ONE WAY FORWARD

The Outsider's Guide to Fixing the Republic

Lawrence Lessig

BYLINER ORIGINALS

ISBN: 978-1-61452-023-8

10 9 8 7 6 5 4 3 2 1

Contents

To
Tess's mama,
and my love.

CHAPTER 1

Prologue

SPRING COMES IN WAVES. At first, unrecognizably. And then, unavoidably. And when it finally fully comes, we wake up.

We, the People. The sovereign. We tumble out of the stupor that is our sleep and exercise a power that is ours exclusively. We might exercise it well. Many think we would exercise it poorly. So when its first hint becomes clear, we should take steps to assure that we will exercise it as well as we can.

The first step is to name it, this, our power. For it is different from the ordinary power that gets fought over in the context of ordinary politics. This is the thing that the commentators miss. They see a fight between the Right and the Left. That is the game, and the frame, they understand. There was Clinton. His side got defeated (sort of) by George Bush. Then his side got defeated (or so we thought) by Barack Obama. Left versus

Right versus Left versus Right, fighting for the control of government and of government policy. And even when there's a fight that doesn't actually happen in D.C.—the Tea Party or the Occupy Wall Street movement—the chattering classes squeeze that battle into a Left/Right fight within Washington. The Tea Party, the insiders insist, is just a mobilizing (and very effective) whip for the Republicans, the Occupiers still a mere hope for the Democrats. As if politics is only ever about the normal battle to determine which side wins control of an existing government.

But as well as the Left side and the Right side, there is an inside and an outside. There are those inside normal government (and their wannabes), who work to direct government policy or at least control government power. And there are those outside normal government, who want nothing of normal government save that it does its job and otherwise "leaves us alone."

The outside spends most of its time ignoring the inside. Maybe once every four years it takes notice. Maybe in a catastrophe, or when some celebration rises above the ratings of *60 Minutes*. But until then, the outside just wants to live its life. It wants to drive across a bridge without worrying about the engineering. It wants to believe that our kids are safe and that public education works. It wants to climb aboard an airplane without wondering whether the FAA is competent. It wants to know that there is a government that is at least trying to do

what's best for this nation. The outside wants to trust. It wants to trust that there's an inside that's at least competent.

The outside is us. It is the we who have other lives. The we who want to do different things. The we who find basketball or hockey more interesting than congressional politics. Or who believe that an afternoon helping at a homeless shelter or a morning at our church is a better use of our time than going door to door for a candidate for Congress. We, the outside, live our life (almost) never even thinking about this thing we call government—even though, for many of us, this thing called government is the single largest financial expenditure that we make every year.[1]

But then something happens, and we can't ignore the inside anymore. And then we start to wake up. Limbs twitch. Eyes open, ever so slightly. An arm moves, then a leg. And a lumbering and clumsy giant finally comes awake.

In our time, I mark the first such twitch in 1998. The insiders were obsessed with whether the president had had an affair with an intern, and then whether he had lied about it. The outsiders were mainly bemused. But after four years of a frenetic special prosecution, spending millions to suss "The Truth" about the integrity of the president, it became clear that our Congress was actually going to invoke the mechanism of impeachment—only twice credibly threatened in the history of the nation—to address this pathetic question. By then, most of us were simply disgusted. Not just with the

president but, more important, with a system that had lost all sense of proportion. "Seriously," we asked, "*this* is the number-one problem facing America?"

Two software developers from Berkeley, Joan Blades and Wes Boyd, were moved to do something about it. What they did followed directly from the background that they had: They started an e-mail list. Because of an innovation in their list technology, they were able to collect the names of the people to whom the e-mail was forwarded. That meant they could track its growth. On the first day, there were a couple hundred followers. The second day, a couple thousand. By the third day there were more than twenty-five thousand. More than a hundred thousand by the fourth. Boyd thought the growth "staggering." And soon a movement—MoveOn.org—became a cross-partisan player and the only *adult* on the field, demanding that Congress censure the president and get back to its work. Its real work. The work of a republic, not the game of persecuting a hopelessly flawed, if genius, president.

In that first flicker of life, that first twitch of this sleeping giant, we can see everything in the stories that would follow. The leaders didn't create any energy; they tapped into it. They were able to tap into it because new technology made it insanely easy to do so. That technology leveraged a passion that was genuine—and cross-partisan. Not just the energy to click and send but also the energy to show up and organize. (Two weeks after MoveOn launched, the team asked for vol-

unteers to "set up meetings with their member of Congress." The response was "dramatic." Within forty-eight hours, hundreds of volunteers had shown up at more than three hundred meetings.) At every step, the insiders were convinced that the outsiders were mistaken, until the insight of the outsiders became conventional wisdom for the insiders. As Wes Boyd recounted in an interview for this book,

> We got blank stares for years and years and years from most of the professional political people. They had no idea what this was about. ... The pros, when we made the mistake of consulting them, would warn very very strongly, "Do not just send volunteers out to do this work."

But, of course, volunteers became the lifeblood of this new genre of political movement. They constituted the energy in "crowdsourced" politics, and they defined its power.

MoveOn's wave has repeated itself again and again in the decade or so since. Not just on the tech-enabled Left but also on the traditional Left (Obama) and then on the Right (the Tea Party), then on the Gen X/millennial Left (Occupy Wall Street), and now in the unaligned Internet (the Wikipedia-driven anti-SOPA/PIPA campaign). Each time, the pattern has been the same: A surprising and unpredicted "open-source" energy, enabled by cheap and ubiquitous technology, shows us a part of us, We, the People, that conventional politics had

forgotten or thought lost. One movement sets the expectations for the next. The character of each sets the framework of legitimacy overall. *Organic* becomes more significant than *organized*. *Authentic* always beats *professional*. We begin to celebrate the reality TV in politics, so long as we actually believe it is reality and not just Astroturf.

The most recent wave, the one that blocked SOPA (the Stop Online Piracy Act) and PIPA (the Protect IP Act) on January 18, may be the most interesting. The copyright industries had exercised their enormous political influence to get Congress to consider legislation to radically increase their power to invoke the courts to block sites said to engage in "piracy." The bill was roundly attacked by Internet companies and academics, but Hollywood had the express commitment of enough in Congress to all but guarantee its passage.

Then came the Internet outsiders: An extraordinary movement of Internet activists began to rally the Net to oppose SOPA and PIPA. An unprecedented Internet blackout, led by Wikipedia, brought tens of thousands to their virtual feet. Capitol Hill was flooded with calls and e-mails. Never had the Twitterverse sounded so angry.

And support for the bill then crumbled. Leaders from both political parties began to signal their retreat. For the first time ever, the Hollywood lobbyists had been stopped by a grassroots, Internet-based open-source movement. A giant had awakened. It had flexed a digital muscle. Washington responded.

These waves have flowed in a direction. They speak to a potential that if nurtured could become real. For we outsiders—call us "citizens"—still have the authority over the insiders—call them "politicians." At least if we can find again a way to speak. And then to act.

The aim of this short book is to point. It is to offer one way forward. I don't speak as a leader of any part of these movements. But movements today are movements without leaders. They are movements of ideas mixed with passion. And so I offer these ideas, mixed with my own passion, not as a politician or as a politician wannabe but as a citizen, and a committed outsider, who wants a citizen politics to have an important and lasting effect on this Republic. Again.

I have enormous respect for (at least some) politicians. I don't diminish their sacrifice at all.

But it is time that we recognize a politics that doesn't depend upon them. And time that we do something useful with it.

CHAPTER 2

Passionate

ON A SUNNY SATURDAY IN FEBRUARY 2011, I walked into the Convention Center in Phoenix, Arizona, to attend my first Tea Party (Patriots) conference. I'm not a Tea Partier—I don't support the substantive vision of most within that movement—but I was fascinated by the Tea Party's success in the previous midterm elections (Republicans gained sixty-three seats in the House and six seats in the Senate, as well as seven hundred seats in state legislatures and six governorships)[2], and I wanted to understand something more about its power.

Though the movement had been brewing long before, the Tea Party got launched on February 19, 2009, when, on the floor of the Chicago Mercantile Exchange, CNBC reporter Rick Santelli launched into a rant about President Obama's mortgage assistance program. He ended the rant with a call:

"It's time," he said, "for another Tea Party."

The rant was quickly posted to YouTube, and that link was shared broadly on Twitter. Thousands responded. Grassroots events were organized across the country. Less than two months later, on April 15, 2009 (Tax Day), an astonishing 1.2 million people attended more than 850 Tea Party events across the country. As Mark Meckler and Jenny Beth Martin, cofounders of the Tea Party Patriots, put it in their upcoming book, *Tea Party Patriots: The Second American Revolution*, "The first American Revolution may have begun with a gunshot, but the second American Revolution began with a hashtag." [3]

Whether a revolution or not, the Tea Party is certainly a powerful new force in American politics today. In their new book *The Tea Party and the Remaking of Republican Conservatism*, Theda Skocpol and Vanessa Williamson estimate that there are "about 200,000 U.S. adults who are on the rolls of active local Tea Parties."[4] That large number reflects the party's strong national support: "From late 2009 on, about 30% of American adults reported having a generally favorable impression of the Tea Party. Reported support bounced around that same level into 2011."[5] In the 2010 election, the Tea Party accounted for an astonishing 40 percent of the votes cast.[6] And that energy continued through the following spring, when the Tea Party Patriots, the Tea Partiers with the strongest grassroots ties,[7] gathered in Arizona.

The Phoenix Convention Center is big. That Saturday morning, its main hall was packed. Close to seventeen hundred souls had crossed the country to be there that weekend. The crowd looked just like the demographics the political scientists had described: almost exclusively white, slightly mostly male, and mainly older (than me).[8]

But there was something in that room that demographers can't quite quantify: a passion—genuine, powerful, and widespread. And that passion made it impossible to believe that this was something ordinary. It wasn't. It was an expression of both frustration and hope, by Americans who genuinely feared that something terrible had happened to their country.

No doubt, the Tea Party's success has come in large part from an endless stream of financial support from billionaires on the Right and a practically endless stream of media support from networks on the Right.[9] But those two sources hadn't engineered the passion that was in that room. As Skocpol and Williamson put it,

> [the] take on the Tea Party as a kabuki dance entirely manipulated from above simply cannot do justice to the volunteer engagement of many thousands of men and women who travel to rallies with their homemade signs and ... [who] have formed ongoing regularly meeting local Tea Party groups.[10]

Likewise, Glenn Reynolds writes:

> These are people with real jobs; most have never attended a protest march before. They represent a kind of energy that our politics hasn't seen lately, and an influx of new activists.[11]

The billionaires and media may have fueled it—they may even have made it make sense to try to act upon it—but what I met and watched and came to admire in that Arizona weekend lived far from Glenn Beck's brain, and was certainly quite independent of the Koch brothers' checkbooks. I met a passion that might appear every generation or so in America. A passion that demands the attention of its government.

This passion, of course, comes from the Right. Its focus that weekend was fiscal, not social. There were no tirades about gay rights or abortion. The attention was instead upon the budget, the deficit, and "strategies" for "regaining control" of government. There were scores of teach-ins, with experts and not-quite-experts lecturing small groups on everything from free trade (the lecturer I saw was against it) to constitutional history (when that lecturer admitted he didn't know who Ayn Rand was, I feared violence). The assembled thousands wanted to learn what they needed to know to do something—for the view of everyone in attendance was that this government was out of control and that it would take dramatic action to

draw it back.

The issue of the day that day, both in Arizona and across the nation, was the debt ceiling, in particular the pledge of congressmen supported by the Tea Party to vote against raising it. Some of those congressmen were there to defend their view (call that preaching to the choir), and some were there trying to moderate or leaven the view (not terribly successfully) with a recognition of the real costs of brinksmanship. But what became clear, even to this liberal, was that these Tea Partiers were not idiots. They understood the danger in this fiscal flirtation. And like a parent who kicks her drug-addicted child out of the house or the wife who abandons an alcoholic husband, taking just the kids, the car, and her clothes, these Partiers believed these risks were necessary. They believed that a certain insanity was the only way to restore some form of fiscal sanity. This wasn't my view. I thought (and think) that such brinksmanship is fiscal suicide. But I could see that for the Tea Partiers, this was a tactic, a way to shake the government out of its craziness. Uncle Sam was a drunk and they wanted to take his keys away—even if it meant he'd have to walk home. At night. In the dark, in subzero weather, without a coat. Maybe that, they thought, would teach him to put the bottle away. Because so far nothing else had.

But put aside their particular objective. Look away from what they wanted to do. Look instead at them. Here were almost two thousand citizens. But unlike most citizens, these

were citizens the way the Framers imagined citizens to be. They were volunteers, working for the nation. They were not paid by anyone to be there or to do the work they did. They instead had made a personal sacrifice—for some, a very significant personal sacrifice—to travel across the country to work to make this country better. And in that work, they summoned into being the only spirit that has ever changed anything real in this nation. A spirit that has real power, at least if it speaks for all of us, and regardless of whether it speaks for the government.

