

# **Inquiring Minds Topic – 12 July 2013**

**Topic paper suggested by Jack Dreyer**

**Moderator: Albert Myers**

## **Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It**

By **LAWRENCE LESSIG -October 2011**

*Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It is the sixth book by Harvard law professor and free culture activist Lawrence Lessig. In a departure from the topics of his previous books, Republic, Lost outlines what Lessig considers to be the systemic corrupting influence of special-interest money on American politics, and only mentions copyright and other free culture topics briefly, as examples. He argued that the Congress in 2011 spent the first quarter debating debit-card fees while ignoring what he sees as more pressing issues, including health care reform or global warming or the deficit.[1] Lessig has been described in The New York Times as an "original and dynamic legal scholar." [2]*

### **Overview**

The central argument of *Republic, Lost* is that members of the US Congress are dependent upon funding from large donors. Lessig sees the system as "legal but corrupt", and that the pivotal point of the corruption is campaign finance.[1] In Lessig's view, it is a systemic problem.[3] He noted that congresspersons spend three of every five weekdays raising money for reelection.[3] It leads to inertia: left-leaning Occupy Wall Street activists see little progress on legislation dealing with global warming, while right-leaning Tea Party activists see little progress on simplifying the tax code.[4] According to Lessig, congresspersons being dependent on large donors affects the ability of Congress to govern, whether or not donations actually change the way members of Congress vote on measures. A poll conducted for the book showed that the American public is cynical about American politics: that 71% of Republicans and 81% of Democrats believed that "money buys results in Congress".[5] Lessig also points out Congress's low approval rating—11% as of the writing of the book (9% as of October 2011).[6] He suggested that the system encouraged congresspersons to take up less-than-important issues for the purpose of intimidating corporations to encourage them to become campaign contributors:

Our current tax system with all its complexities is in part designed to make it easier for candidates, in particular congressmen, to raise money to get back to congress ... All sorts of special exceptions which expire after a limited period of time are just a reason to pick up the phone and call somebody and say 'Your exception is about to expire, here's a good reason for you to help us fight to get it to extend.' And that gives them the opportunity to

**practice what is really a type of extortion – shaking the trees of money in the private sector into their campaign coffers so that they can run for congress again.**

—Lawrence Lessig, 2011[4]

**To obtain the money needed to get elected, incumbent politicians spend between 30 and 70 percent of their time extorting money from big businesses, who pay because they get between \$6 and \$220 (according to different studies) for each \$1 "invested" in lobbying and political campaigns.[7]**

## **Illogical decision-making**

**Lessig illustrates his principle by discussing four situations, which he calls "The Tells": the complex system of subsidies and tariffs that have led to the rise of corn-fed beef and high fructose corn syrup in the American diet, the regulations governing pollution and copyright infringement, the existence of tenure for public school teachers, and the lack of regulation in the derivatives market. For each of the Tells, Lessig identifies what could be an illogical choice made over years of Congressional decision-making, and ends with a statement similar to the following:**

**[Ask] yourself one question only:**

***Not:* Did the contributions and lobbying buy this apparently inconsistent result?**

***Instead:* Do the contributions and lobbying make it harder to believe that this is a principled or consistent or sensible result?[8]**

## **Lobbying**

**The middle chapters of the book describe in detail the system of lobbying in the United States, along with possible explanations of the effects of special interest money on legislation, concluding that lobbying creates a gift economy that changes the way laws are made, and affects what laws are passed.**

**Lessig refers repeatedly to Robert Kaiser's book *So Damn Much Money*, which also discusses lobbying in Congress. Kaiser is a journalist for the *Washington Post* who did a series of articles on lobbyist Gerald Cassidy.[9] Lessig quoted congressperson Jim Cooper who remarked that Congress had become a "Farm League for K Street" in the sense that congresspersons were focused on lucrative lobbying careers after Congress rather than on serving the public interest while serving.[10]**

