



United States Report

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Sustainable Governance
Indicators 2020

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Executive Summary

The twelve-month period under investigation here began with the 2018 midterm congressional elections that delivered a new Democratic majority in the House of Representatives for the Congress that began in January, 2019.

In the first year of the newly elected Congress, with the House under Democratic control and the Senate under continued Republican control, legislative activity was essentially symbolic and designed to display party positions. In 2019, the Democratic House passed about 70 major bills, on subjects a variety of subjects including climate change, gun control, voting rights, minimum wage, equal pay, prescription drug prices and mental health. None of these bills were taken up by the Senate, which also refused to heed intelligence community warnings and thus act on legislation to protect the country's election system against predicted Russian interference.

In terms of the SGI, the United States continues to receive high scores in some areas of long-term strength, including economic policy, labor market efficiency and innovation. Indeed, the U.S. economy continued to perform well throughout 2018. However, as a consequence of the policy agendas of the Trump administration and the Republican-controlled Congress, the United States performed worse throughout the period under review in those policy areas addressing 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 some strengths when it comes to ensuring generally equal political rights, fairness in candidate and party access to the ballot, and relatively balanced news media coverage. However, as evinced by the 2018 midterm elections, there are increasingly important deficits in several areas. Many Republican-controlled state governments have raised barriers to voter participation by, for example, introducing demands for multiple forms of identification that primarily affect black, Latino and lower-income citizens. Although both parties are more or less on par in terms of campaign funding resources, accountability with respect to campaign funding has suffered as a result of growing contributions from extremely wealthy individuals. The worst scores in this assessment – some dramatically lower than those during the

Obama administration – are in the areas of governance and in “steering capability” in particular.

American politics in 2019 was dominated not by policy issues, but by the investigations into President Trump and his actions. Special Counsel Robert Mueller found that Trump and his campaign aides, on multiple occasions, had invited and encouraged Russian interference in the 2016 elections. Although Mueller refrained from formally accusing the president of crimes, his findings made it entirely clear that Trump had on multiple occasions obstructed justice in trying to block the investigation. As the House was deliberating whether to proceed with impeachment, entirely new revelations demonstrated that Trump had withheld \$400 million of military aid in order to force Ukraine to conduct an investigation into Trump’s possible 2020 Democratic presidential opponent Joe Biden, clearly for the purpose of improving Trump’s re-election prospects. President Trump’s actions were widely condemned as an abuse of the power of his office which, by facilitating foreign interference in a U.S. election for his personal political benefit, were harmful to American national security interests. Within a few months, the House investigated the revelations extensively and in mid-December approved two articles of impeachment—calling for the president’s removal from office for his abuse of power and obstruction of Congress. The impeachment (comparable to an indictment in a criminal trial) led to a January 2020 trial in the Senate, where the Republican majority refused to hear witness testimony or subpoena documents, holding firm against Trump’s removal.

Key Challenges

From a sustainable-governance perspective, the United States faces numerous challenges. It has largely failed to address them, however, for the last nine years. Divided party control of the presidency and Congress produced gridlock for the last six years of the Obama presidency. And even with unified government in the first two years of the Trump administration, Congress proved extremely unproductive, mainly because of intra-party differences within the Republican party. Since the 2018 midterm elections in which the Democrats took control of the House of Representatives, gridlock has continued under a divided government and amid the constant interruptions and distractions of various scandals involving members of Trump’s administration and his associates, and the Trump impeachment itself.

The sustainable-governance challenges that U.S. policymakers have largely overlooked include excessive long-term budget deficits, increased economic

inequality, the loss of well-paying middle-class and working-class jobs, as well as problems with costs and provider shortages in healthcare insurance markets. Racial tensions have grown, and the opioid crisis has brought an explosion in addiction and deaths due to overdose. Rather than address climate change, the Trump administration has promoted climate denialism and reversed existing policies to reduce greenhouse gas emissions. The United States has a refugee crisis at its southern border, which the administration has managed with both intentional cruelty and incompetence. Beyond its borders, the United States faces major foreign-policy challenges centering on North Korea's nuclear weapons program, the war in Syria and Russian expansionism. Some Trump administration policy pursuits, such as engaging in trade conflicts with China, abandoning the Iran nuclear deal, and weakening the Western alliance, have actually created foreign-policy problems.

The Democratic House in 2019 passed dozens of bills that would have addressed most of these issues. But neither Trump nor the Republican Senate took any notice of them. Instead, they touted a symbolic proposal for a second major tax cut, even though their 2017 tax cut had doubled the federal annual budget deficit to \$1 trillion (USD). With these conflicting policy agendas, there is essentially no prospect of major legislation until the next Congress in 2021.

The most fundamental challenges facing the United States, however, concern the political system, whose problems have been exacerbated by actions taken by the Trump presidency. Over the last 25 years, the increasingly severe ideological polarization of the country's political parties has produced debilitating gridlock in policymaking. So-called negative partisanship, or the tendency to form political views primarily in terms of opposition to a party one dislikes, has penetrated the electorate to an extent that each party's supporters express intense disapproval of or even hatred toward members of the opposing party. In advance of the 2016 presidential election, the nomination process – which is driven by primary elections – yielded Trump as a Republican candidate although he had no support among prominent conservative commentators or Republican leaders until his early primary victories made him the likely nominee.

Trump has proved more destructive and dangerous as president than even his most severe critics had predicted. His chronic misconduct has resulted in an array of serious scandals, a damning report by Special Counsel Robert Mueller, and his impeachment by the House of Representatives. Numerous commentators from the orbit of the pre-Trump Republican Party have called for his removal from office or for his defeat in the next election. But his intense, cult-like support among the Republican voter base has deterred Republican officeholders, most importantly the Senate majority, from

removing him from office or otherwise holding him to account. His often autocratic style of governance is a stress test for the institutions of checks and balances in the United States.

The 2020 election therefore will be a critical juncture for constitutional democracy in the United States, particularly with respect to free and fair elections and the rule of law. Primarily in an effort to protect himself from being held accountable, Trump has politicized at the very least the top layers of the Justice Department, and to lesser degrees the State Department, the intelligence community and other agencies. He has appointed numerous (sometimes unqualified) loyalists as federal judges. He has often ignored or attempted to undermine the constitutional prerogatives of Congress in oversight, investigation and policymaking. With respect to elections, Trump and the Republican Senate have blocked legislation to strengthen defenses against Russian or other foreign interference in the electoral process, despite official intelligence findings of ongoing Russian efforts to interfere. Partly to counter strong adverse demographic trends, Republicans in many states have adopted measures that are designed to suppress voting by racial and ethnic minorities and lower-income people, most of whom generally vote for Democratic candidates.

If not defeated in the 2020 elections, Trump and the Republicans will most likely proceed to entrench politicized law enforcement, an acceptance of foreign election interference, and the suppression of minority voters so as to capture a lasting advantage in national elections. The same political party that for generations presented itself as the defender of traditional constitutional values might then preside over a transformation of the political system into an authoritarian sham democracy. If the Democrats succeed in the elections, they will face a momentous challenge of rebuilding critical institutions and making them more secure against future authoritarian challenges.

Party Polarization

Party polarization has been the driving force behind political gridlock and the growing incapacity of the government to fulfill its function in recent years. Polarization and its harmful effects derive in large part from specific features of American political institutions.

Independent roll-call decisions by individual members of Congress have made it possible to develop highly diagnostic data regarding the ideological position of each member of the Senate and the House of Representatives. For most of

the country's history, centrist-oriented legislators from both parties have tended to vote within the parameters of the substantial ideological overlap found between the two parties.