EIGHT MONTHS AFTER MY WEEKEND IN PHOENIX, I was in New York. My book *Republic, Lost* had been released, and I had just returned to the States from an overseas trip. More than slightly jet-lagged, I climbed on a subway to Zuccotti Park to watch and listen and then participate as the people in that park, with the movement it represented—Occupy Wall Street—mobilized fifteen thousand people to march to City Hall.

The Occupy movement had begun two and a half weeks before, on September 17, 2011 (a.k.a. Constitution Day). Initially proposed in July by the Canadian group Adbusters, the movement was reported on two days later in a YouTube video on a Facebook page. Three days after that, the protest reached critical mass. Wikipedia reports that "by mid-October, Facebook listed 125 Occupy-related pages" and that "roughly one

in every 500 hashtags used on Twitter, all around the world, was the movement's own #OWS."[12] On October 15, "tens of thousands of demonstrators staged rallies in 900 cities around the world, including Auckland, Sydney, Hong Kong, Taipei, Tokyo, São Paulo, Paris, Madrid, Berlin, Hamburg, Leipzig, and many more."

The march that I saw took place ten days before that world march. And its character, of course, differed from that of my weekend in Phoenix. But there was also much that was the same. The people were different—in the main, younger, though there were marchers of every age, from kids through seniors; much more diverse (in race, gender, sexual orientation); with a purpose that was not yet focused.

But like the citizens in Phoenix, many, many of them were there because they too were angry and anxious about where their nation was going. They too were deeply frustrated. They too had come together to express that frustration. And given their views, there was no better place in the world to launch their march than Wall Street.

For thirty-six months after the collapse on Wall Street—a collapse that in turn had triggered an economic collapse across the country and then around the world—these Americans were not happy with how things had been sorted out. Wall Street, along with some of corporate America, had received massive government bailouts—from Congress (more than $700 billion) and from the Fed (more than $9 trillion).

Main Street, by comparison, had received pennies. With much of their bailout money, Wall Street had paid itself massive bonuses—literally the largest bonuses paid by any public companies anywhere in the history of capitalism—while continuing to hoard the cash the government had given it and pushing homeowners across the country into foreclosure. Put most simply: We as a nation suffered a massive economic crisis; the government intervened in a massive way; that intervention no doubt helped the economy generally, but it also helped a tiny slice of America most. The 1 percent, as the Occupiers would brilliantly frame the meme, had been saved. The 99 percent continued to suffer.

And when you think about it like that, the movement had a point. Whether intentional or not, whether planned or accidental, there is something outrageous about a safety net for the rich only. This is not the social justice of John Stuart Mill, or even Ronald Reagan. It is the social justice of the *Titanic*: Our economy had hit an iceberg. The first class had their lifeboats made ready by the crew; the rest of us were told to swim.

This recognition has fueled its own passion. The majority of that passion has come from the Left. Some from the Far Left. Some even from the anarchist Left (or Right, depending on how you classify anarchists). But most of the Occupiers call themselves not Democrats (27.3 percent), but independents (70 percent). Their form of protest is different from that of the Tea Partiers. They engage in more civil disobedience, and in

mass action. And even though arguably there may have been more crime linked to the Occupiers than to the Tea Partiers (though, as it turned out, nothing as terrifying as the violent threats made on Congressman Tom Perriello's brother and family, threats made real when someone cut a gas line to the family's house),[13] the public's support for the Occupiers continues to be just a bit higher than the public's support for the Tea Partiers. According to a study by the Pew Research Center released December 15, 2011, 44 percent of Americans "support the Occupy Wall Street movement." They overwhelmingly agree with the concerns raised by the movement, but more disapprove than approve of the tactics used. [14]

But again, as with the Tea Party, put aside the Occupiers' particular demands (to the extent that they have any). Look away from what they wanted to do. Look instead at them. For here, again, were thousands of citizens. These, too, were citizens the way the Framers imagined citizens. They, too, were volunteers. They may be younger (average age, thirty-three); they may do less of the stuff that older people do (convene and vote) and more of the stuff that younger people do (march, protest, sleep in tents in parks). But like the Tea Partiers, Occupiers have made a personal sacrifice—for some, a very significant personal sacrifice—to sleep in a park and to work with a wide range of others to demand that this country be better.

Matt Patterson is one of those protesters. Twenty-seven, a native of California who studied political science at UCLA,

he moved to Washington in 2011, passed the Foreign Service exam, and now works for a commercial real estate company. Patterson was among the first to show up to the Occupy K Street protests in early October 2011. After work each day, he goes to the camp and stays until 9 or 10 P.M. Sometimes he sleeps at the camp. When I interviewed him in December 2011, he still had a camp set up.

Patterson became an Occupier as a disillusioned Obama supporter. As he told me, "The mechanisms that we have in place to resolve the problems of society are not functioning." And as he became part of the Occupy movement, he began to recognize the many "around the country [who were] feeling the same sort of frustration."

Occupy K Street is different from Occupy Wall Street.[15] As Patterson described, we "adopted what they did in some ways, but we also built upon [it] and did things differently." For example, like Occupy Wall Street, Occupy K Street uses no technical sound amplification when speakers speak, although no D.C. regulation forbids it. It instead uses the "people's mic," in which each phrase gets repeated by the audience as a speaker speaks, everyone thus participating in the lecture of one.

But unlike Occupy Wall Street, Occupy K Street didn't issue a long list of demands. Instead, "we've got our declaration," Patterson explained to me over the phone, and so they plan to "look at our principles and try to start with step one, which is money and politics. ... Wall Street is the crux of a lot of

problems that we have financially and in society," and "we just thought it was a really good complement and the next logical step" to make "that logical link to K Street."

> In the way I have tried to frame it, why is Occupy Wall Street on Wall Street? Why did we come here? It's because this is the root of the problem. Right here. We're never going to get good energy policy, good environmental policy, good ... technology policy out of Washington until we get the money out.

The Occupiers, however, are not an argument. The movement is not a set of demands. At this stage, it is not even really a plan for changing government.

Instead the Occupiers are focused on the project of reviving a democracy. Meckler and Martin said of the Tea Party, "the sleeping giant woke up."[16] The Occupiers are still focused on the waking part of that project—on reminding people, the outsiders, of the power they could still have. It is about the ten million points of lived experience, when a soul has the epiphany that she is also a citizen. Patterson recalled for me one such moment:

> I can remember one very inspiring speech that a homeless man gave. There were a lot of us there, gathered around. It was pretty emotional. Because this was some-

> one who said how disenfranchised he has felt. How people don't talk to him when they walk by. How they sort of assume different things about him. But now, this person is active. In this movement, he has a voice. This guy, who has one of the smallest voices in society, now has a voice here. And we all, who all felt kind of voiceless before, now that we're in this park together, we all have a voice. And it's pretty cool.

These two stories, of two very different passions, will evoke two very different responses from you. First, they should evoke a sense of hope. Second, and especially if you're a member of either of these two movements, my putting them together as I have will likely evoke a feeling of anger, or frustration.

Let's start with the hope: The couch potato has left the couch.

This is critically important, yet just part of a much bigger trend.

In the past I've written about "read-only" cultures—cultures in which people passively consume culture created professionally elsewhere. That's the couch potato. That's your four-year-old (but not your six-year-old) with your iPod. Think: lost to another world, while also lost to this world.

Such read-only cultures can be contrasted with "read-write" cultures. These are cultures in which amateurs create their own culture, or versions of culture, and share that cre-

ativity with others. Think remix videos on YouTube, or photos on Flickr, or Wikipedia, or the links and RTs on Twitter.

Amateur, however, not in the sense of *amateurish*. Some of it is; much of it isn't. But whether it is or isn't, that's not the point. Instead, think *amateur* in the sense of people who create for the love of creating, and not for the money.

The virtue in this kind of amateur lives deep within our culture. We want our kids to learn to play the piano, even if we don't expect them to become concert pianists. We'd be proud of our kids becoming the resident expert on some obscure subject in some corner of Wikipedia, even if we knew their expertise wouldn't earn them a living. And we'd be deeply saddened if the only sex that a close friend ever knew was professional, rather than amateur, sex.

The life of the professional—the wage earner, the laborer, the doctor, the lawyer, the teacher—is important and edifying and produces enormous social and individual wealth. But a life lived solely as a professional is not important and not edifying and produces only a kind of poverty—certainly individual poverty, but social poverty as well.

Until the twentieth century, all culture was "read-write." All culture lived not only through professionals performing but also through amateurs re-creating and re-performing. Professionals composed music, but amateurs sang it and played it and adapted it. "When I was a boy," John Philip Sousa testified to Congress, in 1906, "in front of every house in the summer evenings you would find young people together singing the songs of the day or the old songs." But technology—the phonograph or the player piano, he feared—was going to take this amateur practice away. "Today you hear these infernal machines going night and day." The consequence? "We will not have a vocal cord left. The vocal cords will be eliminated by a process of evolution as was the tail of man when he came from the ape."[17]

Sousa was certainly right—about the technology of the twentieth century. It did much to make us much more passive. We had more and better music to consume. Think of record shops: an extraordinary diversity literally at our fingertips. We became much better consumers and, much less frequently, creators. Creativity was for the professional. We were to shut up and listen.

Sousa would certainly be wrong, however, to say this about the technology of the twenty-first century. Digital technology has not only improved the ability to consume; it has radically democratized the ability to create. When I was a kid, creative sorts shared mixtapes. My kids will share remixes. In five years, if all your kid can do is push play, you'll worry that something is wrong.

The critical point is that the same read-write transformation is now happening in politics as well. Until the twentieth century—or, more precisely, the rise of broadcasting—all of politics was read-write. The energy of democratic politics in-

spired by Andrew Jackson and perfected by Martin Van Buren was to get people out of doors—to canvass, to debate, to argue, and (not to romanticize this past too much) to promise the necessary patronage or buy the necessary votes.

The twentieth century killed this political read-write culture as well. As campaigns were professionalized, command and control were centralized. The audience was expected to shut up and listen. The worst possible idea was for ordinary supporters to produce their own copy. Campaign material was professional material. The job of the amateur was simply to show up and vote.

Yet here again, the twenty-first century is reviving what the twentieth century killed. Technology has returned the amateur to politics. It has invited the blogger to comment, or to criticize. It has encouraged citizens to post on YouTube or Meetup or to make iReports. It has made a Tweet central. And this has happened not just here, but across the world. The possibilities have changed. There are more channels. Scratch that: there's no such thing as a "channel" anymore. There's only an endless stream of created work, some professional, some amateur, all trying to motivate people to act and to believe differently.

As these new technologies have invited the amateur back in, they have excited the passions that this chapter has described. These passions, in turn, fit the pattern of social movements that students of this age will recognize. It is a

pattern that is common to every important social "surprise" in the last generation. No one (outside of MIT) imagined the Internet; this kind of movement created it. No one (outside of MIT) predicted GNU/Linux, the free software operating system that took on Windows; this kind of movement built it. No one anywhere conceived of Wikipedia as even possible; this kind of movement wrote it. No one predicted the energy of the Tea Party or the Occupy movement or the other parallel movements around the world, but all of them fit this same form. Indeed, as I've gathered the material for this short book, I've been most struck by the universal invocation of the ideals of "open-source culture" to explain these movements.

And not just on the Left. Mark Meckler and Jenny Beth Martin, of the Tea Party Patriots, open their book by defining the Tea Party as an "open-source community."[18]

> In the world of computer software, open-source communities develop and improve ideas organically, based on concepts and practices that work. Driven by innovation contributed by individuals, open source simply means that a system is available to any who wish to contribute. It provides the fastest possible rate of improvement for ideas, and in the case of the Tea Party movement, this notion was fundamental to the development of a true political revolution.[19]

Matt Patterson, from the Occupy movement, told me the very same thing:

> It's exactly like open-source software. There is a framework, but there is no formal leadership. ... If you have a good idea, you can float it and it gets support and it works its way through the system. If not, it doesn't.

And likewise with parallel movements from around the world: All of them call themselves "open source."

I heard the most passionate and articulate account of this kind of movement during a trip to Israel. Stav Shaffir, a twenty-six-year-old writer and composer, was one of the leaders of the Israeli protests that, in the summer of 2011, brought hundreds of thousands of Israelis into the streets. She was commenting on a lecture that I had given. She began her comments with a simple declaration: "We have to see how everything that is happening now is just the practice of open-source principles." Then, for fifteen minutes, more poetry than prose, she linked the history of the Israeli protest to the practice of "open-source culture."

As she described, Israeli society is deeply conflicted, with "many different conflicts, not just a conflict with the Palestinians." Arabs versus Israelis, religious versus secular Jews, immigrants from the east versus immigrants from the west. "The amount of conflict," Shaffir said, "is almost like the number of people."

That fact of conflict drove the strategy of the Israeli protest: Organizers sought a common ground first, an issue that everyone was concerned about, even if that issue wasn't "the most important issue" in Israel:

> We started with that very basic thing, housing, because we could get everybody. It wasn't a left-wing thing, it wasn't a right-wing thing, it wasn't a problem of just people in Tel Aviv, and it wasn't a class thing. It was a national problem. [We] all talk about housing in one way.

Once that foundation was set, the protest iterated to see whether there were other issues where they could find agreement.

