



United States Report

Paul J. Quirk, Christian Lammert,
Martin Thunert (Coordinator)

Sustainable Governance
Indicators 2018

©vege - stock.adobe.com

Executive Summary

The twelve-month period ending in November 2017 was a challenging time for the United States. The country's performance on the Sustainable Governance Indicators (SGI) has deteriorated sharply across numerous indicators.

Some of this erosion was the straightforward consequence of the 2016 elections: the election of Donald Trump as president and Republican majorities in both houses of Congress. Neither Trump nor the contemporary Republican party have policy agendas that align well with the normative assumptions of the SGI. Trump campaigned on a platform of "America First" nationalism – promising drastic action on illegal immigration and a moratorium on Muslims entering the country. He raised objections to U.S. participation in NATO and complained that the United States was treated unfairly in its major trading relationships. Despite long-term fiscal imbalances, he promised major tax cuts, a massive infrastructure program, and rejection of spending cuts for middle-class entitlement programs (Medicare and Social Security). He endorsed the long-standing Republican plan to "repeal and replace" the Affordable Care Act (Obamacare), signaled opposition to policies benefiting racial minorities and low-income people, and dismissed concerns about climate change. Congressional Republicans initially espoused alternative viewpoints on some issues, particularly trade, international security and entitlements spending. Given Trump's staunch support among the party's voter base, however, most eventually deferred to his policy positions.

Beyond policy positions, however, both Trump and the Republican-controlled Congress have demonstrated substantial difficulties in capability and execution. By conventional, nonpartisan standards, Trump has proven an incompetent, even dangerously unfit president. The White House has been poorly staffed and managed. The administration lacks experienced leadership in most key positions and been unable to fill many important posts. Trump himself has remained undisciplined, uninformed and prodigiously mendacious.

At the same time, Republicans in Congress have declined to cooperate with Democrats on their major policy goals, yet been too divided to govern effectively without Democratic support. Until the enactment of a major tax cut in December 2017 (after the assessment period of this report), Trump was on

track to become the first modern U.S. president unable to pass a single major law in his first year.

In terms of the SGI, the United States continues to have high scores in some areas of long-term strength, including economic policy, labor market efficiency and innovation. Indeed, the American economy continued to perform well in 2017. However, as a consequence of the policy agendas of the Trump administration and the Republican-controlled Congress, the United States inevitably performed worse in policy areas concerned with social inclusion, the integration of new immigrants, elementary education, family policy, environmental protection, and fiscal sustainability.

With respect to the quality of democracy, the United States continues to exhibit strengths, including equal political rights, candidate and party access to the ballot, and relatively balanced news media coverage and campaign funding. In many Republican-controlled states, however, the 2016 election continued the trend of raising barriers to voter participation for black, Latino and lower-income citizens. The sources of campaign funding, although relatively balanced between the two major parties, became even less accountable with the increased role of independent expenditures funded in large part by extremely wealthy individuals. In addition, voters' access to reliable information has suffered because of the increased prominence of social media as a news source.

The worst scores in this assessment – some radically lower than those from the last year of the Obama administration – are in the areas of governance, especially those of “steering capability.” There is a bad news, good news story: the leadership of the U.S. government has been uninformed, ideologically extreme and reckless, but also relatively ineffective in achieving its policy goals. In its first year, most of the Trump administration's policy achievements have consisted of ordering reversals of Obama-era administrative regulations, using truncated administrative processes that eventually may not withstand judicial scrutiny.

Key Challenges

The presidency of Donald Trump is itself the major challenge facing the United States. From a sustainable-governance perspective, the United States must deal with numerous challenges. Among them a dangerously excessive long-term budget deficit, increased economic inequality, the loss of well-

paying middle-class and working-class jobs, and cost problems and provider shortages in some health care insurance markets. Racial tensions have increased and there has been an explosion of drug addiction (i.e., the opioid crisis). The Trump administration lacks motivation and thereby effective policies to reduce greenhouse gas emissions. Beyond its borders, the United States faces several major foreign-policy challenges centering on North Korea's nuclear weapons program, the Syrian war and Russian expansionism.

The Trump administration and Republican-led Congress have few plans, if any, that credibly address these challenges. In his presidential campaign, Trump's appeals were an incoherent blend of populist nationalism, Tea Party conservatism and sheer puffery with virtually no supporting analysis. He promised to stop illegal immigration, including by building a wall on the Mexican border; to repeal and replace Obamacare; to enact massive tax cuts, while rejecting reductions in Social Security and Medicare spending; to dramatically increase military spending; to cut back regulations, especially on environmental protections; to rebuild the country's infrastructure; to cancel or renegotiate supposedly unfair trade deals; to reduce American involvement in the Middle East; and to limit American support for NATO.

At the end of the first year, Trump had achieved some of his goals: a very large tax cut, primarily for corporations and wealthy individuals, an increase in deportations and sharp reduction in illegal immigration, and cancellation of many Obama-era regulations, effected entirely by administrative means. These successes, however, were limited and qualified. Trump and the Republican-controlled Congress, despite lengthy efforts, had failed to repeal Obamacare. They had failed even to propose the broad outlines of an infrastructure program. The tax bill increased the ten-year budget deficit by an estimated \$1.5 trillion and was hugely unpopular. The regulatory revisions were subject to judicial appeal, with many vulnerable to reversal. In foreign affairs, the United States had lost influence and credibility in several regions of the world. Trade relations were unsettled with China, Japan, Canada and other important trading partners. Trump had also recklessly exacerbated dangerous tensions with nuclear North Korea.

Given the political circumstances, plausible paths toward significant progress are hard to identify. At this point, the main item on congressional Republicans' agenda for 2018 is to mitigate some of the adverse fiscal consequences of the tax bill by cutting spending on entitlement programs. The most bloated programs – Medicare and Social Security – subsidize middle-class retirees and will be difficult to cut; Trump at times has opposed cutting them. For the United States to bring long-term budget deficits under control would almost certainly require not only reversing most of the 2017 tax cuts, but also raising

taxes beyond recent levels – steps that the Republicans will be unwilling to take for the foreseeable future.

After the chaotic first year of Trump's foreign policy, the United States must develop carefully deliberated, stable positions on existing trade relations, the North Korean nuclear weapons program, several Middle East conflicts, the country's role in NATO and other security alliances, and the rivalries with Russia and China. In view of the successful broad-based effort by the Russian government to disrupt and distort the 2016 elections, the federal government and states must harden the security of election systems and strengthen deterrence of such efforts in time for the 2018 elections. The worst-case scenarios of many of these challenges are indeed calamitous. Unfortunately, Trump and his administration will likely remain incapable of developing coherent foreign-policy positions and unwilling to deal seriously with the threat of Russian election interference.

Trump's second year as president will be dominated by the 2018 midterm congressional elections. Almost a year before the election, polling suggests that a building anti-Trump, anti-Republican wave could return control of the House, the Senate or both to the Democratic party. A Democratic House or Senate would effectively nullify Trump's legislative agenda for the rest of his presidency. Beyond that, a Democratic-controlled House would likely vote to impeach him. Although his being convicted in the Senate (requiring a 2/3 vote) appears highly unlikely, Trump's removal from office by one means or another is a possibility. It is a time of extraordinary dangers both to Trump and his presidency and to the rule of law in American politics.

Policy Performance

I. Economic Policies

Economy

Economic Policy
Score: 8

Considered over any extended period of time, the United States has maintained economic policies that have effectively promoted international competitiveness and economic growth. Compared with other developed democracies, the United States has had generally low taxes, less regulation, lower levels of unionization and greater openness to foreign trade. International financial markets have not punished the United States for long-term budget deficits that would have adversely affected other countries. Although its pro-business policies have had some social costs, including the rapid growth of income inequality, the country has enjoyed superior levels of growth, capital formation and competitiveness over the past two decades.

Although the Trump presidency began in January 2017, only two months into the assessment period, President Obama's economic policies (as constrained by Republican opposition in Congress) remained in effect and without major alteration for most of 2017. The United States thus continued a moderately expansionary fiscal policy with the Federal Reserve Board maintaining steady, comparatively low interest rates. The moderately strong economic growth established during the Obama administration continued through Trump's first year. In every agency where Trump has nominated the senior policy official, the need for new regulation – and the value of old ones – is being questioned. Both Treasury reports emphasized deregulating the economy through administrative action, which is clearly the most likely route to reform. Without the specter of new regulations adding to their costs, the business community is recognizing that they can plan for growth. As a consequence, the markets have been exuberant in the first year of the Trump administration.

During the year, Trump and the Republicans failed in efforts to pass a major infrastructure program, and to “repeal and replace” the 2010 Affordable Care

Act (Obamacare), leaving domestic spending relatively constant. Expectations of major tax cuts, focused largely on corporations and high-income taxpayers, helped sustain a buoyant stock market. The United States pulled out of the Trans-Pacific Partnership trade agreement. Increased uncertainties about trade relationships and expected increases in long-term deficits have had negative implications for long-term economic growth.

Labor Markets

Labor Market
Policy
Score: 8

The United States has one of the least regulated and least unionized labor markets in the OECD, with less than 7% of private-sector workers and only 36% of public-sector workers holding union membership. Some states have “right-to-work” laws that prevent unions from requiring membership as a condition for employment and federal labor policy has not responded to evolving management strategies for avoiding union organizing. The low levels of unionization should generally promote employment, by lowering the price of labor. The U.S. government otherwise plays a minimal role in promoting labor mobility or providing support for training and placement. In recent years, federal policies regarding labor and employment have not changed. Trends in local and state government have gone in different directions. Several cities and states with left-leaning governments have sharply increased minimum wages. Other states have adopted “right-to-work” laws (e.g., Michigan) or have imposed constraints on public employees’ unions (e.g., Wisconsin).

Unemployment in 2017 continued its long slow decline since the 2008 and 2009 recession, with the official unemployment rate hovering around 5%. In addition, the tightening labor market led to the first gains in average wages in two decades. However, unemployment rates are far higher among racial minorities and in inner cities. About one-third of recent high school graduates are underemployed and 40% of recent college graduates are in jobs that do not require college degrees.

The Trump administration has proposed cutting some Obama-era training programs and is reducing Labor Department budgets for enforcement of labor regulations. The overall effect of these changes will depend on controversial judgments about the costs and benefits of the training programs and of labor union organization.

Citation:

Center for American Progress, The State of the U.S. Labor market: Pre-August 2015 Jobs Release, <https://www.americanprogress.org/issues/economy/news/2015/08/06/118877/the-state-of-the-u-s-labor-market-pre-august-2015-jobs-release/> CUT OR UPDATE.

Taxes

Tax Policy
Score: 5

The U.S. tax system does not produce enough revenue to eliminate the deficit, tax policy is highly responsive to special interests (resulting in extreme complexity and differing treatment of different categories of income) and the redistributive effect of the tax system is very low. The tax system has performed poorly with respect to equity, both horizontally and vertically. Many high-income earners pay an effective tax rate that, after deductions, is lower than the rate for middle-class earners. The United States derives a large share of revenue from corporate taxes, a fact that has encouraged some firms to move operations abroad. Despite these shortcomings, the U.S. tax system performs well with respect to competitiveness, since the overall tax burden ranks near the bottom of the OECD rankings.