For more than a century after the Civil War of the 1860s, this overlap derived in large part from Southerners' traditional allegiance to the Democratic party – itself a product of Republican leadership of the Union during the Civil War. In the last quarter of the 20th century, Southerners began to abandon the Democrats, and the ideological divisions between the two parties became increasingly palpable. Other developments, such as an increasingly fragmented and ideologically distinct news media landscape, Congressional reforms that strengthened the role of party factions (particularly in the House of Representatives) and gerrymandering have accelerated polarization processes. Data on individual congressional members' voting records shows that the most recent Congresses have been the most severely polarized in more than a century. Most of the movement toward the ideological extremes has occurred within the Republican party.

Polarization causes gridlock in three distinct ways. First, and most obviously, if the president and at least one house of Congress are controlled by different parties, they are very much inclined to engage in conflict. In 2010, the Republican Senate leader famously remarked that the objective of his party was to ensure that Democratic President Barack Obama would be a one-term president. Second, even with unified party control, the minority party can often block policy change using the Senate filibuster. Third, during the first two years of the Trump presidency, with unified Republican control, both parties were unwilling to work with each other in developing legislation, yet the Republicans themselves were sufficiently divided between mainstream and extreme conservative wings. The five most recent Congresses, from 2011 to the present, have been the least productive of any Congresses in the modern era. (Score: 3)

Policy Performance

I. Economic Policies

Economy

Economic Policy
Score: 8

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 generally featured low tax rates, less regulation, lower levels of unionization and greater openness to foreign trade. The country has enjoyed superior levels of growth, capital formation and competitiveness. The strong economic growth established during the Obama administration continued through Trump's first three years.

During Trump's first two years in office, Congress passed a major tax reform which included a tax cut for corporations and high-income individuals. Along with increases in defense spending and Trump's rejection of spending cuts for middle-class social benefits (Medicare and Social Security), the tax cut created a sharp increase in the already unsustainable long-term budget deficit. As of late 2019, the tax cuts were responsible for a roughly \$500 billion increase in the annual federal budget deficit, which totaled more than \$1 trillion.

During 2018, as the Federal Reserve (also known as "the Fed") began to raise interest rates, Trump repeatedly questioned the Fed's expertise and accused it of doing harm to the economy – which he felt undermined his political interests. And though he lacked the legal authority to do so, he threatened in 2019 to fire the Fed's chairman. Both Congress and financial markets ignored the apparent threat to the Fed's independence. The Fed lowered interest rates during 2019, accounting for signs of slowdown in the world economy.

Holding firm to his campaign claims that the United States has been treated unfairly in most of its trading relationships, Trump repeatedly attacked various foreign trade agreements throughout his first two years in office. This included the United States pulling out of the Trans-Pacific Partnership trade agreement.

Trump also demanded that revisions be made to the North American Free-Trade Agreement with Canada and Mexico, after imposing major increases in tariffs affecting both countries. He has provoked a trade war with China, imposing major tariffs that China met with firm retaliatory measures, along with lesser conflicts with the European Union and Japan. In 2019, a new North American trade deal passed the House, and Trump announced a new trade deal with China. The Trump administration initiated massive subsidies to assist agricultural businesses severely hurt by the loss of exports to China.

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Jeff Stein, Trump's quest to shatter GOP economics reached its culmination in 2019, Washington Post, Dec. 27, 2019.

Labor Markets

Labor Market
Policy
Score: 8

The United States has one of the least regulated and least unionized labor markets in the OECD. Some states even have “right-to-work” laws that prevent unions from requiring membership as a condition for employment. The low levels of unionization, which in principle lowers the price of labor, should generally promote employment.

The U.S. government 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 undergone any major change. Trends at the local and state government levels have gone in different directions. Whereas 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 2019 continued to decline, reaching 3.7%, which is the lowest officially registered rate since 1969. In addition, the tightening labor market produced gains in average wages. At the time of this writing (before the Covid crisis of 2020), median household incomes had increased by 12% since Trump had taken office. At the same time, because income grows even faster at the top, income inequality has been exacerbated. The unemployment rates for groups that have tended to receive a smaller share of the expansion’s rewards – high school dropouts, African Americans and Latinos – also dipped in the period from December 2018 to December 2019.

The Trump administration has cut some Obama-era training programs and sharply reduced the enforcement of labor regulations; it has also rejected an increase in the federal minimum wage. Trump’s policies may increase somewhat the supply of low-wage labor and reduce compensation for some working people.

Citation:

Patricia Cohen, After a Decade of Hiring, Plenty of Jobs but raises are tiny, *New York Times*, Jan. 20, 2020

Taxes

Tax Policy
Score: 5

The U.S. tax system does not produce enough revenue to eliminate the deficit and provide sufficient resources to fulfill major obligations in the long run. Tax policy is highly responsive to special interests and the redistributive effect of the tax system is very low. As a result, the tax system might promote the country's competitive status internationally but faces serious problems in terms of ensuring horizontal and vertical equity. 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.

Congress enacted a sweeping "tax reform" measure in late 2017, which went into effect in January 2018. The Trump administration's ostensible major objectives were to reduce corporate tax rates, reduce rates paid by high-income taxpayers, eliminate the inheritance tax, reduce taxes for middle income taxpayers, and make up for the losses of revenue by eliminating certain credits and deductions.

According to recent numbers issued by the government, tax reform will lead to a loss of \$600 billion more in tax revenues, bringing the cut's total costs to \$1.6 trillion. Although most people actually paid less in taxes as a result of the cuts, the wealthy benefited much more from much larger cuts. In fact, as reported by Max de Haldevang in *Quartz*, in 2020, the wealthiest 20% of "taxpayers will save more than double the amount of taxes than the remaining 80% of earners combined."

Citation:

<https://qz.com/1769421/trumps-tax-cuts-and-jobs-act-shows-poor-results-after-two-years/>

Budgets

Budgetary Policy
Score: 4

Budget policy in the United States is a complex issue and raises different concerns regarding short- or long-term deficits respectively. 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, by all accounts, the country's long-term deficit seriously exceeds acceptable levels. As the Congressional Budget Office has testified, "federal debt appears to be on an unsustainable path." The primary driver 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 (healthcare for the elderly) and Social Security (retirement) programs.

In 2019, the federal budget deficit nearly hit \$1 trillion (4.7% of GDP), and economists are raising growing concerns about the sustainability of the country's fiscal plan. A Congressional Budget Office (CBO) report projected deficits above \$1 trillion every year from 2020 to 2029, with government debt totaling close to \$30 trillion by the end of the decade.

Overall, the Trump administration's policy changes have exacerbated the country's long-term fiscal challenges. Furthermore, Congress has proved increasingly less able to deliver a budget on time. In 2019, it managed to enact the required appropriations bills and avoid a repeat of the January 2018 shutdown. A Bipartisan Budget Act loosened the (largely ineffective) discipline on new spending measures. It also removed the debt limitations that had allowed for highly disruptive partisan brinkmanship, such as that witnessed in 2011 with Republican threats to force default on government bonds.

Research, Innovation and Infrastructure

R&I Policy
Score: 8

The United States has traditionally invested heavily in research and development, but the effects of the Great Recession and the country's problematic budget politics have compromised this support. Certain public institutions stand out, particularly the National Science Foundation, the National Institute of Health, the country's federal laboratories and various research institutions that are attached to federal agencies. In addition, there is a vast array of federally supported military research, which often has spillover benefits.