> We wrote the first code. ... We found the common ground. We then made the common ground bigger and bigger. It was a matter of walking one step forward and one step back. ... After less than a week, we could say the people were demanding social justice. Nothing less than that.

And in terms that echo precisely what Patterson described above:

You write the first line of that code and then you let

> someone else add something to it. And if it works, if the game still works, then somebody else can come and add a third thing and then somebody else can contribute another aspect. And you get all of the people together. If something doesn't work … it is left out. But with everything that works together, we maintain the bigger picture. That is how I describe the structure.

All of these movements are built in the same way that GNU/Linux was. All of them are architected to empower the same democratic source. And as a grandfather of the Internet, David Clark, said of the community that gave us the Internet, so too could these reformers say of themselves:

> We reject: kings, presidents and voting. We believe in: rough consensus and running code.[20]

This is the age of open-source—in technology, in culture, and now in politics. It is the distinctive character of social movements, enabled by networked technology, that enables the "we" to live differently. It is the "wealth of networks" that Yochai Benkler described five years ago.[21] And as it flourishes almost everywhere, it is time, finally, for people to recognize it for what it is: It is power, today.

Which brings me to the second reaction that I predicted would be a result of putting these stories together, at least for

some: anger.

If you're the sort of citizen I've described here—if you've "Meetuped" with other Tea Partiers or pitched a tent with the Occupiers—then this chapter may well have upset you. If you're a Tea Partier, you're outraged that I have likened your passion to the passion of the Occupiers—"America-hating anarchists," as one missive from the Tea Party Patriots described them. If you're an Occupier, you're insulted that I would link what you've done to the "racists" (as many refer to them—unfairly, in my view)[22] who call themselves members of the Tea Party movement. You may concede that there's something similar to what each of these sides feels as they each stand and make their demands for America. But you will not agree that that thing is the same. They are not us. We are not them. And anyone who would suggest differently is either an idiot or Dr. Pangloss. There is nothing *right* in the Left. There's nothing *left* to say to the Right.

CHAPTER 3

Polarized

IN SEPTEMBER 2011, I, along with the Tea Party Patriots, hosted a conference at the Harvard Law School about the idea of calling for an Article V constitutional convention. The Tea Party Patriots hadn't committed to the idea of a convention; they wanted to explore it more. I, by contrast, am a believer.

The best speech—by far—during that weekend was given by Mark Meckler, co-founder of the Tea Party Patriots. In an opening address, he condemned the business model of hate. "The politicians profit," Meckler told the four hundred in that room, "when we are inflamed against each other." We must learn, he said, to resist it.

It was an inspiring charge to launch our two-day conference, and it set the tone for an extraordinary and productive weekend.

The following month, I received an e-mail from the Tea Party Patriots. The aim of the missive was to orient my views about the then growing Occupy movement. The Occupiers, the e-mail insisted, were not the Tea Party. They were instead "America-hating anarchists who want to take their anger out on ordinary, productive citizens." And then, immediately after that charge, the e-mail had a link in bold: "Please make an urgent online contribution of $15, $20, $25, $50, $100 or whatever you can afford to Tea Party Patriots right away!"

There's something completely ordinary about this hilarious, if sad, story. It isn't a tale about the hypocrisy of any single person or group. It is instead a story about all of us. While on the one hand we all aspire to the ideal of working as one, on the other hand we all thrive by rallying us against them.

I tripped on this reality personally with an organization that I helped found called Change Congress. The idea behind Change Congress was to build a cross-partisan movement to support fundamental reform in Congress. Early on, we were very lucky to interest an extraordinary organizer to help lead the group. Adam Green had been one of the early souls at MoveOn. When he moved on, he was eager to start his own organization eventually, but he was willing to give us a few cycles as we started up.

Adam and I had long talks about my desire that the organization be cross-partisan. He smiled at my blatherings and nodded his head. But he had that kind of all-knowing smirk

that all professionals bring to conversations with amateurs. He was willing to try. Yet as I look back on our time together, I realize that he never actually committed to this vision of the organization. He had a view different from mine. And he was running things day to day.

The inevitable conflict came to a head over an extremely powerful ad that Adam had developed for Change Congress. The ad targeted opponents of Obama's "public option" for health care reform (this was before Obama himself became the "opponent-in-chief"). It was beautifully conceived and produced, and was powerfully messaged. And as a liberal who supported the public option, it moved me profoundly. It was easily among the very best political ads that I have seen.

But it was too partisan. It didn't focus the audience on the message that we (or, it turned out, I) were pushing—about the corrupting influence of money. Instead it focused the audience on the compelling and powerful case for the public option—no doubt an idea opposed by special interest money, but money wasn't the ad's focus. And when I complained about this misfocus, Adam explained that he didn't believe it was possible to run a cross-partisan movement. Messaging, he told me, is always targeted. It must always be specific to the interests or values of the audience. Maybe technology could allow us to perfectly separate the messaging we gave to our conservative followers from the one we gave to our liberal followers. But a television ad can't do that. And if it can't, as he

explained to me, it has to take sides.

The business model of hate had arrived right at my own back door.

I didn't want to give up so easily. I told Adam that his new organization could pay for the ad and use it to launch its work. (I understand secondhand that it was among the most successful ads the Progressive Change Campaign Committee has ever run.) And we continued (eventually sans Adam) to putter along with the goal of building a cross-partisan base. But again and again, like a hammer on my thumb, I'd see just how right Adam was. Whenever I would send an e-mail to our list praising, for example, something great the Tea Partiers had done (and trust me, non–Tea Partiers, there are plenty of examples there), we'd get a huge drop-off in members. We on the Left had no patience for praise of the Right, even if the praise was for actions that we on the Left should like!

This is the business model of hate—or, at least, the business model of polarization. And while it might not matter much if it were limited to activist organizations like mine, it isn't. Indeed, perhaps the biggest challenge we face as a republic comes from the fact that the business model of hate operates within every modern mediating institution—most prominently, the media itself.

As competition within media has intensified, so the drive to polarize has increased as well. Commercial media needs devoted listeners; devotion is most extreme at the extremes. If

you want to whip up a frenzied following, follow the model of Fox News or MSNBC or Current TV. Tune away from the likes of CNN or NBC: They are antiques from the age of reason. We've moved far beyond that age.

It wasn't always like this. When choices were fewer, the few played to the middle. In 1980, more than fifty million Americans watched network news every night. By 2010 that number had been more than halved.[23] Those earlier news shows prized anchors like Walter Cronkite and Peter Jennings. But a Cronkite would flop on Fox or MSNBC. Not enough sizzle, or attitude. The trend today is toward the niche—a smaller, maybe more profitable, corner of the market that can reliably and effectively drive advertising sales and, hence, profit. We watch what we agree with.[24] We surf to sites we agree with. And while opposing ideas are just a click away, most of us never click.[25]

This business model is not just for the media. Politics, too, follows the business model of hate. That was Meckler's point. Legislatures craft districts to create as many "safe seats" as possible—seats practically guaranteed to one party or the other. That means the only real challenger that an incumbent could face is one from his own party. But typically, the only challengers who could beat an incumbent are ones from the more extreme wing of the incumbent's own party. Thus, Democratic incumbents in safe Democratic seats worry about left-wing challengers; Republican incumbents in safe Republican seats worry about right-wing challengers. And why are the extremists the most likely to prevail? Because—in part, at least—the extremists are able to raise campaign funds more easily than those in the moderate (read: squishy) middle. A militant base, on either the right or the left, is a reliable base upon which to build a political campaign. So campaigns become militant. The rhetoric becomes more extreme. And as the pressure to raise money increases, the pressure to polarize increases as well.

Again, it wasn't always like this. I'm not saying that there was a golden past, a long-gone utopia, where only reason and principle guided politics and social life. We've always had extremists. Indeed, we've celebrated—and constitutionalized—extremists. "The press" referred to in the First Amendment's "the freedom of the press" clause—the press of 1790—thrived on extremism and partisanship. That pamphlet press looked more like the blogosphere today than the *New York Times* of 1970. There has always been a business model of polarization. We should not pretend—as Al Gore's book *The Assault on Reason* (2007) seems keen to suggest—that we were all once statesmen, and then television turned us into crack addicts.

But the difference is that in those times, there were also mediating institutions that could, for a time at least, put aside the business model of hate and do the work of the Republic. There was a Congress that wasn't campaigning full-time. There were social organizations that asked not what could be

done for the Democrats but, instead, what could be done for the country.

No more. There was not a single moment in the life of the 111th Congress when the campaign was over. From the very first day, members were raising money for the next election. From the very first vote, the minority was scheming its return to majority power.

So, too, outside of Congress. There was not a single moment after the inauguration of Barack Obama when Fox News didn't play to its base. And nothing could have made MSNBC or Comedy Central happier, since, having lost George Bush as a target, they could now shift to a network—Fox News—as a target.

And so, too, with us. We all have joined our i-enabled organization of choice: the Tea Party or MoveOn, Drudge or Huffington Post. We all get our daily fix of fury, from e-mail lists or podcasts, from news sites or blogs. We tune in to the message we want. We tune out the message we can't stomach.

Indeed, as Eli Pariser so powerfully demonstrates in his 2011 book The Filter Bubble, the machines themselves help us tune out. There's no such thing as "a Google search"; there's only "my searches on Google." Google remembers the sort of stuff I'm interested in. Those interests help determine the search results that Google gives me. And thus are my search results different from yours: once again, the business model of polarization, made perfect by the amazing Google.

But so what? you might ask. Why isn't this passionate, polarized politics just what politics needs? Isn't this just vigorous debate?

Exactly right. It is certainly correct that we shouldn't worry (or, worse, regulate!) in response to the business model of polarization unless it is actually doing harm. So what is the harm? Why should anyone care? How is the Republic weakened by the strengthening of extremism?

We can put the answer in a single line: The business model of polarization turns #WeThePeople into #WeTheGeeks—and not the cool, techie geeks who have come to rule the consumer universe, but the decidedly uncool political geeks who are obsessed with the horse race of politics, with the pathetic drama of power, but who care not a whit about building a republic that is "re:public"—as in "regarding the public."

For here's the forgotten fact about America that all this talk of polarization obscures: We, the People, are in fact not polarized. If you focus on the attitudes of Americans—not politically active Americans, or voters, or even registered voters, but instead all those people plus the rest of us—our attitudes and politics fall on a normal distribution. A little bit more to the left than most people think, with the extremes lying in the tails of that distribution.[26]

But as politics becomes more polarized, that normal middle becomes more and more silent. For the average American, the ravings of the talking heads on Current TV, MSNBC,

or Fox News are just alien. They listen, but they can't relate. And so they simply tune out, leaving the job of politics to the tiny minority of politically active Americans, who dominate the viewership of those networks and who dominate political giving.

Our current politics thus shrinks the We. "We, the politically active," turn out to be a tiny fraction of "We, the People." And thus what they, the government, does has little connection to what "We, the People," would actually want.

So "We, who care about this Republic," have every reason to want to change the current dynamic of American politics. But in doing that, we face this critical dilemma, captured best, perhaps, in a "good news/bad news" story:

First the good news: For the first time in a hundred years, we have the technology to empower ordinary citizens to be engaged and passionate about their government again.

Now the bad news: The business model for this engagement, of the entities that build these movements of passion, whether for profit or not for profit, make it extremely hard to imagine them ever working together on anything.

The DNA of America is a house divided. A Civil War without guns. Just at the time technology enables us the most, the business model of hate disables us the most.

Unless we can find a way around it.

CHAPTER 4

Potential

IN CHICAGO, in January 1973, representatives of Major League Baseball voted to allow the American League to adopt one of the dumbest rules in baseball: the designated hitter rule. First suggested in 1906 by the legendary Connie Mack, the rule permits a team to designate a hitter to substitute for the pitcher. When the team is at bat, the pitcher stays in the dugout. When the team's on the field, the DH stays in the dugout.

This rule was inspired by the fact that pitchers are <understatement> not typically great batters </understatement>. (Babe Ruth is the most famous exception.) In 1973, baseball was looking for a way to make the sport more interesting. Specialization would, as Adam Smith had predicted about markets in general, improve the overall efficiency of a team.

In particular, it would increase the "offensive punch that baseball needed to draw more fans."[27] In 1972, nine of the twelve clubs in the American league "drew fewer than a million customers."[28] The league was desperate to try anything.

Whether you like this rule or not (and you might guess my view on the matter), here's the obvious point I want you to see: that although those representatives of the Major League Baseball teams met as competitors, the deliberation about the DH rule was not a competition between them. It was not treason for Gene Autry, owner of the (then) California Angels, to agree with Charlie Finley, owner of their rival, the Oakland A's. It was not even bad form. The A's and the Angels wanted to compete against each other. Each side wanted to win. The discussion the league was having, however, was not a game of baseball. It was a discussion about the rules of baseball. Proponents of the change thought the game would be better if the rules were different. They didn't promote the change to give one team a special advantage.

Deliberations like these are constitutional. Not in the sense that baseball has a constitution, but in the sense that the debate is about the rules that constitute the game. The discussion is not about who would win the game; the discussion is about which set of rules would make the game better.

