

Crony Capitalism, American Style: What Are We Talking About Here?

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Abstract

This paper seeks to reduce the ambiguity surrounding our understanding of what crony capitalism is, what it is not, what costs crony capitalism leaves in its wake, and how we might contain it.

Keywords:

Democracy, industrial governance, institutional corruption, crony capitalism, lobbying, campaign finance, the “revolving door,” costs, cronyism, business ethics, campaign finance reform.

As every experienced detective knows, not every reported crime is, in fact, a crime. And not every seemingly benign event is, upon inspection, benign.

Similarly, not every public claim of cronyism capitalism is, in fact, accurate. Cronyism is clearly a problem in contemporary American capitalism, and perhaps an intensifying one. But characterizing all manner of controversial relationships between government and business as crony capitalism doesn't make them so.

One example of mischaracterization is the popular portrayal of the government bailout of American International Group (AIG) as “crony capitalism at its worst.” This reading emphasizes nefarious collusion between business and government, wherein public funds were unjustifiably and carelessly used to protect this insurance giant and its trading counterparties—mainly Wall Street investment banks—from insolvency and financial collapse.¹

However, such a reading ignores the extensive historical record on the AIG bailout. What a careful examination of the full record reveals is a highly improvised approach to risk management by the Federal Reserve Bank of New York and the U.S. Treasury, pursued by officials feeling extreme anxiety about the chances of a global credit market collapse. This risk-management operation—rolled out over a five-month period in response to the ever-changing financial condition of AIG and global credit markets—was greatly hindered by two notable conditions.

First, officials at the New York Fed and the Treasury found themselves forced to create and implement policy that was far outside their realm of experience. Second, in the early days of the financial crisis, neither New York Fed nor Treasury officials had any direct regulatory authority over failing investment banks and insurance companies. Under those conditions, New York Fed officials may have made mistakes in their unfamiliar role as AIG's chief restructuring officers, but that is far different from calculated corruption favoring domestic and foreign banks vulnerable to an AIG collapse.²

¹ See, for example, David A. Stockman, *The Great Deformation: The Corruption of Capitalism in America* (Public Affairs, 2013).

² Malcolm S. Salter, “Annals of Crony Capitalism: Revisiting the AIG Bailout,” Edmond J. Safra Research Lab Working Papers, No. 32, December 5, 2013, <http://ssrn.com/abstract=2364090>.

But just as apparent crony capitalism is commonly mischaracterized, so is true cronyism often ignored or misunderstood even when in full view. One clear example of crony capitalism at work is the U.S. sugar industry.

Domestic sugar producers have long received generous federal support and protection in response to massive lobbying and large-scale campaign contributions. In the heavily lobbied Farm Bill of 2008, for example, Congress *increased* price supports for sugar producers while *reducing* supports for producers of all other crops. These supports effectively guaranteed the price per pound that the government would pay for raw and refined sugar if producers could not profitably sell at prevailing market prices.³ The legislation also guaranteed U.S. suppliers of beet and cane sugar 85 percent of the domestic market for human consumption. Finally, the bill imposed new restrictions on the secretary of agriculture's ability to loosen import quotas, and added a program to divert any surplus sugar to the production of ethanol.⁴

Because of these price supports and protections, U.S. sugar prices have been 64–92 percent above world prices in recent years, on average.⁵ Just three companies producing about 20 percent of the U.S. sugar supply have received more than half of all sugar industry price supports.⁶ The annual cost of these supports—paid by consumers—is about \$3.7 billion.⁷

The big question, of course, is how this highly favorable deal for sugar producers has lasted so long. Part of the answer lies in the industry's political influence. Lobbying by the sugar industry accounts for more than one-third of all funds spent on lobbying by U.S. crop producers—despite the fact that sugar production

³ More technically, agricultural price supports typically take the form of “price support loan rates” on non-recourse loans made by the government to producers. When sugar prices are low, processors cede sugar pledged as collateral to the government at these guaranteed prices rather than repaying their government loans.

⁴ Agralytica, “Economic Effects of the Sugar Program Since the 2008 Farm Bill & Policy Implications for the 2013 Farm Bill,” June 3, 2013, <http://sugarreform.org/wp-content/uploads/2013/06/AgralyticaEconomicEffectsPaperJune2013.pdf>.

⁵ *Id.*

⁶ Alexandra Wexler, “Bulk of U.S. Sugar Loans Went to Three Companies,” *Wall Street Journal*, June 26, 2013, http://online.wsj.com/news/articles/SB10001424127887323689204578569332949046260?mod=WSJ_hp_LEFTWhatsNewsCollection&mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424127887323689204578569332949046260.

⁷ Agralytica, “Economic Effects of the Sugar Program.”

accounts for only 1.9 percent of the value of all U.S. crop production. Donations to political action committees (PACs) from sugar companies also exceed those of all other U.S. crop producers combined.⁸ In 2013, for example, the sugar industry spent about \$9 million on lobbying, with the top client—American Crystal Sugar—paying about \$1.10 million in lobbying fees.⁹ Meanwhile campaign contributions from the industry to Republican and Democratic congressional candidates alike totaled just over \$5 million in 2012, with American Crystal Sugar contributing \$2.1 million of that amount.¹⁰

Of course, many other seemingly self-sufficient industries are also tainted with cronyism, having pursued lobbying and provided campaign funds on a similar scale, and having benefited grandly from government favoritism.¹¹ In 2014, the Senate Finance Committee approved corporate tax breaks totaling \$48 billion. Yet there is always a back-story to apparent crony capitalism, making identifying true cronyism and estimating its economic cost less than straightforward.

First, the line between *corrupt cronyism* and *legitimate bargaining* among self-interested parties in the halls of government is not always as brightly illuminated as in the sugar industry case. Second, although we can measure the costs to taxpayers of direct and even indirect subsidies, quantifying the cost of violations of the principle of equal treatment by government, the distortion of market mechanisms, and the undermining of public trust in government and business is vastly more difficult.

⁸ Alison Meyer, "Chart of the Week: Crony Capitalism Leads to Higher Sugar Prices," *Daily Signal*, April 22, 2012 (citing a chart originally prepared by The Heritage Foundation), <http://dailysignal.com/2012/04/22/chart-of-the-week-crony-capitalism-leads-to-higher-sugar-prices/>

⁹ Center for Responsive Politics, "Sugar Cane & Sugar Beets: Top Contributors 2013-2014," <https://www.opensecrets.org/industries/indus.php?ind=A1200>. American Crystal Sugar is an agricultural cooperative that produces about one-third of the nation's beet sugar and sells about 15 percent of all U.S.-consumed sugar.

¹⁰ Center for Responsive Politics, "Sugar Cane & Sugar Beets: Top Contributors to Federal Candidates, Parties, and Outside Groups," <http://www.opensecrets.org/industries/contrib.php?ind=A1200.&Bkdn=DemRep&cycle=2012>.

¹¹ The writing of the annual "tax extender" bill provides other classic examples. In this heavily lobbied process, Congress lumps temporary tax deductions and credits for a few sound projects with others that are totally obscure, such as a tax break for rum makers in Puerto Rico and the Virgin Islands, and still others that are indefensibly parochial, such as a tax break for auto race tracks. See Editorial Board, "Congress Needs a Fiscally Responsible 'Tax Extenders' Bill," *Washington Post*, January 20, 2014, http://www.washingtonpost.com/opinions/congress-needs-a-fiscally-responsible-tax-extenders-bill/2014/01/20/ed881552-7fb8-11e3-9556-4a4bf7bc8d84_story.html.

Finally, there is the question of denial. There is no more vigorous disavowal of the presence of cronyism on Capitol Hill than among sitting members of Congress. The common refrain of members faced with questions about cronyism is: “What cronyism? What influence on policy? What corruption?”

For all these reasons, proving or disproving claims of cronyism—and the resulting blight on market-based capitalism and the public interest—can be a delicate and meticulous task. Part of the challenge is that “crony capitalism” has an insidiously corrupt sound. Standing alone, “crony” connotes a buddy, chum, or confidant. But when placed before “capitalism,” “crony” takes on a more cunning and sinister tone implying accomplices, co-conspirators, or collaborators working together in an underhanded manner. Much of that connotation is correct.

David Stockman, former director of the Office of Management and Budget under President Reagan, subsequent Wall Street banker, and a libertarian critic of contemporary capitalism, defines crony capitalism as “stealing through the public purse in ways that reward the super-rich.”¹² Painting with a wide brush, he constructs a portrait of a class of Wall Street financiers and corporate CEOs who believe that government exists to do “whatever it takes to keep the game going and their stock price moving upward.”¹³ Charles Koch, the politically active CEO of Koch Industries, is similarly colorful in his definition, characterizing cronyism as “nothing more than welfare for the rich and powerful.”¹⁴

As saucy as these definitions of crony capitalism may be, my goal is to add precision and nuance to our understanding of this form of corruption. I do so by exploring these definitions, the toolkit of crony capitalism, and ideas for curbing it.

¹² Stockman offered this definition when discussing his book, *The Great Deformation: The Corruption of Capitalism in America*, at Harvard’s Safra Center for Ethics on September 26, 2013.

¹³ *Id.*

¹⁴ Charles G. Koch, “Koch: I’m Fighting to Restore a Free Society,” *Wall Street Journal*, April 2, 2014, <http://online.wsj.com/news/articles/SB10001424052702303978304579475860515021286>

Defining Crony Capitalism

Stripped to its essential characteristics, crony capitalism conveys a shared point of view—sometimes stretching to collusion—among industries, their regulators, and Congress that results in business-friendly policies and investments that serve private interests at the expense of the public interest.¹⁵

More specifically, crony capitalism is a special type of moneymaking that economists call “rent seeking.” Rent seekers pursue privileged advantages that typically show up as targeted exemptions from legislation, advantageous rules by regulatory agencies, direct subsidies, preferential tariffs, tax breaks, preferred access to credit, and protections from prosecution. The ultimate goal of rent seekers is “grabbing a bigger slice of the [economic] pie rather than making the pie bigger.”¹⁶

Crony capitalism is a problem when innovation, economic efficiency, market pricing, and equal access to government decision makers—that is, fairness—are compromised, and when well-placed persons invest their vast fortunes in teams of lawyers, accountants, lobbyists, and political contributions to ensure that the system continues to work on their behalf.

