LIKE A GORGE CONSTRUCTING A WIDE EXPANSIVE RIVER, JUDGES, pundits, and even some scholars have narrowed corruption’s meaning to little more than a quid pro quo, a bribe in exchange for a vote, a favorable decision, or privileged access to public resources. They have semantically trimmed away other varieties of the corruption noted in both governments and markets since the mid-nineteenth century, when the rise of corporations pioneered new ways to use government to transform information into wealth and power. Although many scholars have warned against analyses based on versions of *homo economicus*, accounts of actual corruption, its evolution, and the means taken to combat it still battle with simplistic, a priori accounts of the relationship between “free” markets and corruption, or with judicial just-so stories full of *obiter dicta* (Rothstein 2000, 485-488, 495).

Justice Anthony Kennedy’s majority opinion in *Citizens United v. Federal Elections Committee* (2010) provides a good example of this newly restricted meaning of corruption. Most of *Citizens United* is devoted to explaining the unlikely proposition that corporate personhood bestows on corporations a set of political rights equivalent to those possessed by actual people—that money is the equivalent of speech—and that independent contributions are distinct from direct contributions to candidates. But the decision is ultimately about the trade-offs between political “speech” and the corruption of democratic politics. And it is quite possible that *Citizens United* is only the first step in a trajectory of money, transmuted into “speech,” trumping restraints on corruption. *McCutcheon v. Federal Election Commission*, which went before the court in the fall of 2013, seeks to eliminate limits on aggre-
gate direct contributions to candidates and could, perhaps, eliminate limits entirely.

Justice Kennedy's discussion of corruption is a set of *obiter dicta* and a refashioning of judicial precedents, but since in the eyes of the law things become what the court says they are, Kennedy's enunciation of corruption is important no matter what its flaws. *Citizens United* defined both what counts as corruption and the permissible limits on the government's attempts to prevent it.

Kennedy couches his argument in terms of nineteenth-century liberal binaries: the realms of the market and government, rich and poor, fictive corporate persons and embodied citizens. The terms are familiar but the actual historical struggles that framed them and gave them meaning have disappeared. Instead of a zoo of corrupt practices that first emerged in the late nineteenth century, we get a series of cages, all containing a photograph of one practice: a bribe. The label says this is corruption. Because Kennedy's analysis does not effectively grasp the way corruption has worked in liberal democracies since the mid-nineteenth century, he cannot adequately describe it, let alone constrain it.

Our modern understanding of corruption, like Kennedy's, is largely liberal, arising among nineteenth-century political thinkers concerned with the relationships between the market, the state, and human freedom. In the United States, corruption grew more and more complex with the contemporaneous rise of mass democracy, the modern publicly traded corporation, and state bureaucracies in the mid and late nineteenth century. In the United States these bureaucracies did not initially possess what Daniel Carpenter has described as bureaucratic autonomy. That came slightly later. Current attempts to confine corruption to quid pro quo exchanges between independent actors seeking their advantage at the expense of some larger public good revert back to a world before the corporation and the attempts taken to constrain it (Carpenter 2001, 1-13).

The very crassness of much of international corruption—bribes, kickbacks, diversion of public funds into private pockets, the giving
away of public assets to connected insiders—has fed an equally crude understanding of how corruption works. The analyses of these kinds of corruption usually center, with good reason, on emerging economies in Asia, Africa, and Latin America or in the more developed, formerly communist economies, such as Russia. Developed liberal democracies rank as far more honest, at least as long as the standard of corruption remains variations on bribery (Corruption Barometer 2012, 1–13; Corruption Perceptions Index 2013).

The picture, however, is somewhat different when the focus is removed from bribery and turned to perceptions of undue influence. Here the differences between emerging economies and the older liberal democracies are less stark. In perceptions of undue influence, the United States and the United Kingdom rank with Mexico, and Israel shares the top of the rankings with Greece. This broader view of corruption matches well with the wave of popular protests against corruption in liberal democracies in 2011. In September 2011 the New York Times ran a page one headline: “Protests Rise Around Globe as Faith in Vote Wanes: Many Are Driven by Contempt of Political Class.” The article focused on Europe, Israel, and South Asia. Its subtext was a growing revulsion at corruption. It made no difference whom you elected if, once in office, that person became the partner of entrenched interests. In India protestors complained that “Corruption is ruling our country.” In Spain they asserted that “the political system has abandoned its citizens.” According to protestors, European leaders who have dictated harsh austerity measures in the name of stability and their parliamentary allies are “captive and corrupt national politicians.” Israelis complained their country had been hijacked by “a nexus of money and politics.” Within a week of the Times article the Occupy Wall Street protests spread and grew in number (Global Corruption Barometer 2013, 14–15; New York Times 2011, 1A).

