

CARNEGIE COUNCIL *for Ethics in International Affairs*

Money and American Politics: A Conversation with Lawrence Lessig

Ethics Matter, Global Ethics Forum TV Series

Lawrence Lessig, James Traub

Transcript

Introduction

JAMES TRAUB: Good evening. I'm James Traub and welcome to Ethics Matter.

We're very fortunate to have as our guest this evening Professor Lawrence Lessig, who is the Roy L. Furman Professor of Law and Leadership at Harvard, the [author](#) of innumerable books and, above all, a tireless activist who's waged a series of really titanic and sometimes quixotic campaigns on a wide range of issues; first, Internet freedom and intellectual property and, in recent years, the corrupting influence of money in politics.

Thank you so much for coming here this evening.

LAWRENCE LESSIG: Glad to be here.

Discussion

JAMES TRAUB: I wanted to ask you first something about your own background, because while I know there are many legal scholars who are also activists the way you are, you have thrown yourself into causes in a really profound way, in a way I think that's unusual. Where does that ferocity and commitment come from?

LAWRENCE LESSIG: I guess the first cause that qualifies as something I threw myself into was around copyright policy, kind of a weird esoteric question, but my early work around the Internet and Internet policy quickly focused on the way copyright policy was developing. I felt that lawyers were doing great damage in this space, and worse, it was hard to kind of be the lawyer speaking on the other side of this issue. There was a big push in Hollywood and a big push among lawyers to increase, substantially, copyright in the context of the Internet and very few on the other side.

It felt to me, it was like a lawyer with a guilty conscience. I looked at this and felt there was something deeply wrong with the mismatch in this argument. It was presented as if it was obvious that we ought to be regulating every single use of every bit of content everywhere—then if you dissented from that, you are an obvious criminal. That was completely inconsistent with the tradition and principles that IP [intellectual property] law brought.

So I felt almost insulted and that launched me into that and I took a case to the court and then launched this project, [Creative Commons](#), as an outgrowth of that.

JAMES TRAUB: I've read that, as a kid, you were a Republican and you're of an age where you would've gone to college in the [Reagan era](#)—your late college years would have been the early Reagan era. Was there some conversion experience you had that launched you in a different direction?

LAWRENCE LESSIG: You think there's a conversion experience because I would be skeptical about IP? Is that the point?

JAMES TRAUB: No, I don't mean about intellectual property. I mean sort of more broadly than that.

LAWRENCE LESSIG: So there was a conversion experience. Indeed, I was the youngest member of a delegation in the [1980 Republican Convention](#) voting for Ronald Reagan as the nominee. So, yes, there was a conversion.

Actually the elements of the conversion are harder to track because I was a libertarian and I still think of myself, in an important sense, as a libertarian, but just more aware of the cultural, structural, societal support that liberty requires and the incredibly important role that equality has within a society. Those are the blinders that a libertarian typically doesn't remove—

JAMES TRAUB: Equality is not the libertarian word, after all.

LAWRENCE LESSIG: Right, right, right. But to the extent you're talking about the opportunity for people to flourish using liberty that's equally provided to all, the conditions within which that happens become important. That was the element of the conversion.

I love issues where I feel like people on the left and the right ought to agree about it. So when we took the [challenge](#) to the [Sonny Bono Copyright Term Extension Act](#) to the Supreme Court, a statute that extended the term of existing copyrights by 20 years, there was an economist brief signed by thirteen economists, including five Nobel Prize winners, including [Milton Friedman](#), libertarian, Nobel Prize winner. He said he would only sign the brief if the word "no-brainer" was somewhere in the brief, so obvious was it, that you didn't advance the public good by extending the term of existing copyrights.

I think the current work I'm doing about corruption is similarly cross-partisan in a sense. I kind of find boring, issues that feel just partisan, even though I feel, as a partisan, I believe in issues very strongly on my side. It just doesn't feel like it's an interesting battle to be talking—

JAMES TRAUB: I take it that when you were doing Internet freedom issues—or maybe this is wrong, so tell me—that isn't seen as having an overly partisan cast. Campaign finance reform has been associated with the Democrats, so that, unlike the commitments you had before, rightly or wrongly, is seen as a partisan issue.

LAWRENCE LESSIG: I got into teaching, thinking about the Internet, precisely because it was a space where nobody knew their politics. That's what made it interesting.

There was a great piece by [Julian Dibbell](#) in *The Village Voice* in 1993 called "[A Rape in Cyberspace](#)." It was a story of this—it was then called a MUD [multi-user dimension], which was this text-based virtual world and text-based assaults on a woman using this voodoo doll in cyberspace. It was this astonishing thing of reading *The Village Voice* talking about how words could cause harm at a context when *The Village Voice* was attacking [Catharine MacKinnon](#), who was making exactly the same points about words in real space.

So I thought—

JAMES TRAUB: [Nat Hentoff](#) would never have stood for that.

LAWRENCE LESSIG: Yes, of course!

So I was thinking, "Wow, this a place where nobody knows what their politics is. What more interesting space could there be to teach?" That's why I wanted to be in that space originally, because it was like an opportunity to get people to think rather than just to react to their political prejudice.

Now, you say campaign finance reform is associated with Democrats. Maybe, but I care about corruption reform. I mean, campaign finance reform sounds like describing an alcoholic as someone with a liquid intake problem. [Laughter]

JAMES TRAUB: You're right.

LAWRENCE LESSIG: That's not the problem.

JAMES TRAUB: It's a bloodless term.

LAWRENCE LESSIG: Yes.

Frame it as corruption and now it's perfectly cross-partisan. Outside-the-Beltway Republicans are as animated and furious about a system of government, which is sold to the highest bidder, as any Democrat is.

JAMES TRAUB: I do want to mostly focus this but I want to ask you a little bit more about the Internet issues.

