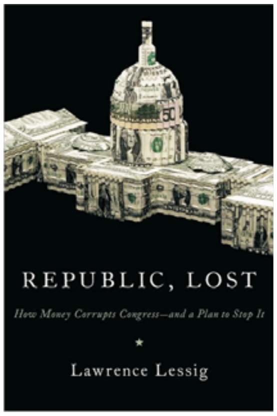

REPUBLIC, LOST

How Money Corrupts Congress – and a Plan to Stop It

LAWRENCE LESSIG

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General Overview:
The overwhelming threat to America's democracy at the present time is not foreign military might but the capture of government control and influence by powerful special interests. Campaign finance reform is America's most important and pressing public policy issue. Until this gets fixed, the government will remain stalled indefinitely. It's time for the American people to get angry about the small but systemic distortions which block the ability of democracy to work the way it should and to do something about it.

Practically every important issue in American politics today is tied to the connections between elected politicians and special interests. This is not bribery in the sense that cash is secreted to buy privilege but it is a process which is happening in plain sight. The economy of influence has normalized a process which distorts democracy by drawing power to act away from the will of the people towards those who have the greatest wealth. The government has become for all intents and purposes an engine of influence which seeks to give the best deal to those who are the most connected. It's time we enact the most obvious solution.

"I have become convinced that while a corruption of Congress is destroying the republic, that corruption is not the product of evil. On the contrary, a corruption practiced by decent people working with a system that has evolved the most elaborate and costly bending of democratic government in our history. If we understand the nature of this corruption, its solution will become obvious. The challenge, then, will be to build a movement to bring about that solution. Such a movement is possible. It has been built before."

* ***Please Note:*** This political book summary does ***not*** offer judgment or opinion on the book's contents. The ideas, viewpoints and arguments are presented just as the book's ***author*** had intended.

The Nature of This Disease

There is a growing anxiety among many Americans today that this nation's period of greatness is nearing its end – that the United States will inevitably in the future go into a period of decline in much the same way the British, Roman and Greek empires have done in ages past. Many people assume that in the words of Benjamin Franklin, we the people have in recent times a republic as a representative democracy slip through our fingers and be lost.

It's not that any enemy has stormed the gates or waged war against this nation. Instead, there is a general acceptance that government has become corrupted by the massive amounts of money which corporations and others lobby Congress with to influence the political agenda. There is a belief legislators are now so deeply connected to special interests they are unable to put the nation's best interests ahead of their own need to finance their reelection campaigns and do what's right. This situation has not arisen because of the arrival of any obvious and blatant enemy but is the result of good people trying to act within a system which has massive disconnects and disincentives – a dependency corruption.

To illustrate why dependency on moneyed interests is a concern for a democracy, consider two questions:

1. *Is plastic made using BPA (Bisphenol A) safe for children to use?*
   In many European countries, BPA has been removed from all children's products but in the United States the majority of soft plastic for children contains BPA. You may therefore consider the scientific evidence to be inconclusive but since 1997, there have been 176 studies of the effects of BPA. Thirteen of these studies which were sponsored by the industry that produces BPA all showed BPA was harmless. However, more than 85 percent of the 163 independently funded studies concluded even low-dose BPA is dangerous, especially for infants.
2. *Are cell phones safe or do they produce potentially harmful radiation?*
   The majority of Americans believe the jury is still out on that question even though cell phone technology has been in widespread use for almost fifty years. The reality is there have been almost three hundred studies seeking an answer to this question including one UN-sponsored study which cost $24 million and took more than a decade. The data from these studies looks ambiguous with 56 percent finding there is a biological effect and 44 percent concluding there is not. However, when those studies are divided into those which were funded by the industry and those which were not, a different picture emerges. Of the 96 industry funded studies, only 28 percent found there was a biological effect and 72 percent concluded there was not. For independently funded studies, 67 percent found cell phone use caused a biological effect and only 33 percent concluded there was not.

As we consider those rather simple questions, we naturally draw the conclusion that money in the wrong places distorts the results of those studies and makes us trust industry funded studies less. This same principle is why the justice system requires judges to step aside when they have a financial interest in the outcome of a case they are called upon to decide. Conflict of interest is a very well known factor in society and institutions take stringent steps to guard against it in order to preserve trust. And yet despite all that, we as citizens still choose to believe that members of Congress are not in any way influenced by the promise of money for their reelection campaigns if they vote in ways which favor special interests. We are reluctant to believe "money buys results" in Congress even though we readily accept industry sponsored studies on product safety are always going to be favorably inclined towards those who have provided the funding.

