Scott McLemee, Review (continued) of Zephyr Teachout, Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United, Inside Higher Ed (Oct. 1, 2014), citing Teachout-Tillman exchange

Seth Barrett Tillman
Review (continued) of Zephyr Teachout, "Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United"

Submitted by Scott McLemee on October 1, 2014 - 3:00am

Column: Intellectual Affairs [1]

In 2009, the Cornell Law Review published an article [2] called “The Anti-Corruption Principle” by Zephyr Teachout, then a visiting assistant professor of law at Duke University. In it she maintained that the framers of the U.S. Constitution were “obsessed” (that was Teachout’s word) with the dangers of political corruption – bribery, cronyism, patronage, the making of laws designed to benefit a few at the expense of public well-being, and so on.

Teachout refers to an erosion of the anti-corruption principle over time, but much of her narrative documents a recurring failure to give anti-corruption laws teeth. “Criminal anticorruption laws were particularly hard to prosecute” during the 19th century, she writes, because “the wrongdoers – the briber and the bribed – had no incentive to complain,” while “the defrauded public was dispersed, with no identifiable victim who would drive the charge.” The concept of corruption has dwindled to that bribery defined as quid pro quo in the narrowest possible terms: “openly asking for a deal in exchange for a specific government action.”
In a colloquy appearing in the *Northwestern University Law Review*, Seth Barrett Tillman, a lecturer in law at the National University of Ireland Maynooth, suggests [5] that a core problem with Teachout’s argument is that it overstates how single-mindedly anti-corruption the framers of the U.S. Constitution actually were. The Articles of Confederation made broader anti-corruption provisions on some points, for example.

And “if the Framers believed that corruption posed the chief danger to the new Republic,” he writes, “one wonders why corrupt Senate-convicted and disqualified former federal officials were still eligible to hold state offices—offices which could indirectly affect significant operations of the new national government—and were also (arguably) eligible to hold congressional seats, thereby injecting corrupt officials directly into national policy-making.”

Concerned about corruption? Definitely. “Obsessed” with it? Not so much. There is much to like about Teachout’s book, but treating the framers of the Constitution as possessing the keys to resolving 21st-century problems seems extremely idealistic, and not in a good way.

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