
America in Decay

The Sources of Political Dysfunction

Francis Fukuyama

The creation of the U.S. Forest Service at the turn of the twentieth century was the premier example of American state building during the Progressive Era. Prior to the passage of the Pendleton Act in 1883, public offices in the United States had been allocated by political parties on the basis of patronage. The Forest Service, in contrast, was the prototype of a new model of merit-based bureaucracy. It was staffed with university-educated agronomists and foresters chosen on the basis of competence and technical expertise, and its defining struggle was the successful effort by its initial leader, Gifford Pinchot, to secure bureaucratic autonomy and escape routine interference by Congress. At the time, the idea that forestry professionals, rather than politicians, should manage public lands and handle the department's staffing was revolutionary, but it was vindicated by the service's impressive performance. Several major academic studies have treated its early decades as a classic case of successful public administration.

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Today, however, many regard the Forest Service as a highly dysfunctional bureaucracy performing an outmoded mission with the wrong tools. It is still staffed by professional foresters, many highly dedicated to the agency's mission, but it has lost a great deal of the autonomy it won under Pinchot. It operates under multiple and often contradictory mandates from Congress and the courts and costs taxpayers a substantial amount of money while achieving questionable aims. The service's internal decision-making system is often gridlocked, and the high degree of staff morale and cohesion that Pinchot worked so hard to foster has been lost. These days, books are written arguing that the Forest Service ought to be abolished altogether. If the Forest Service's creation exemplified the development of the modern American state, its decline exemplifies that state's decay.

Civil service reform in the late nineteenth century was promoted by academics and activists such as Francis Lieber, Woodrow Wilson, and Frank Goodnow, who believed in the ability of modern natural science to solve human problems. Wilson, like his contemporary Max Weber, distinguished between politics and administration. Politics, he argued, was a domain of final ends, subject to democratic contestation, but administration was a realm of implementation, which could be studied empirically and subjected to scientific analysis.

The belief that public administration could be turned into a science now seems naive and misplaced. But back then, even in advanced countries, governments were run largely by political hacks or corrupt municipal



bosses, so it was perfectly reasonable to demand that public officials be selected on the basis of education and merit rather than cronyism. The problem with scientific management is that even the most qualified scientists of the day occasionally get things wrong, and sometimes in a big way. And unfortunately, this is what happened to the Forest Service with regard to what ended up becoming one of its crucial missions, the fighting of forest fires.