Put somewhat differently, crony capitalism is a form of corruption wherein private parties make undue profit from abuse of public authority—benefiting from the public purse by virtue of their group membership and relationships with public office holders, rather than their “individual and universal citizenship.”¹⁷ This form of particularism lacks legitimacy in any governance regime claiming to be

¹⁵ This definition contrasts markedly with that from the Association of Government Relations Professionals: the “principal elements [of lobbying] include researching and analyzing legislation or regulatory proposals; monitoring and reporting on developments; attending congressional or regulatory hearings; working with coalitions interested in the same issues; and educating government officials but also employees and corporate officers as to the implications of various changes.” See Association of Government Relations Professionals, “What is Lobbying,” <http://grprofessionals.org/about-lobbying/what-is-lobbying/>.

¹⁶ “Planet Plutocrat,” *Economist*, March 15, 2014, <http://www.economist.com/news/international/21599041-countries-where-politically-connected-businessmen-are-most-likely-prosper-planet>. In technical terms, “an economic rent is the difference between what people are paid and what they would have to be paid for their labour, capital, land (or any other inputs to production) to remain in their current use. In a world of perfect competition, rent would not exist.”

¹⁷ For an enlightening discussion of ethical universalism in governance regimes, see Alina Mungiu-Pippidi, “Becoming Denmark: Historical Paths to Control of Corruption,” presented at the annual meeting of the American Political Science Association, 2013, <http://ssrn.com/abstract=2301329>.

democratic. It is corrupt because it undermines integrity in the discharge of duty by public officials.¹⁸

But as straightforward as this definition sounds, behavior in the real world is rarely so neatly characterized. Most troublesome is the fact that the public interest in matters involving subsidies, tax preferences, and legislative loopholes is often difficult to discern and agree on.

Take, for example, wind farms. Most would not be economically viable without a tax credit. When developers of wind energy started receiving a production tax credit in 1992, was that cronyism? Not if the federal government wants to foster energy independence—presumably in the public interest, and perhaps justifiable under the general welfare clause of the Constitution.¹⁹ Viewed in this light, tax breaks for wind farms escape the taint of cronyism. However, some critics, including Senator Lamar Alexander (R-Tenn.), claim that the tax breaks unfairly and inappropriately undercut coal and nuclear power, waste money, and promote an industry that “destroy[s] the environment in the name of saving the environment.”²⁰

Senator Alexander is particularly incensed over the fact that the tax credit—now set at 2.3 cents for each kilowatt-hour of wind power produced—is sometimes worth more than the energy it subsidizes. In markets such as Texas and Illinois, Alexander claims that “sometimes . . . the subsidy is so large that wind producers have paid utilities to take their electricity and still make a profit.”²¹ So is the wind tax credit an example of appropriate national energy policy or a financial windfall for wealthy investors at the expense of the national budget? It all depends. . .²²

¹⁸ When lobbyists effectively corrupt an administration for the benefit of a particular party, they are serving as “corruption entrepreneurs” who are “masters of social network manipulation,” according to sociologist Mark Granovetter, who has called such manipulation “network corruption.” See Granovetter, “The Social Construction of Corruption,” in Victor Nee and Richard Swerdling, eds., *On Capitalism* (Stanford University Press, 2007), 168.

¹⁹ Article 1, Section 8.

²⁰ Lamar Alexander, “Wind-Power Tax Credits Need to Be Blown Away,” *Wall Street Journal*, May 7, 2014, p. A17.

²¹ *Id.*

²² Recent approval of \$150 million in federal loan guarantees for the Cape Wind project in Nantucket Sound suggests a strong policy interest in wind farming, even though the power generated in this project will be some of the most expensive in New England. Utilities NStar and National Grid have agreed to purchase 77.5 percent of the power from the project at a price well above typical wholesale prices. Cape Wind waited more than five years for this federal backing. Given the lengthy process for approving the project, the returns for Cape Wind investors must be high. Given the financial risks now borne by U.S. taxpayers, the public benefits

Or consider the even more complex tax rule—some would say loophole—on “carried interest”: the share of investment gains, typically 20 percent, that private-equity and hedge funds pay their general partners. The rule allows managers of these funds to defer federal taxes until profits are realized on their assets. At that point the gains are taxed at the capital gains rate of 15 percent, rather than the income tax rate, which could be 39.6 percent.²³

Some critics argue that carried interest should be taxed at the higher rate because these partners are basically earning a management fee for their labor. These critics also contend that this highly preferential tax rate—along with extensive borrowing based on cheap money and the short time horizons of executives—creates excessive risk-taking, and that the personal payoffs from taking outsized risks dwarf the costs of failure.

Critics also claim that the preferential tax rate leads to excessive compensation for executives, even though carried interest is paid only from a fund’s profits. Supporters of this tax regime counter that no one knows how much carried interest private-equity funds will pay, and that partners’ compensation should be considered a return on a risky investment—that is, a true capital gain, not a management fee.

Which side is correct? The debate has continued in law journals, tax journals, and Congress for two decades. Strenuous lobbying by private-equity, real estate, and hedge funds has so far preserved the status quo. Is this crony capitalism at work? It all depends. . .

Whether a public policy or rule qualifies as cronyism depends on factors such as unique access to public decision makers by beneficiaries, their overwhelming financial resources in lobbying public officials and financing their campaigns, and other means of crowding out opponents’ views—or even, in the worst case, implicit quid pro quos. In the case of the carried-interest tax rule, the investment industry

must also be high. See Erin Allworth, “Federal Backing Lifts Fortunes of Cape Wind,” *Boston Globe*, July 2, 2014, <http://www.bostonglobe.com/business/2014/07/01/federal-loan-guarantee-lifts-fortunes-cape-wind/hS5k4uc4iOSxDhyM06F05N/story.html>.

²³ For a more detailed discussion, see Peter R. Orszag, “The Taxation of Carried Interest,” testimony before the Senate Finance Committee, July 11, 2007, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/83xx/doc8306/07-11-carriedinterest_testimony.pdf.

lobbied heavily for its introduction and preservation. According to Bloomberg, the private-equity firm Blackstone alone spent \$5 million in 2011 lobbying Congress, including on this issue. Other private-equity players spent \$80,000 to \$150,000 each in just the fourth quarter of 2011.²⁴

Even more important was the quality of the lobbyists that the investment industry hired to press its case. Blackstone's top lobbyists included Wayne Berman, an assistant commerce secretary under George H.W. Bush; Drew Maloney, staffer for former House majority whip Tom Delay (R-Tex.); and Moses Mercado, deputy chief of staff for former House majority leader Dick Gephardt (D-Mo.). Private-equity firm Kohlberg Kravis Roberts hired former Representative Vic Fazio (D-Calif.). And Bain Capital hired Joseph O'Neill, chief of staff for former Senate Finance Committee chair Lloyd Bentsen (D-Tex.), and Paul Snyder, legislative assistant for former Speaker Tip O'Neil (D-Mass.).²⁵

The complete history of the carried-interest rule (loophole) remains to be written. But two things are clear. First, it's not only the amount of lobbying money that matters; it's also the quality of the lobbyists. Second, carried-interest rules favor high-net-worth individuals—a constituency that Congress listens to when raising campaign funds.²⁶ We shouldn't be surprised that this highly debatable tax preference has many of the markings of cronyism.

The Crony Capitalism Toolkit

As we have seen, business-friendly legislation and regulatory rule-making result from three potentially perverse relationships between business and government. Although these relationships may be perfectly legal, they compose the crony capitalism toolkit: (1) campaign contributions to elected officials, (2) heavy lobbying of Congress and rule-writing agencies, and (3) a revolving door between government service and the private sector. I discuss each of these in more depth as potential corruptions of democratic capitalism—where business-friendly public

²⁴ Steven Sloan, "Private-Equity Lobbying Helped Protect Romney's Tax Benefits," *Bloomberg*, February 7, 2012, <http://www.bloomberg.com/news/2012-02-07/private-equity-lobbying-protected-romney-s-tax-benefit-of-carried-interest.html>.

²⁵ *Id.*

²⁶ *Id.*

policy results from non-representative forces, leading to a diminution of public trust in our leading institutions of business and government.

Ironically, campaign contributions and lobbying have often played essential roles in the functioning of American democracy. Campaign contributions by private individuals, corporations, industry associations, labor unions, and PACs have long enabled elections to occur without government funding. Lobbying has similarly long fed information to legislators at no monetary cost to the public.

At first blush, this seems like an efficient arrangement. However, when campaign funding by specific business interests directs the priorities of elected officials away from the broader public interest, and when massive lobbying crowds out the voice of other interests before Congress and regulatory agencies, opportunities for crony capitalism multiply, and the prospects for truly democratic capitalism narrow.

The revolving door between business and government has the perverse effect of multiplying the ill effects of campaign contributions and lobbying, when continuous movement of employees between the public and private sectors leads to a shared ideology favoring business interests over the public interest. This phenomenon is referred to as “cultural capture” by James Kwak, a law professor at the University of Connecticut, and “regulatory capture” by economists before him.²⁷

Corruption Based on Campaign Contributions

As a stand-alone tool in the cronyism kit, campaign contributions appear to be effective for “purchasing” business-friendly policies. The key word here is “appear,” because precisely how specific campaign contributions influence specific public policies or pieces of legislation is often difficult to determine. One thing is clear, however: the sums flowing into the campaigns of congressional candidates from both parties are huge, and growing. As shown in Table 1 below, the total amount of

²⁷ James Kwak, “Cultural Capture and the Financial Crisis,” in Daniel Carpenter and David Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press, 2013), <http://www.tobinproject.org/books-papers/preventing-capture>. Kwak defines “cultural capture” as situations where regulation is directed away from the public interest and toward the interests of the regulated industry through mechanisms such as group identification, status, and relationship networks.

Economist George Stigler first described regulatory capture in 1971: “As a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit.” See Stigler, “The Theory of Economic Regulation,” *Bell Journal of Economics and Management Science* 2.1 (1971): 3–21, <http://www.jstor.org/stable/3003160>.

campaign contributions at the federal level by individuals donating more \$200 (such donations must be reported to the Federal Election Commission) and political action committees rose from \$500 million in the 1990 election cycle to \$6.6 billion in 2012.²⁸ These totals do not include donations under \$200. Nor do they include super PAC spending, which would add another 20% to this total.