In its first three years, the Trump administration has afforded research and innovation, apart from defense, a low priority. It cut federal R&D spending by about 4.5%, except for Department of Defense R&D, which was projected to increase by 15% and includes \$2 billion for a new program on artificial intelligence. Trump has cut scientific and engineering personnel in environmental and resource-related agencies and withdrawn support for alternative energy development. Trump's 2020 budget continued these trends, which included a 13% cut in funding for the National Science Foundation and

a 12% cut in funding for the National Institute of Health. Furthermore, the Trump administration's budget proposes to eliminate several environmental programs at the National Oceanic and Atmospheric Administration agency.

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Joel Achenbach et al., Trumps budget seeks cuts in science funding, Washington Post, March 11, 2019.

Global Financial System

Stabilizing
Global Financial
System
Score: 6

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 2008 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.

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. In a major change of direction, the Trump administration and Republican Congress partially repealed the Dodd-Frank Act; the repeal gutted the Volcker rule (prohibiting banks from making certain investments for their own accounts). The administration has abandoned support for the development or implementation of international standards. On the domestic side, it has largely abandoned enforcement activity of the Consumer Financial Protection Board. The result has been a resumption of some of the risky, potentially destabilizing banking practices that led to the financial crisis.

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<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, but which is a low rate 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.

Whereas federal engagement became more extensive and ambitious during the Obama administration, the Trump administration cut federal education programs by more than \$10 billion. Under Education Secretary Betsy DeVos, the administration has redirected funding to support school-choice initiatives, which seek to improve education by shifting responsibility for a child's education to parents while reducing the power of teachers' unions and state-level education bureaucracies – a conservative strategy that has significant support in research findings. In 2019, the administration imposed new cuts in programs for disadvantaged students.

As college and university costs have increased, financial aid for low-income students has failed to keep up. 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 has cut budgets for college loan programs and has relaxed accreditation requirements for the often-predatory for-profit higher education sector. In 2019, the Trump administration canceled an Obama-administration directive that had weakened traditional due-process protections in university proceedings on sexual assault accusations while instituting new requirements for the protection of freedom of speech on campus.

Citation:

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

Social Inclusion

Social Inclusion
Policy
Score: 4

The United States has long featured high levels of economic inequality that have continued to increase. In recent years, poverty has remained persistent and been accompanied by exceptionally large income gains among the top 1% and, in particular, the top 0.1% of earners. The United States ranks in the top 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. Overall income inequality (after taxes and transfers) hit a record high in 2019, according to the Census Bureau.

President Trump and the Republican Congress have introduced major cuts to programs targeting the poor – including healthcare, food stamps, student loans and disability payments. They have also sought to exclude undocumented immigrants from receiving the Child Tax Credit or the Earned Income Tax Credit. They have sought to eliminate the expanded low-income health coverage that was introduced by Obamacare. In 2019, the Trump administration initiated efforts to bar undocumented immigrants from purchasing healthcare insurance under the Affordable Care Act and to sharply reduce coverage of the food stamp program. In 2019, the Trump administration signed the Reducing Poverty in American Act, an executive order that expanded work requirements in the social welfare net, especially in the Supplemental Nutrition Assistance Program (SNAP).

Health

Health Policy
Score: 5

For many years, the U.S. healthcare system has provided the best care in the world, though highly inefficiently, to most of its residents, that is, those with health insurance coverage. It has provided significantly inferior care to the large numbers without coverage, in particular, people with relatively low incomes or those who are ineligible under the means-tested Medicaid program. In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA, often called “Obamacare”), mainly to extend healthcare coverage to more people. The ACA was essentially designed to fill gaps in the existing healthcare system’s patchwork of financing arrangements.

In 2017, the Republican tax bill effectively abolished the individual mandate (a requirement for otherwise uncovered individuals to purchase health insurance), which is central to making the ACA financially viable. In addition, Republican officials in 19 states filed a lawsuit seeking to invalidate the ACA (despite the prior Supreme Court ruling), and the Trump administration authorized “short-term” insurance plans that included sharply reduced coverage. The elimination of the individual mandate has increased the numbers of those not covered by health insurance and increased the cost of premiums for those who are covered. In 2018, the number of people in the United States without health insurance rose to 27.5 million, up from 25.6 million in 2017. In 2019, the Trump administration continued efforts to undermine the operation of the ACA on several fronts.

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 childcare. This measure has not proved 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 Trump administration has discussed enhanced family leave programs, but its main actions affecting low-income families have been to strengthen work requirements in cash assistance, food stamps and low-income healthcare programs. The administration's 2020 budget proposal includes \$1 billion of funding to expand childcare assistance. In addition, the Senate passed legislation in 2019 that would provide federal workers with 12 weeks of guaranteed paid parental leave.

Responding to the arrival of two Trump-appointed conservative Supreme Court justices, several state governments have taken steps to dramatically restrict or even abolish access to abortion. The hope of these governments is that the Supreme Court will overturn *Roe v Wade*, the 1973 decision that established the right to abortion, and therefore uphold their efforts to restrict abortion. In some states, access to abortion has become nearly nonexistent.

Pensions

Pension Policy
Score: 7

The Social Security retirement program is the United States' main public pension system that complements 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%, which is below the OECD average, though the rate is higher 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 of 2008 hit the asset base of pension funds, which has resulted in many private employers proving unable to make full payments. A long-term

Social Security funding shortfall has been politically intractable, with Democrats blocking benefit cuts (or reductions of scheduled benefit increases) and Republicans blocking increases in the payroll tax.

With respect to the three goals of pension systems (i.e. poverty prevention, intergenerational equity and fiscal sustainability), the U.S. pension system is partially successful in reducing poverty among the elderly. In other words, while the poverty rate among the elderly is high by OECD standards, it is lower than 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 and the Republican Congress have not been willing to raise taxes or cut benefits in order to address the long-term funding deficiencies of the Social Security program. These funding deficiencies are increasingly difficult to manage and will require larger, more painful adjustments with every year in which the government fails to act.

Integration

Integration Policy
Score: 4

Prior to the Trump presidency and on the basis of data provided by the Migrant Integration Policy Index, in terms of overall integration policy, the United States was ranked ninth out of 31 assessed countries and 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 share of immigration to the United States has consisted of illegal immigrants, most of whom have crossed the border from Mexico and often have lived, worked and paid 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 (or 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 penalization. There have been bipartisan efforts to enact major immigration reforms, involving proposals that have combined more effective control of illegal entry with the legalization of many prior illegal entrants for several decades; but such efforts have not succeeded.

Events taking place from 2016 to 2018 have profoundly increased the insecurities faced by large numbers of immigrants. President Trump's successful election campaign was based in large part on his opposition to immigration, especially from Mexico, the Middle East or other Muslim countries. Trump has carried out a wide-ranging, aggressive attack on immigration – targeting illegal immigration in particular. Though his actions have often been overturned in federal courts, Trump has sought to ban the otherwise legal entry of individuals from eight mostly Muslim-majority countries and to end the Deferred Action for Childhood Arrivals (DACA) program (which protects adults who were brought into the country illegally as children from deportation). In addition, he has declared his intention to abolish birthright citizenship (despite his lack of constitutional power to do so). Trump has insisted on his demands to build a wall on the Mexican border. In what has been an international human-rights scandal, his administration has separated more than 2,000 children from their parents who have entered the country, most often legally, in search of asylum. Trump has also threatened to withdraw permanent resident status from immigrants who draw on public assistance. So far, most of these reform proposals have been blocked by local courts and/or have not been implemented. In 2019, there was a significant increase in apprehensions of illegal immigration at the Mexican border. The administration has also proposed new rules favoring wealthier applicants for permanent residence status, and there has been an increase in the number of family separations among families seeking refugee status.

