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## The Fortress State: How the American System Protects Vested Interests and the Status Quo

Axel Clavier  
*Bard College*

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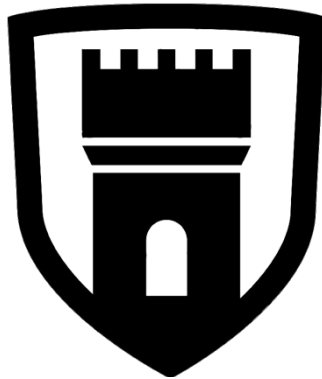
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# **The Fortress State**

How the American System Protects  
Vested Interests and the Status Quo

Senior Project Submitted to  
The Division of Social Studies  
of Bard College

by  
Axel Clavier

Annandale-on-Hudson, New York  
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*To Walter Russell Mead,  
who raised the bar high because he knew I could reach it.*

*And*

*To the turtles who won their races,  
and the little engines that could.*

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# Introduction

The Founders consciously designed the American system to divide majoritarian energies, gridlock the government, and skew the political game towards vested interests and knowledgeable insiders. The result is a political system which disproportionately caters to small and intensely-motivated constituencies while raising the bar very high for majoritarian change. But, if majoritarian forces are persevering enough, if their repeated assaults are able to muster the forces needed across many places and long stretches of time, the system is able to integrate and domesticate change without breaking, and without fundamentally altering itself. Judged by its longevity, the Fortress State is the most successful mechanism for managing institutional change in a large and complex society known to man. However, given the nature of the problems of the 21<sup>st</sup> century, the conclusion of this essay questions whether the disaggregating tendencies of American institutions will serve the nation well in the new millennium.

American political institutions are characterized by institutional and policy stability because they allow organized vested interests a disproportionate amount of power to vet changes to the status quo relative to systems which are otherwise constituted. This is not a bug in the government's operating system. It *is* the operating system. The story of political development in the United States is that of repeated assaults on the barriers, bottlenecks, and citadels erected by the Founders within and between American institutions, and of vested interests having a decided advantage in limiting the possibilities for change and reform by taking advantage of them. In this paper, I refer to this aspect of American government as the "fortress state."

Civil rights, civil service reform, the building of a coherent administrative state, the creation of a health insurance system—these policies and many others took the United States longer to achieve, and the resulting policies were much more haphazard than they would have been in a different political system because of the particular arrangement and rules of American institutions. Generations of Americans may have wished their government otherwise constituted than how they found it, but the system has demonstrated an incredible ability to resist attempts at

revision. An even greater number of reforms were never attempted because political power is not only the ability to veto change, but to deter change from ever being attempted or considered.<sup>1</sup>

This is not necessarily a bad thing. Societies need stable institutions, and there is much that the American system gets right. However, a side effect of the way power is distributed in the Fortress State is that it keeps presenting its citizens with arrangements and compromises that many do not want. Some of these arrangements are so absurd that no sane or rational person would design them, yet they are almost impossible to change. When this happens, the causes are often systemic. They have to do with the way the institutions are designed, and with the way power is frozen within them.

## THE FORTRESS STATE

The term “fortress state” refers in these pages to how the non-hierarchical, disaggregated, and redundant nature of American governing institutions protects vested interests from the kinds of sweeping revisions that may be possible under more majoritarian, centralized, and executive systems like those of the United Kingdom and France. The fortress state, and the manner in which it handles change, is the reason American politics is characterized by institutional and policy stability despite fierce political contestation and a hugely diverse society. This paper argues that the “fortress” function is not an accidental bug in the design of American institutions, but a primary feature.

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<sup>1</sup> Peter Bachrach and Morton S. Baratz, “Two Faces of Power.” *American Political Science Review* 56 no.4 (1962): 947-952

Like a medieval castle, the fortress state is designed to funnel political invaders into bottlenecks, “veto points,” at which entrenched interests can block change. It divides the energies of political players between branches and levels of government and makes it very difficult for a single interest to capture and operate them all in one swoop. The fortress state also allows highly educated insiders who have knowledge of the fortress state’s intricate passageways to have a significant advantage in maneuvering through it. Finally, like the layered and segmented walls and towers of a castle which contain attackers if they breach a section, the fortress state also has layered and independent power centers which ensure that one interest “will be unable to spread a general conflagration. . .”<sup>2</sup> Vested interests can continue their defense from other citadels. This means that, even if part of the castle is captured and reformed, the resulting reforms will be partial, incomplete, and incremental. Attacking forces will be so busy fighting for the next corridor, gate, or citadel, that they will often lose track of how the reforms they set out to make are being watered down and domesticated at every step. In this way, the fortress state is able to limit the scope of change so that it does not upset the balance of interests already within it.

“Fortress state” is a descriptive and empirical term and carries with it no connotation of moral or normative condemnation. As George Tsebelis points out in the introduction of *Veto Players*, it is important that political scientists remain agnostic on the question of what degrees of institutional responsiveness are desirable for all systems at all times. Such considerations are relative in the extreme and rely on highly contingent and particularistic circumstances: those who would like to see their system otherwise constituted will want institutions to be easier to change,

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<sup>2</sup> Madison, James. “No. 10: The Union as a Safeguard Against Domestic Faction and Insurrection.” *The Federalist Papers*. New York: Penguin Books, 2012.



while those who like the status quo will want it to be easier to defend. The analysis of this paper proceeds under the assumption that whether one likes or dislikes the fortress state is often contingent on whether one likes the status quo it protects. Whether one likes the fortress state or not is therefore a personal and normative question. Whether the fortress state exists, how it works, and how it influences policy outcomes, is an empirical and objective question and the subject of this paper.

The fortress state was the result of both deliberate institutional design by highly-motivated groups of interests attempting to secure their positions, and of the historical contingencies, circumstances, and accidents that accompanied colonization of the Eastern seaboard by an impoverished middling European power. The central logic of the fortress state is that institutions create (and often are created by) interests which benefit from them and thus will be highly motivated to defend them. This logic is universal to all political systems.<sup>3</sup> However, the particular rules and institutions that govern a society, and the particular interests they defend, are contingent on its history and development. A society's institutions are unique and have a strong influence on political and government outcomes.<sup>4</sup> While all interests in all societies look to defend themselves, they must use the materials they find in the societies in which they are located. By the same token, different institutional arrangements will emphasize different interests and allocate power between them differently. The term "fortress state" therefore refers to a universal phenomenon—the logic of interests—filtered through uniquely American institutions which are animated by uniquely American values.

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<sup>3</sup> Moe, Terry M. "Vested Interests and Political Institutions." *Political Science Quarterly* 130, no. 2 (2015): 277-318.

<sup>4</sup> Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton University Press, 2011.

## THEORETICAL FOUNDATIONS

This paper, prepared for Bard College's political science department, outlines why the American political system is characterized by institutional and policy stability. It proceeds under the assumption that the tension between institutional change and stability is an essential and desirable dynamic of political development: We create institutions that stabilize our social, economic, and political relations and to fulfil crucial functions needed by our complex societies.<sup>5</sup> However, institutions do not always work for everyone. They freeze relations of power in place which may be to the advantage of some groups of people and not others—or may be to the advantage of a society at one moment while being a source of dysfunction later. The resulting contestation, or lack of contestation, is a story of power, and is the heart of politics. The analysis proceeds under the assumption that institutions have the following characteristics:

**They empower small minorities of highly motivated vested interests.** Institutions tend to survive when they are defended by a small group of highly mobilized and well-connected “vested interests” which benefit disproportionately from them.<sup>6</sup> This is what provides institutions their hardness, staying power, and longevity. General-interest institutions, which is to say institutions whose benefits are spread thinly across large constituencies, are very difficult to maintain if they do not develop small, powerful, and intensely engaged constituencies.<sup>7</sup> This is because the chief influence in politics is not the abstracted will of a people or considerations of a general interest—though these are important—but of very specific and concrete interests pursued by

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<sup>5</sup> Fukuyama, Francis. *The Origins of Political Order: From Prehuman times to the French Revolution*. New York: Farrar, Straus and Giroux, 2012. 38-40.

<sup>6</sup> Moe, Terry M. "Vested Interests and Political Institutions." *Political Science Quarterly* 130, no. 2 (2015): 277-318.

<sup>7</sup> Patashnik, Eric M. *Reforms at Risk: What Happens after Major Policy Changes Are Enacted*. Princeton, NJ: Princeton University Press, 2008.

engaged groups of people who have deeply personal motivations to get involved. As I will argue in Chapter 1, majoritarian interests whose potential or actual benefits are spread over large numbers of dispersed individuals can still have a large amount of staying power in politics *if they are institutionalized in some way*—if engaged political players are created which have incentives to respond to these concerns such as a majoritarian president tied to a national constituency.

People participate in politics because they stand to gain or lose something by their involvement. However, they are more responsive to incentives that are immediate and dear to them instead of those which are distant and do not affect them very much. That is why it is easier to mobilize a small and intensely interested group of people to oppose change than it is to organize a large and dispersed collection of interests to initiate change.<sup>8</sup> It is also why, when forced to choose between their narrow interests and a more general interest, political actors will most often pick the former.

**Institutions create winners and losers.** If institutions serve us well, we breathe in their spirit—which is to say we are more likely to invest emotionally in the ideological and normative structures they create to support themselves. Ideology has many purposes, but one of these is a rationalizing, justifying, and ennobling of what would otherwise be naked self-interest. Few people like to think of themselves as crass and self-interested, but human beings are powerful rationalizers. We tend to gravitate towards ideas that help us explain how we already are to ourselves and to others in a favorable light, even as our judgements—and those of others—structure our behavior. We tend, therefore, to infer general interests from our personal interests in a

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<sup>8</sup> Olson, Mancur Jr. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge: Harvard University Press, 1965.

leap of imagination. Institutional winners, through their dominant positions, may use instruments of cultural production to popularize their rationalizations, creating further supports for existing arrangements of power.<sup>9</sup> If an institution does not serve us directly, on the other hand, we may be receptive to ideologies which are set in opposition to extant institutions and which explain our alienation from them.

**Institutions last; and that creates problems.** Institutions are conservative beings. They outlast their creators, the compromises that created them, and the times to which they were suited. Despite the inherent conservatism and rigidity of institutions, institutional change is necessary. As Edmund Burke put it in his critique of the French Revolution, “A state without some means of change is without the means of its conservation. Without such means it might even risk the loss of that part of the constitution which it wished the most religiously to preserve.”<sup>10</sup> Institutions, in order to survive and serve their purposes, need to adapt to changes in the world around them, but their vested interests will tend to use their political power to fight changes that threaten them. Reformers of all stripes must contend with this reality when attempting to change systems. They will often find themselves limited in the kinds of change they can pursue by the defenses vested interests create.

All of these characteristics of political institutions have consequences for effective government, political reform, and social change.

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<sup>9</sup> Lukes, Steven. *Power: A Radical View*. New York: Palgrave Macmillan, 2009.

<sup>10</sup> Burke, Edmund. *Reflections on the Revolution in France: And on the Proceedings in Certain Societies in London, Relative to That Event; by Edmund Burke*. London: J. Dodsley, 1790.

