

Money, Speech and Spin in American Politics

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Thomas A. Burns, Ph.D.

Chiloquin, Oregon

The frustration and disappointment of Americans with the way our political system presently operates is largely a function of two glaring weaknesses that have become endemic: 1) the negative influence of money in the political process, and 2) the prevalence of disingenuous and manipulative communication by politicians, political parties and the Media celebrity commentators and Internet rabble rousers. These systemic flaws in turn first, encourage partisan posturing and ideological gridlock, which greatly reduce the efficiency of the system [do nothing Congressional sessions], second, cause the public to question the legitimacy of the resulting products [laws that serve special interests rather than the public], and third, paint as corrupt the entire political system to the point where many Americans have lost faith in the integrity and utility of government as a whole.

In the last couple of decades, a majority of Americans have come to question whether their government can meaningfully address the range of pressing issues before the nation: curbing economic recession, developing sufficient alternative energy sources, providing and maintaining public infrastructure, supporting public health, improving public education, supervising military needs and expenditures, addressing local and planetary environmental challenges, assessing public welfare needs, deciding on appropriate responses to conflict and terrorism [warfare and/or diplomacy], supervising the appropriate use of natural resources, regulating business and financial institutions, providing local and national law enforcement and security, etc. Public apathy and anti-government movements alike are reflections of the public's sense of the political system as wasteful and bordering on being corrupt and unreliable. The excitement of the successful Obama presidential candidacy with its major drumbeat for Change demonstrated the thirst of the public for major reforms both to bring integrity to the nation's political process and to address major societal challenges. Unfortunately the first year of the Obama presidency has illustrated the pervasive continuance of all the old weaknesses in both process and communication in America's political sphere. The result is that many Americans have returned to disillusionment and retired to cynicism, apathy or anti-government protest [Tea Party].

Belief in the viability of the American political process is affected by the following two unfortunate and unnecessary equation sequences:

- 1) The Money Line: Money equated with free speech and thereby allowed

mostly unrestrained use in the political process = Lobbyists hired to advocate for the special interests of particular groups = Contributions made selectively to the campaign coffers of “friendly” representatives seeking election and re-election to Congress = Get your “friends” elected to office = Subsequent “special” access for moneyed contributors and moneyed lobbyists to their “friends” to influence the legislative process = Legislation gets created and passed [including earmarks] that serves these moneyed special interests = Unfair advantage provided in support, in position of power granted, or in exclusion from taxation for these moneyed interests = The average citizen and public interest groups see themselves as second class = Cynicism becomes pervasive among the public regarding the integrity of the political process = Apathy and anti-government movements result.

- 2) The Communications Line: Issue for debate = Politicians and parties immediately adopt ideological positions = Politicians and parties determine talking points and calculate spin on the issue to maximally influence public opinion = Spokespersons reiterate the partisan ideological message ad nauseum to and through all Media = Political commentators/hacks/celebrities in the Media and on the Internet further select and manipulate the facts, introduce outright falsehoods, and interpret the selected and skewed facts to suggest extreme consequences = Extremists become the focus of attention and are allowed to characterize the choices in the debate in extreme terms = The debate becomes increasingly inflamed and the public and the parties progressively more polarized = The opposition employs procedural maneuvers to thwart and paralyze the legislative process = No action or only inconsequential action is taken on the issue = The public and politicians on all sides become more angry and frustrated = Politicians and parties seek retribution and fail to explore options for cooperation on subsequent issues = Polarization and paralysis becomes systemic = In the face of political divisiveness and ineptitude, the public becomes cynical, apathetic, or supports anti-government movements.

Note that both of these sequences lead to the same final effect – public disgust, apathy and protest, so this overall effect is greatly magnified. Now, let’s look at each of these problems in more detail.

First the money line: Apologists for the existing flood of money in politics are fond of making two claims. First, they offer loud declarations to the effect that monetary contributions to the campaigns of politicians, the connection of lobbyists to these large money sources of contributions, and the highly remunerative revolving door from corporate offices and their Boards of Directors

to Congress and back again has no influence on lawmakers and the legislation they support. But in spite of these protestations, the facts reveal otherwise. It only takes a brief excursion into bill sponsorship, actual voting records, and the identity of the lawmakers proposing special concessions, subsidies and earmarks to discover the overwhelming evidence for the FACT of this not very hidden quid pro quo.

The second argument that the apologists make in support of the current allowance for money in politics is that all special interests of all persuasions have an equal opportunity to influence the political process by raising money and buying the attention of politicians. While this may be theoretically the case, in reality no such parity comes close to existing.

