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Corporate Influence on US Legislative, Regulatory and Judicial Decision Making

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October 2015

A thesis submitted to Flinders University in accordance with the requirements of the degree of Doctor of Philosophy

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Abstract

The question I have often been asked, and indeed, have asked myself and of others; how can all this damn money in the US electoral system not be considered corruption? Professor Malcolm Feely summed it up by answering; "…well it is not illegal because it is influence, not corruption. If one person did it, it could be corruption, but because everyone does it, it is normal". This led to the development of the question that this thesis attempts to address. *"How does the corporate sector influence US legislative, regulatory and judicial decision making?"*

I have found contemporary discourse to be isolated in silos. Cross disciplinary analyses falls outside of the comfort zone for the majority of scholars. Yet all that happens does not happen in a vacuum; there are always linkages if one is willing to look and attempt to understand. This leads into one of many aspects contained in this thesis; that of understanding influence as a theory. Based on this understanding, the conceptualization of the 21st century corporate sector has contributed to an understanding that contemporary models do not apply. From this I have developed a theory that better describes the corporation and the corporate person; the framework for *Corporate Interest Group Theory*. The evolution of corporate personhood, culminating in *Citizens United*, has been juxtaposed with the development of legislation in Congress and SEC regulations, which distinguishes corporate speech while extinguishing the speech of natural persons.

Money is speech is influence, is defined by this thesis as a continuum; a continuum that interacts seamlessly with the concept of transactional corporate speech. Corporate speech takes on various forms, with political speech, commercial speech and the transactional nature of certain forms of speech being areas which the Court has yet to reconcile. Speech is also money; a concept that has been acknowledged by the Court. Fundamentally, corporate speech is made by spending money to buy power, to buy influence, be it increased sales and/or beneficial relationships. This continuum is the key to understanding how the corporate sector influences decision making at all levels including legislative, regulatory and judicial decision making.

Acknowledging that the corporate sector does not utilize one method of influence promotes an understanding how the corporate sector sponsors beneficial outcomes. This is a long term game where a corporate funded education sector continues to play an integral role in developing the underlying ideology and understanding of the legislative, regulatory and judicial leaders. Key to the concerns of a significant majority of US natural persons today is what is perceived as the corrupting influence of moneyed corporations; the ownership of the peoples government by the broader corporate sector in defiance of the US Constitution.

I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Martin J. Bailey November 1st, 2015

Acknowledgements

Many people have contributed advice and guidance on this journey. I wish to extend my sincere thanks to Professor Jeri Kroll, Professor Phyllis Tharenou, and Professor Martin Griffiths and to Ms Patricia Berry at Flinders University for their valuable support.

I also wish to thank Professor Don DeBats for his guidance in my undergraduate and Honours years and for approving my participation in the Flinders University Internship program to Washington DC in 2013.

A special thanks to the Flinders University Fulbright Distinguished Chairs in American Political Science, Professor Malcolm Feeley and Professor Burdett Loomis, who were both generous with their time and their guidance.

A very special thank you must be extended to Dr Danny Cooper of Griffith University Brisbane who freely gave his valuable time and guidance in the last few months of the journey.

I also wish to acknowledge the valuable support I received from numerous academic and professional staff in the Faculty of the Arts and the Barr Smith Library at the University of Adelaide.

No journey is possible with the loving support from ones significant other. I dedicate this thesis to my loving wife Judy. Without her support and encouragement in dealing with the many challenges faced on the journey, this thesis would likely have not been completed. Strength comes from adversity. Thank you for believing in me; thank you for sharing my dream.

Introduction

Most Americans today are simply fed-up with the government at all levels. They will not, and should not, continue to tolerate the gap between the promise and performance of government.[1]

This statement could have been made by President Barack Obama in his 2013 State of the Union Address, as little has changed since President Richard Nixon made this profound statement in his State of the Union address in 1971. In fact, this thesis supports the notion that the natural person citizens of the United States of America (US) today are disenfranchised to a greater level than when this statement was made by a President long remembered for a series of scandals including organized illegal political espionage, violation of public trust, bribery, contempt of Congress, and attempted obstruction of justice.

Key to the concerns of a significant majority of US natural person citizens today is what is perceived as the corrupting influence of moneyed corporations; the ownership of the peoples government by the broader corporate sector in defiance of the US Constitution. This thesis utilizes a multi-disciplinary approach to analyse key areas relating to influence, corporate speech and corporate personhood culminating in the 2010 *Citizens United* ruling to address the question: *"How does the corporate sector influence US legislative, regulatory and judicial decision making?"*

Mark Hanna, an iron and coal magnate turned political fundraiser; a late 19th century millionaire who leveraged massive contributions from the robber barons, is famously quoted as saying: "There are two things that are important in

[1] Richard Nixon, "State of the Union Address," *Weekly Compilation of Presidential Documents* 7, no. 4 (1971): 89. Also see: Keith W. Olson, *Watergate: The Presidential Scandal That Shook America* (Lawrence, KA: University Press of Kansas, 2003).

politics. The first is money, and I can't remember what the second one is".[2] In a series of judicial-political developments that astoundingly surpassed the mendacity demonstrated by Hanna, the Supreme Court's 2010 Citizens United decision effectively crowned an eclectic assemblage of 21st century billionaires and their corporate sycophants as the moneyed royalty of politics.

Citizens United v. FEC; was a seminal moment of 2010, when the US Supreme Court overturned restrictions on corporate political speech in the form of independent expenditures. *Citizens United* is but one of a whole range of examples but it is important because the Court has struggled for decades to overcome inconsistencies' on how, for whose benefit and on whose behalf, corporations speak. In *Citizens United*, the Court grappled with the boundaries of fundamental First Amendment rights and the extent to which free speech protections should be extended to corporations; inconsistences riddled with assumptions about corporations that are often divorced from the economic and legal realities in which these entities exist. The influence that the Finance, Insurance and Real Estate (FIRE) sector has over Congress is a worthy study because it shows linkages between donations and potential beneficial outcomes for that sector. This thesis engages with traditional corporate law principles to challenge the foundational assumptions regarding corporate entities that the Court relied on in concluding that speech of a corporate person should be treated the same as the speech of a natural person citizen.

The concept of corporate personhood is fundamental to the determination of corporations' claim to First Amendment free speech rights. For decades, Courts have resisted efforts to appropriately intellectualize or conceptualize corporations,

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[2] Thomas A. Daschle, "Bipartisan Campaign Reform Act of 1999 in Response to Amendment No 2229," *Congressional Record* 145, no. 18 (October 14, 1999): 25518.

in what must be considered as an ambiguous process to encompass constitutional rights within corporate discourse. The evolution of corporate personhood, culminating in *Citizens United*, can be juxtaposed with the development of numerous corporate laws and Securities Exchange Commission (SEC) regulations which distinguish the complexities of corporate speech while extinguishing the speech of natural person citizens. The SEC is a particularly good case study because it gives good examples of revolving door and regulatory capture. This leads to how corporate speech is created and for what purpose is arguably inconsistent with the conceptualization of corporate speech, as stated in *Citizens United*, when compared to other areas of constitutional and common law and actualities in the corporate sector.

Corporate speech takes on various forms, with political speech, commercial speech and the transactional nature of certain forms of speech being areas which the Court has yet to reconcile. Speech is also money; a concept that has been acknowledged by the Court. Yet the concept of speech as influence remains vague while the acceptance of money as a method of influence not accepted as corruption unless it can be demonstrated as quid pro quo! The perception of corruption 'worries' the Court as equally as corruption that is proven in a court of law. Money is speech is influence, is defined by this thesis as a continuum; a continuum that interacts seamlessly with the concept of transactional corporate speech. Fundamentally, corporate speech is made by spending money to buy influence, be it increased sales and/or beneficial relationships.

