

The Real Invisible Hand: Presidential Appointees in the Administration of George W. Bush

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It was to be the single most visible decision of George W. Bush's first year in office, inspiring even a rare prime-time televised address to announce and explain to the American people his decision on government support for stem cell research. For weeks, the White House press office told of the President's wide-ranging search for advice: the meetings with ethicists and scientists, with interest group representatives, and with dozens of ordinary citizens.

But Bush's wide search for advice did not include consultations with the director of the White House Office of Science and Technology Policy—the president's chief science adviser—nor with the Director of the National Institutes of Health, the government's leader in health research.

The simple reason why George W. Bush did not consult with his appointees in those positions is that there were none. President Bush was making decisions that affected the health and con-

cerned the moral values of millions of Americans without the support of scores of important players in his administration.

In fact, many of the 500 top positions in the executive branch that required Senate confirmation were not filled in the first nine months of his term in office. Figure 1 shows the month-by-month progress through September 2001 (the deadline for this article).

Many of those who voted for George W. Bush wanted decisive action on the new education approaches he had promised. But until the end of May, his Education Secretary Rod Paige was the only confirmed appointee at work in that department. Around the government, the story was much the same: No one but the secretary confirmed at Energy until May 24; no one but the secretary confirmed at Interior until June 29; on September 1, eight of the 14 cabinet departments had no confirmed chief financial officer; when terrorists struck a brutal blow to the country on September 11, there was no confirmed U.N. Ambassador, no commis-

sioner of customs, no director of the U.S. Marshals, no undersecretaries for the Army or Air Force.

In 1993, the Clinton transition had broken every record for the slowest ever. But the most recent transition will come very close, perhaps even surpass—if that's the right word—the painfully slow pace of its predecessor.

These are not measures of human failure, of the inability of new presidents and their aides to master the task of staffing an administration. There are some breakdowns and false starts in every transition, of course. But the starker reality is that the presidential appointments process has become a monster that quickly overwhelms any new administration's capacity to tame it. The problem is systemic, and it grows with each new election.

Embedded in all mainstream theories of democracy is the notion that elections are critically important navigational devices. They point political leaders in certain directions and away from others. They supply new leaders determined to pursue the goals that citizens choose with their votes. Democratic citizens rely on the assumption that, once chosen, elected leaders will do as they are bid.

But in a complex democracy, that can occur only when elected leaders have teams of experts and administrators in place to help them refine policy options, build support for their initiatives among the people and the legislature, and then implement them. Nowhere in all of democratic theory is there a provision for a lag of six months or nine months or a year between the time the people speak and the essential administrative appointees are in place to act on their instructions.

And yet that, consistently, has been the practice in America over the past decade.

Historical Perspective

Experienced observers of presidential transitions found little surprising in the difficulty George W. Bush confronted in his efforts to staff the first new presidential administration of the twenty-first century. Despite the days of uncertainty following the vote in November, Governor Bush pushed forward with the essentials of transition planning. Clay Johnson, an old

friend of the new president and an experienced hand in helping Bush staff his administration in Austin, had begun to plan for this personnel recruitment and selection task long before it began. He knew the magnitude of the task and the pitfalls he would encounter.¹ But knowing what lies ahead only takes away some of the surprise when you get there. It doesn't guarantee easy negotiation of the obstacles.

The modern appointments process is a morass of forms and questionnaires, of background checks and investigations, of redundancy and complexity. Every nominee is subjected to a scrutiny so thorough, so invasive, so tediously picayune, that some nominees spend almost as much time getting through the appointments process as they do in office.

It hasn't always been so. For most of the twentieth century, the appointments process flowed smoothly through the routines of government. A vacancy occurred, a suitable candidate was identified (often by the managers of the president's political party), a few questions were asked to ensure that the candidate was in agreement with most of the president's program, the nomination was announced, and a quick review and confirmation by the Senate soon followed.

That description fit the appointments process as recently as the late 1960s. One useful measure of the pace of the appointments process is the length of time that passes between inauguration and confirmation for the average appointee in an administration. The average for the Kennedy administration was 2.38 months.² Nixon in the late 1960s was only slightly slower, 3.39 months. Even Carter, a near total stranger to Washington, managed to get his appointees in place in an average of 4.55 months.

But then real changes began to occur as law and process caught up with the post-Watergate cynicism about public servants. The Ethics in Government Act of 1978 was the major monument to those concerns. But it was amended and its interpretation expanded often in subsequent years to seek to prevent every form of misbehavior the mind could imagine.

By the time of the Reagan transition, a noticeable change had appeared in the appointments process, and it is clearly revealed in our measure. The average Reagan appointee was confirmed in 5.3 months, more than twice as long as the average Kennedy appointee 20 years earlier. By the end of the 1980s, the modern appointments process was fully in place. Confirmation for the appointees of the first President Bush took 8.13 months on average, and for

President Clinton four years later, 8.53 months. While it is too soon to calculate the average for the second President Bush, there seems now every likelihood that this will be the slowest transition in American history. Figure 2 indicates the progress of the Bush administration through September 30, 2001.