## PLAN FOR THIS PAPER

In this paper, I will attempt to create a simple but comprehensive framework for understanding American government which can apprehend how its parts relate to the whole. This does not just refer to how individual institutions relate to each other, but also different kinds of interests, political players, and political theories. In Chapter 1, I develop a back-of-the-napkin framework which will allow me to compare how the American political system is more responsive to some categories of interests and not others, and what this means for the character of our nation's politics. I draw upon academic literature to distinguish between the interests of "the few," "the many," and "the one." In Chapter 2, I examine the four strategies employed by the American fortress state to skew the political playing field in the favor of small and intense constituencies. I also explore the consequences of these strategies. Finally, in the conclusion, I reflect upon the current trajectory of American political development.

# Chapter 1: The Institutionalization of Political Power

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. . . . *The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government* [my italics].

James Madison, *The Federalist*, No. 10

This chapter leverages political science literature on interests, political participation, and political organization to present a back-of-the-napkin framework to compare how the fortress state is more responsive to some kinds of interests and less responsive to others.

Societies are composed of many different kinds of interests. Differences of identity, wealth, class, geography, political affiliation, culture, diet, profession, income, gender, taste, religion, values, race, etc—create divisions within society which can become the cause of faction, dissidence, conflict, and change. We may invest these differences with meaning and become attached to them, or we might overlook them entirely. Depending on how they are or are not emphasized, these interests can bring a group of people together, while others can drive that very same group of people apart. A key factor that determines what interest a particular group of people will respond to has to do with the intensity with which they feel that particular interest.

People will tend to respond most readily, and take the most extensive and costly actions, to defend the interests they feel most personally and intimately.

That is why, within realms of politics which have high bars of entry to deter the disinterested, the interests of small minorities which feel their interests intensely, and which face few barriers to collective action, will tend to predominate. This paper refers to these interests as those of “the few.” My definition includes narrow economic interests which are not shared by the whole community, such as the economic interest of bank. It also includes identarian interests, which touch upon the recognition and dignity of minority social groups.<sup>11</sup> This paper argues that the American political system was designed to give these interests a disproportionate advantage in navigating our institutions, and therefore a large amount of power over the structuring of our institutions and the character of our national policy.

However, there are other categories of interests which are important in the process of political development. The first of these is the interests of “the many,” which are dispersed over large constituencies. Given that individual members of these constituencies feel these interests only weakly, many pluralists have argued that majoritarian interests, those of the “common good,” have no substantive meaning or force in politics. This would be true if it were not for the fact that man is a social animal. Through the spreading of norms, ideologies, and values—and through our tendency to react emotionally when these norms are broken or disrespected—large masses of disorganized human beings are able to exert pressure on a person or institution to

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<sup>11</sup> Fukuyama, Francis. *Identity: The Demand for Dignity and the Politics of Resentment*. Farrar, Straus and Giroux, 2018.

shame or coerce them into abiding by their will.<sup>12</sup> In this way, institutions and individuals can be held accountable to large and dispersed interests which, while disorganized, are coded into the social norms and morals of a large population.

Finally, the interests of “the one,” the interests of the state, are also of great consequence. In order to survive as units of political organization, sovereign states must be able to direct their resources in something approaching a rational way, channel the interests of groups and individuals towards positive ends, and to manage social schisms so that they do not get out of hand. Through a process of trial and error, we have developed institutions within the modern state to do these things more or less well.

This paper assumes that societies may give priority to any combination of these interests through how they structure their norms, procedures, and institutions. Giving priority to one interest necessarily comes at the expense of the other two. Different societies arrive at different balances between these three interests through the process, conflicts, and accidents of political development.

#### THE INTERESTS OF “THE FEW”

The most relevant interests to discussions about the fortress state are those of “the few,” colloquially referred to as “special interests.” These are interests which are concentrated in small constituencies. The intensity of the interests in question provide strong incentives for these people to develop and exert political power in a sustained way. To call these interests “special” is not to

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<sup>12</sup> Fukuyama, Francis. *The Origins of Political Order: From Prehuman times to the French Revolution*. New York: Farrar, Straus and Giroux, 2012. 34-48.



impinge on the legitimacy of their activism, but simply to observe that their activities follow a particular logic that sets them apart.

In his works *The Logic of Collective Action* and *The Rise and Decline of Nations*, Mancur Olson hammers out a framework for thinking about how special interests function in society. He convincingly demonstrates that it is harder to organize effective political action than our popular myths about democratic participation generally allow for. This is both because of the inherent costs of political organization in a mass democracy and because of the collective action problems facing large groups of individuals. Organizers bear most of the start-up costs of a political enterprise and must share the benefits with a larger group. Members may be reluctant to join in the enterprise unless it has already been demonstrated that it can be successful. Even then, they may stay uninvolved and freeride on the organizers' success. These collective action problems which stand in the way of effective political organization are obstacles to groups of all sizes and degrees of coherence. However, smaller groups which feel their common interests intensely will be easier to organize than larger groups which feel their interests only weakly. This reality leads to an imbalance in participation in the system of public pressure between groups which are small, concentrated, and organized, and majority interests which are large, dispersed, and absent.<sup>13</sup>

An offshoot of "special interests" are what political scientists refer to as "vested interests." They are a distinctive subset because they are special interests which "arise from the very institutions whose stability and change we want to explain. . . Vested interests arise in all government institutions, in all countries of the world, because certain people and groups of people

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<sup>13</sup> Schattschneider, Elmer E. *The Semisovereign People: A Realist's View of Democracy in America*. Cengage Learning, 1975.

benefit from what the institutions do or make possible—for example, through the services they provide, the supplies they purchase, or the jobs they fund.”<sup>14</sup> Vested interests, in political science lingo, refers to groups of people which benefit materially from government institutions or programs. Like the broader category “special interests,” vested interests tend to be small and concentrated minorities which feel their common interests intensely, and thus have strong incentives to overcome their collective action problems and get organized. Vested interests are unique, however, because their self-interestedness leads them to defend the institutions against revision. Their influence and political activism gives institutions their hardness and conservative character. In political science, unlike in normal conversation, the term “vested interest” carries with it no negative connotation; it is simply meant as an empirical category.

A good example of a vested interest is the intense interest created among retirees by Social Security and Medicare programs. The benefits distributed by these programs have led retired people to exert sustained influence in American politics primarily to defend and expand Medicare and Social Security through such organizations as the American Association of Retired Persons (AARP), which has more than 38 million members and a yearly income of \$1.6 billion as of 2018.<sup>15</sup> This organization allows retirees to project power into the field of force where politics takes place. Their power was on display in 2005 when President Bush attempted reforms which would have partially privatized the system and shifted it from a pay-as-you-go model to a personal account model. The AARP spent \$36 million on lobbying opposing the proposal.<sup>16</sup> According

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<sup>14</sup> Moe, Terry M. "Vested Interests and Political Institutions." *Political Science Quarterly* 130, no. 2 (2015): 287.

<sup>15</sup> American Association for Retired Persons. *Consolidated Financial Statements Together with Report of Independent Certified Private Accountants, AARP, December 31, 2017 and 2016*. 2018.

<sup>16</sup> "Jeffrey H. Birnbaum - On Issues From Medicare to Medication, AARP's Money Will Be There." *The Washington Post*. April 24, 2007. Accessed April 26, 2019. <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/23/AR2007042301760.html>.

to OpenSecrets.org, this is the highest yearly lobbying expenditure the AARP has ever recorded. To provide another example, defense contractors and their employees have a vested interest in government defense programs that distribute funds to them in exchange for the guns, planes, and other systems that they produce. Given that Congress oversees the defense procurement process, defense programs double as virtual jobs programs to be distributed by lucky Congressmen, and competition among those interests is fierce.<sup>17</sup> Teachers have a vested interest in how schools are run and will tend to have a strong impact on school board elections through the political activities of their unions.<sup>18</sup> Agricultural corporations have vested interests in agricultural subsidies and will fight to keep them in place.

These people, feeling the effects of these institutions deeply and personally, are highly motivated to use their resources to develop political power and to see it used to secure their interests. If they succeed in institutionalizing their activism, such as through the creation of self-sustaining professional organizations like the AARP, unions, business associations, or other kinds of groups, these interests will have staying power. Meanwhile, less concentrated and organized interests might come into being only sporadically, if at all. Jonathan Rauch, author of *Demosclerosis* highlighted this when he noted, “Amateur activists can always drop the cause and go home, but for professionals, the cause pays the mortgage.” Professional organizers like the leadership of the AARP will keep the cause going, keep the vested interest they represent “in being” and

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<sup>17</sup> Fukuyama, Francis. *Political Order and Political Decay from the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus and Giroux, 2015.

<sup>18</sup> DiSalvo, Daniel. *Government against Itself: Public Union Power and Its Consequences*. New York, NY: Oxford University Press, 2015.

engaged, and will face strong incentives to press for their clients' interests at the expense of the needs of others because their jobs and the health of their organizations depend on it.

Democratic political systems tend to provide pluralities of intense and organized interests means and mechanisms by which to influence public policy, but together the narrow interests of "the few" do not necessarily add up to a single, general, coherent, and sovereign interest. In fact, the interests that these players pursue will often conflict with each other, and with the broader interests of society taken as a whole. For example, many provisions that teachers' unions insist on in collective bargaining contracts, such as rules that make it almost impossible to evaluate teachers or to fire them when they are performing poorly, might be good for teachers—but they are often bad for students, parents, and education outcomes.<sup>19</sup>

#### THE INTERESTS OF "THE MANY"

In theory, all citizens of a country have an interest in general goods such as defense, clean air, clean water, roads, good schools, good government, economic growth, fair economic rules, a growing job market, etc. This paper terms these interests, "the many."

Large majorities may be in favor of these goods, but their benefits will tend to be dispersed thinly across large populations. Many pluralists have argued that these majority interests have no substantive content since few political actors will be motivated by self-interest enough to defend them. This paper dissents from this view and argues instead that the moral standards and judgements of a community as a whole matter. The pluralist rational choice paradigm fails

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<sup>19</sup> Ibid.

to account for the ways in which natural human sociability helps us to cooperate more often and on a much grander scale than simple calculations of self-interest.

The rational choice paradigm, which focuses on man's ability to make rational choices based on calculations of self-interest, was imported into political science with the publication of Anthony Downs' *An Economic Theory of Democracy* in 1957.<sup>20</sup> The contributions that the rational economic man has made to the study of politics have been great, but an increasing number of political scientists are realizing that it is also necessary to account for the powerful influences that religion, ideology, and other potentially irrational structures of belief have on political development. Francis Fukuyama's analysis in *The Origins of Political Order* cites the works of psychologists and evolutionary biologists in an attempt to do just that.

Fukuyama's most basic framework boils down to this: "[in prehistoric times], human beings in effect entered into an arms race with one another, the winners of which were those groups that could create more complex forms of social organization based on new cognitive abilities to interpret each other's behavior."<sup>21</sup>

In Fukuyama's model, the following abilities and tendencies are empirically observed in human beings. They go a long way to explain why ideologies and ideas are not *just* rationalizations created by rationally self-interested people, but have a life all their own which needs to be taken seriously:

- Our capacity for abstraction and theorizing;

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<sup>20</sup> The literature also includes such foundational works as James M. Buchanan's *The Calculus of Consent* and Mancur Olson's *The Logic of Collective Action*.