**One almost trivial example relates to tax simplification: A large group of companies and individuals make money from helping their clients negotiate the complexity of the US income tax system—and would lose money if it were simpler. The Internal Revenue Service (IRS) gets most of the information needed to complete an income tax return for most citizens and could send taxpayers a draft return. Taxpayers could either accept the IRS bill as is, submit it with modifications (similar to how consumers challenge charges**

on a credit card they didn't make), or create a new one completely from scratch. Intuit, the developer of tax preparation software TurboTax, spent over \$1.7 million to kill a program like this in California (ReadyReturn).[11]

"Intuit has [also] lobbied hard to make sure taxpayers aren't allowed to e-file directly to the IRS," according to Martin Kaste reporting for NPR:

The IRS recommends that taxpayers file electronically — e-filing saves the government time and money, and is more accurate than IRS employees who type in the data from paper returns. But the IRS refuses to set up its own Web portal to receive the filings. Instead, most Americans have no choice but to e-file through private companies like Intuit (Turbo Tax) and HR Block (Tax Cut). In most cases, the companies charge an extra fee for e-filing. In other countries, free and direct electronic filing is a given. ... Steve Ryan, a lawyer for the tax-preparation industry who negotiated a deal that has the IRS promising not to set up its own Web portal for e-filing, says his argument was simple. "When the government becomes my competitor," Ryan says, "then I have every right to run an ad that says 'Big Brother is watching your keystrokes.'" [12] and actually reduces the cost to the government of processing the tax returns.

The direct cost of preparing and filing all business and personal tax returns is estimated to be \$100 to \$150 billion each year. The U.S. Government Accountability Office estimated in 2005 that the efficiency cost of the tax system—the output that is lost over and above the tax itself—is between \$240 billion and \$600 billion per year—between 1 and 5 percent of Gross domestic product (GDP) while federal taxes represented 16.8 percent of GDP. Thus, for every dollar collected in federal taxes, Americans spend between 6 and 30 cents additional for tax preparation and doing things that are otherwise contrary to their own and society's interests to reduce their tax burden. [13] The return on investment in lobbying and political campaigns has been estimated at between \$6 and \$220 (22,000 percent) in different studies cited by Lessig. [7] The returns to legitimate business opportunities are much smaller, which is why the money flowing into lobbying and political campaigns continues to increase.

For all the reasons cited above (and many more described in the book), Lessig concludes that, "corruption is the gateway problem: until we solve it, we won't solve any number of other critical problems facing this nation. [14]

## **Democracy Vouchers**

Lessig supports "Democracy Vouchers", which would return to each citizen the first \$50 in taxes each pays a Democracy Voucher worth \$50 that could only be contributed to candidate(s) or issue campaign(s). [15] The \$50 would be chosen to exceed the sum of all

money spent in the previous 2- or 4-year election cycle. Candidates and issue campaigns could get this money only if they agreed to accept only Democracy Vouchers and contributions capped at double this amount per individual or group contributor.[1] The current population of the United States is over 300 million. If half of those participated in this system, that's \$7.5 billion. "In 2010 the total amount raised and spent in all congressional elections was \$1.8 billion. The total amount contributed to the two major political parties was \$2.8 billion." [16] To put this in perspective, Lessig notes that "In 2009, the Cato Institute estimated that the U.S. Congress spent \$90 billion on 'corporate welfare.'" [17] If this system reduced corporate welfare by only 10 percent, it would more than cover the cost.

Lessig called this Democracy Voucher plan The Grant and Franklin Project, because Grant is on a \$50 bill, and Franklin is on a \$100 bill. This plan is similar to one proposed by Bruce Ackerman in 2003 called *Patriot Dollars* or voting with dollars.[1]

## Strategies for improvement

Lessig proposed four different approaches to getting real reform implemented:

1. Congress could pass a law reforming campaign funding;
2. A popular, non-politician "supercandidate" could run for the House of Representatives in multiple jurisdictions in the same state, promising to stay in the race until other candidates promise to reform their campaign funding procedures;
3. An elected president could prevent the government from functioning until Congress enacts campaign finance reform;
4. A Constitutional Convention could propose a Constitutional Amendment requiring campaign finance reform.

