



THE PROFESSIONALS *versus* THE POLITICAL ALLIES

Marquette Law School professor's extensive analysis probes the qualifications of America's ambassadors.

A federal Freedom of Information Act request by **Professor Ryan Scoville** yielded a trove of previously unreleased data on the qualifications of 1,900 people who were appointed to be American ambassadors, starting with the administration of President Ronald Reagan and continuing through the first two years of the administration of President Donald Trump. The information allowed Marquette's Scoville to shed light on previously unanswered questions about the qualifications of ambassadors, especially those who are not career diplomats.

The result was "Unqualified Ambassadors," an article by Scoville published in the *Duke Law Journal* in 2019. In the article, Scoville, who teaches and writes about U.S. foreign relations law and international law, describes the constitutional background related to appointing ambassadors, historical practices related to appointments, and the information he gathered about contemporary practices and controversies around ambassadorial appointments. He also analyzes options for steps that could be taken, particularly by Congress, to increase the overall quality and professionalism of the nation's ambassadors.

The following are lightly edited excerpts from Scoville's *Duke Law Journal* piece.

The Rise of Ambassadorships as Rewards for Support

United States presidents often reward financial donors and other political supporters with nominations for ambassadorships to foreign states. Because these nominees tend to come from outside the ranks of the State Department's professional diplomatic corps, their selection is typically justified to the public by reference to other indicia of merit, such as philanthropic work and success in industry. Campaign contributions are brushed aside as tangential. Personal connections to the president are framed as the auspicious portents of access and influence. A career in the Foreign Service is deemed unnecessary and even counterproductive.

Consider a few examples. At least 8 of President Trump's first 15 appointments to bilateral ambassadorships (i.e., ones to foreign states as opposed to international organizations) were financial donors. This group includes New York Jets owner Robert Wood Johnson IV, who personally contributed more than \$450,000 to support the Trump campaign and is now ambassador to the United Kingdom. In 2013, President Barack Obama nominated Colleen Bell, a producer for the daytime television series *The Bold and the Beautiful*, as ambassador to Hungary. President George W. Bush nominated five donors whose most significant credential was ownership of a Major League Baseball team. President

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George H. W. Bush selected as ambassador to Barbados a financial contributor who lacked not only diplomatic experience, but also a college degree and an employment history. And in 1981, President Reagan chose his personal friend John Gavin as ambassador to Mexico. Gavin spoke Spanish and had previously served as an adviser to the secretary general of the Organization of American States, but he was a Hollywood actor by trade. He played character Sam Loomis in Alfred Hitchcock's *Psycho* and was a debonair, tuxedo-and-mahogany sort of character in rum commercials for Bacardi.

Cases such as these occur against a constitutional backdrop that many view as settled. Article II provides that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors,” and it is generally accepted that this language confers broad discretion: The president enjoys wide latitude in selecting a nominee, and the Senate is comparably free to choose whether to advise and consent. The principal restraints are instead political. As the Founders saw it, the exclusivity of the president's power to nominate and commission would render him primarily responsible for, and thus help to deter, poor selections, and the Senate's power to confirm would necessitate nominations with broad appeal. Meanwhile, each senator's presumed desire for reelection would incentivize publicly defensible votes in the confirmation process. By this logic, constitutionality is a simple question of procedural regularity, and those who make it through the process are likely to satisfy basic standards of fitness.

And yet, ambassadorial appointments are a perennial source of controversy. The central question is whether it is optimal for the president and the Senate to exercise the discretion Article II confers by appointing financial donors and other affiliates of the president from outside the State Department's professional diplomatic corps (“political appointees”), rather than Foreign Service officers (“career appointees”). . . .

This article reveals multiple dimensions of the appointments process that have long been opaque. Using a novel dataset based on a trove of previously unavailable documents that I obtained from the State Department through requests and litigation under the Freedom of Information Act (“FOIA”), the article systematically reveals the professional qualifications and campaign contributions of more than 1,900 ambassadorial nominees spanning the Ronald

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Reagan, George H. W. Bush, Bill Clinton, George W. Bush, and Barack Obama administrations, along with the first two years of Donald Trump. In doing so, the article sheds new light on the relative and absolute merits of political and career nominees, the bilateral relationships that may have benefited or suffered most under modern appointments practice, and trends across several administrations.