Corporate entities and corporate consortiums [from Commercial Trade Associations to Chambers of Commerce] are in a continual state of being fully organized with huge capital resources to pursue their interests in shaping legislation. The private citizen has no such constantly active and available organizational or capital base. Instead, the public interest [the interest of the American people as a whole] must be aroused at the level of individuals, collected into an organizational structure, and monetary support generated from the grass roots level for each issue. And that takes expertise, time, and energy for which there is no one to pay the bill. Corporations and their consortiums support full time staffs of attorneys and public relations experts who are always ready with monetary resources to advocate for their interests, so they can get ahead of the game and influence overall policy before the public even becomes aware of the way policy will affect it with regard to a particular issue or action. Moreover, corporations are positioned to execute elaborate disinformation and spin campaigns to influence public opinion so that much of this public fails to even properly discern its own interests.

It is a total sham to suggest that there is in reality a Level Playing Field in the political contest between the American Public/Unions/Public Benefit Non-Profits and Corporations [think instead a high school athletic team vs. a professional team]. And now that the Supreme Court in its decision in Citizens United vs. Federal Election Commission [FEC] has authorized virtually unlimited corporate, moneyed influence in American politics, this situation is even more lopsided [think a little league team vs. a professional team].

Once powerful American trade unions, which for a brief period represented the interests of middle class, working Americans, and partially countered the corporations as a special interest, are now greatly reduced in their membership and influence. They have been depleted by legislation promoting anti-union

policies and by the World Trade Organization [WTO], whose ratifying members [nations] agree to allow WTO trade rules to supercede their own national trade and tariff laws. The WTO, which is an international artifact of corporate interests, has opened the door for corporations to pursue their exclusive monetary interests without restraint in relocating their enterprises to the cheapest labor markets regardless of the social or environmental impacts. In the name of promoting competition, money rules, and corporations are the modern moneyed “class.”

The contention that input from labor unions offsets that from corporations in the political contest is positively absurd in the current context. And since the demise of labor unions, nothing has arisen to replace them to represent the interests of average working Americans. Special interest non-profits and “Think Tanks” have emerged, but there are as many of these often euphemistically named non-profits and foundations supporting the cause of corporations as there are supporting the public benefit interests of average citizens. So, the effect of these entities cancel one another out, and the corporations are left unchallenged with their overwhelming advantage.

So, under scrutiny, neither of the apologist claims hold up in the effort to justify the excessive influence of money, and especially corporate money in the American political arena. As it now stands, corporations are positioned to rule politics and their rule is in the process of being consolidated. If Americans do not wake up and put a halt to this situation, America is very likely to become a corporate oligarchy masquerading as a representative democracy – in effect the best government corporations can buy.

Now, what about the apologists for the horrendous state of communication in politics. As in the case of money, it comes down to an interpretation of the scope of the First Amendment guaranteeing Free Speech to the individual versus the interest of the majority to pursue the public good. While most people recognize the sad state of affairs in the communications among our politicians and in the messages they disseminate to both party members and the public, many think the free speech guarantee makes it impossible to restrict speech in virtually any area, politics included. As in most matters, the solution is to achieve a balance between individual rights and the public or communal good and not to allow the one to unnecessarily trump the other.

I would suggest that in the political arena “free speech” is being allowed to trample the public good. In the name of free speech, calculated misinformation, disinformation, spin, outright falsehood, and rumor and fear mongering are being allowed to overwhelm the effort to communicate accurate information.

Indeed, these dissembling forms of communication have largely replaced reliable information based communications. The result is that the ability of the public to make political decisions based on valid information has been severely compromised. We do not allow free speech to extend to yelling “Fire” in a theater, but we are allowing the equivalent kinds of communications with the equivalent overall effect in politics. Under the cover of free speech, we permit dissembling of the worst kind in political speech to the point where a few wealthy people are able to sponsor largely unrestricted 527 organizations, which can disseminate outright falsehoods [Swiftboating] or irresponsible and manipulative half-truths [Hillary film] nationwide at critical points in the election process. These 527 organizations, of whatever political persuasion, with their strategically placed, unconscionable products are yelling “Fire” into the American political theater, and we are protecting them! The hurt to the public is not physical as in people dying in a theater, but our capitulation in the face of comparable “speech” behavior is coming close to killing effectiveness in our political institutions.

Arguing for an absolute free speech right to the point of protecting the mass distribution of products containing intentional falsehoods is excessively permissive, just as restricting the right of an individual to say what he or she thinks privately to anyone he or she wants would be excessively restrictive. We are talking about achieving balance, and in the current circumstance restrictions need to be instituted to control for excessive permissiveness in political speech. We have an obligation to not allow free speech to put the integrity of our political process and institutions in peril.

What to do? I propose five actions to address seven key areas of concern. There may well be disagreement on How I specifically recommend that these actions be implemented, but what is really important is that in some adequate manner they MUST be adequately addressed if Americans are to see substantial improvement in their political process.