<sup>21</sup> Fukuyama, Francis. *The Origins of Political Order: From Prehuman times to the French Revolution*. New York: Farrar, Straus and Giroux, 2012. 34-35. N. K. Humphrey, "The Social Function of Intellect," in P.P.G. Bateson and R. A. Hinde, *Growing Points in Ethology* (New York: Cambridge University Press, 1976), pp. 303-17; Richard Alexander, *How Did Humans Evolve?:*

- Our capacity to receive and transmit our abstractions and theories through language;
- Our tendency to become attached to theories, norms, and structures that harmonize with our subject positions, and to imbue them with emotional meaning;
- Our tendency to react emotionally when those norms and structures are violated or disrespected;
- Our tendency to crave recognition, an “intersubjective state of mind by which one human being acknowledges the worth of another human being”;
- Our tendency to seek personal and group recognition through and from theories, institutions, and norms.<sup>22</sup>

The integration of these postulates poses particularly thorny problems for political scientists studying the development of institutions. This is because it is difficult to tell whether a political actor is invoking an ideological framework because it serves the purpose they would pursue anyway out of self-interest, because they earnestly believe that the ideology is empirically or normatively true, or because they crave recognition for themselves or their group, or any combination of the above. This paper assumes that the three often go together, if not always within the same people, then definitely within the same movement, providing the balm that holds it together. This is true both of groups which belong to “the few” and of those which belong to “the many,” though in the case of “the many,” ideology and norms tend to do a lot more work than organization: through the spreading of norms, ideologies, and values—and through our tendency to react emotionally when these norms are broken or disrespected—large masses of

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<sup>22</sup> Fukuyama, Francis. *The Origins of Political Order: From Prehuman times to the French Revolution*. New York: Farrar, Straus and Giroux, 2012. 34-48.

disorganized human beings are able to exert pressure on a person or institution to shame or coerce them into abiding by their will.<sup>23</sup> In this way, institutions and individuals can be held accountable to large and dispersed interests which, while disorganized, are coded into the social norms and morals of a large population.

However, this aspect of human sociability is not an unqualified force for good, nor will it always work to the advantage of a society. As the Athenians learned during their long war with Sparta, dispersed and unaccountable majorities are excitable and mercurial and may sacrifice long-term good sense, caution, sustainability, or deliberation for actions that feel good in the moment. They may fall prey to demagogues and populists who excite base passions and cause them to take action which have the potential to ruin an individual, an institution, or a society. They may also become divided and polarized, turning their moral disapprobation against each other along societal cleavages which may become difficult for the state to manage. Finally, norms and morals may change or decay as a society changes, grows, or becomes more diverse. That is why one of the crucial functions of the modern state is to harness the creative power of these dynamics while mitigating their potentially harmful effects.

#### THE INTERESTS OF "THE ONE"

Natural human sociability can misfire, which is why societies have developed mechanisms which manage the scope of social conflicts, filter the preferences of "the many," and channel them in

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<sup>23</sup> N. K. Humphrey, "The Social Function of Intellect," in P.P.G. Bateson and R. A. Hinde, *Growing Points in Ethology* (New York: Cambridge University Press, 1976), pp. 303-17; Richard Alexander, *How Did Humans Evolve?: Reflections on the Uniquely Unique Species* (Ann Arbor: University of Michigan Press, 1990), pp. 4-7; Richard D. Alexander, "The Evolution of Social Behavior," *Annual Review of Ecology and Systematics* 5 (1974): 325-85.

constructive directions. For example, the guilt of criminal defendants is determined by carefully administered rules of procedure within a closed institution instead of an open democratic vote. Another example is how modern institutions space out the election of government officers. This gives statesmen a chance to govern without constantly having to worry about pleasing the mob. Yet another example is how branches of government which have more frequent elections serve as an outlet for discontent. Subversive energy which might undermine the state is instead fed back into it to keep the governing majority accountable.

Mechanisms which filter and channel the political energies of “the few” and “the many” in directions which are constructive for the whole society are essential to the survival of a state as a coherent unit of social organization. These mechanisms emerged in what Fukuyama termed, “a manner roughly comparable to biological evolution.”<sup>24</sup> He explained that, “the forms of political organization employed by different groups of human beings have varied, and those forms that were more successful—meaning those that could generate greater military and economic power—displaced those that were less successful.”<sup>25</sup> Over the course of history, the most successful of these forms has been the sovereign state. If a state is to survive as a unit in competition with other units of social organization, it must be able to defend and pursue its own interests in something approaching a concerted and rational way. Political scientists R. Kent Weaver and Bert A. Rockman, authors and editors of *Do Institutions Matter?*, noted that:

. . . all governments need to *set and maintain priorities* among the many conflicting demands made upon them so that they are not overwhelmed and bankrupted; to *target resources* where they are most effective; to *innovate* when old policies have failed; to *coordinate conflicting objectives* into a coherent whole; to be able to

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<sup>24</sup> Fukuyama, Francis. *Political Order and Political Decay from the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus and Giroux, 2015. 446-450.

<sup>25</sup> Ibid.



*impose losses on powerful groups; to represent diffuse, unorganized interests in addition to concentrated, well organized ones; to ensure effective implementation of government policies once they have been decided upon; to ensure policy stability so that policies have time to work; to make and maintain international commitments in the realm of trade and national defense to ensure their long-term well-being; and, above all, to manage political cleavages to ensure that society does not degenerate into civil war.*<sup>26</sup>

This paper terms these needs the interests of “the one,” the interests of the state. Historically, these interests used to be embodied in a single person, usually a hereditary monarch, who considered the whole of the country his personal patrimony. More recently, it has come to be embodied in unitary executives overseeing national bureaucracies which are held accountable to the interests of a society through national elections, national political parties, and democratic norms. However, given the haphazard and accumulative nature of political development and the interest competition faced by monarchs and executives from the “many” and the “few”, it is not a given that states will be able to perform all of the functions above well, or at all.

### BALANCING THE THREE

Through the process and accidents of political development, different societies have arrived at different balances between the interests of the “many,” the “few,” and the “one.” We can discern how some institutions, procedures, and mechanisms of power are more to the advantage of some of these interests, which is to say that a political system will be more responsive to their concerns and override those of the others. The disorganized “many” are advantaged by institutions which simplify power and make it harder for political actors to divide and rule, such as

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<sup>26</sup> Weaver, R. Kent, and Bert A. Rockman. *Do Institutions Matter?: Government Capabilities in the United States and Abroad*. Washington, D.C.: Brookings Institution, 1993.

simple and hierarchical government structures, strong national parties, strong presidents with national electorates, unitary states, and a concentrated national media. The organized “few” are advantaged by institutions which disaggregate, hide, and quarantine power while allowing highly educated and specialized actors influence through a backdoor such as labyrinthian government structures, federalism, checks and balances, judicialized decision-making, weak parties, greater numbers of veto points, fragmented legislative bodies, and fragmented media landscapes. The interests of the state embodied in the “one” are best pursued by institutions which concentrate power in the hands of a unitary head of state: historically a monarch or dictator, more recently a chief executive presiding over a national administrative state.

The design, arrangement, defenses, and ideological supports of institutions freeze particular relations of power in place. These frozen structures allocate power and legitimacy in different proportions to the “many,” the “few,” and the “one.” The argument of this paper revolves around the claim that the American system was created to disproportionately advantage the interests of the “few” over those of the “many” and the “one;” This is because the founders were members of an economic elite born of the unequal divisions of property that occurred under colonial charters. These elites feared that the coming of democracy would create an alliance of the “many” with the “one” against the “few,” to bring about “a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project,” in the words of James Madison.<sup>27</sup> The result of their anxieties, political activism, and planning has demonstrated remarkable resilience as a form of social organization: the American fortress state.

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<sup>27</sup> Madison, James. “No. 10: The Union as a Safeguard Against Domestic Faction and Insurrection.” *The Federalist Papers*. New York: Penguin Books, 2012.



## Chapter 2: Fortress America

It is reasonable to assume that those who dislike the status quo will prefer a political system with the capacity to make changes quickly, while advocates of the status quo will prefer a system that produces policy stability.

George Tsebelis, *Veto Players*

The term “fortress state” refers in these pages to how the non-hierarchical, disaggregated, and redundant nature of American governing institutions protects vested interests from the kinds of sweeping revisions that may be possible under more majoritarian, centralized, and executive systems like those of the United Kingdom and France. In contrast to more majoritarian systems of government which employ institutional arrangements which are more to the advantage of large, dispersed interests, or to more executive systems which grant the state more administrative autonomy, the American system is built like a fortress to protect the interests of the organized few at the expense of large majorities and the rational ordering of the state.

The Founders, who were members of a small economic elite born of an unequal distribution of property during colonization, feared that their interests might suffer if a caesarist alliance between the “many” and the “one” were to come to power. They most feared that such an alliance would result in an abolition of their privileges, wealth, and status. As James Madison explained in Federalist 51, “if a majority be united by a common interest, the rights of the minority will be insecure.” The solution was to create institutions which have a tendency to disaggregate, quarantine, and isolate power so that “society itself will be broken into so many

parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.”<sup>28</sup>

The Founders were not worried for nothing. At the time of the Constitutional Convention, there were very real movements and realities which impinged on the interests of moneyed property, and there were very real economic gains to be harvested from the creation of a national government capable of repaying its debts, taming its western frontier, protecting the rights of contract from infringement by state legislatures, protecting domestic manufactures, and putting down slave revolts.<sup>29</sup> So present and immediate were these fears that Madison enumerates them explicitly in his arguments for federalism in *Federalist* No. 10: “[Under a federalist constitution], A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it.”<sup>30</sup>

The fortress state the Founders built is an institutional order of redundant and non-hierarchical authority where different parts of the government are empowered to block one-another. The ultimate result of its design is to make institutional and policy change difficult to achieve and easy for entrenched interests to veto and influence. The American fortress state achieves a striking amount of policy and institutional stability in four ways:

1. First, it disaggregates political power in many political units which have different constituencies and face different incentives. By doing this, the fortress state makes it harder for

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<sup>28</sup> Madison, James. “No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” *The Federalist Papers*. New York: Penguin Books, 2012.

<sup>29</sup> Beard, Charles. *An Economic Interpretation of the Constitution of the United States*. London: Taylor and Francis, 2017.

<sup>30</sup> Madison, James. “No. 10: The Union as a Safeguard Against Domestic Faction and Insurrection.” *The Federalist Papers*. New York: Penguin Books, 2012.

a single large interest to capture the whole system and easier for special interests to divide and rule.

2. Second, the fortress state empowers these many and diverse political units to check one-another. This create labyrinthian gauntlets of “veto points” which make it easier for vested interests to veto policy or institutional change than for the government to make policy or change.
3. Third, through its complexity, the fortress state raises the individual cost of political action: highly educated insiders who have knowledge of the fortress state’s intricate passageways have a significant advantage in maneuvering through it, while disengaged and dispersed majorities are discouraged from political action.
4. Fourth, if all else fails, the fortress state preserves itself by acceding to change incrementally and incompletely. If those attacking the fortress state are persevering enough, if their repeated assaults are able to muster the forces needed across many places and long stretches of time, the system is able to give without breaking. Reformers who succeeded in institutionalizing their change then discover that they too can use the fortress state to defend what they created.