Table 1 Federal Election Campaign Contributions, 1990 - 2012

| <u>Election Cycle</u> | <u>Individuals >\$200</u> | <u>PACs</u> | <u>Total</u> |
|------------------------------|-------------------------------------|--------------------|---------------------|
| 1990 | \$324,925,768 | \$193,492,649 | \$518,418,417 |
| 1992 | \$704,115,877 | \$281,267,523 | \$985,383,400 |
| 1994 | \$621,677,683 | \$250,617,093 | \$872,294,776 |
| 1996 | \$1,054,350,050 | \$314,107,413 | \$1,368,457,463 |
| 1998 | \$844,740,320 | \$286,202,909 | \$1,130,943,229 |
| 2000 | \$1,805,963,638 | \$379,938,131 | \$2,185,901,769 |
| 2002 | \$1,512,468,334 | \$357,147,309 | \$1,869,615,643 |
| 2004 | \$2,283,966,648 | \$754,839,290 | \$3,038,805,938 |
| 2006 | \$1,638,596,632 | \$713,792,608 | \$2,352,389,240 |
| 2008 | \$3,975,699,441 | \$976,405,997 | \$4,952,105,438 |
| 2010 | \$2,002,395,914 | \$908,186,754 | \$2,910,582,668 |
| 2012 | \$4,757,359,288 | \$1,833,645,032 | \$6,591,004,320 |















An important source of these funds is interest groups that want something from government. Table 2 below shows some of the most significant sources and recipients of these contributions for 2013-2014, through April 2014.²⁹

²⁸ Open Secrets data, compiled by Solomon Kahn into this database: https://github.com/Solomon/opensecrets_to_postgres. OpenSecrets.org, the most comprehensive resource on campaign contributions and lobbying, is produced by the Center for Responsive Politics.

²⁹ See <http://www.opensecrets.org/industries/index.phpthe> for a continuing update of this table.

Table 2 Contribution Total by Industry Sector

Sector Totals, 2013-2014

| Rank | Sector | Amount | Dems | Repubs |  |
|------|-----------------------|---------------|-------|--------|---|
| 1 | Finance/Insur/RealEst | \$148,812,902 | 34.0% | 56.7% |  |
| 2 | Other | \$102,349,407 | 44.6% | 38.4% |  |
| 3 | Ideology/Single-Issue | \$91,246,490 | 34.9% | 38.3% |  |
| 4 | Misc Business | \$76,880,659 | 36.8% | 56.4% |  |
| 5 | Lawyers & Lobbyists | \$63,932,395 | 60.9% | 32.5% |  |
| 6 | Health | \$56,766,404 | 40.6% | 53.7% |  |
| 7 | Labor | \$43,802,297 | 47.5% | 6.4% |  |
| 8 | Communic/Electronics | \$39,230,466 | 55.6% | 36.9% |  |
| 9 | Energy/Nat Resource | \$36,386,539 | 21.5% | 72.7% |  |
| 10 | Agribusiness | \$25,940,108 | 26.3% | 70.1% |  |
| 11 | Construction | \$25,592,211 | 26.2% | 63.6% |  |
| 12 | Transportation | \$23,710,148 | 27.8% | 69.7% |  |
| 13 | Defense | \$12,125,265 | 41.3% | 58.5% |  |

Within industry sectors, large corporate interests have actively financed elections for more than a century. For example, the largest contributor in the agriculture sector is the aforementioned American Crystal Sugar.³⁰ It made \$1.8 million in contributions in 2013–2014, while the government paid out some \$280 million in sugar subsidies that year. The return on American Crystal Sugar’s investment looks very attractive.³¹

³⁰ See Center for Responsive Politics, “Agribusiness: Top Contributors 2013-2014,” <http://www.opensecrets.org/industries/indus.php?Ind=A>. American Crystal Sugar is an agricultural cooperative that raises approximately one-third of the nation’s sugar beet product and sells about 15 percent of America’s sugar. It has a reputation for innovative farming practices.

³¹ Charles Abbott, “Low Prices Mean Highest U.S. Sugar Subsidy Cost in Decade,” *Reuters*, October 24, 2013, <http://www.reuters.com/article/2013/10/24/usa-sugar-forfeit-idUSL1N0IE1MZ20131024>.

The second-largest contributor in the agricultural sector is Altria, formerly Philip Morris. Altria made \$2.4 million in campaign contributions during the 2012 election cycle.³² Finding data on federal subsidies for tobacco, if any, is difficult. However, the federal government has long struggled to regulate tobacco advertising and products effectively—including, most recently, electronic cigarettes.

In most industries, uncovering direct relationships between campaign contributions and special treatment of contributors is difficult. One prominent example is the drafting of Section 619—known as the Volcker Rule—of the Dodd-Frank financial reform legislation of 2010.³³

In the 10 years leading up to the 2008 financial crisis—a period of significant deregulation of the financial sector—financial, insurance, and real estate interests contributed \$1.7 billion to congressional campaigns, according to Simon Johnson and James Kwak.³⁴ The foremost recipients of these funds were Senator Christopher Dodd (D-Conn.), chair of the Senate Banking Committee, and Representative Barney Frank (D-Mass.), chair of the House Financial Services Committee.

Section 619 of the Dodd-Frank bill prohibits large, federally insured banks from proprietary trading: that is, trading for the house account rather than clients' accounts. However, two exclusions to this general rule allow large banks to (a) engage in “risk-mitigating activities,” or trades designed to reduce specific risks related to their overall holdings, and (b) trade securities issued by Ginnie Mae, Fannie Mac, the Federal Home Loan Bank, two federal agricultural banking institutions, and states and municipalities. The first, heavily lobbied exemption is a source of particular controversy because permitted “risk-mitigation” hedging for banks' entire financial holdings could easily be used as a cover for proprietary trading by federally insured banks, which is expressively prohibited by Section 619.

³² See Center for Responsive Politics, “Altria Group,” <http://www.opensecrets.org/orgs/summary.php?id=D000000067&cycle=2012>. Altria also spent \$10.6 million on lobbying during the same period. *Id.*

³³ Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown* (Pantheon Books, 2010), 93. Johnson and Kwak strongly argue that regulatory and cultural capture is precisely what happened in the banking industry in the years leading up to the 2008 financial crisis.

³⁴ *Id.*, 90–91.

While this may seem like an obvious example of cronyism driven by campaign contributions, there are far too many unknowns to substantiate a claim of direct influence or quid pro quo, and Johnson and Kwak make no such claim. To substantiate it, we would need answers to several questions: How much campaign assistance did Dodd and Frank receive directly from specific Wall Street banks and bankers? What special access to these members of Congress did these contributors gain and use, and what issues did they discuss? Given that both Dodd and Frank announced during the legislative process that they would not run for reelection, were the exemptions for large banks thank-you notes for past campaign contributions?

A similarly ambiguous case involves Senator Max Baucus (D-Mont.), head of the Senate Finance Committee during the writing of the 2010 Affordable Care Act. From 2009 to 2013, Baucus received \$5.67 million from the insurance and health services industries, according to OpenSecrets.org. About half that amount came from large private contributors, and half from PACs.³⁵ However, no evidence shows that these contributors had any direct influence on the legislation coming out of Senator Baucus's committee.

A link between campaign fundraising and corruption can occasionally be documented. Daniel Newman—who heads MapLight, a nonprofit that investigates money in politics—writes about how California Democrat Senator Leland Yee was indicted for bribery after he wrote a letter supporting a software firm in exchange for a \$10,000 contribution from the owner. Yee allegedly agreed to this trade in a taped conversation with an FBI agent posing as the contributor.³⁶ Still, such direct evidence of quid pro quo corruption, if proven, is rare.

MapLight has produced several detailed reports on campaign funds directed to elected officials writing important pieces of legislation. For example, in March 2014, the House approved legislation prohibiting the federal government from retaining water rights when allowing private interests to use publicly owned land. Opponents of this provision claimed that it “threatened the federal government’s

³⁵ See Center for Responsive Politics, “Sen. Max Baucus,” <https://www.opensecrets.org/politicians/summary.php?cid=N00004643>.

³⁶ Daniel G. Newman, “Campaign Fundraising Is Bribery,” *Al Jazeera America*, April 11, 2014, <http://america.aljazeera.com/opinions/2014/4/mccutcheon-lelandyeeecampaignfinancebribery.html>.

ability to regulate water use and maintain the health of the natural ecosystem.” Agricultural and recreation interests countered that they needed water rights to continue to operate. MapLight reported that representatives voting in favor of the measure averaged 4.7 times the campaign contributions from the livestock industry, resorts, and local public agencies compared with representatives voting against it.³⁷

The unspoken implications of this report are clear: financial contributors purchased business-friendly legislation. However, as in many other instances, MapLight researchers can claim only circumstantial evidence.³⁸

The Power of Reciprocity

Although proving quid pro quo corruption is difficult, rejecting the overall proposition that campaign contributions can and often do have a corrupting influence on Congress would be a serious mistake. Although the influence is often out of sight, research and analysis support this claim. For example, two major reviews of studies of the effects of campaign contributions on public policy and legislative voting show strong support for the proposition that money does indeed influence votes.³⁹

Some researchers counter that there is “no smoking gun, no systematic relationship between campaign contributions and policy success.”⁴⁰ However, Clayton Peoples, a sociology professor at the University of Nevada-Reno, who has himself done empirical work on the subject, responds, “The literature that

³⁷ Donny Shaw, “House Sides with Ski Resorts and Agribusiness in Private Water Rights Bill,” MapLight summary report, March 17, 2014, <http://maplight.org/content/73428>.

³⁸ Despite these ambiguities, direct influence on policies protecting business interests is, of course, a longstanding tradition in American political and economic life. Indeed, by the late 19th and early 20th centuries, oil, railroad, meatpacking, and other trusts used campaign contributions and other payoffs to gain a firm financial grip on many U.S. senators, who blocked attempts by President Theodore Roosevelt and other Republican and Democratic reformers to regulate these trusts in the public interest. Since then, industry after industry—including sugar, corn, and milk producers; steelmakers; automotive manufacturers; oil companies; home-builders; and banking—have used campaign financing to control the political process and ensure that it supports prices, protects markets, and preserves subsidies.

