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 merciful—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


Americans have never been as interested in social class as Europeans, partly because most
New Directions in Pork

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...