Nobody believes congressmen are taking bags of cash in exchange for changing their votes. That would be rather blatant and easy to capture on network television. The bigger concern, however, is what is the impact of the billions of dollars which gets spent on lobbying each year? Are we as citizens to believe all that money has no impact whatsoever on the thinking and actions of Congress?

The Telltale Signs of This Disease

Consider four key policy struggles of recent years:

1. *American obesity levels*

   Obesity-related disease costs the United States $147 billion annually – more than cigarettes or alcohol. Since 1985, U.S. consumption of sugar has increased by 23 percent with high-fructose corn syrup, a sugar substitute, accounting for a large proportion of that increase. Yet the government protects the sugar industry with tariffs and subsidizes those who grow the corn which gets converted into high-fructose corn syrup. Why not let the free market operate in this area? Everyone knows subsidies are difficult to end once they begin but there is also the fact the beneficiaries of protected sugar and subsidized corn spend an enormous amount to maintain the status quo. In 2010 alone, the sugar industry spent more than $5 million and the corn industry nearly $18 million on lobbying and campaign spending. Is it possible that money has resulted in the government being prepared to distort the free market's actions by tarriffs and subsidies for something which is in fact making us more obese?

2. *Climate change and copyright laws*

   Since 1995, Congress has enacted thirty-two statutes to further bulk up copyright law as the impact of the Internet on distribution has come into focus. That sounds sensible but over the same period, Congress has passed no laws which address growing carbon pollution. One may be tempted to assume that's because climate science is far more inconclusive as of yet but consider this: Pro-carbon reformers spent $22.4 million lobbying Congress in 2009 alone while anti-carbon reformers spent $210.6 million that same year. In the case of copyright law, pro-copyright reformers spent $1.3 billion in lobbying and campaign contributions while anti-copyright reformers spent an estimated $1 million – a thousand to one disparity. Perhaps it was just coincidence and that expenditure was irrelevant to what Congress did.

3. *The American School System*

   Pretty much every American believes the government should ensure kids receive a good education. While not everyone can agree how this should be delivered, there is today widespread acceptance of the fact American schools are underperforming and falling behind the rest of the world rather than leading out. All kinds of reasons are given for this decline but researchers keep coming back to the concept of teacher tenure – guaranteeing public school teachers a job in the future whether they are great teachers or poor teachers. Most researchers have concluded if the United States could eliminate just the bottom 6 to 8 percent of its worst performing teachers, the American education system would be the best in the world. So why is teacher tenure retained in the United States? Could it have anything to do with the fact the teachers' unions are among the largest contributors to the Democratic Party? The teachers union contributions to Congress were around $12.5 million in 2010 alone.

4. *The financial meltdown of 2008*

   Multiple books have been written about the causes of the Wall Street crisis which reverberated around the world. Every actor within the financial system – from over-exuberant borrowers and "greedy" lenders to the government regulators – have been blamed by someone for the disaster. It has been widely assumed there was a systemic irrationality which brought about the crash but that explanation does not stand up under close scrutiny. In fact the core driver of the crash was the major players were acting in a perfectly rational fashion to changes which had been made in government regulations within the finance industry. The major players were acting rationally – it was the system as a whole which was irrational as a result of changes which were to the regulations which had underpinned the stable and prosperous financial system of the previous forty years.

The financial market meltdown of 2008 was particularly noteworthy from the perspective of how government oversight can be influenced by special interests. Until the 1990s, the financial markets were subject to the regulatory regime which had been part and parcel of the New Deal. Specifically, financial assets were required to be traded publicly, transparently and subject to anti-fraud requirements. The free flow of information created robust financial markets for stocks and bonds. However, when financial derivatives started to be traded on the market in the 1990s, there was a debate about whether these financial instruments should be treated differently. Lobbyists for the financial derivatives industry managed in 1993 to get most over-the-counter derivatives to be exempt from federal regulation by suggesting the market would be able to self-regulate.

"It is critically important to recognize that no market is ever truly unregulated. The self-interest of market participants generates private market regulation."

– Alan Greenspan

The incoming Clinton administration wanted to show it was not anti-Wall Street and did so by killing off four anti-derivatives bills in Congress in 1994 and by accelerating deregulation of the financial industry. By 1999, the Glass-Steagall Act was abolished in effect leaving the financial markets to self regulate. Despite the fact by the time President Clinton was reelected the market in financial derivatives had grown to $13 trillion (which was larger than the $8.7 trillion GDP of the United States in 1998), no government agency was charged with exercising jurisdiction over financial derivatives. The Commodity Futures Trading Commission did float the idea it should become involved in regulating financial derivatives but that initiative was quickly shot down by Federal reserve chairman Alan Greenspan and Treasury Secretary Rubin.

