
Score: 10

Inviting outside experts is established practice in the U.S. legislative process and occurs on an everyday basis.

Task area  
coincidence  
Score: 9

The structure of committees in the House of Representatives corresponds only in a rough way to the structure of the executive branch. But the deviations from such correspondence have little or no adverse effect on the ability of the House to monitor ministerial activities and performance – an ability that is, for other reasons, undoubtedly an outstanding feature of the U.S. Congress. With the growing ideological division between the two parties in Congress, the committees' monitoring of the executive increasingly reflects the current political context. The majority party in each chamber (House and Senate) controls the agendas of the committees. Under divided party control of government, monitoring is thus more intense and shaped by political objectives. When the Democrats took over both houses of Congress in 2006, this led to two years of constant criticism and investigation of the Republican Bush administration. With the Democrats winning the presidency in 2008, the congressional scrutiny became less intense, more congenial, and less useful in terms of providing accountability.

Because members of Congress develop large stakes in monitoring and influencing particular programs, the structure of the congressional committee system often functions as a serious barrier to appropriate reorganization of the executive branch. Members of Congress oppose reorganizations that would disrupt their committee- and subcommittee-based relationships with particular programs and their constituencies, and such resistance is frequently a fatal obstacle to reorganization. In the example of financial regulatory reform, committee jurisdiction stood in the way of organizational reform because the proposed abolition of the Office of Thrift Supervision would have resulted in a committee losing its jurisdiction.

Audit office  
Score: 10

The General Accountability Office (GAO) is the independent non-partisan agency of the U.S. Congress charged with auditing activities. It is responsive to Congress alone. The GAO undertakes audits and investigations upon the request of congressional committees or subcommittees or if it is mandated by public laws or committee reports. The GAO also undertakes research under the authority of the Comptroller General. In addition to auditing agency operations, the GAO analyzes how well government programs and policies are meeting their objectives. It performs policy analyses and outlining options for congressional consideration. It also has a judicial function in deciding bid protests in federal procurement cases. In many ways, the GAO can be considered a policy analysis arm of Congress. The executive branch also has significant audit functions. Routine, detailed auditing of budget implementation is handled by the Office of Management and Budget (OMB). In addition, there are 69 offices of Inspector General (IG), assigned to various departments and agencies. The IGs have auditing functions and operate with significant independence from their agencies. Thus there is an auditing office that is responsible exclusively to the legislature, plus additional auditors with other forms of independence from the executive.

Ombuds office  
Score: 8

The U.S. Congress or its members, who cultivate close linkages with local constituencies, effectively function as an ombuds office. A separate institutionalization is not necessary in the U.S. system. Members of Congress each have several staff members – some located in Washington, D.C., and some in the respective state or district – dealing full time with constituents' requests for service. The total number of staffers is estimated to range from 10,000 to 12,000 individuals. A weakness of this arrangement is that it is somewhat informal and the coordination and management of staffers is left up to the individual congressional office. Government agencies do not suggest that clients encountering difficulties should contact their senator or representative for assistance, and the constituency service staff does not develop specialized expertise, except for the most

common categories of request (e.g., social security payments, visas for relatives, and the like).

## F Intermediary organizations

### Media

Media reporting  
Score: 6

Reputable news reporting and news analysis programs are available on radio and TV networks. The information quality of talk shows varies, ranging from infotainment to the serious discussion of issues with experts frequently involved. The emphasis is on an adversarial dialogue. C-Span 1-2 offers in-depth coverage of political proceedings in Congress and of political events in the wider sense, including proceedings at think tanks and academic institutions. A majority of citizens obtain most of their news from television rather than newspapers, and the quality of the national news broadcasts has been in decline, as the emphasis on human interest stories and entertainment has grown and the resources for news gathering have been severely cut.

The most worrying trend for some analysts and commentators is the decline of journalistic standards, especially in certain right-leaning media such as Fox News and some radio stations. These media exhibit pervasive ideological bias and often reckless if not intentional inaccuracy – tendencies that are not confined to identifiable commentary or opinion segments, but also affect news reporting. Their broadcasts amount to outright, polemical campaigning for or against certain political positions and their advocates, without regard for professional standards. Of course, the United States has had polarized, partisan media before (especially in the 19th century) and there are counterweights to the hard-line conservative media, such as the left-leaning MSNBC. Influential late-night comedy-news programs, such as the Daily Show and the Colbert Report, sometimes fulfill a counterweight function despite their role as infotainment shows. Nevertheless, the conservative media are significantly more prominent and influential, with Fox News by far the dominant cable TV news network. In any case, the polarization of the media both reflects and reinforces the general polarization of American political discourse. It may tend to enhance citizens' attention to and participation in politics, at the cost of creating deeper, more severe conflicts. It is certainly not conducive to consensus building and deliberation.

## Parties and interest associations

Party competence  
Score: 7

For Congress, electoral programs are hard to assess, as individual members run their campaigns on their own merits, often emphasizing local concerns. Well-defined party initiatives, such as the Republicans' 1994 Contract with America, are rare. With regard to presidential elections, party platforms, written at the presidential nominating convention, make numerous commitments to specific agenda items, and the winning candidate normally works hard as president to make good on them. These party platforms of course are designed to convey issues and positions that will mobilize support and facilitate electoral success. For the most part, they are broadly consistent. But the programs typically have severe deficiencies in realism and feasibility, promising much more than they can actually achieve. During recent election campaigns, neither party's candidate offered a coherent fiscal plan in which spending, taxation and deficit projections came close to adding up. Instead, unacknowledged, implied or inevitable long-term deficits have been massive, making the candidates' broad claims about their plans, in important respects, bogus. Nevertheless, electing George W. Bush in 2000 and 2004 meant the public would receive tax cuts. The Obama campaign identified major policy issues that it began implementing after being elected: health care reform, a stabilization of the economy and financial markets, climate change, the restructuring of the automobile industry and greater engagement in Afghanistan. What fell by the wayside were higher taxes of affluent households and immigration reform.

Association  
competence  
(business)  
Score: 7

Interest groups advocate policies that promote their members' or constituencies economic and other interests. Such policies may or may not also have credible claims to benefit broader interests of the public. When they do have such claims, it is a major advantage for a group's prospects for getting its policies adopted. For example, pharmaceutical companies can oppose almost any effort to reduce the costs of prescription medicines on the plausible grounds that large profits earned by a relatively few highly successful products provide funds to support further medical innovation. Interest groups have a stake, therefore, in identifying the best policies from the standpoint of serving their own interests while also providing benefits, or at least minimizing costs, for the general public. They also have a stake in presenting these policies in the most persuasive manner.

Association  
competence  
(others)  
Score: 8

Citizens' or public-interest associations' competence in proposing reasonable policy initiatives is unusually high in the United States. This is in part due to the high level of professional staff associations

are able to attract as well as the PR and communication skills they have been able to develop. This holds true for groups such as Friends of the Earth, the Environmental Defense Fund or the Sierra Club. From the standpoint of developing “reasonable” policies, they have the advantage of focusing on broad interests rather than narrow ones as their central mission. They are subject, however, to ideological biases and membership demands that tend to favor extreme views.

Such groups have impressive ability to marshal legal instruments in order to use the courts to enlarge the scope of environmental legislation. A key example thereof is the 2007 Supreme Court case of *Massachusetts vs. EPA*, in which the Court decided in favor of the EPA’s definition of CO<sub>2</sub> as a pollutant and thereby having the authority to regulate it under the Clean Air Act. Environmental interest groups have built on this decision during the Obama administration to push the EPA to regulate CO<sub>2</sub> emissions.

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