In order to appreciate the ways in which the American system is unique, it is necessary to compare it to the governments of other countries. In the following sections, I will be making reference most often to the relatively unitary, majoritarian, and executive governments of France and the United Kingdom, which are both about the size of one American state. In making these comparisons, I do not suggest that the United States might be able to reach the same level of administrative or political centralization as these European countries, nor that

the Founders could have created a unitary state at the Constitutional Convention in 1786. I make these comparisons because France and the United Kingdom are societies which have arrived at governments which are democratic, administratively capable, and governed by the rule of law following different paths of development than the United States. Along the way, they made different choices as to how to institutionalize the interests of the one, the few, and the many in their political systems. The very existence of these systems demonstrates that the American fortress state is not the only form of free or democratic government that can exist. By comparing them, we can learn what the fortress state does well and what other systems which balance forces differently do better.

#### DIVIDE AND RULE

James Madison observes in Federalist 51 that, “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments,” the states and the federal government, “and then the portion allotted to each subdivided among distinct and separate departments.” By attaching these departments and levels to different constituencies with different interests, further dilution is achieved: “The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors.”<sup>31</sup> The ultimate objective of this structure is to divide the political energies and interests of American

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<sup>31</sup> Hamilton, Alexander. “No. 60: Concerning the Power of Congress to Regulate the Election of Members.” *The Federalist Papers*. New York: Penguin Books, 2012.

society “into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.”<sup>32</sup>

The structure works exactly as the Founders intended: even in the modern day, the fortress state divides the energies of political players between levels and branches of government which are responsive to different constituencies and incentives. This disaggregation of power makes the whole system harder to keep accountable to the whole of the people, and easier for parts of the system to be kept accountable to small and interested minorities. It also introduces collective action problems which make it very difficult interests to coordinate across branches and levels of government, making the formation of broad-based and programmatic political parties very difficult.

This pattern is pervasive: from local school boards and other forms of local government which often have their elections at different times than state or national bodies, to the Senate which only allows a third of its members to go up for reelection every two years; from the Electoral College which subdivides the American presidential vote into separate states, to federalism which parcels out sovereign power to different political actors with different constituencies; from decentralized legislatures whose members are held accountable not to national political parties with national platforms but to particularistic local districts, to the way in which such disaggregated legislatures tend to cede their lawmaking authority to secondary bodies which operate under different rules of appointment and procedure. The American system lacks a single power center to rule them all by design.

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<sup>32</sup> Madison, James. “No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” *The Federalist Papers*. New York: Penguin Books, 2012.



A good contrast to this aspect of the fortress state is the system of the French Fifth Republic. Having learned from their disastrous history of fragmented parliamentary government, the French built their system to concertedly unite and strengthen rather than divide and weaken majoritarian energies. The total renewal of the political class in a single election, as occurred as a result of the 2017 election in France, is impossible under the American system by design. By contrast, the French system is biased towards the election of a strong unitary executive supported by a strong legislative majority, ultimately accountable to the whole of the French people and not narrow special interests.

French elections proceed in four rounds: two rounds of presidential elections and two rounds of legislative elections. In the first round of presidential elections, all registered political parties run a candidate for president. If a candidate wins a majority of votes, then that candidate becomes president. If, as more often happens, there is no immediate victor, a run-off election is held between the two candidates who earned the most votes in the first round. While more immediate and intense considerations might prevail during the party primaries and the first round of the presidential election, the second round confronts voters with a single, uniform, and simple choice. Due to the compounded and undivided nature of the electorate, the focus in these elections is on national, programmatic issues which touch the greatest numbers of voters possible rather than on backroom maneuvering, identarian litmus tests, targeted appeals, or particularistic payoffs. In 2017, the French people chose to vote by a two to one ratio for Emmanuel Macron, a centrist, pro-European candidate promising incremental labor reforms over Marine Le Pen, a

far-right populist candidate in favor of drastic curbs on immigration, renegotiation of EU treaties, and an in-out referendum over France's membership in the EU.

Once the presidential elections are complete, the energies of the electorate are channeled into two more rounds of elections, this time for the legislators of the National Assembly, which is composed of five hundred and seventy-seven single-member districts. Turnout drops sharply during these elections, from 74.56% in the second round of the 2017 presidential election to 42.64% in the second round of the 2017 legislative elections.<sup>33</sup> Once again, the preferences of small and intense minorities is filtered through a two-round system. In the first round, all registered parties may field candidates. Candidates have only one month to campaign. The small size of districts and relatively greater number of representatives forces legislators to rely on the brand of their political party and presidential candidate instead of on their prowess as campaigners, fundraisers, and insiders like in the American system. In the second round of legislative elections, the two candidates which garnered the largest share of the vote go head-to-head, often in elections dominated by the energized partisans of the victorious president. The victors become legislators in the National Assembly. Given how this system channels and manages political energy, the President of Fifth Republic is practically guaranteed either an absolute or coalitional majority in the National Assembly at the beginning of his term of office.

After France's disastrous history of fragmented parliamentary government, the constitution of the French Fifth Republic vests a dizzying amount of power in its chief executive. The

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<sup>33</sup> Ministère de l'Intérieur. "Résultats De L'élection Présidentielle 2017." [Http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult\\_\\_presidentielle-2017](http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult__presidentielle-2017). Accessed April 26, 2019; Ministère De L'Intérieur. "Résultats Des élections Législatives 2017." Accessed April 26, 2019. [https://www.interieur.gouv.fr/Elections/Les-resultats/Legislatives/elecresult\\_\\_legislatives-2017/\(path\)/legislatives-2017//FE.html](https://www.interieur.gouv.fr/Elections/Les-resultats/Legislatives/elecresult__legislatives-2017/(path)/legislatives-2017//FE.html).

president can organize the bureaucracy, choose his Prime Minister, pass laws by putting them to a referendum (bypassing the legislature entirely), trigger legislative elections in the lower house to ask the French people to render verdict on a particular issue, and rule by decree for a limited period of time in exceptional circumstances. In cases where the president does not possess a parliamentary majority, it is the Prime Minister which structures the government, taking on a role not dissimilar to a Prime Minister in a Westminster system. The president may also, through his Prime Minister, create government regulations by decree which cannot conflict with the enumerated areas of law reserved to the legislature.

An independent check on government power exists through France's Constitutional Council and other courts. However, unlike the American Supreme court, these courts rule only on narrow constitutional and procedural questions. In the American system, the Supreme Court is considered to have vast powers of interpretation over a constitution and legal statutes which are vague in its prescriptions. French courts interpret law under a civil law constitution which is very specific in its prescriptions and have been leery of being seen as overruling the will of the French people.

The French government's hierarchical nature, centralizing a great amount of power in its chief executive and strong political parties ultimately accountable to the verdict of an unmediated majority of French electors, makes it both highly responsive to majoritarian concerns and highly capable of acting concertedly to defend the state—on paper. However, it is important not to reify the government of France too much. France possesses a highly efficient and well-organized administrative state which is able to deliver on public services in a way which the American system is incapable. However, France is not known for its agility or reformism. In practice, France

is home to very strong vested interests which have developed the power to stop change through other means. Instead of blocking change within the halls of the Congress, as special interests might be easily able to do in the American system, French vested interests have learned that they can immobilize the government by taking the economy hostage, such as by going on strike, by blocking major arterial highways, and by rioting in the streets. This is the fate that many reforms proposed by Emmanuel Macron are suffering at the hands of the *gilets jaune*, a decentralized protest movement that arose in response to his government's attempt to pass a tax on motorists.

However, it also is important to note the differences between this state of things, which we may describe as a fortress *society*, and the American fortress *state*. France's institutional reality benefits certain types of vested interests over others. France can be immobilized by organized vested interests such as unions or by decentralized protest movements animated by vague popular anger and *dégagisme* such as the *gilets jaune*. In the United States, the effects of such a conflagration are limited by the United States' decentralized geography and institutional framework.

Moneyed property interests do not have the same power to veto change within the French system as they do in the American system either. The fact that the French government was able to implement a 75% tax rate on earnings above €1m over the years 2013 and 2014 despite resistance and opposition from wealthy French residents is evidence of this.<sup>34</sup> In the

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<sup>34</sup> Penketh, Anne. "France Forced to Drop 75% Supertax after Meagre Returns." The Guardian. December 31, 2014. Accessed April 26, 2019. <https://www.theguardian.com/world/2014/dec/31/france-drops-75percent-supertax>; Hartley, Jon. "Hollande's 75% 'Supertax' Failure A Blow To Piketty's Economics." Forbes. February 02, 2015. Accessed April 26, 2019. <https://www.forbes.com/sites/jonhartley/2015/02/02/frances-75-supertax-failure-a-blow-to-pikettys-economics/>.

American system, a 75% tax on wealthy individuals would never make it out of committee. These are the difference between a lean state and a fortress state.

The French example demonstrates what the American Founders knew very well: when building institutions, rules and incentives matter. They can be arranged to advantage some kinds interests over others and can be biased towards certain political outcomes. The argument of this paper is that the American fortress state biases political results in the United States away from rapid institutional and policy change towards greater institutional and policy stability—away from majoritarian concerns towards the concerns of smaller, more concentrated vested interests. It does this by creating a structure which is easily dominated by small minorities of interested insiders, a structure which disaggregates and quarantines political power non-hierarchically into many parts and sections which are accountable to different interests. This makes it difficult for any single interest to command the whole all at once, as is possible and even encouraged in the French system.

In the next section, we will explore how this disaggregation of power is paired with the fortress state's second strategy of defense: the creation of overlapping lines of authority and the empowering of different parts of the government to block one-another.

#### CREATING VETO POINTS AND VETO PLAYERS

A disaggregated institution may avoid being prone to gridlock if it establishes clear lines of authority and jurisdiction. However, the Founders designed the American system of government with the intention that it would gridlock itself. They followed Montesquieu's prescription that

“Political liberty is. . . present only when power is not abused, but it has eternally been observed that any man who has power is led to abuse it; he continues until he finds limits. . . So that one cannot abuse power, *power must check power by the arrangement of things* [my italics].”<sup>35</sup> The Founders created a government which is not only non-hierarchical, but also characterized by overlapping spheres of authority between branches and levels of government which are empowered to block one-another.

Americans today see this form of government—checks and balances—as a crucial safeguard against the arbitrary and tyrannical use of state power. The Founders shared this view.

Hamilton argues in Federalist 73 that:

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones. . . But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws. . . They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as more likely to do good than harm. . . The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.<sup>36</sup>

While it may be difficult to objectively judge what actions are arbitrary and tyrannical, it is easy to see how the American system makes *any* concerted use of political power difficult. Checks and balances ensure that the American system has many points at which political actors can halt collective action in its tracks by exercising a veto or withholding consent. The fortress state therefore funnels political invaders into bottlenecks at which entrenched interests can block or water down change. As George Tsebelis observes in his book *Veto Players*, the American political system

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<sup>35</sup> Montesquieu, Charles De Secondat, Anne M. Cohler, Basia Carolyn. Miller, and Harold Samuel Stone. *The Spirit of the Laws*. Cambridge: Cambridge University Press, 1989. 155.

