



REPUBLIC, LOST

How Money Corrupts Congress—and a Plan to Stop It



Lawrence Lessig

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Plan to Stop It*



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NEW YORK BOSTON

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Preface

“There is only one issue in this country,” former MSNBC commentator Cenk Uygur told Netroots Nation, in June 2011. “Campaign finance reform.”

For the vast majority of America, Uygur’s comment is obscure. For a small minority, it is obvious. This book was written for that vast majority, drawn from the insights of that small minority.

As I have struggled to craft it, I have become driven by the view that practically every important issue in American politics today is tied to this “one issue in this country,” and that we must find a way to show the connections. For both the Left and the Right, until this “one issue” gets fixed, there won’t be progress on a wide range of critically important public policy issues. Until it gets fixed, governance will remain stalled.

The challenge is to get America to see and then act. Again and again I have been told by friends, “If you’re going to do this, the story needs drama. There has to be good versus evil. You must tell story after story about venal corruption. Rod Blagojevich, Randy “Duke” Cunningham, Jack Abramoff—these are the figures who will rally America to respond.”

Maybe. But what if the problem is not Blagojevich? What if Washington is not filled with evil souls trying to steal from the republic? What if the absolutely debilitating corruption that we face is a corruption caused by decent souls, not crooks? Could America rally to respond then? Can we get angry enough about small but systemic distortions that block the ability of democracy to work, if those

distortions are the product of good people working in a corrupted system?

I am unsure. As I have worked over the past four years to understand this problem, I have become convinced that while a corruption of Congress is destroying the republic, that corruption is not the product of evil. There is great harm here, but no bin Laden. There are Jack Abramoffs and Duke Cunninghams, to be sure, but they are the exception, not the rule. And without great evil, I am not yet sure that we can muster the will to fight. We will, I fear, simply tolerate the corruption, as a host tolerates a parasite that is not life threatening. Until it is.

Yet I write with hope. If we understand the nature of this corruption, its solution will be 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.

But to build it will require a different kind of learning. This is not an academic book. I do not mean to enter an academic debate. It instead builds upon the insights of academics to address a different debate entirely: a political debate, within the domain of activists, that has been raging in parallel for almost a half century.

Each side in this debate talks past the other. The academic seeks a truth, but that truth is too often too obscure for citizens to grok. The activist seeks to motivate, but with stories that are too often too crude, or extreme. The activist is right that the problem is bad—indeed, worse than his focus on individual corruption suggests. But the academic is right that if the problem is bad, it is not bad because our government has returned to the *Gilded Age*. We are better than they were, even if the consequences of our corruption are much worse. For this is the paradox at the core of my argument: that even without sinning, we can do much more harm than the sinner.

This work takes me far from my earlier writing, though the hint of this book was clear in *Remix* (2008). I was driven to this shift when I became convinced that the questions I was addressing in the fields of copyright and Internet policy depended upon resolving

the policy questions—the corruption—that I address here. I thus left copyright and Internet policy, and began a process to learn as much as I could about a vast and largely undefined field. That work has brought me back to Harvard, where I am now the director of the Edmond J. Safra Center for Ethics, and where I direct a five-year research project studying this “institutional corruption” generally. It has also pushed me to help forge a multipartisan political movement (described in the Appendix) to demonstrate the need, for the objectives of both the Right and the Left, for this fundamental reform.

Because such is the practice this reform will need: the willingness to move between the two very different worlds of the academic and the activist. I am not yet convinced that such a practice can work. I am certain it will evoke sharp criticism from the purists in each world. But if above that din, there are citizens who can glimpse a path to reform, that criticism is a small price to pay.

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Introduction

There is a feeling today among too many Americans that we might not make it. Not that the end is near, or that doom is around the corner, but that a distinctly American feeling of inevitability, of greatness—culturally, economically, politically—is gone. That we have become Britain. Or Rome. Or Greece. A generation ago Ronald Reagan rallied the nation to deny a similar charge: Jimmy Carter’s worry that our nation had fallen into a state of “malaise.” I was one of those so rallied, and I still believe that Reagan was right. But the feeling I am talking about today is different: not that we, *as a people*, have lost anything of our potential, but that we, *as a republic*, have. That our capacity for governing—the product, in part, of a Constitution we have revered for more than two centuries—has come to an end. That the thing that we were once most proud of—this, our republic—is the one thing that we have all learned to ignore. Government is an embarrassment. It has lost the capacity to make the most essential decisions. And slowly it begins to dawn upon us: a ship that can’t be steered is a ship that will sink.

We didn’t always feel this way. There were times when we were genuinely proud—as a people, *and* as a republic—and when we proudly boasted to the world about the Framers’ (flawed but still) ingenious design. No doubt, we still speak of the founding with reverence. But we seem to miss that the mess that is our government today grew out of the genius that the Framers crafted two centuries ago. That, however much we condemn what government has become, we forget it is the heir to something we still believe divine. We inherited an extraordinary estate. On our watch, we have let it fall to ruin.