³⁹ See Douglas D. Roscoe and Shannon Jenkins, “A Meta-Analysis of Campaign Contributions’ Impact on Roll Call Voting,” *Social Science Quarterly* 86.1 (2005): 52-68; and Thomas Stratmann, “Some Talk: Money in Politics—A (Partial) Review of the Literature,” *Public Choice* 124.1/2 (2005): 135-156.

⁴⁰ See Frank R. Baumgartner, Jeffrey M. Berry, Marie Hojnacki, David C. Kimball, and Beth L. Leech, *Lobbying and Policy Change: Who Wins, Who Loses, and Why* (University of Chicago Press, 2009), 194; and Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, Jr., “Why Is There So Little Money in U.S. Politics?,” National Bureau for Economic Research Working Paper, No. 9409, December 2002, <http://www.nber.org/papers/w9409.pdf>.

purportedly shows that contributions don't matter actually shows that contributions significantly influence legislative voting."⁴¹

Into this cacophony of voices enters Lawrence Lessig, law professor at Harvard and director of its Edmond J. Safra Center for Ethics, with an extensive analysis of links between campaign contributions and congressional corruption.⁴² By examining the ways of Congress, testimony by retired members from both parties, and virtually all research on the subject, Lessig makes a strong case that campaign contributions influence policy.

He acknowledges the lack of consensus among political scientists that a strong connection exists between contributions to political campaigns and legislative voting patterns, and the many denials of politicians that campaign cash could ever influence their judgment. But he pushes back by noting that we are all essentially hard-wired to value and practice *reciprocity* of all kinds—and that reciprocity guides our subconscious as much as conscious thoughts. “We reciprocate without thinking,” and then often deny it. In other words, reciprocity is our normal condition. Lessig not only cites behavioral research supporting this claim, but also cites alarming anecdotal evidence—interviews with retired members of Congress about the influence of money in politics—showing that reciprocity deniers are simply not credible.⁴³

Polls show that Lessig does not stand alone with his reciprocity argument. About 75 percent of Americans believe that campaign contributions buy results in Congress—a view confirmed by many former members.⁴⁴

Lessig's description of the inevitable pressures on elected officials to reciprocate contributions and favors from major donors is only part of the larger picture he paints of the corrupting impact of campaign finance. He adds critical details by elaborating three “inevitable effects” of our approach to financing elections.

⁴¹ Clayton D. Peoples, “Yes, Contributions Really Matter,” Edmond J. Safra Center for Ethics Research Lab blog, <http://ethics.harvard.edu/blog/yes-contributions-really-matter>; and “Contributor Influence in Congress: Social Ties and PAC Effects on U.S. House Policymaking,” *Sociological Quarterly* 51.4 (2010): 649-677.

⁴² Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (Twelve Books, 2011).

⁴³ *Id.*, 132-133. These interviews were conducted by the Center for Responsive Politics.

⁴⁴ *Id.*, 133-134.

The first effect is the “distraction” from normal deliberations that perpetual fundraising by members of Congress creates. If members spend 30 to 70 percent of their time hustling for money, which they do, they have less time to master the substance of legislative initiatives and provide services to constituents. A drop by more than half in the number of committee meetings in the House and Senate from the 1970s through the millennium tells this story in stark terms.⁴⁵

The second adverse effect is the “distortion” created when campaign contributions create a gap between what “the people” believe about an issue and what Congress does about it. Lessig calls this *substantive distortion*. Campaign contributions can also create *agenda distortion*—a gap between what the people want Congress to work on and what it actually works on.⁴⁶

Lessig reviews a compelling body of research on these twin distortions: most notably, by Princeton professor Larry Bartels, who has demonstrated that “senators appear to be considerably more responsive to opinions of affluent constituents than to the opinions of middle-class constituents,” and by his colleague Martin Gilens, who “was [also] able to demonstrate a significant difference between the likelihood that a measure would be enacted if the rich supported it and the likelihood when the middle class or poor supported it.”⁴⁷

The third effect is a loss of trust in Washington. The public’s perception of elected officials is now at an all-time low. According to research at the University of Michigan cited by Lessig, “Whereas in 1964, 64 percent of respondents believed that government was run for the benefit of all and 29 percent believed that government was run for the benefit of a few big interests, in 2008, only 29 percent believed government was run for the benefit of all, and 69 percent believed it was run for the benefit of a few big interests.”⁴⁸ Such beliefs, Lessig argues, mean that fewer and fewer of us engage in the practices of democracy, even as campaign

⁴⁵ Id., 139.

⁴⁶ Id., 151.

⁴⁷ Larry M. Bartels, “Economic Inequality and Political Representation,” August 2005, <https://www.princeton.edu/~bartels/economic.pdf> and Lessig, *Republic, Lost*, discussing Martin Gilens, “Inequality and Democratic Responsiveness,” *Public Opinion Quarterly* 69.5 (2005): 778 and 781-782.

⁴⁸ Lessig, *Republic, Lost*, 167.

contributions confer privileged access and opportunities for influence peddling for a few with members of Congress.

In Lessig's framework, the distraction, distortion, and distrust bred by our campaign finance system are as corrupting as the invisible links between this system and policy outcomes—both of which bend the government in the direction of major funders and against the interests of the people.⁴⁹

What Former Members of Congress Actually Say

We know that the most practical way to capture the extent of corruption based on campaign funding is to pay attention to the testimonies of people who have lived inside the system. Most *former* members of Congress affirm that money matters a great deal in congressional affairs. “How could it not?” Lessig asks.⁵⁰

John Kerry's farewell speech to the Senate on January 30, 2013, after he was confirmed as secretary of state, provides a powerful statement on this subject. Speaking about the key challenges facing the Senate based on his 25 years in the chamber, Senator Kerry said:

There is another challenge we must address—and it is the corrupting force of the vast sums of money necessary to run for office. The unending chase for money, I believe, threatens to steal our democracy itself. I've used the word corrupting—and I mean by it not the corruption of individuals, but a corruption of a system itself that all of us are forced to participate in against our will. The alliance of money and the interests it represents, the access it affords those who have it at the expense of those who don't, the agenda it changes or sets by virtue of its power, is steadily silencing the voice of the vast majority of Americans who have a much harder time competing, or who can't compete at all.

The insidious intention of that money is to set the agenda, change the agenda, block the agenda, define the agenda of Washington. How else could we possibly have a U.S. tax code of some 76,000 pages? Ask

⁴⁹ Id., 162 and 157.

⁵⁰ Id., 171.

yourself, how many Americans have their own page, their own tax break, their own special deal?

. . . This is what contributes to the justified anger of the American people. They know it. They know we know it. And yet nothing happens. The truth requires that we call the corrosion of money in politics what it is: it is a form of corruption and it muzzles more Americans than it empowers, and it is an imbalance that the world has taught us can only sow the seeds of unrest.

Corruption Based on Lobbying

Lobbying of Congress and federal regulators by corporations and industry associations has the obvious intent of extracting preferential policies, even at the expense of other parties and interests. Lobbying is a constant companion of campaign contributions, and has long been at the epicenter of most efforts to influence rule-writing that affects businesses. There is, of course, nothing unlawful here, because the First Amendment guarantees the right of “the people” to petition the government.⁵¹ However, lobbying can seriously subvert the public interest while conferring private benefits.

As with campaign contributions, the scale of congressional lobbying by businesses is large and, by some measures, getting larger. The Center for Responsive Politics counted almost 15,000 registered lobbyists in 2007, and some 12,000 in 2012. (The headcount may have declined because the Honest Leadership and Open Government Act of 2007 exempts lobbyists who spend less than 20 percent of their time on the Hill from registering. This is a clear “out” for powerful lobbyists such as former Senator Tom Daschle [D-S.D.] and former Representative Newt Gingrich [R-Ga.], whose influence is far greater than any actual time spent on the Hill.) Despite that drop, total spending on lobbying rose from about \$3 billion in 2007 to around \$3.3 billion in 2012.⁵²

⁵¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, **and to petition the Government for a redress of grievances.**”

⁵² Dan Auble, “Lobbyists 2012: Out of the Game or Under the Radar,” Center for Responsive Politics, March 20, 2013, <http://www.opensecrets.org/news/2013/03/lobbyists-2012-out-of-the-game-or-u/>. The center

Business groups employ vastly more lobbyists than any other sector. From 2000 to 2010, for example, businesses hired 30 times as many Washington lobbyists as trade unions, and 16 times as many lobbyists as labor, consumer, and public interest groups combined. Business and trade groups also spent \$28.6 billion from 1998 to 2010 on lobbying, compared with \$488.2 million spent by labor—a nearly 60-to-1 advantage.⁵³ The financial sector alone spent \$3.4 billion on congressional lobbying from 1998 to 2008—on top of the industry’s \$1.7 billion in political contributions. Securities firms spent \$600 million of the \$3.4 billion.⁵⁴ It is difficult to view these lopsided patterns as a recipe for balanced consideration of public policies and regulations.

The Dodd-Frank Act again provides an instructive example. As the bill was working its way through Congress in 2010, there were “1,537 lobbyists representing financial institutions registered in D.C., and lobbying to affect this critical legislation—*twenty-five times* the number registered to support consumer groups, unions, and other proponents of strong reform,” according to Lessig.⁵⁵ And interests opposing reform spent “more than \$205 million” on lobbying, compared with \$5 million spent by interests supporting reform.⁵⁶ Any system so widely skewed inevitably distorts legislative results, he notes. In this case, the distortion left many opportunities during the final writing of the bill to subvert its intent: curbing risk in the global financial system.