So when you think back to that very long, important part of your life—and, obviously, that serves in many ways, I'm sure, as kind of a template for what you're seeking to accomplish now—what would you say you were able to succeed in changing and what were the lessons you learned about how to promote the kind of broad-scale change you're seeking?

LAWRENCE LESSIG: Well, I'm not going to claim credit but there have been—

JAMES TRAUB: You and others?

LAWRENCE LESSIG: Yes.

There's been substantial change and awareness and recognition in the context of the Internet around the issues that I cared about. So when I started doing the issues around intellectual property, most people were like, "Why would it make sense for [Mickey Mouse's](#) copyright to expire? Why would that make sense? Shouldn't it be Disney's forever?" I mean, this was kind of the intuitive—and in the very beginning of the Internet time, IP copyright was a kind of beloved form of regulation. It was about protecting artists. That's the way it was framed. I think the combination of the terribly played war that the copyright industries waged on the Internet and the efforts of groups like [Electronic Frontier Foundation](#) and what Creative Commons began to do, began to raise awareness about the connection between regulating heavily in that context and basic ideas of freedom.

So when there was that massive [protest](#) that stopped Congress from passing the [SOPA/PIPA](#) bill

[Stop Online Piracy Act/PROTECT IP Act], which was the latest effort to regulate "Internet piracy," that was an astonishing demonstration of power, totally unexpected in Washington—

JAMES TRAUB: You also had big institutions on your side. That's when the divided—one set of behemoths against another one.

LAWRENCE LESSIG: No, but the point is that those institutions jumped in at the end. They jumped in after, literally, 18 months of work, led by my friend [Aaron Swartz](#), to rally different organizations, liberal organizations and conservative organizations, to get the base to recognize the way in which this is an attack on freedom on the Internet. The very opportunity to do that was created, I think, by 10 or 15 years of pressing this issue in 1,000 different contexts.

So what I learned from that was the Internet has a certain way of learning. It isn't broadcast learning. It's not like we're all going to sit down and watch two hours of a television show to understand something. It's Twitter-like learning. It's like small bits repeated over and over again in 1,000 different contexts and slowly people work out what the truth is. That strategy, I think, is the strategy you have to learn how to do something with.

After the SOPA/PIPA fight, which, let's remember, two weeks before that vote, [Chris Dodd](#) reported that he had enough signatures in the Senate to guarantee that thing would pass. When the Internet went dark, nobody thought there was any threat to that. Within 24 hours, that had completely flipped.

That dynamic was produced by this recognition of being able to be summoned and put to use. Many people thought that we had built it like kind of the "red button." We just had to push the red button on any issue and the Internet would rise up. Of course, it turns out it's much harder than that. There's issue after issue after that where people tried to rally the same thing from the Internet and it doesn't quite respond like this. So it's a complicated and hard space to understand how to navigate, but I think it—

JAMES TRAUB: By the way, so copyright law, where is that now? Was that something that was a success or failure or what?

LAWRENCE LESSIG: Oh, I think it's an enormous failure in the context of the public awareness.

In the context of the Internet, this is the one issue you know you can rally hundreds of thousands people to do something about overnight. It continues to manifest itself in the fight against [TPP](#) [Trans-Pacific Partnership] and all sorts of international agreements that are pushing this issue. I would say that 15 years ago, nobody would expect this kind of level of popular support resisting that and that's been produced by these different fights.

It's also been incredibly successful in the courts. The courts were originally just as extreme as Congress was, never finding fair use in any of these contexts, viewing this as a very simple black and white, should there be property or not. But the courts have evolved in a really dramatic way. Even here in the Second Circuit, the courts have evolved in a really dramatic way. That, too, I think is just the product of building this cultural awareness, which the Internet has been central to.

Now, Congress is just as bad as it ever was. They can be stopped like they were in SOPA/PIPA but this access of the Democratic Party and Hollywood makes it impossible for political branches to actually step up and do something sensible.

JAMES TRAUB: Was that the insight that made you think the bigger issue here is not the thing I'm

working on now but this question of money and politics?

LAWRENCE LESSIG: Yes. What literally made me take it up was, again, my friend, Aaron, who came to me eight years ago, just as I was finishing the last [book](#) I wrote on a copyright [*See Lessig's Carnegie Council 2008 talk on this book*] and said to me—I was very proud of this [TED talk](#) I was about to give, the first TED talk I was about to give. I showed him what I was doing and he said to me, "How do you expect you're ever going to make progress on these issues so long as we have this corrupt system of government?"

I was a little miffed he wasn't excited about my TED talk—

JAMES TRAUB: He was also probably 19 years old or something.

LAWRENCE LESSIG: Twelve or something like that. [Laughter]

I said, "Yeah, but, Aaron, it's not my field." And he said, "Okay, as an academic, it's not your field?" And I said, "Yeah, as an academic, it's not my field." And he said, "Okay, but what about as a citizen? Is it your field as a citizen?"

There are very few moments in one's life where you can just think, "There it is." That's the moment when it was impossible for me to look at him and give a straight answer other than, "You're right."

JAMES TRAUB: What an extraordinary person he must have been.

LAWRENCE LESSIG: Yeah, I mean, that's obvious.

So from that moment on, that's when I started working on this and he was a collaborator in this first step. He and I started this group called [Change Congress](#), which was the first iteration of this.

But it was recognizing that it's not just esoteric questions like copyrights or Internet policy. It was climate change legislation. It was every single important issue. Once you begin to connect the dots, paranoia takes over. [Laughter]

JAMES TRAUB: Also, the thing you were doing before was a set—or so it would seem to me—of very important discrete issues, whereas now this feels like democracy is endangered by this and if you don't solve this, then all those issues are going to flounder.

LAWRENCE LESSIG: That's exactly right and it's that recognition, which is both empowering and debilitating, because once you see that, you can say, "Okay, that's the reason to jump." Or you can say, "That's the reason just to give up and go home."

