

Jill Lepore, "The Crooked and the Dead: Does the Constitution protect corruption?"
The New Yorker, August 25, 2014.

A Note about Sources

N.B. For readers who'd like to read more, or who are undertaking their own research, here is a select bibliography of my sources for this piece. As with all the bibliographies for New Yorker essays that I post on my Harvard faculty website, this brief discussion mentions a good number of works consulted but it's neither an exhaustive inventory of my sources nor a survey of the scholarship in a given field. Instead, I've listed works I found most useful or especially provocative. I have generally only included manuscripts, journal and magazine articles, and books; I haven't listed interviews here at all; I've not included things like newspapers, advertisements, patents, legislation, and policy statements; and I've generally left out citations from specialized bodies of literature in fields like medicine and law. A last caveat: these brief bibliographies are all frozen in time: I do not update them, and they therefore don't include anything written on these subjects after the date on which my essay was published.

"It would be impossible for an historian to write a history of political corruption in America," Walter Lippmann wrote in "A Theory about Corruption" in *Vanity Fair* in November 1930. "What he could write is the history of the exposure of corruption. Such a history would show, I think, that almost every American community governs itself by fits and starts of unsuspecting complacency and violent suspicion." More or less the same can be said of the history of scholarship on the subject: the more people worry about corruption, the more scholars study it. It comes in fits and starts.

What counts as corruption has been the subject not only of constitutional debate but also of longstanding scholarly dispute. Social scientists have tended to define political corruption broadly, as the behavior of a public servant who places private gain above public interest, at the expense of public trust in government. A very good, if older introduction to the broad, comparative social science scholarship on corruption is *Political Corruption: A Handbook*, edited by Arnold J. Heidenheimer et al (New Brunswick, NJ: Transaction Publishers, 1989). A significant sub-field, especially in the middle, post-colonial decades of the twentieth century, concerned the relationship between corruption and development. An influential essay was Samuel P. Huntington, "Modernization and Corruption," in *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), 59-71. Huntington argued that "modernization breeds corruption." The inverse of this argument is a kind of American exceptionalism, which insists that there ought to be less corruption in the United States than in any other country in the world. This argument comes and goes. Mostly, it goes. In the 1970s and 1980s, scholarship on corruption in the United States was informed and colored by the political tumult of the 1960s, and, above all, by the Watergate scandal. See, e.g., Carl J. Friedrich, *The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy, and Propaganda*

(New York: Harper and Row, 1972). Representative of the flood of post-Watergate books is Larry L. Berg et al., *Corruption in the American Political System* (Morristown, NJ: General Learning Press, 1976). A polemical history from this era, arguing that corruption inheres in the American political tradition, is Nathan Miller, *Stealing from America: A History of Corruption from Jamestown to Reagan* (1976; revised ed., New York: Paragon House, 1992).

Another wave of books about corruption, more often written by reporters and open government activists than by social scientists, has followed in the wake of the presidencies of Clinton, George W. Bush, and Obama. Representative is Tom Fitton, *The Corruption Chronicles: Obama's Big Secrecy, Big Corruption, and Big Government* (New York: Threshold Editions, 2012). Meanwhile, a rich field of inquiry among political scientists has been the study of the consequences of corruption. Especially provocative is Martin Gilens, *Affluence and Influence: Economic and Political Power in America* (Princeton, NJ: Princeton University Press, 2012).

Corruption in New York has its own literature. It includes the work of Progressive era muckrakers, and later polemics, too. Revealing is John A. Hennessey, *What's the Matter with New York? A Story of the Waste of Millions* (New York: The O'Connell Press, 1916). Hennessey's catchy title has been used more than once. See Norman Thomas and Paul Blanshard, *What's the Matter with New York: A National Problem* (New York: Macmillan, 1932). The best recent account, a fascinating indictment of what's been done on the banner of "reform"—partly inspired by the New York State Commission on Government Integrity, appointed by Governor Mario Cuomo in 1987--is Francis M. Barry, *The Scandal of Reform: The Grand Failures of New York's Political Crusaders and the Death of Nonpartisanship* (New Brunswick, NJ: Rutgers University Press, 2009).

