

## THE PERMANENT AND PRESIDENTIAL TRANSITION MODELS OF POLITICAL PARTY POLICY LEADERSHIP

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### INTRODUCTION

One of the central questions raised by comparative constitutional law is whether the American constitutional system is somehow different, or even exceptional, when compared to the systems of other countries. As Stephen Gardbaum has written, “even within the common framework of . . . modern constitutional fundamentals, there is still a pervasive sense that the United States remains broadly exceptional or different.”<sup>1</sup> Whatever the veracity of this conventional wisdom as applied to the rest of the American system, it is undeniably true that the events dominating the United States since the election of Barack Obama on November 4—the events related to the presidential transition—are a uniquely American drama.

The phenomenon of the transition between elected governments—a time where one political leader or party has already been elected but has not yet taken official power—is not unknown to the rest of the world, and seems specifically contemplated by the constitutions of other countries.<sup>2</sup> What makes the American system unique, then, is not the existence of the transition period, but its significance. In the major constitutional regimes elsewhere, political parties more clearly identify their policy leaders even when not in power, and thus have a much smaller number of personnel decisions to make when transitioning to power.<sup>3</sup> By contrast, American polit-

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<sup>1</sup> Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 MICH. L. REV. 391, 394 (2008) (link).

<sup>2</sup> For instance, the Constitution of the French Fifth Republic seems to contemplate the possibility of a period of transition between elected regimes. See 1958 CONST. art. 7, § 3 (Fr.) (stating that the election of the new President shall take place not less than twenty days and not more than thirty-five days before the expiry of the powers of the President in office) (link).

<sup>3</sup> In this Essay, I discuss the policy leadership of political parties, not the general leadership of parties. The permanent—more purely political and strategic—staff of parties are selected in more similar manners in the United States as compared to the rest of the world. The major difference comes when

ical parties do not clearly identify who their policy leaders are when they do not occupy the White House. Because of that, and because American Presidents have such a large number of political appointments to make, the transition period becomes a crucial moment for the new American President to coronate a select few political figures as the current and future political and policy leaders within his Administration, and therefore within his party. The contrast leads to a simple, but significant, difference: While political parties in other countries define their policy leaders permanently, American parties define their policy leaders in substantial part through a singular moment of high drama—the presidential transition.

Part I of this Essay discusses how political parties outside of the United States define the policy leaders of their parties. The process used by the world's other major constitutional democracies—a process that transpires even when a party is out of power and is only a minimal part of the transition to power—is called the “permanent” model of selecting the leaders of political parties. Part II then turns to the American regime, which this Essay calls the “presidential transition” model of political party leadership selection because this process is centered around the process of presidential transitions.

#### I. THE PERMANENT MODEL OF POLITICAL PARTY LEADERSHIP

For anxious and long-suffering members of the Democratic Party, the calendar year 2008 was an exhilarating, but gradual, thrill. First came the competition between Hillary Clinton and Barack Obama for the Democratic Party nomination for President; then came the Denver Convention; and finally came the electricity among Democrats the night of the election, when Obama's victory became certain. But if that was a gradual thrill, then the period following Obama's election on November 4th has been more of a temporary rush. Aspiring Democratic policy leaders meet with old friends and new allies by the dozens and hundreds every week, trying to position themselves for leading roles in the new Obama Administration and therefore within the Democratic Party for years to come. This rush of the American transition to power, then, is the feeling that comes with being a part of a sprint, and not a marathon.

If the presidential transition in the United States is a sprint, then the process of selecting the current and future political and policy leaders of the party in the other major constitutional democracies around the world is more of a marathon. When out of power, political parties in other nations clearly define their policy leaders. When transitioning to power, these pre-defined leaders usually assume positions in government, and there are very few other coronations of new leaders taking place because of the paucity of political appointments the new leader gets to make.

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parties select who will lead their portfolios on particular policy issues, and one manner in which they select those leaders is through cabinet and other appointments.