Chapter 1 defines the methodology used in this thesis. Given the cross-disciplinary nature of the broad topic area, theories relating to this thesis are explored with the development of new theories argued and defined. I argue that current Interest group theories, elite theory and stake holder theories do not reflect

the contemporary corporate form; there is an argument for a different approach. This argument is extended to include the concepts of political money, corporate personhood and corporate speech. Based on a composition of applicable aspects I define Corporate Interest Group Theory. This theory along with many additional aspects is considered in relation to the following chapters.

Chapter 2 begins by stating contemporary discourse is insulated in silos. Therefore, the wide-ranging literature reviewed in this chapter has been selectively chosen to represent seminal work in their respective fields and contribute to the objectivity for the thesis. The multi-disciplinary literature reviewed permits the application of traditional silo modelling to be considered horizontally within the context of this thesis.

Chapter 3 defines Influence by demonstrating the concepts relating to how influence occurs in the context of corporate influence over legislative, regulatory and judicial decision making. Power is defined as a causal mechanism to influence, where influence is framed within the notion that *money is power is influence*. Money is the initial causal mechanism of the money-power-influence continuum in the context of complex relationships between the corporate sector, Congress, the Court, Agencies and natural person citizens. Influence as a theory is defined by demonstrating a linkage with social exchange theories, reciprocal altruism, beneficial narcissism and self-interest.

Chapter 4 places the corporation at the very epicentre of political money and therefore influence. How that ideology has evolved; an orchestrated agenda where corporate money has purchased power and influence that continues to grow must be considered and understood. The global community of natural persons is very aware of the effects of political money, but the mechanisms behind the corporate veil are less clear. The theories and concepts as defined, clearly

places the contemporary corporate model at the head of the constitutional table in place of the natural person citizens of the US.

Chapter 5 evaluates a complicit Congress, while representing the primacy of US natural person citizens, continues to fail in its obligations to the US Constitution; a contract that places 'We the people…' at the centre of US federal republicanism. Congress' have become less about the natural person citizens and more about the system; a system centred round the moneyed influence of corporate people and not natural people as was the intent of the Founding Fathers. The House Committee on Financial Services (HCFS) and the Senate Judicial and Finance Committees are used as vehicles to demonstrate complicity and ineptitude; corporate voice over the voice of natural person citizens of the US.

In Chapter 6, the concept of Agency is considered alongside the non-delegation doctrine. Although the Securities Exchange Commission (SEC) is singled out as an example, the broader argument is that all four branches of the US federal government contribute to the moneyed power and influence of the corporate person. The SEC becomes the elephant in the room in which the inter-related concepts of the revolving door and regulatory capture are investigated and considered as an example of the causal mechanisms and causal effects at play; a method of corporate speech demonstrated as an essential weapon in the arsenal of contemporary corporations.

Chapter 7 argues that the ideology of the US Supreme Court (Court) continues to play a significant role in the development and realization of the corporate voice in the 21st century. The history of the concept of corporate personality and personhood are explored. This will contribute to explaining how corporate speech, considered in the context of *Citizens United*, influences the Court. Why corporate speech influences legislative, regulatory and judicial

outcomes is central to the argument that will demonstrate how the corporate sector influences legislative, regulatory and judicial decision making.

The conclusion and the comprehensive appendices will contribute to addressing the question; *"How does the corporate sector influence US legislative, regulatory and judicial decision making?"*

Chapter 1: Methodology

Contemporary discourse is isolated in silos, and as such tends not to evaluate the over-arching issues or concerns of the effects of influence, corporate speech and corporate personhood. A novel approach is utilised to demonstrate the influence of the corporate sector with the FIRE sector utilised as a case study in relation to some aspects of corporate influence. The SEC, as representative of Government agencies, will highlight the issues relating to what is referred to as the revolving door; the cycling of people between the corporate sector, the SEC and back to the corporate sector.

The contributory evidence provided will relate to the corporate sector in the US in the lead up to the Sub Prime Mortgage Crisis, as it is known domestically [3], the Global Financial Crisis (GFC) as it is known outside of the US, and subsequent legislation and regulation, through to 2010 and *Citizens United*. This generally covers the terms of the 110th-112th Congress'.[4] This period includes Republican and Democrat Presidents and a mixture of House and Senate majorities. While historic aspects of the Court, the corporation and corporate personhood will be considered, the literature broadly considered will be multi-disciplined and considered relevant to this thesis.

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[3] Danielle DiMartino and John V. Duca, "The Rise and Fall of Subprime Mortgages, Federal Reserve Bank of Dallas," *Economic Letter 2* 11 (November 2007): 1–8.

[4] The period of the 110th Congress was between January 3, 2007, and January 3, 2009, during the last two years of the second term of President George W. Bush. It was composed of the Senate and the House of Representatives. The apportionment of seats in the House was based on the 2000 U.S. census. The Democratic Party controlled a majority in both chambers for the first time since the end of the 103rd Congress in 1995.

The period of the 111th Congress was between January 3, 2009, and January 3, 2011. It began during the last two weeks of the George W. Bush administration, with the remainder spanning the first two years of Barack Obama's presidency. The apportionment of seats in the House was based on the 2000 U.S. Census. In the November 4, 2008 elections, the Democratic Party increased its majorities in both chambers, giving President Obama a Democratic majority in the legislature for the first two years of his presidency.

The period of the 112th Congress was between January 3, 2011 and January 3, 2013. The apportionment of seats in the House was based on the 2000 U.S. census. In the 2010 elections, the Republican Party won the majority in the House of Representatives. While the Democrats kept their Senate majority, it was reduced from the previous Congress.

I will utilize existing well-defined concepts as well re-defining concepts that are traditionally too broad and/or ill-defined and are therefore subjective. Concepts and their definitions, as accepted or as defined, will be listed within the appendices to ensure the reader is not placed at any disadvantage as to their usage and/or interpretation. However, essential concepts are defined here.

To differentiate clearly between the corporate form of person and the biological form of person, I refer to the later as natural persons or to denote citizens; natural person citizens. The corporate form of person; a non-biological entity that is considered under law to have personality or personhood, I refer to as a corporate person.

For the purpose of this thesis, I define a corporation in the US context as a separate publicly listed legal entity to act within legal constraints and recognized in law with corporate registration. In addition, I consider that a registered corporation possesses legal personality and is therefore not owned by shareholders; it is owned by itself. Investors include those whose 'share-holdings' are tradable with their liability limited to their investment. Typically, investors do not actively manage a corporation; investors who hold 'shares' have the option of electing or appointing a board of directors to act for the corporation in fiduciary capacities who in turn appoint executive officers to operate the corporation. Unless noted otherwise, I refer to the corporate sector as a broad community of corporations as defined. I do refer to specific corporate sectors. For example: reference to the FIRE sector includes only those corporations who are predominantly engaged in the Finance (banking and investment), Insurance and Real Estate sub sectors.

