

succeeding one another, is a clear signal that career public servants are a dying—and possibly already extinct—species. Yet the lack of long-term government officials, particularly in the United States, leaves the country—blown left or right by the ideological winds of the moment—susceptible to the very “mobocracy” the Founders feared.

POLITICS & GOVERNMENT

It's Always Politics

THE SOURCE: “‘Going Bipartisan’: Politics by Other Means” by Peter Trubowitz and Nicole Mellow, in *Political Science Quarterly*, Fall 2005.

AMERICANS LOVE IT WHEN POLITICIANS place principle above politics to act for the common good. But pull back the curtain and such displays of bipartisanship are still largely politics, say political scientists Peter Trubowitz, of the University of Texas at Austin, and Nicole Mellow, of Williams College.

Politicians put on bipartisan plumage when political circumstances call for them to win over centrist or swing voters outside their party. But bipartisanship is far from the usual practice in Congress. The authors’ analysis of roll-call votes since 1889 reveals that it has come in waves, reaching an all-time high in the 91st Congress (1969–71), when lawmakers voted in substantially bipartisan fashion 76 percent of the time. Bipartisanship went downhill after that—to a post–World War II low of 33 percent in the 104th Congress (1995–97), when Republicans gained control of the House of Rep-

resentatives for the first time in 40 years. There was a turn toward greater bipartisanship in congressional voting in the late 1990s, and during 2001–02 bipartisan votes reached 58 percent.

Bipartisanship in Congress is more likely to occur when the two parties are competitive nationally and lawmakers have to woo moderate voters, say Trubowitz and Mellow. That happened in the 1960s and 1970s, “when the regional foundation of the New Deal party system eroded and the Republicans became more competitive in the South.” Bipartisanship is also a feature of divided government, a consequence, for example, of the president’s having to appeal to moderate members of the opposition party to win congressional support. That’s what Harry Truman did in the late 1940s to gain backing from the GOP-controlled Congress for his Cold War foreign policy.

The state of the economy also makes a difference. In good times, partisan pressures on lawmakers ease. In hard times, increased pressure from labor on the Democrats and from business on the Republicans makes crossing party lines less likely. When the unemployment rate soared during the Great Depression, bipartisanship in Congress plummeted. And despite possible short-lived “rally round the flag” effects, bipartisanship does not appear to increase at times of international crisis. Today, write the authors, with the parties “increasingly regionally polarized,” the economy sluggish, and no end in sight to the war on terrorism, bipartisanship’s prospects don’t appear very bright.

POLITICS & GOVERNMENT

Supreme Shifts

THE SOURCE: “The Debate Over the Constitutional Revolution of 1937: Introduction” by Alan Brinkley and “The Constitution, the Supreme Court, and the New Deal” by Laura Kalman, both in *American Historical Review*, Oct. 2005.

MINDFUL OF PRESIDENT FRANKLIN D. Roosevelt’s landslide reelection victory in 1936 and fearful of his “court-packing” scheme, the Supreme Court in 1937 suddenly reversed course and began approving New Deal legislation. At least, the reversal *looked* sudden at the time, and has been so regarded in the standard scholarly interpretation of what happened. But in the past decade or so, in a debate freighted with larger political implications, some scholars have argued that the change was actually the product of an evolutionary process occurring over a period of years.

By the end of 1936, the Court had struck down a series of New Deal measures, often by 5–4 decisions. In early 1937, a frustrated FDR proposed legislation that would have enabled him to nominate a new Supreme Court justice for each sitting justice above the age of 70—which that year would have meant adding six justices to the Court’s nine.

“The plan created a political firestorm” and damaged the president’s standing, writes Alan Brinkley, a historian at Columbia University. “But according to more than a generation of scholars, it also frightened the justices themselves.” Justice Owen Roberts appeared to jump from the conservative to the liberal side, joining a 5–4 majority in *West Coast Hotel v. Parrish* to uphold a state minimum-wage statute virtually identical to one the Court had

invalidated just months earlier. Two weeks later, he joined in a 5-4 ruling upholding a major New Deal measure, the National Labor Relations Act. The “switch in time [that] saved nine,” as a wit of the day put it, removed the Court as an obstacle to New Deal legislation and ended FDR’s bid to pack the Court.

In its 1937 decisions, the Court jettisoned the doctrine, established in *Lochner v. New York* (1905), that many federal and state government efforts to regulate wages and hours violated workers’ “liberty of contract” under the Fourteenth Amendment.

Summarizing the work of the scholars who have argued that the shift was not as abrupt as it seemed, Laura Kalman of the University of California, Santa Barbara, notes that Roberts himself wrote the majority opinion in an important 1935 case that paved the way for the 1937 “switch.” The



The Supreme Court began ruling in favor of FDR’s New Deal legislation in 1937 but not, some scholars now believe, because of his court-packing threats.

Court’s many narrow votes during the 1930s showed that its approach was in flux. Finally, Roberts himself denied being swayed by politics. Indeed, he had cast his vote in *Parrish* before FDR made his court-packing proposal.

At bottom, Brinkley and Kalman observe, this is a debate about how the Supreme Court changes its mind. Is the Court (and the law more generally) a creature of politics, as legal realists and other thinkers of progressive bent have argued? That’s the implication of the standard “switch in time” view of the 1937 events.

Or does the law evolve, as Brinkley puts it, through “a largely internal process, insulated from politics,” and based on constitutional principles and precedents? That’s a traditionalist view, but it has also been attractive to some of Kalman’s revisionist scholars, who worry that viewing

precedent-breaking decisions such as those of the 1960s and ’70s as politically inspired will deprive them of legitimacy. As for Brinkley and Kalman, they doubt that the Court is often moved by either pure principle or pure politics.

FOREIGN POLICY & DEFENSE

A UN for Our Time

THE SOURCE: “Anarchy and Order in the New Age of Prevention” by Thomas M. Nichols, in *World Policy Journal*, Fall 2005.

SINCE THE COLD WAR ENDED, THE campaigns of ethnic cleansing and genocide in Europe and Africa, the nuclear ambitions of rogue states such as North Korea and Iran, and

terrorist attacks, especially those of 9/11, have led many nations to question the idea of absolute state sovereignty, doubt the adequacy of deterrence, and look at preventive force in a new light. “A new age of preventive war” is upon us, and a reformed United Nations is needed to preside over it, contends Thomas M. Nichols,

a professor of strategy and policy at the Naval War College.

In the face of the crises of the 1990s, the UN’s performance “was dismal even by the reckoning of its supporters.” Its paralysis during the 1994 genocide in Rwanda cost many lives, and when genocide loomed in Kosovo five years later, the United States and its NATO allies “acted without the Security Council’s approval rather than risk a Russian veto.” After Kosovo, UN secretary-general Kofi Annan cautiously embraced “the principle that states could at times interfere in the