JAMES TRAUB: Also, some things look like self-perpetuating machines and so that's why they spawn such bad stuff and that's why people don't bother to ever try to change them because they feel like the system is structured in such a way as to make it impossible to change the system. That's the feeling about money in politics. Is that unduly despairing?

LAWRENCE LESSIG: That certainly is the feeling but, remember, the Soviet Union in 1987 looked like a system that was destined never to change, right? This system, too, I think people are not sufficiently sensitive to how dramatically it's changed in the past 20 years.

Twenty years ago or thirty years ago, it still was possible to get something done. There's a story [Mike Lux](#) tells about the [Clinton administration](#) and one of the first fights they had in the Clinton

administration was whether they should pursue campaign finance reform, as they called it back then, or health care reform. They chose to go with health care reform and I'm not sure it was the wrong decision, because in 1993, the system still kind of worked. You could still do things.

Today, that's completely wrong and the idea that you would not recognize, as a president, that we've got to fix this issue if you're going to get anything, seems to me a measure of whether you have any sense of what's possible in politics at all.

That's a relatively short period of time, a radical change in the very existence of being a Congressperson. You talk to people like [Jim Cooper](#), who went to Congress first in 1983. Cooper said to me, "The thing you've got to understand about Congress is that Congress has become, Capitol Hill has become, a kind of farm league for K Street." K Street is where the lobbyists work or used to work—it's now too expensive for them to be on K Street.

The point he was making is that everybody has this business model and it's a business model focused on their life after government, their life as lobbyists. Fifty percent of Congress now goes to become lobbyists. United Republic [calculated](#) the salary increase for the members they tracked was 1,452 percent. So—

JAMES TRAUB: So whatever indignities you have to put up with as a Congressman are worth it for that 14-fold increase you'll get after you're done with the indignities.

LAWRENCE LESSIG: Exactly right.

So this is a change within the last 15 years and as this changes and as the system stalls and is incapable of doing anything, it becomes more and more like the Soviet Union of 1987. What are you going to do? Something's got to happen here or something's going to break.

JAMES TRAUB: You look at other Western democracies, a lot of them—we were talking about India, you and I, before. India has a huge problem with money corrupting the system. That's India. It's not Germany, Switzerland, France. Why does the United States have this disease so much more virulently than anybody seems to?

LAWRENCE LESSIG: The United States, for good or for ill, embraced the idea of privately funding campaigns. This is the core problem. What we've done is we've outsourced, now, the funding of campaigns to the tiniest fraction of the 1 percent. The estimate for my book is something like .05 percent of Americans give enough money to be the relevant funders so that anybody cares about what they think. So that's about—

JAMES TRAUB: Even the 1 percent is too broad a category to be meaningful.

LAWRENCE LESSIG: That's 150,000 Americans. It's about the same number of people as are named Lester in the United States. [Laughter] So this is why, in my [TED talk](#), I talk about United States as Lesterland. That's where we live, this place with this tiny fraction of the 1 percent, who exercise this incredible dominance and that number is falling. That number is going down.

Today, there's this [spending bill](#) that they've agreed to and part of that spending bill is a radical increase in the maximum contribution that's going to be permitted to help parties. We're going to reduce the number of relevant funders, so it's this tiny, tiny, tiny fraction. When you look at it like that and you think about, for example, Hong Kong—what happened in [Hong Kong](#)?

Students were told that there was going to be a democracy where, first, a [committee](#) of 1,200 would decide who were the candidates who got to run in the general election and then everybody in Hong Kong could vote on those candidates. The students in Hong Kong said, "Wait, wait, this isn't a democracy,"—.024 percent of Hong Kong were going to pick the candidates that the rest of Hong Kong got to vote for and they went to the streets and they shut down that city. First, the kids, literally—there were elementary school students sitting in the streets and then their parents felt guilty that the kids were doing all the work so they turned up, too. That was the protest, this protest on the basis of this purely process issue.

You look at the United States and you think, "What's the difference between what they were protesting about and what we have?" Because we, too, have this two-stage democracy, where the first stage, a tiny, tiny fraction of the 1 percent get to pick the candidates who get to run in the second stage. They pick the candidates by funding their campaigns. That's as much a qualification as any kind of primary would be. Now we have what we could call the "green primary" in the United States where 99.95 percent of Americans are excluded from playing in the green primary.

JAMES TRAUB: Wait, so if that's true, why are Americans not waving their pitchforks? Americans aren't behaving remotely like the people of Hong Kong. They appear not to accept that otherwise-persuasive sounding analogy. Why's that?

LAWRENCE LESSIG: Well, part of it is because I think most Americans don't think there's anything you can do about this problem. We did a poll last year and we found 96 percent of Americans said it was important to reduce the influence of money in politics but 91 percent said it wasn't possible.

It's like Egypt under [Mubarak](#). Everybody wanted to get rid of Mubarak but nobody thought it was possible so you just went on with your life. What else were you going to do? That's the same sort of thing here and the Hong Kong kids have not yet learned that that's just the nature of modern democracy.

I call this Tweedism. [Boss Tweed](#), Cherry Street philosopher, used to say, "I don't care who does the electing as long as I get to do the nominating." [Laughter] That's what the Chinese government were trying to do with the government in Hong Kong. That's what our system does, too. The tiniest fraction of the 1 percent nominates by funding the campaigns, which then we get to pick. So it's something which we've just come to take for granted and don't think there's anything we can do about it and they haven't yet learned this is the nature of modern democracy.

JAMES TRAUB: You spent the last six years, in part, trying to get people to see and trying to dramatize this very fact that you're describing and you've had a whole range of things, involving trying to seek pledges from Congressmen, trying to get donors to stop giving money. Has your experience, to date, shown you that there is a much deeper sense of public outrage over this or the opposite?

