



SUNDAY BOOK REVIEW

# Zephyr Teachout's 'Corruption in America'

By THOMAS FRANK OCT. 16, 2014



**Corruption in America**  
Zephyr Teachout

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A reproduction of an 1871 Thomas Nast cartoon about a Tammany Hall scandal. North Wind Picture Archives, via Associated Press

The language of political corruption is the default invective of our jaded age. For all our disposition to believe the worst, however, Beltway knavery has only rarely been the object of sustained historical consideration. Most corruption writing, for reasons of journalistic necessity, focuses on particular scandals or individual rogues. TV shows on the subject, meanwhile, assure us that vice is simply a Washington constant; that it saunters along the streets of the capital today with the same easy, untroubled gait as it always has.

The true student of misgovernment knows that the story is grander and more complicated than that. Washington isn't simply a Place of Wickedness, throbbing with sin at all times and always in the same way. The misdeeds of Iran-contra did not much resemble the turpitude of, say, the Crédit Mobilier episode, even if they did have a great deal in common with the screw-ups of the George W. Bush years. And so the most ambitious chronicler of political misbehavior looks for something higher: a theory, a dialectic, a telos of scandal.

Surprisingly few have been able to pull this off. There was the muckraker Lincoln Steffens, who called himself a "graft philosopher" as he traveled from city to city studying political machines at the turn of the last century. There was the historian Matthew Josephson, whose 1938 masterpiece, "The Politicos," traced the marriage of money with politics from its dalliances during the Grant administration until its final, grotesque consummation in William McKinley's electoral triumph of 1896.

And now comes Zephyr Teachout, a professor at Fordham University Law School and a candidate in this year's Democratic primary for governor of New York. Her entry into the field, "Corruption in America," includes plenty of the juicy stories that make the genre so much fun to read. We learn, for example, about a diamond-studded snuffbox that Louis XVI gave Benjamin Franklin, then our ambassador to France, and how the Revolutionary generation regarded this gift — the result of a noncontroversial custom in Europe — as a possible threat to republican virtue. We read about an officer of the Turkish government in the 1870s who agreed to sell the products of an American arms manufacturer to his government in exchange for a small consideration, and who then, having duly moved the units, went to court to have the deal enforced. Good stuff, all of it. You have probably heard pundits say we are living in an age of "legalized bribery"; "Corruption in America" is the book that makes their case in careful detail.

As you might have guessed, Teachout's main target is the currently reigning money-in-politics doctrine of the Supreme Court, as defined mainly by Citizens United, the 2010 decision that struck down certain restrictions on political spending by corporations. Today's court understands "corruption" as a remarkably rare malady, a straight-up exchange of money for official acts. Any definition broader than that, the justices say, transgresses the all-important First Amendment. Besides, as Justice Anthony Kennedy announced in the Citizens United decision, the court now knows that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption" — a statement that I guess makes sense somehow in law-land but sounds to the layman's ear like the patter of a man who has come unzipped from reality.

The first few American generations, Teachout reminds us, saw things very differently; for them, corruption was a "national fixation." Drawing on Montesquieu and their understanding of ancient history, the founders fretted about the countless ways a republic might be undone from within. "They saw their task this way," Teachout writes: "How could they create a system that would be most likely to be filled with men of civic virtue but avoid creating temptations that might corrode that virtue?" Their answer was to build structural barriers keeping public and personal interests separated, without getting lost in considerations of whether a forbidden activity did or did not amount to what our current court calls a "quid pro quo."

The dings and the dents in their grand design started appearing almost immediately. In 1795, it was discovered that members of the Georgia Legislature had been bribed to hand over enormous stretches of land to speculators. The guilty were promptly booted from office, but then things got complicated. Was it possible for a state to take back land that a corrupt but duly elected legislature had given away? The Supreme Court eventually decided it wasn't — corruption was just too hard to define.

And so have the debates gone, right down to our own day. We think of all the laws passed over the years to restrict money in politics — and of all the ways the money has flowed under and around those restrictions. And finally, it seems to me, we just gave up out of sheer exhaustion.

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According to Teachout, however, it's much worse than this. Our current Supreme Court, in Citizens United, "took that which had been named corrupt for over 200 years" — which is to say, gifts to politicians — "and renamed it legitimate." Teachout does not exaggerate. Here is Justice Kennedy again, in the Citizens United decision: "The censorship we now confront is vast in its reach. The government has 'muffle[d] the voices that best represent the most significant segments of the economy.' "

You read that right: The *economy* needs to be represented in democratic politics, or at least the economy's "most significant segments," whatever those are, and therefore corporate "speech," meaning gifts, ought not to be censored. Corporations now possess the rights that the founders reserved for citizens, and as Teachout explains, what used to be called "corruption becomes democratic responsiveness."

Let me pause here to take note of another recurring peculiarity in corruption literature: an eerie overlap between theory and practice. If you go back to that "censorship" quotation from Kennedy, you will notice he quotes someone else: his colleague Antonin Scalia, in an opinion from 2003. Google the quote and one place you'll find it is in a book of Scalia's opinions that was edited in 2004 by none other than the lobbyist Kevin Ring, an associate of Jack Abramoff who would later be convicted of corrupting public officials.

As it happens, Teachout gives us a long and savory chapter on the legal history of lobbying. Once upon a time, lobbying was regarded as obviously perfidious; in California it was a felony; and contracts to lobby were regarded as reprehensible by the Supreme Court. Here is a justice of that body in the year 1854, delivering the court's decision in a case concerning lobbyists and lobbying contracts:

"The use of such means and such agents will have the effect to subject the state governments to the combined capital of wealthy corporations, and produce universal corruption, commencing with the representative and ending with the elector. Speculators in legislation, public and private, a compact corps of venal solicitors, vending their secret influences, will infest the capital of the Union and of every state, till corruption shall become the normal condition of the body politic, and it will be said of us as of Rome — *omne Romae venale*."

Well, folks, it happened all right, just as predicted. State governments subject to wealthy corporations? Check. Speculators in legislation, infesting the capital? They call it K Street. And that fancy Latin remark about Rome? They do say that of us today. Just turn on your TV sometime and let the cynicism flow.

And all of it has happened, Teachout admonishes, because the founders' understanding of corruption has been methodically taken apart by a Supreme Court that cynically pretends to worship the founders' every word. "We could lose our democracy in the process," Teachout warns, a bit of hyperbole that maybe it's time to start taking seriously.

**CORRUPTION IN AMERICA**  
From Benjamin Franklin's Snuff Box to Citizens United  
By Zephyr Teachout  
376 pp. Harvard University Press. \$29.95.

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