Look at corruption as simple bribery and there is one set of results; expand the definition to undue influence and there is another. Semantics matter in evaluating corruption, and this is a particular issue because in the United States the Supreme Court seeks to redefine what
counts as corruption. The most recent decisions on money—and the influence it buys—in politics have proceeded semantically. By removing a whole variety of practices from the lexicon of corruption, the legislation aimed at them becomes suspect. What remains is largely bribery.

Kennedy noted in *Citizens United* that in *Buckley v. Valeo* the court recognized a “sufficiently important” government interest in “the prevention of corruption and the appearance of corruption” to permit the regulation of direct contributions to candidates. This interest sprang “from the court’s concern that large contributions could be given “to secure a political quid pro quo.” The court regarded “prearrangement and coordination” as necessary conditions for expenditures to “be given as a quid pro quo for improper commitments from the candidate” (*Citizens United*, 5, 29).

The court, Kennedy noted, had also distinguished corporate donations from other kinds of donations in *Austin v. Michigan Chamber of Commerce*. In overturning *Austin*, however, *Citizens United* rejected the idea that the special features of a corporation and “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form” made any difference in distinguishing between individual actions and corporate actions. *Citizens United* decided that *Austin* created a “chill on speech” and overturned it. In the court’s opinion the danger to corporate speech was far greater than the danger that corporate money presented to democratic governance. The critical reaction to *Citizens United* has followed Kennedy off into a discussion of speech, corporate persons, and individual citizens. These are very important, but it is still a mistake to take our eyes off of corruption (*Citizens United*, 31, 56).

Kennedy took pains to distinguish between a narrowly defined corruption—a quid pro quo marked by “prearrangement and coordination”—and the use of money to gain political influence and favorable treatment. He thought (quoting himself in *McConnell*) that the only reason to give money to a candidate is to get an outcome the contributor favors, the acquisition of influence in exchange for dollars being a
mark that democracy works since "democracy is premised on respons-
iveness." In a final *obiter dictum*, he promised that "the appearance of
influence or access, furthermore, will not cause the electorate to lose
faith in our democracy" (*Citizens United*, 44).

The Supreme Court has thus defined corruption, insofar as
the government’s legitimate concerns are involved, as bribery of the
simplest sort, involving “prearrangement and coordination.” Kennedy’s
position assumes that corruption is fundamentally a market exchange.
Corruption is, as in Susan Rose-Ackerman’s formulation, a penetration
of market forces into a realm of democratic politics where officeholders
are required “to dedicate themselves to democratic ideals, even when
this [is] not . . . in their self-interest” (Rose-Ackerman 1978, 3, 9–10). At
least as I read her, Rose-Ackerman’s position shares the view of what
Michael Johnston has referred to as the “Washington consensus” that
corruption is political rent-seeking. But she is more sophisticated than
those who think the cure is simply increased insufficient economic
liberalization (Johnston 2001, 27; Jain, 2001, 3–10; Rose-Ackerman

Surprisingly, given the events of the last decade, economic liberal-
alization still functions in the press as a kind of unexamined common
sense. The working assumption remains that economic liberalization
has an inverse relation to corruption. It is a staple of recent corruption
stories in the summer of 2013 concerning Chinese princelings hired
by American banks to gain access to government officials or Chinese
businessmen funneling gifts to the families of high officials. Analysts
assume that businessmen have no choice, given the government’s
dominant role in the markets. In the words of Chen Zhiwu, a profes-
sor of finance at Yale, “If you don’t cooperate with them, you won’t
succeed. Those are the choices you have in a system where government
power is unchecked” (Barboza 2013, A1, A7).

The implied solution is economic liberalization. There suppos-
edly needs to be a boundary between politics and the market either (1)
to protect democratically elected officials from temptation by greedy
corporate or other business interests or (2) to allow the market to func-
tion efficiently without subversion by rent-seeking politicians and bureaucrats. But as American intellectuals pointed out long ago, this is not how the American economy has worked since the Civil War (Beard 1930, 447–74).