When out of power, it is quite common in all forms of constitutional systems for the political parties out of power to clearly identify which (senior and junior) members of their parties will lead the party in certain policy areas.<sup>4</sup> This is particularly so in dozens of British-inspired parliamentary systems, but is also true of parties out of power in semi-presidential and presidential systems. In presidential Argentina, for instance, the opposition party chairs and controls a certain number of legislative committees.<sup>5</sup> In choosing who will chair these committees, then, political parties often clearly indicate who their party's leaders are on certain policy issues, because parties have enormous influence on which member of their opposition caucus will receive these coveted committee chair positions. Likewise, political parties in semi-presidential systems (such as France) have also often clearly defined their policy leaders even when out of power.<sup>6</sup>

Members of opposition political parties will often be assigned a "Shadow Cabinet" position, whereby they essentially mimic the policy portfolio of an official cabinet agency.<sup>7</sup> Not only are there shadow cabinet ministers—officials with some national prominence already, or at least the notoriety roughly equivalent to that of a real cabinet minister—but there are more junior officials who work with the shadow cabinet ministers.<sup>8</sup>

These positions of party policy leadership are more than just empty titles; they also come with real policy leadership responsibilities, and a series of special entitlements recognized by law. In parliamentary systems, for instance, when a cabinet minister or other policy leader from the governing party or another party appears before the legislature, his shadow minister counterpart leads the questioning of the governmental minister.<sup>9</sup> The shadow minister and junior ministers produce position papers identify-

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<sup>4</sup> In parliamentary systems, a singular vote is cast for a party, and the party then selects the leader of the country; and in presidential systems, separate votes are cast for the directly elected executive and members of the legislative body. A semi-presidential system "combines a popularly elected head of state with a head of government who is responsible to a popularly elected legislature." See Cindy Skach, *The "Newest" Form of Separation of Powers: Semipresidentialism*, 5 INT'L J. CONST. L. 93, 93 (2007).

<sup>5</sup> See Mark P. Jones & Wonjae Hwang, *Party Government in Presidential Democracies: Extending Cartel Theory Beyond the U.S. Congress*, 49 AM. J. POL. SCI. 267, 277 (2005).

<sup>6</sup> In semi-presidential France, François Mitterrand appointed leaders within his party in different policy areas—what was called the "counter-government" rather than the shadow cabinet—in 1966. See SERGE BERSTEIN, *THE REPUBLIC OF DE GAULLE, 1958–1969*, at 204 (Peter Morris trans., 1993).

<sup>7</sup> See, e.g., Nevil Johnson, *Opposition in the British Political System*, 32 GOV'T & OPPOSITION 487, 488–89, 493–96 (1997) (describing this process in the British system, which formed the basis for many other shadow cabinets).

<sup>8</sup> *Id.* at 493–94.

<sup>9</sup> See SIR THOMAS ERSKINE MAY, *ERSKINE MAY'S TREATISE ON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGES OF PARLIAMENT* 252–53 (20th ed., Butterworths 1983).

ing their party's position on certain issues and submit requests for information to the government on behalf of their party.<sup>10</sup>

In countries without these versions of shadow governments, political parties have still transformed into “cartel parties”—parties in which there is an “ever closer symbiosis between parties and the state,”<sup>11</sup> and they have an “increasing orientation towards, and dependence upon, the state as an institutional support structure.”<sup>12</sup> One way that cartel parties use the institutional support of the state—in presidential as well as parliamentary regimes—is that even when in opposition, they will be granted control of certain arms of the government. For instance, as in presidential Argentina<sup>13</sup> or parliamentary Germany,<sup>14</sup> opposition political parties are often given the power to actually chair legislative committees—which allows them to designate the chair of that committee—a party leader in that area of policy.

There are entire legal regimes created to support the operations of these permanent policy leaders in opposition parties. In Great Britain, for instance, there are specific funds to support the operations of opposition parties in both the House of Commons and the House of Lords.<sup>15</sup>

When this party in opposition wins an election, and becomes the governing majority, the transition to power is not as significant a moment in defining the policy leadership of the party as it is in the United States. First, there is already a bench of shadow ministers, shadow junior ministers, opposition party committee chairs, and even younger policy officials, all of whom are ready to transition to the same or a similar position in government after their party wins an election. Second, even if, as is the case in some countries, there is no shadow government or opposition-led arms of the government—and the newly elected leader has to determine for the first time who he wants to appoint to every single cabinet position—there are very few other personnel decisions that have to be made after national elections. The reality of the American “politicized presidency”<sup>16</sup> is that “[t]he United States has a far larger number of political appointees than any other

<sup>10</sup> See, e.g., HOUSE OF COMMONS INFORMATION OFFICE, PARLIAMENTARY QUESTIONS, FACTSHEET P1 (Dec. 2008), available at <http://www.parliament.uk/documents/upload/p01.pdf> (link); MAY, *supra* note 9, at 331–47.