Of the approaches, Lessig suggested that the fourth strategy was the most probable to succeed. Lessig argued that a constitutional convention would get around debilitating Supreme Court decisions which allow virtually unrestricted campaign contributions under the banner of free speech.[3]

## A second Constitutional Convention

In that vein, along with Tea Party leader Mark Meckler, Lessig held the Conference on the Constitutional Convention at Harvard University on 24 September 2011.[18] His keynote address was an abbreviated version of the content in *Republic, Lost*, and he reiterated his support for a new Constitutional Convention to propose amendments which would reduce the influence of lobbyists.[2] Meckler did not support a Constitutional Convention in the end, claiming that the size and scope of the federal government was the true problem, rather than corporate influence.[19]

[ Also suggested is this video: <http://www.youtube.com/watch?v=AxCo2bE9Gtk> ]

## Notes

1. <sup>a b c d</sup> THOMAS B. EDSALL (December 14, 2011). "Putting Political Reform Right Into the Pockets of the Nation's Voters". *The New York Times*. Retrieved 2012-01-23.
2. <sup>a b</sup> JAMES WARREN of The Chicago News Cooperative (December 10, 2011). "Let's Do Something About Privilege, Donors, Corporations and the Constitution". *The New York Times*. Retrieved 2012-01-23.
3. <sup>a b c</sup> Margaret Carlson of Bloomberg News (December 26, 2011). "Book review: Harvard law professor Lawrence Lessig offers plan to smash culture of money in politics". *Chicago Tribune*. Retrieved 2012-01-23.
4. <sup>a b</sup> -Tom Ashbrook (January 2, 2012). "Lawrence Lessig on Money, Corruption and Politics". *90.9 wbur (Boston's NPR)*. Retrieved 2012-01-23.
5. <sup>a</sup> Lessig (2011, p. 88)
6. <sup>a</sup> "Congressional approval at all-time low of 9%, according to new CBS News/New York Times poll" . Retrieved 28 October 2011.
7. <sup>a b</sup> Lessig (2011, p. 117)
8. <sup>a</sup> Lessig (2011, p. 60)
9. <sup>a</sup> Robert G. Kaiser; Alice Crites (research contributor) (2007). "Citizen K Street: How lobbying became Washington's biggest business -- Big money creates a new capital city. As lobbying booms, Washington and politics are transformed.". *Washington Post*. Retrieved 2012-01-13.
10. <sup>a</sup> Lawrence Lessig (February 8, 2010). "How to Get Our Democracy Back". *CBS News, The Nation*. Retrieved 2011-12-14.
11. <sup>a</sup> Lessig (2011, p. 201) Halper, Evan (May 5, 2006). "Maker of Tax Software Opposes State Filing Help: The government's offer to fill out forms is a hit with poor and elderly, but not with Intuit". *Los Angeles Times*. Retrieved March 19, 2013.
12. <sup>a</sup> NPR - IRS Urges E-Filing — But by Vendors Only, Please
13. <sup>a</sup> Tax Policy: Summary of Estimates of the Costs of the Federal Tax System by the U.S. Government Accountability Office
14. <sup>a</sup> Lessig (2011, p. 175)
15. <sup>a</sup> Lessig (2011, ch. 16)
16. <sup>a</sup> Lessig (2011, p. 268)
17. <sup>a</sup> Lessig (2011, p. 269)
18. <sup>a</sup> "Conference on the Constitutional Convention". Retrieved 27 October 2011.
19. <sup>a</sup> "Harvard Confab Fails to Convince Tea Party To Seek Constitutional Convention". Retrieved 27 October 2011.