Consider the lobbying efforts of JPMorgan Chase. The bank lobbied heavily to allow banks—again under Section 619—to engage in proprietary trading if their foreign subsidiaries assume the risks and trade securities held abroad. This exclusion, beyond the two mentioned above, allows JPMorgan, Goldman Sachs, Morgan Stanley, and Citigroup to compete with their foreign counterparts and pocket comparable gains from trading. However, it also exposes U.S. financial institutions

based this finding on data from the Senate Office of Public Records. Companies must submit lobbying disclosure forms to the Senate database every quarter. However, the information is very basic. Respondents must indicate which area of the federal government they are lobbying and which lobbyists are involved, and indicate the issues involved only vaguely. Although this information precludes any real assessment of how much companies are paying a particular lobbying firm, it is better than nothing.

⁵³ Hedrick Smith, *Who Stole the American Dream?* (Random House, 2012), xvii-xix.

⁵⁴ Johnson and Kwak, *13 Bankers*, 90-91.

⁵⁵ Lessig, *Republic, Lost*, 147.

⁵⁶ *Id.*, 189. Lessig’s research also shows that campaign contributions by groups opposed to Dodd-Frank were “more than \$25 million, two and a half times the contributions of groups supporting the reform.”

to significant trading losses—as in the JPMorgan “London Whale” case, in which a London trader made a series of unsuccessful bets designed to hedge the bank’s large bond portfolio and then tried to hide some of the massive losses by deliberately giving inaccurate values to the securities involved in the trade. It is entirely conceivable, and even probable, that this exclusion under Section 619 will merely move the next global financial crisis from New York to London or other financial center outside the reach of Dodd-Frank. And the exclusion appears to seriously subvert the goal of financial reform to reduce risk in the global financial system.

A decade before Dodd-Frank, the business-led repeal of the Glass-Steagall Act—which separated commercial and investment banks for nearly seven decades—was another case where lobbying and campaign contributions by the finance industry compromised the public interest. The repeal of Glass-Steagall—engineered by the 1999 Gramm-Leach-Bliley Act—followed 25 years and \$300 million worth of lobbying and campaign contributions by commercial banks seeking to merge with entities that trade securities.⁵⁷ The repeal was based on the argument that banks were now operating in financial markets where the distinctions between loans, securities, and deposits were no longer clear.

On the surface, that is true. However, the repeal of Glass-Steagall had the extraordinarily perverse effect of increasing risk in the global financial system and reducing its capacity to absorb unexpected shock. Federally insured banks were now free to merge into larger, more complex, and more leveraged institutions—the better to exploit greatly expanded profit opportunities in high-risk, high-return investment banking and securities trading. Commercial banks were also free to participate in the booming real estate market, by providing financing for mortgage brokers and issuers of mortgage-backed securities while also underwriting their

⁵⁷ Barry Ritholtz, “Repeal of Glass-Steagall: Not a Cause, But a Multiplier,” *Washington Post*, August 4, 2012, http://www.washingtonpost.com/repeal-of-glass-steagall-not-a-cause-but-a-multiplier/2012/08/02/gJQAuvvRXX_story.html. The repeal was lobbied most publicly by Sandy Weill of Citigroup, a direct beneficiary, and championed by Fed Chair Alan Greenspan, Senator Phil Gramm, and Treasury Secretary Robert Rubin, a former Goldman Sachs partner. President Bill Clinton, whose re-election campaign was heavily financed by Wall Street bankers, also supported the repeal of Glass-Steagall.

own risky mortgage-backed securities. The result was that banks played a major role in the systemic risks that drove the real estate bubble.⁵⁸

These contrasting stories invite a closer look regarding whether the repeal of Glass-Steagall is a classic case of corruption based on lobbying, legislative capture, and cronyism. In light of history, it certainly looks that way.

The principal architect of Gramm-Leach-Bliley was Senator Phil Gramm (R-Tex.), who chaired the Committee on Banking, Housing, and Urban Affairs from 1999 to 2001. In 2002, Gramm left the Senate and promptly joined UBS, a large Swiss bank, as vice chair of its investment banking unit. His role was to provide advice to major corporate and institutional clients and work with governments around the world on behalf of UBS. Gramm registered as a lobbyist as early as 2004, advocating for the banking industry while continuing to work at UBS.

Gramm's employment history and activities make it difficult to discard suspicions that he had developed great sympathies for and deep relationships with the financial industry during intense interactions with lobbyists and their clients—relationships that paid off handsomely for the senator. While in the Senate, Gramm earned lots of points with the industry by turning down virtually every attempt to provide the Securities and Exchange Commission (SEC) with more funds for its skyrocketing enforcement workload.

He also opposed SEC attempts to prohibit accounting firms from getting too close to the companies they audited. He also introduced huge exclusions into the 2000 Commodity Futures Modernization Act, written with the help of industry lobbyists, which exempted newfangled credit-default and other swaps from regulatory oversight. Because of this exemption, a \$62 trillion market—nearly four times the size of the entire U.S. stock market—remained utterly unregulated. That meant no one was making sure that the banks and hedge funds that traded swaps had the capital to cover their potential losses.⁵⁹

⁵⁸ See Simon Johnson, "The Quiet Coup," *Atlantic Monthly*, May 2009.

⁵⁹ David Corn, "Foreclosure Phil," *Mother Jones*, July/August 2008, <http://www.motherjones.com/politics/2008/05/foreclosure-phil>.

The commodity futures legislation also contained a provision—heavily promoted by Enron, a generous contributor to Gramm—that exempted energy-linked financial products from regulatory oversight.⁶⁰ That enabled Enron to experiment, unfettered, with all sorts of financial instruments and derivatives contracts, many of which it eventually hid in off-balance-sheet entities when market values plunged.

Lobbying on the Affordable Care Act

Blocking new business-threatening rules and policies is, we have seen, just as important a lobbying mission as repealing existing policy. In the case of the Affordable Care Act, insurance companies, pharmaceutical firms, and hospital chains spent hundreds of millions of dollars lobbying Congress to block a public insurance option and other reforms that threatened corporate profits. With industry lobbyists “swarming all over Capitol Hill”—in 2009 there were six registered healthcare lobbyists for every member of Congress—a partner in one of Washington’s most powerful lobbying firms admitted that money from healthcare interests “has a lot of influence . . . that is morally suspect.”⁶¹

According to Robert Reich, labor secretary in the Clinton administration, the Obama White House was acutely aware of how the health industry had killed off President Clinton’s attempts at healthcare reform nearly a decade earlier. This history, coupled with massive lobbying by the industry, contributed greatly to what Reich has characterized as “a Faustian bargain with big pharma” to ensure passage of the Accountable Care Act. The administration scuttled profit-squeezing regulations, such as caps on drug prices and, even more alarming to insurance companies, public health insurance—both in return for industry promises not to oppose reform.⁶²

Since 2010, industry spending has not abated as the government has drafted rules and regulations that will guide implementation of the act. Small changes in the

⁶⁰ Eight years before Congress approved this exemption, Gramm’s wife Wendy Gramm, chair of the Commodities Futures Trading Commission, had already pushed through a rule exempting Enron’s energy futures contracts from regulatory oversight. She later joined Enron’s board of directors, earning hundreds of thousands of dollars in directors’ fees.

⁶¹ Chris McGreal, “Revealed: Millions Spent by Lobby Firms Fighting Obama Health Reforms,” *Guardian*, October 1, 2009, <http://www.theguardian.com/world/2009/oct/01/lobbyists-millions-obama-healthcare-reform>.

⁶² *Id.*

wording of rules can have enormous effects—both positively and negatively—on the bottom lines of many companies. According to OpenSecrets.org, the industry spent more funds lobbying Congress and the federal government than any other sector in both 2012 and 2013—just short of \$500 million (down from \$650 million in 2009, the year before the Affordable Care Act passed).⁶³ More than 2,400 individuals are registered as lobbyists for the healthcare sector—a figure that probably understates the true total. For example, Elizabeth Fowler, who directs health policy for Johnson & Johnson and was a chief architect of the law (see below), is not registered as a lobbyist.⁶⁴

The crucial question is whether all this bargaining and lobbying is corruption at work in blocking profit-sapping rules, or perfectly legitimate horse-trading by the White House and the industry to push a needed bill through Congress. There's a fine line between the two. Whether the success of healthcare lobbyists in keeping caps on drug prices out of the final bill totally compromises the objective of reducing the long-run costs of U.S. healthcare without sacrificing quality of care is not completely clear. Reich would probably predict the affirmative. In contrast, drug companies would no doubt argue that this White House compromise appropriately preserves their ability to produce new efficacious and possibly cost-effective treatments by preserving their R&D budgets. Despite these differing views, there is little doubt that heavy lobbying by healthcare companies succeeded in capturing the sympathies of a majority of members of Congress.

So, too, is there little doubt that the return on investment in lobbying is very high for many business groups. Lessig cites research at the University of Kansas showing that the return on lobbying for tax benefits for business in the 2004 American Jobs Creation Act was 22,000 percent.⁶⁵ He also cites a 2009 paper

⁶³ See Center for Responsive Politics, "Health," <http://www.opensecrets.org/lobby/indus.php?id=H>. This total includes spending by all health professionals, health services companies and HMOs, hospitals and nursing homes, and pharmaceutical and health products companies.

⁶⁴ Mike Flynn, "Healthcare Industry Spent \$243 Million [during first six months] in 2013 Lobbying Obamacare," Breitbart.com, September 23, 2013, <http://www.breitbart.com/Big-Government/2013/09/23/Health-Care-Industry-Spent-243-million-Already-in-2013-Lobbying-ObamaCare>.

⁶⁵ Lessig, *Republic, Lost*, 117, note 82.

showing that firms reap \$6 to \$20 for every \$1 they spend on lobbying for targeted tax benefits.⁶⁶

With respect to healthcare lobbying, Big Pharma reportedly spent \$116 million on the aforementioned effort to keep Congress from authorizing Medicare to bargain down prescription drug prices. As a result, Big Pharma saved—according to United Republic, a non-profit organized to end “money in politics corruption”—\$90 billion in future profits, representing a return on investment of 77,500 percent.⁶⁷

Corruption Based on the Revolving Door

The third item in the toolkit of crony capitalism, the revolving door between public service and the private sector, is also a potentially corrupting source of business-friendly policies. “Revolvers” breed public distrust and anger when they ignore conflicts of interest when serving in government, and when they exert undue influence when representing business.