It's the Process, Stupid

What explains the very long time that it has taken to staff the new Bush administration in 2001? Not a lack of diligence or concern on the part of the new president. He was

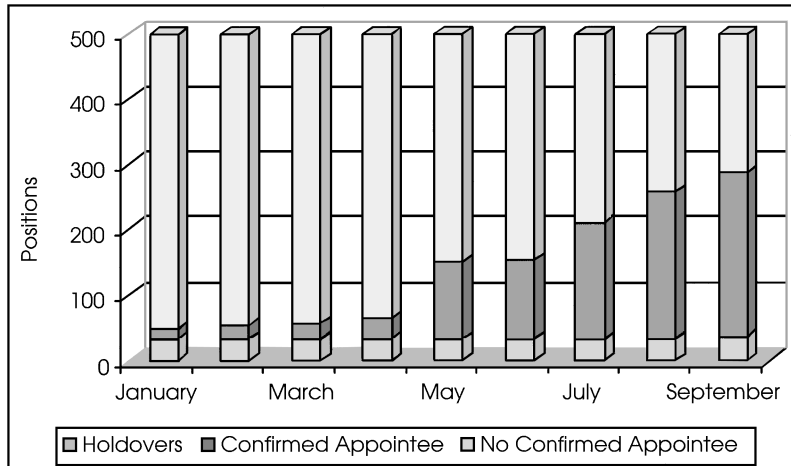
calling for changes in the appointments process months before his election. Not the people to whom President Bush delegated the task of managing the process. They worked as hard and with as much competence as any presidential personnel advisers ever had. The answer is the process itself. Staffing a new administration in the twenty-first century has become a task too large, burdened by procedures too dense and resistance too potent.

Too Many Appointees

Without any blueprint or defining theory, the number of positions filled by presidential appointees has grown steadily over recent decades, expanding outward with the creation of new departments

and agencies, expanding downward as positions once filled by senior civil servants have been converted to political appointments. President Bush had nearly 3,300 positions subject to his appointment, more than any president could hope to fill in timely fashion even with an appointments process far more efficient than the one under which we currently labor. In 2001, thoughtful members of Congress have begun to call for a substantial reduction in

FIGURE 1
Pace of Completed Appointments in Top 500 Positions in Executive Branch, 2001.



Source: Prepared by the author from data calculated from official sources by Michael Hafken of the Presidential Appointee Initiative of the Brookings Institution.

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the number of presidential appointments, perhaps as many as a third of the current total.

Some people oppose this reduction, arguing that it will undercut the president's ability to control and lead the government.³ Others argue that every one of the positions currently filled by appointment is critical to good management.

Perhaps. But there is a heavy and unmet burden of proof on those who make this argument. It's called the facts. We have never succeeded in developing an appointments process that could adequately meet the staffing burden this many positions imposes. As a consequence, it now takes nearly a quarter of a presidential term to get an administration staffed. It is hard to sustain the case for so many appointed positions when it is so long and arduous a task to fill them.

Too Thick A Process

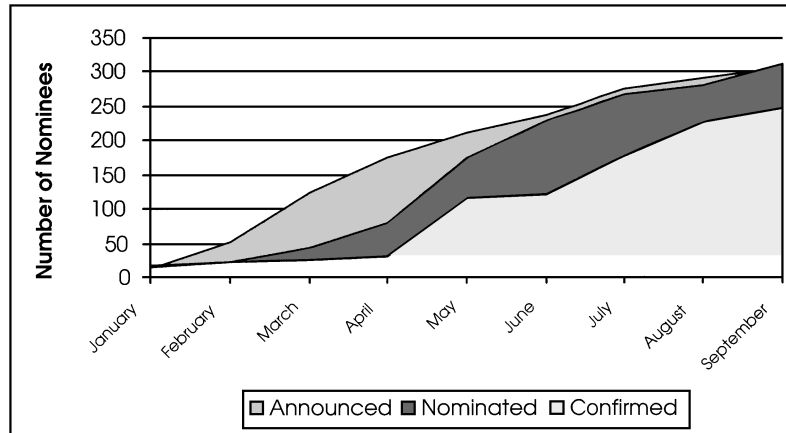
The Bush appointees in 2001 were expected to complete forms and questionnaires that asked more than 200 questions.⁴ The IRS reviewed their taxes. Law enforcement authorities across the country were solicited for any relevant files. The FBI conducted a complete full-field investigation on them. They were subject to intensive questioning by the Office of Presidential Personnel, by vetters, and by the White House Counsel.

The Office of Government Ethics and lawyers in the White House and at the agency where they would serve scrutinized every detail of their personal finances, often requiring that they divest assets or alter their portfolios to avoid potential conflicts of interest. Their policy views, their public record, and all of their writings and public statements were combed for any material that might undermine their nomination or embarrass the president. When they were done with all of this, if they ever were, then they endured

largely duplicative inquiries and investigations at the hands of Senate committee staffs.