I argue corporations have several tools in their arsenal to beneficially influence legislative, regulatory and judicial outcomes; the common component being money. Money is the weighted voice of the corporate sector. Being an

inanimate or notional entity, a corporate person has no voice of its own; it uses money to buy speech made on their behalf by others. This may be in the form of advertising, various forms of publications, persuading natural persons to adopt particular approaches or attitudes, employing lobbyists or others to act in their interests or a combination of these and other similar approaches. While money is said to buy speech, what it is actually buying is influence; money is power is influence. The beneficial outcome of corporate influence is more power, more money. I argue that speech by a corporation, regardless of the type of speech, must ensure at least an attempt to providing a beneficial outcome for the corporation in the form of more money, more power, and therefore, greater influence. A consequential effect is the potential of enhanced return to the investor. However, the Founding Fathers feared that the power and influence of the corporate entity was a nemesis of the people that must be avoided at all costs.

There is no clear universally accepted metric to measure corporate power, or indeed influence, over legislative, regulatory and judicial decision making. While corporate sector concentration ratios are loosely used to gain some measure of national market power, these are problematic as they do not address unweighted variable such as corporations who are represented across sector or foreign competition.[5] Despite rhetoric from many not-for-profit groups over many decades and reactionary responses from mainstream media, there is little in the way of scientific research on this specific topic area. Attempts at legislation have been limited to county and state level, mainly at the initiative of minority groups, with no real progress made to understand a methodology let alone any form of regulatory

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[5] Alfred D. Chandler and Bruce Mazlish, *Leviathons: Multinational Corporations and the New Global History* (Cambride: Cambridge University Press, 2005), pp 31-32.

approach.[6] This thesis argues all forms of political money are an investment by the corporate sector and that investment legally requires a return on that investment. This is demonstrated anecdotally by evaluating interrelated causal mechanisms and causal effects. This is then extended to clearly demonstrate by way of tables, the return on investment by the top 200 corporations ranked by contribution.

The Founding Fathers established the US as a Republic (res publica); a form of government in which sovereignty resides in the people governed according to law by elected representatives. However, individuals have little power with which to influence government policy; membership of an interest group having greater authority to strive for a specific outcome. As interest groups are different from political parties in that the key persons generally do not aspire to public office, I do not consider political parties in this thesis with any mention of party affiliation utilised as a method of differentiation.

Theories

This analysis of theories is based on the notion that whether you can perceive a mechanism or not is reliant on the theory you use. "It is the theory which decides what can be observed".[7] Therefore, I argue that numerous dissimilar methodologies are utilised to define interest group theories in existing literature along with a diverse range of interpretations employed. This complicates comparisons between the different forms of interest group theories and the application of literature. After reviewing key literature, I set out to utilize a different

[6] Ralph Nader, *In Pursuit of Justice: Collected Writings 2000-2003* (New York: Seven Stories Press, 2011), p 67.

[7] Abdus Salam, *Unification of Fundamental Forces: The First 1988 Dirac Memorial Lecture* (Cambridge: Cambridge University Press, 1990) p.99 Albert Einstein objecting to the placing of observables at the heart of the new quantum mechanics, during Werner Heisenberg's 1926 lecture on Quantum theory in Berlin.

approach in defining and categorizing a specific interest group that falls outside contemporary definitions in that literature.

Interest group theory, also referred to as pluralism, considers that many different interests compete to control government policy, and that their conflicting interests can balance out each other to provide good governance. Adopting methods of analyses and tools from the discipline of economics, transaction theories focus on the mechanisms of interest group influence.

Pluralist theories, including inter-related concepts, electoral democracy and majoritarian pluralism, consider interest group politics as a system; a methodological process that is complete in itself. Pluralist theory evaluates the political system as a whole and seeks to understand how the various interest groups make claims to the government, how the government reacts to that influence, and what effect, if any, this has on policy. In contrast, transaction theories explain the direct and often strategic interactions between individual interest groups and the government, by analysing individual interest group-government interaction at the individual and/or individual interest group level. Competition and/or cooperation (collusion) between multiple groups may be considered part of transaction theory, but rarely transaction theories attempt to analyse the political system as a whole as pluralist theories suggest. The two theories have been traditionally considered in isolation; therefore could be considered less distinct and merely variations of the same foci; the ability of interest groups to beneficially influence legislation and policy.

As very US-centric theories, they fit well historically with the principles of key advocates of the US form of a pluralist democratic republic including Arthur F. Bentley, Robert A. Dahl, James Madison, Adam Smith, Alexis de Tocqueville, David Truman *et al.* The tenets of the theories maintain that the duty of the

broader political system, the four branches of the Federal government, is to promote interest group engagement by instituting the rules of the game, commissioning compromises, ratifying the covenants into legislation, enforcing the laws and adjudging any constitutional challenges. As public policy is traditionally considered as a transitory equilibrium, politicians, group leaders and commentators alike believe that situation will remain fluid permanently; no one interest group will have an enduring victory. Based on this, it is reasonable to suggest that the federal government is bound by a covert group which supports a structure of overlapping participation across dissimilar assemblages with a structure of balanced equilibria for interest group struggle and agenda construction. However, the increasing dominance of conservative political thought and the rise of neo-liberal economic strategies, traditional interest group theories struggle to adapt to the changing political economy within the US and on a global basis.

I considered elite theory and the related concept, economic-elite domination, as methods of defining the process of influence. These theories are based on the premise or theory of the state which believes that the wealthy elite control the US political economy. The economic elite generally tend to consist of the same people as the political elite (wealth equals power). The theory seeks to describe and explain the power relationships in contemporary society. Transaction theory supports some aspects in that a small minority, consisting of members of the economic elite and policy-planning networks, acquire/have acquired wealth/power and that this power-influence transaction is self-determining and therefore exclusive of a representative ballot process. Through positions in corporations or on corporate boards, and influence over the policy-planning networks through financial support of foundations or positions with think tanks or

policy-discussion groups, members of the elite are able to exert significant power/influence over the policy decisions of corporations and governments; the wealthification of the US political-economy. Interestingly, members of the wealthy elite generally figure within a very narrow alumnus of key tertiary education institutions. Elite theory and related concepts stand in opposition to pluralism in suggesting that a democratic republic is a utopian ideal. They also stand in opposition to state autonomy theory. Traditionally, the synergies of power and influence reside in positions of authority in key economic and political institutions.

I also considered how ideological interest groups unite on issues driven by deeply held beliefs. While Ideological interest groups may co-operate on various differing issues, their deeply seated ideological interests are the key motivation. This ideological base is extremely broad and in clear contrast to the greatest majority of the elite in the US who subscribe to various yet narrow forms of conservative political and neo-liberal economic theories; theories which themselves must be defined.

The rise and decline of 1960s left wing radicalism, the failure of liberalism and rise of the New Right in the 1970's, followed by the supremacy of the Right in the 1980's, I consider an evolution of conservative thought. While various contemporary literatures consider (post) Reaganite ideology to be a form of neo-conservatism, I do not differentiate between neo-conservatism and conservatism. Neo-liberal economic thought is generally accepted as an economic philosophy that emerged in the 1930s attempting to trace an alternative between the conflicting philosophies of classical liberalism and collectivist central planning. In the decades that followed, neoliberal theory was promoted as a market economy under the guidance and rules of a strong state, a model which came to be known as the social market economy. Neoliberalism evolved with what became known as

Reaganism and Thatcherism, a set of ideas associated with the economic policies introduced by Ronald Reagan in the US and Margaret Thatcher in the UK. Scholars now tend to associate it with the laisse faire theories of economists Friedrich Hayek and Milton Friedman.