<sup>11</sup> Richard S. Katz & Peter Mair, *Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party*, 1 PARTY POL. 5, 6 (1995).

<sup>12</sup> Aleks Szczerbiak, *Cartelisation in Post-Communist Politics: State Party Funding in Post-1989 Poland*, in PAN-EUROPEAN PERSPECTIVES ON PARTY POLITICS 127, 128 (Paul Lewis & Paul Webb eds., 2003).

<sup>13</sup> See Jones & Hwang, *supra* note 5, at 277.

<sup>14</sup> See NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS, COMMITTEES IN LEGISLATURES: A DIVISION OF LABOR 16 (1996), available at [http://www.accessdemocracy.org/files/030\\_ww\\_committees.pdf](http://www.accessdemocracy.org/files/030_ww_committees.pdf) (link).

<sup>15</sup> See RICHARD KELLY, HOUSE OF COMMONS LIBRARY, SHORT MONEY 7–9 (2008), available at <http://www.parliament.uk/commons/lib/research/notes/snpc-01663.pdf> (link).

<sup>16</sup> See Terry M. Moe, *The Politicized Presidency*, in THE NEW DIRECTION IN AMERICAN POLITICS 235, 235 (John E. Chubb & Paul E. Peterson eds., 1985).

industrialized democracy.<sup>17</sup> The exact numbers vary based on what criteria are used to determine who constitutes a political appointee, but some estimates suggest that the American President makes almost 8,000 political appointments,<sup>18</sup> while incoming national leaders in comparable democracies like Britain and France make just a few hundred political appointments.<sup>19</sup> By any measure, this difference is staggering. In France, there are 5 million federal public servants,<sup>20</sup> and just between 100 and 200 political appointments for the new President to make. In the United States, there are 1.8 million federal public servants,<sup>21</sup> and the President makes almost 8,000 appointments. France has nearly three times as many federal public servants as the United States, but just about 1% or 2% of the number of presidential appointees.

This is not to say, of course, that the selection of party policy leaders for incoming governments in other countries is purely gradual and is entirely unaffected by particular events that accelerate turnover in party policy leadership. Even in countries with a more permanent mode of selecting political party leaders, elections still do have a large impact on the policy leadership of the new government. Countries with shadow governments will often displace or reassign some policy leaders after they win national elections. After Kevin Rudd's win in the 2007 elections in Australia, for instance, Rudd removed six ministers from his shadow cabinet who were slated to be in the leadership of the Rudd Government, and reassigned four members of his shadow cabinet to different positions in the governing cabinet.<sup>22</sup>

Likewise, in countries where the governing majority is supplied by a coalition of political parties rather than by a single party, the results of the elections will determine which parties—and which leaders of which

<sup>17</sup> Shankar Vedantam, *Who Are the Better Managers—Political Appointees or Career Bureaucrats?*, WASH. POST, Nov. 24, 2008, at A6 (link).

<sup>18</sup> See WILLIAM S. DIETRICH, IN THE SHADOW OF THE RISING SUN 185 (1991).

<sup>19</sup> See DAVID E. LEWIS, THE POLITICS OF PRESIDENTIAL APPOINTMENTS: POLITICAL CONTROL AND BUREAUCRATIC PERFORMANCE 3 (2008). In Germany, as one specific illustration, when the Social Democratic and Green Parties (together called the Red-Green coalition) led by Gerhard Schroeder took control from the Christian Democrats in 1998, “[t]he incoming government had a total of 136 senior administrative posts designated [for political appointment].” Eckhard Schroter, *The Politicization of the German Civil Service: A Three-Dimensional Portrait of the Ministerial Bureaucracy*, in POLITICIZATION OF THE CIVIL SERVICE IN COMPARATIVE PERSPECTIVE 55, 71 (B. Guy Peters and Jon Pierre eds., 2004).

<sup>20</sup> See Luc Rouban, *Politicization of the Civil Service in France: From Structural to Strategic Politicization* 81, 83–84, in POLITICIZATION OF THE CIVIL SERVICE IN COMPARATIVE PERSPECTIVE, *supra* note 19.