During the 2016 campaign and in 2017, President Trump and congressional Republicans promised major tax cuts and/or “tax reform.” Their ostensible major objectives were to reduce corporate tax rates, reduce rates paid by high-income taxpayers (including those in the highest brackets), eliminate the inheritance tax, reduce taxes for middle income taxpayers, and make up for the losses of revenue by eliminating certain credits and deductions. Through most of 2017, they promised that their tax legislation would be “revenue neutral” and would not increase future budget deficits. Both liberal and conservative economists largely derided the Republican proposals as being unrealistic about revenue effects; liberals sharply criticized them as regressive.

Congress enacted a sweeping “tax reform” measure in mid-December (after the end of the current SGI assessment period), which will go into effect in January 2018. Official estimates from the nonpartisan Congressional Budget Office and the Joint Economic Committee’s bipartisan staff indicate that the law will produce a \$1.5 trillion increase in budget deficits over 10 years. Republicans have discussed cuts in spending, especially entitlement programs such as Social Security and Medicare, to make up some of the losses. It is, however, likely that the effect of the December 2017 tax reform will be a significant loss of long-term fiscal sustainability (which is not reflected in the current indicator).

Budgets

Budgetary Policy
Score: 4

The condition of budget policy in the United States is complex and raises different concerns depending on the time perspective of the assessment. In the depths of the 2008 – 2009 recession, the budget deficit, enlarged by the fiscal stimulus, reached \$1.4 trillion, or 9.9% of GDP. While the deficit shrunk to a

manageable 2.5% of GDP by 2015, recovery was too slow to stimulate vigorous economic growth. At the same time, long-term deficits are by all accounts seriously beyond acceptable levels. As the Congressional Budget Office has testified, “federal debt appears to be on an unsustainable path.” The primary cause of long-term deficits, in addition to the severe limits on revenues, is the growth of the elderly population and the generous terms of the Medicare (health care for the elderly) and Social Security (retirement) programs.

In 2017, under the budget measures enacted in the last year of the Obama administration, the increasing spending on health and retirement programs pushed the annual deficit to the highest level of the last four years (3.6% of GDP). The deficit is projected to increase over the next ten years and reach 5.7% of GDP by 2028 . Spending on Social Security, Medicare and Medicaid now account for about half of the budget. In addition, the new tax law will leave in place many of the “tax expenditures” that benefit some individuals and companies while draining federal revenue.

Although President Trump and the Republicans are proposing cuts in many domestic programs, their effect is far smaller than the projected costs of their tax plans. Thus, as the budget picture is gradually worsening, current policy agendas (including the December 2017 tax cuts) severely exacerbate the country’s long-term challenges.

Research and Innovation

R&I Policy
Score: 7

The United States has traditionally invested heavily in research and development, but the recession and the country’s problematic budget politics have compromised this support. U.S. innovative capacity is a product of funding from a mix of private and public institutions. Certain public institutions stand out, particularly the National Science Foundation, the several federal laboratories, the National Institute of Health, and research institutions attached to federal agencies. In addition, there is a vast array of federally supported military research, which often has spillover benefits. Between 2005 and 2015, total U.S. R&D climbed from roughly \$400 billion to more than \$ 500 billion, or from 2.50 to 2.75% of GDP, of which roughly one-third was direct federal R&D funding.

Recent demands for spending cuts and the across-the-board sequester cuts have resulted in stagnating federal R&D spending, including in the area of basic science. U.S. government R&D spending has declined as a share of GDP and in comparison both to spending by other countries and by the private

sector. Critics have particularly noted the modesty of government funding for energy research, which is critical to the goal of reducing carbon emissions. In 2016-2017, total U.S. R&D spending is at record levels of \$513 billion, while the federal government share of R&D spending is at historic low of \$125,289 or below \$25%.

The Trump administration's budget plans for Fiscal Year 2018 call for sharp cuts in the federal research spending of about 4.5% - except Department of Defense R&D spending, where the increase is projected at roughly 15%. In addition, it has already cut scientific and engineering personnel in environmental and resource related agencies and withdrawn support for alternative energy development.

:
Congressional Research Service (2017), Federal Research and Development Funding: FY 2018, <https://fas.org/sgp/crs/misc/R44888.pdf>

Global Financial System

Stabilizing
Global Financial
Markets
Score: 7

Prior to the Trump presidency, the United States had generally promoted prudent financial services regulation at the international level. This includes participation in international reform efforts at the G-20, in the Financial Stability Board (FSB), and in the Basel Committee on Banking Supervision (BCSC). U.S. negotiators played a major role in developing the Basel III capital rules adopted in June 2011, as well as the liquidity rules adopted in January 2013. The global nature of the recent financial crisis necessitated a multilateral approach and the promotion of a robust financial-policy architecture. The Obama administration took the initiative in transforming the G-20 into a new enlarged "steering group" for global financial policy. This reconfiguration could not have become reality without strong U.S. engagement. Indeed, the U.S. encountered significant resistance in international forums regarding its efforts to establish effective financial regulation.

With respect to the national regulatory framework, U.S. regulatory bodies had been developing rules required by the 2010 Dodd-Frank Act. U.S. regulators generally preferred stronger rules than international standards required (e.g., on the regulation of derivatives). However, lobbying by the powerful financial services industry had weakened U.S. standards.

Significantly, the Trump administration has promised to repeal the Dodd-Frank Act or at least to significantly relax the implementing regulations. More critically, the U.S. has ceased any support for the development of enhanced

international standards by the G-20 sponsored Financial Stability Board (FSB). It may effectively veto any such development; thus, the FSB effort is likely defunct.

Citation:

<https://www.wsj.com/articles/curtains-for-global-financial-regulation-1492037557>

II. Social Policies

Education

Education Policy
Score: 6

The performance of primary and secondary education in the United States has long been disappointing. Historically low high school graduation rates significantly improved over the last two decades, reaching a record high of 82% in 2016 – still a low level for a wealthy country. The education system largely lacks vocational alternatives to high school education. High school students’ performance in science, math and reading remains below most wealthy OECD countries. Yet the educational system is generously funded. Its shortcomings are the result of several factors, including the impact of deficiencies in the home environments of many children in low-income/minority neighborhoods, severe inequalities in school quality between wealthy and low-income areas, a lack of accountability for outcomes in the fragmented system, and effective resistance to school reforms by powerful teachers’ unions.

Federal engagement became more extensive and ambitious during the Obama administration. The federal Race to the Top program promoted test-based national performance expectations, reflecting new standards called the Common Core.

As college and university costs have increased, financial aid for low-income students has failed to keep up with tuition and living expenses. As a result, students from the top income quintile are now at least three times as likely to graduate as those from the lowest quintile. Trump’s budget plans will cut some college loan programs.

The Trump administration’s proposed budget would cut federal education programs by more than \$10 billion. The Department of Education’s total operating budget would be slashed by \$9 billion and spending on secondary-education programs would be redirected to school-choice initiatives – the chief policy goal of Betsy DeVos, the education secretary. President Trump’s

budget would also eliminate the public-service loan-forgiveness program, subsidized Stafford Loans and Supplemental Educational Opportunity Grants.

<http://nymag.com/daily/intelligencer/2017/09/charter-schools-losing-the-narrative-but-winning-the-data.html>

Social Inclusion

Social Inclusion
Policy
Score: 5

The United States has long had high levels of economic inequality, and these levels have been increasing. In recent years, there has been persistent poverty along with exceptionally large income gains for the top 1% and especially the top 0.1% of the income scale. The United States ranks in the top (i.e., worst) five among the 41 OECD countries with regard to the proportion of the population (17.3%) that receives less than 50% of the median income.

A number of Obama-administration initiatives benefited low-income families. The Affordable Care Act (Obamacare) expanded health coverage to a larger share of the low-income population. However, deficit politics and Republican resistance to social spending led to cuts in the food-stamp program. About two-dozen Republican-led states declined to expand Medicaid health care for the poor. The number of children living in poverty rose, with 1.3 million children homeless.

Reflecting an abrupt change in presidential priorities, President Trump's 2018 budget proposed major cuts in programs for the poor – including health care, food stamps, student loans and disability payments. It would exclude undocumented immigrants from receiving the Child Tax Credit or the Earned Income Tax Credit. The plan would also bar federal money for organizations that provide abortions, such as Planned Parenthood. Trump and congressional Republicans have sought to eliminate the expanded low-income (Medicaid) health coverage under Obamacare.

Health

Health Policy
Score: 5

For many years, the U.S. health care system has provided the best care in the world, though highly inefficiently, to the majority of residents – those with health insurance coverage. The system has provided significantly inferior care to the large segment without coverage (especially people of relatively low income, ineligible under the means-tested Medicaid program). In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA, Obamacare). The main goals of the legislation were to lower costs in the health care sector and extend health care coverage to more people. The design of the ACA was essentially to fill gaps in the patchwork of financing

arrangements that were embodied in the existing health care system.

Health care reform has been highly controversial and partisan, both before and after its enactment. Republicans consistently vowed to “repeal and replace” Obamacare from 2010 to 2016, while offering no specific plans for its replacement. Some state governments headed by Republican governors declined to provide the expanded Medicaid coverage to low-income families, even though the federal government would pay 90% of the cost. The Supreme Court narrowly upheld the ACA against two potentially catastrophic challenges. Despite early problems in implementation, the program was proving successful by 2016.

In 2017, the Trump administration and Republican majorities in the House and Senate tried to enact a repeal bill but could not achieve sufficient agreement within the party on a specific measure. The effort was hampered by the Republicans’ unwillingness to consult with Democrats, to hold open hearings on proposals, or to focus on solving the specific problems of the existing program. Although the ACA has gradually become quite popular, the potential for continuing efforts at repeal will hamper the stabilization of health care insurance markets. Trumps tax reform will eliminate major tax subsidies in the health care system, especially for low-income people. This will result in a higher number of uninsured people.

Citation:

Kaiser Family Foundation, The Affordable Care Act’s Little-noticed Success: Cutting the Uninsured Rate, 2016, <http://kff.org/uninsured/perspective/the-affordable-care-acts-little-noticed-success-cutting-the-uninsured-rate/>

Families

Family Policy
Score: 7

The United States ranks near the bottom of the developed world on many measures of direct governmental and regulatory support for working mothers. The Family and Medical Leave Act of 1993 requires employers with at least 50 workers to allow 12 weeks of unpaid leave for child care. This measure has not proven highly effective, partly because of narrow eligibility criteria.

Nevertheless, the United States provides significant support for families with children, largely through tax benefits. The policies have the greatest effect for poor families, especially single mothers, partly because of low governmental tolerance for welfare dependency. The Obama administration increased support provided through the Child Care and Development Fund (CCDF), a block grant going to state governments, by \$2 billion. As of 2011, tax benefits for families with children included a dependent-related exemption, a child tax credit, an earned-income tax credit and a child- and dependent-care tax credit,

as well as two tuition-related tax benefits for post-secondary education. As a result, effective child-care costs as a percentage of income were lower in the United States than in most OECD countries, and for low-income single mothers, much lower.

From 2011 to 2015, the Obama administration called for expanded family leave polices and more generous support for child care, but Republicans effectively blocked legislative action. The United States has been slipping behind other advanced economies with regard to the percentage of women in the labor force, falling from seventh to 20th place in the OECD by 2015. The Trump administration and Republican-controlled Congress will not increase and may cut federal support for working mothers.