Economic interest groups are one of the five broad categories of interest groups in the US that advocate for the economic interest and benefits of their members. Economic interest groups are varied and for any given issue there will be large number of competing interest groups. This category includes groups representing business, labour, professional and agricultural interests.[8] Business interest groups are considered in contemporary discourse as a subsection of economic interest groups who generally promote (small) business or employer interests across a wide body of sectors. Under this umbrella also sits the concept of biased pluralism.[9] However, I consider ideology and elite status as described does not conform to the broader description of economic interest groups; they fail to define that very narrow description of those elite persons who share a mutual interest in conservativism and neo-liberal economics.

When considering the role of the corporate sector in legislative, regulatory and judicial decision making, this thesis will demonstrate that a theory must encapsulate aspects of all these sub-theories. Traditionally, discourse relating to economics, business, and ideological interest groups has been considered separately and in isolation, with elite theory captured in seclusion. Therefore, I combine aspects of economic interest group theory, business interest group theory, ideological interest group theory and elite theory into a concept I refer to as

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[8] Nadia Urbinati and Mark E. Warren, “The Concept of Representation in Contemporary Economic Theory,” *Annual Review of Political Science* 11, no. 1 (2008): 387–412.

[9] Martin Gilens and Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens,” *Perspectives on Politics* 12, no. 3 (2014): 564–81.

Corporate Interest Group theory or *CIGT* which best describes the inherent interests of the corporate sector.[10] Influence as a theory in the context of legislative, regulatory and judicial decision making, will be defined in line with these concepts. This is extended to include the concepts of political money, corporate personhood and corporate speech which are defined in the context of this thesis with many aspects considered in relation to the following chapters.

Concepts

The concept of political money will be utilised in place of the more common, but often misapplied, term of 'campaign finance'. The term campaign finance infers a loan or the beneficial financing of a project or task. In the true sense, this only applies to money contributed to an election campaign, whereas the term political money encompasses the broad use of money for political purpose. Therefore, when money is contributed to an election campaign and/or an individual natural person who is 'standing' for Congress, I will refer to campaign contribution.

I define corporate speech itself by the notion that corporate speech is self-regulated based solely on the identity of the corporate speaker; this being but one aspect considered. Speech made as corporate speech can only be made if there is a positive outcome to that speech; the transactional nature of corporate speech requires a positive return on the investment to which that speech contracts. Corporate speech by way of monetary transactions that influence election outcomes as well as direct campaign contributions support the argument that the

[10] See Appendix 1. While CIGT incorporates relevant aspects of a broad range of interest group theories, this concept could be considered as adjunct to neo-corporatism but with a key difference in that the criticism "…neo-corporatism is not any more accurate in description of interest group systems than pluralism", is not relevant. Conservative Corporate Law Theory also supports CIGT. See: Clive S. Thomas, "Understanding and Comparing Interest Groups in Western Democracies," in *Comparative Politics: Critical Concepts in Political Science* , edited by Howard J Wiarda (Abingdon: Routledge, 2005), 152–53.

corporate sector does play a role in legislative, regulatory and judicial decision making.

Corporate Social Responsibility (CSR), or corporate conscience, corporate citizenship and corporate accountability as it is at times referred to, will not be considered in this thesis. CSR is a complex area in itself and in the context of the US corporate model, the question of corporate personhood must be resolved first in order to apply CSR to the broad corporate sector. Additionally, CIGT argues that CSR is a natural corporate condition, the corporation knows best, and therefore does not require enforcement by legislation or regulation. Therefore, any mention or inference relating to CSR is purely anecdotal. I investigate the actions of the SEC within the concepts of the revolving door and regulatory capture and argued in relation to corporate speech and personhood. Washington's revolving door movements from government service into the lobbying industry, although regarded as a major concern for development and approval of legislation and policy-making is considered anecdotally in relation to the FIRE sector and more specifically, the SEC. The concept of the revolving door as a causal mechanism, with regulatory capture becoming a causal effect will demonstrated by analysis of the SEC which is sufficient to demonstrate that the corporate sector does play a role in regulatory decision making.

Influence, as part of the speech/money continuum, will be clearly and succinctly defined.[11] Defining the line between influence and political corruption continues to remain elusive. Numerous jurists, academics and legislators have attempted to define the concept corruption and the context in which it prevails. However, the concept remains subjective. Therefore, while this thesis will define political influence, I make no inference to any act or action being corrupt outside

[11] See Appendix 4

the context stated by courts. Examples of influence as demonstrated in this thesis are not contextualized as corruption unless they refer to actions where a person or persons has been convicted by a Court.

Contributory analyses

As determined by the Constitution, Congress is the obligatory institution for safeguarding popular, democratic, and constitutional government. *Article One, Section 1,* of the US Constitution vests all legislative powers with Congress; powers cannot be delegated.[12] However, the Court has determined that legislative powers can be delegated so long as the Congress provides an '*intelligible guide'* to the receiving agent.[13] Although its record over the past two centuries presents a mixed depiction, the record of the other two branches is also decidedly mottled. Based on direct observations made whilst working 'on the Hill' in 2013, I argue that Congress has become subordinate to the power/influence of the corporate sector, agencies and the Court, and therefore, could be considered as inherently inept.

Supporting this premise is the considerable evidence that a significant majority of US natural person citizens support the notion that Congress is failing its Constitutional mandate. The Constitution looks to Congress as the first branch as it is the primacy of that institution through which natural person citizens at the local and state level exercise sovereignty.[14] In recent decades, I argue that the corporate sector and the Court are collectively substituted for the knowledge and legitimacy brought by members of Congress. I argue that Congress is 'the people's branch' and should only be subservient to the natural person citizens of the US.

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[12] "Constitution of the United States," 1788, http://www.archives.gov/exhibits/charters/constitution.html [accessed 5 January 2015].

[13] J. W. Hampton, Jr. & Co. v United States, 276 US 394 (1928).

[14] Michael L. Wells, "Congress's Paramount Role in Setting the Scope of Federal Jurisdiction," *Northwestern University Law Review* 85, no. 2 (1991): 465–77.

The HCFS will contribute to a case study of the FIRE sector, which will cover the period of the GFC and the subsequent 'bailout' of that sector, including the *Troubled Asset Relief Program (TARP)*[15] and the *American Recovery and Reinvestment Act* of 2009.[16] This information will be contained, in the majority, in tables and graphs.

What is referred to colloquially as 'K Street', the lobbying sector and lobbyists, will be analysed in relation to the FIRE sector in particular and the broader corporate sector anecdotally.[17] The analysis will be contained in tables, graphs and charts where I will make evident the number of registered persons and the information reported to relevant agencies. The position taken is that lobbyists, in the context of this thesis, are both a causal mechanism of corporate speech, as well as a causal effect. I also acknowledge the persons who have special access to legislators, regulators and the judiciary and may contribute to specific outcomes but are not officially considered as lobbyists for various reasons. I will clearly demonstrate that the revolving door that permits former incumbents' of House and Senate seats to lobby on behalf of the FIRE sector supports the notion that the transactional nature of corporate political money does not cease with the loss of incumbency or retirement from Congress.

[15] The Troubled Asset Relief Program (TARP) is a US$700 billion program of the US government to purchase assets and equity from financial institutions to strengthen its financial sector. It was signed into law by President George W. Bush on October 3, 2008. It was a component of the government's measures in 2008 to address the subprime mortgage crisis. The banks who agreed to Treasury support included Goldman Sachs Group Inc., Morgan Stanley, J.P. Morgan Chase & Co., Bank of America Corp. (which had just agreed to purchase Merrill Lynch), Citigroup Inc., Wells Fargo & Co., Bank of New York Mellon and State Street Corp. The Bank of New York Mellon was tasked as master custodian overseeing the rollout of the fund.

