

Political Update 23, 27 September 2020 by Charles E. Morrison

Stable Election Parameters

As has been typical of the Trump era, there has been a lot of daily drama and controversy often focused around what the President has said or done that day. However, despite the noise, the basic parameters of the 2020 presidential election remained remarkably stable, with Biden continuing to lead for an election now just 5 weeks away and with some small groups already voting. Although 40-45% of voters say they will wait to vote on November 3, election day, time is already late for any significant change of direction.

The basic parameters are:

- The election remains highly polarized around Trump, being a referendum on his performance in office. Most Democrats and Republicans are supportive of their own candidate, and maybe as many as 90% of voters have either made up their minds or are strongly leaning toward one or another candidate. Almost the same proportion say that they will not even consider voting for the other candidate whatever may yet come.
- Biden maintains a consistent and significant lead in the national polling. Although previous updates have expected some tightening, this seems to be only slightly occurring at the national level. Trump would not be competitive but for the indirect Electoral College system which over-represents less populous rural states.
- Biden appears to lead in most polling in most of the states that will make the difference; however, in some, the polls are inconsistent and the leads are often not statistically significant. But in Michigan and Wisconsin, two states Trump barely won in 2016, numerous polls have shown Biden's leads have been relatively stable and significant (less so in Wisconsin), meaning that Trump must be exceedingly lucky with the remaining states. He has closed earlier gaps in some, but it is absolutely essential for him to win both Florida and Pennsylvania, and the first especially is on knife edge. The campaigns are oriented in terms of advertising and candidate appearances toward these and just a few other smaller critical swing states. Biden now has a spending advantage and using it to add new contested areas. Trump is largely focused on defending his 2016 victories with even his long hope of expanding to Minnesota, which he had narrowly lost in 2016, now seemingly out of reach.
- Third party candidacies will make little difference in this election. While the Libertarian Party is on the ballot everywhere, Republicans have lost several state-level efforts to put other third-party candidates on the ballot in hopes of peeling away marginal voters from Biden and splitting the anti-Trump vote. But

even if they had been more successful, the election is polarized around Trump, with the anti-Trump forces coalesced around Biden.

- Trump's efforts to characterize Biden as mentally challenged, weak on law and order, or a radical socialist have had little effect, and are unlikely to. They have mainly appealed to people already supporting Trump or highly likely to. They may even have done some damage to the President as they fortify an image of being his being desperate, loose with facts, highly partisan, and personally rude or "unpresidential." Women and more educated voters seem most offended by the style.

Aside from these parameters, most of the earlier September "surprises" favored Biden rather than Trump, particularly a story that Trump referred to American service personnel who had died in battle as "losers" and "suckers" and author Bob Woodward's revelations that Trump in February and March spoke to him unguardedly about the seriousness of the pandemic and also his efforts to play it down publicly. Unluckily for Trump, Woodward had tapes to prove it, and it strengthened his critics' narrative that Trump knew better and willfully downplayed the epidemic for personal advantage. Trump or his associates and family members also suffered from numerous public relations and legal setbacks. Two more recent surprises - the death of Justice Ruth Bader Ginsburg and New York Times revelations concerning Trump's taxes - bear special attention for potential impact on the race.

The Death of Justice Ginsburg and the Looming Supreme Court Fight

With the pandemic stubbornly remaining, the most important and almost last opportunity for Mr. Trump to shift the direction of the election seemed to be the debates, particularly the first debate on Tuesday, September 29, and this may still be the case. However, the death of liberal Supreme Court Justice Ruth Bader Ginsburg on September 18 provided a possibly a new opportunity to redirect political debate from the pandemic and toward a touchstone issue with many conservatives. The death was hardly a black swan event since Ginsburg had been gravely ill for some time. But by coming just 46 days before the election, it provided just enough time to use the Republican Senate majority to rush through approval of a conservative replacement.

The President and his party hoped an appointment would remind conservatives of the importance of having a Republican president, motivate their voting, and ensuring a conservative Court majority for years ahead. Trump himself also noted that it could help to have a new justice in place in case 2020 election controversies ended up with the Supreme Court. At the same time, the haste is an implicit admission that the Republican presidency and Senate majority are severely threatened.