Trump's first budget proposal includes the creation and funding of a program to provide all mother and fathers with six weeks paid time off after the birth or adoption of a child.

Pensions

Pension Policy
Score: 7

The Social Security retirement program is the main public pension system, complementing various employer-based pension plans, tax-subsidized retirement saving plans (401k plans) and private retirement accounts. Social Security is funded by mandatory employee and employer contributions, totaling 12.4% of wages, on wages up to approximately \$120,000 per year. The wage replacement rate of the public system is on average 45%, below the OECD average, though with higher rates for people with lower incomes. Benefits from company-based and private accounts raise the wage-replacement rate to 80%. However, 78 million Americans have no access to company-based retirement plans. In addition, the financial crisis hit the asset base of pension funds, resulting in current or expected future failures to make full payments by many private employers. A long-term Social Security funding shortfall has been politically intractable, with Democrats blocking benefit cuts (including reductions of scheduled benefit increases) and Republicans blocking increases in the payroll tax.

With respect to the three goals of pension systems, the U.S. pension system is partially successful in reducing poverty among the elderly. (The poverty rate among the elderly is high by OECD standards, but not as high as the general U.S. poverty rate.) The system is hard to assess with respect to intergenerational equity. Historically, each succeeding retirement cohort has received generous subsidies from current workers, but the growth of the elderly population threatens coming retirement cohorts with potential losses of expected benefits. The system is currently at risk with respect to financial

sustainability. President Trump has given mixed signals regarding his support for cost-cutting reforms of the Social Security system. After the December 2017 enactment of major tax cuts, cuts in entitlement programs may be on the agenda of the Republican-controlled Congress in 2018.

Integration

Integration Policy
Score: 5

Prior to the Trump presidency, on the basis of data provided by the Migrant Integration Policy Index, the United States was ranked ninth out of 31 analyzed countries with regard to overall integration policy, but first with respect to anti-discrimination laws and protection. The United States also ranked high on the access-to-citizenship scale, because it encourages immigrants to become citizens. Legal immigrants enjoy good (but often low-paid) employment opportunities and educational opportunities. However, the United States does less well with regard to family reunification. Many legal permanent residents cannot obtain visas for other family members.

A large fraction of the immigration to the United States has consisted of illegal immigrants, most of whom have crossed the border from Mexico and who may live, work and pay taxes in the United States for their entire adult lives without ever becoming legal residents. These illegal immigrants account for nearly one-third of the immigrant population, numbering 12 million to 15 million individuals or 3% to 4% of the country's overall population. They have in effect been tolerated (and even virtually invited by the ease of illegal entry) for their economic contributions, often as agricultural workers or in low-paying service occupations. Children of illegal immigrants attend public schools and businesses that employ illegal immigrants have not been subject to effective sanctions.

Events in 2016 and 2017 profoundly increased the insecurities faced by large categories of immigrants. In 2016, the federal courts blocked an Obama administration order that would have allowed several million current undocumented immigrants to remain in the country indefinitely.

The Trump administration has taken numerous major actions on immigration during 2017. The administration has banned nationals of eight countries, most majority-Muslim, from entering the United States and reduced refugee admissions to the lowest level since the resettlement program was created in 1980. In comparison to the last two years of the Obama administration, the new administration increased arrests of unauthorized immigrants in the U.S. interior. The administration also canceled the Deferred Action for Childhood Arrivals (DACA) program, which is currently providing work authorization and temporary relief from deportation to approximately 690,000 unauthorized

immigrants brought to the United States as children. The U.S. government also ended the designation of Temporary Protected Status for nationals of Haiti, Nicaragua and Sudan, and signaled that Hondurans and possibly Salvadorans may also lose their work authorization and protection from removal in 2018.

Even more concerning, both as a presidential candidate and as president, Donald Trump has made intense, categorical opposition to immigration a centerpiece of his policy agenda. It is difficult to say how this active hostility toward immigration at the presidential level will affect, for example, educational and job opportunities and support for legal immigrants. In any case, Muslim, Latino, and other immigrant communities have experienced a massive increase in uncertainty about their status and acceptance.

Citation:

Migration Policy Institute (December 2017), Immigration under Trump: A Review of Policy Shifts in the Year Since the Election, <https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts> (accessed December 2017)

Safe Living

Safe Living
Conditions
Score: 4

The United States invests massively in efforts to protect citizens against security risks such as crime and terrorism. In the years after 9/11, the United States built an extraordinarily large security establishment centered in the Department of Homeland Security, the Federal Bureau of Investigation, the Central Intelligence Agency and the National Security Agency. In 2013 and 2014, the Snowden leaks revealed massive, largely unauthorized National Security Agency (NSA) surveillance of Americans' telephone and internet communications. Although little evidence has been provided regarding the concrete achievements of this surveillance program, policymakers had not moved to impose major limitations on surveillance authority by November 2016. The US has suffered attacks from homegrown terrorists. In addition, security officials report that actors associated with the Russian government have hacked into computer systems of the Democratic party, the Clinton campaign, and other political organizations.

The government has had less success dealing with two other kinds of violence. First, a number of large cities are plagued by homicides, primarily in inner city black and Latino neighborhoods. New Orleans, St. Louis, Baltimore, Detroit and Chicago all number among the world's 50 cities with the highest homicide rates. Second, there are repeated instances of individuals conducting large-scale violent attacks on civilians in public spaces, killing large numbers of people, often using semi-automatic weapons with large ammunition clips. Under pressure from the National Rifle Association and its mass membership, Congress has failed to pass legislation tightening weapon regulations.

In addition, the 2014 fatal shooting of an unarmed black teenager by a police officer in a St. Louis suburb drew attention to a possibly growing phenomenon of excessive police violence, especially against African Americans. The Black Lives Matter protest movement gained momentum during 2015, highlighting the insecurity of racial minorities vulnerable to harassment or violence by local police departments. Law-enforcement sources have suggested that the additional scrutiny of police practices has inhibited police effectiveness and led to increases in crime in certain areas. In terms of actual casualties and loss of life, the frequency of mostly black-on-black inner-city violence is by far the greatest failure to provide safe living conditions.

In his inaugural address, Trump provided a dark picture of crime in the United States and called for a tough on crime strategy. Trump's dark portrait of America, however, comes at a time when the national crime rate is near historic lows – 42% below what it was in 1997.

Global Inequalities

Global Social
Policy
Score: 6

The United States is an important player in global social policy because it provides a large share of the world's development assistance. Relative to the size of its economy, however, its efforts lag behind those of most OECD democracies. For most of the postwar era, U.S. foreign aid has had four features that have reduced its impact on economic development and welfare in poor countries: It has been modest in amount relative to national income; it has been heavily skewed toward military assistance; it has not always been coordinated with assistance from international organizations; and – at least with regard to food assistance – it has often been designed to benefit U.S. agricultural, shipping and commercial interests along with aid recipients.

Presidents Bush and Obama have both made major efforts to reorient U.S. foreign aid. The Bush administration accomplished a transformation of aid policy by reducing the emphasis on military spending, increasing health-related assistance, and focusing economic assistance on countries with stable democratic political systems and a commitment to long-term pro-business development strategies. President Obama continued the Bush-era effort focusing aid efforts on economic development, food security and poverty. In 2016, Congress passed a bipartisan Global Food Security Act committing U.S. foreign policy to focus on hunger and poverty in developing countries. The Trump presidential campaign stressed economic nationalism and the president is pushing to reduce foreign aid by up to 37% and there are reports that some officials in the administration are seeking to merge USAID with the State Department.

III. Environmental Policies

Environment

Environmental
Policy
Score: 4

The United States has had ambitious environmental programs since the early 1970s. By the 1990s, major enactments covered the entire range of significant environmental concerns, including water resources, wetlands, endangered species and protection of forests. In some areas, such as hazardous-waste management and new sources of air pollution, environmental controls have imposed excessive costs. The issue of climate change, however, requires the implementation of costly controls for the sake of benefits that will occur years or even decades in the future and that will affect the rest of the world as much as the United States itself.

In his 2008 and 2012 election campaigns, President Obama promised to make effective action on climate change a major priority. In 2009-2010, he pushed for a major cap-and-trade bill, but the measure failed in the Senate. Nevertheless, a number of constructive developments occurred. The Environmental Protection Agency (EPA) has imposed several major measures, including increased fuel-economy standards for cars and light trucks, and carbon standards for new coal plants.

In November 2015, President Obama announced that the United States was rejecting the proposed Keystone XL Pipeline that would have carried bitumen produced from tar sands in Alberta, Canada, for processing into oil in Texas. Because producing oil from tar sands has high energy costs, environmentalists criticized the project as undermining the effort to reduce carbon emissions.

The Trump administration has been a rapidly escalating disaster for environmental policy. Trump has embraced an extreme version of climate-change denial and declared that the United States will withdraw from the Paris Climate Agreement. Although some of the more liberal states will attempt to continue reducing carbon emissions, no national action can be expected during Trump's presidency. Indeed, Trump has promised to rejuvenate the coal-mining industry, an economic absurdity.

Meanwhile, Trump has appointed hard-liner opponents of environmental regulation from industry to top environmental positions. His EPA has ordered the cancellation of numerous Obama-era environmental regulations – actions that may, in the end, be struck down by the courts. It has decimated the EPA's

scientific and expert staff – with more than 200 already departed. In addition, the Trump EPA is unlikely to enforce many regulations that remain on the books.

Global Environmental Protection

Global
Environmental
Policy
Score: 3

The Trump administration represents a sharp reversal of the U.S. role on international environmental issues. From the late 1960s to the early 1990s, the United States exercised leadership on a wide range of international environmental issues. The European Union was often a reluctant participant, although it eventually ratified all the significant international agreements during the period. However, the 1997 Kyoto Protocol on greenhouse gases (GHGs) was a turning point, as the Clinton administration signed the protocol, committing the United States to a schedule of emission reductions, but later abandoned an evidently doomed effort to win Senate ratification. In 2001, the Bush administration formally withdrew the United States' endorsement of the protocol. Like most other countries, the United States has failed to achieve the GHG reductions it called for.

The Obama administration has sharply reversed Bush's policy direction on environmental issues for the executive branch, especially with regard to climate change. Limited support from Congress and the public have constrained U.S. positions in international negotiations. Nevertheless, the U.S. rejoined the United Nations process on climate change at Copenhagen in 2007 and Cancun in 2010. In 2013, the United States reached an important bilateral agreement with China to limit the use of hydrofluorocarbons. In November 2014, it committed to reducing total U.S. carbon emissions by 26% to 28% in comparison with 2005 levels. Although the United States played a leading role in the December 2015 U.N. Conference on Climate Change (COP21), it still lacks a comprehensive national carbon-pricing policy.

In his presidential campaign, Donald Trump denied the reality of human-driven climate change and vowed to abandon costly policies designed to control greenhouse gases. As president, he has declared the administration's intention to abandon the international climate-change regime. Although several states (most notably California) have indicated their intention to continue progress in reducing carbon emissions, under Trump there is likely to be no leadership nor much cooperation from the U.S. federal government in international climate-change efforts.