Four Conclusions About Political Versus Career Ambassadors

Under the Foreign Service Act of 1980, the president must provide to the Senate Foreign Relations Committee a “certificate of demonstrated competency” of nominees for ambassadorships. The certificates for the 1,900 appointees in my dataset support several significant conclusions regarding the modern practice of ambassadorial appointments.

First, as a group, career nominees have been substantially more qualified than political nominees under all the dominant metrics of competence: they have possessed stronger language abilities and had more experience in and involving receiving states and regions, foreign policy, and organizational leadership. The only metric under which career nominees have been less attractive to nominating presidents is financial; Foreign Service officers contributed far less money to presidential campaigns than their counterparts. These facts—summarized in the table on p. 39—are consistent with the suspicion that political appointments are often rewards for financial assistance, irrespective of other considerations of merit. From this perspective, common attempts to highlight donor credentials appear as post hoc justifications for a practice that is fundamentally nonmeritocratic.

Second, even though career ambassadors are extremely well qualified in both an absolute and a relative sense, it is at least conceivable that there is room for improvement. In the first two years under President Trump, 36 percent of career ambassadors had no aptitude in the receiving state's principal language, 77 percent had no prior experience in the receiving state, and 16 percent lacked prior experience in the region. In view of this evidence, critics of political appointments might strengthen their case by exploring ways to further optimize the State Department's training and assignment policies for Foreign Service officers.

Third, the data suggest that federal appointments practice has systematically disserved some states and



regions. Western European states and major allies such as Australia, Canada, and Japan have received an overwhelming majority of relatively unqualified donors and bundlers. Language deficiencies have been particularly common among ambassadors to states in Eastern Europe, the Middle East, and East Asia. Lack of regional experience has been comparatively common among ambassadors to Europe, where the United States now confronts a series of challenges, including Russian nationalism; the rise of illiberal governments and populist movements; and significant disagreements over trade, the Iran nuclear agreement, climate change, and the North Atlantic Treaty Organization (NATO). To the extent that credentials stand as reliable predictors of performance, these patterns indicate areas in which U.S. ambassadors have been least effective.

Finally, as a group, political nominees have in several ways become materially less qualified over time. Compared to those nominated under Presidents Reagan and George H. W. Bush, the typical political nominee in recent years has possessed less experience in the receiving state, significantly weaker language skills, and much less experience in the region of the receiving state, foreign policy, and organizational leadership. Moreover, the gap between the credentials of the typical career nominee and the typical political nominee has grown under virtually all of these measures. In short, if the preference for career

nominees was justified at the enactment of the 1980 law, it appears to be even more so now. The conjunction of this development and the steep rise in the average size of campaign contributions among political nominees indicates the possibility that the increasing cost of presidential elections is indirectly degrading the quality of U.S. diplomatic representation overseas by shifting the relative weight of credentials and contributions as influences on the appointments process.

Policy Implications

The findings carry important implications for the way in which the president and the Senate exercise their powers under the Appointments Clause.

Most immediately, the evidence changes the context in which debates about ambassadorial appointments occur. A long-standing dearth of systematic data collection forced critics of political appointments to rely on anecdotal evidence of underqualification and incompetence. This rhetorical strategy always left room for an obvious retort: even if some political appointees are unqualified, many are fit for office. But the collected evidence changes the dynamic by rendering incontrovertible a view that was previously impressionistic: political ambassadors are, as a group, significantly less qualified than career appointees under several metrics that Congress has deemed particularly important. By demonstrating as much, the research confirms that the occasional press

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reports on the underqualification of donor nominees are representative of broader trends.

In turn, the evidence is consistent with the possibility that a form of plutocratic corruption broadly infects ambassadorial appointments in the United States. In 1974, President Richard Nixon's personal attorney, Herbert Kalmbach, pleaded guilty to promising a European ambassadorship to J. Fife Symington in return for a \$100,000 contribution to the election campaigns of Nixon and a collection of Senate Republicans. The Senate Watergate Committee's final report highlighted this conviction along with "over \$1.8 million in presidential campaign contributions" from 54 noncareer ambassadors in recommending strict limits on federal campaign contributions. Congress later enacted these limits as amendments to the Federal Election Campaign Act of 1971, but it is hard to avoid the impression that quid pro quo corruption continues to shape official practice. Surely it is no coincidence that relatively unqualified financial supporters have received the vast majority of appointments to attractive destinations for global tourism.