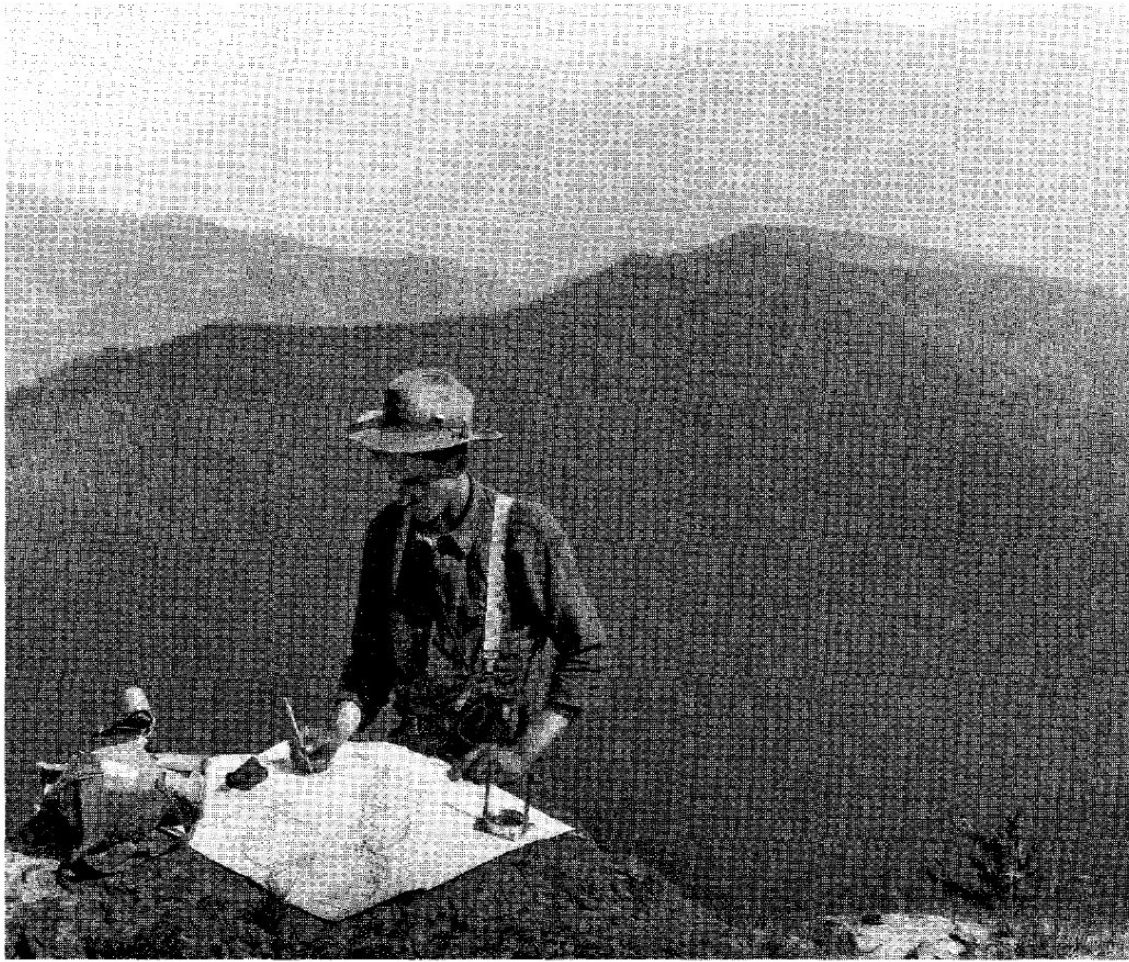
Pinchot had created a high-quality agency devoted to one basic goal: managing the sustainable exploitation of forest resources. The Great Idaho Fire of 1910, however, burned some three million acres and killed at least 85 people, and the subsequent political outcry led the Forest Service to focus increasingly not just on timber harvesting but also on wildfire suppression. Yet the early proponents of scientific forestry didn't properly understand the role of fires in woodland ecology. Forest fires are a natural occurrence and serve an important function in maintaining the health of western forests. Shade-intolerant trees, such as ponderosa pines, lodgepole pines, and giant sequoias, require periodic fires to clear areas in which they can regenerate, and once fires were suppressed, these trees were invaded by species such as the Douglas fir. (Lodgepole pines actually require fires to propagate their seeds.) Over the years, many American forests developed high tree densities and huge buildups of dry understory, so that when fires did occur, they became much larger and more destructive.

After catastrophes such as the huge Yellowstone fires in 1988, which ended up burning nearly 800,000 acres in the

park and took several months to control, the public began to take notice. Ecologists began criticizing the very objective of fire prevention, and in the mid-1990s, the Forest Service reversed course and officially adopted a "let burn" approach. But years of misguided policies could not simply be erased, since so many forests had become gigantic tinderboxes.

As a result of population growth in the American West, moreover, in the later decades of the twentieth century, many more people began living in areas vulnerable to wildfires. As are people choosing to live on floodplains or on barrier islands, so these individuals were exposing themselves to undue risks that were mitigated by what essentially was government-subsidized insurance. Through their elected representatives, they lobbied hard to make sure the Forest Service and other federal agencies responsible for forest management were given the resources to continue fighting fires that could threaten their property. Under these circumstances, rational cost-benefit analysis proved difficult, and rather than try to justify a decision not to act, the government could easily end up spending \$1 million to protect a \$100,000 home.