LAWRENCE LESSIG: The first chunk of my work on this was quintessential academic in the sense that I was trying to prove—maybe lawyer academic—I was trying to prove that there was a problem here. My book *Republic, Lost* is all about how to see this problem so that you really get that it's a problem.

There are people out there who say, like [Bradley Smith](#), the former chairman of the Federal Elections Commission, that money doesn't matter to legislative policy, doesn't matter in the system, so that this concern that we talk about is totally not a concern. So the first part of my work was about trying to prove.

Then after Aaron Swartz killed himself, for [reasons](#) unrelated to this—but this moment was, for me, an incredible trauma. I wanted to shift the way in which I was working on this: "I'm going to become much more direct." On the anniversary of his death last January, we started this insane [march](#) across New Hampshire.

New Hampshire's an important state for a lot of reasons. Obviously, it's a presidential primary state. It's a state where people are very sensitive to this issue. [John McCain](#) won the state in 2000, in part, because he was talking about the corruption of the system.

It also has a link to this amazing woman named [Doris Haddock](#), "Granny D." So Granny D, in 1999, at the age of 88, started a walk from Los Angeles to Washington, DC with a sign on her chest that said "campaign finance reform"—still the wrong words but, okay, that was her cause. It took her 13 months. She arrived at the age of 90 in Washington, DC. Of course, there were a whole bunch of Congressmen walking with her at the very end. They'd gotten in their cars and driven out to meet her one mile before. [Laughter] She's a kind of public figure in New Hampshire.

So we put these things together. We said, "We're going to do a march in New Hampshire. We can't do across the country the way Granny D did, but across New Hampshire in January—that sounds nice."

So we started on the anniversary Aaron died. We ended on the anniversary of Granny D's birth. We walked 190 miles from the Dixville Notch, which was where the primary happens, down to Nashua.

That experience, more than anything, convinced me that the need to prove this was just incredibly naïve—everybody gets it. Everybody feels it. We had people screaming and running out of their house, chanting us on, because they are so frustrated and angry with this point that it's not about like proving the money connects. It's not about statistical proofs. It's about giving them a sense there's something you can do about it. It's not proving there's a problem. It's proving there's a solution.

That was the event that has shifted my thinking about what we need to do here, to create the possibility that—not just hope in the sense that there's something to fight for but optimism that there's something we can actually do that could begin to unleash this type of passion, energy.

JAMES TRAUB: It's a very kind of [Gandhian experience](#) to—

LAWRENCE LESSIG: A bit colder than Ghandi . . .

JAMES TRAUB: He said it was very hot when he did it.

LAWRENCE LESSIG: That's true.

JAMES TRAUB: But that was a very intensely personal thing for you to have done.

LAWRENCE LESSIG: Yes, it was.

I kind of thought of it when I started it on the anniversary of Aaron's death as I wanted to feel physically as miserable as I had been—

JAMES TRAUB: Yes it feels kind of penitential.

LAWRENCE LESSIG: —psychologically since his death. There were many people who came up to walk on that day just for that purpose. And the weather was perfect. It was torrential freezing rain, so

we were totally soaked by the end of the day.

JAMES TRAUB: Did your colleagues at Harvard think you were nuts?

LAWRENCE LESSIG: Yeah, of course, they do. [Laughter]

JAMES TRAUB: And maybe still do?

LAWRENCE LESSIG: Yes, even more so.

JAMES TRAUB: So that's part of the price you're happy to pay is—

LAWRENCE LESSIG: I wouldn't say "happy." I'm not, dispositionally, the sort of person who likes to be the crazy person in the room. I really don't.

JAMES TRAUB: So there is a kind of reputational price, because instead of sitting there writing law review articles like your colleagues are, you're out here talking to us and out there in New Hampshire talking to people and that's not what a great legal scholar does.

LAWRENCE LESSIG: Right. I felt this in a lot of ways. I mean, I've got three young kids. I feel it in that way. I've got like what a normal professor does. I feel it in that way.

JAMES TRAUB: You thought of running for office at one point, which is also not a thing that Harvard law professors—or at that time, maybe you were a Stanford law professor . . .

LAWRENCE LESSIG: Yes, when I first started doing this work, people launched a kind of "Draft Lessig" campaign. They raised a bunch of money trying to get me to think about running. My Congressman had just died, [Tom Lantos](#), who was a guy who had served forever and was a real kind of picture of what a public servant could be.

So I agreed to consider running and [Joe Trippi](#), who ran [Howard Dean's campaign](#), flew in, appeared on my doorstep, and said, "I'll run your campaign." So I said, "Well, let's talk about it." He said, "But you need to promise me that every day between today and the day you announce your retirement from politics, you're going to be willing to get on the telephone for two to four hours and call people and ask for money."

I said, "Joe, no. I could just email people and ask them." He said, "No, you've got to call them." And I said, "Well, that makes this very easy because I just psychologically could not do that." And then I thought, "Well, who are the people who can do that? What is that person like?"

JAMES TRAUB: What are we selecting out for, in effect?

LAWRENCE LESSIG: Yeah, exactly right.

I was on a [panel](#) yesterday at New America with [Zephyr Teachout](#), of course, local hero who ran in the [primary](#) against Governor [Cuomo](#) on a corruption campaign issue. She described it like this, which I think is really insightful and powerful: "The system bleeds leadership out of our politicians because if you spend two to four hours a day on telephone, sucking up to people of power, begging them for your money, how can you become the kind of person who will be a political leader?"

So we filtered out the people whose self-respect or ego—you tell me what it is—is too great to be able to do that for the people who are happy to do that and those people are precisely not the people

we need to be leaders in a time when we're facing really critical problems.

Now, if you are deeply conspiratorial—I'm not, but if you were—you would say, "Oh, perfect."

JAMES TRAUB: That's how they do it.

LAWRENCE LESSIG: That's how they do it to make sure that those who have power are not resisted by those who are supposed to have power, like our democratically elected representatives. But that turns out to be the way it is.