<sup>21</sup> See PAUL C. LIGHT, A GOVERNMENT ILL EXECUTED: THE DECLINE OF THE FEDERAL SERVICE AND HOW TO REVERSE IT 101 (2008).

<sup>22</sup> See *Rudd's First Ministry Mixes Old and New*, SYDNEY MORNING HERALD ONLINE, Nov. 29, 2007, <http://www.smh.com.au/news/National/Rudds-first-ministry-mixes-old-and-new/2007/11/29/1196037023340.html> (link); *Rudd Hands Out Portfolios*, Australian Broadcasting Corporation, Nov. 29, 2007, <http://www.aph.gov.au/house/members/minlist.pdf> (link).

parties—will join the governing cabinet, and therefore which political figures take leadership positions in certain policy areas. In Israel, for example, the party receiving the most votes in the 2006 election was the Kadima Party, led by incumbent and current Israeli Prime Minister Ehud Olmert, which received 29 out of 120 seats in the Israeli Knesset.<sup>23</sup> Olmert needed other parties to join his coalition, and because the Labour Party did well enough during that election, Olmert asked them to join his coalition—and assigned Labour Party leader (and former Labour Prime Minister) Ehud Barak the important position of Defense Minister in the Kadima/Olmert Government.<sup>24</sup> This meant that, because of the results of the 2006 Israeli election, Barak reemerged as a major figure in his party's leadership on defense issues.

But while elections sometimes lead to decisions about political party leadership outside of the United States, it certainly happens much less frequently than in the United States. After all, while Kevin Rudd replaced six ministers of his shadow cabinet for the first Rudd Ministry, he still left seventeen out of his twenty-three shadow ministers in place.<sup>25</sup> An American President would have had to determine who all twenty-three members of his cabinet would be. And Rudd did not have to appoint anywhere near 8,000 new leaders of his new government. In other words, for the incoming government, the leaders of its various policy portfolios are affected by specific events—and in particular by the election bringing that party to power—but nowhere near to the extent as in the United States.

## II. THE PRESIDENTIAL TRANSITION MODEL OF POLITICAL PARTY LEADERSHIP

In the American system, the party coming into power in the White House defines its policy leaders much more based on a singular event, the presidential election and then the transition period before the president-elect takes office on January 20. When out of power, the policy leadership of this party is less clearly defined.<sup>26</sup> When transitioning to power the new President also has to make thousands of appointments that will determine who many of the policy leaders of his party will be. The result is a concen-

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<sup>23</sup> See Greg Myre, *Premier-Elect in Israel Closer to a Coalition*, N.Y. TIMES, Apr. 28, 2006, at A8 (link).

<sup>24</sup> See Isabel Kershner, *Ex-Premier of Israel Takes Helm of Labour Party*, N.Y. TIMES, June 14, 2007, at A19 (link).

<sup>25</sup> See *Rudd's First Ministry Mixes Old and New*, *supra* note 22; *Rudd Hands Out Portfolios*, *supra* note 22; Parliament of Australia: Who's Who, <http://www.aph.gov.au/house/members/minlist.pdf> (listing the members of Rudd's ministry as of September 15, 2008) (link).

<sup>26</sup> Stuart Benjamin and G. Mitu Gulati have argued that presidential nominees should indicate during campaigns whom they will nominate to their cabinet. See generally Stuart Minor Benjamin & G. Mitu Gulati, *Mr. Presidential Candidate: Whom Would You Nominate?* (Duke Law School Legal Studies Research Paper Series, Paper No. 213, 2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1155222](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1155222) (link).

trated burst of activity in appointing the policy leaders of the Administration, and therefore a concentrated period of activity defining who will be the policy leadership of the party controlling the White House.