Corruption may be a revolving door of rent seeking politicians and bureaucrats seeking returns in the market and businesspeople and corporations seeking favors from politicians, but Kennedy is concerned only with preventing the politicians from securing a financial return on a public good. Those who seek influence actually become objects of his protection as long as they do not seek to purchase specific votes or favors. Once Kennedy has made corruption only the purchase of some political good, which should not be for sale, the redefinition of the problem dictates the solution. The question becomes: what degree of regulation of the use of money made in the market to shape the political process is permissible? This is not an easy question; Americans have been struggling with the problem for well over a century. Essentially, Kennedy wants to know what limits, if any, should government place upon economic interests seeking to determine public policy. Instead of building on the American experience and gradually increasing restraints on money in politics, he seems interested in dismantling such solutions. He favors a drastic simplification (Jain 2001, 3–10; Beard 1930, 95–103).

In much current scholarship, Kennedy would be dismissed as a neoliberal, as if the label were an analysis. Neoliberalism has over the last half century accrued such a confounding array of meanings that it is less than helpful. It is most often used as a slur rather than an analytical category (Burns 2013). Kennedy’s relation to liberalism in the nineteenth-century sense remains a better route for examining American thinking about the relationship between corruption and markets. The idea of corruption being a breach of the supposedly separate realms of politics and the market is a nineteenth-century liberal idea. When the market breached politics, liberals believed, it corrupted governance and put it at the service of the rich. If politics breached the market, then private property was threatened. In these liberal formulations, the
rich move from the market to subvert politics, and the poor move from
democratic politics to subvert the market.

Even in this simple formulation, nineteenth-century liberalism did not boil corruption down to bribery and other quid pro quo exchanges. Nineteenth-century liberals struggled with both bribery and influence. Nineteenth-century thinking about corruption was far more expansive than what the Supreme Court seems willing to acknowledge, and the eventual American reactions against corruption were far more sweeping and intrusive than anything the court seems willing to allow. The court clearly recognized that Americans have in the past thought the movement of large amounts of money into the hands of politicians and political campaigns has been a problem for their democracy, but they seem to assume that the public’s fear was simply the purchase of officials. In American history the fear of corruption has been more expansive. It has served, to quote John Murrin, as an “extremely sensitive barometer for measuring the hopes, aspirations, and anxieties expressed in American public life” (Murrin 1994, 103–115).

Corruption is a metaphor whose root reference is to something decaying or dying, and corruption involves the decay of the republic itself. Fears of the death of the republic sprang paradoxically from the decline of politics of deference following the American Revolution. The United States became a society in which the very wealthy exercised enormous power within the economy but almost never held office (Murrin 1998, 91). The danger that economic power could be translated to political power drove the dread of corruption. The dual fear of the very rich and the very poor underlined the complicated relations between property and republicanism—and later democracy—at the root of the American experiment.

For Jefferson and his supporters, republicanism depended on the widespread distribution of property, which secured the independence necessary for voting and public service. The intervention of government in the economy, which Jeffersonians thought would inevitably favor the rich, could threaten the equitable and relatively even distribu-
tion of property that they believed laissez-faire would secure. The rich could turn government into a tool to increase their wealth and power. The poor might use government to redistribute property. Or the two could unite; the rich could use public resources to turn the poor into tools of their ambitions.

During the Jacksonian era, anxieties about corruption centered on the rich. The Bank of the United States—a quasi-public corporation—mixed politics and private finance in a way that could not help but fuel liberal fears about the concentration of power and the danger of corruption. The issue was, among other things, one of trust. Jackson’s secretary of the treasury, Roger Brooke Taney, in attacking the Bank of the United States, emphasized that “It is a fixed principle of our political institutions to guard against the unnecessary accumulation of power over persons and property in any hand. And no hands are less worthy to be trusted with it than those of a moneyed corporation” (Carpenter 2001, 61).

Andrew Jackson stated the issue in terms of influence and “selfish purposes” in his veto message:

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions of society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages, artificial distinctions, to grant titles, gratuities, and exclusive privileges to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their government” (Wilentz 2005, 370).
It is the expansive nature of these fears that is important here. They were not confined to bribery but instead, as Jackson put it, the bending “of the acts of government to their selfish purposes.” Instead of the quid pro quo transactions that Justice Kennedy focuses on, the danger lay in a broader influence that gained the wealthy “favors” unavailable to the mass of citizens. The assumption was government favors were gained by “the time or the means” that were available to the wealthy but not to the mass of citizens.

Jacksonians advocated the divorce of the economy from politics through laissez-faire, minimal government, and turnover in office. They had multiple ideological reasons for such a policy, but salient among them was the sense that the intrusion of the state into the market created temptations for corruption and neglect of public duties (Carpenter 2001, 44). The underlying fear was that government would become a tool to enhance the power and wealth of a privileged class.