"No conspiracy was necessary. By 1998, it was part of the world view of the Washington elite that what was good for Wall Street was good for America."

– Simon Johnson and James Kwak, authors, *13 Bankers*

What is less well known is that from 1998 to 2008, the financial sector spent $1.7 billion on campaign contributions and $3.4 billion on lobbying expenses to encourage a hands-off regulatory approach. To put this into context, these sums on money spent on lobbying by the finance industry were more than the lobbying and contributions of energy, health care, defense and telecoms combined. *"The real story of the Great Recession is simply this: Stupid government regulation allowed the financial services industry to run the economy off the rails. But it was the financial services industry that drove our government to this stupid government regulation. They benefitted enormously from this policy. Strain as I may, I find it impossible to believe that our government would have been this stupid had congressmen from both sides of the aisle not been so desperate for the more than $1 billion in campaign contributions given by individuals and groups affiliated with these firms, and the $2.7 billion spent by them lobbying."*

"These four examples are not small issues. Together, they have an effect. They confirm the view already held by the vast majority of Americans. In a poll, 75 percent of Americans believe 'campaign contributions buy results in Congres.' three to one, with Republicans (71 percent) just as convinced of this as Democrats (81 percent.) Puzzles plus money produce the view that the money explains the puzzles. In a line: We don't trust our government. And until we create the conditions under which trust is possible – when, in other words, the presence of money in wrong places doesn't inevitably make us doubt – this skepticism will remain. We can't help it."

Beyond Suspicion: Congress's Corruption

Unfortunately for the United States, an economy of influence has evolved within our government. This economy of influence draws members of Congress away from acting in the best interests of their constituents and instead allows them to effectively "sell" their votes to the highest bidder – even when they do this unintentionally or without malice. This is not just a figment of our collective imagination – the evidence of this economy of influence is real and increasingly obvious. Consider a few facts:

• From 1974 to 2008, the amount required to be reelected to the House went from $56,000 to $1.3 million.

• In 1974, all candidates combined spent $77 million getting reelected. In 2010, that figure was $1.8 billion.

In other words, the costs of reelection campaigns are now becoming substantial and it has been necessary for Congress to be a fund-raising dynamo for a number of years now – since the 1990s. At one time fund raising for reelection was viewed as a side activity but today this has become the central focus for most if not all congressmen. The inevitable result of that emphasis, in turn, has been that fund-raising has become much more highly valued. At the same time, those who excel at fund-raising have become party leaders and the parties have become much more willing to change their political messages in order to attract more campaign funding. In practice, the Democrats have become more pro-business and there are today less differences between the economic messages of both parties.

Lobbyists are at ground zero when it comes to the modern-day economy of influence which has enveloped Congress. Lobbyists have become indispensable to politicians because they are the conduit between well funded special interests and the members of Congress. Lobbyists don't do anything illegal like make outright bribes but they do create a gift economy where moneyed interests can provide reelection funding donations in exchange for reciprocal consideration when new government projects, contracts, grants or legislation are being run through the system.

"The lobbying industry has exploded over the past twenty years. Its growth and wealth match almost any in our economy. In 1971, Hacker and Pierson report, there were just 175 firms with registered lobbyists in Washington D.C. Ten years later, there were almost 2,500. In 2009, there were 13,700 registered lobbyists. They spent more than $3.5 billion – twice the amount spent in 2002, representing about $6.5 million per elected representative in Congress."

So what does all that money do? There are three undeniable effects of this economy of influence:

1. Lobbying is a welcome d because it addresses a member's greatest time constraint –the 30 to 70 percent of their time which must be applied to raising money for reelection. Accepting donations from lobbyists is much more efficient than beating the bushes for $10 or $100 at a time.
2. The legislators start paying more attention to the concerns of those who contribute generously to their campaign funds than they do to the needs of those people who elected them. Those who pay more have better access to elected federal leaders than those who cannot afford to do so. Political views get distorted to accommodate those who are resource-rich.
3. Trust in the legislative process is reduced because there is the perception money buys votes. People become cynical about the operation of the political process as a whole and rather than attempting to change the system, more and more ordinary Americans opt out of any political involvement.

"Thousands of instances exist where appropriations are leveraged for fund-raising dollars or political capital."

