

DEPARTMENT OF POLITICAL SCIENCE

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INSIDE THIS ISSUE:

BINDER: 2
**ADVICE AND
CONSENT**

BALLA: 3
**TRANSPARENCY
AND PUBLIC
PARTICIPATION**

SIDES: 4
**RACE AND THE
PRESIDENTIAL
ELECTION**

GOLDGEIER: 5
**OBAMA AND
FOREIGN POL-
ICY**

THANKS TO OUR 6
CONTRIBUTORS

NEWS AND NOTES

- **Julle Silverbrook**, a senior major, was invited to present "Beyond Subversive Advocacy: Free Speech Jurisprudence After *Brandenburg*" at the Midwest Political Science Association meeting.
- **Martha Finnemore** and **James Rosenau** were named to the top 20 most influential scholars in international relations
- **Brian Karlsson** was awarded a dissertation fellowship by the Berlin Program for Advanced German and European Studies

GREETINGS FROM POLITICAL SCIENCE

January 20, 2009 brought change to Washington. The quadrennial event that marks the beginning of a new presidential term, the Inauguration, saw a mall crowded with onlookers.



STUDENTS, PUNDITS IN TRAINING, EXCEL IN CALLING THE ELECTION

A Department-sponsored election prediction contest made clear that GW students understand and are enthusiastic fans of American electoral politics. Forty-seven students entered the contest and had to answer 18 questions predicting things such as:

- Would any state give some electoral votes to McCain and some to Obama? (The answer is yes, because Nebraska split their electoral college votes.)
- Would the Democrats secure enough seats (60) to invoke cloture and eliminate minority party filibusters? (The answer is no, because Democrats only won at most 59 seats)
- Who would win Minnesota's Senate seat? (For now, we gave it to Al Franken although Norm Coleman is contesting the results).

Two students, Alexander D'ull and Nat Kaine, correctly answered all 18 questions and seven students answered 17 questions correctly. A tie-breaker question, how many seats will Democrats hold in the House of Representatives,

That event has given way to governing. We asked four Political Science faculty members to take this opportunity to comment on what the Obama Administration or any new administration means for politics and policymaking. In particular, Sarah Binder writes on the impact of the new administration on judicial appointments, Steve Balla discusses changes in bureaucratic policymaking, John Sides assesses the role of race, and Jim Goldgeier projects what impact President Obama will have on foreign policy. These subjects were discussed during the campaign and in the days following the election, but these scholars give their view grounded in political science scholarship.

separated the two perfect prognosticators. By a one seat prediction difference (255 to 254), D'ull is officially declared the winner. For third place, Joseph Naron won the tie-breaker among the seven runners-up. Kelly Bauer prevailed among the graduate student entrants.

D'ull, a senior, relied on fivethirtyeight.com to make his predictions. Kaine is a freshman from Richmond who worked in the Obama campaign. Naron, a former McCain campaign worker, is a freshman from North Carolina.



Joseph Naron, Alexander D'ull, Forrest Maltzman, and Nat Kaine (from left to right)



ADVICE AND CONSENT

SARAH A. BINDER

The inauguration of Barack Obama has turned the eyes of most Washington observers to Capitol Hill, as Congress and the new president begin to tackle the nation's worst economic crisis since the Great Depression. The return of unified party control to Washington will also have important consequences for the Third Branch of government—the federal judiciary. How will the Obama presidency affect the federal bench? Here, I draw on my forthcoming book with my department colleague, Forrest Maltzman, to explore the politics of advice and consent for the federal courts and the impact of a new Democratic administration after eight years of Republican rule.

For better or worse, federal judges in the United States are today asked to resolve some of the most important and contentious public policy issues. Although some hold onto the notion that the federal judiciary is simply a neutral arbiter of complex legal questions, the justices and judges who serve on the Supreme Court and the lower federal bench are in fact crafters of public law. As the breadth and salience of federal court dockets has grown, the process of selecting federal judges has drawn increased attention. Judicial selection has been contentious at numerous junctures in American history, but seldom has it seemed more acrimonious and dysfunctional than in recent years.