Liberals did not dominate American politics, but liberals were the most coherent and consistent political thinkers until the rise of antimonopolists and pragmatists at the end of the century. Liberalism itself, however, evolved. The Mugwumps—the much ridiculed liberal Republicans of the Gilded Age, who formed a loud, if minority, faction within that party—managed to fear corruption and embrace laissez-faire while being anything but Jacksonian (Connolly 2010, 57–58).

The Mugwumps confronted a basic liberal tension between what they regarded as the necessarily separate spheres of the market and government. They regarded the market, subject in their view to clear and unalterable laws, as the model for all human relations outside of the home. Amasa Walker, a leading economist and the father of the soon-to-be even more influential Francis Walker, proclaimed economic laws to be “above all human enactments.” These laws, not legislation, would determine social conditions (Cohen 2002, 37).

Jackson and Jefferson had by and large thought of laissez-faire as a means to ensure the roughly equal distributions of property necessary for political freedom, but many liberals after the war thought of political freedom as being concomitant with market freedom. E. L. Godkin
of *The Nation* may not have been the most sophisticated liberal thinker, but he was among the most influential. Godkin turned laissez-faire into an end in itself. He conflated all freedom with free markets: “the liberty to buy and sell, and mend and make, where, when, and how we please” (Cohen 2002, 56).

Such a conception of freedom created, and still creates, a conundrum. If all freedom is market freedom, and the market was the model for all social relations—at least outside the home—than why shouldn’t it extend to governance? Why shouldn’t votes, and office, and political favors be available for the highest bidder? Why treat quid pro quo exchanges as illegitimate if politics is figuratively a marketplace? If ideas can be bought and sold, why can’t votes?

These questions and the conception of government as a metaphorical political marketplace have a current resonance. The marketplace language survives in jurisprudence about corruption. *Citizen’s United* overruled *Austin*, and the court in *Austin* thought that money in politics had to be regulated “to prevent corporations from obtaining ‘an unfair advantage in the political marketplace.’” *Austin* seemed to use political marketplace as a metaphor; Kennedy seems to use it less figuratively. His “open marketplace for ideas” seems literally a marketplace, where political ideas are bought and sold. But as was the case with nineteenth-century liberals, the conceit of Justice Kennedy’s distinction between the illegitimate quid pro quo purchases of votes and the legitimate acquisition of influence vanishes if the marketplace of ideas is taken too literally (*Citizens United*, 52, 54).

Godkin, no more than Kennedy, sanctioned the purchase of votes. Despite arguments to the contrary, the corruption of nineteenth-century elections was quite real (Argersinger 1985, 669–687). Godkin heartily condemned it, but he still had to find a way to maintain his idea of freedom as market freedom while refusing to extend the marketplace to politics. He did so by making two related moves. The first had plenty of liberal precedents: he relocated the danger of corruption onto the poor, particularly the racialized poor. He recognized the danger of collusion between the rich and public officials, but the more immedi-
ate danger was a corrupt bargain between voters and elected officials to extort funds from property holders. Godkin and other Gilded Age liberals like Charles Francis Adams, Henry Adams, and Francis Parkman located the threat to property in the enfranchisement of African Americans in the Reconstruction South and immigrants, particularly Irish immigrants, in urban cities (Cohen 2002, 135–37; Connolly 2010, 69–74). Early antimonopolists such as Henry George, who sprang from similar liberal roots, extended the taint of corruption to the Chinese (George n.d., 66–67).

This association of corruption with minority voters and the poor has persisted with the Right pushing the idea that the poor corrupt the political process and with the Left regarding many attacks on political corruption as a subterfuge to forward disenfranchisement. The corruption of elections in the nineteenth-century elections and actual disenfranchisement were both real. Disenfranchisement was precisely the tactic that Godkin pursued.

Godkin maneuvered out of the conundrum of both seeing the market as the model for public life while simultaneously attacking corruption embodied in the sale of votes by redefining municipal governance as a business. Municipal governments were corporations; and if not votes then the right to vote was for sale. Just as shareholders purchased the right to vote, so citizens purchased that right by paying a certain amount of taxes. Large cities such as New York were not political communities; they were instead municipal corporations. The standards to be applied to them were not those of democratic politics and representative institutions but instead those of economic efficiency and contract freedom. They should be managed for the benefit of their shareholders, who were taxpayers. Under the cover of democratic politics, the poor—particularly the immigrant poor—were engaging in a kind of theft, gaining benefits from property they did not own. When political machines such as Tammany secured votes in exchange for jobs and aid, and then used their political power to gain financial benefits from their office at the price of higher taxes and municipal debt, government had displaced the market as the means.
for allocating property and wealth (Cohen 2002, 133–37; Connolly 2010, 51).