<sup>36</sup> Hamilton, Alexander. “No. 73: The Provision For The Support of the Executive, and the Veto Power.” *The Federalist Papers*. New York: Penguin Books, 2012.

possesses many more “veto players” than more majoritarian and executive countries like France and the United Kingdom. This skews the battle towards status quo forces and leads to greater institutional and policy stability.<sup>37</sup>

Let’s take the issue of bureaucratic structuring as an example to illustrate this reality. In how it approaches bureaucratic structure, the American system is very different than that of the British and French, where decisions about how the bureaucracy is to be organized originate with the executive and are ratified by Parliament (the British system) or are simply the province of the executive (the French system).

The American Constitution allocates to Congress the enumerated powers of the government, such as the power to collect taxes, to regulate interstate commerce, to raise and maintain an army or a navy, and so on, but does anyone expect Congress to do any of those things itself? No, Congress delegates its power to agencies which it creates, regulates, and funds, such as the Internal Revenue Service (IRS), many consumer health, environmental, financial, and social institutions, the Department of Defense, among many, many others. As a result, decisions about bureaucratic structure originate within Congress and are strongly influenced by the players, rules, incentives, and structure at play within it.

By what process does Congress structure bureaucracy? Congress is not a unitary actor. It is a collective body which can only act after a laborious process of aggregation of its members’ preferences.<sup>38</sup> Like the parliaments in British and French systems, Congress is composed of two

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<sup>37</sup> Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton University Press, 2011.

<sup>38</sup> Moe, Terry M., and Michael Lewis. “The Presidency and the Bureaucracy.” *The Presidency and the Political System*. Edited by Michael Nelson. Washington, D.C.: CQ Press, 1984. 381-383.

houses. Unlike the British and French, however, the Americans requires agreement between both houses for a bill to leave Congress.<sup>39</sup> Neither the Senate nor House of Representatives are unitary actors either. They are bodies composed of different numbers of legislators elected from different kinds of districts and serving for different term lengths, and thus responsive to different incentives. As a result, the House and Senate have different institutional characters and balance interests within them differently. This makes them less likely to have the same preferences on a given issue.

The internal organization of legislatures—their party systems, issue caucuses, committee systems, parliamentary rules, and legislative pipeline—impose order on what would otherwise be a chaotic free-for-all. These rules can be used to empower some interests and disempower others. For example, by tying legislators to a centralized party leadership which can motivate them with rules, punishments, and rewards, strong majorities can govern as if they were unitary actors. We have seen how the French political system, through a creative use of election timing and small legislative districts, ties the electoral fate of legislators to that of political parties and national candidates. The sheer number of representatives in the National Assembly, the polarization of French politics, and strong tribal loyalties also lead to a subsuming of the individual within the group. The French and British examples teach us that legislatures can overcome their internal collective action problems and act as unitary actors tied to majoritarian executives through rules which encourage the rise of strong legislative parties.

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<sup>39</sup> In a pure Westminster system, the upper house is primarily ceremonial. However, the British have been moving towards the integration of more checks and balances. In the French system, the National Assembly has the power to override the upper house on some issues and the executive is given every possible tool to circumvent parliament if necessary.



The institutions of Congress, by contrast, follow the Madisonian model which divides institutions “into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.”<sup>40</sup> Eric Schickler observed in his extensive history of Congressional institutional development that no single interest or incentive predominates in Congress in a stable or durable way. This leads to a disjointed pluralism that “militates against any overarching order in legislative politics.”<sup>41</sup> Congressional parties must compete for influence over the decisions of legislators with policy interests and lobbyists, individual power bases, presidents, other members of the executive branch, the divergent reelection interests of individual members, and the shared electoral considerations of legislative majorities. When change does occur, it is because of unstable and opportunistic alliances between disjointed interests acting for their own reasons. If a legislature composed of such unstable alliances were allowed to change policy and the institutions at will, there would be chaos. That is why the Founders paired their decentralized, disaggregating structure with checks and balances, which drastically increases the cost and difficulty of making decisions. They did this not just between institutions, but within institutions as well. American politics is therefore characterized by the sheer number of political players possessing a veto over political action.

In order to structure bureaucracy, Congress is required to pass a bill delegating its enumerated powers to an institution. At every stage, the bill must go under the knives of veto players whose assent must be secured before a bill can proceed to the next veto point.

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<sup>40</sup> Madison, James. “No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” *The Federalist Papers*. New York: Penguin Books, 2012.

<sup>41</sup> Schickler, Eric. *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton: Princeton University Press, 2001. 17-18.

In most cases, the gauntlet will look something like this: A bill is introduced in the House or Senate. It is referred to the proper committee, which may refer it to a subcommittee. Committee and subcommittee members, especially the Chairs, have a lot of influence over whether a bill is considered, the content of the bill, and whether the bill is referred by majority vote to the House or Senate calendars. The leaderships of the House and Senate have a lot of power to choose which of their members sit on committees, potentially providing filter which keeps certain legislators from ever working on a policy area they may have radical views on. The leaderships of the House and Senate also choose which bills to take off the legislative calendars so they can be put to a vote on the House and Senate floor. They can also influence the rules by which a vote takes place, such as whether amendments are allowed. 218 votes in the House and 51 votes in the Senate are needed to pass a bill. In a highly polarized Congress, small groups of legislators or individual Senators can defect. A bill may need to be substantially altered in order to gain the requisite number of votes. In the Senate, on some matters, 60 votes may be necessary if a single Senator stands to filibuster a bill.

If a bill passes even one house of Congress, which is not a given, it must be passed in identical form in the other house, which means it must go through the same process from the very beginning. Often, when a bill is passed by both houses, the two versions conflict. In these cases, the House and Senate often appoint a conference committee to reconcile the two versions. These conference committees are typically composed of the senior members of the standing committees which first recommended the bill. Conference committees have a lot of influence over a bill's final form, especially through the Conference Chair who may waive or interpret rules as to how a bill can or cannot be changed during reconciliation. Once a conference

committee completes its report, the report is referred to the House and Senate. No amendments are allowed to this final version of the bill, and it is subject to a vote. If it passes both houses, it goes to the president's desk.

The internal structure and rules of Congress have changed through time, becoming more or less centralized as different competing interests jostled over legislative reforms incrementally without rationalizing the whole system.<sup>42</sup> However, Congress' disaggregated structure has often given small minorities of enterprising legislators many tools to block bills that they do not like. These powers are self-reinforcing. In order to change the rules to remove the vetoes held by powerful legislative minorities, it is necessary to go through the gauntlet, where their vetoes are encountered, and nothing changes. Examples of this are the powers held by committee chairmen in the Senate as a result of the seniority system during the first half of the 20<sup>th</sup> century, and the Senate filibuster.<sup>43</sup>

On whose behalf are legislators going to use their veto power? Special and vested interests. In France and the United Kingdom, special and vested interests are forced to negotiate directly with the government given that it is the government which has the power to give or withhold the favors, exemptions, and rents that they want. In these countries, the government has the constitutional power to originate laws and generally has fewer problems passing bills through disciplined legislatures.

In the American system, the president may not originate laws; legislative initiative belongs solely to members of the legislative branch. Although American presidents are positioned

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<sup>42</sup> Ibid.

<sup>43</sup> Caro, Robert A. *Master of the Senate*. New York: Knopf, 2002.

within the political system to have significant agenda-setting powers, the extent of that power pales in comparison to that of French and British executives.<sup>44</sup> The relative lack of party discipline in the United States, the likelihood of divided government, the lack of an overall legislative order, and the relative prevalence of actors with parochial constituencies and the power to halt legislative action, all contribute to the reality that the American president is just one of many interests competing to pressure legislators to vote a certain way. Instead of negotiating primarily with the president, special interests negotiate with individual legislators occupying key bottlenecks. Like presidents, interest groups can reward and punish legislators by developing the capacity to influence their re-election chances. As we have seen in Chapter 1, vested and special interests are highly motivated to develop that kind of political power.

It is much cheaper to convince a single legislator to take or withhold a single action than it is to convince a whole legislature, or the president of a whole nation to do so. The disaggregated structure of Congress which divides it into “many parts, interests, and classes of citizens,” and empowers them with vetoes, affords vested interests the ability to block change much more cheaply and effectively than in the United Kingdom and France.<sup>45</sup>

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<sup>44</sup> American presidents possess considerable informal agenda-setting powers by virtue of the fact that they are unitary actors and national figures. By contrast, Congress is fragmented, riven by collective action problems, easily immobilized, and parochial. This provides the presidency with two advantages in its competition with the legislature in the separation of powers scheme:

*First*, presidents are often the most coherent force in setting the legislative agenda and shepherding bills through Congress. In recent years, the Executive Office of the President has developed into a considerable policy and lobbying organization dedicated to formulating and advancing the president’s legislative agenda.

*Second*, the president or his appointees may act unilaterally within the bureaucracy to alter the agenda without the approval of Congress, such as, for example, by forcing the Environmental Protection Agency to submit economic impact assessments to the OMB before new regulations can be promulgated, or by having OSHA conduct fewer safety inspections.<sup>44</sup> In instances where the executive takes unilateral action, both houses of Congress must take positive action to countermand him. As we have seen, this is very difficult for them to do, especially with members of the president’s party playing defense inside the Congressional gauntlet.

<sup>45</sup> Madison, James. “No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” *The Federalist Papers*. New York: Penguin Books, 2012.

The consequences for the quality and character of government of this state of things are most comprehensively detailed in Terry Moe's "The Politics of Bureaucratic Structure." By comparing how the Environmental Protection Agency (EPA), Consumer Product Safety Commission (CSPC), and Occupational Safety and Health Administration (OSHA) were structured, Moe demonstrates that this state of things has some unintended knock-on effects. First, the assigning of the government's enumerated powers to the legislature shifts the focus of the legislative battle away from broad programmatic questions of policy which the public can generally understand to arcane questions of bureaucratic structure. Moe saw this in his study of all three agencies:

In each case, a coalition of groups representing broad social interests triumphed over the narrower, more concentrated interests of business in committing the nation to bold new policies and creating new arrangements for carrying them out.