Figure 1 shows the confirmation rates (by Congress) for presidential nominations to the federal appellate and trial courts. Confirmation rates for nominations to the U.S. Courts of Appeals have fallen steadily over the past four decades, with barely half of recent presidents' nominees confirmed in recent congresses. Even appointments to the

Sarah Binder is Professor of Political Science. Her books include Stalemate: Causes and Consequences of Legislative Gridlock (Brookings Institution Press)

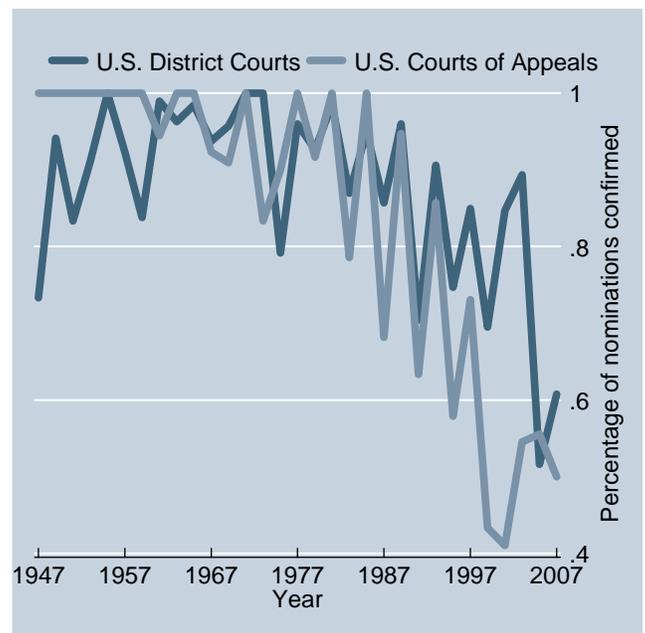
federal trial courts have come under increased scrutiny, as senators have become less likely to defer to the choices of their colleagues and the president. Not only have confirmation rates sunk, but it also takes longer than ever for candidates to move from nomination to confirmation—often waiting months and sometimes years for Senate consideration. All the while, the caseload of the federal judiciary has been expanding over the past two decades to an exceptionally heavy level.

How will the Obama presidency affect the federal bench? The onset of unified Democratic control will likely have at least three effects. It will speed up the retirement of sitting judges—especially those appointed by Democratic presidents—offering Obama a chance to shape the ideological and partisan tenor of the bench. It will help to smooth the path to Senate confirmation for Obama's nominees. And it is likely to lead to an expansion in the size of the federal bench, as congressional Democrats maneuver to create new judgeships to be filled by a Democratic president. Let's consider each of these in more detail.

First, federal judges often time their retirements so that a like-minded president can appoint their successor. Indeed, very few judges appointed by Democrats opted to retire during George W. Bush's administration, limiting Bush's ability to convert Democratic-held judgeships into Republican-held judgeships. (Interestingly, quite a number of *Republican-*

appointed judges took senior status during the Clinton administration, allowing Clinton to convert a substantial number of Republican-held seats into Democratic ones.) Obama's ability to move the federal bench in a more liberal direction will depend on the precise mix of Democratic- and Republican-appointed judges who decide to step down. With Democratic appointees now filling over a third of the bench, a reasonable expectation is that within four years, Obama will move the partisan balance of the bench into

Figure 1. Confirmation Rates (U.S. District Courts and Courts of Appeals, 1947-2008)



Source: Sarah A. Binder and Forrest Maltzman, *Advice and Dissent: The Struggle to Shape the Federal Bench and Why it Matters* (Brookings Institution Press, forthcoming)

the Democratic column. With those appointments, Obama will be poised to create Democratic-majorities on several of the circuits of the U. S. Courts of Appeals currently dominated by Republican appointees.

Second, unified party control should in-

crease the confirmation rate for presidential appointments to the district and appellate courts. Over the past fifty years, nominees have been confirmed at substantially higher rates during periods of unified party control than during periods of divided control. Still, unified party control is not a magic bullet for presidents seeking confirmation of nominees: Senate rules and practices extend procedural powers to all senators, even those from the minority party who may choose to exploit the rules of the game to block action on nominees they oppose. Although we are unlikely to see a return to the halcyon days of near perfect confirmation rates, unified party control should make confirmation

of Obama's nominees more likely—especially if he avoids selecting controversial candidates out of the legal and ideological mainstream.