When New York’s liberal Democratic governor, Samuel Tilden, appointed a commission to report on municipal reform in 1875, its report, coauthored by Godkin, endorsed the by-then standard liberal position that cities were not political communities to be governed by voters but rather municipal corporations to be managed as efficiently as possible. The commission recommended that voting be restricted to taxpayers, who were, in effect, shareholders (Cohen 2002, 133, 136). This attempt at disenfranchisement failed, but incremental reforms would cut away at suffrage in the name of reducing corruption.

This redefinition of municipal governance as business allows us to reconcile what seems on the surface one of the great contradictions of Gilded Age liberalism: the simultaneous enthusiasm for laissez-faire and bureaucracy. James Kloppenburg has accurately identified the classical liberal as committed to an “individualism that linked freedom with acquisition, liberty with property, and politics with strict noninterference” (Kloppneberg 1986, 171). But Nancy Cohen has just as accurately emphasized their commitment to “an activist administrative state” (Cohen 2002, 121). The Mugwumps were both laissez-faire liberals devoted to the gold standard, distrustful of manipulation of the currency, dedicated to free trade, and disdainful of government regulation of the economy beyond efforts to secure transparency; they were reformers devoted to expert governance, a professional bureaucracy, and systematic study of science and social problems. In many ways the quintessential expression of Gilded Age liberalism was the American Social Science Association. Just as liberals believed that the economy ran according to fixed and discoverable laws, so they also thought there were social laws open to examination and implementation. To be reliably and efficiently implemented they needed to be in the hands of an autonomous and professional bureaucracy. The Mugwumps’ goals for bureaucracy and civil service reform stretched well beyond controlling corruption, but attacking corruption was one of the goals. They wanted to detach administration from party politics, making it less a response
to democratic elections and instead more efficient, more honest, and able to forge policies according to “scientific” discoveries rather than in response to party interests (Carpenter 2001, 45–46; Haskell 1977, passim).

Francis Walker, both devoted to laissez-faire and the head of the US Census Bureau and the Bureau of Indian Affairs, encapsulated these two sides of Gilded Age liberalism. Walker was so doctrinaire a liberal that he defined as socialistic “all efforts, under popular impulse, to enlarge the functions of government, to the diminution of individual initiative and enterprise, for a supposed public good” (Benedict 1985, 306). Such an expansive definition of socialism meant that virtually every positive action taken by the government, from delivering the mail and cleaning the streets to providing for schools, amounted to socialism. But in 1876, Walker, while insisting that “it is eminently desirable to reduce the action of the organized public force to the minimum,” admitted that, even though it was contrary to laissez-faire, it was the duty of the state to educate its population, provide “a strict system of sanitary administration,” and secure “by special precautions the integrity of banks of savings...” (Wadhwni 2006, 126).

Walker’s special precautions for the “integrity of banks of savings” were revealing. He sought to stop corruption in private markets as well as the public sphere. In this he joined other Mugwumps. Charles Francis and Henry Adams published one of the earliest exposes of corporate corruption in Chapters of Erie. Like Walker, the Adams brothers conflated the corruption of fiduciary relations with government because they thought they become critical to both markets and representative government in ways that demanded government regulation. “Our whole system rests upon the sanctity of fiduciary relations,” the Adams brothers wrote in Chapters of Erie. “Whoever betrays them... is the common enemy of every man, woman, and child who lives under representative government. The unscrupulous director is far less entitled to mercy than the ordinary gambler, combining as he does the character of a traitor with the acts of the thief” (Adams 1956, 8).
In this formulation, corruption of fiduciary relations threatened the integrity of representative government. This metaphor extended a political sin—treason—into the realm of the market. The malfeasance of corporate officials threatened everyone. Charles Francis Adams was not an antimonopolist but he shared their sense that financial malfeasance formed a threat to the representative government. And he, like the antimonopolists, shed the belief that the problem could be solved simply through a strict devotion to laissez-faire. In a modern economy, particularly in an economy where information could be more valuable than money or material goods, those lines could no longer be policed. The government and the market were inextricably intertwined.