Quality of Democracy

Electoral Processes

Candidacy
Procedures
Score: 10

Procedures for registering parties and candidates are fair and nondiscriminatory. State governments determine the requirements for ballot access, so the details vary across states. All states, however, require a party or candidate to collect signatures on a petition and to file the petition by a specified deadline. Parties and candidates who meet the requirements are included on the ballots. In addition to the dominant Democratic and Republican parties, several minor parties or independent candidates are often included. In some cases, the ballot-access requirements may be a burden for smaller parties or independent candidates. But the single-member-district, plurality-election system precludes victory by such participants anyway. In general, ballot access has not been controversial, and no major problems regarding ballot access have been reported in recent elections. In the 2016 presidential election, a Green party candidate who received about 1% of the popular vote was on the ballot in regions accounting for 480 out of the total available 538 electoral votes. Libertarian party candidate Gary Johnson was on the ballot in all 50 states.

Media Access
Score: 7

In a formal and legal sense, media access is fair, although the U.S. media exhibit some significant biases. There are only modest publicly funded media: the Public Broadcasting System (PBS, for television), National Public Radio (NPR) and C-SPAN. Most media organizations are privately owned, for-profit enterprises, independent of the government and political parties.

Media content reflects several biases. In election campaigns, media coverage of the major candidates and parties generally reflects the strength and popularity of the competing campaigns, with more favorable coverage going to the leading candidate, regardless of party.

Some media, such as the MSNBC cable news network, have a strong liberal and Democratic party bias. Others, most importantly Fox News Channel, have an fervent conservative and/or Republican bias. During the 2016 campaign and the first year of Trump's presidency, Fox News has broadly adopted Trump's often false and misleading rhetorical positions – including his claim that outlets including CNN, the New York Times, and the Washington Post are

providers of “fake news.” Based on neutral fact-checking organizations, Trump is by far the most prolific liar in modern U.S. political history, but Fox News and some far-right websites regularly repeat his claims and rarely question them. Responsible conservative commentators have noted the abandonment of journalistic standards in a large segment of right-wing news media.

Importantly, in election campaigns, media messages are often dominated by paid advertising. Such advertising can reflect massive imbalances in the fundraising capabilities of the opposing candidates or parties, with a modest, inconsistent advantage for the Republicans. In an unusual feature, Donald Trump had a strong advantage in free air-time on news media because audiences were interested in his frequently extreme rhetoric at campaign rallies.

During the 2016 campaign, for the first time, citizens reported getting their information through social media, especially Facebook and Twitter, as often as from traditional news sources. Social media proved highly amenable to the spreading of false information. In particular, Facebook estimates that more than 125 million individuals viewed content that was created by Russian-sponsored accounts seeking to promote Trump’s election, generally by promoting false stories. (It is possible, but far from clear, that this and other Russian interference influenced the outcome of the election.)

The unprecedented biases and distortions in right-wing media and the vulnerability of social media to false news indicate that citizens’ access to reliable information has become problematic.

Citation:

<https://www.brookings.edu/research/how-to-combat-fake-news-and-disinformation/>

Voting and
Registrations
Rights
Score: 6

Voter registration is subject to regulation by the federal government, but it is administered by the states. Most discriminatory practices have been eliminated through federal regulation and enforcement over the last 50 years. Convicted felons are ineligible to vote in many states; non-citizen residents are not permitted to vote, although permanent residents are encouraged to become citizens.

Between 2011 and 2016, Republican-controlled legislatures in over half of the states have enacted or considered measures that have made it harder for some groups to vote – mostly by upgrading the identification requirements for voter registration or by reducing opportunities for mail-in and early voting. Federal courts have struck down or delayed implementation of several state measures, but also have declined to delay others. In 2013, the U.S. Supreme Court struck

down a 2006 congressional 25-year extension of the section of the Voting Rights Act that required specified states or counties with a history of discrimination to pre-clear changes in voting laws with the U.S. Justice Department. The Justice Department can still challenge discriminatory practices in court, but cannot prevent their initial adoption. During 2015 and 2016, registration procedures have been highly controversial, with bills to restrict registration or (less often) to facilitate it under consideration in many states. Some Republican-controlled states reduced the number of polling places, resulting in several-hour waits in minority and low-income areas. Long lines clearly reduced the Latino and African American vote in certain areas in the 2016 elections. The Trump Justice Department has not challenged such voting restrictions.

Party Financing
Score: 6

The U.S. system of political finance has evolved to become only partly transparent. At the federal level, campaign-finance law is enacted by Congress and enforced by the Federal Election Commission (FEC). The Federal Election Campaign Act of 1974 and the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act) established a strictly regulated and transparent system to monitor contributions to candidate campaigns and political parties. However, so-called independent expenditures (spent on behalf of a candidate, e.g., for advertising, without coordination with the candidate) have been subject to fewer, and steadily diminishing, constraints. More significantly, in the 2010 Supreme Court ruling *Citizens United v. Federal Election Commission*, the court rejected any limits on private advertising in election campaigns.

As a result, recent elections have seen the rise of so-called Super PACs – political action committees able both to make unlimited contributions on behalf of parties or candidates, and to receive unlimited contributions from individuals, corporations, unions or other entities. Neither the contributor nor the candidate or party can be held accountable. In the 2014 *McCutcheon* case, the Supreme Court went further, striking down the limit (then set at \$123,200) on aggregate contributions by an individual directly to political parties or candidates (as opposed to independent groups).

Candidates of both parties, though especially Republicans, have relied increasingly on independent expenditures originating from extremely wealthy individuals or large businesses. In some cases, the donations are laundered through intermediary organizations to obscure their source.

Popular Decision-Making
Score: 8

Popular decision-making mechanisms do not exist in the United States at the federal level, but are strong for some state and local governments. The federal government does not have any provision for citizen initiatives or referendums. Twenty-four of the 50 state governments and many local ones provide rules for some forms of direct democracy. Ballot measures provide citizens the

opportunity to discuss and vote on policy issues at the local level and state level. In around 30 states, petitions can force special elections in which voters are asked to remove or retain a slate of local elected officials. In several states, a recall with sufficient signatures can launch a by-election for any reason. Some states or cities have adopted measures granting or restricting rights for the LGBTQ community, legalizing marijuana, imposing or removing limits on taxes, and other provisions.

Access to Information

Media Freedom
Score: 7

The United States has long upheld an unusually rigorous version of media freedom, based on the language of the First Amendment to the U.S. Constitution. In general, government interference in the media sector has been nearly nonexistent. News organizations are rarely subject to damage suits, even for clearly false accusations against government officials. Because judicial precedents virtually prohibit “prior restraint,” they are rarely enjoined from publishing information – even if a source illegally provided it. The United States does not have a national “shield law” protecting the confidentiality of journalists’ sources (and barring punishment for a journalist’s refusal to reveal them), but most states offer such protection.

Recent developments have placed journalists under new pressure. Conflicts have occurred between press freedom and national-security and counterterrorism efforts – including government surveillance of journalists and attempts to compel reporters to reveal the sources of leaked information.

Both in his presidential campaign and as president, Trump has threatened news organizations in various ways for critical coverage, which he dismisses as “fake news.” He has demanded (unsuccessfully) that critical reporters be fired, threatened antitrust action against the owner of the Washington Post (though no such action has been taken) and suggested that a major television network might be denied its broadcast license (even though over-the-air TV stations, not networks, have licenses). He has also excluded reporters he regarded as unfriendly from campaign events or White House press briefings. By late 2017, there have been no apparent cases of substantial punishment or censorship of news organizations, but the president’s lack of deference for press freedom has been widely regarded as dangerous.

Media Pluralism
Score: 8

The media market is characterized by pluralism in the electronic and broadcast sectors. Publicly funded television and radio networks provide high-quality programming but have modest resources for news gathering. There are strong television-news networks on both the left (MSNBC) and the right (Fox News) of the political spectrum. Within the private media, an unprecedented consolidation has occurred in recent years. The number of independent

television-station owners has dropped by 40% since 1995. During the same period, the number of commercial radio stations has dropped by 36%. Just five big media corporations control nearly 75% of primetime viewing. In addition, there has been a steady decline of competition in the print media, especially with regard to local newspapers; few cities today have more than one newspaper.

The main challenge with respect to pluralism is the decline in financial resources available for actual news gathering and reporting, as opposed to commentary. As an unfortunate consequence, an increasing proportion of news coverage consists of statements made directly by politicians or public officials, often without filtering or analysis by reporters. The rapidly increasing use of mobile phones as a principal means of accessing news reduces the depth of the reporting people receive.

Access to
Government
Information
Score: 7

The Freedom of Information Act (FOIA) allows citizens a high degree of access to documents and files held by federal agencies. Various categories of information are exempt, such as information related to national defense, personnel rules and practices and ongoing criminal investigations. Administrators have considerable discretion in permitting access, as citizens and researchers have difficulty knowing when relevant information has been withheld.

The Obama White House reported that it had reduced FOIA request backlogs and denied fewer requests than the preceding Republican administration. Moreover, the Obama administration generally responded to requests from Congress for internal documents, making fewer claims of “executive privilege.” Yet, in 2013 and 2014, the Obama administration denied or delayed a record number of such requests, in many cases on national-security grounds. In 2015, Congress debated a Freedom of Information Oversight bill that would tighten FOIA procedures and standards.

Early evidence of the Trump administration’s approach to providing information is alarming. Both as candidate and president, Trump has refused to disclose his income tax filings – a departure from the nearly consistent practice of the last half-century. His agencies refused to provide information on past lobbying activities to the Office of Government Ethics, which was legally responsible for examining the information to guard against conflicts of interest. Trump attacks the press almost daily as corrupt and biased. At the end of the study period, it is too early to assess the administration’s response to FOIA requests, but all evidence points to a drastic decline in good-faith compliance.

Citation:

<https://www.newyorker.com/news/ryan-lizza/how-trump-broke-the-office-of-government-ethics>

Civil Rights
Score: 6

Civil Rights and Political Liberties

The emphasis on protections from intrusion by the state has been compromised significantly as a result of the anti-terrorism measures following the attacks of 9/11. The Patriot Act, widely reviled by civil-liberties advocates, has taken a more balanced approach than is generally recognized, although some surveillance and investigative procedures have opened the way for abuse. The more significant compromises of privacy protections resulted from actions of the Bush administration, notably the ordering of widespread wiretapping and internet surveillance by the National Security Agency, which was entirely without statutory authority. The Obama administration did not produce a sweeping change to these actions, however. Congress also authorized parts of the National Security Agency's (NSA) wiretapping program, at least as it pertains to foreign suspects.

From 2014 to the present, African-American activists (the Black Lives Matter movement) have charged urban police departments of reckless, sometimes fatal use of force against black citizens. Despite some scandalous episodes captured in video recordings, according to a controversial study by Harvard economist Roland Fryer, empirical evidence has not shown a general pattern of racial bias in police use of lethal violence (shootings). Critics have argued that police training overemphasizes avoidance of risk to the officer, resulting in overly quick violent responses. In 2015, police review boards (for investigating citizen complaints of police abuse) were strengthened in some cities. In addition, a bipartisan group in Congress made progress promoting a sentencing-reform bill that would reduce excessive sentences for nonviolent offenses.

Trump has rejected complaints about excessive use of force by police (endorsing the counter-slogan Blue Lives Matter) and withdrawn support for legislative efforts at sentencing reform.