– Senator Tom Colburn, R-Okla.; 2005 -

One key point to note is all the money which today gets spent on lobbying defeats both the left and the right in equal measure. To illustrate:

- President Barack Obama won election on November 4, 2008 on a promise that "the ways of Washington must change." His election electrified and energized the reform community and yet his track record during his first term has been that he hasn't played the game he promised. Instead, President Obama has been forced to strike one bargain after another with the most powerful lobbyists in order to get bills through Congress. Seven-billion-dollars has been spent lobbying Congress during the first two years of the Obama administration and that money has succeeded in blocking the reforms Obama probably intended to make. As Al Gore noted: *"The influence of special interests is now at an extremely unhealthy level. It is virtually impossible for participants in the current political system to enact any significant change without first seeking and gaining permission from the largest commercial interests who are most affected by the proposed change."* It can be argued the problem with the Obama administration is not that it is too liberal and reform oriented but that it has been too conventional. The voters bought into the promise of change and they now feel shortchanged.
- When Ronald Reagan was elected president, he had three core right-wing objectives the championing of which have now been taken up by the Tea Party. First, he wanted to shrink the size of government. Second, he aspired to simplify the U.S. tax system. And third, Reagan wanted to make sure that free markets would be allowed to operate efficiently. Reagan soon found it was members of Congress rather than bureaucrats who were pushing to extend the reach of regulation because that expanded the pool of companies who would be willing to assist with fund-raising. Those pushing for a flat tax system have found the software companies which sell programs and services to make completing complex tax returns are not only good at lobbying but they are also skilled at defeating those who have intentions of taking away their revenue streams. A flat tax would also remove a constant stream of people coming to Washington in search of tax breaks with their potential for assisting with campaign financing. And as to the free markets ideal – the biggest threat to this didn't come from idealists but from the incumbents in each market who were eager to protect themselves from the emerging market players of the future. Reagan was unable to make significant and lasting changes in these areas because the political machinery fought change tooth and nail.

"My sense is that too many on the Right make the same mistake as many on the Left. They assume that change happens when you win enough votes in Congress. Elect a strong Republican majority, many in the Tea Party believe, and you will elect a government that will deliver on the promise of smaller government and simpler taxes – just as many activists on the Left thought they could elect a strong Democratic majority and deliver on the promise of meaningful health care reform, or global warming legislation, or whatever other reform the Left thought it would get. What both sides miss is the machine we've evolved systematically thwarts the objectives of each side. The reason for the thwart is different on each side. Change on the Left gets stopped because strong, powerful private interests use their leverage to block changes in the status quo. Change on the Right gets stopped because strong, powerful public interests, Congress, work to block any change that would weaken their fund-raising machine. The current system of campaign funding radically benefits the status quo – the status quo for private interests and the status-quo of the fund-raising Congress."

If it's true that both sides of the political spectrum will always be blocked from making the changes they want by the existing system of campaign funding, then it would be logical to assume both sides would have the same level of interest in making changes to that system. The problems are it's highly lucrative for ex-government officials to become lobbyists and "corruption" can be defined a lot of different ways. The system as it stands now does not provide any real incentive for Congress to change itself. The driving force for change is going to need to come from outside Congress and from other than the main political parties.

Solutions

"Senators and representatives, faced incessantly with the need to raise ever more funds, can scarcely avoid weighing every decision against the question, 'How will this affect my fund-raising?' rather than 'How will this affect the national interest?'"

– Barry Goldwater (R-Ariz.; 1953-1965, 1969-1987)

The two standard campaign finance reforms which most commonly get put forward are increased transparency or complete anonymity with political donations. Both won't work:

- Requiring greater transparency of every donation given to a politician or a political party would generate a blizzard of data which would ultimately confuse rather than clarify. Besides, large corporate donations could easily be broken down into a large number of smaller donations under assumed names with nobody being equipped to pick up on the sleight-of-hand.
- Anonymity wouldn't work either because there would always be the lingering suspicion that large donors could advise the politician of the donation they made after the fact.

Instead of going down the anonymity or transparency paths, a better system for financing political campaigns could look something like this:

1. Convert the first fifty dollars every taxpayer pays to the U.S. Treasury into a "democracy voucher" which each person can allocate however they wish – to one candidate or spread over multiple candidates.
2. If the voter does not allocate their voucher, the money from each voucher automatically goes to the party they are registered with or else into a pool where it is used for voting systems and voter education – to support the machinery of democracy.
3. Voters can then supplement their voucher contribution by choosing to make a donation of up to $100 per candidate. No donations of more than $100 will be permitted. This gives voters some skin in the game.
4. Any viable candidate for Congress could then voluntarily elect to receive this funding only if he or she agrees not to accept any PAC funding or other contributions. This viability test might require the would-be candidate to first gather a specified number of citizen nominees in order to be eligible to participate in the campaign funding program.