Third, many have called for expanding the size of the federal bench—an effort to deal with the burgeoning caseloads carried by federal judges. Despite judicial need for new judgeships, the last successful effort to expand the federal appellate courts took place nearly twenty years ago. Senators have been loath to create new judgeships in periods of divided government, lest the president seek to appoint too many judges who hold policy views anathema to the Senate majority. With the return

of unified Democratic control, the likelihood of expanding the federal bench has improved substantially.

Curiously, Obama said little on the campaign trail about the types of judicial nominees he would choose for the Supreme Court or other vacancies. The more Obama veers to the ideological center in selecting nominees, the greater his chances for securing Republican support for his nominees and thus the greater his chances of reducing the heat raging in recent decades over advice and consent. Will Obama be a true post-partisan president? The choices he makes about lifetime appointments to the bench will offer a critical test.

TRANSPARENCY AND PUBLIC PARTICIPATION IN BUREAUCRATIC POLICYMAKING: RECOMMENDATIONS FOR THE OBAMA ADMINISTRATION

STEVEN J. BALLA

In the months leading up to last year's election, an independent, nonpartisan task force (of which I was a member) assessed the status of policymaking in the United States federal bureaucracy, and articulated a set of recommendations about how the relevant processes might profitably be reformed. These recommendations specifically addressed issues of transparency and public participation in executive branch rulemaking, and were delivered to the transition team on the morning after President-elect Obama's victory.

Transparency and public participation can both improve the quality of agency decision making and enhance the democratic legitimacy of policymaking by government officials who are not directly accountable to citizens through periodic elections. Although the regulatory system as it currently operates is relatively transparent and participatory, task force members identified a number of broad concerns about existing bureaucratic practices (see page vi of the

Steven J. Balla is Associate Professor of Political Science, Public Policy and Public Administration, and International Affairs. He is the author of Bureaucracy and Democracy: Accountability and Performance (CQ Press)

report, which can be accessed at <http://www.hks.harvard.edu/hepg/Papers/transparencyReport.pdf>). These concerns include:

1. Generally speaking, agencies are neither transparent nor participatory at the earliest stages of their decision making processes.
2. When agencies do open themselves up for public participation, they oftentimes fail to allow for the benefits of dialogue and interaction between external stakeholders.
3. Agencies have not taken full advantage of information technology to make their policymaking processes more transparent.

With deficiencies such as these in mind, the task force developed recommendations designed to bolster the transparency of and public participation in executive branch policymaking. These recommendations include (see pages vi and vii for a summary discussion):

1. Making available online all records that an agency or court has determined to be releasable under the Freedom of Information Act.
2. Adopting best practices for establishing rulemaking dockets when

agencies begin working on new rules and promptly including in these dockets all relevant background information.

3. Reducing barriers to the use of federal advisory committees, which provide stakeholders with opportunities to interact directly with one another rather than solely with agency officials.
4. Creating a bureaucratic culture that promotes communications with external actors, so long as these communications are disclosed in agency dockets.

In the end, agency rulemaking will surely remain one of the most common and important forms of policymaking in the entire American government, with agencies issuing thousands of new rules annually. As these rules collectively exert enormous influence over, for example, the safety of our food, environment, and transportation system, it is crucial that the Obama administration take steps to address shortcomings in existing rulemaking practices. By adopting reforms like those laid out in the task force report, President Obama can ensure that government regulations serve the American public effectively and are adopted through fair and open processes.



RACE AND THE 2008 PRESIDENTIAL ELECTION

JOHN SIDES

Obama's racial identity spawned intense speculation about how voters would respond. The most prominent theme was how much racial prejudice would affect his support and, ultimately, his chances for victory. Most social scientific research shows significant reservoirs of racial prejudice among Americans. Its impact in 2008 was far from certain, however. At this stage, we have drawn only tentative conclusions from the available evidence, but that evidence suggests a far more complicated story.