Though opposed by most Americans, Trump's xenophobic rhetoric and his draconian – often unconstitutional – immigration measures have been popular with his base, the roughly 40% of those citizens who approve of his performance. His rhetoric and actions in this regard appear to have contributed to Republican losses in the House of Representatives in the 2018 midterm elections. Nevertheless, the president's hostility toward immigration will undoubtedly affect educational and job opportunities and other support for the integration of legal immigrants. Muslim, Latino and other immigrant communities have experienced a massive increase in uncertainty regarding their status and acceptance in society.

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)

Internal Security
Policy
Score: 4

Safe Living

The United States invests massively in efforts to protect citizens against security risks such as crime and terrorism. In the years after the September 11, 2001 terrorist attacks, 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. Since 9/11, the United States has been subject to only smaller-scale attacks from homegrown terrorists. In 2019, arrests for domestic terrorism held steady at about 100.

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. Hate crimes have increased, with Jewish and Muslim persons frequently targeted. Even though the 2019 level – 350 hate crimes reported to police – is about one crime per million population, the increase has resulted in a growing sense of insecurity among the targeted populations.

Under pressure from the National Rifle Association and its mass membership, Congress has failed to pass legislation tightening weapon regulations. In 2018, a massive national protest – led by students from a Florida high school that had suffered an attack – increased the pressure on lawmakers to introduce tighter restrictions on the sale and acquisition of guns and other weapons. In 2019, the Democratic Congress passed numerous gun control measures (background checks and limits on ammunition magazines) which the Republican Senate did not act on.

The issue of violence in predominantly black communities has been highly controversial. Whereas some studies have suggested that when apprehending a suspect, police are no more likely to use lethal force against blacks than whites, these studies have been criticized for methodologies involving conceptual bias. There are several other studies, however, showing that black men are much more likely than white men to be affected by police brutality. In terms of actual casualties and loss of life, the frequency of inner-city violence, which involves mostly black perpetrators and black victims, is by far the greatest failure to provide safe living conditions (see 2016 FBI data “Crime in the United States”).

Citation:
<https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/expanded-homicide-data-table-3.xls>

Global Inequalities

Global Social
Policy
Score: 6

Although the United States’ efforts have lagged behind those of other OECD countries, relative to the size of their economies, it provides a large share of the world’s development assistance. 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.

Reversing this direction with his “America first” agenda, Trump has cut foreign aid budgets with plans to seek reductions of up to 37% and even abolish the U.S. Agency for International Development (USAID). To support Israel, he has barred aid to Palestine. In deference to anti-abortion demands, he has barred international organizations that either promote or perform abortions from involvement in distributing economic aid. At the end of 2018, the Trump administration changed its course again. With the Build Act and other activities, the administration looked again to foreign aid policy as an instrument of soft power in competing with Russia and China. As of this writing (December 2019), however, no major investment in expanding foreign aid has been made and earlier in the year, President Trump proposed freezing more than \$4 billion in development aid.

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 resource use (e.g., water resources, wetlands, endangered species and the protection of forests). In some areas of environmental pollution, 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.

The Trump administration has been a rapidly escalating disaster for environmental policy. Trump has embraced an extreme version of climate-change denial and withdrawn the United States from the Paris Climate Agreement. Although some of the country's more liberal states will continue to seek reductions in carbon emissions, no national action can be expected to be taken under the Trump presidency. Indeed, Trump has promised to rejuvenate the coal-mining industry, an economic absurdity. He appears to want to reverse any action that was taken by the Obama administration – for no other reason than that – and thereby torpedo ambitious environmental policy goals. There is no coherent policy approach across different relevant policy fields.

Meanwhile, Trump has appointed hardliner opponents of environmental regulation from industry to top environmental positions. Under his leadership, the Environmental Protection Agency (EPA) has ordered the cancellation of numerous Obama-era environmental regulations – actions that have generally been undertaken without benefit of serious analysis and may, in many cases, eventually be struck down by the courts. The Trump administration has decimated the EPA's scientific and expert staff, leaving the agency unlikely to enforce many regulations that remain on the books.

Global Environmental Protection

Global
Environmental
Policy
Score: 2

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. 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.

The Obama administration sharply reversed Bush's policy direction on environmental issues, especially with regard to climate change. But limited support from Congress and the public constrained U.S. positions in international negotiations. Nevertheless, the U.S. rejoined the United Nations process on climate change. In 2014, it committed to reducing total U.S. carbon emissions by 26% to 28% in comparison with 2005 levels, and it played a

leading role in the December 2015 U.N. Conference on Climate Change (COP21), although lacking an effective national carbon reduction strategy.

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, Trump has withdrawn the United States from the international climate-change regime and canceled U.S. contributions to support conversion to clean energy by low-income countries. Importantly, some states (especially California) have indicated their intention to continue progress in reducing carbon emissions. But California does not play a significant role in supporting the international regimes for environmental control. Under President Trump there will no leadership and little, if any, cooperation from the U.S. federal government in international climate-change efforts.

Marine plastic pollution threatens biodiversity through entanglement, ingestion and chemical exposure. The United States is in the top 20 of 192 coastal countries with mismanaged waste entering the ocean. Regarding single-use plastics and fishing nets, two major sources of plastic pollution, the United States currently does not have a federal ban on most single-use plastics or on synthetic gillnets.

Quality of Democracy

Electoral Processes

Candidacy
Procedures
Score: 9

With rare exceptions, procedures for registering parties and candidates are fair and nondiscriminatory. State governments determine the requirements for ballot access. All states 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 some cases, the ballot-access requirements may be a burden for smaller parties or independent candidates.

In general, ballot access has not been controversial, and no major problems regarding ballot access have been reported in recent elections. In 2019, however, Republican party organizations in four states (Arizona, Kansas, Nevada and South Carolina) moved to cancel their 2020 primary elections, and thus protect President Trump from effective challenge to his nomination for a second term. Because the political parties set their own rules and procedures for nominating candidates, the national Republican party will undoubtedly accept the change, even though it severely compromises the democratic character of candidate selection within the party.

Media Access
Score: 6

In a broad sense, media access is fair, although the U.S. media exhibit some significant biases. Publicly funded media have access to relatively modest budgets, most of which is financed through community support. Most media organizations are privately owned, for-profit enterprises, independent of the government and political parties. Some media, such as the MSNBC cable news network, have a strong liberal and Democratic party bias. Others, most notably Fox News Channel, have a fervent conservative and/or Republican bias.

It is important to note that during 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. During the 2016 presidential race, Donald Trump held a strong advantage in free air-time on news media because audiences were interested in his frequent use of extreme rhetoric at campaign rallies.

Since the 2016 campaign, citizens have reported accessing political campaign information through social media (i.e., Facebook and Twitter) as often as through traditional news sources, even though social media have proved to be highly useful in efforts to spread misinformation. Despite being subject to considerable criticism during congressional hearings held in 2019, Facebook has resisted taking responsibility in terms of preventing the dissemination of false and misleading content on its platform.

The unprecedented biases and distortions found within right-wing media outlets and the vulnerability of social media to misinformation suggest that citizens no longer enjoy uncompromised access to reliable information.