We need just such a constitutional conversation today. Not about baseball but about our government. About the rules by which our government gets constituted. About the con-

ditions under which it demands our trust. Not a conversation about whether liberals or conservatives are right. I have my view; you have yours. But a conversation about the rules within which the Right or the Left gets to translate its view of right into law.

This is the difference between constitutional politics and ordinary politics. And this distinction is critical to everything that follows. Because there's no reason, in principle, why people who disagree fundamentally about ordinary politics can't agree fundamentally about constitutional politics. That's not to say that they will agree. We all would say in the abstract that votes cast in an election should be fairly and accurately counted. That's different from saying that all sides in a particular election would favor a recount of Miami–Dade County. Opponents in a political battle use whatever means they can to win. But even so, it is still possible for us to engage in a conversation with people with whom we disagree about what the rules of the game should be, independently of who is likely to win.

Yet to do this in the current political environment is extraordinarily difficult. If we're to do it, we need a clear symbol or tag—a kind of Red Cross or UN flag—that we could show to people on either side and expect them to understand it to say:

> I am here to have a constitutional conversation. I'm not here to convert you. I respect your position, even if I dis-

> agree with you. I hope someday to have a chance to persuade you of the error in your ways. That's not my aim today. I aim today simply to talk about whether the system under which our differences get resolved is one we can trust or one we should change. I aim to talk about the rules of the game, and not about which side should win.

This is, no doubt, a complex idea. It can't be explained in 140 characters. Yet if we're to make progress in saving this Republic, we need to find a way to express it clearly. And then we need experience in practicing it.

For here is the fundamental challenge that we face: We won't fix this Republic without amending the Constitution. There's lots we could do before an amendment is enacted, but unless the Supreme Court changes radically, we're going to need an amendment as well.

In America, an amendment requires massive cross-partisan agreement. It can't be done, and won't be done, by one faction alone. The Tea Partiers can well be proud of the success of their movement (even if it scares some of the rest of us). But the Tea Party alone is not "the Second American Revolution." Nor are Occupiers on their own going to radically change the way society works. We must recognize that there is no 99 percent that shares a common set of substantive political values. We are, as Americans, different, even if there are dimensions

(for example, constitutional dimensions) upon which we all agree.

So this, then, is the third bit to add to the dilemma that ended the last chapter:

If we're to be successful, we must not only:

> (1) Identify an effective reform that the vast majority of us could agree upon; and then ...
>
> (2) Leverage the passion of different grassroots movements to support that fundamental reform; but we must do this ...
>
> (3) Without neutralizing or denying or ignoring the real differences that exist among these passionate grassroots movements.

In my tribe, we want the government to do more to assure basic equality of opportunity; we want it to be as aggressive in protecting individuals from (at least some forms of) failure as it has been in protecting banks from their failure. We believe in a progressive tax rate. We also believe (in this corner of the tribe, at least) in free trade and free enterprise. We are skeptical of subsidies—not necessarily opposed, but skeptical.

Your tribe might be different. You might want a flat tax, or a much smaller government. You might not believe that the

government has a role in providing security against social threats as it provides security against physical or terrorist threats. You might be against gay rights. You might be for traditional marriage. You might believe it is the responsibility of the state to protect the unborn, regardless of the burden that imposes upon a mother.

These are real differences. And as we think about reform, each side is likely to think about these differences, and about whether the proposed reform is likely to make the objectives of one side easier or those of the other side harder.

But even if we could find "an effective reform that a vast majority of us could agree upon," there is still the impossibly difficult challenge of convincing different tribes to join a federation to push for its adoption. So entrenched is the business model of polarization that one can't even describe the idea of talking across tribes without being called a traitor to one's own.

I know this personally, and I have the bruises to prove it. At a teach-in at Occupy K Street, I implored the Occupiers to invite Tea Partiers to sit down with them. "You may or may not like capitalism," I told them, "but nobody likes 'crony capitalism,' and it is crony capitalism that has corrupted this system of government and given us the misregulation that led to the collapse on Wall Street."

Just after I said that, in a scene that could have been scripted in Hollywood, a man sitting in the front row raised

his hand and said, "I was one of the original Tea Partiers, and today I run a site called AgainstCronyCapitalism.org. I can guarantee you that if you started talking about the corruption from crony capitalism, you'd have thousands of Tea Partiers down here joining with you in this fight."

I thought the argument was obvious, and that the next steps would happen almost automatically.

They didn't.

Instead, soon after my speech, a sportswriter for the *Nation*, Dave Zirin, started tweeting about my speech and then writing about it on his blog. We should not, he instructed, be collaborating with the racists from the Tea Party. It was enough, apparently, for the movement to hang with its own.

But here's the puzzle: Someone in the Occupiers' "We can't talk to the 'racists' of the Tea Party" camp needs to explain to me how the Occupiers can speak for "the 99 percent," once we subtract the 30 percent who call themselves supporters of the Tea Party or the 40 percent of Americans who call themselves conservatives. Zirin thinks these "numbers actually tell us very little about what ideas hold sway among the mass of people in the United States." But are the Tea Partiers, or the conservatives, just confused?

Zirin's concern is important. It grows from a desire to build a "true movement." Such substantive movements are built around shared ideals and shared values. The ideals of we on the Left are different from the ideals of them on the Right. And

if a true substantive movement has to give up talk about its own different values or ideals, then it dies. We need to be able to defend universal health care, even though that isn't something 99 percent agree upon. We need to argue for a progressive tax rate, even if most Americans don't agree about just how progressive that rate should be. We need to constantly and vigorously remind America about the harms caused by racism and sexism and homophobia; about the plight of immigrants, whether "legal" or not; about the hopelessness of the poor in America—even if the vast majority of Americans wouldn't put those concerns anywhere close to the top. We on the Left need to have our movement, to build and rally our team, for the inevitable fight over the substantive policies that government will enact—whether or not we achieve fundamental reform.

And so too on the Right. Tea Partiers and others from the Right want a smaller government. They need to rally their troops against all sorts of do-gooders (like me) who have all sorts of new ideas about how to spend tax dollars. They need to keep their troops in line, and, perhaps more important, they need to avoid alienating their members by confusing them with talk that sounds, well, too liberal. Sure, there are Tea Partiers who would pay attention enough to understand the subtlety of a cross-partisan movement. But there are also Tea Partiers who have two jobs, or three kids, or a hobby they love, and who are just as likely to skim an e-mail about "Re-

form" and get furious that someone not from their tribe gets mentioned approvingly.

But the challenge, and the practice, that I am describing is different. Our challenge is not to build a movement that coheres around a common set of values. No one's going to convince every conservative to become a liberal, or every liberal to become a conservative. Our challenge is to build an alliance that can agree about the need for a fundamental change in the system itself. An alliance for constitutional reform. An agreement not about which side should win in a battle between Left and Right, but about the rules that should govern that fight.

Such a process will require, first, as Stav Shaffir said about the Israeli protests, a "first line of code": a common plank that each side can stand upon. Together. A common recognition that the system itself is broken. And a common understanding that to fix this broken system will require not just a victory in Congress but constitutional reform as well.

We did this at least once before. This is the story not of the Declaration of Independence and the war against Britain. It is the story of how that newly independent nation saved itself from almost certain failure. The story, that is, of the framing of our second constitution (1787) and the rejection of the first (1781).

When people today think about that framing—if indeed they think about it at all—the image is not a celebration of di-

versity. Seventy-four white men, all basically upper-class, all basically elite. Sounds like a very boring party.

But in fact there was radical disagreement among those Framers of our Constitution. There were men in that hall who believed that slavery was just, and there were men in that hall who believed that slavery was the moral abomination of the age. Yet these men, with their radically different views, were able to put aside that disagreement enough to frame a constitution that gave birth to this Republic, because they realized that unless they did, the nation would fail.

There is no difference today between the Tea Party and the Occupy movement—or between the Left and Right in general—as profound or as important as that between the factions who fought about slavery. Nor is our challenge as profound as the one that divided them. They needed to craft a new nation. We need simply to end the corruption of an old government.

If they could do what they did, we should be able to do this.

We are different, we Americans. We have different values and different ideals. But take out a dollar bill and read after me: *E pluribus unum*: Out of the many, one. And out of our many, we need to find "one" in the sense of a common understanding that could lead us on a path to save this Republic. While we still can.

CHAPTER 5

The Problem

WE DON'T HAVE A COMMON END. We do have a common enemy.

There isn't a single thing that we all want—save perhaps peace, justice, and the American way (whatever that means). But there is a single thing that is blocking the ability of all of us to get from our government what we think we are getting when we actually succeed in securing government power.

I've written a book to prove that point—*Republic, Lost*. This isn't that book. Instead, I will simply assert here what I try to prove there, because it turns out that most of us already believe what I show there.

At the core of our government is a corruption. Not the corruption of criminals, violating the law by engaging in illegal bribery. There is some of that, but not much, and even

if we ended all of that, we wouldn't begin to solve the type of corruption that I'm speaking of. Instead, the corruption that I'm speaking of, and the corruption that debilitates this government, is legal corruption. It is the economy of influence that guides Washington to regulate or not to regulate as the funders of campaigns want and, more pressingly and more recently, as the barons of super PACs demand.

This corruption blocks both the Left and the Right. For different reasons, it blocks us both from getting the change that each seeks.

The Left wants climate change legislation. It will never get that so long as this corruption remains. The Left wants real health care reform—with real competition for insurance companies and real competition in drug prices. It will never get that so long as this corruption remains. And the Left says it wants a vibrant and modern broadband Internet infrastructure. But it will never get the competition it needs to inspire that building so long as the incumbents can spend less (through the regulatory system) to block competition than providing that service would cost.

The Right wants different things, but again, they are things it will never get so long as elections are funded as they are now funded. The Right wants a smaller government. But so long as a bigger government means more targets for fundraising (i.e., the regulated), the system is biased against what the Right wants. The Right wants simpler taxes—whether Her-

man Cain's 9-9-9 plan or Rick Perry's flat tax. But taxes—or, more precisely, the complexity of today's taxes—are tools in the fundraiser's toolbox. Got a tax benefit that's set to expire? Expect a call from a congressman or his fundraiser, eager to enlist you in the fight to "preserve your tax freedom." What congressman would simplify taxes when that only complicates his opportunity to raise campaign funds?

The key is for both sides to look at these failures and to connect the dots. Not to the one or two critical changes that never seem to happen, but to link the five or ten critical changes that never seem to happen, and to ask "Why?" If, to invoke the author of my one sacred text, Henry David Thoreau,

> [t]here are a thousand hacking at the branches of evil to one who is striking at the root,

the key is for this thousand to pause their hacking and to begin to go after that root.

The "root" is the role that money plays within this system. Or, more precisely, the role that money from a tiny slice of America plays within this system. It plays that role along two dimensions—one familiar and one brand-new.

The familiar is through campaign contributions. So long as congressmen spend between 30 and 70 percent of their time raising money, they will be responsive to their funders. But so long as the vast majority of us are not "the funders," this

economy of funding will corrupt the system. So long, that is, as the vast majority of funds come from a tiny slice of the top 1 percent of us—0.26 percent of us give more than $200 to congressional campaigns, 0.05 percent of us max out to any congressional candidate, and 0.01 percent spend more than $10,000 in a campaign cycle[29]—that funding will corrupt this system. Members become dependent upon the you-pick-your-fraction-of-the-top-1-percent to fund their campaigns. Government becomes responsive to the you-pick-your-fraction-of-the-top-1-percent to keep the funders happy. No longer do we have a government "dependent," as the Framers put it, "upon the People alone."

The dynamic here is complex, but not too complex. Only the very few (some might say idiots) make the link between the funding and the special benefit explicit (and hence illegal). Practically everyone else is smart enough to avoid crossing that line while still securing the support they need. Jack Abramoff writes in his recent (and excellent) book *Capitol Punishment*,

> The entire time I was a lobbyist, Tom DeLay never once asked me for a contribution, let alone strong-armed me. He didn't have to. I did it because I believed in him, and because when I needed help, he and his staff were there. [30]

This was Abramoff's general philosophy:

> As a lobbyist, I thought it only natural and right that my clients should reward those members who saved them such substantial sums with generous contributions.[31]

These "quid pro quos," as Abramoff refers to them, were "one of the hallmarks of our lobbying efforts."[32] And completely ordinary. As he writes,

> I was so used to hearing senator so-and-so wants $25,000 for his charity, or representative X wants $50,000 for the Congressional Campaign Committee, that I would actually double check with my staff when they didn't request lucre for the legislators. The whole process became so perfunctory it actually seemed natural.[33]

And while this dynamic didn't bother Abramoff much while he was in the middle of it, on reflection (in a federal prison), he came to believe that

> contributions from parties with an interest in legislation are really nothing but bribes. Sure, it's legal for the most part. Sure, everyone in Washington does it. Sure, it's the way the system works. It's one of Washington's dirty little secrets—but it's bribery just the same.[34]

"Bribery," whether legal or not. Part of a "system," as Abramoff puts it, that "needs to be changed." "[N]ot the current cast of characters running the system,"[35] but *the system*. A system that leads 75 percent of Americans to believe that "campaign contributions buy results in Congress,"[36] and a system that earns the confidence of no more than 11 percent of the American public.[37]

But the fundraising game is nothing compared with a new dynamic that the Supreme Court inspired through its obliviousness in *Citizens United v. Federal Election Commission*: the dynamic force of independent expenditures within this system.