The policies, however, were never explicitly fought over. They were broadly popular among the electorate, and political elites of all stripes, including leaders within the business community, were quick to voice support for governmental action. All this was symbolic. The real battles over policy took place within an arcane realm of politics remote from the concerns of ordinary citizens: the politics of structural choice. The struggles of genuine consequence were about bureaucratic arrangements, about powers and procedures and criteria. These were the choices that would determine whether the bold new policies of social regulation would mean anything at all in practice. Interest groups speaking for the consumer, labor, and environmental movements were counted as victorious not because they committed government to laudable social goals, but because they won most of the battles over structure.<sup>46</sup>

The second knock-on effect is what happens when you let interest groups write their own bureaucratic legislation, using a disjointed legislature as their conduit. Moe argues that interest groups are only interested about their narrow goals and will create bureaucratic structures

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<sup>46</sup> Moe, Terry M. "The Politics of Bureaucratic Structure." *Can the Government Govern?* Edited by John E. Chubb and Paul E. Peterson. Washington, D.C.: Brookings Institution, 1989. 323.

piecemeal and with little attention to the coherency of government. This is because they are held accountable to their performance on a single issue, as opposed to the American and French Presidents, and the British Prime Minister, who are held accountable for the concerted functioning of the whole government. The third knock-on effect has to do with the incentives created by a system with many veto points where it is harder to change bureaucratic structures than it is to fight to keep them the same. In the American system, even the friends of bureaucratic agencies will face strong incentives to press for arrangements which limit the agency and decision-making authority of the structures they are creating. These agency-forcing measures may make no technical or administrative sense, but they ensure that if the legislature changes hands, if the interest group loses steam, or a hostile president comes to power, the agency will be forced to continue to do what proponents initially wanted. This was the case with the Clean Air Act of 1970:

Perhaps most important of all, the designers had aggressively searched for mechanisms by which the agencies could be forced to do a good job. This search led to the arsenal of structural weapons for which the Clean Air Act of 1970 is now famous: painfully explicit goals and criteria, lists of specific substances to be regulated, exact deadlines for agency action and goal attainment, detailed procedures to be followed in setting and enforcing standards, citizen suits as a check on agency inaction, and pervasive opportunities for judicial review. . . There were compelling political reasons for burdening the EPA with all this baggage, but, as the young agency struggled to pursue its mandate, the load would take a heavy toll on its capacity for effective performance.<sup>47</sup>

The fourth knock-on effect is the inverse of the third. Given that Congress allows a babel of interests to influence legislation, the bills that come out of Congress will be the result of compromise between different groups. As a result, groups which have a strong material interest in

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<sup>47</sup> Moe, Terry M. "The Politics of Bureaucratic Structure." *Can the Government Govern?* Edited by John E. Chubb and Paul E. Peterson. Washington, D.C.: Brookings Institution, 1989. 313, 317.

seeing the agency fail at its job will also have a say in how the bureaucracy is structured. This “lets the fox into the chicken coop,” as Moe puts it. Hostile interests will push for mechanisms which are designed to cripple the agency’s ability to do its job. For example, in the design of OSHA, whose mission was to create and enforce workplace safety standards:

Business. . . succeeded in imposing a fragmented structure that labor had staunchly resisted from the beginning. While the secretary did get the authority to set standards, he was hemmed about by other players with important roles to play. The Occupational Safety and Health Review Commission made final decisions on enforcement actions (subject to court appeal)—and, in practice, it would later reverse or reduce a large percentage of penalties assessed by OSHA against business. The National Institute for Occupational Health and Safety (NIOSH). . . was to. . . provide the “criteria documents” on which OSHA standard development was to be based. OSHA and the Secretary of Labor could not control NIOSH, and its delays, research interests, and very different political concerns would later cause many problems for them. The courts would also become actively involved, as business exercised its statutory rights to challenge virtually every decision OSHA made.

Business was also successful in securing a major role for the states, which were encouraged to submit regulatory plans that would preempt federal regulation by OSHA. . . It was a potent means of fragmenting government regulation. It was also a means of ensuring that regulatory decisions would be made in arenas more sympathetic to business interests, since business has historically done well at the state level.

The fifth and final knock-on effect I would like to discuss here is the consequence of the third and fourth: the proliferation of veto points and disaggregated structures. The growth of American government over the past two centuries has been towards a multiplication of veto players, veto points, and unnecessarily complex structures which replicate and reflect the disjointedness of the institution that created them. Instead of growing flexibly, and then periodically being revised and rationalized to be easier to control by a centralized executive, as in the French and British bureaucracies, the American system has grown spasmodically and in a fractal-like pattern of complexity.

Delegations of power, authority, and autonomy are rarely made cleanly in the American system. The landscape is littered with bizarre bureaucratic arrangements, each with their own rules of appointment and control. Some are independent, some are accountable to Congress, some are accountable to the president. Other branches are dragged into the bureaucratic fray. The judiciary might step in and make law itself, such as by ordering the desegregation of schools or by ascribing a specific meaning to vague Congressional statutes. Private litigants or state governments may be empowered by statute or by constitutional principles to sue the government to halt the implementation of a law, government program, or executive action.<sup>48</sup> Administrative courts may be arenas where laws may be challenged by their opponents and delayed indefinitely.

Just by examining the process of structuring bureaucracy, we can see how the fortress state's disaggregation of power and great number of veto points makes policy and political structures difficult to change and very easy for vested and special interests to veto. George Tsebelis appears to approach this as if it were a benign accident of how American institutions are arranged. However, this paper agrees with Charles A. Beard when he argues in *An Economic Interpretation of the Constitution of the United States* that this effect was intentionally created by small groups of vested interests looking out for their own:

Dominant interests quite as often benefit from the prevention of governmental action as from positive assistance. They are able to take care of themselves if let alone within the circle of protection created by the law. Indeed, most owners of property

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<sup>48</sup> Farhang, Sean. *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* Princeton, NJ: Princeton University Press, 2010.



have as much to fear from positive governmental action as from their inability to secure advantageous legislation.<sup>49</sup>

This paper also goes further, to argue that labyrinthian forms of government place the interests of “the many,” large and disorganized majorities, at a disadvantage in relation to the interests of “the few,” highly organized and knowledgeable insiders who have an easier time navigating the system and operating it from within. It is to this aspect of the fortress state that we now turn.

### INSIDER’S GAME

Modern society has developed many institutions to manage social conflicts of varying scopes without resort to mob violence or civil war. These institutions include the state’s monopoly on the legitimate use of violence, independent legal systems, private arbitration, norms of civility and conduct, free and fair elections, lawmaking by elected legislatures, federalism, and localism. From the point of view of the state, these are essential mechanisms for keeping the peace. From the point of view of interests below the state, they are the rules of the game which can be exploited strategically for the gain of the individuals or groups.

Because the scope of a conflict determines the balance of forces engaged in it, choosing the scope is a crucial component of political strategy.<sup>50</sup> Some interests will want to keep a conflict localized, where they enjoy an advantage, while others will want to expand its scope where their greater numbers will count. It follows that small vested interests will benefit disproportionately from mechanisms which quarantine conflicts and allow for the creation of “iron

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<sup>49</sup> Beard, Charles. *An Economic Interpretation of the Constitution of the United States*. London: Taylor and Francis, 2017.

<sup>50</sup> Schattschneider, Elmer E. *The Semisovereign People: A Realist's View of Democracy in America*. Cengage Learning, 1975.

triangles,” where their smaller numbers and greater technical and political skill will have an advantage. Meanwhile, majoritarian impulses will benefit the most from mechanisms which allow for an appeal to the society as a whole. These mechanisms allow the majority’s greater weight in numbers to count. In the United States, mechanisms which socialize conflicts are comparatively weak, while mechanisms which isolate them are comparatively strong.

The disaggregation of the American system allows special and vested interests to “shop around” for the best instrument to achieve their goals. Often, these are local structures of government like school boards, city councils, and state governments whose elections take place at different times than national bodies, and whose activities are generally not being monitored by the community. Local elections are low-turnout affairs.<sup>51</sup> By the way in which they are arranged, they isolate small segments of the electorate and give them disproportionate amounts of power over public policy.

This is most evident in elections for school boards across the country. These bodies are typically local entities created by state governments to administer property taxes raised for the purpose of running local public schools. Elections for school board are often held in off-years, when no other major office such as governor or president is up for grabs. This isolation from other elected officials ensures that the elections are also usually non-partisan, which eliminates the potential nationalizing effect of a party label and party discipline. The relative inattention of mainstream voters and isolation of these bodies makes them particularly susceptible to capture by a small, self-serving group of people who turn out disproportionately in these elections to

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<sup>51</sup> DiSalvo, Daniel. *Government against Itself: Public Union Power and Its Consequences*. New York, NY: Oxford University Press, 2015.

keep themselves in power. Sometimes, this self-dealing can have disastrous consequences for the quality of education in public schools, as Moe found in his study of the New Orleans public school system before it was wiped out by Katrina:

The elected OPSB had jurisdiction over more than 100 public schools and 66,000 students. For decades prior to 2005, it operated a system of patronage politics that was common in many city school systems. Board members routinely interfered in hiring decisions in order to secure jobs for friends and family. Principals, often patronage appointees themselves, had little say in the staffing of their own schools. . . According to the state auditor, for example, the central office's accounting department was so full of patronage appointees and former school personnel that it failed to employ a single accountant.

The board also controlled the district purse strings and made decisions about which firms to contract with for construction, advertising, cafeteria food, legal services, security, maintenance services, architectural services, evaluation services, insurance services, professional development, curricula, and the like. Members awarded inflated no-bid contracts to friends and campaign contributors, sometimes for work never completed. Patronage allowed board members to strengthen their political appeal and, in cases of outright corruption, to profit directly.<sup>52</sup>

Such structures are also ideal for small, highly concentrated, and highly organized economic interests who have a vested interest in how schools are run, such as teachers. Terry Moe found in a number of other studies that teachers and allied staff turn out more frequently in these elections than any other social groups. For example, in the Charter Oak School District which Moe studied, only 7 percent of registered voters turned out in 1997, while 46 percent of teachers did. In the Katrina case, the local union, the Unified Teachers of New Orleans (UTNO), had a membership which approached 75% of New Orleans teachers and raked in \$3 million in dues. Moe found that UTNO was the most active player in local elections for the New Orleans school board. Union members tended to turnout at 70 to 80 percent in elections which drew only 25%

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<sup>52</sup> Moe, Terry M. *The Politics of Institutional Reform: Katrina, Education, and the Second Face of Power*. Cambridge, United Kingdom: Cambridge University Press, 2019.

to 35% of registered voters. UTNO was consistently the top contributor to school district members' election campaigns, and its endorsement was highly sought after in city council, state legislature, and judicial elections. Daniel DiSalvo explains in his book, *Government Against Itself*:

Huge information asymmetries help explain many outcomes. The “rationally ignorant” public pays little attention to public sector labor relations, while the unions are preoccupied with it. Law professor Richard Epstein has described collective bargaining in government as “an unfair match” between voters on one side and public officials and unions on the other because politicians can “escape voter wrath by granting public employees highly favorable, but less visible” pay and benefit packages. Furthermore, over the long term, negotiated work rules can even push public policy down paths that neither elected officials nor voters truly desire.<sup>53</sup>

In the New Orleans case, the result of union power meant that much of the policy that should have (on paper) been decided by the democratically elected representatives of the New Orleans community were instead dictated to it by the union in its collective bargaining contract:

The 159 page labor agreement in place prior to Katrina not only set the salary schedule and provided for various fringe benefits, but also covered the length of the school day, the list of paid holidays, rules for textbook adoption, rules for how often school administrators could use the public address system, minimum disciplinary punishments for students, maximum class sizes by grade. . . Senior teachers had priority in filling new jobs that opened up, severely limiting principals' discretion in hiring. And once teachers landed their jobs, principals essentially had no authority to get bad performers out of the classroom.<sup>54</sup>

In many places, state governments have been forced to step in to set minimum standards for the operation of local governments. By removing some of the discretionary authority of local governments and monitoring their activities and expenditures vigilantly through state comptroller's offices, state governments have been able to reduce the level of corruption and self-

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<sup>53</sup> DiSalvo, Daniel. *Government against Itself: Public Union Power and Its Consequences*. New York, NY: Oxford University Press, 2015. 28.