[16] *American Recovery and Reinvestment Act (ARRA) of 2009, Pub L 111–5*, 1971. This is commonly referred to as the Stimulus or The Recovery Act; a stimulus package enacted by the 111th United States Congress in February 2009 and signed into law on February 17, 2009, by President Barack Obama.

[17] K Street is a major thoroughfare in the US capital of Washington, D.C. known traditionally as a centre for numerous think tanks, lobbyists, and advocacy groups. Lobbyists are, in some circles, referred to as the 'fourth branch of government,' as some have great influence in Federal politics due to their monetary resources and the 'revolving-door' practice of hiring former government officials.

While I acknowledge that the influence of the individuals who wield power within the board-room and/or the offices of senior executives of any corporation as significant, this specific area of influence is outside the scope of this thesis. Therefore, I make the assumption that the speech made by corporations is reflective of the biddings of board members and the executive officers. This is supported by tables that clearly demonstrate that campaign contributions made in the name of a corporation to a particular candidate in an election are also made to that same candidate by board members and executive officers of that corporation. I also demonstrate that contributions to the same candidate also come from direct family members of those same board members and executive officers. This supports the concept of CIGT and the notions that social exchange theory, reciprocal altruism and self-interest are all components that must be considered when assessing influence in relation to political money.

I appraise corporate personality and corporate personhood in both historic and contemporary context to understand the notion of the separation of ownership and control in the corporate model and to assess the transactional nature of corporate speech. The underlying purpose of the corporate model; to provide a beneficial return to investor holders of shares, is not in dispute. Therefore, discourse contiguous to the separation of these forms of investors from the daily operation of the corporate entity will only be considered anecdotally and not be a focus of argument.

Principles of corporate law relied on by the Court will be considered with these principles challenging the foundational assumptions regarding corporate entities that the Court relied on in concluding that corporate speech should be treated the same as the speech of natural person citizens. The evolution of corporate law and corporate personhood is considered in order to provide an

understanding on which the argument will reside. From this, I argue that social exchange theory, reciprocal altruism and self-interest contribute to addressing the underlying question.

I have reviewed a long history of Court rulings relating to corporate personhood and political money to understand the notion of the ideology of behind those rulings including the influence of political money. Based on this understanding, I argue the evolution of an underlying conservative ideology orchestrated by the corporate sector has a history of more than four decades. This demonstrates that the Court is influencing the legislative outcomes, along with an often complicit Congress, to ensure that the long term conservative political and neo-liberal economic goals for the US are heading in the right direction. The ideological makeup of the Supreme Court; the long term goal of the corporate sector to influence legal and academic discourse, will be given consideration to demonstrate that the corporate sector plays a significant role in determining judicial decision making.

Corporate influence over legislative, regulatory and judicial decision making processes, I argue, is a long term suite of interfacing methodologies that date back over 40 years to the Powell memo. These methodologies are complex and fluid with a flexible evolution that positively adapt to ever changing circumstance but with a single intended goal; the ability of the corporate sector to beneficially influence legislative, regulatory and judicial outcomes. Put simply, the applications of methodologies employed are driven by the intended outcome; causal mechanisms are determined by the intended effect. This overarching methodology fits well with the corporate model with long term planning outcomes, (long-termism as opposed to congressional short-termism) at a corporate level driving methodologies on how to achieve those outcomes. Influence therefore, I suggest,

is not merely about taking a specific corporate position or engaging in limited action to maintain short term corporate influence or gain publicity; influence is about winning politically and doing whatever is necessary to ensure that long term influence is beneficially enhanced, not just maintained. For example; lobbying tactics employed by the corporate sector to influence judicial selections are a mixture and relational use of different strategies regardless if a nomination is to the Supreme Court or for a nomination to the lower federal courts. However, the intensity of the methodologies employed does appear to vary according to the importance of the office and the ideology of the Senate majority. This suggests that lobbying campaigns, regardless of a specific corporate group or the wider corporate involvement, the political nature will be not dissimilar in terms of the various tactics employed.

What was established under the Constitution as a protector of that document and therefore an irrefutable line of defence against influence, the Court, in asserting its right to assess the constitutionality of legislative acts in *Marbury v. Madison (Marbury),* became complicit in enhancing influence.[18] The Court, with unelected Justices who are appointed for life, now shares a key policy making platform alongside the elected Executive and elected Legislative branches and is therefore considered by all interest groups, not just the corporate sector, as a political player; a player that must be on the corporate team.

Sources

I utilise primary sources including federal legislation, congressional records, agency policy and regulation, agency documentation, court rulings and opinions. Unless referenced as such, primary sources are not electronic sources. The

[18] Marbury v Madison 1 Cr. 137 (1803).

Federal Election Commission (FEC) has proven to be a rich source of primary information, despite the very cumbersome task of interrogating their (transparent?) database. I note that the monetary figures provided in the chapter on the HCFS differ slightly from open source databases as I have factored in a 0.5% variance. Other primary sources include SEC and Congressional reports, corporate annual reports, and Delaware corporate records. Secondary sources will mainly consist primarily of books, print and electronic journal articles. The use of non-governmental agency and corporate web sites is limited as is newspaper articles or features.

By acknowledging that contemporary discourse is isolated in silos, I am able to develop a methodology to evaluate the over-arching issues or concerns of the effects of influence, corporate speech and corporate personhood. While I acknowledge this methodology is complex, by developing a web of horizontal relationships between the various concepts and theories, I am able to clearly demonstrate an orchestrated effort by the corporate sector to influence legislative, regulatory and judicial decision making.

Chapter 2: Literature Review

When researching this thesis, it became obvious very quickly that the sheer volume of literature available borders on the absurd. I have identified in excess of 500 books dedicated to campaign finance alone, with many thousands of journal articles and associated papers in this specific genre. Apply this to the broader disciplines covered, and the numbers skyrocket. As stated earlier, contemporary discourse is insulated in silos. Therefore, the wide-ranging literature reviewed in this section has been selectively chosen to represent seminal work in their respective fields and assist in providing objectivity for the thesis.

The underlying concepts that will be demonstrated in this thesis are the power of political money; the power of Influence. Henry Waxman, in referring to the tobacco industry, clearly demonstrated how that industry influenced Congress. Waxman observed "…how it [the tobacco industry] spread enormous amounts of money to both Republicans and Democrats" and how it had provided "…lavish grants for local charities and arts programs…" [19] Given the accepted doctrine that money is speech, the implication is that money is influence. Therefore, influence itself as a concept must be defined. While any social system implies an allocation of power, status and wealth, there is never complete concordance between what individuals and organisations within a system consider their rights and responsibilities, nor the system of allocation. Lewis Coser is very succinct when arguing that conflict ensues in the effort of various individuals and organisations as they strive to increase their share of power, status, and wealth.[20] The acquisition of all three sets the stage for influence; the power of the few over the many. It should be noted, as stated above, influence does not infer public corruption.

[19] Henry Waxman and Joshua Green, *The Waxman Report: How Congress Really Works* (New York: Twelve, 2009).

[20] Lewis A. Coser, "Social Conflict and the Theory of Social Change," *The British Journal of Sociology* 8, no. 3 (1957): 197–207. See also Lewis A. Coser, *The Functions of Social Conflict* (New York: Free Press, 1966).