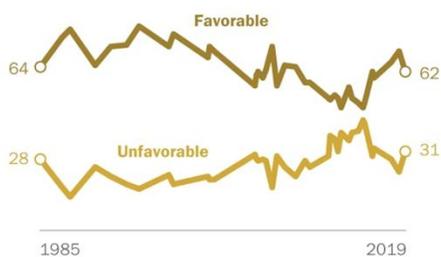
It is certainly Constitutional for the President to propose and the Senate approve a replacement quickly. But there are several other ways to evaluate the appointment: Is it appropriate coming so close to the election? Will it help it help Trump politically? And aside from immediate considerations, is it good for the country?

As for the appropriateness, the traditional admonition that heirs should not be fighting over the inheritance until “the body gets cold” was hardly in evidence. Justice Ginsburg was highly respected and an even iconic figure, a Bill Clinton appointee of a somewhat less partisan era, who had been confirmed in 1993 by a Senate vote of 96-3. Trump paused until September 26, the day after the Ginsburg memorials, to announce his selection of conservative-leaning Appellate Court Judge Amy Coney Barrett, but the news leaked out earlier. The hypocrisy of rushing the appointment was highlighted because in 2016 the Republicans had refused to proceed with an Obama appointment ten months before the election on the grounds that the voters should decide. No justice had ever been appointed this close to an election, even as people are already voting, and none in recent times has been approved in so short a period as available.

As for the politics, polling suggests a majority of the public does not favor rushing ahead. An overwhelming number of Republicans do in order to consolidate a conservative Court majority, while 90% of Democrats and most independents are opposed. Aside from the diversionary effect, the President hopes the appointment of Barrett, a Catholic and mother of seven, may help him with women and Hispanics. Democrats seem disinclined to argue against Barrett on the basis of her religious views and possible impact on abortion, and more likely to focus on Republican political hypocrisy and how Barrett’s conservative Constitutional views (focused on the original meaning of the document) might affect the future of Obama’s Affordable Care Act, undermining health insurance for millions.

Most view Supreme Court favorably

% who have a ___ view of the Supreme Court



Note: Don't know responses not shown.
 Source: Survey of U.S. adults conducted July 10-15, 2019.
 PEW RESEARCH CENTER

With respect to the good of the country, the Supreme Court is the most respectable branch of government and has enjoyed some image for nonpartisanship in a partisan era. Last year a Marquette Law School poll found that some 57% approved its job performance, similar to Pew’s finding to the left, compared to 22% for the Congress and 21% for the presidency. Two-thirds thought the Court more was guided by law rather than politics or ideology. Before Ginsburg’s death, the 5 justices appointed by Republican presidents and 4 appointed by Democrat presidents more or less reflected the internal social divisions, especially since Chief Justice John Roberts, a conservative, sometimes sided with the more liberal minority. A change to a 6-3

composition in favor of conservatives, however, without prospect of another appointment soon again, shifts the court from being a social balancer to instead becoming a potential political instrument thwarting majority rule. This shift would be another blow to the political center in the United States.

The Democrats have virtually no chance to stop the appointment as long as the President and Senate Republicans are determined to push it through. Biden, wanting to project himself as a calming influence and hoping to keep focused on the pandemic and its economic effects, seems