Never have I heard that influence described better than by former senator Evan Bayh (D-IN) in response to a question put to him on a panel: John Samples, from the CATO Institute, had just suggested that the evidence was inconclusive about whether money bought results in Washington. Bayh was asked whether, based on his twelve years of experience in the Senate, he too was uncertain.

There was no uncertainty in his response. Indeed, if anything, he evinced a certain terror as he told his story. For, as he put it, the critical change that has happened to D.C. is the rise of independent expenditures through the effectively anonymous entities called super PACs. These super PACs have spread fear throughout the political system. The single most frightening prospect that an incumbent now faces is that,

thirty days before an election, some anonymously funded super PAC will drop $500,000 to $1,000,000 in attack ads in the district. When that happens, the incumbent needs a way to respond. He can't turn to his largest contributors—by definition, they have all maxed out and can't, under the law, give any more. So the only protection he can buy is from super PACs on his own side.

That protection, however, must be secured in advance: a kind of insurance, the premium for which must be paid before a claim gets filed. And so how do you pay your premium to a super PAC on your side in advance? By conforming your behavior to the standards set by the super PAC. "We'd love to be there for you, Senator, but our charter requires that we only support people who have achieved an 80 percent or better grade on our Congressional Report Card." And so the rational senator has a clear goal—80 percent or better—that he works to meet long before he actually needs anyone's money. And thus, without even spending a dollar, the super PAC achieves its objective: bending congressmen to its program. It is a dynamic that would be obvious to Tony Soprano or Michael Corleone but that is sometimes obscure to political scientists: a protection racket that flourishes while our Republic burns.

This is corruption. With the system of campaign contributions and also with independent expenditures, we have allowed an economy to evolve in which our representatives are not "dependent upon the People alone" but are instead de-

pendent upon the funders. Its source is obvious. And its consequences—from the financial crisis to the global warming crisis, from the bailouts to the health care debacle, from a tax system written by and for the lobbyists (and their clients) to a regulatory system that just can't resist one more regulation (and hence one more target for congressional extortion)—are obvious as well.

What isn't obvious is this: Why can't we get the populist Left and the populist Right to focus on the obvious? Why can't both sides recognize this common source? Why can't they see that until the obvious is dealt with, nothing else will get done?

The Tea Party Right is often the clearest about recognizing this source. As Meckler and Martin put it,

> We've also set up a system that requires legislators to spend so much time raising money and campaigning for reelection that they have no time to fully debate the consequences of their actions (or, as we've seen in so many cases, actually even read legislation before they vote on it).[38]

The solution, however, as they see it, is not "some kind of campaign finance reform that will, invariably, either trample the First Amendment or further drive us into debt." It is instead "the most effective form of campaign finance reform there is: a dramatic reduction in the federal budget."

But you can't simply assume away the hardest part of the problem: How would you get a "dramatic reduction in the federal budget" when the very system for funding campaigns depends upon more spending and more complicated taxes? The current system is biased in favor of large government and complex taxes not because liberals rule, but because complex taxes and invasive government are very efficient ways in which to inspire campaign contributions. The Right will have no fair shot at getting a smaller government or simpler taxes so long as the opposite is a surer path to funding congressional campaigns.

There should be no conflict between the Left and the Right on this: Both sides should favor reform that ends this corrupting influence.

We don't need to destroy wealth. We need to destroy the ability of wealth to corrupt our politics.

We don't need to kill capitalism. We need to kill that form of capitalism—crony capitalism—that uses its power to corrupt our politics.

We don't need to hate success. We have to organize against those who think that their success entitles them to special benefits and privilege from those addicts to fundraising we call congressmen.

We don't need to foment another fundamental revolution. We need only to end the corruption within the system that Jefferson's revolution helped create.

Both the Left and the Right should be able to agree about this. Or, at least, the outsiders from both sides.

For until the giant recognizes that she has two hands, a Left and a Right, and two feet, a Left and a Right, and two sides of a brain, a Left and a Right, and that she needs both, the giant will do nothing more than flail—as every one of the waves of reform so far has. Drop the first l from flail and you have precisely what the you-pick-your-top-fraction-of-the-top-1-percent want: disorder and disrespect enough to justify the pepper spray and batons that now line American streets.

We don't have time for these games anymore. The carnival was fun. Tens of thousands marching on beautiful fall days was inspirational. And thousands meeting in convention centers across the country to learn what Madison would have thought is genuinely amazing. But all of this energy is for naught if we don't learn how to slay the dragon. And if you—Tea Partier, Occupier, citizen—aren't in it to slay the dragon, then you—Tea Partier, Occupier, citizen—are the problem. You are this Republic's only hope. And so long as you dawdle, you deserve what's left when this Republic is lost.

SO WHAT WOULD FIX IT? What change would end this debilitating dependence, this obvious corruption?

Understand the source and you understand the solution. The source of this corruption is a Congress that is responsive to its funders but whose funders are not the People. The reme-

dy is to change that source by making the funders "the People."

We can achieve that remedy by changing the way campaigns are funded.

We must move away from the world in which (a tiny slice of) the top 1 percent fund elections to a world in which practically all of us—let's say, the 99 percent—fund elections. Until we do that, we will not have a republic "dependent upon the People alone." We will instead have a government "dependent upon the funders primarily."

The rules that would create this alternative are not hard to describe. At least in principle. The details require careful work. But for now, we can leave the details to another day. For now, focus on three changes to our current system that would produce a regime where the funders are "the People" and where no one could believe that "money is buying results in Congress."

1. Public elections must be publicly funded.

We must first build a system to fund campaigns in which all of us, or at least the vast majority of us, become the effective funders. Not through a system that forces one side to subsidize the speech of the other, or that empowers Washington bureaucrats to decide how much money each side has to run its campaigns. That's the awful connotation that typically comes with the term "publicly funded elections," and it's not what I mean here. Instead, through a system that incentivizes

candidates to raise campaign funds from all of us, in small dollar chunks, and that effectively spreads its influence to all of us.

Here's just one example: Imagine a system that rebated the first $50 of tax revenue paid by each of us, in the form of a voucher—call it a "democracy voucher."[39] Voters could allocate that voucher (or any part of it) to any candidate for Congress who agrees to fund his or her campaign only with "democracy vouchers" and contributions from citizens of up to $100 per election. Vouchers not used would get returned to the political party of the voter—or, if the voter is an independent or chooses differently, to some other democracy-supporting fund. At $50 per voter, this system would put at least $7 billion into elections each year, more than three times the total raised in congressional elections in 2010.

Call this the Grant and Franklin Project. As a system, it would easily and adequately fund congressional elections. But it would be us, not the you-pick-your-fraction-of-the-top-1-percent of Americans, who would be funding these elections. And, sure, the money to fund this system would be "the public's"—in the sense that the Treasury would write the checks to back the democracy vouchers. But as with everything in the Treasury, the Treasury got this bit of the "public" from us first. This system just rebates what the people have given the government, in a form that allows the People to make Congress responsive to them.

2. Contributions to political campaigns must be encouraged, but limited.

Barack Obama's first presidential campaign taught us a critical truth about modern campaigns: Participation is key. And one critical way in which citizens participate is through contributions. As law professor Spencer Overton puts it, the "participatory interest" in elections is crucial for motivating Americans to understand and engage their democracy.[40]

But we can feed this participatory interest without allowing unlimited contributions to candidates. Or even contributions anywhere close to the amount permitted under the existing system. In my view, we satisfy the participatory interest if citizens can contribute up to $100 in an election. Beyond that, with proper people funding, no one needs to go.

3. Political expenditures separate from a campaign (so-called "independent expenditures"), whether by individuals or corporations, should not be banned, but they should be limited.

The first two rules could be achieved without any change to our Constitution. Consistent with *Citizens United*, Congress could establish a voluntary system to fund federal elections in exactly the way that I've described. Contributions would be effectively capped not by legal mandate, but because candidates would choose to take no more than $100 (so as to qualify for the voucher). Candidates choosing to live under the old

system would be free to continue to do so.

I used to believe that this change would be enough. But the dynamic that we've seen over the past two years with super PACs has convinced me that we need something more.

The government, in my view, should never have the power to ban the political speech of any individual or group, regardless of whether a citizen or not, or "a person" or not. Citizens, foreigners, corporations, and (someday, I hope) dolphins should be free to add their perspective to the political marketplace of ideas.

But the recent experience with super PACs has convinced me that there must be an ability to limit the amount of independent expenditures that can be made in a campaign, so as to assure that candidates don't become just as dependent upon independent spenders as they are now dependent upon contributors.

Limit, but not ban. Congress should be free to set reasonable limits to avoid improper dependence. It should not be free to silence any one faction in a debate.

THESE THREE CHANGES would radically change the economy of influence governing campaigns today. They would dramatically strengthen the independence of members from the corrupting influence of special interest money. And they would make possible again a government that people could believe in. A government that people could trust.

Others, however, believe that we need more changes than these three. There is a large and influential movement to declare that "corporations are not persons."[41]

And there are some who believe we also need to affirm that "money is not speech," at least for purposes of campaign contributions.[42] Groups such as MovetoAmend.org and GetMoneyOut.org have awakened thousands to the dangers of a government not responsive to "the People alone." They have driven citizens to demand stronger controls on corporations.

These movements were birthed by *Citizens United*. They have joined other critical movements—for example, the Coffee Party, founded by Annabel Park as a Facebook group in response to the Tea Party, and now a broad-based and diverse movement pushing for reform. They have all done the nation an important service by raising the awareness of all of us about the distorting effect that special interest politics now has in our Republic. And if the three changes that I have described are adopted, there is no harm in at least affirming that "corporations are not persons," in the sense that corporations are not "endowed by their Creator with [any] unalienable Rights." God didn't give us the Delaware corporate charter. We did.

But it is important not to let the (geeky) sexiness of a declaration that "corporations are not persons" sidetrack us from the crucial change that this Republic needs. The day before *Citizens United* was decided, this democracy was already broken. *Citizens United* may have shot it again, but the body was

already cold. And reversing *Citizens United* might well be a necessary step to bringing it back to life. But such a reversal alone is nowhere close to a sufficient step. To revive this democracy, we must change the way campaigns are funded and supported.

Citizens need the courage to make this obvious point. No doubt the fight to fix this system—truly, not symbolically—will be difficult. Every pundit and purveyor of conventional wisdom will tell you it is impossible. Indeed, talk about "campaign finance reform" and their eyes roll.

But these are the same people who said that MoveOn was impossible. And that the Tea Party would flicker out. And that the Occupiers would go home after a week. They know only what they have seen. They have not seen the giant awake. It's time to show them something new.

CHAPTER 6

A Plan

WHETHER FROM THE RIGHT OR THE LEFT, citizens must agree upon a common charge: that this government is corrupt, and this corruption must end.

How we end it is something that most of us should be able to agree upon as well: We end it by removing the corrupting influence of money. Not by removing all money—not by pretending that campaigns cost nothing. But by removing the sort of money that makes outsiders like us wonder whether it is money—rather than principle, or reason, or justice, or even just politics—that is buying results in our government.

But a charge and a response do not constitute a plan. To actually do something about this corruption, we need a way into the mechanisms of government. We need a strategy for taking control of those mechanisms, fixing the problem, and then getting out.

We need, in other words, a plan for taking on the most powerful government in the history of governments—and winning.

<Sigh. Deep breath.>

There is no simple strategy for doing this. It will instead require the actions of individuals and the actions of groups. In the section that follows, I map four things that you could do now. In the section following that, I describe what we need to be able to do—together.

The Work for Citizens

1. Engaging Congress

THE SIMPLEST and most obvious step is to hold the insiders in Congress to account. They are not evil. They are not even criminal. But they are responsible. For Congress could change this system tomorrow through legislation that would dramatically weaken the corrupting influence of money.

A single statute establishing small-dollar public funding, perfectly constitutional under the current Supreme Court's jurisprudence, could radically change the economy of influence inside D.C. That change would then open the way to the next step of reform: a constitutional amendment, necessary to correct the mistakes of *Citizens United*. But long before any

amendment, we should hold Congress responsible for failing to fix what it can on its own.

We can do this by holding every member of Congress and candidate for Congress accountable for the position that he or she takes on this question of corruption. Is he a candidate who will end the corrupting influence of money in Washington? And will he so pledge?

Imagine, then, a pledge like this:

> I hereby pledge to do whatever it takes to end the corrupting influence of money in our government.

This pledge is general. Anyone can take it—citizen or candidate alike. But on its own, the pledge is vague. So we need to add to it the ability to specify precisely what "ending the corrupting influence of money" means, by describing the mix of principles that the person taking the pledge believes essential.

Three principles could fill that commitment out. The person making the pledge could commit:

(A) To provide that public elections are publicly funded;

(B) To limit, and make transparent, contributions and independent political expenditures; and

(C) To reaffirm that when the Declaration of Independence

spoke of entities "endowed by their Creator with certain unalienable Rights," it was speaking of natural persons only.