<sup>54</sup> Moe, Terry M. *The Politics of Institutional Reform: Katrina, Education, and the Second Face of Power*. Cambridge, United Kingdom: Cambridge University Press, 2019. 34.

dealing at the local level. However, state governments may themselves be susceptible to the same form of pressure and cooptation from organized groups. The response of teachers' unions to being regulated from above has often been to organize at the state and national level for regulations which disproportionately favor them. Terry Moe found in another study that from 2000 to 2009, the political spending of teachers' unions outpaced those of all business groups combined in 36 out of 50 states. In the New York, for example, all teachers are guaranteed yearly pay raises, even if the school district cannot afford it or a teacher has been performing poorly. In the New Orleans case, state law granted teachers tenure automatically after three years, making it impossible to fire the worst teachers, even if they were known to be engaging in criminal acts.<sup>55</sup>

Local governments are not the only institutions which are skewed towards small, highly interested minorities. As we have seen, the labyrinthian and disjointed structure of Congress makes it very difficult for strong national political parties to emerge. In the vacuum, special interests provide to legislators the kinds of organization, legislative expertise, exposure, rewards, and favors that political parties or the government might provide in other systems. Pressure politics is not the most accessible or public-friendly kind of politics. The kinds of organization that effective public pressure requires—a presence in Washington D.C., the ability to court legislators, the ability to understand and keep up with bills traveling through both chambers, the ability to influence the re-election of key legislators, an understanding of the laws and institutions at play, connections and credibility with major players, the ability to argue in

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<sup>55</sup> Moe, Terry M. *The Politics of Institutional Reform: Katrina, Education, and the Second Face of Power*. Cambridge, United Kingdom: Cambridge University Press, 2019.

administrative hearings—provide daunting obstacles to ordinary people wanting to take action based on majoritarian concerns that they feel only weakly. Conversely, these institutions reward professionals who are highly motivated to learn how the system works and how to influence it.

#### ACCEDING TO CHANGE INCREMENTALLY

We have seen that the American system possesses by design an incredible capacity to dilute, divide, and halt forces attempting to bring about policy or institutional change. This is how the fortress state, and the vested interests within it, defend themselves. However, if the winds of discontent are strong enough, if the forces in favor of change are organized and dispersed enough across many places and many elections, the system *will* give. It will do so slowly, incrementally, one institution at a time. Battles within institutions will be fierce. Victories will be partial, incomplete, and leave attackers exhausted and depleted. Over the course of this long war, institutions may be retaken by the defending forces, and progress made by the attackers undone. Reformers may find themselves unable to perfectly remake the system, instead forced to layer their changes on top of the institutions that already exist. They may also find it easier to accept small, particularistic payoffs than to initiate sweeping reforms in the public interest. However, if faced with enough sustained pressure, the system *will* give. The Jacksonians, the Progressives, the Suffragettes, the Prohibitionists, Labor, the Civil Rights Reformers, the LGBTQ Activists, the Conservatives, among others, will eventually succeed in making their mark on the system.

Given the sheer number of opportunities to move the cause one increment forward—to bring reform to one city or one state, to one institution instead of a whole country, the

disaggregated American system is able to channel discontent into itself far better than a winner-take-all system. In France, discontent against Emmanuel Macron takes the form of riots in the streets, blocked highways, lost tourism revenue, and lost economic growth. In the United States, discontent against Donald Trump takes the form of a surge in special House and Senate elections for the loyal opposition, increased activism within the Democratic Party, increased engagement with local and state races, and, within two years, a Democratic House with the ability to say no. Discontent and conflict which could undermine the state is instead fed back into it.

Once reformers achieve the change they seek, however imperfectly they achieve it, they discover that the fortress state's defenses can also be used to protect their hard-earned privileges and reforms. Very often, this leads them to join the fortress state's defenders on the battlements. By acceding to change in this way, the fortress state turns its most vehement and powerful critics into staunch defenders. The most brilliant part is that it does not have to entirely transform itself in doing so, which could potentially be explosive and upsetting to interests already vested in the status quo.

The longevity of the American Constitution (penned 1786) is a testament to the effectiveness of the fortress state as an instrument for handling political, social, and economic change over the long term in a large and complex society. As noted in the introduction, policy and institutional stability is not necessarily a bad thing. Given this paper's focus on political development and institutional reform, it is inevitable that we focus primarily on the darker side of policy stability, which in Tsebelis' words consists of "the inability of the political system to respond to changes occurring in the economic, political, or social environment."<sup>56</sup> The design of

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<sup>56</sup> Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton University Press, 2011. 207.

the fortress state renders American government is disjointed and dysfunctional, incapable of delivering on services that more centralized and decisive governments are able to. However, it is also important to remember that not all policy or institutional change is desirable. Hamilton was correct in observing the institutions can be changed for the worse much more easily than they can be changed for the better.

Institutional and policy stability can also be desirable for its own reasons. Tsebelis observes that, another “way of conceiving policy stability is as a credible commitment of the political system not to interfere in economic, political, or social interactions and regulate them.”<sup>57</sup> It is a very common and credible view in political science and economics that economic systems and markets need stable rules which are difficult to change in order to function and grow properly.<sup>58</sup> For example, Witold Henisz uses data to find that when a political system cannot change the rules of the economic game, investment and growth rates tend to be higher.<sup>59</sup> A similar argument can be made for the rules of the political game: the ability of a political system to legitimately and fairly referee political disputes and reconcile conflicting interests might be difficult to maintain if political players are empowered to change the rules to suit themselves.

A particular view of political and social change has emerged out of this institutional reality. The American view is that “progress” takes a long time. It happens incrementally, organically, in a decentralized way, after hard-fought battles. Liberals might be frustrated that it does

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<sup>57</sup> Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton University Press, 2011. 207.

<sup>58</sup> Kydland, Finn E., and Edward C. Prescott. "Rules Rather than Discretion: The Inconsistency of Optimal Plans." *Journal of Political Economy* 85, no. 3 (1977): 473-91. doi:10.1086/260580; Weingast, Barry. "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development." *The Journal of Law, Economics, and Organization*, 1995. doi:10.1093/oxfordjournals.jleo.a036861..

<sup>59</sup> Witold J. Henisz, 2000, "The Institutional Environment for Economic Growth." *Economics & Politics* 12 (1): 1-31; Witold J. Henisz, 2000, "The Institutional Environment for Multinational Investment." *Journal of Law, Economics & Organization* 16 (2): 334-64.



not come fast enough. They may be ridiculed as cranks and pie-in-the-sky idealists who do not understand how the system works, but they can take comfort in the fact that the franchise *was* eventually extended to all men, women, and minorities, that slavery *was* abolished, that the New Deal *did* triumph, that the civil rights movement *did* succeed. Victories might be incomplete now, and there may be unconscionable conservatives engaging in a rear-guard action against the advance of history, but liberals can look to the future with the assurance that more progress is coming.<sup>60</sup> Conservatives, too, can take comfort in the idea of progress. As Walter Russell Mead observed of the conservative mindset:

Change will come—must come, should come—but it will come at a slow and acceptable pace. It will be domesticated; the outlandish will become familiar before we must accept it. . . . The heart and soul of Anglo-American conservatism is the belief that an organic process of development, even if sometimes slow in the short run, will in the long run be the most effective way of facilitating improvement and change.<sup>61</sup>

This is a consequence of how American institutions are arranged.

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<sup>60</sup> Mead, Walter Russell. *God and Gold: Britain, America, and the Making of the Modern World*. New York, NY: Knopf, 2008. 306-307.

<sup>61</sup> Mead, Walter Russell. *God and Gold: Britain, America, and the Making of the Modern World*. New York, NY: Knopf, 2008. 307-308.

## Conclusion

Due to the disjointed and fractal-like nature of American government, and the fevered, confused, and polarized state of American politics, it is increasingly difficult for students coming of age in the new millennium to conceptualize of the American the system in its entirety. There is too much going on. There are too many actors making too many claims; too many bodies with too many rules; too many worthwhile issues and grievances clamoring for recognition; too much urgency, and too little perspective; too much information and not enough patience to digest it properly. That is why I wrote *The Fortress State*, to arrive at a simple but comprehensive framework which explains how the system's parts relate to the whole—if only because I wanted to leave my senior year less confused than when I entered it.

Mass democracy in the age of the internet—in which the pace of change is measured not in years or decades, but in days and hours—is baffled when it encounters the glacial fortress state. It is an unstoppable force hitting an immovable object. As I suggest throughout this paper, this is not an unprecedented occurrence. The Atlantic tide of democratization of the early 1800's, the abolitionist fever of the mid-century, the reformist movements of the turn of the 20<sup>th</sup>, the argument for woman's suffrage, movements for decolonization and an end to racial discrimination, the rise of consumerism and global capitalism, etc, etc, all had this same unstoppable, transnational character. The degree to which the institutions are transformed during these moments says just as much about the institutions themselves as the pressures trying to change them.

But there are things about this moment which are different, which are signs of change. Americans are coming to realize that the institutions they inherited from the Greatest

Generation are not working as well as they used to. What is wrong, who is responsible, and how to fix it, is a subject of debate and acrimony both within and between the two major political parties. No one solution, no one ‘theory of the problem,’ has emerged to rule them all. The political system which ensures that society will be broken into “many parts, interests, and classes of citizens” continues to operate effectively—perhaps even more effectively than before. What all can see for absolute certain is that there is more acrimony, more conflict, more confusion, and more polarization than at any time in recent memory. It has not been uncommon in my classes, whenever the conversation has turned to current events, for the professor to comment, “I know your generation grew up with this, so this normal for you. *But this is NOT normal.*” As with all stories of political development, our present moment is a complex mixture of change and continuity. There are two worthwhile questions to ask about it. First, at the beginning of the twenty-first century, what does the fortress state protect? Who is most advantaged and advantaged by it? Second, how are these tensions likely to be resolved by the balance of interests and incentives within the American political process? In the space I have left, I will explore these two questions by discussing what I believe to be the demise of the majoritarian presidency and the consequences it will have for American political development.

#### THE EFFECTS OF MEDIA DISAGGREGATION ON POLITICAL ORGANIZATION

When Sydney Blumenthal penned *The Permanent Campaign* documenting how Ronald Reagan perfected the use of consultants and media advisors to harness the news cycle and drive up presidential approval numbers, there were only eight television channels. Only a few blockbuster movies were released each year. Only a few major corporate newspapers had the

resources and scale needed to reach a national audience. Blumenthal did not know it, but he was documenting the end, rather than the beginning of an era. Within a decade, satellite and cable television brought many more channels. The possibility of wall-to-wall political coverage for those interested in politics was opened up, while those less interested in politics could opt out entirely because they had something else to watch. Newt Gingrich discovered a powerful new tool for reaching narrow but highly excitable constituencies through the new television channel C-SPAN. With better technology, the rise of the internet and smartphones, of websites like YouTube and Facebook, the cost of creating content and reaching large audiences dramatically decreased. Sites like Netflix and YouTube created repositories of functionally unlimited entertainment to suit any narrow taste or particularity. The new technologies allowed small stars and firms to touch people more immediately and personally. This explosion of choice in entertainment, communication, and news was hailed by techno-futurists and democratic enthusiasts as the best thing to happen to democracy since mass literacy, but recent developments have caused Americans to take a second look at the internet and how it is impacting society.