The third item in the toolkit of crony capitalism, the revolving door between public service and the private sector, is also a potentially corrupting source of business-friendly policies. “Revolvers” breed public distrust and anger when they ignore conflicts of interest when serving in government, and when they exert undue influence when representing business.

Calculating the number of people who pass through the revolving door is a daunting prospect, attempted so far only by the Federal Reserve Bank of New York. That institution found that some 3,500 people moved from state and federal agencies regulating the banking industry to the private sector in 2013.⁶⁸ However, the revolving door actually includes several traffic flows.

⁶⁶ Id., 117, note 83. Similarly, according to United Republic, a non-profit that uncovers the influence of well-financed interests in American politics, multinational companies spent \$283 million on lobbying in 2004 for a tax break on repatriated profits, which they got. This tax break is worth \$63 billion—again yielding a return on investment of 22,000 percent. Cited by Aimee Duffy, “Should Companies Do More to Disclose Their Lobbying Efforts?” *The Motley Fool*, April 5, 2014, <http://www.fool.com/investing/general/2014/04/05/should-companies-do-more-to-disclose-their-lobbyin.aspx>.

⁶⁷ Duffy, “Should Companies Do More to Disclose Their Lobbying Efforts?”

⁶⁸ David Lucca, Amit Seru, and Francesco Trebbi, “The Revolving Door and Worker Flows in Banking Regulation,” Federal Reserve Bank of New York, Staff Report No. 678, June 2014. The authors created profiles of 35,604 people who had worked for federal or state regulators. The number of people who flowed from

Flow 1: From Government Service to Lobbying

Perhaps the largest cohort flowing through the revolving door is composed of congressional and agency employees who leave government service for lobbying firms, where their legislative or regulatory experience is eminently “bankable.” This traffic pattern helped ensure the tax breaks for private equity cited earlier, for example.

The financial incentives to switch from government service to lobbying are steep. Salaries for members of Congress have remained at \$174,000 since 2009.⁶⁹ Senate staff and legislative assistants earn a median pay of \$30,000 and \$35,000, respectively—significantly lower than Senate janitors and parking-lot attendants.⁷⁰ The average legislative counsel in the House made \$56,000 in 2012.

In marked contrast, the average salary for lobbyists in Washington ranges from \$68,000 for an assistant lobbyist to \$133,000 for a senior one.⁷¹ Salaries of lobbyists who are well-connected to members of Congress average \$177,000, according to one study.⁷² These are averages, of course, so the tail of this distribution is higher for more valuable lobbyists. If the consulting business is any guide, principals of lobbying firms take home many times those amounts.

Different studies of the gap in compensation for congressional employees versus lobbyists use different methodologies and come up with slightly different numbers.⁷³ But whatever the precise gap, it is significant. And given that staffers, especially, work for substandard wages, they clearly have real incentives to enter the revolving door after establishing “street cred.”

regulatory agencies to the private sector in 2013 was twice the number of a decade earlier. These figures are based on Figure 3, p. 42.

⁷⁰ See Ida A. Brudnick, “Congressional Salaries and Allowances,” Congressional Research Service 7-5700, January 7, 2014, http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%270E%2C*PL%5B%3D%23P%20%20%0A.

⁷⁰ Luke Rosiak, “Congressional Staffers, Public Shortchanged by High Turnover, Low Pay,” *Washington Times*, June 6, 2012, <http://www.washingtontimes.com/news/2012/jun/6/congressional-staffers-public-shortchanged-by-high/?page=all>. The average salary of parking-lot attendants is \$49,000, and that of college-educated workers in the D.C. area is \$93,000. Data are from Legistorm, <http://www.legistorm.com>.

⁷¹ Jordi Blanes i Vidal, Mirko Draca, and Christian Fons-Rosen, “Revolving Door Lobbyists,” *American Economic Review* 102.7 (2012): 3731-3748

⁷² *Id.*

⁷³ See, for example, studies by Sunlight Foundation (a nonpartisan non-profit committed to promoting and catalyzing via the internet greater government openness and transparency). Lee Drutman and Alexander Furnas, “K Street Pays Top Dollar for Revolving Door Talent,” Sunlight Foundation, January 21, 2014, <http://sunlightfoundation.com/blog/2014/01/21/revolving-door-lobbyists-government-experience/>.

How Many?

After passage of the Affordable Care Act, companies such as Delta Air Lines and UBS, and healthcare giants such as United HealthCare Group and Blue Cross Blue Shield, hired more than 30 former administration officials, members of Congress, and staffers to help them navigate rules the former public employees wrote into the legislation.

During the writing of Dodd-Frank, 47 of 50 Goldman Sachs lobbyists, 42 of 46 JPMorgan Chase lobbyists, and 35 of 46 Citigroup lobbyists had held government positions.⁷⁴ Not unexpectedly, these lobbyists punched out many controversial provisions and exemptions—such as exemptions from prohibited proprietary trading activities that include market making-related activities, trading on behalf of customers, risk-mitigating hedging activities, trading in certain government obligations, and underwriting, among others.

While determining the share of the lobbyist population composed of people moving from Congress and government agencies is difficult, we do have a rough sense of the proportions among leading lobbyists. A 2007 story in *Washingtonian* identified half of 50 “top lobbyists” as having such connections to the federal government: 13 were former members of Congress, and 12 were ex-congressional or ex-agency staffers.⁷⁵

Similarly, according to Howard Brody, director of the Institute for Medical Humanities at the University of Texas, nearly half of 675 lobbyists employed by the pharmaceutical industry to influence legislation before the 2004 elections had worked for the federal government. Of those, 26 had been members of Congress.⁷⁶ The lobbying clout of the industry essentially guaranteed that the government would not compromise its interests, such as by lowering the prices of drugs covered by formularies and Medicaid, according to Brody.⁷⁷

⁷⁴ Nomi Prins, *All the President's Bankers: The Hidden Alliances That Drive American Power* (Nation Books, 2014), 415. Prins' source of data was OpenSecrets.org. See www.opensecrets.org/lobby/index.php.

⁷⁵ References in Vidal, Draca, and Fons-Rosen, “Revolving Door Lobbyists.”

⁷⁶ Howard Brody, *Hooked: Ethics, the Medical Profession, and the Pharmaceutical Industry* (Rowman & Littlefield, 2007), 238-239.

⁷⁷ *Id.*, 239.

At most, these figures are suggestive. But even if we were to assume that the share of lobbyists across all industries that is composed of ex-government employees is far lower, the claim that an elite center of influence is at work with and on Congress is plausible.

In recent years, there have been various legislative efforts to constrain the activities and increase the reporting on Congressional staffers and other public employees-turned-lobbyists. The 1995 Lobbying Disclosure Act, the 2006 Legislative Transparency and Accountability Act, and the 2007 Honest Leadership and Open Government Act constrained the activities of federal employees turned lobbyists, and increased reporting on those activities. For example, Senators are now prohibited from lobbying Congress for two years after leaving office; senior Senate and House staffs are subject to a one-year “cooling off period.” This legislation was spurred by enduring concern that the outward migration of elected officials and government employees to powerful Washington lobbying firms has led to “a disparity of access and influence over elected representatives,” which in turn “perpetuates the impression that Washington is controlled by a tightly knit elite, thus undermining popular support for democratic institutions.”⁷⁸

Flow 2: From Government Service to Industry

A smaller and less easily documented flow through the revolving door is composed of former employees of Congress and regulatory agencies who move to executive positions at firms and industry associations related to their previous work. These refugees may seek employment in the business world for many reasons—not least of which is simply to increase their income and net worth.

The pharmaceutical and bioscience industries often recruit former civil servants for senior positions in their trade associations, according to Jennifer Miller, executive director of Bioethics International, which encourages ethical decision making in healthcare, life sciences, and biotech. For example, Billy Tauzin (R-La.) was a key architect of the Medicare prescription drug benefit, which prohibited the agency from using its volume purchasing power to negotiate discounts on drug prices, before he became president of the Pharmaceutical Research and Manufacturers of America in December 2004. And Jim Greenwood (R-Pa.) served in the House and

⁷⁸ Vidal, Draca, and Fons-Rosen, “Revolving Door Lobbyists.”

the Pennsylvania legislature for many years before walking through the revolving door to become president of the Biotechnology Industry Organization.⁷⁹

The financial industry does the same. In *Flash Boys*, prominent journalist Michael Lewis writes that “more than two hundred SEC staffers since 2007 had left their government jobs to work for high-frequency trading firms or the firms that lobbied Washington on their behalf.”⁸⁰

The question is whether such career transitions inadvertently or intentionally compromise the democratic process. Two claims of adverse effects are common. First, refugees’ specific knowledge of the workings of government help firms and industry associations influence, retard, or game policies designed to serve important public interests. Second, the prospect of high-paying jobs in the business sector may influence the judgment and decisions of members of Congress, regulators, and administration officials, who see few advantages in making enemies among potential employers.⁸¹

James Kidney, a trial attorney at the SEC who won its first jury trial on insider trading and many such cases thereafter, spoke at his retirement dinner about the reluctance of senior colleagues to pursue Wall Street leaders after the 2008 credit crisis. The SEC, he said, had become “an agency that polices the broken windows on the street level and rarely goes to the penthouse floors,” because senior officials are more focused on getting high-paying jobs after government service than on bringing difficult cases.⁸²

Flow 3: From the Private Sector to Government

This flow—the reverse revolving door—occurs when business executives move into policy-sensitive areas of government related to their industry loyalties and even

⁷⁹ Jennifer E. Miller, “Bioethical Standards in the Pharmaceutical Industry? A Proposal for How to Marry Theory with Praxis” (IF Press, 2014), 183-187.

⁸⁰ Michael Lewis, *Flash Boys: A Wall Street Revolt* (W.W. Norton, 2014), 12.

⁸¹ Johnson and Kwak, *13 Bankers*, 96.