The evidence also suggests the complicity of the Senate. Diplomatic historian Elmer Plischke found that fewer than 3 percent of ambassadorial nominations from 1789 to 1975 failed to result in an appointment. In more recent decades, the Senate has at times rejected or otherwise ended nominations. For instance, George Tsunis, an Obama donor and pick for ambassador to Norway, had to withdraw his nomination in 2014 in light of a disastrous confirmation hearing and considerable Senate opposition. But such cases remain at roughly 3 percent of all nominations in recent decades, with only minimal variation from one administration to the next and no signs of closer scrutiny for political nominees. The evidence of eroding qualifications among those nominees raises questions about the wisdom of such deference.

The findings further suggest that the various legislative efforts to dissuade the president from nominating comparatively unqualified political supporters have not succeeded. Recall that, since 1980, federal law has explicitly stated that campaign contributions should not play a role in appointments, that nominees should generally demonstrate language abilities and country expertise, and that the president should normally fill ambassadorships with career members of the Foreign Service. Given the absence of certificates of demonstrated competency

prior to 1980, it is unclear whether this law effected an improvement over earlier practice. It is quite clear, however, that little improved from 1980 to 2018. If anything, the trends reported above suggest that the Foreign Service Act of 1980 has only become less effective over time, particularly during the past decade. The most recent evidence from the Trump administration underscores this conclusion.

There are two plausible consequences, neither salutary. First, the United States may encounter greater difficulty executing foreign relations. Lacking important qualifications now more than any other time in recent memory, political appointees may very well find it harder to communicate with foreign officials, know less about the politics and culture of receiving states and regions, and exhibit a diminished ability to navigate federal bureaucracy and lead embassy personnel. Important insights and opportunities will be missed. Gaffes will occur. Resources will be misused. Morale problems will intensify. And so forth. On a retail basis, none of these problems are overwhelming. But in aggregate and over time, they could materially disserve U.S. bilateral relationships.

Second, the eroding credentials of the donor class might contribute to the marginalization of diplomacy itself. By standard accounts, a substantial militarization of U.S. foreign policy commenced shortly after the Cold War and accelerated following the terrorist attacks of September 11, 2001. Rather than invest in diplomacy and civilian capacity to manage foreign affairs, successive administrations and Congresses have allocated vast new resources and functions to the armed forces. Thus, the Defense Department now plays a significant role in a wide range of traditionally civilian domains, such as development assistance. Similarly, in a move that is likely to further mitigate a traditional advantage of the Foreign Service, the Army is now requiring a growing number of military units to develop regional expertise—including cultural and linguistic knowledge—in order to strengthen relationships with foreign partners and better respond to future crises. Rosa Brooks has suggested that these developments are generating a self-perpetuating shift toward higher levels of militarization: as U.S. forces acquire new resources and skills to carry out new functions, civilian capacity atrophies, which in turn makes it easier to justify the allocation of even more resources to the military.

Trends in ambassadorial qualifications might reflect and contribute to this phenomenon. Given the

growing number of relatively unqualified political donors in senior diplomatic posts, it should come as no surprise if Washington begins to place more trust in nondiplomatic perspectives and solutions. With respect to Western Europe, for example, one can only imagine that it is difficult for political ambassadors—former daytime television producers, actors, businesspersons, and socialites—to prevail over senior NATO officers in the event of disagreement. The plausible effect is not only a marginalization of civil diplomacy, but also a diminished capacity even to imagine nonmilitary solutions to national security problems. In these ways, the evidence presented above might strengthen the argument for reform.

To be sure, few would argue that a career in the Foreign Service is a strict prerequisite to an effective ambassadorship. A nominee might have acquired an aptitude for leadership, negotiation, and intercultural communication, among other skills, without ever working for the federal government, much less the State Department, and history offers plenty of examples of successful noncareer appointees. To name just a few, Shirley Temple Black, Mike Mansfield, Edwin Reischauer, John Sherman Cooper, and Averell Harriman all came from outside the Foreign Service and earned considerable plaudits for their work.