President Trump's proposed budget assumes a major reduction of staff in the civil rights division of the Justice Department, the section charged with enforcing laws against discrimination and protecting the right to vote. Since taking office, Attorney General Jeff Sessions has rescinded Obama-era guidance on combating discrimination against transgender students and announced his intention to end the civil rights division's aggressive oversight of police departments, even seeking to rescind a court-monitoring agreement

overseeing police in Baltimore. The budget proposal also makes no mention at all of fighting discrimination against people with disabilities, a prominent change from the Obama-era 2016 request, which described it as a major priority.

Citation:

<http://www.nber.org/papers/w22399>

<https://scholar.harvard.edu/jfeldman/blog/roland-fryer-wrong-there-racial-bias-shootings-police>

Political Liberties
Score: 9

The United States generally has a strong record of protecting political liberties. The protections cover all of the recognized political freedoms of speech, association, voting, and pursuit of public office, and extend even to extreme groups such as neo-Nazis. Religious freedoms are protected even for religious fringe groups. In contrast with most developed democracies, the United States' constitutional free-speech doctrine does not permit laws banning hate speech.

In one significant limitation to political rights, convicted felons are barred from voting in nearly all states, although usually not permanently. Additionally, while the government allows protest demonstrations for all kinds of causes, even when they may become disruptive or disorderly, local police have sometimes confined demonstrators to locations far removed from the target events (e.g., during G-8, G-20 and WTO meetings).

From 2015 to 2017, there was increasing media and political attention on the practice on many university campuses of imposing restrictions on speech deemed to offend one or more groups – primarily African Americans, LGBTQ or women. Some universities have barred conservative speakers from making appearances on campus, mostly citing security concerns that arise from left-wing activists' efforts to disrupt the events. According to the non-profit Foundation for Individual Rights in Education (FIRE), a majority of colleges and universities have speech codes with provisions that have been ruled unconstitutional by federal courts.

Recently, there have been reactions against such university censorship. Many mainstream liberal media outlets have been highly critical of this kind of censorship, but some have given both sides the opportunity to state their positions. The Trump administration's Department of Education (DOE) has withdrawn a highly controversial, supposedly advisory letter that ordered universities to weaken free speech and due process rights on campus; the Obama administration had issued it to strengthen anti-discrimination and sexual harassment enforcement, backed by the threat of losing federal funds. The House Judiciary Committee, controlled by Republicans, had challenged the Obama administration's interpretations of the law and warned campuses to ensure that their speech codes do not violate constitutional rights. FIRE reports

Non-
discrimination
Score: 8

that the number of universities with unconstitutional speech codes has declined for several years.

The U.S. federal and state governments have enacted many laws prohibiting discrimination. At the federal level, enforcement is centered in a Civil Rights Division within the Justice Department and an independent Equal Employment Opportunity Commission. While the origins of these policies are found in the civil rights movement of the 1960s, the framework of protection has been extended from racial minorities to women, the aged and disabled, and in some state and local contexts, LGBTQ. The Obama administration made progress with regard to gender equality.

The federal government has not actively pushed affirmative-action policies, such as preferential treatment for disadvantaged groups, since the Clinton administration. The U.S. Supreme Court has imposed restrictions on state-university practices that favored black or Latino students in admissions, while upholding state policies that barred race or ethnicity as considerations in admission. In general, liberals and conservatives disagree on how much the persistence of unfavorable outcomes for African Americans in educational achievement, employment status, income, incarceration and other areas is a consequence of ongoing discrimination despite existing legal protections.

The Trump administration has announced reversals of some Obama-era anti-discrimination policies. The Justice Department has announced that an anti-discrimination law does not protect transgender workers, opening people up to potential discrimination in the workplace based on their gender identity. In 2017, Donald Trump signed a directive reinstating a ban on transgender individuals serving in the military. Transgender troops had been able to serve openly since the Obama administration lifted the ban in 2016. The Trump administration and the Republican-controlled Congress will undoubtedly minimize anti-discrimination enforcement. Attorney General Jeff Sessions was a strong opponent of anti-discrimination policies while he served in the Senate. The administration is also appointing numerous very conservative judges. It is possible that past anti-discrimination achievements will be eroded.

Rule of Law

Legal Certainty
Score: 6

There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty either. Some uncertainty arises as a consequence of the country's adversarial legal system. Policy implementation is one area that suffers. Adversarial tendencies have several negative effects, such as supplanting the authority of elective policymaking institutions, reducing administrative discretion, causing delay in decision-making, and increasing reliance on courts and judges to design

policies and/or administrative arrangements. On important issues, a government agency will undertake a lengthy, highly formalized hearing before issuing a decision. The resulting action will be appealed (often by multiple affected parties) to at least one level of the federal courts, and firms will not know their obligations under the new regulation for at least several years.

In recent years, certain constitutional issues have increased uncertainty across a range of issues. Citing Congress's failure to resolve major issues, President Obama has acted unilaterally, taking an expansive view of executive discretion, in a variety of areas. In 2015 and 2016, federal courts nullified Obama's expansive executive actions on undocumented immigrants and coal-fired power plants, indicating that unilateral presidential action can result in legal uncertainty. In 2017, President Trump adopted an even more aggressive approach to unilateral action, canceling many Obama-era regulations, especially on the environment. Because these actions will be subject to judicial appeals, businesses and individuals will have difficulty assessing their regulatory obligations for at least several years.

Citation:

<https://www.degruyter.com/view/j/for.2017.15.issue-3/for-2017-0037/for-2017-0037.xml>

Milkis and Jacobs

Judicial Review
Score: 9

The United States was the originator of expansive, efficacious judicial review of legislative and executive decisions in democratic government. The Supreme Court's authority to overrule legislative or executive decisions at the state or federal level is virtually never questioned, although the Court does appear to avoid offending large majorities of the citizenry or officeholders too often or too severely. At least in the United States, however, judicial review does not simply ensure that legislative and executive decisions comply with "law," in some neutral or consistent sense. The direction of judicial decisions depends heavily on the ideological tendency of the courts at the given time. The U.S. federal courts have robust authority and independence but lack structures or practices to ensure moderation or stability in constitutional doctrine.

In recent years, the Supreme Court has been sharply divided, with a 5 to 4 or larger conservative majority on most issues, while still providing narrow majorities for liberal decisions on some issues. Either way, the Court's decisions clearly go far beyond any well-established legal principles, and in effect impose the constitutional views or policy preferences of the court majority. A series of decisions on campaign finance, culminating in the notorious 2010 Citizens United decision, has rendered campaign-finance regulation almost without substantive effect. The Court's 2015 decision requiring states to permit same-sex marriage set aside more than 200 years of U.S. public policy. The death of conservative Justice Antonin Scalia in early

2016 left the court with a 4 to 4 liberal-conservative split, hindering its ability to rule on a considerable number of issues. In a sharp break from past practice, the Republican-controlled Senate refused to act on Obama's nomination of a replacement for more than a year. After the 2016 election, President Trump nominated and the Senate confirmed a conservative Republican justice. The Senate's handling of the appointment is an indicator of the partisan and ideological character of the federal judiciary in this era.

Judicial review remains vigorous. In 2015 and 2016, the federal courts struck down several expansive uses of executive power by the Obama administration as well as potentially discriminatory voter registration requirements in a number of states. During 2017, federal courts have blocked the Trump administration's constitutionally dubious travel ban affecting visitors from certain Muslim countries as well as Trump's executive decision to end the DACA program.

Appointment of
Justices
Score: 7

Federal judges, including Supreme Court justices, are appointed for life by the president, with advice and consent (endorsement by a majority vote) by the Senate. In general, they are likely to reflect the political and legal views of the presidents who appointed them. Over the last 30 years, however, judicial appointments have become highly politicized. With the severe polarization of Congress in the 2000s, the opposition-controlled Senate has been increasingly willing to hold up confirmations for federal judgeships. When, however, the president's party controls the Senate, the president's nominees will receive casual scrutiny, with no requirement of ideological consensus. (Owing to a rule change introduced by the Democratic-controlled Senate in 2013, the Senate minority cannot filibuster most judicial appointments.) These arrangements fail to guarantee a politically "neutral" judiciary.

As of December 2017, Trump has nominated 59 people for federal judgeships. Among them, 19 have been confirmed by the Republican-controlled Senate: Neil Gorsuch to the Supreme Court, 12 circuit court judges and six district court judges. So far this year, four of Trump's nominees have been judged by the standing committee of the American Bar Association to be "not qualified." By comparison, no nominee received that rating from the ABA during President Obama's first two years in office. While the White House has suffered from disorganization in some areas, the judicial nominee process has been relatively efficient and analogous to those in past administrations.

Corruption
Prevention
Score: 7

The first year of the Trump presidency has brought a brazen and unprecedented disregard of established practices to prevent conflict of interest.

The U.S. federal government has long had elaborate and extensive mechanisms for auditing financial transactions, investigating potential abuses and prosecuting criminal misconduct. The Federal Bureau of Investigation

(FBI) has an ongoing, major focus on official corruption. Auditing of federal-spending programs occurs through congressional oversight as well as independent control agencies such as the General Accountability Office (GAO) – which reports to Congress, rather than to the executive branch. The GAO also oversees federal public procurement. With all of these controls, executive-branch officials have been effectively deterred from using their authority for private gain and prosecutions for such offenses have been rare.

President Trump has openly flouted established practices, if not the law, with respect to conflict of interest. Most obvious, he has refused to sell off his extensive domestic and international business interests (especially hotels, casinos, and resorts) and to put the proceeds in a blind trust to avoid the potential of his financial interests influencing presidential decisions. Many individuals and groups, including foreign governments, stay at or hold events in his hotels in Washington, D.C. and other locations, often at inflated prices – thus directly contributing revenue to Trump’s businesses. He visited his various properties 100 times in his first year. Trump has defended his refusal to move his assets into a blind trust on the grounds that (in contrast with other federal officials) there is no conflict-of-interest statute that pertains to the president. His son-in-law Jared Kushner and daughter Ivanka have continued to run separate business while performing White House roles. The administration has been heedless of conflict-of-interest in appointments to regulatory and other positions. The administration simply refused to provide information to the Office of Government Ethics concerning potential conflicts among appointees, prompting the respected nonpartisan director of the office to resign in protest. Several Trump officials have been embroiled in scandals involving abuse of public resources (such as using military aircraft for vacation travel).

Governance

I. Executive Capacity

Strategic Capacity

Strategic
Planning
Score: 5

The Trump administration and the current Republican Congress have drastically subordinated strategic planning, professional expertise and policy analysis.

The U.S. government has multiple units that analyze policy issues, and that make long-term projections as part of the assessment of current options. The Executive Office of the President has multiple staffs and analytic agencies. On the legislative side, the Congressional Budget Office analyzes the 10-year fiscal impact of all bills with budget implications. Expertise about long-term considerations is available in abundance, in the agencies, Congress and the White House. In past periods, the main barrier to coherent long-term planning was the constitutional separation of powers between the legislative and executive branches, along with frequent elections. By design, no individual or cohesive group controls policy for a long enough period to formulate and implement long-term plans.

In most areas of government and policy, President Trump has shown virtually no interest in long-range planning, professional expertise, or even organized, careful deliberation. His high-level economic advisers and appointees are notably missing economists. In national security policy, he has favored senior military officers, but often relied on his own untutored preferences and impulses. His White House has had essentially no conventionally organized advisory and decision processes.