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

Voting and
Registration
Rights
Score: 5

American elections are administered by the states but subject to regulation by the federal government in order to protect citizens' rights and other issues. In many states, convicted felons are not eligible to vote. Non-citizen residents are not permitted to vote, although permanent residents are encouraged to become citizens. Various forms of racial discrimination against blacks were widespread in many of the southern states before the Voting Rights Act of 1965. Thanks to the Justice Department's aggressive enforcement of the act, racial discrimination in the administration of elections was largely eliminated by the 1990s.

In recent elections, however, Republican officials in many states have engaged in or attempted to engage in overt efforts to reduce the numbers of black (and sometimes Latino) voters. Often under the pretext of preventing voter fraud, Republican-controlled legislatures in over half of the states have enacted or considered measures that have made it harder for some groups to vote. Federal courts have struck down or delayed the implementation of several such state laws but have also declined to delay others. In both the 2016 and 2018 election cycles, registration procedures were subject to considerable controversy, as heavy-handed voter suppression efforts were observed in many Republican states. Some Republican-controlled states reduced the number of polling places, resulting in several-hour waits in minority and low-income areas. The Trump Justice Department has not challenged such voting restrictions. But federal courts, responding to appeals brought on by other parties, have blocked several of these restrictions. And the new Democratic House has identified voting rights as one of its top priorities. Florida passed an amendment in 2018 to restore voting rights for felons.

As of 2019, the Republican party adopted as a standard party strategy the suppression of low-income and minority votes by any legal means. Republican

Party Financing
Score: 5

officials in Wisconsin and Georgia have launched initiatives to purge the voter rolls of hundreds of thousands of voters, mostly in minority and low-income areas.

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 regulated and transparent system to monitor contributions to candidate campaigns and political parties. However, so-called independent expenditures have been subject to fewer and diminishing constraints. 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 expenditures on behalf of parties or candidates – without being allowed to coordinate with candidates’ campaigns – and to receive unlimited contributions from individuals, corporations, unions or other entities.

Neither the contributor nor the candidate or party can be held accountable for how contributions are spent, and contribution recipients are no longer required to disclose how a Super PAC is funded. 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 avoid publicity regarding their source.

In 2018 and 2019, evidence emerged of potentially substantial illegal foreign contributions being made to electoral campaigns. The National Rifle Association has been implicated in funneling Russian money to Republican candidates. In September 2019, two Ukrainian associates of Trump’s personal attorney Rudolph Giuliani were indicted for several crimes – including illegal, Russian-sourced contributions to political campaigns such as that run by House Republican leader Kevin McCarthy. Meanwhile, the Trump administration has failed to make appointments to the Federal Election Commission, depriving it of the quorum needed to undertake enforcement action.

Popular Decision-
Making
Score: 8

Popular decision-making mechanisms do not exist in the United States at the federal level. But 24 of the 50 state governments and many local governments provide for some form of direct democracy – with ballot measures giving citizens the opportunity to discuss and vote on public policy and/or constitutional issues. In around 30 states, petitions can force special elections in which voters decide whether to remove or retain one or more challenged elected officials. In several states, a recall with sufficient signatures can launch a by-election for any reason. States or cities have adopted measures granting or restricting rights for the LGBTQ community, legalizing marijuana, mandating certain expenditures, limiting taxes, setting mandatory criminal sentences and other provisions. The contribution of these direct-democracy practices to sustainable governance is controversial.

Access to Information

Media Freedom
Score: 7

The United States has long upheld an unusually rigorous version of media freedom, based on the categorical language of the First Amendment to the constitution. In general, government interference in the media sector has been nearly nonexistent. News organizations are rarely subject to damage suits, even for false accusations against government officials. The United States does not have a national “shield law,” barring punishment for a journalist’s refusal to reveal sources to law-enforcement officials, but most states offer such protection.

Both in his presidential campaign and as president, Trump has threatened news organizations in various ways for their critical coverage of him, which he dismisses, nearly always falsely, as “fake news.” Throughout 2018, there were no apparent cases of substantial punishment or censorship of news organizations, but the president’s contempt for press freedom has been widely regarded as a significant threat. He has persistently attacked the mainstream media, falsely accusing them of corruption and dishonesty, referring to them as “enemies of people.” In 2019, the Trump administration withheld a \$10 billion military contract for cloud services from Amazon in an apparent attempt to retaliate against owner Jeff Bezos, who also owns the Washington Post and which has published several reports critical of the president.

The vast majority of the news media have not been intimidated by Trump’s attacks or threats, which have become more or less ceaseless at this writing.

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, in addition to the centrist CNN. There has been an

unprecedented consolidation of ownership of local media outlets in recent years. A mere five major media corporations control nearly 75% of primetime viewing. Nevertheless, people in most places have access to at least six different national television news networks in addition to multiple radio stations and the vast array of internet sources. Because of declining readership, there has been a steady decline of competition in the print media; few major cities today have more than one newspaper. The main challenge with respect to media pluralism is the decline in financial resources available for actual news gathering and reporting, as opposed to commentary.

The main problem in the U.S. media system is not a lack of pluralism but the fragmentation of media audiences into ideological camps. In addition, the prominence of right-wing media, such as Fox News, pose a significant problem as they have largely participated in the Trump presidency's attack on mainstream media, the erosion of standards of civility, and have engaged in the dissemination of misleading claims and outright falsehoods. A significant share of the public is therefore effectively not exposed to the most important current information about public affairs.

Access to
Government
Information
Score: 6

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 from public access, 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.

In 2019, a larger issue of access to information arose in that the White House declared, in the context of the House's various investigations into presidential misconduct, that the administration would not cooperate with the House inquiry and thus would neither provide any requested documents nor permit executive branch witnesses to testify. Although some executive-branch witnesses did testify, contrary to White House instructions, most did not. The unprecedented blanket defiance of legitimate congressional demands for information and testimony also deprived the media and the public of the access it would have had to most of that information. As of fall 2019, congressional efforts to enforce demands for information (along with some similar demands by state and local prosecutors) were tied up in judicial appeals – in most cases with little chance of getting the administration to cooperate with these demands.¹ In December 2019, the House of Representatives, on a party-line vote, impeached president Trump, in part for his “obstruction of Congress.”

Citation:

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

Civil Rights and Political Liberties

Civil Rights
Score: 6

The traditional legal protection 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, even though some surveillance and investigative procedures have opened the way for abuse. The more significant compromises of privacy protections have resulted from actions taken by the Bush administration, which include the National Security Agency being able to order widespread wiretapping and internet surveillance, entirely without statutory authority.

In December 2018, Congress passed a bipartisan bill under discussion for several years that reduced excessive sentences for many nonviolent offenses, such as minor drug offenses. The burden of such sentences had fallen heavily on blacks and Latinos. In 2019, however, the Justice Department, under Attorney General William Barr, has openly criticized the reform law and sought to discourage its full implementation.

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 Communists and 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. From 2015 to 2018, restrictions imposed by many university campuses on speech deemed to offend one or more groups – primarily leftwing social justice, anti-racist, feminist and LGBTQ activists – received growing media and political attention. Some universities have barred conservative speakers from making appearances on campus, mostly citing security concerns that arise from leftwing 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 that violate constitutional guarantees of freedom of speech. Several states with Republican-controlled legislatures have passed laws requiring state universities to effectively protect free speech on campus, and in 2019, the

Trump administration added free-speech protection to the requirements for university access to federal aid.