JAMES TRAUB: So to go into this question of people's sense of hopelessness about it, you tried, in this last campaign cycle, a completely new, original, insane way of addressing this, which was you created this PAC [political action committee], [Mayday](#), which raised \$10 million in order to support candidates who would commit themselves to change. And it failed.

A couple of questions—one is why were you, it turned out, really over-optimistic about what would happen? And what are the lessons you take from that failure?

LAWRENCE LESSIG: We ran in eight races and two of our [candidates won](#). Only one of them was a really contested race. So from the standpoint of, "Did we elect our candidates?", we failed.

But this project was actually a continuation of something [Jonathan Soros](#) had started in 2012. Jonathan Soros, in 2012, started something called [Friends of Democracy](#), a Super PAC, which was in eight races and seven of his eight races won. The races he was in, it was not clear to anybody that they were winning because they took this issue on. They were relatively close. They spent a relatively small amount of money. So the skeptics who say, "Nobody cares about this issue," looked at that and said, "It doesn't prove anything."

So what we thought we had to do was to take on much bigger bets. At the time we decided to do this, it didn't seem like there was going to be the [tsunami](#) of partisan hatred towards the [president](#) that it turned out that there was. So it didn't seem like insane bets. This isn't my judgment. This is judgment of political people with whom we sat down and they picked the races.

We had to make bigger bets because we needed to take on and win in a big way to dislodge this assumption that people don't care about this issue. We didn't do that. We failed in doing that. So the skeptics are still just as skeptical. The articles that were written afterwards—even before the data came back to show whether in fact people cared about this issue, they announced this was a zero issue. Nobody cares about this issue at all.

We just released a big report yesterday with all the polling data that we had done. We released all the raw polls, so people can do their own analysis, as well.

What we can show in this is that, indeed, though the tsunami wipes out any of the contested Democratic candidates that we're doing, we moved people on the basis of this issue. And this issue, the collection of the ways to think about this issue, is among the most important issues people identify as the reasons that they vote. It's just when you step it up against the partisan question, they're not willing to give up their partisan loyalty even for an issue that's important.

JAMES TRAUB: You think this race was aberrational enough that in a different race, it won't be like that? There'll be a different scale of priorities?

LAWRENCE LESSIG: No, no, I would say something different.

What I think we learned is we need to fight this issue in a context where we don't also have to fight the partisan issue. It's completely possible for us because, for example, we can show in our data that in safe primary races between two candidates, one who cares about this issue and one who doesn't, this issue will be a big advantage for the candidate in safe primary seats, both Republican and Democrat. This means that the place to be making this fight is not where we need to say to somebody, "Vote against your team for someone who wants to clean up the system." We can say, "Vote for your team. Your team's going to win. Don't worry about your team but let's have a team you are happy to be supporting because they are going to try to clean up the system, too."

JAMES TRAUB: Does that mean the [primaries](#), in some ways, are a better place to do this?

LAWRENCE LESSIG: Much better place to do this. And safe primaries.

So in 2016, there are 22 Republican senate seats up and the vast majority of them are safe. It's a perfect place to begin to talk about raising the salience of this issue in a way that either gets some of those Republicans to be focused on this issue or encourages other Republicans to step up and do something about it.

JAMES TRAUB: So you and I talked about something upstairs that I'd like you to talk about now. The issue is so often pitched as "we need to regulate this free market activity and stop plutocrats from doing bad stuff." Everybody knows it's a liberal Democratic issue against a conservative Republican vision and you were talking about the fact that there's a very different way of understanding and framing this issue.

LAWRENCE LESSIG: Yes. I think, unfortunately, we, liberals, are very good at shooting—

JAMES TRAUB: You said liberals. You're not saying libertarian?

LAWRENCE LESSIG: Yes, I'm a liberal. That's fine.

JAMES TRAUB: Okay.

LAWRENCE LESSIG: We're very good at shooting ourselves in the feet on many issues, but this one, too. Because we talk about this issue in ways that are guaranteed to alienate 50 percent or 60 percent of America, depending on where you are.

So if the problem is, as I've described it, that we have concentrated the funding of campaigns in a tiny, tiny fraction of 1 percent; the solution is to break that concentration up to decentralize funding of campaigns. Well, when you start talking about decentralization of power, [Hayek](#) gets excited in his grave. Libertarians get excited. It's about, yes, the problem is concentrated power.

Conservatives, too, ought to be skeptical of concentrated power and if all we're talking about is making it possible for more people to participate in the funding of campaigns and not worried about silencing people you don't like—

JAMES TRAUB: So you can do this without having to pass very sharp restrictions on the ability of Super PACs, for example, to operate?

LAWRENCE LESSIG: You can and should and the first thing we must do is to change the way campaigns are funded. That's something we can do with a statute. If we get the right statute passed, whether it's the matching fund proposal, which is modeled in some sense off of the New York City campaign finance proposal or a voucher proposal, which is what Republicans push, the idea of

giving everybody a voucher, which they can use to fund campaigns; either of those, if done right, would radically change the influence that this tiny, tiny fraction of 1 percent have in our system.

In addition to that, I also believe we are going to have to deal with the problem of Super PACs. I actually don't think we have to worry about *Citizens United*. Those are two different issues. *Citizens United* is the case that says corporations get to spend unlimited amounts of money and unions get to spend unlimited amounts of money. As long as—

JAMES TRAUB: They are people, too, and they have the speech rights.

LAWRENCE LESSIG: That's not what the Court said. That's how people explained it.

JAMES TRAUB: Ah, okay.

LAWRENCE LESSIG: They get to spend unlimited amounts of money and, therefore, the fear we had—I was one of these people who had this fear—was that these corporations were going to spend billions in elections and kind of sweep the field. That decision led the DC Circuit to make one step further to [say](#) that if you could spend unlimited amounts of money, you should be allowed to give unlimited amounts of money to independent political action committees. That's what created the Super PAC.