One vein of commentary about race concerned the "Bradley effect" or "Wilder effect," which takes place when black candidates do worse in the election than they did in pre-election polls, presumably because some white voters told pollsters that they would support the black candidate but then did not. One explanation for the about-face is latent racism that white voters try to conceal from pollsters. Even before 2008, evidence of the Bradley Effect was thin. In recent elections, black candidates running against white opponents had done, on average, no better or worse on Election Day than they were doing in pre-election surveys. This proved true in 2008 as well, both during the primaries and in the general election. As in earlier years, polls taken a few days before the general election were very close to the national vote and to the votes in the states. Most importantly, Obama's share of the vote was not consistently higher or lower than his poll numbers. To be sure, the Bradley Effect cannot be isolated simply by comparing the polls to the election returns, as the election returns are also affected by turnout and other factors. So these results

*John Sides is Assistant Professor of Political Science. He is an author of *The Monkey Cage* (www.themonkeycage.org), a blog by political scientists to provide informed commentary on political events and issues. Parts of this essay first appeared on *The Monkey Cage*.*

do not mean that people never lie to pollsters about their support for black candidates. But they do suggest that the Bradley effect deserved far less emphasis than it received.

Even more important is the actual impact of racial prejudice on voting behavior. Early results from the campaign were hyped to suggest a potentially devastating impact. One article, summarizing the results of an AP/Yahoo poll, stated: "Deep-seated racial misgivings could cost Barack Obama the White House if the election is close" and "Such numbers are a harsh dose of reality in a campaign for the history books."

But there are two problems with such conclusions. First, racial identities are not the only important identities in elections. People's identities as partisans, as Democrats or Republicans or what have you, are especially important. Approximately 90% of the public identifies with or leans toward one of the two parties and the vast majority of partisan support their party's presidential candidate. In fact, the loyalty of partisans has been increasing over time. 2008 was no exception. The vast majority (89%) of Democrats supported Obama and 90% of Republicans supported McCain. For most voters, partisan identities appeared to trump any racial prejudice. In one study, even 62% of the most prejudiced Democrats said they voted for Obama. And, among Republicans, even those who were the least prejudiced were still loyal to McCain (89%).

Of course, these results likely suggest that there were some voters who did not support Obama because of race. But there is still a second problem: these results do not tell us anything about the net effect of race on the overall outcome of the election. One reason is that racially prejudiced voters are not distributed evenly across the country. Given the attributes that are correlated with prejudice, it is likely that these voters are

to be found in rural areas and in the South. Indeed, Obama did uniformly better than Kerry nearly everywhere, except for Republican-leaning poor counties in the South. Among white voters in particular, he did worse mostly in "red" states where the race was never thought to be competitive. Although this analysis is far from conclusive, it suggests that racial prejudice may not have altered Electoral College math very much.

There is a second reason to pay attention to the net effects of race: Obama's race may have helped him more than it hurt him. It is noteworthy, for example, that although Obama's share among white voters was roughly equal to John Kerry's, he did better than Kerry among every other ethnic group. Compared to Kerry, Obama gained 7% among blacks, 12% among Asians, and 13% among Latinos. As political scientists Stephen Ansolabehere and Charles Stewart have written, "Obama gained not only by bringing new minority voters into the electorate, but also by converting minority voters who had previously been in the GOP stable." This does not imply that Obama's race was the reason he gained votes among these groups, but certainly it was not a disqualification.

Even more telling is an experiment conducted by political scientists Simon Jackman and Lynn Vavreck which subtly measured the effect of Obama's race. They provided respondents a list of considerations and asked how many of them were reasons to vote for Obama and how many were reasons to vote against Obama. One half of respondents saw this list: economic plan, party, Iraq policy, health care plan, and speaking ability. The second half of respondents saw that list plus the phrase "He's black." Because respondents specified the number of items rather than which items, they do not have to reveal any sensitivity to Obama's race. Comparing the average number of items mentioned in each group of respondents tells us the fraction

that considered Obama's race as a positive or negative. They found that 11% of the sample saw Obama's race as a reason to vote against him, but approxi-

mately *three times as many* saw Obama's race as a reason to vote *for* him. Again, this experiment is not definitive evidence, but it suggests that

the effects of Obama's race were twofold, at a minimum. He may even have won more votes because of his race than he lost.



WHAT AN OBAMA PRESIDENCY MEANS FOR FOREIGN POLICY

JAMES GOLDGEIER

January 20 was not just a day eagerly anticipated by many Americans; around the globe, people marveled at what had occurred in the United States. Hopes are high for the Obama foreign policy and for a change in direction in America's relations with the world. But the highest priority everywhere is the financial crisis, and it may be a long time before we see global economic improvement.