When American political parties do not control the White House, policy leadership in those parties is contested and fragmented.<sup>27</sup> One claim for the policy leadership in a party comes from the party's leadership in Congress. If that party does not control the White House, but controls one or both houses of Congress, that party will have congressional leaders who claim to be the party's leader on certain policy issues. In the American system, where congressional committees are quite powerful,<sup>28</sup> the chairs of particular committees in Congress might claim to be their party's leaders on policy issues when their party is in the legislative majority. Barney Frank (D-MA), as Committee Chair of the House Financial Services Committee, became one of the leading left-of-center voices articulating the Democratic Party's suggested response to the financial crisis in the fall of 2008.<sup>29</sup> Nancy Pelosi, Speaker of the House, and Harry Reid, Senate Majority Leader, can make claims to be the leaders of the Democratic Party on a wide range of issues. Even when in the legislative minority, the ranking members of the opposition party on a congressional committee—as well as the House Minority Leader and Senate Minority Leader—have claims to their party's general leadership. And, regardless of whether their party is in the legislative majority or legislative minority, members of Congress who do not have particularly senior status on a committee but have a general notable national reputation (Hillary Clinton during her time in the Senate, or Robert F. Kennedy) might also have claims to be their party's policy leader on issues of particular interest to them.

The party that does not control the White House might also have policy leaders who do not occupy any elected office. Cabinet officials from previous Administrations might make claims to be one of their party's policy leaders; think, for example, of the leadership role that William Perry, Secretary of Defense during former President Bill Clinton's Administration,

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<sup>27</sup> See Nicol C. Rae, *Be Careful What You Wish For: The Rise of Responsible Parties in American National Politics*, 10 ANN. REV. POL. SCI. 169, 170 (2007) (“In the comparative study of political parties in twentieth-century advanced democracies, the United States has always been something of a problematic outlier owing to the absence of organized, disciplined, and ideological mass political parties.”).

<sup>28</sup> See, e.g., Kenneth A. Shepsle & Barry R. Weingast, *The Institutional Foundations of Committee Power*, 81 AM. POL. SCI. REV. 85 (1987).

<sup>29</sup> For the first time, then, Frank became the focus of a number of lengthy profiles in major media outlets. See Jeffrey Toobin, *Barney's Great Adventure: The Most Outspoken Man in the House Gets Some Real Power*, THE NEW YORKER, Jan. 12, 2009, at 37, available at [http://www.newyorker.com/reporting/2009/01/12/090112fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2009/01/12/090112fa_fact_toobin) (link); Michelle Cottle, *Bailout: The Redemption of Barney Frank*, THE NEW REPUBLIC, Dec. 3, 2008, at 23, available at <http://www.tnr.com/politics/story.html?id=1367a1e5-6575-4ee9-b011-8826cc7a09b5> (link); *Barney Frank on Bailouts, Welfare*, 60 Minutes, Dec. 14, 2008, <http://www.cbsnews.com/stories/2008/12/11/60minutes/main4663945.shtml> (discussing *60 Minutes* story about Frank) (link).

plays on defense issues.<sup>30</sup> The head of the political party organization itself might have a plausible claim to be a leader within the party. For instance, Howard Dean might have had a claim to be one of the leaders of the Democratic Party because of his position as head of the Democratic National Committee (DNC).

During the presidential campaign season, the leading presidential candidates also have claims to be their party's policy leaders. If you wanted to know the Democratic Party's position on health care in 2008, earlier in the year you would have consulted both the Clinton and Obama plans. After the party primaries are resolved, and a single individual becomes the party's nominee, the nominee has an even stronger claim to be a party or policy leader. For example, after becoming the Democratic nominee for President, but before being elected, Obama accompanied Barney Frank, Nancy Pelosi, and other Democratic congressional leaders at the White House for the meeting about the financial crisis on Thursday, September 25.<sup>31</sup> This extends to the presidential nominee's advisors as well. One of Obama's chief foreign policy advisors, Susan Rice—also a former Clinton Administration Assistant Secretary of State—became a leading voice for the Democratic Party in 2008 on foreign policy issues as a key member of the Obama campaign's foreign policy team.<sup>32</sup>

When a political party is out of power in the White House, then, the American system muddles the definition of the policy leaders of the political parties. This has much to do with the horizontal (separation of powers) and vertical (federalist) fragmentation of powers in the American system. Party leadership is fragmented because it is multipolar. The vertical separation of powers means that parties have policy leaders who are currently or have been in the past members of one of many branches of the federal government. Federalism creates the potential for successful and entrepreneurial governors to claim leadership roles in their party's efforts on certain policies.<sup>33</sup> Federalism also means that political parties are not singular entities, but instead collections of fifty state parties loosely tied together into a national party.<sup>34</sup>

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<sup>30</sup> See Posting of Michael Falcone to The Caucus, <http://thecaucus.blogs.nytimes.com/2008/06/18/obama-convenes-national-security-team/?scp=2&sq=%22william%20perry%22&st=cse> (June 18, 2008, 16:39 EST) (link).