Now, the one doesn't follow from the other. The Supreme Court has never even considered the Super PAC decision. It wasn't reviewed by the Supreme Court. It turns out corporations aren't very eager to spend their money directly. This election cycle, I think it's only like 2 percent of the money spent was corporate money. That's because corporations have discovered the high cost of free speech.

Target, when it supported an [anti-gay candidate](#) in Minnesota, found their stores [picketed](#) all across the country. They're not eager to do that. They're not eager to get in the middle of these kind of fights.

So I actually think we ultimately don't have to worry about the *Citizens United* part; it's the Super PAC part. It's not even clear to me it's going to take a Constitutional amendment to do it because I'm increasingly convinced the Supreme Court will eventually fix that mistake. If it fixes the mistake and says there can't be Super PACs—there can be independent political action committees but the amount you contribute is limited—then I think 95 percent of the problem is the way we fund campaigns. That's the fight we need to be having.

Now, again, it seems to me, we, progressivel liberals are fighting the wrong fight, because if you look out there, all the energy out there is people pushing for Constitutional amendments and say corporations are not persons and money is not speech; two changes that actually wouldn't address anything that I'm talking about here. That wouldn't change the way elections are funded if you declare corporations are not persons or money is not speech. And the other thing that does is it convinces everybody the only way to solve this problem is to amend the [Constitution](#) and most people think it's impossible to amend the Constitution.

So you reinforce the impossibility assumption with a solution that wouldn't even be a solution, which is why I work as hard as I can to push the conversation away from the Constitutional issue and focus it back on what is the core problem.

The core problem is the way we fund campaigns. And we ought to do what every other democracy

does, which is to find a way to fund campaigns that doesn't exacerbate the natural desire of the elite to exercise enormous power inside the political system.

Questions

QUESTION: I'm Maxine Hersh and I teach at Kingsborough Community College.

One thing we can do is tell the Americans what other democracies could teach us. I will give you just a few examples.

The United Kingdom: no advertising allowed, equal time on municipal broadcasting. A few years ago, it was \$5,000 spent over, you were knocked out of the race. Japan: 12 days allowed for campaigning. I have a whole list of what other democracies are doing or not doing.

The other thing we could do is inform the American people about our history.

President [James Monroe](#), at his time, no one campaigned openly. [John Quincy Adams](#) said, "I will not take one step to promote the pretensions of the presidency." [Truman, 1948](#), passed his hat for money to get to the next train stop.

What's happened? Why don't we let the American people know these facts?

I am an 88-year-old grandmother. I am not going to walk to Washington, but I am taking out a website about some of these facts.

I had one idea and I'm sure there are many better ideas, that on the same day—maybe a holiday—someone dress up as [Abraham Lincoln](#) and have a sign: "You and I could not be elected today. Why?" Big dollar sign.

Let's start doing, not just talking, not just exchanging ideas. I think there is plenty of actions we can take.

LAWRENCE LESSIG: First of all, I completely agree. Let's not just talk, which is why some of us are walking and some of us are doing everything we can to engage people in this. I think that's really important.

You're right. Many other democracies have lots of accommodations to deal with making more sensible the election process. Our problem is, our reality is, that the [First Amendment](#) has been interpreted to ban every one of those kinds of changes. You couldn't, under our Constitution, restrict the time of a campaign. You couldn't force equal time on television stations anymore, given the change in the way the courts thinks about that type of regulation. You couldn't, as France does, ban television ads, except for free time that's given to candidates.

Because we're not a parliamentary system—the natural reason why parliamentary systems can limit the time of a campaign is they never know when the election is until six weeks before the election. But we know when the election is. It's fixed in the Constitution.

Now, historically, until about 15 years ago, there was a time in America, in Congress, it was called a governing time and then there was the electing time. The governing time was a year, maybe 15 months. The electing time was the balance. Now, I think, largely, because of this obsession to raise money, the electing time is from the very moment they get elected. There is no governing time anymore. We constitutionally can't do anything about that.

So you could say, "Let's amend the Constitution," and I think there's lots to think about about getting Congress the power to more sanely govern these elections.

The one thing we can do before amending the Constitution is to remove this corrupting influence of money and that's the thing I would do.

QUESTION: Hi, my name is Mike Ward.

First I'd like to offer some encouragement. I know that the media seemed to think that Mayday PAC was a failure, but I didn't and I think a lot of people didn't either.

LAWRENCE LESSIG: Thank you.

QUESTION: With that in mind, I think it's very interesting what you were talking about in focusing on the primaries and I was wondering if, between now and that cycle, in 2016, if you're going to be focusing your attention on building up for that or are there other things that you're doing between now and then?

LAWRENCE LESSIG: What we announced yesterday is for 2015. What we discovered at the end of this process is we had an incredible number of people who were desperate to do something, to continue to do something. So we're going to, in this year, turn them into developing a platform to be able to make this really effective, turn them into basically citizen lobbyists, but not lobbying Congress directly. What we want them to do is to reach out into targeted districts, to voters in those districts, to get them to ask their member to co-sponsor fundamental reform.

So right now, I think, if you added up support for all the core reform bills, there's probably about 170 people in the House who would support fundamental reform. We want to shrink the gap between 170 and 218, which is a majority in the House, by getting more people to sign up to commit to fundamental reform so that by the end of 2015, we have a large number of new co-sponsors to make it seem like it's only 20 votes or something that we need to be able to get it to a majority and make it then the sort of fight that political people think is a kind of a winnable fight.

There are two ways we ought to do that. One way is the traditional way, trying to convince people to make this case and it turns out a relatively small number of in-district people contacting a representative and asking the representative to do something produces the representative to do something. And, at least if it doesn't cost the representative much in co-sponsoring what seems like a hopeless bill, it doesn't seem to cost them much.