A recently released 17-nation poll conducted for the BBC world service shows how hopeful the rest of the world is for a renewal of relations with the United States. Since last summer, the number of people optimistic about U.S. foreign policy rose from 11 to 51 percent in Turkey and by similar numbers in Russia. Nearly 70% of Chinese respondents expressed optimism for better relations, as did almost 60% in Egypt. In Italy, Germany, Spain and France, the numbers are closer to 80%.

Obama has a tremendous window of opportunity. It is not simply the fact that George W. Bush, who was so disliked in so many parts of the world (especially in Europe) is gone and a fresh face is on the scene. While many around the world were initially focused on how American financial practices had led to the economic crisis, as countries continue to suffer, people are hopeful that America can lead the way to renewed prosperity. But while those high expectations will lead to a willing-

ness to give the new president time, they will also be hard to meet.

The president has already started to act on a number of campaign promises. He signed an executive order on Guantanamo, asked his military to review the modalities for the withdrawal of the American combat presence in Iraq, and signaled that he will beef up the American commitment to Afghanistan by 20-30,000 troops.

In addition to a financial crisis and two wars, President Obama inherits a Middle East peace process in tatters. His new envoy, former Senator George Mitchell, is engaging in the region right away, but recent Israeli elections will have a major impact on the prospects for any negotiations. Obama has made clear that he is ready to get to work throughout the broader Middle East. As he stated in his inaugural address, "To the Muslim world, we seek a new way forward, based on mutual interest and mutual respect. To those leaders around the globe who seek to sow conflict, or blame their society's ills on the West — know that your people will judge you on what you can build, not what you destroy. To those who cling to power through corruption and deceit and the silencing of dissent, know that you are on the wrong side of history; but that we will extend a hand if you are willing to unclench your fist."

The president will attend two major summits in April that will help define the first year of his presidency. In Strasbourg and Kehl, Obama will join with his NATO counterparts to celebrate the 60th anniversary of the alliance. While America is beefing up its presence in

Afghanistan, NATO is struggling to maintain its relevance there. The Bush administration never seemed certain how much effort it wanted to make to help NATO adjust to the 21st century. Obama has an opportunity to renew America's ties with Europe, but his biggest challenge will be convincing Europeans that they should be willing to do more to prevent Afghanistan from reemerging as a major breeding ground for terrorist activities.

The other major summit will be the G-20 meeting in London. There were many calls before the last G-20 meeting in November for a "Bretton Woods II" to fix the world's financial architecture. Many forget that the original Bretton Woods meeting, which led to the creation of the International Monetary Fund and the World Bank, essentially involved coordination between the United States and Great Britain. Coordination among countries as diverse as the United States, France, Russia, China, India and Brazil is a daunting challenge.

It will be a sprint for the new Obama team to prepare for these major international meetings so soon in his term, and we will learn a lot about our new president at these summits. For many world leaders, it will be a chance to be photographed with a true political rock star. We'll see how that translates into policy.

James Goldgeier is Professor of Political Science and International Affairs. His most recent book, written with Derek H. Chollet, is America Between the Wars: 11/9 to 9/11 (Public Affairs Books).

D O N A T E T O G W A N D P O L I T I C A L S C I E N C E T O D A Y

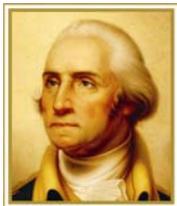
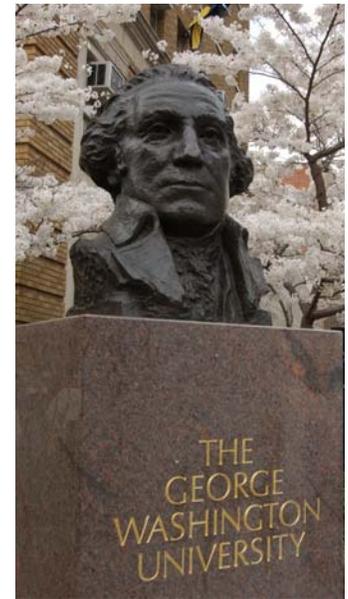
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THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON DC

Department of Political Science
Monroe Hall Suite 440
2115 G Street NW
Washington, D.C. 20052
Phone: 202.994.6290
E-mail: polsci@gwu.edu

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