The clue that something is very wrong is the endless list of troubles that sit on our collective plate but that never get resolved:

bloated and inefficient bureaucracies; an invisible climate policy; a tax code that would embarrass Dickens; health care policies that have little to do with health; regulations designed to protect inefficiency; environmental policies that exempt the producers of the greatest environmental harms; food that is too expensive (since protected); food that is unsafe (since unregulated); a financial system that has already caused great harm, has been left unreformed, and is primed and certain to cause great harm again.

The problems are many. Too many. Our eyes get fixed upon one among them, and our passions get devoted to fixing that one. In that focus, however, we fail to see the thread that ties them all together.

We are, to steal from Thoreau, the “thousand[s] hacking at the branches of evil,” with “[n]one striking at the root.”

This book names that root. It aims to inspire “rootstrikers.” The root—not the single cause of everything that ails us, not the one reform that would make democracy hum, but instead, the root, the thing that feeds the other ills, and the thing that we must kill first. The cure that would be generative—the single, if impossibly difficult, intervention that would give us the chance to repair the rest.

For we have no choice but to try to repair the rest. Republicans and Democrats alike insist we are on a collision course with history. Our government has made fiscal promises it cannot keep. Yet we ignore them. Our planet spins furiously to a radically changed climate, certain to impose catastrophic costs on a huge portion of the world’s population. We ignore this, too. Everything our government touches—from health care to Social Security to the monopoly rights we call patents and copyright—it poisons. Yet our leaders seem oblivious to the thought that there’s anything that needs fixing. They preen about, ignoring the elephant in the room. They act as if Ben Franklin would be proud.

Ben Franklin would weep. The republic that he helped birth is lost. The 89 percent of Americans who have no confidence in Congress (as reported by the latest Gallup poll)¹ are not idiots. They are not even wrong. Yet they fail to recognize just why this government

doesn't deserve our confidence. Most of us get distracted. Most of us ignore the root.

We were here at least once before.

One hundred years ago America had an extraordinary political choice. The election of 1912 gave voters an unprecedented range of candidates for president of the United States.

On the far Right was the "stand pat," first-term Republican William Howard Taft, who had served as Teddy Roosevelt's secretary of war, but who had not carried forward the revolution on the Right that Roosevelt thought he had started.

On the far Left was the most successful socialist candidate for president in American history, Eugene Debs, who had run for president twice before, and who would run again, from prison, in 1920 and win the largest popular vote that any socialist has ever received in a national American election.

In the middle were two "Progressives": the immensely popular former president Teddy Roosevelt, who had imposed upon himself a two-term limit, but then found the ideals of reform that he had launched languishing within the Republican Party; and New Jersey's governor and former Princeton University president Woodrow Wilson, who promised the political machine-bound Democratic Party the kind of reform that Roosevelt had begun within the Republican Party.

These two self-described Progressives were very different. Roosevelt was a big-government reformer. Wilson, at least before the First World War, was a small-government, pro-federalist reformer. Each saw the same overwhelming threat to America's democracy—the capture of government by powerful special interests—even if each envisioned a very different remedy for that capture. Roosevelt wanted a government large enough to match the concentrated economic power that was then growing in America; Wilson, following Louis Brandeis, wanted stronger laws limiting the size of the concentrated economic power then growing in America.

Presidential reelection campaigns are not supposed to be

bloody political battles. But Taft had proven himself to be a particularly inept politician (he was later a much better chief justice of the Supreme Court), and after Roosevelt's term ended, business interests had reasserted their dominant control of the Republican Party. Yet even though dissent was growing across the political spectrum, few seemed to doubt that the president would be reelected. Certainly Roosevelt felt certain enough of that to delay any suggestion that he would enter the race to challenge his own hand-picked successor.

A Wisconsin Republican changed all that. In January 1911, Senator Robert La Follette and his followers launched the National Progressive Republican League. Soon after, La Follette announced his own campaign for the presidency. Declaring that "popular government in America has been thwarted . . . by the special interests," the League advocated five core reforms, all of which attacked problems of process, not substance. The first four demanded changes to strengthen popular control of government (the election of senators, direct primaries, direct election of delegates to presidential conventions, and the spread of the state initiative process). The last reform demanded "a thoroughgoing corrupt practices act."

La Follette's campaign initially drew excitement and important support. It faltered, however, when he seemed to suffer a mental breakdown during a speech at a press dinner in Philadelphia. But the campaign outed, and increasingly embarrassed, the "stand pat" Republicans. As Roosevelt would charge in April 1912:

The Republican party is now facing a great crisis. It is to decide whether it will be, as in the days of Lincoln, the party of the plain people, the party of progress, the party of social and industrial justice; or whether it will be the party of privilege and of special interests, the heir to those who were Lincoln's most bitter opponents, the party that represents the great interests within and without Wall Street which desire through their control over the servants of the public to be kept immune from punishment when they do wrong and to be given privileges to which they are not entitled.²