The other thing that we're going to do is actually build on an idea which Aaron Swartz had originally coded in 2010. This says, let's look at the top donors in these targeted districts and reach out to the top donors and say to the top donors, "We want you to pledge not to give money to anybody who is not committed to fundamental reform." Most people like to be given an excuse to say no to politicians when they ask for money. So what we found in 2010, is a huge number of people just signed up and we, in that kind of experiment, could show that we had pulled \$10 million out of the election that races that we were in from people just saying, "We're not going to give unless you signed up to fundamental reform."

So this a little bit of the carrot and stick to try to reduce the gap to a majority so that in 2016, the number of races that would actually have to be won would be relatively small and, especially, to focus that energy in Republican seats.

JAMES TRAUB: The 170 you mentioned, how many of those are republicans?

LAWRENCE LESSIG: None. I mean, in the House is one co-sponsor of the—[Walter Jones](#).

JAMES TRAUB: So given that the libertarian energy and the anti-establishment energy, the anti-Washington energy is all on the Republican side . . .

LAWRENCE LESSIG: Yes.

JAMES TRAUB: How come it's so hard to get people to break ranks? They ought to be natural allies.

LAWRENCE LESSIG: Because I don't think people have talked about this in the right way.

So there's a great new group that's just being formed—I don't know that they've settled on their title, so this is terrible, I can't even tell you the name of the group but the board is [Trevor Potter](#), who is the Republican former chairman of the Federal Election Commission and [Stephen Colbert's Super PAC](#) lawyer; a guy named [Richard Painter](#), who is [George Bush's](#) ethics czar; [Mark McKinnon](#), who was Bush and McCain's media guy and my partner in Mayday. So those three are the board for this new organization, which is devoted to getting Republicans to step up for changing the way elections are funded.

But the most exciting bit of that is the guy running the organization is the guy who ran [Dave Brat's](#) campaign. Dave Brat is the guy who beat [Eric Cantor](#) in the [primary](#) in Virginia. And he beat Eric Cantor on the anti-crony capitalist—that was part of his message—the anti-crony capitalist line. He said to the conservatives in that Virginia district, "This guy's a crony capitalist. He's taking all this money from Wall Street banks. He's not voting in a way that you care about. He's voting just in the way his funders care about. Throw him out. That's not conservatism."

This guy, his name's [John Pudner](#). He's like from central casting. You meet him and this is the most authentic right-wing organizer, grassroots organizer, you can imagine. He lives in Alabama and he has a endless list of these organizer types who are—this is his job now, to bring them together to support candidates, who will support changing the way elections are funded.

So I think the right gets it and is beginning to expand on it and what this movement needs is success there too, right? Democrats cannot win this alone. Indeed, if Democrats push it alone, it's a guarantee we will lose, because it will be perceived as just something that benefits Democrats. Especially, the [Tea Party](#) wing of the Republican Party should have a reason to think about this, too, and I think if it's framed and sold in the right way, they will.

QUESTION: Michael Schmerin.

You stated, which is true, that the campaign begins the first day you're elected to Congress, especially, in the House. It's also kind of like being a tenured professor at Harvard. It's real hard to lose once you're elected.

So how does one change the system, if you will, that you're not constantly reelected, because it's very difficult, no matter how well you're funded, unless there's a sweeper or mandate to throw one party out?

LAWRENCE LESSIG: One important point to remember is that members are taxed by their party. So if you're in a safe seat, you've still got to raise money because your party says you need to raise

money to give to the weak seat candidates in that party. So they're still raising an endless amount of money.

Now you're right—if you're in a safe seat, you can be there forever. But I'm actually kind of worried about voluntary term limits that seemed to have emerged in Congress, people who decide to do, as Jim Cooper said they would do, leave Capitol Hill to become lobbyists.

I sometimes think about it like my students. I teach at Harvard. Many of my students come down to Wall Street and there are lawyers in Wall Street. They make in their first year about the same amount of money as Congressmen make. They're working very hard to become partners and they want to be partners and when they make partner, they'll be paid multiples of what they made originally, so they might be paid half a million or a million dollars. That's their business model.

Well, what Jim Cooper is saying is that members of Congress have the same business model. They go to Congress. They get paid \$180,000 a year. They want to be there for six or eight years and then they want to become partners. But what becoming partner means is moving to K Street and becoming a lobbyist, which means that their whole time in Congress, they're constantly focused on, "How do I keep those guys happy?"

Jack Abramoff has a wonderful passage in his really great book called *Capitol Punishment* and he says, "The most effective technique that I had as a lobbyist was I would go into an office and I would say to the chief of staff, 'So what are you going to do when you're finished here?'"

The chief of staff said, "I don't know, Jack. I haven't figured that out." Abramoff said, "I want you to look me up." And Abramoff said, "From that moment on, I owned that staffer and not a single dollar had changed hands."

That's the same dynamic that I worry too many members of Congress have going on in their head as they think about what their life is going to be as a—not necessarily a lobbyist. Lobbyists are now a low-class thing. They're kind of just government affairs advisors for these big companies.

QUESTION: In addition to looking at the federal system, have you looked at the more corrupt state-wide system, which certainly needs dealt with?

LAWRENCE LESSIG: Yes, here in New York, in particular—and that was what's so amazing about Zephyr's Teachout's campaign, because here, the anti-corruption governor had corruptly corrupted his anti-corruption committee to protect his friends and attack the enemy. I mean, it seemed to me like an astonishing story. When that *broke*, I was like, if an indictment had come down, which it sounded like it's in the works, it would've radically changed the face of politics here in New York. But, of course, nothing happened.

I think it's really an incredible missed opportunity here in New York that they didn't pass the public funding measure, which seemed like they were on their way to passing, and now it seems to be locked in against it.

QUESTION: Sylvain Zimmer, entrepreneur from France.