<sup>31</sup> See Toobin, *supra* note 29.

<sup>32</sup> See Russell Berman, *Meet Obama's 'Tenacious,' 'Take Charge' Dr. Rice*, N.Y. SUN, Jan. 28, 2008, at 1 (link).

<sup>33</sup> See Ernest A. Young, *Welcome to the Dark Side: Liberals Rediscover Federalism in the War on Terror*, 69 BROOK. L. REV. 1277, 1286 (2004) ("In America . . . , the party that is 'out' in Washington will almost certainly be 'in' in at least a couple of dozen states and literally thousands of localities, and the experience of practical governance at those levels often provides the springboard for successful political takeovers at the national level.").

<sup>34</sup> See generally Larry D. Kramer, *Putting the Politics Back Into the Political Safeguards of Federalism*, 100 COLUM. L. REV. 215 (2000) (discussing the federal, decentralized nature of American political parties).

This fragmentation in party leadership is substantially mitigated when and if a party in opposition elects one of its own as President. During the campaign, the future President relies on current and past party leaders for advice and support, but rarely if ever does a presidential candidate indicate who he would like in his cabinet.<sup>35</sup> After being elected, though, the presidential nominee then has to decide which one among these party notables represents the kind of policy leadership he wants in his Administration. During the 2008 presidential campaign, for instance, the Democratic Party had no shadow secretary of state, so its leadership on foreign policy issues was fragmented and diverse. Senate Foreign Relations Committee Chair Joseph Biden was a voice of foreign policy leadership before becoming the nominee for Vice President in August of 2008. Former Democratic Presidential nominee and current Senator John Kerry from Massachusetts made it known that he wanted to become Secretary of State.<sup>36</sup> But after being elected, President-Elect Obama had to choose his Secretary of State from among these and other policy leaders. Because he had no shadow Secretary of State he had to decide who would be one of—if not the—chief Democratic Party voice on foreign policy.

A few caveats are important to keep in mind. First, in a fragmented system like the American system, the capacity of the President to choose nearly 8,000 individuals to take positions of leadership does not silence all other sources of potential party policy leadership.<sup>37</sup> Particularly when the President's party also has majorities in Congress, there are other plausible sources of party policy leadership. Because he is Chair of the Senate Committee on Health, Education, Labor and Pensions, Democratic Senator Edward Kennedy will have perhaps just as much of a leadership role on health care reform as Obama's Health and Human Services Secretary. The power of the American President is not to eliminate other sources of party policy leadership, but to give one of his policy allies a potentially superior position of policy leadership. Also, whatever power the President does have to elevate political figures into policy leadership positions is not exer-

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<sup>35</sup> While candidates essentially never provide anything more than generalities about who they will ask to be in their cabinet, George W. Bush indicated while campaigning in 2000 that he would ask Colin Powell to be Secretary of State if he were elected. See Jamie McIntyre, *Secretary Powell? Bush Hints at Former General's Role*, CNN.COM, Aug. 1, 2000, <http://archives.cnn.com/2000/ALLPOLITICS/stories/08/01/powell.state/index.html> (link). Bill Richardson promised that if he were the Democratic nominee for President in 2008, he would announce his whole cabinet in advance. See Philip Elliott, *Richardson Promises Cabinet Preview*, WASHINGTONPOST.COM, July 28, 2007, [http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072800781\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072800781_pf.html) (link).

<sup>36</sup> See Carl Hulse, *Kerry, After Setbacks, Aims to Make a Mark as a Senate Chairman*, N.Y. TIMES, Jan. 13, 2009, at A12 (link).

<sup>37</sup> It is worth noting, too, that it is the President himself who has increasingly made appointments, not the parties. See generally THOMAS J. WEKO, *THE POLITICIZING PRESIDENCY: THE WHITE HOUSE PERSONNEL OFFICE, 1948–1994* (1995) (discussing the centralization of the appointments process in the White House through the White House Personnel Office).

cised solely at the time of the presidential transition. Because political appointees tend not to remain in their appointed positions terribly long,<sup>38</sup> the President will likely make other appointments throughout his Administration—but at nowhere near the pace of the presidential transition period.