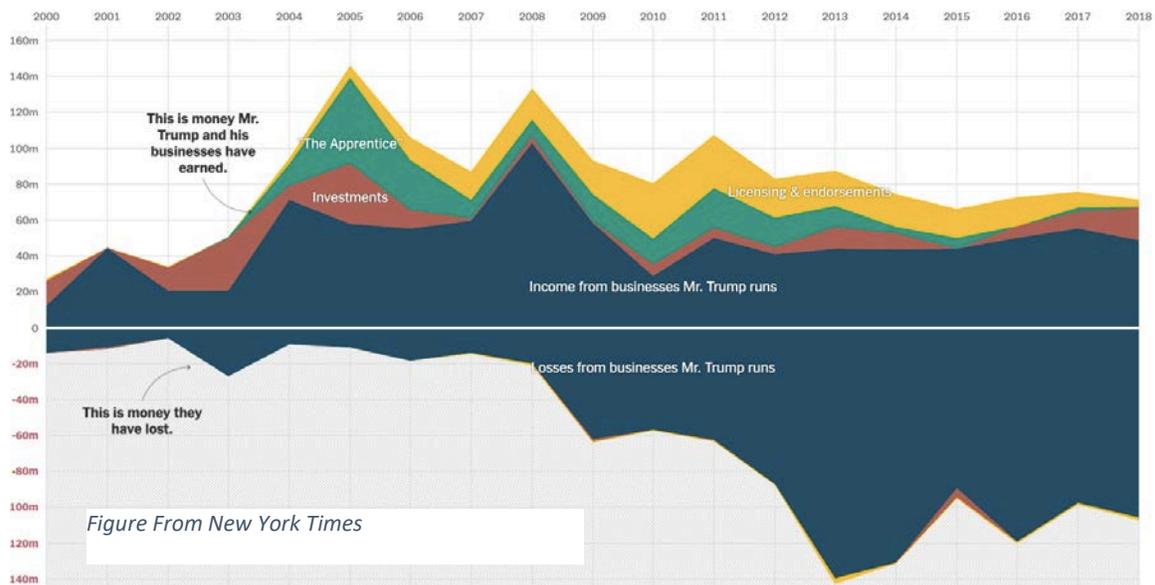
to want downplay the appointment. As an institutionalist, he probably also will not want to respond to speculation bubbling in some liberal circles as to whether the Democrats should add another justice should they win both the presidential election and hold next year's Senate majority.

The Barrett confirmation may have more implications for tight Senate races than for the presidential election. Since voters are often motivated more by what they are against than what they are for, the positive effect of a controversial appointment may accrue more for Democrats. Angry Democrats around the country did respond almost immediately with huge donations of money to the opponents of Republican Senate majority leader Mitch McConnell and Judiciary Chair, Lindsay Graham. The latter is surprisingly involved in a close race, and he used the occasion of a Fox News interview to appeal to the audience to send him campaign donations.

Although McConnell has a reputation for being a shrewd political operator, he may have endangered his own status a majority leader by placing Republicans in Maine, Colorado, Arizona, North Carolina, and elsewhere in the uncomfortable positions of having to vote prior to November 3.

Trump Tax Returns

On September 27, the New York Times released the results of a long inquiry into Trump's financial records, which have been withheld from the public, and it promises more. These show



that Trump's business losses and deductions for his opulent lifestyle offset his income to the point of no payments in most recent years. In 2016 and 2017, the first year of his presidency, Trump paid \$750 each year in personal taxes, much less than most American workers, and he paid much more to some foreign countries, including the Philippines and India, than to the United States. In the previous ten years, he had paid no taxes at all, and over an 18-year

period, he paid only a fraction of what others in his income category paid. Aside from the question of fairness, Trump's overall finances appeared close to reckless, with significant debts, much of it to foreign entities that also provide a large share of his income, and much due for repayment soon.

While providing shocking details, the revelations came as little surprise to most close observers; Hillary Clinton had speculated in 2016 that Trump's reluctance to release returns was because he had paid virtually no taxes. Trump immediately labeled the Times' story as "fake news," and his lawyers insisted he has paid "tens of millions," leaving the question of why he would continue to hide the records to prove it. The Times does not plan to release the documents it has for fear of revealing its sources, and because of this, many Trump supporters will believe the story unverifiable and only concocted for election purposes. And apart from that, many of them have already discounted Trump's character, alleged escapades with multiple women, and his finances because they like his bluntness or the direction of his policies. Thus, the tax story will probably have no significant impact on the overall national shape of the election. However, it obviously provides ammunition for Democratic ads, which began almost immediately, and is one more factor that might make a difference in the most hotly contested races at the state level. It may also moderately deter Trump from making as full an attack on what he believes are Biden's ethical problems in the debates as he had been planning.

The First Debate

The debates are the only opportunity for the two candidates to confront each other head-to-head in an unscripted setting. The first part of the first debate will probably be the most heavily watched, and it comes before most voting, even mailed absentee voting.