Charles Francis Adams was a Mugwump, a member of the American Society for Social Science, and a bureaucrat who eventually headed the Massachusetts Board of Railroad Commissioners. He also became a corporate leader, president of the Union Pacific Railroad, with a firsthand knowledge of corporate corruption. Adams knew that bribery—Kennedy's quid pro quo—was a problem in Gilded Age America. He left a detailed account of the attempt by the acting vice president of the United States to solicit a bribe from the Union Pacific for his fellow senator from Kansas. But Adams also knew that bribery was the crudest form of corruption, the easiest to detect, and the least effective. In the 1870s and 1880s corporate leaders, politicians, and reformers all recognized that what Kennedy now presents in the early twenty-first century as the legitimate parameters of government concern with corruption were already laughably archaic in the wake of the Civil War and became even more so in the early twentieth century (White 2010, 353–55; Beard 1930, 95–103, 447–474).

The Gilded Age provides a way to repopulate the zoo of corruption with the fuller range of species displaced by Kennedy's reduction of corruption to bribery. I will draw largely on my own work, but many other examples are possible. The most effective Gilded Age corruption involved neither “prearrangement and coordination” nor expenditures to “be given as a quid pro quo for improper commitments from the candidate.” Instead, it involved friendship and information.
The currency of friendship was sometimes money, but more often it could be privileged information, employment, and gifts. These things were bestowed and received not quid pro quo but instead to achieve an unelected seat in the halls of government and a say in the process of governance (White 2011, 100–102, 112–118).

Friendship falls outside of Justice Kennedy's definition of legitimate government concerns, but it was, and remains, at the heart of American corruption. Friendship was not a market relation; it was part of a whole set of homosocial relationships in business and public life. Corporate leaders had journalists who were friends and executives in other corporations who were friends. They had bankers who were friends, but above all they had politicians who were friends. On "being asked the secret of political success," John Morrissey—"prize fighter, professional gambler and member of Congress... replied 'Stick to your friends, and be free with your money.'" As a lawmaker told reporter George Alfred Townsend, "measures lived or died on friendship." It was not only good to have friends; it was essential (Summers 1993, 109; White 2011, 99).

Trust has persuasively been presented as a key to honest governance, but trust was just as critical to nineteenth-century corruption (Rothstein 2000). Friends did favors for each other and worked toward common goals. Friendship did not involve prearrangement and individual transactions. It was based on bonds of sympathy, reciprocity, loyalty, and a presumption of mutual independence. Friends were loyal, and loyalty, as friends themselves observed, could not be purchased even if it could be rewarded. Friends of the railroads were not agents, bought and paid for. They were trusted.

Friends did not have to like each other. Friends sometimes hated each other. Friends often differed, but it was the long-term relationship that counted. Friendship involved not so much individual acts as mastery of a process. Given the finesse and secrecy involved in congressional committee work and negotiations, friends could not be easily monitored; they could only be trusted. Friends had to be prepared for betrayals. One of the most common notations in Gilded Age political
and business correspondence was “Destroy when read.” The phrase is a staple of the archived correspondence between railway officials and politicians. The survival of letters so obviously read and so obviously undestroyed in the archives testifies to both a misplaced confidence in corporate friendship and evidence that friendships were always provisional (White 2011, 100).

Because friendship was provisional, it had to be nurtured. Morrissey might urge friends to be free with their money, but corporate friends were as likely to be free with information. The railroads could and did grant political friends direct payments in the form of “loans” or cash, but such payments were unimaginative and often unnecessary. They caused problems in case of investigations. The railroads had numerous other ways of disguising favors—purchases from companies owned by friends, employment as lawyers, or as lobbyists after they left office. But the cleanest and cheapest ways of helping friends was by giving them what the railroads often got in return: information (White 2011, 100–102).

Information formed the currency of Gilded Age friendship and Gilded Age corruption, just as it is at the core of modern corruption. The men who ran Gilded Age railroads and Gilded Age reformers all recognized that in the emerging industrial economy, and more centrally in the expanding financial markets, information was not only money: it was power. But to be useful, information had to be asymmetric. Insiders had to have a lot of it; outsiders had to have little of it. Insiders manufactured it; outsiders were reduced to simple consumers.

Corporate leaders could be disingenuous when they denied bribing politicians, but they engaged in bribery only when they lacked friends. Friends did not need to be bribed. The relations of friends were continuous with favors being exchanged only sporadically and as part of a larger ongoing relationship. Prearrangement was not necessary. Collis P. Huntington rewarded his friends financially while proclaiming their honesty. He thought Senator William Stewart of Nevada “peculiar, but thoroughly honest, and will bear no dictation, but I know he must live, and we must fix it so that he can make one
Roscoe Conkling was a quintessential friend of the Southern Pacific, whom Huntington considered “decidedly the greatest man in the United States Senate.” Oliver Ames of the Union Pacific wrote in 1874 that Conkling “has always been in the interest of the Central Pacific and ready at all times to work for whatever they wanted.” But always being ready to work in the interest of the Central Pacific was what made quid pro quo and prearrangement unnecessary. Huntington once asked Leland Stanford, one of the founders of the Central Pacific, to “arrange something out of which he [Conkling] could make some money (something handsome). You will have to be very careful how you do it, as he is very sensitive, but, of course, like the rest of us, has to eat and drink” (McClain 1985, 31–46; White 2011, 101–102).