1. Create a New Legal Category [Legal Party of Limited Interest] and Eliminate the Confusion Caused by Corporations Being Viewed as Perpetual Legal Persons. Corporations as currently defined in virtually all states are entities with a singular interest – to maximize financial benefits to their shareholders. For corporations to serve broader public interests is to invite a conflict with the law. By contrast, individual citizens – real persons – have many and varied interests, which they must consider in a balanced overall manner in making decisions. They have economic interests like corporations, but they also have concerns in the areas of family; education; religion, work/career/ profession; neighborhood/ community; health; local, state and national politics; environment; local and

national security; international relations, etc. Corporations are not individuals because by law they are guided by a singular economic interest. In the U.S., corporations were extended full status as legal persons through the back door when a pre-trial comment by a Supreme Court Chief Justice was included as part of a Supreme Court decision. Over time, this view of corporations as "legal persons" has been broadened, and it has now been expanded by the recent 2010 Supreme Court decision – in terms of the corporate right of free speech – giving corporations the right to use money in politics equal to that of citizens.

Corporations need to be redefined in the law as Legal Parties of Limited Interest with certain rights, but not with rights equal to those of citizens, as guaranteed in the Constitution. All other limited interest parties should be included in this new category of legal entity because it is not just corporations that may pose this same problem to the integrity of the political process. Corporations are just the current culprits that have been allowed to get out of control. If corporations, and all limited interest parties, are so defined, the confusion over whether they have rights the scope of individuals can be eliminated, and all limited interest parties can also be appropriately restricted in their input in the political process.

2. Institute Mandatory Publicly Financed Campaigns and Elections for All Federally Elected Offices. This must be a no nonsense, no loophole version of reform, and it must include restrictions that assure that all political communication surrounding campaigns and elections are factual, fair and balanced. To be effective, this reform package must accomplish at least the following:

- a. Each official candidate must provide his or her platform including his or her governing philosophy and position on all relevant issues in a full and written statement with documentation and citation of the related voting record.
- b. A central role must be created for a strong Non-Partisan Election Board to 1) arrange, schedule, and conduct all debates among the candidates, 2) determine the questions for these debates and their wording, 3) oversee the public financing process and guarantee the restrictions are met, 4) pass on the fairness and accuracy of all platform statements and all distributions of information to the public before a candidacy is made official or the information is disseminated, 5) identify the issues to be addressed in candidate platforms, 6) assure there are no negative or disinformation campaigns by any candidate or any other party, 7) make public report on the accuracy of all assertions by one candidate about an opposing candidate as to his or her positions or record on issues, 8) assure the publicly available Media and Internet sites and commentators abide by their restrictions, 9)

make sure that PAC's, parties and independent groups abide by their restrictions, 10) approve the fairness and accuracy of all publicly disseminated PAC, party and independent groups' informational material, 11) make sure the candidates' oral statements during the campaign respect the fullness of their platform statements, and 12) assign penalties for violations.

- c. All PACs, parties and independent groups – including 527s – must be restricted to assure that they only promote their platforms and positions on issues, that they do not promote individual candidates, and that they represent information fairly and accurately in the information they disseminate to the public.
- d. Only the candidates, their official campaign staffs, and individuals speaking as individuals can speak in favor of a candidate or against an opposing candidate. Political contests are to be between the candidates, not between parties or PACs or independent, special interest groups.
- e. Media and the Internet: All communication on campaigns and elections that is available to the public during the campaign and election periods is limited to distribution of the platforms of the candidates, reporting on the activities in campaigns and elections, reporting on the political activity of PACs, parties and independent groups, reporting on Election Board decisions in the campaign and election process, and seeking clarification from the candidates on any issues that are uncertain or challenged by the opposing candidates. Sources of publicly available information on candidates and campaigns can fairly compare the qualifications, platforms, records, and proposals of the candidates, but they must not be in the business of judging or endorsing individual candidates, their campaigns or their platforms. All Media and publicly available Internet sites, and all organizations and individuals offering materials through them have a responsibility to fact check what they make available to the public, and they must not knowingly participate in the dissemination of partial truths or misinformation, or employ rhetoric to inflame or promote fear in the public. Individuals can say whatever they want in the form of private communications, but speech that is intended to be publicly available must be held to a much higher standard.

The intent of all these limitations and restrictions in the election process is to provide the members of the voting public with reliable information on the candidates and to encourage the voting public to decide how they will cast their votes on the basis of the candidates' actual philosophy, positions and proposals, and not on emotional and fear based spin.