The disaggregation of the media landscape has an important consequence for the balance between narrow and majoritarian interests in democracy. It is important to remember that the media is also an institution which responds to and creates incentives. Democratic and development theorists have long recognized the importance of a free and independent media to keeping government accountable to majoritarian interests. However, I am sure that outlets like Breitbart, Fox News, and MSNBC—whose business strategies are to appeal to small and intense constituencies while sacrificing mass appeal—were not what they had in mind.

When technology limited us to three television channels, a handful of national newspapers, and comparatively few alternatives for entertainment, for-profit corporations like the *New York Times* could recoup the cost of distributing information by taking advantage of economies of scale. In order to do this, they needed to appeal to as broad an audience as possible. As a result, the *New York Times* tended to appeal to interests and concerns which touched all Americans—albeit weakly. Americans, who tended not to have access to outlets which targeted them specifically based on narrower and more intense concerns, were more likely to feel and respond to these majoritarian interests.

No political office was more impacted by this state of things than the presidency. As the national head and the center of concerted action in the American system, the expectations and demands of the American people as a whole were centered on the president. Every day, the Washington Press Corps reported on what the president said, did, and stood for. This relationship between a national media, a national president, and a nation was made possible by a centralized media landscape. It created strong incentives for the president to stand by majoritarian priorities and gave the president's "bully pulpit" an incredible amount of power to frame the national conversation, to set the agenda in Washington, and to cajole more particularistic actors into taking his side.

What has occurred with the rise of cable television and the internet has been the breakdown and particularization of this mechanism. News companies like Fox News, Breitbart, and MSNBC appeal to small and intense constituencies as a business strategy, and reward political actors which are willing to take harsh particularistic stands. The national media was previously

an instrument for majoritarian pressure. It is now an instrument for particularistic pressure, with consequences for how political actors behave while in office and on the campaign trail.

#### CHANGES IN THE PROCESS FOR NOMINATING PRESIDENTS

It cannot be said that the process of nominating American presidents was ever a majoritarian exercise. Before reforms in the 70's and 80's which instituted a system of binding primaries, party leaders attending conventions as part of state delegations bargained away their votes in a highly complex ballad of backroom maneuvering. Political entrepreneurs controlling the votes of key states such as Ohio, Chicago, and New York would routinely gridlock conventions in order to extract promises of government jobs, appointments, favors, contracts, and other privileges from the winning candidates. Meanwhile, potentially hundreds of rounds of balloting unfolded on the convention floor. This system may have been woefully undemocratic and may have forced many candidates to sacrifice some of the effectiveness of the national government to reward political allies. However, as Steven Levitsky and Daniel Ziblatt argue in their book *How Democracies Die*, party leaders were also highly conservative in their choice of nominees.<sup>62</sup> They tended to gravitate towards candidates whom they knew had experience as campaigners, had a track record of keeping their promises to their allies, and had mass appeal. After all, they could extract any promise they wanted at the convention, but if that candidate went on to lose in the general election because their appeal was too particularistic, there would be no spoils, no jobs, no contracts, and no cabinet appointments. Further, if a candidate was inexperienced and

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<sup>62</sup> Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. London: Penguin, 2019.

had no connections to the party establishment—such as extreme and potentially authoritarian candidates like Charles Lindenberg—the chances of their renegeing on their promises once in office were higher.<sup>63</sup> These two considerations, that candidates needed to win, and needed to be loyal, made the party nomination system select for candidates who had mass appeal and were experienced with the political system.

The incentives of the new primary system have become evident in the last decade, as they took a while to come into full flowering. In switching the party nomination system to one based on state primaries rather than on state conventions, reformers perhaps imagined that they were opening up the selection of political nominees to the people at large. George McGovern, who won the Democratic nomination in 1972 unexpectedly, referred to the primary system as “the most open political process in our history.” Unfortunately, as we now know, asking voters to turn out in more than one election a year places a barrier to collective action which selects for voters which are more motivated than others. Party primaries tend to be dominated by voters who are motivated by narrow ideological, vested, or identarian interests which they feel very strongly.

The party nomination system effectively swapped one kind of small, highly motivated interest for another. But are the incentives the same? Unfortunately, they are quite the opposite. Primary voters motivated by ideology, identity, or vested interest do not have to bear the consequences of their decision to vote for a particularistic candidate in the same way that party

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<sup>63</sup> Party machines were reminded of this in a drastic way in 1910 when the New Jersey Democratic machine nominated Princeton President Woodrow Wilson, to the governorship of that state. The machine assumed that, as a political novice, he would be a loyal and pliable governor. But barely had they nominated him that Wilson turned on them and campaigned as a Progressive *against* the machine, won, and continued his war against them from the governor’s seat.

leaders did. Party leaders were strongly incentivized to pick a candidate who could win, who was reliable, and who followed political norms, because their political futures and electoral chances depended on it. Meanwhile, the particularism of primary voters makes them more likely to insist on presidential candidates who reflect their narrow and particularistic shibboleths. Primary voters want their presidential candidates to deliver just as much as party leaders did back in the day. But unlike party leaders, primary voters in presidential contests are after the zero-sum triumph of their narrow issue, identity, or ideology over others. For party leaders back in the day, the best way to ensure that a candidate would follow through on their promises was to insist on political experience and connections. For primary voters, the best way to ensure a candidate's reliability is by insisting on authenticity—a candidate's genuine, strict, and long-lasting adherence to the identity or creed that the particular interest believes in. Primary voters will therefore favor political virgins and radicals over seasoned politicians. Primaries have become fraught zero-sum contests between small groups because it is very difficult for candidates to represent multiple groups authentically all at once. The result of this process is a particularistic presidential candidate, one who does not necessarily have the same experience, broad appeal, and connections that presidential candidates tended to have in the past.

#### THE PARTICULARIZATION OF THE PRESIDENCY AND THE BAD PRESIDENT PROBLEM

The combination of these two changes to our political system—the disaggregation of our media and the particularization of the presidential nomination process—has resulted in two related problems, the particularization of the presidency and the bad president problem.



The American presidency is our constitutional system's answer to collective action problems. The President is the embodiment of both "the one" and "the many." He defends both the interests of the state and of the American people as a whole, a counterweight to the particularistic interests represented in Congress. In order to fulfill its constitutional function, the presidency requires that it be occupied by someone motivated to use the instruments of the national administrative state to respond to these interests and to ignore the babel of particularistic interests. In the past, strong incentives existed in both the presidential nomination and media systems to reinforce the pressures of "the many" and lift the president above the power of "the few." However, over the past thirty years, these pressures have been reversed. The president is now rewarded for taking particularistic stands which enflame social tensions and for sacrificing the effectiveness of the national bureaucracy to appease particularistic constituencies. Meanwhile, it is getting much harder for the president to appeal to a nation which is increasingly segmented into particularistic media bubbles, and which does not respond to broad and unifying appeals as it once did. This is a systemic problem which will not go away when Donald Trump leaves office. The problems of the particularistic presidency will recur until we change the incentives which created it.

Over the past hundred years, the presidency has amassed a great amount of power and responsibility. It is a huge job, one that involves a great amount of experience, organization, connections, and talent. While it is still possible for experienced and well-prepared members of the political class to attain the presidency, the filters which made it impossible for incompetent, radical, or authoritarian presidents to reach the office no longer exist. In the years to come, the American political system may from time to time be subjected to a "Bad President Problem,"

where the highest and most powerful office in the land is occupied for at least four years by an individual who is either unwilling to or incapable of fulfilling the presidency's traditional role.

How much of a problem is this likely to be? Three years of Donald Trump have demonstrated how the fortress state can protect us from the worst effects of an incompetent administration. Left alone, the economy has continued to grow. Jobs are still being created. People are still going to school, getting married, and pursuing happiness. In instances where the federal government has been incapable to fulfill a particular function, the redundancy and incentives of the American system have empowered other branches and levels of government to step in. For example, state governments stepped in to keep the airports open during the 2018-2019 government shutdown. State Attorneys General offices controlled by the loyal opposition have taken on a new constitutional role as a check on executive overreach, corruption, incompetence, and statutory noncompliance.

However, in the absence of concerted national leadership, collective action problems which touch us all weakly, but which we all suffer from, remain unaddressed. Some of the biggest problems of the 21<sup>st</sup> century are collective action problems, such as climate change, government insolvency due to demographic changes, the rise in social alienation and anti-social behavior, the rise in the risk of nuclear war between superpowers, decaying roads and bridges, pervasive rent-seeking behavior, the burden imposed on families by overpriced healthcare, large-scale health crises like the rise in "deaths of despair" and instances of mental and physical disabilities, a labor market in drift that no longer serves the interests of employees as well as it once did, etc. Powerful interests, when left to themselves, can look after themselves. But weak

interests, both of the narrow and the broad kind, have trouble. It is these which are most likely to suffer under the new state of things.

Due to recent developments, it appears like the American government is growing increasingly incapable of imposing losses on small, powerful interest groups, of responding to majoritarian interests, and defending its interests abroad. This has always been a core aspect of the design of the fortress state, though Americans have in the past been able to achieve a healthy balance between the interests of “the many” and disorganized, “the few” and organized, and “the one” by empowering a national and majoritarian presidency. This is how Americans conquered the Great Depression, the Second World War, and the Cold War. However, in the 21<sup>st</sup> century, Americans have inadvertently dismantled by small, incremental, and uncoordinated changes the very institutions which made this balance possible. The jury is still out on whether these incremental changes carried out by sub-national actors following their own interests will lead American political development on a more positive path than what a centrally-planned intelligence might be able to achieve, or if they will destabilize forever the careful and fortunate balance we struck during the 20<sup>th</sup> century. Here, we might be able to discern two philosophies. Those who believe in the “invisible hand” argue that, while we don’t know what the terminus of progress is, we should trust the process and endure the disruptions it imposes as best we can. Then, there are those who doubt that thousands of smaller actors, pursuing their own narrow interests, will serve a larger interest without first being incentivized to do so by the norms, morals, or institutions of a society. I fall into the latter category, which is why I chose to focus my conclusion on the American presidency.

The United States enters the 21<sup>st</sup> century, the century of global collective action problems, with a disaggregated frame of government which was created in the 18<sup>th</sup> for a small agrarian republic on the shores of the New World. That system of government, the fortress state, has proved to be one of the luckiest and most resilient in the world. This was not preordained. The Founders understood that governments function according to rules and incentives. They carefully balanced their institutions and the interests of society against one-another in order to achieve the results they wanted. We revere the Founders, but very few of us are still able to see the American government as they once did: as one big system, greater than the sum of its parts, where every part contributes to the character and outcomes of the whole. It was the majoritarian president's role to apprehend the system in this way, but we dismantled him. The system can continue to function without him, but we should still be aware of what we are losing, and why, as political development takes its course in the 21<sup>st</sup> century.

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