Here again, however, there are important details. There are many ways to make "public elections publicly funded." Likewise, there are important differences in the regimes that might limit independent political expenditures and make them transparent. So, again, we need to give people a chance to specify precisely how they believe each of these principles should be respected.

TheAntiCorruptionPledge.org gives this opportunity. Any citizens or candidate for Congress can go to this site and take the pledge.

That citizen or candidate then indicates which of the three principles he or she commits to. And for each of those principles, the citizen or candidate can select a particular plan or actual bill that would support that principle.

So, for example, under the first principle, to "provide that public elections are publicly funded," the person taking the pledge could indicate that he or she would co-sponsor the Fair Elections Now Act, the Grant and Franklin Project that I proposed in the last chapter, or other proposals that are consistent with this principle.

Once people have made the pledge, they are given a badge they can post to their own website. If they are a candidate, their pledge is confirmed and recorded for others to see. The

pledge would give us, the citizens, a clear sense of who might bring about the change we need. And it would give us a clear way to hold candidates accountable.

So here is the first thing that you should do: At the very minimum, take the pledge yourself, and then demand that candidates for Congress also take this pledge. Go to the website and check whether your congressman, or candidate for Congress in your district, is on the list. If your congressman or favorite candidate is not on the list, then demand that he or she take a stand. Now. And if he or she is, then thank that candidate for taking the first steps that we will need for reform.

2. Engaging the President

CHANGING CONGRESS would be a great first step. It is no doubt a necessary step. But we've not seen Congress take the lead on fundamental reform since Reconstruction. I don't have high expectations that Congress will recover its capacity for leadership anytime soon.

Instead, it has been presidents who have been the engine of reform in American politics. FDR, Lyndon Johnson, Ronald Reagan—these were the transformational figures of the last century. It thus makes sense to look to the presidency for the leadership that this movement will require.

Or maybe it did make sense, until Barack Obama showed us once again that we were Charlie Brown, and reform presi-

dents were Lucy, pulling the football out from under us. No candidate for president in the past half-century made change as central to his campaign as Obama. Yet, once elected, his change agenda was largely forgotten. Indeed, it seems clear that Obama's team didn't even have a plan to carry out the changes that Obama promised. The rhetoric of that campaign was just that: rhetoric.

The 2012 cycle might, however, offer an opportunity for a reform candidate whom too few are taking seriously. For the first time in modern political history, there will be a clear path to the presidential ballot in every state that is outside the control of the Republican and Democratic parties. That path is the Internet-based "political party" Americans Elect.[43]

Americans Elect (AE) is the brainchild of Peter Ackerman, a director at Rockport Capital. Outraged at the cartel-like control that the two major political parties have over presidential elections, in 2007 Ackerman joined a massive effort (also massively well-funded) to establish a procedure by which candidates could become the "Americans Elect" candidate for president. And, more important, AE promised that candidate would be on every state ballot in the nation.

As this book goes to press, it seems clear that AE will succeed on both counts. An Internet-based process has been built by which citizens can become delegates to the Americans Elect Convention. That same process will enable individuals to become candidates for the AE nomination for pres-

ident. And the nominee from the AE process will then, in all likelihood, be a candidate on every ballot across the nation.

When that happens, everything about the 2012 election could change. Obviously, Barack Obama will be the Democratic nominee. If the Republicans nominate, as seems at least probable, Mitt Romney, then both major parties will have candidates who don't excite the activist base. A credible third-party candidate could then radically destabilize the plans of both major-party candidates, forcing both to account for the third in a way that makes the strategy of each different.

I first met the architects of AE in Cambridge, Massachusetts, in May 2011. Peter and Eliot Ackerman made their pitch for this radical new experiment. I was not sold. They were both smart and impressive, but they were obsessed with the idea that the problem with American politics was the polarization of presidential candidates, not the corruption induced by campaign funding. Their hope was that some moderate, bipartisan ticket might emerge from the process they birthed. And they believe such moderates could break the stalemate that is Washington today.

I don't believe non-moderate presidents are the problem with American politics. And I certainly don't believe that anything would be fixed by simply adding the ability of Americans to fine-tune their choice between the two (alleged) extremes presented by the two major parties.

The original website didn't allay these concerns. Indeed,

the original AE framework didn't even seem to recognize fundamental reform as an issue. A delegate joining AE is asked scores of questions to suss out his or her opinion on every important federal issue there is. But reform was simply folded in among every other issue. As I went through the AE interrogation, I grew increasingly impatient with the questions. I didn't give a damn about the precise weight I gave to environmental issues versus health care issues. I cared about fixing the system first. It was like firemen asking what color I wanted my living room repainted before they put out the fire. Forget the paint. Put out the damn fire!

But AE has evolved, and the platform is primed for precisely the kind of capture that this movement requires. There is nothing in the structure of AE that commits it to substantive centrism. Indeed, the platform is open to any cross-partisan candidacy regardless of their politics. If a reform candidate could emerge within that process, the AE platform could be a crucial step toward essential reform.

What (not who) is a credible AE reform candidate?

A reform candidate makes reform of the system primary. He or she must take the corruption pledge and make it perfectly clear how the process of reform happens. There can be no ambiguity here. We can't have another Rorschach candidate who seems to everyone to be promising just what everyone wants. Instead, this candidate must make absolutely clear that he or she is in this race because of reform first.

Obviously, reform is not the only thing a president would need to do. In *Republic, Lost*, written before AE was viable, I imagined a reform candidate who would promise a regency presidency, holding office only until the reform that he or she identified was ratified and then resigning. But whether or not that bit of drama is added to the story, there is still a need to know what this candidate believes about a host of other issues. Those questions must be answered. But to be a credible reformer, they must always be framed second. The first issue must be the issue for the campaign: How can we end the corruption of this system?

Americans Elect could be the path to this reform. If the delegates of AE rallied around a reform candidate, whether Buddy Roemer or Howard Schultz or pick-your-favorite, it would be extremely hard to keep the message of reform off the presidential debate stage. And if that message were onstage, with the two other conventional candidates—both of whom will have fed at the big-donor trough, both of whom will have taken advantage of unlimited super PAC money, and neither of whom will excite his base—then a critical dynamic could begin: Either that reform candidate would become credible enough to win; or, at least, that candidate would force the others to begin to promise the stuff that reformers demand.

Either way, this is an obvious second step that every citizen should help make real: We need to "occupy" AmericansElect.org. Become a delegate. Today. Make reform your number-one

issue. Work to convince other AE delegates that this number-one issue for you should be the number-one issue for Americans Elect. And then cast your ballot only for a candidate who promises reform first. Forget Democrat or Republican. Forget Left or Right. Forget mushy centrism. Vote for the candidate who could make change something other than a slogan.

But if the candidate is not a reform candidate, then I am not a supporter. There is a "dime's worth of difference" between the major party candidates. I don't believe in gambling over that difference, unless there's a real chance that something important would be gained. A real commitment to reform would be, in my view, sufficiently important. Fine-tuning the gap between R and D is not.

3. Engaging the Constitution

AS I'VE SAID, some may believe that it is enough to pass (at least the right version of) public funding for federal elections. The Grant and Franklin Project, for example, would bring about a substantial change in the way Congress works without requiring any change in the Constitution.

But I've become convinced that in the long run, constitutional change will also be required. Even with the right version of public funding, independent expenditures will still turn our representatives into shape-shifters as they bend to please their super PAC of choice. We have to remove the need for this

shape-shifting by amending the Constitution to give Congress the power to limit, not ban, independent expenditures.

Article V of our Constitution provides two paths to amendments. The only one that's ever been used requires two-thirds of Congress to propose an amendment, and then three-fourths of the states to ratify it. The alternative requires two-thirds of the states to call on Congress to "call a Convention for proposing Amendments." Those proposals too would then have to be ratified by three-fourths of the states before they became part of the Constitution.

We can't wait around for Congress to act. We need to begin the process of forcing Congress to act, by organizing to get state legislatures to call for an Article V convention.

This alternative scares people because it has never been done before, and they sensibly fear the uncertainty of trying something radically new. What if the convention "ran away"? What if it abolished the Bill of Rights? What if it criminalized homosexuality? Or (the fear of the John Birch Society) what if it instituted a Stalinist form of government? (Seriously.)

I understand the worry. I don't consider it to be fatal. Sure, there are a million questions to answer. And, sure, anytime you invoke the term "convention," you invite people to reflect upon the most basic power of the sovereign (us) within a republic—the "unalienable Right of the People," as Jefferson said in the Declaration of Independence, "to alter or abolish" government. Truly, scary stuff.

But the convention that I'm talking about is not a "constitutional convention" in the ordinary sense of that term. It is an Article V convention—meaning a convention as specified in Article V of our Constitution. That convention has just one power: the power to propose amendments. Those amendments have no effect unless thirty-eight state legislatures (or state conventions, but not popular referenda) ratify them.

Thirty-eight is a huge number. One house each in thirteen states could block any amendment. And I trust that even the most cynical would not believe that thirty-eight states are going to ratify the ideals of Stalin or abolish Madison's Bill of Rights.

But I get that to win this argument, we need to show people why an *Article V* convention makes sense. We show people by modeling a convention: by building a "convention in a box" and running serious mock conventions to demonstrate that ordinary citizens can think sensibly about constitutional change. At the same time that we mobilize to get legislatures to make the call for a convention, we must get citizens to show one another that a convention could work.

CallAConvention.org is taking both steps. A cross-partisan organization that advances no single agenda for constitutional reform, CallAConvention.org is intended simply to facilitate a national call for an Article V convention. Its board is politically balanced. The rules of the organization forbid it from pushing for any particular substantive reform. But as well as enabling state-based organizations that would push

state legislatures to make a call on Congress for an Article V convention, the organization will also organize the push for mock conventions as a means of demonstrating why We, the Citizens, are able to make the change this government needs.

You can help this process, too. Go to CallAConvention.org and sign up. Become a supporter of the mock convention process. Become a member of your own state organizing committee. And then, with that state-based organization, begin to occupy your state legislature, to build the campaign to get them to ratify a resolution calling on Congress to call an Article V convention.

For even if we don't get the necessary thirty-eight states to make the call for a convention current and binding, the very process of collecting states calling for reform will have its own effect. This is a quintessentially outsider process. It is the one clear way the Framers gave us for making an end run around a corrupted Congress. Any substantial push for an Article V convention will have an effect on what Congress does.

That is the lesson that history teaches. We've never had an Article V convention, but we've been very close twice. In the 1980s, the states were close to having enough resolutions to demand a convention for the purpose of passing a balanced budget amendment. That push led Congress to adopt the most important budget reforms in half a century. And exactly a century ago, the states came within one vote of calling for a convention for the purpose of making the Senate elected

rather than, as it was at the time, appointed. Congress, in response, quickly proposed an amendment to achieve the same end and, before the final state could pass its resolution calling for a convention, three-fourths of the states had ratified the Seventeenth Amendment, fundamentally changing the nature of the Senate.

The same effect would happen here. Politicians don't believe in giants—until they see them, up close and in person. And the giant that is the sovereign of this nation needs to stretch its muscles and show itself to the politicians. The cross-partisan process of pushing the nation to a convention is the chance to show the insiders that the outsiders are here. And we're not going anywhere. Until we change them.

4. Engaging Citizens

HERE'S WHAT CONVENTIONAL WISDOM SAYS about this fight: The people don't care about it. They don't care about campaign finance reform. It doesn't move votes. It doesn't elect candidates. And it certainly won't drive a constitutional revolution.

The conventional wisdom is right. It has been about a hundred years since America rallied to such fundamental reform. It will take extraordinary effort by each of us to convince enough of us to do it again.

Yet this we must do, by drawing more of us into this cause.

And we do that by getting more of us to recognize what you certainly see: not that the problem of money in politics is the most important problem facing the nation, but, instead, that the corrupting influence of money is the *first* problem facing this nation. That unless we solve this problem, we won't solve anything else. Unless we press pause on the endless game of "hacking at the branches of evil" and spend at least a cycle or two "striking at the root," we won't get anywhere fighting any of the many evils that motivate all of us as citizens.

So you need to recruit your friends, your neighbors, your school, your followers on Twitter, to help us strike at this root. You need to recruit root strikers—those rare and powerful souls who can get others to see why we must first solve this if we're to solve anything.

Now, when I tried to persuade Jon Stewart to become a root striker, he didn't much like the name. He suggested "batmen" as a better moniker. Much less geeky. Much, much cooler: That's Stewart versus Lessig in a nutshell.

But whether root striker or batman, the point is the same. It doesn't take a genius to recognize this argument. It simply takes someone willing to connect the dots. Become a member of this campaign—Rootstrikers.org—and help us show others how these dots connect. And how we can reform the system that connects them.

The Work for the Net(works)

THESE FOUR STEPS ARE A START. They would begin a process that would push the politics of reform that this nation desperately needs.

But alone, they are not enough. The core argument of this book is that the reform we need will require a critical discipline by all of us. It will take each of us, and the networks that constitute us, learning to work with people who are different—who believe in different things, who want a different politics. This reform will require us to learn how to work with the other side to make the ultimate fight with the other side fair, and effective.