In Congress, the Republican leadership has sought to overcome popular resistance to its major policies on health care and taxes by avoiding public hearings or bipartisan discussion of any kind. Instead, bills are drafted in secret within Republican task forces and brought to a vote with the

expectation of strict party voting. Republican leaders have tried to prevent the ten-year budget effects “scoring” of bills normally provided by the nonpartisan Congressional Budget Office. Both on health care and tax reform their principal claims and arguments have included demonstrably false and misleading statements.

The departments and agencies have witnessed major losses of high-level staff, both because the Trump White House has failed to make political appointments to many positions and because long-serving civil service experts have left agencies due to pressure or discouragement. The State Department and the Environmental Protection Agency, in particular, have sustained massive losses of experienced, expert staff.

Scholarly Advice
Score: 4

As with the role of strategic planning and other expert units within government, the Trump administration and Republican-controlled Congress have drastically subordinated or ignored sources of independent academic or research-based advice. They have preferred to act on campaign promises, ideological viewpoints, or the demands of their donor- and/or voter-base without regard for expert analysis.

U.S. policymaking incorporates scholarly and expert advice in an informal and unsystematic manner. Along with university-based experts and analytic agency staffs, there are a few hundred think tanks – non-governmental organizations that specialize in policy research and commentary. The Obama administration made extensive use of the scholarly talent pool in its first term, but less so in its second term. Most think tanks do little original research, specializing instead in drawing on existing knowledge to produce partisan, ideologically oriented commentary and recommendations on policy issues. None of this analysis has the official or authoritative status that might derive from an official expert panel. The lack of formal, representative panels that make authoritative consensus assessments of research findings probably permits policy analysis to be more partisan and tendentious than it would be otherwise.

In general, Republicans and conservatives have been less supportive of the institutions in government and academia that undertake research and policy analysis than Democrats and liberals – partly because such research sometimes does have a left-leaning bias. On some issues, notably climate change, many legislators are highly willing to reject well-established scientific findings. In short, the flow of policy-relevant research is voluminous, but the policymaking process is relatively open to severely biased or unreliable analysis.

In 2017, the administration and Republican-controlled Congress ignored mainstream academic advice, not only on climate change (a long-standing

policy area of Republican resistance to advice), but also health care (repealing Obamacare) and tax reform. Republicans developed and passed a major tax reform bill that was estimated to add \$1.5 trillion to the 10-year deficit and was endorsed by virtually no academic economists.

Interministerial Coordination

GO Expertise
Score: 7

The closest comparison to a government office or prime minister's office in the U.S. system is the White House staff, along with other units of the Executive Office of the President (e.g., the Council of Economic Advisers, the Office of Management and Budget, and the National Security Council).

Because of the separation of powers, Congress or particular congressional committees sometimes compete with the president to shape policymaking in executive agencies. In response to these challenges, presidents have gradually established a large executive apparatus designed to help assert presidential control over the departments and agencies as well as enable the independence of presidential policy decisions. The total professional staff in the presidential bureaucracy vastly exceeds that of a parliamentary system's GO or PMO, with roughly 2,500 professionals and a budget of \$300 million to \$400 million. Indeed, the White House has often not allowed the departments and agencies to play a major substantive role in the drafting of bills. In recent presidencies, it has increasingly dominated executive-branch policymaking. President Obama went even further than previous presidents, appointing a number of high-level presidential adviser, or so-called czars, to oversee executive-branch policymaking in specific areas.

The Trump White House is by all accounts vastly inferior in expertise and organization to that of any prior modern president. Trump has not seriously attempted to maintain orderly processes or to rely on experienced or expert judgment. Insiders have regularly described a state of "chaos," with White House staff often preoccupied with preventing destructive behavior by the president. The Office of Management and Budget still has a large permanent staff that can analyze bills, but the president's use of such expertise is accidental or haphazard.

GO Gatekeeping
Score: 10

The comparable issue for the U.S. system concerns the ability of White House staff to control the presentation of issues, proposals, policy papers and decision memoranda to the White House or cabinet-based presidential-advisory committees. In fact, the president and his or her staff assign the responsibility for coordinating decision processes on major issues and may choose to emphasize White House or cabinet responsibility in varying degrees as he or she organizes the White House and establishes advisory arrangements. In recent presidencies, a strong and consistent trend has favored White House

control. In the Obama administration, for example, the White House controlled policy management and thus the presentation of decision materials almost completely, with cabinet officials in subordinate roles. In the Trump administration, there are few initiatives from departments and agencies and actors have influence to the extent that they are assumed to reflect Trump's preferences.

Line Ministries
Score: 10

In the U.S. system, this item relates to how the executive departments and agencies involve the president and the White House in their work. In fact, however, president and the White House are dominant within the executive branch, and can therefore prioritize issues they see as important to the president's agenda. This tends to happen in two general ways. If a department or agency is seeking significant legislation, then the White House is essentially in charge of policy development. It may allow a cabinet official to have major influence or even appoint him or her to chair a committee tasked with formulating options for the president, or it may relegate the relevant cabinet officials to secondary roles.

If the agency is developing an important administrative regulation or other policy that does not require legislation, then the administration's generally numerous political appointees in the agency will respond to White House direction. If the matter is judged important for the president, the relevant White House experts may make the main decisions. In the Trump administration, agency policy development has been heavily shaped by Trump's desire to cut regulations and, especially, to reverse actions taken by the Obama administration. There has been little policy development shaped by long-term agency missions or priorities.

Cabinet
Committees
Score: 5

The question for the U.S. system is whether, on major issues, White House advisory processes prepare issues thoroughly for the president, and on lesser issues with interagency implications, whether interagency committees prepare them thoroughly for decision by the relevant cabinet members. The U.S. system of advisory processes varies considerably, even within a single presidential administration, but is largely under control of the president's appointees in the White House. The process is to a great extent ad hoc, with organizational practices varying over time and from one issue area to another, based partly on the personnel involved. Typically, important decisions are "staffed out" through an organized committee process. However, the ad hoc character of organization (compared with a parliamentary cabinet secretariat), along with the typically short-term service of political appointees – resulting in what one scholar has called "a government of strangers" – renders the quality of these advisory processes unreliable.

President Trump's White House has largely neglected the role of managing an organized, systematic policy process. After the first six months, a new White

House chief of staff (John Kelly, a retired Marine Corps general) has brought some order to the president's immediate environment by controlling direct access to the president. There have, however, been no reports of a systematic, deliberate presidential decision process on any matter. Trump tweeted a declaration that transgendered persons would no longer be allowed to serve in the military, without first consulting with the Department of Defense (DoD) or the military branches. The DoD has apparently resolved to simply ignore that president's declaration.

Ministerial
Bureaucracy
Score: 4

In general, there is an expectation of interagency coordination at various levels of the bureaucracy. The quality of this coordination varies, and as with cabinet level coordination, it is adversely affected by the short-term service of political appointees, which results in underdeveloped working relationships across agencies. The overall or average performance has not been systematically evaluated, however. President Trump has failed to appoint or nominate people to occupy a large majority of the important political-appointee positions in the agencies. In addition, permanent staff have been departing. As a consequence, it would be impossible for interagency coordination to operate effectively at this stage of his presidency.

Informal
Coordination
Score: 8

The U.S. government is highly prone to informal coordination, relying on personal networks, constituency relationships and other means. As with more formal processes, the effectiveness of such coordination is adversely affected by underdeveloped working relationships resulting from the short-term service of political appointees. The overall or average performance of informal coordination mechanisms has not been systematically evaluated. The Trump administration's lack of experienced personnel in key agency positions leads to an increased role for informal coordination, often based on various personal networks, such as people connected with Trump's family or businesses. These arrangements, however, are not sufficiently developed to make up for the lack of personnel and organization in the departments and agencies.

Evidence-based Instruments

RIA Application
Score: 5

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 for agency regulations is supervised by the Office of Management and Budget (OMB). For significant regulations, it must approve impact assessments conducted by the agencies as a condition for issuing the regulations. In addition, the Government Accountability Office, which reports to Congress, conducts assessments on an ad hoc basis, mostly in response to requests by Congress. The Congressional Budget Office (CBO) conducts analysis of proposed bills, including cost estimates over a 10-year period.

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. The U.S. government has normally been highly ambitious with respect to the volume and coverage of impact assessment.

However, the Trump administration largely abandoned impact analysis and other professional expertise. Agencies have been under a strong presidential mandate to reduce regulations and reverse decisions taken during the Obama administration. Since the first several months of the Trump presidency, this effort has been aggressively carried out on the basis of minimal analysis. The president also issued an order saying that for every new regulation that an agency adopts, it is required to cancel two existing regulations – a mechanical solution that does not permit analytic influence.

Quality of RIA
Process
Score: 6

Regulatory impact assessment is a highly political process, with a strong tendency for results to reflect the preferences and expectations of the agency or political official that controls the process. Under Republican presidents, the process was frequently directed toward containing or curtailing environmental and work-safety regulations put out by the Environmental Protection Agency and the Occupational Health and Safety Agency. Under Obama, the process is more biased toward issuing new regulations. Indeed, a 2011 study of regulatory impact assessments by the George W. Bush and Obama administrations demonstrated the biasing effect of political priorities. The Obama administration has issued new rules at a rate 40% higher than either Clinton or Bush. While Obama's regulators reported costs triple those of Bush's, they report benefits eight times higher.

In any case, the differences in overall results between administrations suggests that many or most proposed regulations would receive opposite assessments from the Bush and Obama administrations, rendering the value of the assessments questionable at best. Trump administration regulatory officials have had little concern about impact assessment. In canceling the Obama era's "net neutrality" regulations, the Federal Communications Commission relied on a large volume of citizen messages that it had already determined were produced by internet bots, rather than actual people.

Regulatory assessment will thus be of limited value until the government adopts clearer standards and best practices for the conduct of the analyses, presumably under the auspices of a nonpartisan institution such as the Congressional Budget Office.

Sustainability
Check
Score: 6

There is no standard, separate check required for "sustainability" as such. Assessments are expected to consider the important costs and benefits relevant to the particular project or policy. Environmental considerations have figured

very prominently in many cases. However, the Trump administration has aggressively dismissed most environmental considerations.

Societal Consultation

Negotiating
Public Support
Score: 5

The U.S. political system is outstanding in the degree to which it elicits opinions and preferences from societal actors at all stages of the policy process, and enables such actors to shape policy outcomes. These processes, however, are informal, decentralized and not especially conducive to careful deliberation. In the U.S. system, the president and congressional leaders must build congressional support for each measure. Interest groups, ideological activists, experts and ordinary citizens have extensive opportunity to influence policymakers before decisions have been made. Societal responses are elicited in a variety of ways. The White House maintains direct relationships with some interest groups. Congressional committees hold hearings on most legislative initiatives and on general policy issues. Furthermore, the president, party leaders and major interest groups use media-based strategies to mobilize public opinion, often using targeting strategies to reach sympathetic groups. In sum, the U.S. government is exceptionally open to influence by societal forces. This openness is not designed to ensure consensus and does not do so, although action without broad support is normally difficult.

