Curing What Ails Democracy: Lippes Series Speaker Issues A Bold Challenge to “Institutional Corruption”

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A Harvard Law School ethicist with harsh words for the way Congress does its work brought those ideas to SUNY Buffalo Law School in a provocative, high-profile address.

Lawrence Lessig, who also directs the Edmond J. Safra Center for Ethics at Harvard University, spoke April 19 in O’Brian Hall. Lessig’s address, co-sponsored by the Law School and UB’s School of Management, was part of the Gerald S. Lippes Speaker Series, one of the university’s highest-profile lecture series.

The speaker, whose most recent book is Republic, Lost: How Money Corrupts Congress — and a Plan to Stop It, was introduced by Law School Associate Professor S. Todd Brown as a “rock star” in the field of legal ethics. And his lecture, “Institutional Corruption and the Financial Crisis,” raised as many emotions as ideas, as Lessig took on some systemic problems in politics and economics that, he said, threaten the very foundations of the American experiment in democracy.

Lessig began by noting the Founding Fathers’ “obsession” with independence, and said that trust is a function of independence. For example, he said, people place less trust in an industry-funded study of the safety of a chemical than in an independent study — “All of us psychologically will process the recognition of money in the wrong place.”

He then went on to define his current field of study, institutional corruption, saying the phrase refers not to bribery or any other illegal activity, but rather to a corruption of the purpose of the institution, steering it in the wrong direction “especially by weakening the public trust of the institution.”

So, for example, a tax credit for companies’ research and development expenses was passed under President Ronald Reagan, and instituted temporarily, to test its effectiveness. It worked — on that, Lessig said, all sides agree. And yet the credit continues on a temporary basis, requiring a periodic vote by Congress to renew it. Why hasn’t this tax credit been made permanent? Because, Lessig said, members of Congress get lots of campaign contributions from industry lobbyists seeking to ensure the law is renewed. “This dynamic is central to how Washington works,” he says. “We architect tax policy not only to make it easier for the Treasury to raise money, but to make it easier for campaign treasuries to raise money. We regulate in part to facilitate the raising of money for campaigns.”

The 2008 financial crisis, he said, came about through a mixture of too little government on the one hand — financial-industry deregulation that led to an explosion in the use of risky financial instruments called derivatives — and, on the other hand, too
much government—“the suggestion that a bailout would await on the other side when bubble burst. We have had socialized risk but privatized benefit. This is insanely stupid as a way to architect a financial system.”

But, he said, as Congress debated reforms to prevent another such meltdown, “Wall Street still had the power to blackmail both the Democrats and the Republicans to get basically a get-out-of-jail-free card and to pass financial reform that does not address the structural problem that produced the catastrophe.” In 2010, he noted, the banking sector was the largest contributor to congressional campaigns.

Because of situations like this, Lessig said, “Americans believe that money buys results in Congress”—an opinion held by 75 percent of the respondents in some surveys. And thus the proportion of Americans who trust Congress is very small, around 9 percent. “There were certainly a bigger percentage of Americans who believed in the Crown at the time of our Revolution than believe in Congress,” Lessig said.

“The Framers,” he said, “gave us a representative democracy. Our government would have a branch that would be dependent on the people alone. But Congress has developed a different dependence: It’s increasingly dependent on the funders.” Members, he said, spend up to 70 percent of their time on fund-raising. “They develop a sixth sense, a constant awareness on how what they do might affect their ability to raise money.”

As a result, he said, though every citizen’s vote is supposed to count the same,

members of Congress are in some sense beholden to a very small segment of the electorate. Only one-quarter of 1 percent of Americans, he said, have given more than $200 to a congressional campaign. And 80 percent of the money spent by “super PACs” in the current presidential campaign has been supplied by only 196 Americans. “This is corruption,” Lessig said, “because it’s a dependence that conflicts with the dependence that the Framers intended.”

One remedy, he said, would be to require campaigns to be funded by small contributions. As a model, Arizona, Maine and Connecticut have systems under which candidates can receive such contributions and have them matched by the state.

Though fixing the problems will be difficult, Lessig acknowledged, it’s up to smart people of good conscience to tackle the issues. “We face these critical problems in our society that need serious attention, but we have these institutions incapable of giving them attention,” he said. “They’re distracted, these institutions, unable to focus, like a pilot playing on a laptop rather than flying an airplane, a surgeon flirting during surgery, half of you with your cell phones while driving.

“And who is to blame for that? Who is responsible? It’s too simple to blame just the evil people. Evil people play their role, but as well as the evil people, there is us. We, the most privileged, have the responsibility to fix this problem. Because the most outrageous part here is not just that the corruptions were primed by the most privileged, it’s that they have been permitted by the passivity of the most privileged, too.”

The Lippes Speaker Series is funded by the support of Gerald S. Lippes ’64, a founding and senior partner in the Buffalo law firm Lippes, Mathias, Wexler and Friedman.