The March 29, 2013 indictment of Malcolm A. Smith and other defendants has been [unsealed](#). *U.S. v. Malcolm A. Smith, Daniel J. Halloran, and Vincent Tabone* is 13 Cr. 297 (2014). For this piece, I consulted court documents, including transcripts of recorded conversations. Andrew Cuomo's office's announcement of the July 2013 appointment of the Moreland Commission to Investigate Public Corruption is [online](#), as is the Moreland Commission's December 2013 [preliminary report](#). The *New York Times* [investigation](#) into the governor's relationship to the commission appeared in July 2014.

The Armstrong committee hearings are available as *Testimony taken before the Joint Committee of the Senate and Assembly of the State of New York To Investigate and Examine into the Business and Affairs of Life Insurance Companies* (Albany, NY: State Printers, 1905-6), 10 vols. There are two good accounts of the history of the Moreland Act and its commissions: J. Ellswoth Missall, *The Moreland Act: Executive Inquiry in the State of New York* (New York: King's Crown Press, 1946), and Ernest Henry Breuer, *Moreland Act Investigations in New York, 1907-65* (Albany: University of the State of New York, 1965). For more on the role Charles Evans Hughes, see Morton Keller, *The Life Insurance Enterprise, 1885-1910: A Study in the Limits of Corporate Power* (Cambridge, MA: Harvard University Press, 1963), chapter 15 ("1905") and Robert F.

Wesser, *Charles Evans Hughes: Politics and Reform in New York, 1905-1910* (Ithaca, NY: Cornell University Press, 1967), chapter 2.

The history of campaign finance reform is on the one hand, a sub-field of the study of corruption, and, on the other, its own field. An invaluable but again outdated documentary history is *Campaign Finance Reform: A Sourcebook*, edited by Anthony Corrado et al (Washington, DC: The Brookings Institute, 1997). In *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press), Raymond J. LaRaja argues that, from the start, campaign finance reform has been motivated by partisan concerns. The best recent history is Robert E. Mutch, *Buying the Vote: A History of Campaign Finance Reform* (New York: Oxford University Press, 2014); see also his earlier book, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988). The Supreme Court's ruling in *Citizens United* spawned a virtual industry in books lamenting it, too many works to consider here. Much of the strongest analysis can be found in law review articles. Up-to-date data on spending and polling is presented in Conor M. Dowling and Michael G. Miller, *Super PAC! Money, Elections, and Voters after Citizens United* (New York: Routledge, 2014). The most recent [Gallup polling](#) on the subject of campaign finance reform is from 2013.

As with the social science literature, corruption and campaign finance are sometimes treated separately in legal scholarship, and sometimes together. An important study is Laura S. Underkuffler, *Captured by Evil: The Idea of Corruption in Law* (New Haven, CT: Yale University Press, 2013); she discusses campaign finance law in chapter 6. Melvin I. Urofsky, *Money and Free Speech: Campaign Finance Reform and the Courts* (Lawrence, KS: University Press of Kansas, 2005) is both a careful and nuanced history and an exceptionally broad- and fair-minded legal discussion. Timothy K. Kuhner, *Capitalism v. Democracy: Money in Politics and the Free Market Constitution* (Stanford, CA: Stanford University Press, 2014); Lawrence Lessig *Republic Lost: How Money Corrupts Congress—and a Plan to Stop It* (New York: Twelve, 2011); and Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United* (Cambridge, MA: Harvard University Press, 2014), are calls for reform, informed by both legal and historical analysis. Teachout and Lessig's understanding of corruption is also succinctly described in Lawrence Lessig's [amicus brief](#) in McCutcheon (2014). For an important countervailing view, see Bradley A. Smith, *Unfree Speech: The Folly of Campaign Finance Reform* (Princeton, NJ: Princeton University Press, 2001). Robert Post, *Citizens Divided: Campaign Finance Reform and the Constitution* (Cambridge, MA: Harvard University Press, 2014), is more strictly constitutional analysis. Originally presented as the Tanner Lectures at Harvard, Post's book includes commentaries by four scholars.

Lippmann thought corruption wasn't so bad; after all, it's better than outright tyranny, or civil war. "The common American assumption about political corruption is naïve and misleading," he believed. Bands of thugs are mankind's "natural governments," while reformers represent "artificial government." They're meant to fight each other; the fight will never end. "The traffic in privileges, which is what corruption is, has never long

lacked men smart enough to find ways of defeating the ingenuity of the reformers.” Not many people who have written on the subject wholly agree with Lippmann, or else they might not have bothered to write. But some agree with him a lot.

--J. Lepore
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