⁸² Robert Schmidt, “SEC Goldman Lawyer Says Agency Too Timid on Wall Street Misdeeds,” *Bloomberg*, April 8, 2014, <http://www.bloomberg.com/news/2014-04-08/sec-goldman-lawyer-says-agency-too-timid-on-wall-street-misdeeds.html>.

financial interests. OpenSecrets.org lists dozens of former lobbyists now employed by lawmakers of both parties.⁸³

The office of Senator Max Baucus, Chairman of the Senate Committee on Finance, again provides a graphic example. Much of the final wording of the Affordable Care Act was written by Liz Fowler, Baucus' top health policy advisor for health care reform, counsel to the Finance Committee and former vice-president of WellPoint, the nation's largest health insurer, a principal beneficiary of the law.⁸⁴ The movement of industry veterans into important government positions tends to cement close personal, financial, and ideological ties between firms and their regulators, and gives industry privileged access to legislators—the most direct way to introduce private interests into public decision making.

A friendlier picture would note that cross-pollination of ideas between the public and private sectors enables informed oversight and sensible regulatory policy in industries with rapidly evolving technologies and markets. As a long-time professor at a leading U.S. business school, I can attest that a significant share of my best students aspire to work in government and for the public interest at some point in their business-denominated careers.

However, concerns about the reverse revolving door remain. Reporter Sheila Kaplan has documented a classic case involving Stephen Sayle, a lobbyist for oil, gas, and chemical interests. As CEO of Dow Lohnes Government Strategies, Sayle was known to secure the best deals on Capitol Hill for his clients, and *The Hill* named him one Washington's top lobbyists in 2012.⁸⁵

Sayle left Dow Lohnes for the influential job of staff director for the House Science, Space and Technology Committee's Subcommittee on Energy, which now devotes much of its time to attacking efforts by the Environmental Protection Agency (EPA) to regulate oil, gas, and chemical companies. Sayle's professional journey has included several rotations between congressional staff positions and industry lobbying. As Rep. Bradley Miller (D-N.C.) mused to Kaplan, "Can a lobbyist shift his

⁸³ See Center for Responsive Politics, "Revolving Door," <http://www.opensecrets.org/revolving/>.

⁸⁴ McGreal, "Revealed: Millions Spent by Lobby Firms Fighting Obama Health Reforms."

⁸⁵ Sheila Kaplan, "On Capitol Hill, The Door Swings Both Ways," Investigative Reporting Workshop, December 11, 2013, <http://investigativereportingworkshop.org/investigations/Revolving-doors/story/door-swings-both-ways/>.

outlook from protecting business interests to protecting the nation's interest so quickly?"⁸⁶

Kaplan points out that in contrast to rules on people's professional activities after they leave the Hill, no explicit ethics rules govern the reverse revolving door. Some knowledgeable observers, such as Robert Kelner, chair of Covington & Burling's election and political law practice group, contend that rules limiting the reverse revolving door would block the transfer of specific knowledge to government, and that onerous regulations in general invite noncompliance. However, in interviews with Kaplan, John Walke, clean air director for the Natural Resources Defense Council, and Jay Feldman, executive director of Beyond Pesticides, which advocates a toxics-free environment, make a compelling case for the other side.

Walke, who generally does not have a problem with employees who move to the private sector after gaining "invaluable experience" at the EPA and the Justice Department, draws the line at reverse migration: "The problem comes when someone works at government and continues to represent private interests and corporate interests while causing the public good and public health to suffer." Feldman echoes Walke: "The regulatory process is overwhelmed by previous [industry] employees who know how to delay and undermine the decision-making process."⁸⁷

The industry with the most noticeable flow to government is finance. In the last 40 years alone, no fewer than 10 treasury secretaries have come from the business community—predominantly from Wall Street. Many of these appointees had been top-tier fund-raisers for the presidents they served.

Symptomatic of the flow of leaders from this industry to government is the roster of bankers from a single firm: Goldman Sachs. According to a Hunter Lewis, 5 Goldman employees spun through the reverse revolving door into the Clinton administration, 14 into the Bush administration, and 10 into the Obama administration.⁸⁸ For example, Gary Gensler, head of finance at Goldman, became

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Hunter Lewis, *Crony Capitalism in America: 2008-2012* (AC² Books, 2013), 85-88. Johnson and Kwak refer to this as the cultural capture of government by bankers in *13 Bankers*.

assistant secretary and then undersecretary of the Treasury under President Clinton, and then chaired the Commodities Futures Trading Commission under President Obama.

Former Goldman executives who became government officials under President George W. Bush include Treasury Secretary Henry Paulson; Robert Steele, undersecretary of the Treasury for domestic finance; Stephen Friedman, director of the National Economic Council; William Dudley, senior executive at the New York Fed; Joshua Bolton, director of the Office of Management and Budget and Bush's chief of staff; and many other Treasury employees.

Former Goldman employees also include Henry Fowler, treasury secretary under President Johnson; John Whitehead, deputy secretary of state and chair of the New York Fed under President Reagan; Gerald Corrigan, president of the New York Fed; and 10 former Goldman employees who served in various European governments.

Former Wall Street executives in the Clinton administration included Roger Altman of Lehman Brothers and the Blackstone private-equity group, who served as deputy treasury secretary, and Lee Sachs of Bear Stearns, assistant treasury secretary.⁸⁹

At one level, the movement of extraordinary talent from Wall Street to government can be seen as a gift to the nation. However, its scale means that Wall Street's worldview inevitably spreads to the corridors of power.⁹⁰

As in the case of Stephen Sayle, who has moved back and forth between the EPA and industry, Kaplan shows how the revolving door can spin in both directions. While we do not know the precise size of this "round-tripping" cohort, the practice seems to be common in finance, healthcare, and chemicals, providing many opportunities for cronyism to take root.

Dr. Tracey Woodruff, a former EPA scientist who directs the program on reproductive health and the environment at the University of California-San Francisco's School of Medicine, warns, "When people leave EPA for industry, they take with them valuable inside knowledge that their new companies, or clients, can

⁸⁹ Lewis, *Crony Capitalism in America*, 94.

⁹⁰ *Id.*, 96.

use against the agency. This happens in both scientific research and the regulatory arena, and it weakens EPA's ability to do its job. And when they come back to the agency, after working in industry, it's reasonable to question where their loyalties lie.”⁹¹

The Costs of Cronyism

We can crudely estimate many of the direct costs of crony capitalism, such as from targeted exemptions from legislation, advantageous rules by regulatory agencies, preferred access to credit, direct subsidies, preferential tariffs, tax breaks, and protection from prosecution. Other costs—including diminished public trust in democratic capitalism, and lower GNP growth because of a lower propensity of favored firms to make risky, transformational investments—defy systematic quantification, although they are arguably among the most important long-run costs of cronyism.

Imagine a system of tax breaks and subsidies that totaled \$222.7 billion from 2008 to 2010, when the nation faced the steepest recession in more than 50 years. Imagine also a system in which 56 percent of these subsidies went to just four industries: finance, utilities, telecommunications, and oil, gas, and pipelines. Finally, imagine a system in which the most profitable industries receive the biggest subsidies. Your rich imagination might lead you to wonder about how such an arrangement could exist in our widely acclaimed democratic society. Your wonderment might turn to shock if you discovered that this imagined reality is, in fact, true—which it is, according to an analysis by Citizens for Tax Justice and the Institute on Taxation and Economic Policy.⁹²

Partly because the financial industry's effective tax rate was 15.5 percent from 2008 to 2010, financial companies are especially profitable and account for a growing share of U.S. corporate profits, according to this analysis. Given that the

⁹¹ Kaplan, “On Capitol Hill, The Door Swings Both Ways.”

⁹² Robert S. McIntyre, Matthew Gardner, Rebecca J. Wilkins, and Richard Phillips, “Corporate Taxpayers & Corporate Tax Dodgers,” Citizens for Tax Justice and the Institute on Taxation and Economic Policy, November 2011, 8, <http://www.ctj.org/corporatetaxdodgers/CorporateTaxDodgersReport.pdf>. The \$222.7 billion is the difference between the \$473 billion that 280 companies in these industries would have owed had they reported all their profits to the IRS and paid the 35 percent corporate tax rate, and the amount of taxes they actually paid.

corporate tax rate is nominally 35 percent, this amounts to a tax subsidy of about \$34.5 billion.⁹³ And that figure does not include the bailouts by the federal government that kept large banks afloat during the recession. At least twenty other industries had effective tax rates below 20 percent as of January 2014, with effective tax rates in the single digits for many high tech industries.⁹⁴

The federal government spends almost \$100 billion annually on direct and indirect subsidies to business, the Cato Institute recently reported, based on a detailed analysis of the federal budget. These subsidies include those for farms, small businesses, R&D, trade, and energy, railroad, and maritime interests, as well as tax preferences and favorable regulations.⁹⁵

Tax credits for the highly profitable oil and gas industry—which subsidize drilling costs and, oddly, compensate companies for the declining value of wells—total \$7 billion a year, according to another recent estimate.⁹⁶ A somewhat higher estimate pegs federal subsidies for fossil fuels from 2002 to 2008 at \$72.5 billion.⁹⁷ Some of the industry’s tax write-offs have been in effect for nearly a hundred years. And the oil industry can expect profits to remain healthy, given that the price of oil is

⁹³ Id., 7. According to Asworth Damodaran, a professor at New York University, the average tax rate across all firms by 2014 was 18.37 percent (with the effective rate for only money-making firms was up to 32.54 percent). See Damodaran Online, <http://pages.stern.nyu.edu/~adamodar/>.

⁹⁴ See Damodaran Online. See also, Binyamin Appelbaum, “Corporate Taxes: More Winners and Losers,” *New York Times*, January 27, 2011, <http://economix.blogs.nytimes.com/2011/01/27/corporate-taxes-more-winners-and-losers/>.

⁹⁵ Tad DeHaven, “Corporate Welfare in the Federal Budget,” Cato Institute Policy Analysis, No. 703, July 25, 2012, <http://www.downsizinggovernment.org/new-paper-federal-business-subsidies>.