Aside from the Supreme Court appointment, the six-part debate will focus on the two candidates' record, the pandemic, the economy, election integrity, and race and urban violence according to moderator, Fox News' Chris Wallace, who has a reputation for asking tough questions. The week-end tax story will undoubtedly also play a role.

Usually the debates are an opportunity for the challenger to show he/she is capable of standing on the same stage as the incumbent and able to handle the same issues effectively. In this case, the roles are oddly reversed as the President needs the debates more than his challenger to try to change the dynamic of the race. He is said to want to be on the attack and to bring Biden's record and fitness for office to the top of the agenda, but this misses a central point – that the election is basically about Trump and his record.

The avalanche of unfavorable public relations stories in the past month, has continued to put the President on the defensive about his record. Biden will try to keep the debate focused just there, and to avoid the inevitable provocations that Trump will bring his way. Biden does not have a reputation as a strong or flashy debater, but he wants to show he is on top of the issues and civil in demeanor. In contrast to Trump, he does not need a stellar performance or a knock-out blow. And he set aside time to prepare. Trump's preparations are less clear, but he

still seems unable to fix on a credible avenue of attack on Biden. Some believe that his efforts to portray the former vice president as lethargic or even senile have actually helped Biden by setting low expectations.

Why is foreign policy not on the list of topical areas for this debate? Undoubtedly aspects will be brought up under other headings, such as the candidates' records and their overall visions, in which alliance relations, climate change, and toughness with adversaries may all come up. But aside from stylistic differences, and Biden's commitment to international institutions and processes, there is less to debate about than on domestic policy, where the candidates' views on the roles and responsibilities of government provide a major contrast. These are also the issues most on top of the domestic public's minds.

Assuming that no one collapses on the stage, the likely outcome of the debate is that partisans of both candidates will believe their candidate won. But in the few states where only very marginal shifts of mindsets or of motivations to vote may affect the outcome, debate performance could make a critical difference.

Election Outcomes

At this point in the political cycle, there seem to be three possible outcomes: a narrow Trump victory based on small margins in some critical states similar to 2016, a narrow Biden Electoral College victory based on small margins in critical states having peeled away 3 or 4 from Trump's 2016 victory, and an overwhelming Biden victory based on a large popular vote margin of 4-6%, and victories in several critical states that would result in a significant Electoral College vote.

As argued previously, a narrow Trump victory or an overwhelming Biden victory would be the least controversial from the standpoint of a smooth transition of power, but the middle outcome of a narrow Biden victory is probably the most likely. Trump's refusal to commit to a smooth transition has increased anxieties about an election that is manipulated or stolen, but despite Trump's disregard for traditional norms, this should be discounted to some extent. Trump remains an inexperienced politician who cannot quite figure out how to admit that he could lose a fair election without conceding an advantage to his opponent.

Most of the efforts to constrain voting have come well before the election. Because it is so critical, Florida provides an interesting case. Prior to 2019, it was one of four states that did not allow people convicted of felonies a right to vote. This was overturned by a state Constitutional amendment, supported by 65% of the voters, that allowed most felons to regain their voting privileges upon release. The state legislature subsequently voted to continue to forbid voting until those released had repaid any past fees and fines. While this was being pursued through the courts, Michael Bloomberg paid off the fees for about 32,000 released felons. The result appears to be that this small group, which could not have voted in 2016, can this time around. But how many will vote and for whom is not at all clear.

This observer believes that the opportunities to manipulate the outcome after the election remain very limited. This is partly a consequence of the decentralization of the election machinery and the norm in state election commissions of ensuring a fair outcome. But perhaps even more important is the public mood. The American presidential elections are a long and excruciating process, tiring not just for the candidates but also the public, especially in the battleground states. There is little tolerance for prolonged debate on the outcome, as the 2000 election showed. Unless the counting is very controversial in one or more critical states, the results will probably be known, if not on November 3, at least within days.

If he loses, Trump will, of course, manufacture an excuse for his loss, but he will leave the White House. But neither he nor Trumpism, a movement he empowered, by no means will leave politics in the foreseeable future.