While all this was going on, the original mission of the Forest Service was eroding. Timber harvests in national forests, for example, plunged, from roughly 11 billion to roughly three billion board feet per year in the 1990s alone. This was due partly to the changing economics of the timber industry, but it was also due to a change in national values. With the rise of environmental consciousness, natural forests were increasingly seen as havens to be protected for their own sake, not



Man on a mission: a U.S. Forest Service ranger on Mount Silcox, in Montana, 1909

economic resources to be exploited. And even in terms of economic exploitation, the Forest Service had not been doing a good job. Timber was being marketed at well below the costs of operations; the agency's timber pricing was inefficient; and as with all government agencies, the Forest Service had an incentive to increase its costs rather than contain them.

The Forest Service's performance deteriorated, in short, because it lost the autonomy it had gained under Pinchot. The problem began with the displacement of a single departmental mission by multiple and potentially conflicting ones. In the middle decades of the twentieth century, firefighting began to displace timber exploitation,

but then firefighting itself became controversial and was displaced by conservation. None of the old missions was discarded, however, and each attracted outside interest groups that supported different departmental factions: consumers of timber, homeowners, real estate developers, environmentalists, aspiring firefighters, and so forth. Congress, meanwhile, which had been excluded from the micromanagement of land sales under Pinchot, reinserted itself by issuing various legislative mandates, forcing the Forest Service to pursue several different goals, some of them at odds with one another.

Thus, the small, cohesive agency created by Pinchot and celebrated by scholars slowly evolved into a large,

Balkanized one. It became subject to many of the maladies affecting government agencies more generally: its officials came to be more interested in protecting their budgets and jobs than in the efficient performance of their mission. And they clung to old mandates even when both science and the society around them were changing.

The story of the U.S. Forest Service is not an isolated case but representative of a broader trend of political decay; public administration specialists have documented a steady deterioration in the overall quality of American government for more than a generation. In many ways, the U.S. bureaucracy has moved away from the Weberian ideal of an energetic and efficient organization staffed by people chosen for their ability and technical knowledge. The system as a whole is less merit-based: rather than coming from top schools, 45 percent of recent new hires to the federal service are veterans, as mandated by Congress. And a number of surveys of the federal work force paint a depressing picture. According to the scholar Paul Light, "Federal employees appear to be more motivated by compensation than mission, ensnared in careers that cannot compete with business and nonprofits, troubled by the lack of resources to do their jobs, dissatisfied with the rewards for a job well done and the lack of consequences for a job done poorly, and unwilling to trust their own organizations."

WHY INSTITUTIONS DECAY

In his classic work *Political Order in Changing Societies*, the political scientist Samuel Huntington used the term "political decay" to explain political

instability in many newly independent countries after World War II. Huntington argued that socioeconomic modernization caused problems for traditional political orders, leading to the mobilization of new social groups whose participation could not be accommodated by existing political institutions. Political decay was caused by the inability of institutions to adapt to changing circumstances. Decay was thus in many ways a condition of political development: the old had to break down in order to make way for the new. But the transitions could be extremely chaotic and violent, and there was no guarantee that the old political institutions would continuously and peacefully adapt to new conditions.

This model is a good starting point for a broader understanding of political decay more generally. Institutions are "stable, valued, recurring patterns of behavior," as Huntington put it, the most important function of which is to facilitate collective action. Without some set of clear and relatively stable rules, human beings would have to renegotiate their interactions at every turn. Such rules are often culturally determined and vary across different societies and eras, but the capacity to create and adhere to them is genetically hard-wired into the human brain. A natural tendency to conformism helps give institutions inertia and is what has allowed human societies to achieve levels of social cooperation unmatched by any other animal species.