Maybe it's too soon to ask, but do you think that getting the right people is enough to truly make things change or will the system, once they get in Congress, change them? Or do you rely on interests with the people you choose?

LAWRENCE LESSIG: Really important question.

So when people talk about corruption, they typically imagine a bad person and when you say, "Let's get rid of corruption," it sounds like what you're saying is, "Let's get good people." The kind of corruption I'm talking about is good person corruption, good soul corruption. These are good people.

Congress is not filled with a bunch of criminals. Despite my story about K Street, they're not filled with people who go into this business thinking that, "Yeah, this is where I'm going to get rich."

There are people who go into this business thinking, "This is the way I'm going to do good." Now their conception of good is not necessarily mine, but the point is that's their motive and they get there and they realize the only way they survive is to play this game. Then, as they play this game, they become something different from who they were.

So no, I don't think we ought to be focused on electing supermen and superwomen to Congress. That's not the solution.

The solution has got to be to change the structure of incentives so that normal, ordinary humans can do the right thing in that system, not expecting we're going to find superhumans that can do the right thing in that system, because they won't survive. Superhumans won't survive.

QUESTION: Hello, my name is William Murray.

I have a question regarding a strategy that you guys didn't take, which is in a number of issues recently for which there is a potentially majority consensus in one direction, but neither major party has taken a stance, things have been done through ballot initiatives on the state level, which bypass a number of traditional gatekeepers and at least have the advantage relative to a contested two-person election that there's not a single individual responsible for the other side, which sort of automatically solves all bystander effect and coordination problems.

I was wondering whether you had or the Mayday PAC had considered whether there was anything that could be done via the state ballot initiative process?

LAWRENCE LESSIG: So an organization that I strongly support and have worked with in the past, called [Represent.us](#), has been pushing ballot initiatives at the state level and at the city level. In this last election in Tallahassee, they got through a [ballot measure](#) to pass this anti-corruption act, which has a really powerful anti-revolving door—it's an equivalent to the federal statute, but applied to the state, has public funding for city elections in Tallahassee. It won with 70 or 80 percent of the vote for exactly the reason you're talking about.

They are now rolling that out in a whole bunch of other cities and states so they're doing it in that way, from the bottom up.

The problem, though, from the federal perspective, is there's no federal ballot initiative. I'm not sure I would favor one, either, but there isn't one. So the only thing we can do is to figure out, at the federal level, what's the way to leverage the support to get a bill passed? And we're experimenting with lots of different strategies to try to do that.

This round was one strategy and it's taught us other strategies we have to do beyond that.

QUESTION: Eddie Mandhry with the [Carnegie New Leaders Program](#) and from NYU. Thank you for a great presentation.

My question is around the drafting of legislation and the influence corporations have. I recently found out about the [American Legislative Exchange Council \[ALEC\]](#) and the power they have.

Is there an opportunity, for instance, for citizens to pressure the corporations that are on these boards and committees and task forces to kind of withdraw their membership? How impactful are these organizations and are there ways that we can kind of reduce or minimize their power?

LAWRENCE LESSIG: They are very powerful and they're very powerful because Congress is so dependent on outside expertise, almost by design. There have been critical institutions within our government that have been eliminated that gave internal expertise to Congress. They then depend on lobbyists and these outside groups to provide all the expertise and that means they're more dependent on these outside groups and these outside groups are not representative, so it tilts, once again, in favor of the rich and powerful as opposed to broadly representative.

Now, the natural reaction of many is to think about strategies to fight those organizations. People talk about, "Let's boycott corporations unless they withdraw from ALEC," or "Let's find ways to create our own legislative support for Congress."

And, again, those all seem, to me to be fighting the symptom rather than the disease. Because if you address the disease, the incentives for producing this kind of dependency change. And if you didn't have a Congress that was spending all of its time raising money, it could actually do more of this, itself.

There was a time when Congress actually spent their time doing work on the legislation that they were supposed to be passing. There's this great film by [Charles Guggenheim](#) called *HR6161: An Act of Congress*. I think it's like 1976 and it's following the struggle over whether the [Clean Air Act](#) will be amended and a whole bunch of people who are still around are in that bill or reinforcing the question about maybe we've we need to find term limits.

What's striking about it is you watch them work and it's a completely unrecognizable institution because they're sitting there arguing about whether the word should be "and" here or maybe we need to worry about union support in that. They're arguing about the substance of their legislation. And if you're on Capitol Hill today or you know anything about what goes on in Capitol Hill today, that almost never happens at the level of what members of Congress are doing. I think it's got to be tied to the fact that they don't have time to do any of that.

They're basically low-paid telemarketers. That's their job. [Laughter] After 2012, a bunch of Congressmen—they come to the Kennedy School to be trained to be Congressmen and we met with a bunch of the freshmen. This one Congressman from California said to me, "I ran for Congress in my pajamas," and I thought, "Okay, that's California. They're all kind of weird out there." [Laughter] He said, "No, literally, I never left my house. I spent the whole time calling people raising money and then I sent the money to television stations and they ran my commercials."

He said, "But the problem is, I've gotten to Washington and I realize my job is no different. It's just I can't wear my pajamas anymore." [Laughter]

So this world, this reality of who they are and what they do is really dramatically important in understanding a range of these problems. Rather than fighting at the edges to change the symptom of this problem, just address the core. Change the way we fund campaigns and you would change 80 percent of the rest of these problems.

JAMES TRAUB: Professor Lessig, thank you so much. That was so educational and I think also inspirational.

LAWRENCE LESSIG: Thanks.

Audio

On a crusade against the corrupting influence of money in politics, Lawrence Lessig founded a "super PAC" which raised \$10 million to support candidates committed to radical reform of campaign financing. Most of them lost, but Lessig is not daunted. He fights on, convinced that the majority of Americans agree with him and that change will come.

Video Clips

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TV Show

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