The absence of a clearly defined policy leadership when parties do not occupy the White House—and the number of officials the President has to nominate—are part of the reason why presidential politics (and American presidential politics in particular) “introduce[] a strong element of zero-sum game into democratic politics.”<sup>39</sup> There are longitudinal consequences—many unique to the American version of presidentialism—that make the American presidential election a zero-sum game. In the permanent model of political party leadership, senior officials have usually been a constant presence in the policy leadership of that country (often for their party, but sometimes even as part of the civil service or nonpartisan policy leadership), gradually working their way up the party and policy ladder.<sup>40</sup> If a senior official is given a position in the American government, then he or she is in a prime position to be a policy leader in the party in the future—but one of their best chances to obtain a position in the government is if the President appoints them to a position. Their cabinet experience might be a major credential for a later run even for an elective office like the presidency, as was the case for Bill Richardson during the Democratic primary race for the nomination last year.<sup>41</sup>

When their party is out of power in the White House, though, there are fewer opportunities for political figures to assert policy leadership in their party than in other constitutional democracies. They could run for Congress or run for Governor (as Richardson did).<sup>42</sup> But they do not have the opportunity to use shadow cabinets (as in Mitterand’s France or British-

<sup>38</sup> Most studies seem to indicate that political appointees last about two years in office. *See, e.g.,* ROBERT MARANTO, *BEYOND A GOVERNMENT OF STRANGERS* 29 (2005).

<sup>39</sup> Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY: COMPARATIVE PERSPECTIVES* 3, 18 (Juan J. Linz & Arturo Valenzuela eds., 1994).

<sup>40</sup> In France, for instance, “[e]very President of the Republic (with the notable exception of François Mitterrand), every Prime Minister and most ministers were recruited from the ranks of the civil service; since 1958, the proportion of ministers coming from the public service has varied between 44 and 69 per cent, with an average of 52 per cent.” Rouban, *supra* note 20, at 84.

<sup>41</sup> Richardson had been Secretary of Energy and Ambassador to the United Nations during the Clinton Administration, and emphasized this experience as part of his campaign for the Democratic presidential nomination. *See* Ryan Lizza, *Paper Candidate: Bill Richardson v. His Resume*, *THE NEW REPUBLIC*, June 18, 2007, at 29, available at <http://www.tnr.com/politics/story.html?id=af68fef4-eb92-473f-a0e4-77274017f75e> (link).

<sup>42</sup> A policy leader from the party out of power might be a sensible appointment to one of the federal agencies that mandates that a certain number of appointments be from opposing political parties. *See* Marshall J. Breger & Gary J. Edles, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 *ADMIN. L. REV.* 1111, 1135-38 (2000) (discussing the requirement in various agencies that there be a certain number of appointments from both major American political parties).

style parliamentary systems) or committee chair positions delegated to an opposition party (as in Argentina or Germany) to improve their credentials. If they are denied a cabinet position—and do not run for other office—then they will have far fewer, if any, chances to make nationally televised speeches articulating their party's position on policy issues and criticizing the policy positions of other parties. There are less significant out-of-power positions for them to pursue, perhaps at an established think tank like the Center for American Progress,<sup>43</sup> but these institutions do not compare to the opposition institutions in other countries in terms of either the numbers of positions or their significance. In other words, a presidential appointment is consequential because it provides a unique opportunity to be thrust into the policy limelight, an opportunity that is almost entirely missing when a political figure's party does not control the White House.

The importance of a presidential appointment is even more dramatic for junior officials. In other constitutional regimes, the “Best and the Brightest”<sup>44</sup> do not migrate to the capital to work in the federal government following the election of a charismatic young leader like John F. Kennedy or Barack Obama; they already live and work in the federal government because there are many party leadership positions for figures from opposition parties. For instance, right now, the Labour Party is in power in Great Britain, but the opposition Conservative Party has a shadow cabinet staffed by individuals of all levels of seniority and receives special funding.<sup>45</sup> In addition, in the current British Parliament, opposition parties chair many committees,<sup>46</sup> so aspiring operatives can also turn to committee staff positions even as members of the opposition party as a result. When their party is out of power, then, the young and ambitious have more options to burnish their credentials.