3. Regulate Lobbying and the Revolving Door to Congressional Office. Special interests have a right to be heard by national representatives. But the interests of all parties that represent a substantial part of the public have a right to be heard equally, irrespective of the amount of money supporting them. All persons executing the role of a Congressional lobbyist [whether individuals, PACs, or separate groups] must be registered, indicating the issues of their concern, their positions on these issues, and all public and private sources of their support [no flow-through entities protecting the identity of the real contributors]. All Congressional Representatives – including their senior staff members – must keep and make public each month a record of all contacts with registered lobbyists, the time spent, and the positions promoted. Three years must separate the time between being a registered lobbyist or a congressional representative – including senior staff members – and becoming a person executing the opposite role or creating or working for any organization, corporation or group in this capacity. The public good requires that citizens know who is trying to influence their representatives, in what ways, for how much time, and how often. And this public must know how a lobbyist or a representative or any of a representative’s senior staff have been previously employed to know what biases they may bring to the exercise of their new role.

4. Close the Constant Search for Legal Loopholes. It is time to make the Spirit of the law the Law, not just the Letter of the Law. All federal legislation contains both its specific language and the Report that accompanies it. The Report identifies the issue[s] addressed, the motivation for action, and the intent of the law to address the issue. The Letter of the Law is intended to capture the intent of the law, but often it fails to do so completely. The consequence is that there is a constant search by interested parties to interpret the letter of the law in such a way that they can circumvent the full intent of the law. The intent of the law may be clear in the Report, but courts only consider the letter of the law and so invite this loophole-seeking process. The remedy is obvious: Include the Report together with the Letter of the Law as the complete legislative action. Any effort to circumvent the legislation in both its letter and intent must be regarded as a violation to be met with severe punishments. We must eliminate the legal enterprise of loophole crawling.

5. Require National Level Political Representatives to Justify Their Legislative Decisions by Certifying That They are Respecting National Priorities. American democracy is supposed to be in Lincoln’s words, “of the people, by the people and for the people.” And “People” in both the Declaration of Independence and the Constitution means the American people as a whole, not government to serve a particular region, or state, or congressional constituency, or particular

ethnic, religious, racial, or economic group. It follows that national level political action must be primarily about national matters, not about carving out support for local museums and bridges or generating contracts or subsidies to support local weapons manufacturers or potato farmers. Americans must demand from all of their federal representatives that they demonstrate a clear order of priority in their decision making on all legislative matters by answering the following questions in order: First, is the proposed action [including any amendment or earmark] good for the country as a whole? Second, is it good for the representative's region as a whole? Third, is it good for the representative's state as a whole. Fourth, is it good for the representative's district as a whole? And Fifth, is it good for individual social entities within that district? The greatest weight must go to the answer to the first question and so on through the sequence with the least weight going to a "Yes" answer to the fifth question. The best proposed actions are ones that receive a convincing "Yes" determination for each of these five questions. Any proposal that does not legitimately get a "Yes" response to the first and/or second question[s] is probably not an action appropriate for national level consideration. It may be a reasonable action to take at the state, county or local level. Americans must require that all decisions by their representatives pass the "priorities" test. And in order to pass, representatives must offer proof in writing, which is available to the public at the time of their vote on the proposed action, that they have made this full assessment and have provided a clear rationale for their decision. It is time to stop politicians from servicing the needs and desires of just their own constituency and getting reelected and accumulating seniority and congressional power while largely ignoring the greater whole. We need to demand that our politicians become statespersons.

Do the above five proposed actions seem harsh? Maybe. But, the current political process in America is greatly lacking in efficiency, civility, and respect for the public good. And the combined ills that are endemic in the system legitimately cause the public to question the system's fundamental fairness and integrity. It will require strong measures to adequately address these lacks and ills and to restore public faith in American politics. If we take money away as a determinant of outcomes in the political process, then legislative proposals and decisions can be made for the right reasons – what is of the greatest benefit to the most Americans. And the debate can center on what constitute real solutions, not on where the most political points can be scored in the effort to get money, to acquire or retain power, and to serve the moneyed interests – in a process spiraling upon itself and into the sewer. The current gridlock in Congress is ideological, but money is the underlying cancer that serves both to amplify and perpetuate differences in political philosophy and to undermine reasonable efforts to find the creative and cooperative center. If we 1) take

money out of the political process as a determinant in campaigns, elections and legislation, 2) redefine corporations as parties of limited interest with limited rights of participation in the political process, 3) require that the distribution of political information to the public by all parties in campaigns and elections be accurate and responsible, 4) make the focus of campaigns and elections about candidates and their ideas and proposals, 5) restrict the undue influence of lobbyists in the legislative process, 6) close the revolving door between Congress, lobbyists and all types of special interest groups, and 7) require representatives to prove that their decisions are guided by appropriate national priorities, then I am convinced that a lot of the extreme ideology that is currently supported by the political spin machines [as sponsored by special interests] will crumble since it cannot survive the test of what supports “the greater good.” We might even get all the way to CIVILITY, even COOPERATION! At that point we should have converted apathy, cynicism and anti-government protest into renewed Faith by Americans in the Integrity of their political system. Imagine an outcome where the American public participates in the nation’s political process actively, eagerly, and constructively.