In 2017, the Republican-controlled Congress surprised commentators with the degree to which it pushed legislation that was opposed by most interest groups and the general public. The health care reform – narrowly defeated in the Senate – was opposed by most interest groups and professional associations (e.g., insurance companies, physicians’ associations, health care providers). The tax reform – passed along a strictly partisan line (after this SGI review period) – was opposed by a large majority of the public. Interpretations of this behavior emphasized the Republicans’ need to satisfy their electoral base (i.e. the most committed voters, most of whom continued to support President Trump) or the increased influence of very wealthy individual donors. Polling results in late 2017 point to a potential Democratic “wave” in the 2018 congressional elections. It is far from clear that current Republican positions reflect a viable electoral rationale.

Policy Communication

Coherent
Communication
Score: 4

With politically appointed leadership in every agency, executive agencies and departments carefully coordinate their messages with the White House communications strategy. Agency press releases and statements on politically salient matters are often specifically cleared with the White House. During 2012 and 2013, a minor scandal developed over the administration’s

formulation of a public response to a terrorist attack on U.S. diplomatic offices in Benghazi, Libya. Eventually, the White House released 100 pages of e-mails detailing discussions between the State Department, the Central Intelligence Agency (CIA) and the White House. In the end, it appeared that most of the revisions were prompted by the State Department and the CIA rather than the White House and were motivated more by concerns for accuracy than political effect. Regardless, the episode indicated the extensive involvement of the White House in public communications.

The Trump White House press office has been deeply implicated in defending or obscuring Trump's continual false claims. Using a rigorous definition of presidential lies, the New York Times found that President Obama averaged approximately two lies per year; Trump was on a pace that would result in 124 lies per year. Communications offices in the agencies repeat many of the same lies. (Note that we use the term "lie," which is uncommon in analytic discourse, because its meaning of intentional falsehood is evidently accurate. Some psychologists note that Trump, personally, may have a mental illness that results in nearly constant delusion; his spokespersons presumably would not share such delusions.)

Citation:

<https://www.nytimes.com/2017/12/14/opinion/trump-lies-obama.html>

Implementation

Government
Efficiency
Score: 4

In comparison to parliamentary systems that have an expectation of nearly automatic legislative approval of government bills, policy implementation in the U.S. separation-of-powers system is presumed to depend on coalition building, negotiation and relatively broad consensus. In the current, highly polarized state of the major political parties, the ability to act depends heavily on whether partisan control of the presidency and Congress is unified (with the same party controlling the presidency, House, and Senate) or divided.

From 2011 to 2016, with a Democratic president, Republicans controlling one or both houses of Congress and an aggressive far-right ("Tea Party") Republican faction that was often able to block action, the U.S. government had profound difficulty in accomplishing any policy goals. The two Congresses of this period were the least productive (i.e., enacting the fewest laws) of any Congress in the modern era (since the 1920s pre-depression era).

The legislative experience of Trump's first year, however, was unprecedented. The president and Republicans in Congress identified three major legislative priorities – repealing and replacing "Obamacare" (President Obama's health

care reform), adopting a major infrastructure rebuilding program, and major tax cuts and tax reform. Trump also wanted major restrictions on immigration (especially from Muslim countries), the renegotiation of major trade agreements and the building of a wall along the border with Mexico. Republicans in Congress resolved to avoid negotiating with Democrats on these measures, hoping to avoid compromises that would be unacceptable to the Republican base.

In fact, Republicans themselves were sufficiently divided that legislative successes were very limited. Of the numerous policy objectives, only a seriously flawed tax cut (including modest tax reforms) was adopted. Given that the act massively increases long-term budget deficits and includes unpopular tax cuts for corporations and the wealthy, it is likely to be amended significantly before many of its provisions go into effect. Until the enactment of this tax cut in December 2017, Trump's first year was shaping to be the first time in modern history when a new president had failed to secure even a single piece of legislation.

Trump's objectives on immigration were pursued by administrative means, without legislation. Trump was successful in sharply increasing deportations of undocumented immigrants, primarily from Mexico. Due to judicial interventions, he was not successful in implementing a ban on entry by Muslims or people from select Muslim countries. Regulatory agencies withdrew large numbers of Obama-era regulations, but whether these decisions will hold up against judicial appeal remains uncertain. At the end of the first year, very few of Trump's policies had been adopted in a manner that promises to be enduring.

Ministerial
Compliance
Score: 10

The president has a high level of control over appointments such as agency and department heads. They serve at the president's discretion and need the support of the White House for their success, both in terms of agency missions and individual careers. 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. As recent presidents have upgraded their ability to monitor agency activities and to draw major issues into the White House, conflicts between the agencies and the White House have largely disappeared.

Monitoring
Ministries
Score: 6

The president and the White House monitor activities in departments and agencies to widely varying degrees, depending on the centrality of the activities to the president's political agenda. Agencies and programs that are not the focus of presidential policy initiatives and are not politically

controversial may get little attention from the White House, and in fact may receive most of their political direction from Congress or the congressional committees with jurisdiction over the policy area. Recent years have seen a number of serious failures of administrative control.

In 2015, agents of the Secret Service responsible for protecting the White House and the president were discovered asleep on the job after working shifts that required severe sleep deprivation. Separately, the National Security Agency has been exposed as having violated the legal terms of its surveillance authority, even eavesdropping on the phone calls of German Chancellor Angela Merkel.

In the Trump administration, staffing deficiencies in both the White House and the departments has diminished the capacity for monitoring. The White House lacks the organization or personnel needed to keep track of most significant activity in the departments.

Monitoring
Agencies,
Bureaucracies
Score: 6

Federal departments have central units attached to the relevant secretary's office that monitor the activities of subordinate agencies. There are no semi-autonomous agencies in the U.S. administrative system. Independent regulatory commissions –including the Federal Reserve Board (both a regulatory agency and the central bank, responsible for monetary policy) – are headed by bipartisan commissions with fixed terms of office and are in some respects outside the executive branch. The White House and certain executive agencies such as the Antitrust Division of the Justice Department monitor the activities of regulatory agencies, despite lacking formal authority to impose changes. State-level agencies which administer federal programs are subject to highly inconsistent federal supervision. The losses of organizational capacity in the federal bureaucracy under Trump reduces the ability of departments to monitor agencies.

Task Funding
Score: 8

The United States has a federal system in which the 50 states are independent sovereign governments, although the federal constitution is “the supreme law of the land.” States have unrestricted power to raise their own revenue, although the federal government takes full advantage of their more productive sources, such as the income tax. There is no general presumption of uniform standards for public services. Rather, the federal government imposes standards or seeks to induce certain levels of performance in varying degrees on different issues.

State officials have often complained that federal mandates required substantial expenditures without providing the necessary funds. In 1995, the

Republican Congress passed the Unfunded Mandates Reform Act. The act provides incentives for Congress and regulatory agencies to identify potential unfunded mandates in the legislative or rule-making process but does not prevent them from setting mandates. As a result, complaints from state officials have subsided. The Obama health care reform seeks to expand coverage of low-income individuals by raising the income ceiling for eligibility for Medicaid, a program administered and largely funded by the states. According to the law, the federal government will pay 90% of the cost of the expanded coverage if states pay 10% of the cost of health coverage for the new beneficiaries. However, many states with Republican leadership have thus far opted out of the Medicaid expansion.

Constitutional
Discretion
Score: 8

Whether the federal government permits the states to exercise their constitutional authority without undue interference is one of the central constitutional controversies in U.S. politics. In one sense, there is no such thing as the federal government depriving states of their constitutional discretion. Whatever decisions the federal government imposes on the states can be appealed to the federal courts. Given the availability of appeals, one can assume that states are able to exercise their constitutional jurisdiction as it is currently interpreted. In 2012, the Supreme Court, supporting the Obama administration, invalidated most of an Arizona law that provided for aggressive state-level investigation and prosecution of undocumented immigrants. In 2015, it invalidated all state laws that bar same-sex marriage. On the other hand, multiple states have legalized medical and sometimes recreational use of marijuana. Even though marijuana remains illegal under federal law, under the Obama administration, the federal government had not attempted to prosecute violators in states with legalization policies.

National
Standards
Score: 5

Due to the dual nature of the U.S. federal system, the issue of national standards applies mostly to co-financed federal programs, where the federal government sometimes asserts its right to set and monitor compliance with these standards. The bulk of public services are delivered by local and state agencies with minimal intervention by the federal government. The question of enforcing federal standards arises in specific areas where federal policymakers have sought to impose such standards, sometimes to enforce citizens' rights under the federal constitution, and other times for policy reasons. The Environmental Protection Agency, for example, requires states to meet air-quality standards under the Clean Air Act. On the other hand, states exercise broad discretion in setting standards of eligibility for Medicaid coverage or with regard to unemployment insurance. The Obama administration granted waivers that allowed individual states to relax work requirements for welfare recipients (under Temporary Assistance for Needy Families). One Obama administration K-12 education program sought to promote national "core curriculum" standards. In most areas, large variation in state government policies and standards of service are regarded as legitimate.

Adaptability

Domestic
Adaptability
Score: 6

The United States has developed institutional structures that are able to respond to its international obligations. Climate-change negotiations, for example, have been firmly institutionalized in the Office of Global Affairs in the State Department. Similarly, the creation of the Department of Homeland Security was a domestic structural response to the challenges of international terrorism. Whether the policies of these units and agencies have been successful or have facilitated multilateral cooperation has depended on the policy choices of each administration and the disposition of Congress.

The Obama administration continued to develop new institutional structures to adapt to policy challenges. The United States has been less prone to adapt domestic-policymaking structures to the requirements of the international-trade regime, in some cases resisting compliance with fully adjudicated obligations under the WTO and the North American Free Trade Agreement. Given the domestic political orientation of most members, Congress has placed low priority on compliance with international-trade agreements and regimes.

The Trump administration has been inclined, if anything, to dispense with international agreements and alliances. It has not sought to align institutions with international structures.

International
Coordination
Score: 6

The United States sometimes leads international efforts to pursue collective goods – sometimes, indeed, effectively controlling those efforts – while sometimes preferring unilateral approaches that withhold support from international forums. Its institutional structures and political traditions – especially the role of presidential leadership – accommodate all of these approaches. But the United States often cannot act effectively unless a national consensus or single-party control of the government enables the president and Congress to agree on a strategy.

President Obama's strategy in the Middle East, for example, was hampered by conflict with Congress over support for Israel. Most often, the United States not only collaborates in reform initiatives promoted by international forums, but actively works to shape their agenda. The United States is also an effective participant in the G-7/8 process. The most notable change under the Obama administration was the move toward participation in broader international forums such as the G-20 that include emerging-market countries such as China, Brazil and India.

The Trump administration, with its avowed “America First” orientation, has reduced its engagement in international forums and agreements. This has included lecturing NATO members on their allegedly insufficient contributions, withdrawing from the Paris Climate Agreement and declining to join the Trans-Pacific Partnership trade agreement.

Organizational Reform

Self-monitoring
Score: 5

On one hand, presidential advisory and administrative arrangements in and around the White House are reconfigured in important respects by each president. As a result of this fluidity, presidents, their staffs and commentators discuss the effectiveness of the given arrangements of the president’s senior aides almost constantly. By contrast, most other organizational structures – including the basic separation-of-powers system; the structure of Congress; and the structure of departments and major agencies of the executive branch – are rigid. None of these is subject to change by executive decision or ordinary legislative majority, and they are evaluated only in extreme circumstances.