The very stability of institutions, however, is also the source of political decay. Institutions are created to meet the demands of specific circumstances, but then circumstances change and institutions fail to adapt. One reason is



Mission on the move: fighting flames near Camp Mather, California, August 2013

cognitive: people develop mental models of how the world works and tend to stick to them, even in the face of contradictory evidence. Another reason is group interest: institutions create favored classes of insiders who develop a stake in the status quo and resist pressures to reform.

In theory, democracy, and particularly the Madisonian version of democracy that was enshrined in the U.S. Constitution, should mitigate the problem of such insider capture by preventing the emergence of a dominant faction or elite that can use its political power to tyrannize over the country. It does so by spreading power among a series of competing branches of government and allowing for competition among different interests across a large and diverse country.

But Madisonian democracy frequently fails to perform as advertised. Elite insiders typically have superior access to power and information, which they use to protect their interests. Ordinary voters will not get angry at a corrupt politician if they don't know that money is being stolen in the first place. Cognitive rigidities or beliefs may also prevent social groups from mobilizing in their own interests. For example, in the United States, many working-class voters support candidates promising to lower taxes on the wealthy, despite the fact that such tax cuts will arguably deprive them of important government services.

Furthermore, different groups have different abilities to organize to defend their interests. Sugar producers and corn

REUTERS / MAX WHITTAKER

growers are geographically concentrated and focused on the prices of their products, unlike ordinary consumers or taxpayers, who are dispersed and for whom the prices of these commodities are only a small part of their budgets. Given institutional rules that often favor special interests (such as the fact that Florida and Iowa, where sugar and corn are grown, are electoral swing states), those groups develop an outsized influence over agricultural and trade policy. Similarly, middle-class groups are usually much more willing and able to defend their interests, such as the preservation of the home mortgage tax deduction, than are the poor. This makes such universal entitlements as Social Security or health insurance much easier to defend politically than programs targeting the poor only.

Finally, liberal democracy is almost universally associated with market economies, which tend to produce winners and losers and amplify what James Madison termed the "different and unequal faculties of acquiring property." This type of economic inequality is not in itself a bad thing, insofar as it stimulates innovation and growth and occurs under conditions of equal access to the economic system. It becomes highly problematic, however, when the economic winners seek to convert their wealth into unequal political influence. They can do so by bribing a legislator or a bureaucrat, that is, on a transactional basis, or, what is more damaging, by changing the institutional rules to favor themselves—for example, by closing off competition in markets they already dominate, tilting the playing field ever more steeply in their favor.

Political decay thus occurs when institutions fail to adapt to changing external circumstances, either out of intellectual rigidities or because of the power of incumbent elites to protect their positions and block change. Decay can afflict any type of political system, authoritarian or democratic. And while democratic political systems theoretically have self-correcting mechanisms that allow them to reform, they also open themselves up to decay by legitimating the activities of powerful interest groups that can block needed change.

This is precisely what has been happening in the United States in recent decades, as many of its political institutions have become increasingly dysfunctional. A combination of intellectual rigidity and the power of entrenched political actors is preventing those institutions from being reformed. And there is no guarantee that the situation will change much without a major shock to the political order.

A STATE OF COURTS AND PARTIES

Modern liberal democracies have three branches of government—the executive, the judiciary, and the legislature—corresponding to the three basic categories of political institutions: the state, the rule of law, and democracy. The executive is the branch that uses power to enforce rules and carry out policy; the judiciary and the legislature constrain power and direct it to public purposes. In its institutional priorities, the United States, with its long-standing tradition of distrust of government power, has always emphasized the role of the institutions of constraint—the judiciary and the legislature—over the state. The political scientist Stephen

Skowronek has characterized American politics during the nineteenth century as a "state of courts and parties," where government functions that in Europe would have been performed by an executive-branch bureaucracy were performed by judges and elected representatives instead. The creation of a modern, centralized, merit-based bureaucracy capable of exercising jurisdiction over the whole territory of the country began only in the 1880s, and the number of professional civil servants increased slowly up through the New Deal a half century later. These changes came far later and more hesitantly than in countries such as France, Germany, and the United Kingdom.