The American system, by contrast, ties so much of the party policy ambition of younger political operatives to the presidential transition process. If an aspiring policy wonk—say, in her early 30's or late 20's—receives a position in a presidential administration, it will define the rest of her career. When her party resumes control of the White House, she will be first in line for more senior positions in the new administration. When her party does not control the White House, she will be first in line for the rela-

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<sup>43</sup> See Charlie Savage, *John Podesta, Shepherd of a Government in Exile*, N.Y. TIMES, Nov. 7, 2008, at A22 (link).

<sup>44</sup> See generally DAVID HALBERSTAM, *THE BEST AND THE BRIGHTEST* (1972) (discussing the wave of talented individuals who flocked to Washington, D.C., to work in the Kennedy and Johnson Administrations).

<sup>45</sup> See Ministerial and Other Salaries Act, 1975, c. 27, § 1(1) & sched. 2, available at [http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1975/cukpga\\_19750027\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1975/cukpga_19750027_en_1) (link).

<sup>46</sup> Labour currently holds nine committee chairs, while the Conservatives hold six chairs and the Liberal Democrats hold four. See UK Parliament—Parliamentary Committees—Commons Select Committees, [http://www.parliament.uk/parliamentary\\_committees/parliamentary\\_committees16.cfm](http://www.parliament.uk/parliamentary_committees/parliamentary_committees16.cfm) (last visited Feb. 24, 2008) (link).

tively few opposition positions, either as one of the few committee staffers that minority members of congressional committees are provided, or for one of the even fewer positions at a think tank or advocacy group.<sup>47</sup>

But if these younger operatives do not receive a position in a presidential administration, they face a more precarious predicament. They will lose out on a chance to occupy one of the very few opposition positions, because they will not have the policy leadership credentials that their colleagues who had served in an Administration have. That is why so many members of losing presidential campaigns are forced to leave politics altogether to head to the worlds of law firms, business consulting, and other private sector positions. If Bill Clinton had not won election in 1992, or reelection in 1996, an entire generation of Democratic Party policy leaders (like Susan Rice) would have had a more difficult time competing for the few opposition positions in places like the Senate or think tanks; and, come Obama's victory, would have moved to the back of the line in the competition for policy positions in the Obama Administration. They might instead have had to leave politics.

It should be said that much of the reason for the difference between the permanent model of political party policy leadership and the American presidential transition model stems from the structural differences between parliamentary regimes and semi-presidential and presidential regimes. In parliamentary systems, it might not be surprising that there is a shadow cabinet, because voters vote for a party—and all of the personnel and programs of that party—rather than voting for an individual person as happens in semi-presidential or presidential systems. In presidential systems like the United States', voters cast a ballot for a singular official as well. That official therefore does not have the same need to define who his party's leaders are, since the voter is casting a ballot for that person and not that person's party.

But this does not explain most of the differences between the American model and the model of the world's other major constitutional democracies. As mentioned before, even in semi-presidential systems like France or presidential systems like Argentina, sometimes the opposition party will clearly identify who their policy leaders are so that they can fill the larger number of opposition positions in government (as committee chairs, for instance). And, even in other presidential democracies the new President does not make anywhere near the number of appointments that the American President has to make. In other words, for many reasons and on many levels, the regime used in the United States to select policy leaders is distinctively American.

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<sup>47</sup> One study found that about eighty percent of high-level political appointees had prior experience in the federal government. See Carl Brauer, *Tenure, Turnover, and Postgovernment Employment Trends of Presidential Appointees*, in *THE IN-AND-OUTERS: PRESIDENTIAL APPOINTEES AND TRANSIENT GOVERNMENT IN WASHINGTON* 174, 177 (G. Calvin Mackenzie ed., 1987).

CONCLUSION

The United States might still think of itself as different from the rest of the world, and even exceptional. When it comes to constitutional structure and related political structure—the manner in which we allocate authority between our institutions—the United States is still different in many important respects. Perhaps the most salient aspect of our difference is how our major political parties select their current and future policy leaders. The predominant model in the other major constitutional democracies of the world, of all forms, is to permanently define and coronate members of parties to lead their parties' efforts on certain policies. In the United States, though, so much of this process is wrapped up in the uniquely American drama of the presidential transition—a drama that begins on election day and continues even after the presidential inauguration.