At the same time, there is evidence that political appointees exhibit a stronger tendency to underperform. Analyzing data compiled from nearly 200 embassy-inspection reports published by the

State Department's Office of Inspector General, a recent study by Evan Haglund found that "politically appointed ambassadors perform worse generally than career diplomats, with a 10 percent reduction in performance score on average for political appointees compared to careerists." Haglund also found that political appointees are associated with a significant reduction in the quality of an embassy's political and economic reporting. These findings align with more general statistical evidence that federal programs administered by political appointees "get systematically lower [performance] grades than careerist-administered programs even when we control for differences among programs, substantial variation in management environment, and the policy content of programs themselves."

Anecdotal evidence corroborates the point. Several of President Trump's political appointees, for example, have violated traditional diplomatic protocols or committed public gaffes that have hindered bilateral relations, even while comparable indiscretions seem harder to find among his career appointees. One inspector general's report concluded that a political appointee to The Bahamas and major financial donor to President Obama presided over "an extended period of dysfunctional leadership and mismanagement, which . . . caused problems throughout the embassy." Another report concluded that a donor who became ambassador to Denmark ran the embassy in a way that created accountability and communication issues, in

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Comparing career and political nominees for ambassadorships

Metric	Career	Political	Difference (percentage point)
Contributions — % of nominees	5%	73%	+68 p.p.
Contributions — average value	\$33	\$84,850	\$84,817
Knowledge of principal language — % of nominees	66%	56%	-10 p.p.
Knowledge of any relevant language — % of nominees	80%	65%	-15 p.p.
Experience in state — % of nominees	15%	8%	-7 p.p.
Experience in or involving state — % of nominees	19%	12%	-7 p.p.
Experience in region — % of nominees	82%	15%	-67 p.p.
Experience in or involving region — % of nominees	86%	24%	-62 p.p.
Foreign policy experience — % of nominees	100%	48%	-52 p.p.
Leadership experience — % of nominees	96%	76%	-20 p.p.

addition to gaps in strategic planning. Still another found that Ambassador Cynthia Stroum—a political appointee to Luxembourg—caused numerous problems during her tenure. Many of these were “linked to . . . an abusive management style,” but there was also a “chronic communications problem between the front office and the rest of the mission” due to Stroum’s lack of coordination and lack of confidence in her staff, which led to a “near total absence of regular guidance and advance planning.”

Why would political nominees tend to underperform in these ways? One potential explanation points to their general inferiority in language ability and experience in the receiving state, region, foreign policy, and organizational leadership. Under this possibility, the qualifications discussed elsewhere in this article predict performance in office, and the gradual erosion of those qualifications among political nominees in recent decades has produced an increasingly deleterious effect on performance outcomes. If this hypothesis is correct, the solution is to nominate more individuals who possess the qualifications discussed and to devote greater resources to training that enhances those qualifications among nominees who are deficient.

Unfortunately, there is close to zero empirical evidence on the specific traits that predict performance in office, and the limited evidence

that exists is mixed: On the one hand, Haglund finds that an ambassador’s language ability correlates positively with his or her ability to facilitate interagency coordination. On the other hand, Haglund does not test for the effects of experience in the receiving state, foreign policy, or organizational leadership; he does not examine the effects of changes in qualifications over time; and he finds that regional experience has no effect on overall performance. Meanwhile, no other research has attempted to measure performance outcomes.

Such an empirical record leaves room for a second possibility: political nominees underperform because they are inferior in ways that Congress has not specifically addressed. Under this possibility, political nominees are inferior not because they tend to lack experience in the receiving state or foreign policy but, rather, because of other potential tendencies, such as a comparative lack of interest in international affairs, diplomacy, or public service. If this hypothesis is correct, the evidence collected in this article is largely unrelated to the performance deficit, and Congress needs to reconsider the factors that it has emphasized in the Foreign Service Act of 1980 and deliberations over individual nominees. Additional empirical research is needed to further elucidate whether and why political appointees tend to underperform. ■