The shift to a more modern administrative state was accompanied by an enormous growth in the size of government during the middle decades of the twentieth century. Overall levels of both taxes and government spending have not changed very much since the 1970s; despite the backlash against the welfare state that began with President Ronald Reagan's election in 1980, "big government" seems very difficult to dismantle. But the apparently irreversible increase in the scope of government in the twentieth century has masked a large decay in its quality. This is largely because the United States has returned in certain ways to being a "state of courts and parties," that is, one in which the courts and the legislature have usurped many of the proper functions of the executive, making the operation of the government as a whole both incoherent and inefficient.

The story of the courts is one of the steadily increasing judicialization of functions that in other developed

democracies are handled by administrative bureaucracies, leading to an explosion of costly litigation, slowness of decision-making, and highly inconsistent enforcement of laws. In the United States today, instead of being constraints on government, courts have become alternative instruments for the expansion of government.

There has been a parallel usurpation by Congress. Interest groups, having lost their ability to corrupt legislators directly through bribery, have found other means of capturing and controlling legislators. These interest groups exercise influence way out of proportion to their place in society, distort both taxes and spending, and raise overall deficit levels by their ability to manipulate the budget in their favor. They also undermine the quality of public administration through the multiple mandates they induce Congress to support.

Both phenomena—the judicialization of administration and the spread of interest-group influence—tend to undermine the trust that people have in government. Distrust of government then perpetuates and feeds on itself. Distrust of executive agencies leads to demands for more legal checks on administration, which reduces the quality and effectiveness of government. At the same time, demand for government services induces Congress to impose new mandates on the executive, which often prove difficult, if not impossible, to fulfill. Both processes lead to a reduction of bureaucratic autonomy, which in turn leads to rigid, rule-bound, uncreative, and incoherent government.

The result is a crisis of representation, in which ordinary citizens feel that their supposedly democratic government no

longer truly reflects their interests and is under the control of a variety of shadow elites. What is ironic and peculiar about this phenomenon is that this crisis of representation has occurred in large part because of reforms designed to make the system more democratic. In fact, these days there is too much law and too much democracy relative to American state capacity.

JUDGES GONE WILD

One of the great turning points in twentieth-century U.S. history was the Supreme Court's 1954 *Brown v. Board of Education* decision overturning the 1896 *Plessy v. Ferguson* case, which had upheld legal segregation. The *Brown* decision was the starting point for the civil rights movement, which succeeded in dismantling the formal barriers to racial equality and guaranteed the rights of African Americans and other minorities. The model of using the courts to enforce new social rules was then followed by many other social movements, from environmental protection and consumer safety to women's rights and gay marriage.

So familiar is this heroic narrative to Americans that they are seldom aware of how peculiar an approach to social change it is. The primary mover in the *Brown* case was the National Association for the Advancement of Colored People, a private voluntary association that filed a class-action suit against the Topeka, Kansas, Board of Education on behalf of a small group of parents and their children. The initiative had to come from private groups, of course, because both the state government and the U.S. Congress were blocked by pro-segregation forces. The NAACP continued to press the case on appeal

all the way to the Supreme Court, where it was represented by the future Supreme Court justice Thurgood Marshall. What was arguably one of the most important changes in American public policy came about not because Congress as representative of the American people voted for it but because private individuals litigated through the court system to change the rules. Later changes such as the Civil Rights Act and the Voting Rights Act were the result of congressional action, but even in these cases, the enforcement of national law was left up to the initiative of private parties and carried out by courts.

There is virtually no other liberal democracy that proceeds in this fashion. All European countries have gone through similar changes in the legal status of racial and ethnic minorities, women, and gays in the second half of the twentieth century. But in France, Germany, and the United Kingdom, the same result was achieved not using the courts but through a national justice ministry acting on behalf of a parliamentary majority. The legislative rule change was driven by public pressure from social groups and the media but was carried out by the government itself and not by private parties acting in conjunction with the justice system.