⁹⁶ Jordan Weissmann, “America’s Most Obvious Tax Reform Idea: Kill the Oil and Gas Subsidies,” *Atlantic*, March 19, 2013, <http://www.theatlantic.com/business/archive/2013/03/americas-most-obvious-tax-reform-idea-kill-the-oil-and-gas-subsidies/274121/>. See also Seth Hanlon, “Big Oil’s Misbegotten Tax Gusher,” Center for American Progress, May 5, 2011, <http://www.americanprogress.org/issues/tax-reform/news/2011/05/05/9663/big-oils-misbegotten-tax-gusher/>. Regarding the profitability of the oil and gas industry, 2013 profits of the big five oil companies—BP, Chevron, ConocoPhillips, ExxonMobil, and Shell—totaled \$93 billion. In the second quarter of 2014, the sector posted profits representing slightly more than 21 percent on shareholder equity—a very healthy return for a capital-intensive industry. One startling indication of the industry’s profitability and excess cash is that even with lower profits in 2013, four of the big five oil companies used 30-50 percent to repurchase shares rather than investing them in the business. Data are from Daniel J. Weiss and Miranda Peterson, “With Only \$93 Billion in Profits, the Big Five Oil Companies Demand to Keep Tax Breaks,” Center for American Progress, February 10, 2014, <http://www.americanprogress.org/issues/green/news/2014/02/10/83879/with-only-93-billion-in-profits-the-big-five-oil-companies-demand-to-keep-tax-breaks/>; and CSIMarket.com, “Energy Sector,” http://csimarket.com/Industry/Industry_Profitability.php?s=600.

⁹⁷ H.R. 601, Ending Big Oil Tax Subsidies Act, sponsored by House Democrat Earl Blumenauer of Oregon and 30 other members of Congress, summary online at http://blumenauer.house.gov/index.php?option=com_content&view=article&id=1788.

expected to remain near \$100 a barrel for the foreseeable future because of instability in the Middle East and rising global demand.

Former Texas governor and President George W. Bush provocatively commented that these subsidies have little justification.⁹⁸ Partly in response, leading Republicans as well as Democrats are now beginning to signal—albeit in vague terms—that they could support a rollback of these credits.⁹⁹ How enduring that bipartisan sentiment might prove to be is highly questionable, however, given that the oil and gas industry spent about \$70 million on congressional campaigns in 2012.¹⁰⁰ The industry also employed 737 lobbyists and spent about \$140 million on lobbying—much of that aimed at heading off curbs on carbon emissions.

The costs of subsidies are equally shocking in other sectors. Recall the example of the sugar industry, whose political connections and lobbying ensure that U.S. consumers pay prices 65–85 percent above those of the global market, yielding \$3.7 billion annual subsidy.

The whiff of American-style crony capitalism is widespread, and growing recognition of its high costs forces the critical question of how we could contain it.

Containing Crony Capitalism

Crony capitalism is a two-sided transaction. On the business side are the vast resources that wealthy individuals, firms, and industry associations spend on campaign financing and lobbying to promote their idiosyncratic interests. On the government side are members of Congress who are both dependent on campaign contributions from well-heeled supporters and highly susceptible to the influences of well-paid and relentless lobbyists.

⁹⁸ McIntyre, Gardner, Wilkins and Phillips, “Corporate Taxpayers & Corporate Tax Dodgers, 2008-2010,” 8.

⁹⁹ Seth Hanlon and Daniel J. Weiss, “Eliminating Big Oil Tax Loopholes Won’t Lead to a Tax Increase,” Center for American Progress, May 16, 2011, <http://www.americanprogress.org/issues/green/news/2011/05/16/9640/eliminating-big-oil-tax-loopholes-wont-lead-to-a-tax-increase>.

¹⁰⁰ See Center for Responsive Politics, “Oil and Gas,” <https://www.opensecrets.org/lobby/indusclient.php?id=E01>. Many of the campaign finance expenditures in 2012 were aimed at warding off potential curbs on carbon emissions, supporting construction of the Keystone pipeline, and expanding offshore drilling. The total includes contributions from gas producers and refiners, natural gas pipeline companies, gasoline stations, and fuel oil dealers. Some 90 percent of these contributions went to the GOP, according to OpenSecrets.org.

When this dependence distracts Congress from its intended purpose—to promote the interests of “the people alone,” it leads to institutional corruption.¹⁰¹ This kind of corruption does not require members of Congress to be either evil or criminal. Instead, it typically involves a kind of addiction—one that builds up over time—afflicting otherwise honest public officials who become distracted by the influence of large campaign contributions and other forms of political support and persuasion.¹⁰²

The crony capitalism embedded in such transactions could be contained in several fairly obvious—but painfully slow and difficult—ways. We could push for greater transparency, including better reporting of industry and business lobbying on specific pieces of legislation and regulatory rule writing. Federal law—principally the Lobbying Disclosure Act of 1995 and the Honest Leadership and Open Government Act of 2007—does not now require such disclosure.

We could also strengthen via legislation restrictions on the revolving door, as President Obama did with his first executive order, which prohibited former lobbyists from working at agencies and on issues they had previously lobbied, and which barred them altogether from related advisory boards and commissions.¹⁰³ We could also tighten requirements for cooling-off periods for public- and private-sector officials passing through the revolving door, to minimize trust-destroying conflicts of interest and privileged access by influential business interests to Congress and regulatory agencies.

Both initiatives would be useful, and should be pursued. However, no significant containment or reversal of American-style crony capitalism will occur without a major change in our approach to campaign financing. The amount of money on the table is simply too great, and the fuel in many elections simply too rich, for campaign finance reform not to be the first priority. As Robert Kaiser, an

¹⁰¹ Lessig refers to this phenomenon as “dependency corruption.” See Lessig, *Republic, Lost*, 15-20 and 230-246, for a complete definition and discussion.

¹⁰² Lessig refers to politicians’ dependence on money as a “feeder drug” enabling both venal and systemic corruption. *Id.*, 237. In an interview with *Harvard Magazine*, Lessig likens this dependency on money to cocaine addiction, in which politicians spend “70 percent of their time feeding their habit” (the proportion of time each week that they typically spend raising money). See, Jonathan Shaw, “A Radical Fix for the Republic,” *Harvard Magazine*, July-August 2012, <http://harvardmagazine.com/2012/07/a-radical-fix-for-the-republic>.

¹⁰³ See White House, “Shutting the Revolving Door,” <http://www.whitehouse.gov/21stcenturygov/actions/revolving-door>.

experienced political reporter and editor of the *Washington Post*, argues in *So Damn Much Money*, lobbying has not only corroded American government but has also interfered with the legislative agenda of both the Right and the Left.¹⁰⁴

Of course, this country has a long history of attempted campaign finance reform, starting with the Tillman Act of 1907, which prohibited corporations and nationally chartered (interstate) banks from making direct financial contributions to federal candidates. Weak enforcement undercut the act's effectiveness. Much more recently, Congress has crafted legislation and the Supreme Court has issued opinions on campaign contributions.¹⁰⁵

Despite this activity, one corrupting feature of federal campaigns has not changed. Today 85 percent of funding for congressional campaigns comes from large contributors—mainly wealthy individuals and corporations. Only 196 individuals—or 0.00063 percent of Americans—had given more than 80 percent of super PAC funds spent on the presidential election as of summer 2012, according to Lessig.¹⁰⁶ This is truly a picture of an American oligarchy at work.

This tiny group of contributors can affect the policy agenda of Congress and block reforms of all kinds. According to an analysis by political scientists Martin Gilens of Princeton and Benjamin Page of Northwestern University, “Economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence.”¹⁰⁷ Campaign finance reform is essential to restoring our democracy.

The history of attempted campaign finance reform sends a clear message: it is next to impossible for incumbent members of Congress to agree on meaningful controls on funds flowing into federal elections. Most party leaders, and not a few legal

¹⁰⁴ Robert G. Kaiser, *So Damn Much Money: The Triumph of Lobbying and the Corrosion of American Government* (Vintage Books, 2010).

¹⁰⁵ See the *Bipartisan Campaign Reform Act of 2002*, also called McCain-Feingold. For Supreme Court opinions: and see *Federal Election Commission v. Wisconsin Right to Life, Inc.*; *Buckley v. Valeo*; and *Citizens United v. Federal Election Commission*.

¹⁰⁶ Lawrence Lessig, “Big Campaign Spending: Government by the 1%,” *Atlantic*, July 10, 2012, <http://www.theatlantic.com/politics/archive/2012/07/big-campaign-spending-government-by-the-1/259599/>.

¹⁰⁷ Martin Gilens and Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens,” *Perspectives on Politics*, forthcoming.

scholars and the current Supreme Court, oppose controls that would diminish the role of money in politics, arguing that they would be “an infringement on free speech and healthy political competition.”¹⁰⁸

The prospects for approving a constitutional amendment reforming campaign financing are equally daunting, given that it would require (1) a two-thirds vote in both the House and Senate and ratification by three-quarters of the states; (2) a two-thirds vote of a national convention called by Congress; or (3) ratifying conventions in three-fourths of the states.

That leaves few practical strategies for change. Options include a system wherein the government would match such contributions, or one wherein the government would give vouchers to voters, who could contribute them to candidates who restrict their funding to such vouchers and other small contributions.

Another option has recently appeared with the swift and ironic rise of independent super PACs aimed at electing a Congress committed to small-dollar campaign funding. Other reform-minded super PACs focus on supporting candidates who simply reject funding from PACs with undisclosed donors.

If all this sounds like pie in the sky, just look at the record of Mayday, a super PAC launched by Lessig, which raised \$12 million dollars in less than three months to back candidates who support campaign finance reform. Other super PACs aiming to reduce the influence of wealthy interests and elevate the impact of small donors on campaigns include CounterPAC, Friends of Democracy, and Every Voice Action (formerly Friends of Democracy). These initiatives—which are targeting specific races and candidates in the 2014 elections—are the most direct and professionally managed efforts so far to change the big-money-in-elections game. The failure of these initiatives to gain momentum—against the backdrop of significant legislative failures during the 1990s and the Supreme Court’s *Citizen’s United* decision—would be a setback for U.S. democracy and perpetuate the curse and costs of American-style crony capitalism.

¹⁰⁸ See Bill Moyers & Company, “The Super PAC to End Super PACs Gets Started,” July 29, 2014, <http://billmoyers.com/2014/07/29/the-super-pac-to-end-super-pacs-gets-started/>, for a description of this phenomenon and the quick rise of Mayday PAC.

(Disclosure: The author contributes to the Mayday PAC and the New Hampshire Rebellion, a nonpartisan movement to make systemic corruption driven by money in politics the central issue of the 2016 presidential primary.)



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