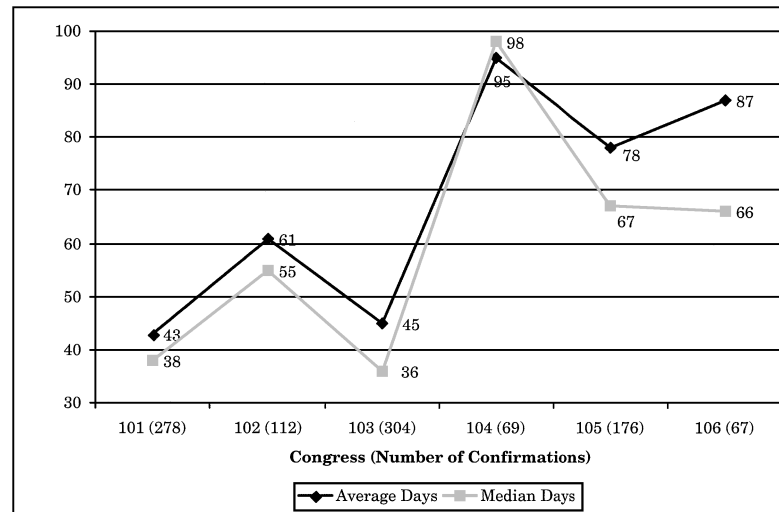
That it may take many months to accomplish all of this, especially at the outset of a new administration when all the systems are in overload, is no surprise—except to those unfortunate nominees who are unfamiliar with the appointment process when they enter it, and as the months pass are shocked to discover just how hard it has become to serve one's country.

FIGURE 2
Number of Bush Nominees Announced, Nominated, and Confirmed by Month, 2001



Source: Prepared by the author from data calculated from official sources by Michael Hafken of the Presidential Appointee Initiative of The Brookings Institution.

FIGURE 3
Average and Median Number of Days Between Senate Receipt of Nomination and Confirmation of Executive Branch Appointees, 1989-1999



Source: Constructed from data in Loomis 2001 (165).

Too Fragmented a Senate

The Senate has an important role in the appointments process and the framers of the Constitution were astute in recognizing that personnel evaluations often must rely on personal judgments. In substantial part, that is why the appointments process, as they invented it, was so uncluttered with rules, constraints, and specifications.

But the framers could not have envisioned the impacts of a long period of divided government. The intensifying partisanship of contemporary legislative-executive conflict has invaded the appointments process and altered it substantially. For most of our history, the dominant Senate view was that the president was entitled to staff his administration with persons of his own choosing, that the Senate would object to the president's choices only when there was overwhelming necessity. That view prevails now only rhetorically.

In practice, the modern Senate regards itself as a coequal participant in the appointments process. And individual senators have come to regard the appointments process as fertile ground for their own efforts to shape the ideology of the administration, to fight for their own policy initiatives,

to settle old scores, and to second guess administrative decisions.

The most effective device at their disposal is the “hold,” an arcane Senate tradition that allows an individual senator to place a hold on a nomination for whatever reasons and for however long he or she may choose. During the time a hold is in place, the nomination is dead in the water.

Holds reached epidemic proportions in the final years of the Clinton presidency. Some observers assumed that this was simply a consequence of bad relations between a Democratic president and a Republican-controlled Senate, that things would change when one party controlled both houses.

But the habits of divided government die hard, and even in the few months before Senator Jim Jeffords undercut the Republican majority in the Senate, holds were being imposed by senators of both parties. For example, Jesse Helms, the Senate’s leading holder, had no reservations about putting a five-month hold on Kenneth Dam, Bush’s nominee for deputy Treasury secretary.

The practice of holds, combined with the much more thorough investigations that Senate committees conduct of nominees, the growing burden of scheduling hearings for nominees to so many positions, and the benefits of delay that come to those who dislike a nominee or the nominee’s policy views have changed the Senate’s role from that of ultimate quality check on nominees to a place where nominations often go and disappear for months at a time, as Figure 3 indicates.

Conclusion

It was business as usual for the Bush administration in 2001, but it’s a lousy business. Staffing the highest levels of government has become a nightmare for contemporary presidents. And for friends of democracy who believe that those who win elections ought to be able to govern, the deep flaws in the presidential appointments process are more than arcane matters of public management. They are central concerns that pose serious questions about what democracy can be and what it has become in America at the beginning of the twenty-first century.

Notes

1. Clay Johnson, interview, White House Interview Project, 23 February 2001.
2. Calculations for this and the presidential averages reported in subsequent paragraphs were done by the author from data reported in Congressional Quarterly Almanacs for 1961,1969,1981,and 1989. The average for the Clinton administration was calculated from reports

- prepared by Rogelio Garcia for the Congressional Research Service.
3. Robert Moranto and Robert Moffit, “Keep ‘Em Coming: In Defense of Political Appointees,” *Washington Times*, 2 May 2001.
 4. See Terry Sullivan’s (2001) detailed analysis of these forms.
 5. The confirmation process for judicial appointments has similarly lengthened over the past decade. See Binder 2001.

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