When social systems have institutionalized goals and values to govern the conduct of component actors, but limit access to these goals for certain members of the society, Coser suggests that departures from institutional requirements are to be expected.[21] Sanford Gordon *et al* acknowledges that historically, "scholars have encountered difficulties in isolating the mechanisms through which the political activity of interests, particularly corporations, translates into favourable results".[22] This is partially due to traditional discourse being isolated in silos and therefore tends to focus on specific areas which tend to be vertical in nature. This is exacerbated because the context within which influence may be shaped in the legislative arena does not follow any pre-set or preordained process. While this process is required to conform with legislated regulatory requirements as to reporting, the actualisation of establishing and maintaining connections beneficial to the outcome required by corporations and non-governmental organisations results purely from the methodology employed for and by particular organisations in a particular instance.[23]

Esteem academics, including Allan J. Cigler and Burdett A. Loomis, along with Martin Gilens and Benjamin I. Page, have all contributed to understanding the theories and concepts broadly referred to by Cigler and Loomis as Interest Group Politics.[24] The seminal work by Gilens and Page provided a methodology on which to prove that the theories as traditionally applied to Interest Groups, fail to hold up

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[21] Lewis A. Coser, *Masters of Sociological Thought: Ideas in Historical and Social Context*, 2nd ed. (Salem, Ill: Waveland Press, 2003), p.31.

[22] Sanford C. Gordon and Catherine Hafer, "Corporate Influence and the Regulatory Mandate," *Journal of Politics* 69, no. 2 (2007): 300–319.

[23] Dennis O'Grady, "State Economic Development Incentives: Why Do States Compete?" *State and Local Government Review* 19, no. 3 (1987): 86–94; See also: Alistair R. Anderson and Sarah L. Jack, "The Effectiveness of Embeddedness on the Entrepreneurial Process," *Journal of Business Venturing* 17, no. 5 (2002): 467–87.

[24] Alan J. Cigler and Burdett A. Loomis, eds., *Interest Group Politics*, 6th ed. (Washington: CQ Press, 2002); Robert H. Salisbury et al., "Who Works with Whom? Interest Group Alliances and Opposition," *American Political Science Review* 81, no. 4 (1987): 1217–34; Kay Lehman Schlozman and John T Tierney, *Organized Interests and American Democracy* (Ann Arbor, MI: University of Michigan Press, 2008).

when applied specifically to the FIRE sector. While Gilens and Page define the concepts and set out models supporting the concepts as defined, the horizontal inter-relationship between various aspects of the concepts are not extended outside their respective vertical silos. This therefore, does not acknowledge the multivariate nature of horizontal relationships in the corporate-legislative-regulatory-judicial spheres and how they relate to influence. I do however, concur with the authors statement that this is "…a first step [that] will help inspire further research into what we see as some of the most fundamental questions about American politics."[25]

Jonathon Doh *et al* support Sanford Gordon *et al* by suggesting that when academic writers create a theoretical account of corporate influence over regulation in a political sphere, it is important to recognise and amend important differences between the construction of legislation and implementation of regulation; the need to differentiate between causal mechanisms and causal effects on a cumulative basis.[26] As a key component of this process, Talcott Parsons, ably supported by Cass Sunstein, insist that there is a need to justify, empirically as well as logically, a set of assumptions regarding incentives that govern the elected legislators, bureaucrats, and of corporations. Therefore, it is necessary to distinguish clearly between the processes within the system and the processes of change of the system.[27] This is confirmed by Wolfgang Friedmann who considers this tension as an ongoing 'dialectic process'.[28]

[25] Gilens and Page, "Testing Theories of American Politics: Elites, Interest Groups and Average Citizens."
[26] Gordon and Hafer, "Corporate Influence and the Regulatory Mandate". See also: Jonathon P. Doh and Terrence R. Guay, "Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective," *Journal of Management Studies* 43, no. 1 (2006): 47–73.
[27] Talcott Parsons, *The Social System* (London: Tavistock Publications, 1951), p. 481. Regulation is a political process; it can never be construed as the final solution to any problem. Law is an attempt to formally specify constraints on how social benefits are attained and damages prevented or at least limited.

Actions by federal agencies may compel organisations to internalise the costs of many aspects of their operation and consequently affect their business model, or as Gerald Frug suggests, even have a direct burden on the operation structure within a particular model.[29] Given the potentially enormous distributive consequences of any regulatory legislation, James Snyder finds it unsurprising that potentially affected interests invest resources toward influencing Congress in both creation of regulatory legislation and maintenance of regulatory policy.[30] However, financial support from regulated interests may also translate into electoral benefits is indicated by Jeffery Banks *et al*, who argue that the political benefits of a stringent statute may be mitigated if the bureaucracy is unable or unwilling to rigorously enforce the legislation in its entirety. Banks *et al* add to this argument by demonstrating as fact that governments require 'feedback' from corporations in order to ascertain regulatory performance.[31] This paradigm is itself in conflict with Bruno Amable's interpretation of 'best interests' or 'public good'.[32]

For-profit and, to a lesser degree, not-for-profit organisations face collective action issues and commitment problems when attempting to influence Agencies, Congress and/or the Court. Emile Durkheim (1858-1917) referred to these differences, value consensus and structural integration, as mechanical and

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See also: Cass R. Sunstein, "Political Equality and Unintended Consequences," *Columbia Law Review* 94, no. 4 (1994): 1390–1414.

[28] Wolfgang G. Friedmann, "Corporate Power: Government by Private Groups, and the Law," *Columbia Law Review* 57, no. 2 (1957): 155–86.

[29] Gerald E. Frug, "The Ideology of Bureaucracy in American Law," *Harvard Law Review* 97, no. 6 (1984): 1276–1388. See also: George W. Overton and Jeannie Carmedelle-Frey, eds., *Guidebook for Directors of Nonprofit Corporations*, 2nd ed. (Chicago Ill: American Bar Association Committee on Nonprofit Corporations, 2002) and Edmund W. Kitch, "The Law and Economics of Rights in Valuable Information," *The Journal of Legal Studies* 9, no. 4 (1980): 683–723.

[30] James M. Jr Snyder, "Campaign Contributions as Investments: The U.S. House of Representatives, 1980–1986," *Journal of Political Economy* 98, no. 6 (1990): 1195–1227.

[31] Jeffery S. Banks and Barry R. Weingast, "The Political Control of Bureaucracies under Asymmetric Information," *American Journal of Political Science* 36, no. 2 (1992): 509–24; W. Crain and Robert E. McCormick, "Regulators as an Interest Group," in *The Theory of Public Choice II,* edited by James M Buchanan and Robert D Tollison (Ann Arbor, MI: Michigan University Press, 1984), 287–304.

[32] Bruno Amable, "Morals and Politics in the Ideology of Neo-Liberalism," *Socio-Economic Review* 9, no. 1 (2011): 3–30.

organic solidarity.[33] Mechanical solidarity, Durkheim argued, relates to "...ideas and tendencies common to all members of a society are greater in number than those which to pertain personally to each member.[34] This solidarity will grow exponentially to benefit the majority of members as individual differences are minimized. Durkheim supports his argument by stating: "Solidarity which comes from likeness is at its maximum when the collective conscience completely envelops our whole conscience and coincides in all points with it".[35] Thus, by desiring to maintain a political 'footprint' for this reason enables (collective) organisations to commit to rewarding elected officials who maintain laws benefiting an entire sector.