The origins of the U.S. approach lie in the historical sequence by which its three sets of institutions evolved. In countries such as France and Germany, law came first, followed by a modern state, and only later by democracy. In the United States, by contrast, a very deep tradition of English common law came first, followed by democracy, and only later by the development of a modern state. Although the last of these institutions was put into place during

the Progressive Era and the New Deal, the American state has always remained weaker and less capable than its European or Asian counterparts. More important, American political culture since the founding has been built around distrust of executive authority.

This history has resulted in what the legal scholar Robert Kagan labels a system of "adversarial legalism." While lawyers have played an outsized role in American public life since the beginning of the republic, their role expanded dramatically during the turbulent years of social change in the 1960s and 1970s. Congress passed more than two dozen major pieces of civil rights and environment legislation in this period, covering issues from product safety to toxic waste cleanup to private pension funds to occupational safety and health. This constituted a huge expansion of the regulatory state, one that businesses and conservatives are fond of complaining about today.

Yet what makes this system so unwieldy is not the level of regulation per se but the highly legalistic way in which it is pursued. Congress mandated the creation of an alphabet soup of new federal agencies, such as the Equal Employment Opportunity Commission, the Environmental Protection Agency, and the Occupational Safety and Health Administration, but it was not willing to cleanly delegate to these bodies the kind of rule-making authority and enforcement power that European or Japanese state institutions enjoy. What it did instead was turn over to the courts the responsibility for monitoring and enforcing the law. Congress deliberately encouraged litigation by expanding standing (that is, who has a right to sue) to an

ever-wider circle of parties, many of which were only distantly affected by a particular rule.

The political scientist R. Shep Melnick, for example, has described the way that the federal courts rewrote Title VII of the 1964 Civil Rights Act, "turning a weak law focusing primarily on intentional discrimination into a bold mandate to compensate for past discrimination." Instead of providing a federal bureaucracy with adequate enforcement power, the political scientist Sean Farhang explained, "the key move of Republicans in the Senate . . . was to substantially privatize the prosecutorial function. They made private lawsuits the dominant mode of Title VII enforcement, creating an engine that would, in the years to come, produce levels of private enforcement litigation beyond their imagining." Across the board, private enforcement cases grew in number from less than 100 per year in the late 1960s to 10,000 in the 1980s and over 22,000 by the late 1990s.

Thus, conflicts that in Sweden or Japan would be solved through quiet consultations between interested parties in the bureaucracy are fought out through formal litigation in the U.S. court system. This has a number of unfortunate consequences for public administration, leading to a process characterized, in Farhang's words, by "uncertainty, procedural complexity, redundancy, lack of finality, high transaction costs." By keeping enforcement out of the bureaucracy, it also makes the system far less accountable.

The explosion of opportunities for litigation gave access, and therefore power, to many formerly excluded groups, beginning with African Americans. For

this reason, litigation and the right to sue have been jealously guarded by many on the progressive left. But it also entailed large costs in terms of the quality of public policy. Kagan illustrates this with the case of the dredging of Oakland Harbor, in California. During the 1970s, the Port of Oakland initiated plans to dredge the harbor in anticipation of the new, larger classes of container ships that were then coming into service. The plan, however, had to be approved by a host of federal agencies, including the Army Corps of Engineers, the Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency, as well as their counterparts in the state of California. A succession of alternative plans for disposing of toxic materials dredged from the harbor were challenged in the courts, and each successive plan entailed prolonged delays and higher costs. The reaction of the Environmental Protection Agency to these lawsuits was to retreat into a defensive crouch and not take action. The final plan to proceed with the dredging was not forthcoming until 1994, at an ultimate cost that was many times the original estimates. A comparable expansion of the Port of Rotterdam, in the Netherlands, was accomplished in a fraction of the time.