There's no website for this. There won't be a commander or any single entity that will make this happen. Instead, it will require an alliance that is organic and authentic and that builds from the grass roots up. Occupiers must invite Tea Partiers to coffee (or tea). Tea Partiers must have sessions at their conventions about whether cooperation is possible. The Coffee Party must reach out to the organizations pushing to amend the Constitution: Everyone must take the first steps to allow a wide range of different groups to begin to work together.

The simplest way to enable such coordination would be for some to take the lead in constituting a Citizens' Convention. The Citizens' Convention would aim to do nothing more than provide a framework within which a common platform for

change might be developed. As with CallAConvention.org, it would be cross-partisan. But it could begin a regular process, meeting virtually (maybe every month) and physically (maybe twice a year) to gather and hash out a common platform of demands.

This alliance must affirm, not hide, its differences. It must recognize that it speaks not for a single movement but for allies aiming at a common goal. Eisenhower should be the model. Diversity—like an alliance that could include the Soviet Union as well as the United States—should be its character. Its focus should be the single common enemy that has corrupted this Republic. Its aim must be to map the process by which we, #outsiders, defeat that enemy. Together. As one people, but not one network. As a federation, with radical differences among us, committed nonetheless to the one end we all must achieve: a government that we could have reason to trust.

Our age has given us many different leaders, from Jimmy Wales (Wikipedia) to Markos Moulitsas (Daily Kos) to Meckler and Martin (Tea Party Patriots). They reflect a diversity of networks, working on every important issue. They sometimes represent power enough to make the insiders listen.

Let us learn how this diversity can act now as one network, as an inter-network, as a cooperating crowd, embracing the open-source principles that define our age, and using them to restore this Republic.

CONCLUSION

The Promise

IN 2008, Iceland, like much of the rest of the world, suffered a major economic collapse after its recently privatized banks suffered a catastrophic default. The legalized gambling that the world's banking system had become left Iceland's three major banks holding nine times the country's GDP in debt. When the collapse of Lehman Brothers ended their ability to refinance that debt, the banks entered bankruptcy—the largest collapse, relative to the size of a nation's economy, in the history of the world. When a coalition government tried to bail out the banks—with a package that would have required each Icelandic citizen to pay about one hundred euros a month for fifteen years at 5.5 percent interest—the citizens revolted. A national referendum rejected the bailout in March 2010, with 98 percent voting to reject.[44]

As the frustration with Iceland's failure grew, there was a growing recognition that this economic failure was a governance failure, too. Iceland had failed to insulate its government from cronyism and corruption. Both fueled irresponsible monetary and banking policy and, eventually, economic collapse.

So the citizens of Iceland launched the most ambitious crowdsourced-sovereignty project in modern history. As a first step, a network of private grassroots organizations called the Anthill gathered a statistically significant portion of the nation to brainstorm a vision for the country. This "National Assembly" of more than fifteen hundred Icelandic citizens used open-source principles to "energize the wisdom of the population," as it was promoted, and "to crowdsource a socio-economic political manifesto."[45] The idea, according to the assembly's architect, was to "focus on the process. With a process it is something that can scale. It's like how Linux competed with Windows. ... The process ... can scale so clever people all over the world can participate."

The National Assembly set the stage for the next extraordinary step of popular sovereignty. In June 2010, the Icelandic parliament passed the Act on a Constitutional Assembly, delegating the "intensely legalistic task" of writing a constitution to a group of citizens acting in a constitutional council.

That council then convened a National Forum in November 2010, which "crowdsourced the norms and values of the

population of 21st century Iceland," through a series of questions and interviews. Then, building on the results from that survey and the work of the 2009 assembly, the forum divided citizens into groups focused upon particular themes.

At the same time, the council initiated elections to a twenty-five-seat drafting commission, which would have ultimate responsibility for drafting a constitution. After some struggles with the Supreme Court, the government appointed the elected representatives to the council in April 2011.

The council was a completely self-governing body, charged with the task of drafting a new constitution based upon the framework established by the 2010 forum. Each week, the council assembled in a televised general meeting, accessible over the Internet. Every Icelander was invited to participate in those proceedings by submitting written comments or proposed new sections. Every week, beginning in April 2011, the council posted draft clauses on its website. The public commented on the clauses directly and through social networking sites such as Twitter and YouTube. By the end of the process, the public had contributed more than 3,600 comments and had submitted more than 370 suggestions to the council's website.

In July 2011, the council submitted the draft of a new constitution to parliament. That draft will be voted upon in a public referendum sometime in 2012. The parliament will then determine whether to approve it and bring it into force. If it

passes, it will be the first popularly ratified constitution in Iceland since it gained independence from Denmark in 1944.

EVEN FOR ME—constitutionally committed to the genius of what open-source values can inspire—it is extremely hard to read the story of Iceland without at least a bit of anxiety. The cause was no doubt just. The means were extraordinarily ambitious. And, if successful, the constitution that this process produces could well inspire other nations to a similar faith in citizen politics. But to throw everything into the air at once takes real courage. It is not the sort of thing that nations do often, or well.

Yet in America, we don't need such ambition. Or, better, it is ambition enough for us to make the relatively small change that we need to restore this Republic. We have no need to replace all of our Constitution, or most of our Constitution, or even lots of our Constitution. We instead have a narrow but profound flaw at the core of our Constitution, one that has allowed our government to become captured, and one that the insiders are not about to repair on their own.

We need to use every creative tool at hand to achieve this one small change. We need geeks, and educators; parents and city councils; business leaders and leaders from culture. We need citizens everywhere.

For it can be done. If you think about the other problems that our nation tackled throughout the course of the twenti-

eth century, this one is tiny by comparison. America defeated fascism. It started the process to finally end institutionalized racism. It gave the cause of ending sexism new legal tools and important legal standing. And even conservatives on this Supreme Court have aided in the task of ending hatred on the basis of sexual orientation.

Each of those problems is impossibly hard. There's no way to legislate an end to racism. It takes generations of hard work and the commitment of a people to their higher selves. The same with sexism and homophobia: These live deep within souls. They get bred early, and for some they become part of the DNA. It takes real work to root them out. The twentieth century honestly and firmly began that work.

The problem that I have described in this book is nothing compared with those. It is simply a problem of incentives for those who govern this nation. If we funded elections differently, politics would change. Overnight. In Connecticut, when clean elections were adopted, 78 percent of elected officials used the system in the first year.[46] They did so because it made sense, as none of them had a deep-seated desire to live their lives as vassals to some baron of the 1 percent.

The same could be true of our Congress, too. If we, the giant, can learn to stand and walk and demand, then we, the People, the sovereign, can hack this system to make it true.

It will take insight and a certain discipline. There is passion enough. There are plenty of tools. There is a network

that feeds authentic collective action. And when that network awakes, as it did to stop SOPA/PIPA, it has more power than the insiders have ever imagined.

If the leaders of these many movements can put aside their egos for just a bit, if they can imagine winning as part of an alliance, not on their own, if they can remember that even Moses didn't get to the promised land, then there is a chance that this passion, plugged into this network, on behalf of this People, might slay this dragon.

That's the most that can be said with honesty: There is a chance. But what alternative do we have? We are Americans. We all have a love of country that is every bit as deep as the souls who risk their lives to defend it. Whether victory is guaranteed or not, we need to fight for it. Again and again.

So let us begin. Now.

Afterword and Acknowledgments

THERE IS NO CHANCE that the Supreme Court had any clue about the trouble that it was causing on January 21, 2010. The Court is aloof. That's one of its virtues. And the decision in Citizens United v. FEC[47] followed fairly directly from a string of recent cases that had all dropped without a trace.

But trouble it caused. For by deciding that our Framers had given corporations the right to spend unlimited amounts in political campaigns, the Supreme Court inspired a rare outrage that linked both Left and Right. A Washington Post–ABC News poll conducted immediately after the decision found that 80 percent opposed the decision (65 percent strongly), with Democrats outnumbering Republicans just slightly (85 percent vs. 76 percent).[48] Justice Stevens was certainly correct when he observed:

> While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.[49]

In the two years since, we have learned a great deal about the world the Supreme Court built. We have seen, first, that the effect of *Citizens United* on campaigns and on the behavior of politicians is profound: It has become the era of the super

PAC, in which unlimited and effectively anonymous political expenditures rule campaigns and Washington.

But we have also learned how easily political movements can become obsessed. The push for repeal has grown dramatically as almost a dozen amendments have been proposed and almost as many reform groups born. In city after city, resolutions are being passed, demanding that their politicians join the cause. And as this short book goes to press, thousands from across the country are rallying to recall the Court's blunder and to push again for reform.

Yet, as I've argued here, we need to keep in mind one completely obvious fact: that on January 20, 2010, the day before *Citizens United* was decided, this democracy was already broken. And any reform that simply returned us to the world before *Citizens United* would certainly fail as a reform that mattered. We need to do much more than fix the Supreme Court's mistakes. We must remake a republic dependent not upon campaign funders, direct or indirect, but instead, as *Federalist 52* puts it, "dependent upon the People alone."[50]

How is the challenge. I don't write with the illusion that we can see over the horizon. Change will take time, and over time our strategies will need to evolve. We need to learn from what has worked and adjust as we go forward. And, most important, we need not a commander but a conversation, among citizens who recognize that none of us has ever done this before, but that all of us must do it now.

With the help of my publisher, Byliner, I hope to spread this first version widely. After a short period, and assuming the book takes hold, I will license it freely, and, based on feedback (at oneway.lessig.org), draft version two.[51] That second version will be licensed freely from the start, and live on a wiki. That means that no single one of us will own it, but that all of us will be able to direct it.

For this is the character of everything that has been surprising and great from the past few decades: powerful, open-source projects that did what no one thought possible—from the Internet to GNU/Linux to Wikipedia to the Tea Party to Occupy Wall Street to the defeat of Hollywood's anti-piracy monster, SOPA and PIPA.[52] And that must be the character of this movement, too. At least, if it is to work.

I am grateful to the few who worked extraordinarily hard to make it possible for me to write this short book so quickly.

Lauren Henry, Sushila Rao, and Benjamin White provided excellent and speedy research support, guided and driven by Szelena Gray. I am indebted to them, and especially and always to her.

David and Melissa Sedano did an extraordinary job bringing TheAntiCorruption-Pledge.org to life. I am endlessly thankful to them for their amazing work in absolutely no time.

Mark Snyderman helped me pretend I know something about the history of baseball. Maggie McKinley guided me through one small part of the Occupy movement. And David

Zirin's fury helped me understand a perspective I should have recognized more clearly, much earlier. I am thankful to each of them.

I am thankful as well to Wes Boyd, Stav Shaffir, and Matt Patterson, who allowed me to interview and quote them for this book, as well as to the many others who taught me about these movements.

It was Amanda Urban's idea to put these thoughts to paper. I am thankful to her for pushing me to do it, as she has with every other book I have written.

Finally, I am hopeful that there will be a year when "the Holidays" don't get interrupted by some urgent project. But I am endlessly grateful to my family for their understanding as I completed this "tiny book," as my two-year-old describes it. And none deserves that gratitude as much as the woman to whom this, and everything, is dedicated. With perpetual love.

Appendix

Proposed Constitutional Texts

IF WE'RE TO PREVAIL, the Constitution will need to be amended. In this appendix, I offer a draft amendment, and I offer the resolution that a state legislature should adopt in order to force Congress to call an Article V convention.

Constitutional texts are law. They are legal code. Just like Python, C++, or JavaScript, they need to be crafted carefully to achieve the objective of the ratifiers. They are not slogans. They are not principles. They are texts that embody a principle, perhaps made popular by a slogan. But they need to be crafted in a way that assures that they work as promised.

I offer this proposed draft as a legal text. It is crafted as it is to respond to a legal context that it can't directly change. I have tried in the notes to explain why each bit is needed as I have crafted it. Law is not rocket science. (Or maybe the better phrase here is "Law is not quantum physics," since rocket science is actually not so hard anymore.) Anyone can study enough to understand the stuff I've referenced. But it does take study.