Organic solidarity, Durkheim argues, develops out of differences, rather than commonalities, between individuals. Thomas Catlaw concurs when he argues that: "It is a product of the division of labour, were increasing differentiation of functions in a society come increasing differences between its members".[36] Therefore, it is this difference that empowers organizations; a form of collective influence that seeks influence over actions of individuals in different sections of the society, who in turn seek their own agenda, but not as a collective. When mechanical solidarity is applied by organizations, the collective might, even when instigated by an individual corporation, will automatically attain collective weight.

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[33] Coser, *Masters of Sociological Thought: Ideas in Historical and Social Context*, pp 129-132. See also: John B. Allcock, ed., *Emile Durkheim, Pragmatism and Sociology* (Cambridge: Press Syndicate, 1983).

[34] Gary Easthope, Andrew Bell, and James Wilkes, "Bernstein's Sociology of the School," *Research Intelligence* 1, no. 1 (1975): 37–48.

[35] Irving L. Horowitz, "Socialization without Politicization: Emile Durkheim's Theory of the Modern State," *Political Theory* 10, no. 3 (1982): 353–77. See also: R. Hummel, *The Bureaucratic Experience: The Postmodern Challenge* (Armonk, NY: M.E. Sharpe, 2007).

[36] Thomas J. Catlaw, "Authority, Representation, and the Contradictions of Post-Traditional Governing," *American Review of Public Administration* 36, no. 3 (2006): 261–87. See also: Thomas J. Catlaw, *Fabricating the People: Politics and Public Administration in the Bio-Political State* (Tuscaloosa, AL: University of Alabama Press, 2007) "Increasing separation between citizens and their political representatives and growing scepticism about the legitimacy of administrative action grounded in narrow technical expertise, has weakened social cohesion, or the social bond, such that it no longer has sufficient stability and robustness to support the creation of mutually acceptable action by traditional administrative processes.".

During the 1920s and into 1930s, John Dewey and William Douglas contributed significantly in reconstructing corporate legal theory. Dewey came first with an essay; '*The Historic Background of Corporate Legal Personality*'. This seminal work contributed a definitive critique on what had become by 1926, an inherited concept; what we refer to today as corporate personhood. Because of his process-oriented and sociologically conscious opinion of knowledge and understanding, his theories are often considered as; "a useful alternative to both modern and postmodern theory'.[37] Dewey's non-foundational method pre-dates postmodernism by more than half a century; for Dewey, past doctrines always require reconstruction in order to remain useful for the present time.

Based on the work of Dewey and others, Douglas contributed significantly to the New Deal reforms while at Columbia and Yale Law schools, by analysing the numerous cases of commercial litigation and bankruptcy stemming from the Great Depression. What became known as the legal realist movement, Douglas argued for an appreciation of law based on replacing formalised legal doctrines with an evaluation of the real-world effects of that law.[38] Douglas left Yale to join the US Securities and Exchange Commission (SEC), becoming an adviser to President Franklin D. Roosevelt and the inaugural SEC chair Joseph P. Kennedy, followed by his own nomination as the third Chair of the SEC.[39] Douglas went on to become the longest serving Associate Justice on the US Supreme Court.

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[37] John Dewey, "The Historic Background of Corporate Legal Personality," *The Yale Law Journal* 35, no. 6 (1926): 655–73.
[38] William Douglas, "Stare Decisis," *Columbia Law Review* 49, no. 6 (1949): 735–58. See also: Walter Murphy et al., eds., *Courts, Judges and Politics: An Introduction to the Legal Process* (Columbus, OH: McGraw-Hill, 2005); Charles J. Cooper, "Stare Decisis: Precedent and Principle in Constitutional Adjudication," *Cornell Law Review* 73, no. 2 (2014): 401–10; Justice Goldberg, "Keeping Faith With the Constitution," *Christian Science Monitor*, April 20, 1987, 15–16; Jon D. Noland, "Stare Decisis and the Overruling of Constitutional Decisions in the Warren Years," *Valparaiso University Law Review* 14, no. 1 (1969): 101–35.
[39] Christopher L. Tomlins, *The United States Supreme Court* (Boston, MA: Houghton Mifflin Harcourt, 2005). The papers of William O Douglas during his time at Yale and the SEC can be viewed at the Library of

'*The Modern Corporation and Private Property'* by Lawyer Adolf Berle and Economist Gardiner Means still encourages dynamic discourse more than three quarters of a century after it was first published.[40] Enhanced with an introduction by Murray Weidenbaum and Mark Jensen, the 1991 edition belies the fact that this timeless work remains essential literature in understanding the internal organization of the corporation in modern society in the 21st Century. Berle and Means described the problem of management responsibility as stemming from a separation of ownership and control; a hallmark of large US corporations. Berle and Gardiner argued for fiduciary constraints on corporations which stemmed from the New Deal period after the Great Depression. However, their argument lost support from early 1980s, with the orchestrated collapse of confidence in regulatory solutions to economic problems.

This has turned around with the acquired understanding arising from the FIRE sector collapse; known in the US as the Sub-prime Crisis but referred to globally as the GFC. Consequently, Berle and Means have retained a privileged position at the forefront of policy discussion relating to the corporate entity. '*The Modem Corporation and Private Property*', like Dewey and Douglas, significantly influenced New Deal legislation. However today, Dewey and Douglas speak to us in the context of historical inquiry, whereas Berle and Means are consistently referenced in deliberations on contemporary issues.

Gregory Mark argues that during the period post *Santa Clara*, the scope of the corporation shifted from being able to do things specifically allowed by its charter to having the latitude to do anything not specifically prohibited in the

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Congress. See also: William O. Douglas, *Go East, Young Man: The Early Years* (Random House: New York, 1974).

[40] Adolf Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1933).

charter. Mark attributes this shift to the general incorporation laws that made incorporation seem unexceptional and the wave of regulatory measures enacted by state legislatures that ratified the autonomy of the corporation. Mark argues that: “The state had once been the source of a corporation's purpose and power. By the beginning of the Gilded Age the state supplied only a corporation's robes and, for some businesses, a subsidy”.[41]

The *14th amendment*, as aptly detailed by Howard Jay Graham, meticulously describes how it was applied to former slaves and women, and then to corporations; another significant milestone in the rise of corporate power and influence.[42] Rowland Berthoff clearly demonstrates how and why the *14th amendment* was applied and how the corporate sector capitalised on precedent to ensure the amendment applied to that sector.[43] Thomas G. Hansford and James F. Spriggs II evaluate the politics of precedent and how the development of law contributes to the interpretation of precedent.[44] This underpins an issue with legislation and regulation in the modern era. The law has become a reaction to prevent people, both natural and corporate, from an activity. The moral and ethical issue then becomes the division between the humanity of the natural person citizen and the personhood of the corporate entity. Where the natural person citizen has the right to make choices based on an understanding of the risks and benefits and the consequences, the right of a corporate entity has evolved from only undertaking what was permitted under the charter of its creation, to any

[41] Gregory A Mark, “The Personification of the Business Corporation in American Law,” *The University of Chicago Law Review* 54, no. 4 (1987): 1441–83.
[42] Howard J. Graham, *Everyman’s Constitution: Historical Essays on the Fourteenth Amendment, the Conspiracy Theory, and American Constitutionalism* (Madison WI: State Historical Society of Wisconsin, 1968).
[43] Rowland Berthoff, “Conventional Mentality: Free Blacks, Women, and Business Corporations as Unequal Persons, 1820-1870,” *The Journal of American History* 26, no. 3 (1989): 753–84.
[44] Thomas G Hansford and James F. Spriggs, *The Politics of Precedent on the U.S. Supreme Court* (Princeton: Princeton University Press, 2006).

activity that is not prohibited by that charter. However, the risks are carried by the natural person citizens that are holders of shares as a form of investment, the providers of credit to that corporate entity, and increasingly, by taxpayers in the form of 'bail outs' or environmental rehabilitation. The life of the corporate form is essentially expendable.