Yet from 2011 to 2016, just such extreme circumstances have emerged. A series of self-induced crises in economic policy, driven by fundamental conflicts over long-term budget policy, has led commentators to question some of the seemingly fixed and intractable features of the political system. The unprecedented levels of partisan conflict in the legislative process, the increasingly routine resort to filibusters in the Senate, and the tendency toward partisan deadlock and inaction have particularly alarmed analysts, not to mention the public. In 2015, the extreme-conservative Tea Party faction among House Republicans raised questions about the power of the speaker of the House to control the agenda. Both Democratic and Republican Senate majorities have discussed abolishing or severely curtailing the Senate filibuster – a major change that could be accomplished by a simple-majority vote only at the beginning of a new Congress.

The executive structures of the Trump presidency have been exceptionally casual and unstable, with a president who appeared to have no appreciation for the benefits of systematic deliberation and division of labor. As one indicator, Trump assigned his inexperienced 36-year-old son-in-law Jared Kushner to take leadership responsibility on an extraordinarily diverse array of areas, including the Middle East peace process, negotiations with other countries, criminal justice reform, innovation and the opioid crisis. In effect, the administration has de-institutionalized the top levels of the executive branch.

Institutional
Reform
Score: 4

The U.S. government is exceptionally resistant to constructive institutional reform. There are several major sources of rigidity. First, the requirements for amending the constitution to change core institutions are virtually impossible

to meet. Second, statutory institutional change requires agreement between the president, the Senate and the House, all of which may have conflicting interests on institutional matters. Third, the committee system in Congress gives members significant personal career stakes in the existing division of jurisdictions, a barrier to change not only in congressional committees themselves but in the organization of the executive-branch agencies that the committees oversee. Fourth, the Senate operates with a supermajority requirement (the requirement of 60 votes, a three-fifths majority, to invoke “cloture” and end a filibuster), and changes in Senate procedures themselves are normally subject to the same procedures. Fifth, as was the case from 2011 to 2016, the president and Congress often represent different political parties with competing institutional interests, and one party is highly inclined to obstruct the other.

II. Executive Accountability

Citizens’ Participatory Competence

Policy
Knowledge
Score: 5

The U.S. public is generally quite uninformed by the standards of political elites. Comparing citizens’ levels of governmental knowledge across political systems is difficult. Nevertheless, as one scholar has written: “The political ignorance of the American voter is one of the best-documented findings in political science.”

Two examples illustrate this: In spring 2013, nearly 90% of the public favored legislation requiring background checks for the purchase of guns. Republicans in Congress blocked Democratic proposals for such a measure. Yet, when asked whose approach to gun control they preferred, the public split almost evenly between President Obama and congressional Republicans. At the same time, roughly 40% of the public believed that Obama’s health care reform had in fact been repealed – an unrealistic prospect given the Democratic control of the presidency and the Senate. Political scientists debate the issue of whether and how a generally uninformed public can discharge the tasks of citizenship effectively. A 2014 Ipsos MORI cross-national survey found U.S. citizens to show the second-highest level of inaccuracy among 14 countries with regard to factual knowledge about a variety of social issues.

Legislative Actors' Resources

Parliamentary
Resources
Score: 10

The staff resources of the U.S. Congress substantially surpass those of any other national legislature. First, there are three large congressional agencies that perform research and analysis: the Congressional Budget Office (CBO), Congressional Research Service and Government Accountability Office. The CBO, a nonpartisan body, is the most credible source of budget analysis in the government. Secondly, each congressional committee has a sizable staff, divided between the majority and the minority parties. In addition, each member of Congress has personal staff, ranging from about 14 personnel, including at least one or two legislative specialists, for a member of the House, to more than 50, with several legislative specialists, for a senator from a large state.

The magnitude of Congress's resources reflects three features: First, Congress is constitutionally independent of the executive, and thus seeks to avoid depending on it entirely for information and analysis. Second, Congress's own structure has traditionally been decentralized, with much of the legislative work done in committee. And third, individual members are politically independent of the parties, and use staff both for participating in policymaking and for providing electorally beneficial services to constituents.

Importantly, Congress has cut staff personnel significantly in recent years. This reflects an increasing reliance on ideologically oriented think tanks for policy advice and centralization of control in the party leadership. The role of individual members and committees in policymaking has been diminished. Nevertheless, Congress's staff levels remain unmatched in the world.

Obtaining
Documents
Score: 10

The legislature's right to obtain government documents is well established in the U.S. system of government and congressional committees have subpoena power to request documents. However, this power is sometimes limited by claims of executive privilege – a constitutionally recognized entitlement that protects White House and agency internal communications in limited circumstances. In 2013, the White House supplied congressional investigators with more than 100 pages of email messages that had been exchanged between the White House, the State Department and the CIA, in a controversy over allegedly misleading White House statements about the terrorist attack in Benghazi, Libya. Although the executive branch often withholds classified information from general release to members of Congress, the members of the House and Senate Intelligence Committees have top-secret clearance enabling them access to sensitive secrets. In any case, for most issues, the information that Congress needs for policymaking or oversight of administration does not fall under any plausible claim of executive privilege or security restriction. In

Summoning
Ministers
Score: 10

these cases, Congress can obtain almost any information that exists. Within very broad limits, Congress can also ask departments and agencies to gather data or perform studies when it finds existing information to be insufficient.

Executive officials do not appear on the House or Senate floor. However, department secretaries and other high-level officials of the executive branch appear with great frequency and regularity, essentially on request, before legislative committees and subcommittees. In the context of an investigation, committees sometimes subpoena executive branch members to make an appearance. Most appearances are voluntary, however, motivated by the desire to maintain strong relationships with the congressional committee. The resulting burdens on high-level executives become considerable, with congressional appearances and the required preparation taking up a significant share of executives' time. Congress uses testimony from executive officials both in evaluating proposals for new legislation and in "oversight," that is, in reviewing and evaluating the administration's performance.

Summoning
Experts
Score: 10

The invitation of outside experts to testify at committee hearings is an established, highly routine practice in the legislative process. Hearing transcripts are published, and testimony from a variety of qualified witnesses is expected in a competent committee process. Although congressional norms call for permitting both parties to select witnesses, some committee chairs in the current era severely limit the minority-party witnesses, resulting in a selection of witnesses strongly biased in favor of the majority-party position.

Task Area
Congruence
Score: 9

The structure of committees in the House and Senate largely reflects the structure of the executive branch. When deviations occur, the adverse effect on the ability of the House and Senate to monitor executive activities and performance is modest. But there are also effects on the burdens of oversight for the agencies. Agencies will sometimes face hearings and investigations from several committees from both chambers that have jurisdiction over an agency or program. Indeed, committees compete for the publicity that comes with investigating a highly salient topic. Because members of Congress develop large stakes in monitoring and influencing particular programs, the structure of the congressional committee system often is a serious barrier to reorganization of the executive branch. In financial regulatory reform, for example, 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 nonpartisan 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 as 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 outlines 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.

Ombuds Office
Score: 6

Congress does not have an ombuds office, as such. Its members, who cultivate close ties with their state or district constituencies, effectively function as a collective ombuds office. Members of Congress each have several staff members who deal full-time with constituents' requests for service. The total number of staffers engaged in constituency service is at least in the range of 2,000 to 3,000 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 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. In addition, because the acquisition of experience is massively disaggregated, without any systematic collation of information from the 535 congressional offices, congressional staff are less able to identify general policy or administration problems than an actual ombuds office would be. Congress retains this inefficient organization for dealing with citizens' problems because it enables the legislators to gain individual political credit for providing services – a valuable commodity with the country's candidate-centered (as opposed to party-centered) elections.

Media

Media Reporting
Score: 6

For the interested citizen, it is easy to find a large volume of serious, high-quality reporting on government and policy, with balanced, reasonably objective treatment of issues – in print, on the internet or on television. But such qualities do not describe the majority of major news outlets, nor the outlets used by the largest audiences. A majority of citizens obtain most of their news from television rather than newspapers or the internet, and the quality of the national news broadcasts has been declining. However, 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 policy issues with reputable experts.

The most damaging trend for public understanding is the decline of journalistic standards. Some media – most notoriously the conservative Fox News cable news network – exhibit pervasive ideological biases 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. In addition, reflecting the economic problems of print journalism, the number of reporters covering Washington for daily newspapers declined from about 860 in 1998 to 575 in 2014.

During 2017, Fox News and other right-wing news media went beyond past displays of bias and echoed Donald Trump's constant false and destructive claims that mainstream news media, including the country's leading newspapers, reported "fake news."

Parties and Interest Associations

Intra-party
Democracy
Score: 9

There are two major parties, the Democratic and Republican parties, operating at the local, state and federal levels in nearly all areas of the country. Unlike in parties in parliamentary systems, individual office holders (for example, members of Congress) decide their own positions on policy issues, subject to informal influence from party leaders. Thus, party programs or platforms, amounting to collective statements of party policies, do not exist. A national party platform is written every fourth year at each party's presidential nominating convention but is rarely referred to after the convention.

The occasion for intra-party democracy is therefore the nomination of party candidates for office. Party nominations are determined by primary elections and open caucuses conducted within each party in each state, thus putting these decisions directly in the hands of ordinary party members. The Republican primary elections in 2016 produced a presidential candidate, Donald Trump, who was viewed by leading Republican figures and nonpartisan commentators as unqualified and profoundly unfit for the office. The Trump nomination underscored the critical views of some scholars and other observers about the dangers of relying on ordinary party members to choose party nominees.

Association
Competence
(Business)
Score: 9

A vast number of business associations are active in the United States. This is a reflection of the size and complexity of the American economy and of a political culture that fosters participation, but also of the opportunities for lobbying influence in a decentralized political system. The associations themselves range from peak associations such as the Business Roundtable to trade associations of major industries such as the American Trucking Association and groups representing narrow industry segments. The larger, wealthier associations have large professional staffs and can produce credible policy proposals with substantial supporting documentation. Given the large numbers of very small associations, it is not true that "most" business associations can present credible proposals. However, there are certainly

Association
Competence
(Others)
Score: 8

several hundred business associations that can draft bills or amendments and present articulate, sophisticated arguments for their positions.

Public-interest or civil society associations' competence in proposing reasonable policy initiatives is unusually high in the United States. This high level of competence is in part due to associations' ability to attract highly qualified professional staff, and in part due to their media and communication skills. This holds true for groups such as the Environmental Defense Fund, Common Cause and the National Taxpayers' Union. From the standpoint of developing credible policies, these associations have the advantage of focusing on broad interests, rather than self-interested ones, as their central mission. However, they are subject to ideological biases and membership demands that tend to favor extreme views. Citizens' groups do not receive public support for their policy development or representational activities.

Address | Contact

Bertelsmann Stiftung

Carl-Bertelsmann-Straße 256
33311 Gütersloh
Germany
Phone +49 5241 81-0

Dr. Daniel Schraad-Tischler

Phone +49 5241 81-81240
daniel.schraad-tischler@bertelsmann-stiftung.de

Dr. Christof Schiller

Phone +49 5241 81-81470
christof.schiller@bertelsmann-stiftung.de

Dr. Thorsten Hellmann

Phone +49 5241 81-81236
thorsten.hellmann@bertelsmann-stiftung.de

Pia Paulini

Phone +49 5241 81-81468
pia.paulini@bertelsmann-stiftung.de

www.bertelsmann-stiftung.de
www.sgi-network.org