As early as the 1870s, this was how money worked. It easily met Justice Kennedy’s standards of political rectitude. The Central Pacific fed Conkling well even as they reassured him of his virtue. “Your letter touching the disposition to be made of outstanding land grants but anticipates a wish to know your opinion and have your views,” Senator Conkling wrote Collis P. Huntington in 1880. A week later Conkling, in a letter marked private, asked Huntington for advice on Central Pacific stock. “I shall buy as much as I well can if I can know that you would think well of the purchase.” By the end of the year, $60,000 that Conkling had invested with Huntington had grown to $84,000 (White 2011, 101–102). These kinds of relationships were hardly peculiar to the Southern Pacific. When J. N. Dolph was elected to the Senate from Oregon in 1882, he asked for, and got, reassurances from Henry Villard of the Northern Pacific that his “interests will be properly taken care of.” Villard also assured him that “I shall take good care that your identification with our interests shall not embarrass you in the least as senator” (White 2011, 117).

Political information and financial information became mutually constitutive not just because they could be turned into cash on financial markets but because government had necessarily and unavoidably
become a site for corporate competition. The idea that corporations competed in the market and political parties competed in elections had become a delusion with the railroad subsidies of the 1860s and other public/private infrastructure projects. Congress—and legislatures—had instead become a place where corporations and financiers competed with each other. Publicly traded Gilded Age corporations, which for all practical purposes meant railroads until the end of the century, created the modern corporate lobby because Congress had become a forum for battles between corporations (White 2011, 102–133; Roy 1997, 1–5).

And this created a second arena that moves corruption into regions that fall outside Justice Kennedy's constricted terrain. Corporations could seek favors from government, but just as often they sought to deny favors, similar to those that they had received, to competitors. Or they sought to have the government, through investigations, hearings, or reports, create conditions that could make it difficult for their rivals to raise capital or which could drive down their stock prices (White 2011, 105–06, 117–133).

Nineteenth-century Americans came to presume that what was happening on the surface hid the real significance of events. They were convinced of the “inwardness” of things. The inwardness of politics and business in the Gilded Age paralleled the courtships and conversations of an Edith Wharton or Henry James novel. More was happening than met the eye.

Corporate money sought to influence what was often invisible: not the vote itself but whether bills ever came to a vote. Parties could corrupt general elections, often with corporate money, but corporations were less successful with direct interventions except in senatorial elections before the direct election of senators. Corporations found it easier to win congressmen over once elected. Because the process of legislation was so opaque, little things done quietly and undercover could have large results. Congressmen who failed to appear at a committee meeting, thus denying a quorum, did the work of corporations more effectively than those who sold a vote. A committee meeting delayed so that a bill could not come up in time for
consideration was a virtually invisible corporate victory. A congress-
man who voted against a measure desired by a corporation but did
not press his opposition in order to prevent others from voting for
it was an effective corporate ally. “You know,” Grenville Dodge, then
a lobbyist for railroad magnate Tom Scott, wrote, “it is so easy for a
person to be a friend and not a friend in a measure before Congress
that no one can tell whom to count on in any emergency or on an
amendment” (White 2011, 113–18, 123). Investigations of corruption
could themselves be corrupt if the real goal was to manipulate stock
or bond prices. Precisely because in a modern corporate economy the
market and government had become the two heads of a single beast,
the signals that flickered from one brain to another could influence
the actions of what amounted to a shared body. Wall Street bears
knew this, and they could corrupt politicians simply by having the
politicians produce information through investigations, hearings, or
the introduction of legislation that would influence the markets. The
bears shared the information with congressmen as to what stocks and
bonds would fall, and provided them with loans with which to specu-
late and invest (White 2011, 347–355).

