

## HOW SO MUCH MONEY IN POLITICS DEFEATS CONSERVATIVE OBJECTIVES <sup>1</sup>

Excerpts from *Republic, Lost* by Lawrence Lessig, Hachette Book Group, 2011

Imagine a follower of Ronald Reagan who wants to achieve three core objectives:

- He wants to shrink the size of government.
- He wants to simplify the US tax system.
- He wants to make sure that markets are allowed to be efficient.

How would these objectives fare under the current structure of our political system?

### Making government small

Both Republicans and Democrats have an interest in extending the reach of regulation, because increasing the range of interest regulated increases the number who have an interest in trying to influence the federal regulation. And how is that influence exercised? Through the “gift economy” enabled by Santa, the lobbyist.

Now, of course no one would say that Congress regulates simply for the purpose of creating fundraising targets. But souls on the Right should recognize that it is more likely Congress is thinking about targets of fundraising that affects the scope of government power rather than bureaucracies angling to increase the scope of their work. Having lots of targets of regulation is actually a good way to have lots of targets for fundraising.

The same dynamic explains the organization of Congress. Newt Gingrich believed that the more committees and subcommittees a person can be on, the more attractions they can acquire to present to contributors. After interviewing former members of Congress, one observer reported that “lawmakers freely acknowledge that they and their colleagues often sought assignments to certain ‘cash cow’ committees, primarily because members of those committees are able to raise large amounts of campaign money with little effort.”

The lesson is simple: getting a smaller government is difficult enough. Getting smaller government when members have a direct financial interest in a bigger one might well be impossible.

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<sup>1</sup> Lessig writes: “My sense is that too many on the right make the same mistake as many on the left. They assume the change happens when you win enough votes in Congress. Elect a strong Republican majority, many in the tea party believe, and you will elect a government that will deliver the promise of smaller government and simpler taxes -- just as activists on the Left thought that they could elect a strong Democratic majority and deliver on the promise of meaningful health care reform, or global warming legislation, or whatever other reform the Left thought it would get.”

## Simple taxes

It is been a central plank of the Republican Party since before Ronald Reagan that our system taxes too much, and has too much complexity. Simpler, "lower taxes" has been a common constant refrain. Yet we have consistently failed to implement a simplified tax system. Why? Who benefits from complex taxes? And how could that benefit possibly outweigh a universal push for simplicity?

To understand the nature of tax law in America, you have to understand one simple point: its complexity is a feature, not a bug. From the perspective of those closest to crafting the tax code, complexity offers a host of opportunities that simplicity can't. Some of those opportunities are legitimate: the chance to better target taxing to achieve economic goals. But many are completely illegitimate. And for the illegitimate, when simplicity is pushed, complexity pushes back harder.

Sometimes problems pay. And when they pay enough, those who benefit will work to block their being fixed.

Our tax code is riddled with the most absurd exceptions. These exceptions are proposed and secured by lobbyists. Indeed, lobbyist firms specialize in providing the "service" of securing the special benefits. Independent studies have concluded that the return on investment for lobbying expenditures varies between 600% and 2,000%. Not a bad ROI for government work.

Yet complexity is just one part of the two-part dance that, unless stopped, will drive our taxing system into bankruptcy. When you get a targeted tax benefit, you don't get to keep it forever. Instead, because of the rules governing how budgets get drafted, each of these special benefits "sunset" after a limited time. Because of these sunsets, each must be reconsidered every time a budget gets drafted.

Sunsets sounds like a good idea. Indeed, some seem to treat them as a panacea for all government ills. But when you begin to think more carefully about the obvious incentives in the "political economy," things become a little more complicated. For every time a "targeted tax benefit" is about to expire, those who receive this benefit have an extraordinarily strong incentive to fight to keep it. Indeed, we can say precisely how much they should be willing to pay to keep it. If the tax benefit is worth \$10 million to the company, they should be willing to spend up to 10 million to keep it.

A paper published in a law review states that succinctly. "The continual termination of certain tax benefits and burdens creates occasions for politicians to more easily extract votes and campaign contributions from parties affected by the threatened provision."

In the first 25 years of the life of tax sunsets, only two were allowed to expire – and one of those was renewed in the next session of Congress, with a retroactive gift given to cover the lapse.

As the Wall Street Journal reported, in the 1990s there were fewer than a dozen tax extenders in the US tax code. Now [writing in 2010] there are more than 140.

Thus, again we could say: Getting a system of simpler taxes is difficult enough. Getting a system of simpler taxes when Congress has a direct financial interest in complexity might well be impossible.

#### Keeping market efficient

Free market advocates believe that markets aggregate the will of the public better than governments do. Yet often the biggest danger to free markets comes not so much from anti-market advocates (the communists and worse!) as from strong and successful market players eager to protect themselves from the next round of strong and successful market players.

The perpetual danger is that competition will be distorted by incumbents, because of an obvious fact, not about markets, but about humans: “Those in power prefer to stay in power. They feel threatened by free markets – even if it was free markets that gave them their power.”

Put differently, “How do we protect capitalism from the capitalists?” This is a worry because there are only two things we can be certain of when talking about free markets:

- That new innovation will challenge old.
- That old innovation will try to protect itself against the new.

This challenge was articulated in progressive writings decades ago: “To destroy this invisible government, to dissolve the unholy alliance between corrupt business and corrupt politics is the first task of statesmanship of the day.”

So long as wealth can be used to leverage political power, wealth will be used to leverage political power to protect itself. And as long as private [and undisclosed] money drives public elections, public officials will work hard to protect that private money.