Examples such as this can be found across the entire range of activities undertaken by the U.S. government. Many of the travails of the Forest Service can be attributed to the ways in which its judgments could be second-guessed through the court system. This effectively brought to a halt all logging on lands it and the Bureau of Land Management operated in the Pacific

Northwest during the early 1990s, as a result of threats to the spotted owl, which was protected under the Endangered Species Act.

When used as an instrument of enforcement, the courts have morphed from constraints on government to mechanisms by which the scope of government has expanded enormously. For example, special-education programs for handicapped and disabled children have mushroomed in size and cost since the mid-1970s as a result of an expansive mandate legislated by Congress in 1974. This mandate was built, however, on earlier findings by federal district courts that special-needs children had rights, which are much harder than mere interests to trade off against other goods or to subject to cost-benefit criteria.

The solution to this problem is not necessarily the one advocated by many conservatives and libertarians, which is to simply eliminate regulation and close down bureaucracies. The ends that government is serving, such as the regulation of toxic waste or environmental protection or special education, are important ones that private markets will not pursue if left to their own devices. Conservatives often fail to see that it is the very distrust of government that leads the American system into a far less efficient court-based approach to regulation than that chosen in democracies with stronger executive branches.

But the attitude of progressives and liberals is equally problematic. They, too, have distrusted bureaucracies, such as the ones that produced segregated school systems in the South or the ones captured by big business, and they have been happy to inject unelected judges

into the making of social policy when legislators have proved insufficiently supportive.

A decentralized, legalistic approach to administration dovetails with the other notable feature of the U.S. political system: its openness to the influence of interest groups. Such groups can get their way by suing the government directly. But they have another, even more powerful channel, one that controls significantly more resources: Congress.

LIBERTY AND PRIVILEGE

With the exception of some ambassadorships and top posts in government departments, U.S. political parties are no longer in the business of distributing government offices to loyal political supporters. But the trading of political influence for money has come in through the backdoor, in a form that is perfectly legal and much harder to eradicate. Criminalized bribery is narrowly defined in U.S. law as a transaction in which a politician and a private party explicitly agree on a specific *quid pro quo*. What is not covered by the law is what biologists call reciprocal altruism, or what an anthropologist might label a gift exchange. In a relationship of reciprocal altruism, one person confers a benefit on another with no explicit expectation that it will buy a return favor. Indeed, if one gives someone a gift and then immediately demands a gift in return, the recipient is likely to feel offended and refuse what is offered. In a gift exchange, the receiver incurs not a legal obligation to provide some specific good or service but rather a moral obligation to return the favor in some way later on. It is this sort of transaction

that the U.S. lobbying industry is built around.

Kin selection and reciprocal altruism are two natural modes of human sociability. Modern states create strict rules and incentives to overcome the tendency to favor family and friends, including practices such as civil service examinations, merit qualifications, conflict-of-interest regulations, and antibribery and anticorruption laws. But the force of natural sociability is so strong that it keeps finding a way to penetrate the system.

Over the past half century, the American state has been "repatrimonialized," in much the same way as the Chinese state in the Later Han dynasty, the Mamluk regime in Turkey just before its defeat by the Ottomans, and the French state under the *ancien régime* were. Rules blocking nepotism are still strong enough to prevent overt favoritism from being a common political feature in contemporary U.S. politics (although it is interesting to note how strong the urge to form political dynasties is, with all of the Kennedys, Bushes, Clintons, and the like). Politicians do not typically reward family members with jobs; what they do is engage in bad behavior on behalf of their families, taking money from interest groups and favors from lobbyists in order to make sure that their children are able to attend elite schools and colleges, for example.

Reciprocal altruism, meanwhile, is rampant in Washington and is the primary channel through which interest groups have succeeded in corrupting government. As the legal scholar Lawrence Lessig points out, interest groups are able to influence members of Congress legally simply by making