

probation or some other form of supervised release from jail. She looks at the rise of the administrative state, with its accompanying laws and procedures designed to check the powers of government officials, as an important culprit. Government agencies are increasingly operating under strict procedures designed to prevent bureaucrats from rewarding friends and punishing enemies as they implement the likes of housing subsidies and pollution restrictions. The spirit of “administrative law” enjoys public support because of its perceived absolute fairness, and leaches into the judicial branch. If it is effective in limiting the executive branch’s discretion to interpret civil law, why not extend its limits to criminal matters?

In effect, Barkow says, this is exactly what is happening. Even without formal limits, presidents and governors have sharply cut their use of executive clemency. The powers of parole boards—once afforded the discretion to be merci-

ful—are highly circumscribed.

President Richard M. Nixon—himself the recipient of a presidential pardon after he was forced from office—granted 36 percent of the petitions he received for clemency for convicted wrongdoers. That number dropped steadily, to five percent of petitions granted by President George H. W. Bush, before ticking up to six percent for President Bill Clinton. Researchers have found a similar trend at the state level. And the courts themselves have placed limits on jury nullification—“not guilty” verdicts in the face of substantial evidence to the contrary.

Prosecutors still have considerable leeway to show mercy by simply declining to prosecute a case. They don’t have to follow strict guidelines about when to let somebody off the hook by failing to bring charges, and they don’t have to give reasons for their decision. Even if they are elected as crime-busters, they can’t physically or financially

prosecute every infraction and seem to get a pass on their ability to be lenient.

But drafting administrative procedures to guide juries and executives in showing mercy would contradict the most important reason for having discretion to be lenient in individual cases, Barkow concludes. The utter impossibility of anticipating every human factor in advance is the very reason for the existence of mercy.

POLITICS & GOVERNMENT

The Rise of the Donor Class

THE SOURCE: “The Check Is in the Mail: Interdistrict Funding Flows in Congressional Elections” by James G. Gimpel, Frances E. Lee, and Shanna Pearson-Merkowitz, in the *American Journal of Political Science*, April 2008.

AMERICANS HAVE NEVER BEEN as interested in social class as Europeans, partly because most

EXCERPT

Broadway Neocon?

I wrote a play about politics. . . . The argument in my play is between a president who is self-interested, corrupt, suborned, and realistic, and his leftish, lesbian, utopian-socialist speechwriter. The play [is] a disputation between reason and faith, or perhaps between the conservative (or tragic) view and the liberal (or perfectionist) view. . . .

I took the liberal view for many decades, but I believe I have changed my mind. . . . I found not only

that I didn't trust the current government . . . but that an impartial review revealed that the faults of this president—whom I, a good liberal, considered a monster—were little different from those of a president whom I revered. Bush got us into Iraq, [John F. Kennedy] into Vietnam. Bush stole the election in Florida; Kennedy stole his in Chicago. Bush outed a CIA agent; Kennedy left hundreds of them to die in the surf at the Bay of Pigs. Bush lied about his military service; Kennedy accepted a Pulitzer Prize for a book written by Ted Sorensen. Bush was in bed with the Saudis, Kennedy with the Mafia. Oh.

—DAVID MAMET, on his most recent play, *November*, in *The Village Voice* (March 11, 2008)

people consider themselves middle class, no matter what their income. But political scientists have identified a distinct new demographic group perched geographically and economically apart from the hoi polloi. Made up of individuals with the means and inclination to influence the outcomes of congressional races far afield, this small group of wealthy, highly educated urban and suburban residents constitutes the growing donor class.

Today's typical congressional candidate now receives more than two-thirds of all individual donations from people outside the contested district, write James G. Gimpel, Frances E. Lee, and Shanna Pearson-Merkowitz, professor, associate professor, and graduate student in political science, respectively, at the University of Maryland. In fully 18 percent of all congressional districts, candidates receive almost all of their personal checks from beyond the boundaries of the area they are seeking to represent.

The wealthy segregate themselves even more than the poor, and the donor class is concentrated in a few places, including Los Angeles; New York City; suburban Miami-Dade and Broward counties, Florida; Lake County, Illinois; Montgomery County, Maryland; and Bergen County, New Jersey, the authors say. The flow of funds doesn't go from rich to poor or urban to rural, but from the donor class to competitive races wherever they may be.

While political action commit-

tees have been shown to donate to gain access to members of Congress, the new class gives to "make a difference" in party alignment, Gimpel and his colleagues write. The donor class typically ignores primaries. "Distant nonresidents respond unambiguously only to two-party competition," they say. Republican-leaning and Democratic-leaning enclaves are both well represented in the donor class. As the level of competitiveness increases, so do the checks.

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Reformers have expressed concern that the increasing role of nonresident donors obligates members of Congress to favor the priorities of distant givers over the locals they represent. But because of the crucial role of the party in identifying close races and mobilizing tried-and-true contributors, lawmakers are more indebted to the party than to individual donors. Large individual donations from distant locales are, functionally speaking, not individual at all, say the authors. "They are instead extensions of the modern parties' organizations into the electorate."

POLITICS & GOVERNMENT

New Directions in Pork

THE SOURCE: "The Presidential Pork Barrel and the Conditioning Effect of Term" by Andrew J. Taylor, in *Presidential Studies Quarterly*, March 2008.

IF YOU'RE A STATE GOVERNOR with a hankering for a bigger slice of the federal procurement pie, a recent study may point the way.

First, make sure your state is big. "Bigger states get discernibly more procurement per capita," says Andrew J. Taylor, a North Carolina State University political scientist who analyzed procurement contracts from 1984 to 2004. Bigger states have more votes in the Electoral College, electoral votes help presidents get elected (or reelected), and, Taylor points out, "the president and his administration can influence the distribution of procurement contracts greatly." Most of these contracts "are undertaken with the Department of Defense," he adds.

Second, get your people onto a congressional committee. You will see a modest return even if it's just in the House of Representatives, but, Taylor says, "adding a senator to a state's delegation on Appropriations is worth about \$42 per capita in procurement spending; to Armed Services it is worth about \$77." That's no small change if your state has as many people as, say, California. Bonus bucks if your legislator is a member of the party in power.

Third, and this may be the