In one significant limitation to political rights, convicted felons are barred from voting in nearly all states, although usually not permanently. Florida passed legislature to restore voting rights for felons in 2018. 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).

Non-
discrimination
Score: 8

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, LGBT.

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 Department of Justice under Trump has argued that anti-discrimination legislation does not include transgender workers and has blocked efforts to prohibit discrimination in the workplace based on gender identity. It also supports the right of small businesses to withhold services from LGBTQ individuals if, for example, the business owners have religious objections to same-sex marriages. In an action initiated in a tweet by the president, without consultation of the Department of Defense, the Trump administration has banned transgender individuals from serving in the military. For the most part, however, the Trump administration positions have resisted expansion of anti-discrimination protections, especially for transgendered persons, rather than withdrawing established protections.

Rule of Law

Legal Certainty
Score: 5

There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty. 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. These include supplanting the authority of elective policymaking institutions, reducing administrative discretion, causing delays in decision-making, and increasing reliance on courts and judges to design policies and/or administrative arrangements. When it comes to 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 may not know their obligations under the new regulation for several years.

Donald Trump and his associates have been heavily criticized for their overt and sustained efforts to undermine investigations into possible misconduct. In the most important investigation, Special Counsel Robert Mueller investigated Russian interference in the 2016 election campaign, possible collusion with the Russian interference by the Trump campaign, and possible obstruction of justice. In the course of the various investigations into his activities, Trump has fired the FBI director, threatened to fire Special Counsel Robert Mueller, leveled numerous false accusations against investigators, and repeatedly discussed offering presidential pardons to his associates whom he feared would testify against him. For the most part, Congressional Republicans have either supported Trump's conduct or have at least avoided engaging in a direct confrontation with him. The Trump administration has ignored clear legal obligations on some investigation-related matters, which includes refusing to provide Trump's tax returns to Congress, and failing to forward a whistleblower's report that had been referred by the intelligence community's inspector general. Trump has also invoked emergency powers, without credible grounds, to transfer funds from military construction projects to the construction of his proposed wall on the Mexican border. In his letter of resignation as secretary of defense, James Mattis criticized Trump for ignoring the limits of his legal authority in multiple matters.

At the time of this writing (early 2020), on the heels of Trump's impeachment by Congress, it seems clear that the United States is in the midst of a constitutional crisis in which there is severe uncertainty regarding assured adherence to the rule of law within the executive in particular.

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 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. In the U.S., however, judicial decisions often depend heavily on the ideological tendency of the courts at the given time. The U.S. federal courts have robust authority and independence but lack the structures or practices to ensure moderation or stability in constitutional doctrine.

After the death of conservative Justice Antonin Scalia in early 2016, the Republican-controlled Senate, in a sharp break from past practice, refused to act on Obama's nomination of a replacement for more than a year. Since the 2016 election, President Trump has nominated, and the Senate confirmed, two conservative Republican justices, Neil Gorsuch and Brett Kavanaugh. In the case of the latter, a full investigation of (decades-old) sexual assault accusations waged against Kavanaugh was not permitted. The Senate's handling of these appointments 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 and various Republican states' onerous voter registration requirements. During the Trump presidency, federal courts have intervened in various ways by blocking the Trump administration's Muslim travel ban and forcing major modifications to the administration's harsh treatment of asylum-seekers.

As of late 2019, the Trump administration has not yet defied final rulings by the judicial branch. It remains to be seen whether it will comply with such orders in the multiple cases currently at various stages of appeal.

Appointment of
Justices
Score: 7

Federal judges, including Supreme Court justices, are appointed for life by the president and must be confirmed by a majority vote in the Senate. Historically, they have generally reflected the political and legal views of the presidents who appointed them. Over the last 30 years, however, judicial appointments have become more politicized, with conflicts over Senate confirmation eventually becoming almost strictly partisan.

With one additional vacancy during his first two years, President Trump has appointed and the Senate confirmed two Supreme Court justices. With the obstacle of the filibuster removed, the Republican Senate has declared a firm

commitment to confirming Trump-nominated conservative lower court judges. In a departure from past practice, the Republican Senate has confirmed several Trump nominees whom the American Bar Association had rated “not qualified.”

Given the fact that federal judges are appointed for life, the courts’ independence from current elected officials is well protected. However, federal judges increasingly reflect the ideological preferences of the president and the Senate at the time of their appointment, often decades earlier. Within the Senate, voting on the confirmation of Supreme Court judges is a partisan manner as bipartisan consensus has all but vanished. All of the Trump administration’s federal judge appointees have demonstrated allegiance to the president, and some have few credentials beyond their hardline conservative views.

Corruption
Prevention
Score: 6

The first two years of the Trump presidency have brought an unprecedented disregard of established practices to prevent conflicts 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 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. Thanks to 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 with respect to conflicts of interest. 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 and 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 the abuse of public resources, for example, the use of military aircraft for vacation travel.

Trump has demonstrated a lack of respect for laws, constitutional provisions and established practices in order to profit personally from the presidency. His hotels have received millions of dollars in payments from foreign governments

(in apparent violation of the Constitution’s “emolument’s clause”), American military personnel, and his own travel and security staff. In 2019, uncontroverted testimony emerged showing that Trump used the threat of withholding \$400 million of military aid from Ukraine to coerce Ukraine to investigate one of Trump’s likely 2020 election rivals, former Vice President Joe Biden.

In December 2019, the House voted on and approved two Articles of Impeachment against Trump. One of them concerned the abuse of power in the Ukraine affair, and one concerned the obstruction of Congress. The House had considered including various additional articles, including Trump’s violation of the emoluments clause (i.e., financial corruption) and the obstruction of justice in the Mueller investigation, but decided to focus on the two articles whose evidence and importance were most readily demonstrable.

Governance

I. Executive Capacity

Strategic Capacity

Strategic
Planning
Score: 5

The U.S. government has a number of units that analyze policy issues and make long-term projections as part of the assessment of current options. The Executive Office of the President has multiple staffs and agencies tasked with analyzing various policy issues. 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 most areas of government and policy, President Trump has shown virtually no interest in long-range planning, professional expertise or even organized, careful deliberation. Economists are notably absent among his high-level economic advisers and appointees. In national security policy, he has favored senior military officers, but often relied on his own untutored preferences and impulses. His administration has essentially eschewed any conventionally organized advisory and decision-making processes.

In Congress, the Republican leadership has sought to overcome popular resistance to its major policies on healthcare 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 that party members will toe the line. Republican leaders have tried to prevent the “scoring” of legislative proposals by the nonpartisan Congressional Budget Office, which assess the budgetary implications of bills over the next 10 years.

The vast majority of government departments and agencies have witnessed devastating 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.

Expert Advice
Score: 4

U.S. policymaking incorporates scholarly and expert advice in an informal and highly decentralized 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.

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 is sometimes perceived to have a left-leaning bias. On some issues, especially climate change, Republican officials have simply rejected well-established scientific findings. Through 2018 the Trump administration has annulled or withdrawn various environmental regulations (on pesticides, endangered species, and other matters) without addressing the scientific evidence.

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. In 2019, the Department of Agriculture moved scientific research agencies from the Washington, D.C. area to Kansas, apparently for the purpose of inducing most of the scientists to leave government employment.

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.

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” in which White House staff are 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.