When members of Congress manufactured information to
manipulate security prices, they were only doing what corporations
did already. As both Walker and Adams came to recognize, “fiduciary
relations” broadly construed were central to corruption of both poli-
tics and finance. Fiduciary relations in a corporate economy were
about the creation, withholding, and dissemination of information.
Railroads, which dominated the stock and bond markets, made corpo-
rate reports into one of the great fictional genres of the nineteenth
century. Railroad corporations manufactured information to cultivate
markets, mislead investors, and reward, or deceive, public officials. All
of this was corrupt. The heads of railroad corporations lied to enrich
themselves, to enrich politicians who aided them, to evade laws, and
to gain advantage over those who could neither manufacture nor hide
information on their scale. Adams’ description of the Credit Mobilier in
Chapters of Erie captured the way this corruption worked:
The members of it were in Congress; they were trustees for the bondholders, they were directors; they were stockholders, they were contractors; in Washington they voted the subsidies, in New York they received them, upon the Plains they expended them, and in the Credit Mobilier they divided them. Ever-shifting characters, they were ubiquitous, —now engineering a bill, and now a bridge,—they received money into one hand as a corporation, and paid into the other as a contractor. As stockholders they owned the road, as mortgagees they had a lien upon it, as directors, they contracted for its construction, and as members of the Credit Mobilier they built it. What is the community to pay for it? (Adams 1956, 408)

Adams wrote *Chapters of Erie* as a reformer, and his position did not change when he ran the Union Pacific. “Our method of doing business,” he wrote, “is founded upon lying, cheating and stealing:—all bad things” (White 2011, 359).

By the late nineteenth century the larger outlines of the changes that the rise of corporations, modern financial markets and information systems, and mass democracies would bring to corruption were already visible and recognized in the United States. The rise of antimonopolists in the United States created a second current of reform alongside liberal reformers, and to a degree they merged to produce the reforms of the Progressive Era.

These reforms did not achieve instant success; like corruption itself they evolved, but their general outlines were certainly clear by the 1930s. Much of what they struggled to achieve was not mysterious. They sought to secure accurate and transparent information from both the government and corporations. They created bureaucracies, which, as Daniel Carpenter has demonstrated in his epic studies, possessed autonomy, networked constituencies, and reputation to make either capture or corruption difficult (Carpenter 2001; Carpenter 2010).
Beard recognized that organized interests are always going to be part of the American political system. This was, and is, hardly news. In the early twentieth century there was a sustained, if rather inchoate and confused, discussion about recognizing classes of citizens and using them as a basis for representation as a way to make sure all interests were served and to eliminate the corruption of the political process through money. These were methods embodied in fascism and were for good reasons rejected. Instead, representative government meant the representation of individual citizens.

Representative government depended on the public’s trust in elections as an expression of the electorate’s will. Undue influence undermined the electorate’s will, and undue influence involved money in politics. When in 1930 Charles Beard wrote *American Leviathan*, his account of American governance, he could matter of factly treat the ongoing problems of money in politics and the limitation of corruption as manageable. There needed to be new laws, new regulations, and new agencies responsible for enforcement. He presented an agenda partially achieved in the years that followed but now being dismantled. New acts governing corrupt practices should include conventions and primaries and “fix limits to all expenditures, define the purposes for which they may be made, place full responsibility for disbursement on candidates and committees, and abolish exemptions in accounting for campaign outlays.” There should be a federal elections commission with investigatory powers and the power to deal quickly with contested cases. This would not fully solve the problem of money in politics. He thought the ultimate solution was to eliminate private money in primaries and elections entirely (Beard 1930, 95–103).

Justice Kennedy goes in the opposite direction. He aims, in the name of free speech, to expand the role of money in politics. The irony of Justice Kennedy’s approach is that in freeing up the restrictions on money in politics, he resurrects in a new form the idea of corporate representation flirted with and abandoned a century earlier. Neither corporations nor labor unions are individual voters, but both can now play enlarged roles in elections (Beard 1930, 15–19, 95–103).
Justice Kennedy’s assertion that the buying of influence rather than votes does not affect the public’s faith in the political process flies in the face of both modern polling data and the history of the Gilded Age and the early twentieth century. The modern polling data is apparent in the corruption indexes. The famous preamble of the Populist platform of 1892 can serve as a reminder of how corrosive the purchase of influence is in a democracy and the dangers Justice Kennedy courts when corruption is narrowed only to the most blatant kind of bribery.

The conditions which surround us best justify our cooperation; we meet in the midst of a nation brought to the verge of moral, political, and material ruin. Corruption dominates the ballot-box, the Legislatures, the Congress and touches even the ermine of the bench.

Nineteenth-century liberals were the common ancestors of both modern liberals and conservatives. Their struggle with corruption in the Gilded Age resonates with combating modern financial and political corruption in the United States. It is ironic that their increasingly complex understanding of corruption should be reduced to Kennedy’s primitive forms. And this reduction should justify the relaxation or elimination of the measures that eventually reined it in.

REFERENCES