If every registered voter participated in this campaign financing system, it would generate a pool of $6 billion every two-year election cycle. Some portion of that pool would go to the candidates and the balance to the parties. By comparison, in 2010, $1.8 billion was spent by the candidates for all congressional elections and the major political parties brought in $2.8 billion. This suggests the proposed campaign finance initiative is in the right ball park in terms of the amount of money involved.

The central feature of this proposal is the fact candidates would be able to focus on the needs of their constituents rather than being forced to go after special interest money. Furthermore, if this type of campaign finance approach were taken, another fundamental change would occur. The Cato Institute estimated in 2009, the United States Congress spent $90 billion of taxpayer money on "corporate welfare" – subsidies and regulatory protections the lawmakers extended to businesses and industries which had helped fund their past election campaigns. If even just five percent of that $90 billion were saved, that would more than pay the $3 billion per year which would be required to fund elections using the proposed system. Also keep in mind the United States has spent more than $750 billion (not to mention the lives of more than 4,500 patriots) to try and build a democracy in Iraq. When measured against that kind of expenditure, it makes putting aside $3 billion a year to make democracy work better in America seem like a bargain.

But would it work? Well, if you look at it objectively, there are really only four ways genuine campaign finance reform will happen. Those four strategies are:

1. *The conventional approach* – Congress could pass a campaign finance bill which puts a new system in place for the next electoral cycle. The President signs off on it. It would be difficult to change the status quo given the power and resources of special interests. Chances of success: less than 2 percent.
2. *A primary game* – In every congressional district, a prominent and clearly non-political person could put their name forward for election on the basis they will go to Washington and vote for a campaign finance reformation bill and then resign. If that were to happen in three hundred seats across the nation, there would be enough votes to force through new legislation. Chances of success: less than 5 percent.
3. *An unconventional President* – A credible candidate for President of the United States could be nominated who will run for election on the sole promise he or she will hold Congress hostage until it passes a campaign finance reform bill at which point that President will resign. If a single-issue presidential candidate like this were to make a respectable showing in a primary, Republicans and Democrats would be forced to take note and respond. Both parties would make a grab for that block of voters by nominating their own reform candidate who promises to do the same thing. The key battle would then be to have the right vice-presidential candidate who would assume power once a campaign funding bill has been passed by Congress. Even being wildly optimistic, chances of success for this strategy: 2 percent.
4. *Convene a federal constitutional convention* – The Constitution specifies that a "convention for proposing amendments" must be convened if two-thirds of the state legislatures ask for it. This has never yet happened but even calls for a constitutional convention by a reasonable number of states just might be enough to force Congress to move on campaign finance reform. Perhaps getting thirty-eight states to support the idea of a constitutional convention might be achieved if the aims of the convention were also to include consideration of line-item-veto power for the President, a balanced-budget amendment, the abolishment of the Electoral College, term limits or any other topics which the various states have strong views on. In recent times, thirty-two states petitioned Congress to call a conventional convention to enact a balanced-budget amendment before the idea lost steam in 1989. That suggests getting to the thirty-eight state threshold for a constitutional convention is not impossible. Chances of success: certainly 10 percent at a minimum and likely much higher.

"I've outlined four strategies for effecting the change we need. None are likely to succeed alone. But which makes the most sense? And why should we pursue any of them if none are likely to succeed? To understand the challenge, we need to keep the enemy in focus and understand how it will react. As the movement to kill the system of dependance that is D.C. grows, the resistance will grow as well. There are too many people whose livelihoods depend upon the status quo. Some of them will be happy to see the system change. Most will fight like hell to protect it. That's the advantage to the three unconventional strategies. Each of them – running non-political candidates, running reform presidential candidates, calling for an Article V convention – is something that hasn't happened before. Thus, the chance to evade the status quo is greater with these three. And if I had the power to launch this war, I would launch it by launching all three at once. Even then, however, the chances are not great. So why do it? Why waste your time? I understand the futility of fighting but I also know love. Love makes the odds irrelevant. Why not the same for country? Soldiers volunteer to fight wars for democracy. The war I've endorsed won't kill anyone. So pick your poison. You tell me which hopeless strategy is best. Or you come up with a better one. But don't tell me this is hopeless. Hopelessness is precisely the reason that citizens must fight."

– Lawrence Lessig

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