AMENDMENT 28

(1) For the purpose of securing the independence of the legislative and executive branches, Congress shall:[53]

(A) fund federal elections publicly, at no less than the equivalent of the total amount spent in the election cycle in which this article is ratified;[54]

(B) limit any non-anonymized contributions to candidates for federal office to the equivalent of $100;[55]

(C) have the power to limit, but not to ban, independent political expenditures within 90 days of an election, including, but not limited to, expenditures in support of, or in opposition to, a candidate for federal office.[56]

2. The First Amendment shall not be construed to limit legislation enacted pursuant to this article, save to assure content and viewpoint neutrality. Neither shall the First Amendment be construed to limit the equivalent power of state or local legislation enacted to regulate elections of state or local officers.[57]

3. Congress shall by law establish an agency for federal elections which shall enforce the provisions of this article, and whose principal officers shall be nonpartisan commissioners who have served at least 10 years as a federal

judge. The agency shall have standing to enforce the provisions of this article judicially in the federal courts, and the judicial power shall be construed to extend to actions by the agency against Congress.[58]

4. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[59]

PROPOSED RESOLUTION TO CALL A CONVENTION

The State of _____, speaking through its legislature, pursuant to Article V of the Constitution, hereby petitions the United States Congress to call a convention for the purpose of proposing Amendments to the Constitution of the United States of America.[60]

Furthermore, _____ would propose that convention consider amendments to _____.[61]

Furthermore, _____ requests that, its proposal notwithstanding, Congress restrict the agenda of the convention

to considering only those matters enumerated by at least 40% of the states calling for the convention.[62]

And finally, _____ requests that Congress exclude from eligibility as delegates to the convention any current Member of Congress.[63]

Notes

[1]The average federal tax burden in 2006 was 20.7 percent (Congressional Budget Office, Historical Effective Federal Tax Rates: 1979 to 2006 [April 2009], http://www.cbo.gov/doc.cfm?index=10068). The average state burden is 10.1 percent ("How Tax-Friendly Is Your State? Local and State Taxes Can Have a Big Impact on Your Take-Home Pay," CNNMoney [citing a Tax Foundation report], http://money.cnn.com/pf/features/lists/taxesbystate2005/#more; accessed January 4, 2011). Thus, the average combined burden is 30.8 percent. Using this figure, I calculate the highest average after-tax expense to be housing, at 23.84 percent (Bureau of Labor Statistics news release, "Consumer Expenditures—2010" [September 27, 2011], http://www.bls.gov/news.release/cesan.nr0.htm). Laurence J. Kotlikoff and David Rapson argue that the effective burden at the lower rates is even higher; see "Does It Pay, at the Margin, to Work and Save? Measuring Effective Marginal Taxes on Americans' Labor Supply and Saving," National Bureau of Economic Research Working Paper no. 12533, December 2006.

[2]The role of the Tea Party in these gains is contested, but Skocpol and Williamson are convincing in their argument that the Tea Party's role was significant and important. See Theda Skocpol and Vanessa Williamson, *The Tea Party and*

the Remaking of American Conservatism (2012), 158–161.

[3]Mark Meckler and Jenny Beth Martin, *Tea Party Patriots: The Second American Revolution* (2012), 16.

[4]Skocpol and Williamson, *Tea Party*, 22.

[5]Skocpol and Williamson, *Tea Party*, 21.

[6]Skocpol and Williamson, *Tea Party*, 22.

[7]Skocpol and Williamson, *Tea Party*, 108.

[8]Most surveys conclude that 55 to 60 percent of Tea Partiers are male (Skocpol and Williamson, *Tea Party*, 42). They are "mainly white … married, older than 45, more conservative than the general population, and likely to be more wealthy and have more education" ("Tea Party movement," Wikipedia, http://en.wikipedia.org/wiki/Tea_Party_movement, accessed January 12, 2012). Sixty-two percent of Tea Partiers call themselves conservative Republicans (Skocpol and Williamson, *Tea Party*, 27–28).

[9]"Grassroots activists, roving billionaire advocates, and right-wing media purveyors—these three forces, together, create the Tea Party and give it the ongoing clout to buffet and redirect the Republican Party" (Skocpol and Williamson, *Tea Party*, 13).

[10]Skocpol and Williamson, *Tea Party*, 12.

[11]Glenn H. Reynolds, "Tea Parties: Real Grassroots," *New York Post*, April 13, 2009; http://www.nypost.com/p/news/opinion/opedcolumnists/item_kjS1kZbRyFntcyNhDJFlSK, accessed January 13, 2012.

[12]"Occupy Wall Street," Wikipedia, http://en.wikipedia.org/wiki/Occupy_Wall_Street, accessed January 12, 2012.

[13]Skocpol and Williamson, *Tea Party*, 32.

[14]Pew Research Center, "Frustration with Congress Could Hurt Republican Incumbents" (December 15, 2011), 11.

[15]Indeed, as I've traveled across the country to see these different groups, each of them has its own character. Occupy Seattle at the time I visited had become more militant. They had rejected an offer by the mayor to use City Hall, for fear of becoming "co-opted." Occupy Boston seemed the most diverse, from drug addicts (living in a No Drugs Zone) to students to professionals, with a health clinic and stage with a mic thrown into the bargain.

[16]Meckler and Martin, *Tea Party Patriots*, 15.

[17]Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (2008), 24–25.

[18]Meckler and Martin, *Tea Party Patriots*, 19.

[19]Meckler and Martin, *Tea Party Patriots*, 19–20.

[20]Paulina Borsook, "How Anarchy Works," Wired 3.10 (October 1995): 110.

[21]Yochai Benkler, *The Wealth of Networks* (Yale University Press, 2007).

[22]As an ABC News polling unit found, "views on extent of racism as a problem are not significant predictors of support for the Tea Party movement." See "The NAACP, the Tea Party and the Question of Racism," ABC News, July 12, 2010; http://abcnews.go.com/blogs/politics/2010/07/the-naacp-the-tea-party-and-the-question-of-racism.

[23]Pew Research Center, "Network by the Numbers" (2011); http://stateofthemedia.org/2011/network-essay/data-page-5.

[24]Pew Research Center for the People & the Press, *Beyond Red vs. Blue: The Political Typology* (2011), 42–43; http://www.people-press.org/files/legacy-pdf/Beyond-Red-vs-Blue-The-Political-Typology.pdf.

[25]Pew Internet and American Life Project, *The Internet and Campaign 2010* (2010), 5; http://pewinternet.org/~/media//Files/Reports/2011/Internet%20and%20Campaign%202010.pdf.

[26]Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (2011), 97–99.

[27] "This Day in History–Jan. 11, 1973: American League Adopts Designated Hitter Rule," History.com, http://www.history.com/this-day-in-history/american-league-adopts-designated-hitter-rule (accessed January 4, 2011).

[28]Joseph Durso, "Baseball's 10th Man—Pioneer or Pigeon?" *The Saturday Evening Post*, July/August 1973, 20.

[29]The first two statistics are found at OpenSecrets.org, Donor Demographics (2010); http://www.opensecrets.org/bigpicture/donordemographics.php?cycle=2010, accessed January 16, 2012. Contributions include those made to a party or to a PAC. Data originally drawn from the Center for Responsive Politics.

[30]Jack Abramoff, *Capitol Punishment: The Hard Truth About Washington Corruption from America's Most Notorious Lobbyist* (2011), 86.

[31]Abramoff, *Capitol Punishment*, 90.

[32]Abramoff, *Capitol Punishment*, 90.

[33]Abramoff, *Capitol Punishment*, 206.

[34]Abramoff, *Capitol Punishment*, 90.

[35]Abramoff, *Capitol Punishment*, 204.

[36]Lessig, *Republic, Lost*, 133.

[37]Lessig, *Republic, Lost*, 247.

[38]Meckler and Martin, *Tea Party Patriots*, 89.

[39]I draw upon Bruce Ackerman and Ian Ayres for the "democracy voucher" idea. See *Voting with Dollars: A New Paradigm for Campaign Finance* (New Haven: Yale University Press, 2002). I describe the program more fully in Lessig, Republic, Lost, 265–73 (2011).

[40]Spencer Overton, "The Participation Interest," *Georgetown Law Journal 6* (forthcoming, 2012).

[41]See, for example, the Occupied Amendment, S.J. Res 33, 112th Cong. (2011); the Ellison Amendment, H.J. Res. 92, 112th Cong. (2011); the McGovern People's Rights Amendment, H.J. Res 88, 112th Cong. (2011); and the Lyons Amendment from Vermont, J.R.S. 11, 2011–12 Leg. Sess. (Vt. 2011).

[42]See, for example, the Yarmuth Amendment H.J. Res 97, 112th Cong. (2011); the Move to Amend Amendment (http://movetoamend.org/amendment, accessed January 2, 2012); and the Get Money Out Amendment (http://www.getmoneyout.com, accessed January 3, 2012).

[43]Disclosure: I am a noncompensated member of the Advisory Board of Americans Elect.

[44]"Icelandic Loan Guarantees Referendum, 2010," Wikipedia,

http://en.wikipedia.org/wiki/Icelandic_loan_guarantees_referendum,_2010 (accessed January 13, 2012).

[45]See http://ohmygov.com/printfriendly.aspx?=7435.

[46]State Elections Enforcement Commission, Citizens' Election Program 2010: *A Novel System with Extraordinary Results 2* (January 2011).

[47]130 S.Ct. 876 (2010).

[48]Dan Eggen, "Large Majority Opposes Supreme Court Decision," *Washington Post*, February 17, 2010 (http://www.washingtonpost.com/wp-dyn/content/article/2010/02/17/AR2010021701151.html).

[49]558 U.S. ___ (2010), slip. Op. 90 (Stevens, J., dissenting).

[50]*Federalist* No. 52, at 328 (James Madison), Henry Cabot Lodge, ed. (G. P. Putnam's Sons, 1888).

[51]Both works, and any subsequent derivative, will be licensed under version 3.0 of the Creative Commons Attribution-ShareAlike, the same license that governs Wikipedia.

[52]GNU/Linux, properly speaking, grew out of the Free Software Movement, and when it comes to software, and culture, my preference is that moniker over the more common "open-source." But my purpose in this work is to describe the self-understanding of very different movements. All of them refer

to "open-source" values.

[53]Preambles haven't had much success in our constitutional tradition (see, for example, the Court's complete failure to pay attention to the Progress Clause perambulation), but you can't fault a guy for trying. This aims at making it perfectly clear that the purpose of this amendment is to protect or better secure the independence of Congress and the Executive, by which I mean the proper dependence—as *Federalist* 52 puts it—"upon the People alone."

[54]This is one of three critical changes: Public elections must be publicly funded. Precisely how is for Congress to determine. I prefer "small-dollar-funded elections," such as the Fair Elections Now Act or what I've called the Grant and Franklin Project. The "at no less than" clause makes sure Congress doesn't underfund the system (and thereby entrench the incumbents). "The equivalent of" is intended to index the amount to inflation.

[55]Some good souls want to "Get Money Out." I want to get *corrupting* money out. I am with Spencer Overton: Obama taught us the importance of getting small dollars in (even if that lesson seems to have been forgotten). So this part would preserve the participatory money while keeping out the corrupting money. "The equivalent of $100" again is meant to index the $100 to inflation. The most puzzling bit of this paragraph is the "non-anonymized" part. This is meant to leave it open to Congress to permit (truly) anonymous contributions. I know the intuition is that's impossible. But as Ackerman and Ayres show, it's quite possible. The proposal is complex, but the key is to make contributions revocable—so even if I can show you today that I contributed $5,000, tomorrow I can revoke it so you can't be sure.

[56]This is the part that responds to *Citizens United*. As I argue in *Republic, Lost*, there was a kernel of truth in the Court's decision: No one or thing—corporations, dolphins, or the Chinese—should be banned (or effectively so by being so burdened) from saying anything. Especially not nonprofit filmmakers like Citizens United, Inc. But that doesn't mean that there is no legitimate corruption-related interest in limiting "independent" expenditures. Of course there is a fundamental difference between a Citizens United spending its money to promote its film about Hillary and an Exxon spending $100 million in an election. This clause recognizes that difference by giving Congress the power to limit "independent political expenditures"—whether corporate or individual—during the time around an election, whether "issue ads" or promoting/opposing a candidate.

[57]This is a critically important paragraph that reintroduces First Amendment values (the guarantee of government neutrality) into campaign finance regulation. The concern is that

Paragraph 1 alone might be read to completely free Congress from the duty to be neutral. So, e.g., a ban on one side vs. the other. Also, Paragraph 1 doesn't do anything to give states and localities the freedom to secure their own independence of elected officials or judges (as some states, very stupidly, choose to elect judges).

[58]A big problem is who gets to enforce the rules. Existing Supreme Court doctrine makes it hard to imagine anyone with the power to force Congress to do its work. ("Force" in a weak sense of the word: nothing can really force Congress to do anything.) So this first creates a new FEC. It fills it with effectively neutral commissioners—I stole this idea from Bruce Ackerman. And it expressly says that courts have to let that commission sue to enforce the provisions of this amendment, including the ability to enjoin Congress to act. That is a very dangerous power, I know. Many democracies have tried it and failed. So this might be trouble. Nonetheless, this is a crucial part of the amendment. The current FEC is hapless and hopeless, and both are in its DNA. There must be a body with constitutional standing to hold Congress to the terms of this amendment.

[59]This is the standard clause that gives Congress "Necessary and Proper" power with respect to this amendment. So Congress gets to pass the implementing legislation, and other "appropriate" legislation.

[60]This is the general unconditional call for a convention. It excludes any of the ambiguities about whether limited calls are valid.

[61]In this clause, the legislature signals which issue, among others, it wants the convention to address.

[62]This clause asks Congress to exercise its Necessary and Proper Power to narrow the scope of the issues to those with substantial support.

[63]This assures that the Convention not simply become a rubber stamp for Congress.

About the Author

PHOTO COURTESY OF STANFORD LAW SCHOOL

LAWRENCE LESSIG is the director of the Edmond J. Safra Center for Ethics at Harvard University and the Roy L. Furman Professor of Law and Leadership at Harvard Law School. His most recent book is *Republic, Lost*, an attack on the destructive influence of special-interest money on American politics. He is a founding board member of Creative Commons and serves on the board of Maplight.