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 staff in their work. Under long-established practice, however, the president and the White House staff are in fact dominant within the executive branch and can therefore prioritize issues they see as important to the president’s agenda. In the Trump administration, agency policy development has been heavily shaped by Trump’s desire to cut regulations and to reverse actions taken by the Obama administration. There has been little policy development shaped by long-term agency missions or priorities, nor has White House involvement reflected organized deliberative processes.

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 thoroughly neglected the role of managing an organized, systematic policy process. Trump selected his third White House chief of staff before the end of his second year in office. Decision processes have been described as chaotic, even by insiders.

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. 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: 7

The U.S. government is highly prone to informal coordination, relying on personal networks, constituency relationships and other means. As with 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. The executive branch under Trump has seen calamitous failures of coordination – for example, in the failure to provide timely disaster assistance after a devastating 2017 hurricane in the U.S. territory of Puerto Rico, and the failure to provide effectively for the humane custody of more than 2,000 children seized in 2018 from asylum-seeking parents at the Mexican border. These failures of coordination, however, largely reflect general problems of understaffing and lack of competent leadership in the departments and agencies in the Trump presidency.

Digitalization for
Interministerial
Coordination
Score: 8

The U.S. government invests heavily in technology, although it is not a world leader in e-government. The multiple intelligence agencies are sometimes criticized as prone to hoarding intelligence information, rather than sharing it within the intelligence community. Reforms adopted in the aftermath of the 9/11 terrorist attacks have increased the sharing of information among the intelligence agencies.

Apart from intelligence issues, problems of coordination generally arise from political forces that promote agency autonomy and response to specialized constituencies, not from deficiencies in communication technology.

Evidence-based Instruments

RIA Application
Score: 5

In general, U.S. government has provided 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, OMB 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 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 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. 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. Impact analyses remain in use in areas that have not attracted the attention of the president, the White House or Republican congressional actors.

Quality of RIA
Process
Score: 5

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. 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 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 also reported benefits eight times higher.

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. The Trump administration has focused on repealing regulations opposed by business groups, mostly without substantial analytic effort.

In the United States, RIA are based primarily on a presidential order or decree like the one issued by President Trump shortly after he was inaugurated on January 30, 2017, reading "it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

Before the end of the current observation period (late 2019), the Council on Environmental Quality (CEQ) was proposing to update its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). These updated regulations are designed to advance the original goals of CEQ regulations such as reducing paperwork and delays, and ensuring that decisions are consistent with the national environmental policy set forth in section 101 of the NEPA.

Citation:

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, Issued on: January 30, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-reducing-regulation-controlling-regulatory-costs/>

Federal Register January 10, 2020: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

<https://www.federalregister.gov/documents/2020/01/10/2019-28106/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>

Sustainability
Check
Score: 6

There has been no standard, separate check required for “sustainability” as such. Assessments have been expected to consider the important costs and benefits relevant to a particular project or policy. While environmental considerations figured prominently in some cases prior to 2016, environmental issues have been aggressively dismissed by the Trump administration. Sustainability checks are either manipulated, ignored or simply do not take place. There are undoubtedly some areas of government – below the radar of Trump, his thin cadre of political appointees, and the business lobbyists that have his attention – in which serious sustainability checks are taking place and guiding decisions.

Quality of Ex
Post Evaluation
Score: 5

The United States has extensive and highly sophisticated capabilities for evaluating the impact of public policies – within government, in a large sector of think tanks and consulting firms, and in the extensive public policy-oriented academic community. In normal times, however, U.S. government is relatively inflexible, and slow to respond to evidence of the need for change. This is a widely recognized consequence of the separation-of-powers constitutional system, which was designed to inhibit policy change. In particular, the institutional barriers to policy change enhance the ability of organized groups to resist reforms that they oppose.

The lack of interest in information about the consequences of policies reached a new and quite extraordinary level during the first two years of the Trump presidency. In some cases, the Republican leadership overrode congressional rules by refusing to wait for CBO analysis before voting on bills. Policy journalists have described an unprecedented indifference among senior government officials to evidence of the actual effects of policy. Effective use of evaluation information is limited to issues that are not on presidential or

partisan agendas, and independent regulatory commissions (with multiple commissioners, serving fixed terms) that are not yet controlled by Trump appointees.

Societal Consultation

Public
Consultation
Score: 5

The U.S. political system is noteworthy for 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 highly 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.

The Trump administration is focusing more on behind-closed-door meetings with lobbyists and supporters and there are no broader attempts to integrate a plurality of societal actors.

Policy Communication

Coherent
Communication
Score: 4

Under normal conditions, politically appointed leadership in every agency means that executive agencies and departments will typically have coordinated their messages with those responsible for the White House communications strategy. Agency press releases and statements on politically salient matters are often cleared with the White House and will be planned for consistency with the president’s priorities and political strategy.

During the Trump presidency, the White House press office has been heavily engaged in defending or obscuring Trump’s many false claims and inconsistent positions. The Washington Post has counted more than 14,000 false or misleading claims (including repetitions) in Trump’s first three years of office.

The coherence of administration messaging is often undermined by chaotic policymaking, sharp deviations from established doctrines and practices, and the pursuit of unacknowledged policy priorities. For example, the 2018 National Climate Assessment, a collaborative product of thirteen federal agencies and 300 scientists, confirmed standard scientific findings indicating the need for urgent action to mitigate climate change – yet Trump declared that he did not believe the report’s findings. He has generally denied the validity of intelligence-community findings on Russian interference in the 2016 election. The administration has sometimes denied, and sometimes acknowledged, a policy of separating refugee families at the Mexican border. Trump often announces major policy changes by tweet only to not follow through with official action.

It is rare for different agencies to issue conflicting statements, but White House and agency statements may change rapidly and lack close coordination.

Implementation

Government
Effectiveness
Score: 4

In comparison to parliamentary systems that anticipate the near-automatic legislative approval of government bills, policy implementation in the United States’ separation-of-powers system is presumed to depend on coalition building, negotiation and a 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.

The legislative experience of Trump’s first year, however, was unprecedented. Even under the condition of unified government, the administration proved unable to pass any major legislation, with the exception of tax reform. The Trump administration has implemented major policy initiatives by issuing executive orders and thereby avoiding the process of legislative change. Preoccupied by the Mueller investigation and House hearings and with divided party control, Congress passed no major legislation in 2019. Trump’s first three years were by far the least productive of any modern president so far.

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. In some cases, agency heads have ignored or discounted

Monitoring
Ministries
Score: 6

apparent orders from President Trump, which have appeared to reflect his spontaneous, un-deliberated responses, often conveyed via Twitter rather than formal presidential documents. We do not consider these instances to constitute failures of compliance.

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.

Under the Trump administration, unprecedented severe staffing deficiencies in both the White House and the departments has diminished the capacity for monitoring.

Monitoring
Agencies,
Bureaucracies
Score: 5

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 reduce 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 Trump administration has increased the states' discretion in the use of funds for food stamps, medical care for the poor (Medicaid), and cash assistance to the poor.

Constitutional
Discretion
Score: 8

Whether the federal government permits the states to exercise their constitutional authority without undue interference is one of the central, long-term 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 2015, the Supreme Court invalidated all state laws that bar same-sex marriage. On the other hand, multiple states have legalized medical and sometimes recreational use of marijuana. The Trump administration has sought to impose controls on states that have maintained certain liberal policies. More notable examples include the administration's attempt to annul California's strict standards for automobile emissions, enforce the federal prohibition of cannabis in states that have legalized it, and penalize "sanctuary cities" that protect undocumented immigrants.

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. Reversing the pattern, the Trump administration has attempted to force the state of California to weaken standards for vehicle emissions. On the other hand, states exercise broad discretion in setting standards of eligibility for Medicaid coverage or with regard to unemployment insurance. A large variation in state government policies and standards of service is regarded as legitimate in most fields.

Effective
Regulatory
Enforcement
Score: 5

In general, the United States has invested quite heavily in regulatory enforcement. A substantial amount of investment reflects the frequent, substantial legal resistance to enforcement actions on the part of the targeted firms or other entities. U.S. regulatory agencies are highly subject to judicial review, and their enforcement actions are often appealed, raising the costs of enforcement and reducing its effectiveness. In general, however, enforcement efforts have been sufficiently energetic. As a result, the targeted firms generally take regulations seriously.

During the Trump presidency, however, many of the regulatory agencies have been headed by appointees with extremely strong and direct ties to the regulated industries, or with strong ideological opposition to their agencies’ programs. In certain areas, such as environmental and workplace safety regulations, the Trump administration has largely ceased enforcement activity.

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.

International
Coordination
Score: 4

The United States has often led international efforts to pursue collective goods. 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.

U.S. performance in this area is not significantly constrained by deficiencies of institutional capability. However, 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. In 2019, among other examples, he has opposed efforts to enhance European security capability, worked to undermine the World Trade Organization, and, in conduct that led to his impeachment, withheld military aid from Ukraine to coerce its cooperation with his personal electoral interests.

Organizational Reform

Self-monitoring
Score: 5

On the 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.

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. In many important agencies, such as the Environmental Protection Agency (EPA), the State Department, and parts of the Department of Justice, mid-tier and lower-level professionals have also left in large numbers.

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 (except at the beginning of each Congress) changes in Senate procedures themselves are normally subject to the same procedures. Fifth, elected politicians, such as members of Congress, are rarely willing to alter the electoral arrangements and practices that enabled them to win office.

II. Executive Accountability

Citizens’ Participatory Competence

Political
Knowledge
Score: 5

With regards to how government works, and the complexity of the issues addressed by policies and policymaking, the U.S. public is generally quite uninformed. Comparing citizens’ levels of governmental knowledge across political systems is difficult. In recent years, observers have become most concerned about the strength of “partisan motivated reasoning” on the part of ordinary citizens. An unprecedented series of scandals, failures and deviations from consensus policies have barely affected public approval of Trump, which has held almost constant at around 42% throughout his first three years in

office. According to the 2019 Annenberg Constitution Day Civics Survey, only 39% of U.S. adults could correctly identify the three branches of government (executive, judicial and legislative).

Citation:

<https://www.annenbergpublicpolicycenter.org/americans-civics-knowledge-increases-2019-survey/>

Open
Government
Score: 7

In addition to data on the activities of government, the U.S. government publishes a vast amount of social, economic and other data. All major departments and agencies collect and publish important series of relevant data. The Budget of the United States Government describes all major programs, their funding and levels of activity, and each agency publishes a substantial annual report describing its operations and various measures of performance and outcomes.

Federal agencies often provide data in a form intended to be used by ordinary citizens. For example, the National Institutes of Health (NIH) provides information for patients separately from that intended for health professionals. For the most part, however, federal agencies do not, and need not, take responsibility for putting data into a form that is best understood by ordinary citizens. Each body of federal data is repackaged and re-purposed by numerous media, service and other organizations.

The Trump administration has discontinued the publication of various data series on matters that challenge administration priorities, ranging from climate change to mental health. Its actions have been described as a “war on data.” Increasingly, the administration cites national security as an argument for withholding information from the public or Congress.

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 globally.

Obtaining
Documents
Score: 5

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. 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. 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 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.

In a sharp departure from past practice, the Republican Congress during the first two years of the Trump presidency has largely refrained from conducting oversight or investigations into the conduct of the executive branch. The Democratic takeover of the House of Representatives as a result of the 2018 midterm elections massively increased levels of oversight and investigation, as it sought to render the executive under Trump accountable. Despite lacking credible legal or constitutional grounds, the Trump administration declared in 2019 the House investigations into presidential misconduct illegitimate and adopted a firm posture of refusing to cooperate with House requests for information, including legally binding subpoenas. As of late 2019, the House and the Trump administration have been embroiled in numerous lawsuits over the administration's refusal to provide information, and the House has approved an article of impeachment alleging the obstruction of Congress.

Summoning
Ministers
Score: 5

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.

As with respect to documents, the Trump administration in 2019 has maintained an unprecedented, blanket refusal to allow executive branch officials to testify before House committees investigating presidential misconduct. As of 2019, there are numerous lawsuits underway, but the House also – recognizing the unprecedented, sweeping character of the administration's positions, and their incompatibility with the basic design of the constitutional system – has approved an article of impeachment alleging the obstruction of Congress.

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.

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 much more than half of major news outlets, nor the outlets used by large 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.

In the aftermath of the 2016 presidential election campaign, investigations have determined that Russian content farms, working through disguised social media accounts, created false and misleading news posts on Facebook and other social media that that were received hundreds of millions of times by unsuspecting social media users. The posts were generally designed to increase division and conflict in American society and, in particular, to promote the candidacy and subsequent presidency of Donald Trump, and have continued to do so. Facebook and other media companies have been embarrassed by their failure of self-policing. It is unclear how effectively such interventions can be prevented.

Parties and Interest Associations

Intra-party
Decision-Making
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 officeholders (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 Trump nomination underscored the critical views of analysts about the dangers of relying on ordinary party members to select party nominees. Nevertheless, former supporters of Senator Bernie Sanders’ unsuccessful pursuit of the 2016

Democratic presidential nomination have successfully pressured the Democratic party to reduce the role of party leaders in the 2020 presidential nomination contest.

Association
Competence
(Employers &
Unions)
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 several hundred business associations that can draft bills or amendments and present articulate, sophisticated arguments for their positions.

Labor union staff capacity has declined over several decades, as a result of the declining proportion of the workforce organized by unions (now about 11%). It is still sufficient to formulate relevant policy proposals in areas of interest. In general, labor unions are the principal interest organizations that represent the interests of low-income people. Thus, the decline in union capability is a potentially significant weakness of the U.S. political system.

Association
Competence
(Others)
Score: 8

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.

Independent Supervisory Bodies

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.

Data Protection
Authority
Score: 7

Numerous laws govern the handling of information by U.S. government agencies – in the interests of maintaining citizens' privacy, protecting proprietary information of businesses, preventing identity theft, and for other purposes. Overall, these regimes may be relatively strict. However, while there is no national data protection authority, the U.S. Federal Trade Commission (FTC) over the past several years has made itself America's de facto data protection authority through aggressive use of Section 5 of the FTC Act, which prohibits unfair or deceptive trade practices. The FTC took enforcement action to protect consumers against unfair or deceptive trade practices, including materially unfair privacy and data security practices.

Many state attorneys generally have similar enforcement authority over unfair and deceptive business practices, including the failure to implement reasonable security measures and violations of consumer privacy rights that harm consumers in their states. In addition, a wide range of sector-specific

regulators, particularly those in the healthcare, financial services, telecommunications and insurance sectors, have authority to issue and enforce privacy and security regulations, with respect to entities under their jurisdiction.

Citation:

see: International Association of Privacy Professionals (2019): The U.S. Doesn't Have a National Data Protection Authority? Think Again...

<https://iapp.org/news/a/america-doesnt-have-a-national-data-protection-authority-think-again/>

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