Increasingly, discourse is challenging the both role and the influence held by the corporation in modern society. Charles Derber argues that the US is being governed by; "…a corpocracy… a marriage between big business and big government that turns a formally democratic government into a vehicle for corporate ends".[45] Gary Brumback goes further by postulating that: "…any sense we might have that we live in a democracy is an illusion, and that major changes in the relationship between government and business will have to occur if we are ever to fulfil the dreams of our Founding Fathers".[46] Alexis de Tocqueville noted that while the Founding Fathers imposed limits on democracy, they made it very clear how "…the laws of democracy [must] emanate from the majority of citizens".[47] However, de Tocqueville's understanding preceded the rise of wealthy and powerful corporate sector organizations.

David Jacobs noted both the US Chamber of Commerce (USCC) and the National Association of Manufacturers (NAM) [48] are: "… particularly sensitive to the concerns expressed by a powerful (wealthy) minority of their diverse memberships." It is this minority that has the greatest influence due to the money

[45] Charles Derber, *Regime Change Begins at Home: Freeing America from Corporate Rule* (San Francisco: Berrett-Koehler, 2004).
[46] Gary Brumback, *The Devil's Marriage: Break Up the Corpocracy or Leave Democracy in the Lurch* (Bloomington, IN: Authorhouse, 2011).
[47] Harvey C. Mansfield and Delba Winthrop, eds., *Alexis de Tocqueville Democracy in America (1835-1840)* (Chicago: Chicago University Press, 2000).
[48] NAM has an estimated 14,000 manufacturer members at the time of writing and is politically active across spheres including Congress, Agencies, and the Court, as well as the Executive "National Association of Manufacturers," 2014, http://www.nam.org/ [accessed 20 December 2014].

they have to support action that that minority deem beneficial.[49] These members are the big corporations. This is supported by economist Mancur Olsen who noted that: “A number of very large businesses will gain or lose so much from changes in national policy that they will find it expedient to make significant contributions.” Olsen also states that NAM; “…is, in practice, supported and controlled by a handful of really big businesses”.[50] This is further supported by an evaluation of the boards of these two organizations and their statements over many decades. They are extremely conservative in culture and have strong alliances with the Republican Party and more recently with the Tea Party.

In the late 1930s, “NAM used one of the earliest versions of a modern multi-media public relations campaign to promote the benefits of capitalism and to combat the policies of President Roosevelt”.[51] NAM made efforts to undermine organized Labor in the United States before the New Deal [52] and lobbied successfully for the 1947 *Taft-Hartley Act* that restricted the power of trade unions.[53] In the modern period, the cross-relationship is not obvious and requires an intensive investigation of the share register to evaluate cross ownership. However, the cross-relationship at the board level is more visible with the names of many directors showing up on the boards of multiple corporations.[54]

William Blackstone found that corporations could be included within the definition of legal persons arguing that legal persons included both natural and artificial persons. He argued that: ‘Natural persons are such as the God of nature

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[49] David C.D. Jacobs, *Business Lobbies and the Power Structure in America: Evidence and Arguments* (Westport, CT: Quorum Books, 1999).
[50] M. Olsen, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965).
[51] Burton III St. John, *Press Professionalization and Propaganda: The Rise of Journalistic Double-Mindedness, 1917-1941* (Amherst, NY: Cambria Press, 2010).
[52] Larry J. Griffin, Michael E. Wallace, and Beth A. Rubin, “Capitalist Resistance to the Organization of Labor Before the New Deal: Why? How? Success?,” *American Sociological Review* 51, no. 2 (1986): 147–67.
[53] Anna McCarthy, *The Citizen Machine: Governing by Television in 1950s America* (New York: The New Press, 2010).
[54] For an example, see Appendix 5

formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic'.[55] Blackstone articulated what was slowly becoming a reality, although the Founding Fathers feared the rise of corporations such as the East India Company. Corporations were on the rise and were beginning their assent as legal persons as the fledging American nation came of age.

By the end of the Gilded Age, real person theory which taught that the corporate person should be considered in the same light as a natural person for legal matters was firmly accepted by the courts and legal theorists. The debate over legal corporate personhood largely withered away while new scholarship provided by Adolf Berle and Gardiner Means turned the study of corporations in a new direction. They documented that as of January 1st 1930, the 200 largest American business corporations (excluding banks) possessed assets in excess of $81 billion; this representing 49 percent of all corporate wealth in America.[56] Berle and Means established that there had been a fourfold increase in the number of people owning corporate stock between 1900 and the beginning of the Great Depression. Unlike previous scholarship, Berle and Means assumed the power and permanence of the corporation and did not bother to explain the political and social justification of the corporate autonomy. Instead, Berle and Means focused on the structure of the corporation explaining that the corporation is composed of various groups including the board of directors, professional managers, and the stockholders they considered the owners.[57]

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[55] William Blackstone, *Commentaries on the Laws of England* (London: Christian, Chitty, Lee, Hovenden, and Ryland Publishers, 1832), Book 1, Chapter 1.

[56] This should be compared to the US GDP for 1930 which was $91.2 billion (1930 $)

[57] Berle and Means, *The Modern Corporation and Private Property*. The property owner who invests in a modern corporation so far surrenders his wealth to those in control of the corporation that he has exchanged the position of independent owner for one in which he may become merely recipient of the wages of capital... [Such owners] have surrendered the right that the corporation should be operated in their sole interest..."

Accordingly, the hallmark of the modern corporation was the fragmentation of accountability and legal liability among these groups. This led to the conclusion that there is no discernible mind or conscience within the corporation. This was a startling conclusion for moral theorists who were beginning to take note of the rising power of the corporate person.[58] Although legal theories of the corporate personhood were dormant, the work of Berle and Means ignited scholarship by philosophers concerned with the moral justification of the corporate person.

The concept of positional or institutional duties is not new. In '*A Theory of Justice*', John Rawls describes the duties attached to any public office "not as moral duties but as tasks and responsibilities assigned to certain institutional positions".[59] Similarly, John Simmons defines them as "tasks or performances which are intimately connected with some particular office, station or role which an individual can fill".[60] Unlike natural duties, that is, moral requirements which apply to all men irrespective of status or of acts performed, positional duties do not carry any moral weight in themselves. Within liberal democracies, the positional duties of partisanship are of two kinds. First, there are certain legal obligations of partisanship; that is those imposed by party policy or rules. The latter can be derived from the main constitutional texts and other constitutional legislation, party policy, those laws and regulations that govern elections; electoral laws, campaign regulations, congressional organization, political finance, other political activities

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[58] Richard A Sabatino, "The Responsible Corporation," *American Journal of Economics and Sociology* 25, no. 3 (1966): 255–66. See also: Forest G. Hill, "Veblen, Berle, and the Modern Corporation," *American Journal of Economics and Sociology* 26, no. 3 (1967): 279–95; Walter Werner, "Management, Stock Market, and Corporate Reform: Berle and Means Reconsidered," *Columbia Law Review* 77, no. 3 (1977): 388–417; David Vogel, "The Corporation as Government: Challenges & Dilemmas," *Polity* 8, no. 1 (1975): 5–37; Thomas Donaldson, *Corporations and Morality* (Englewood Cliffs, NJ: Prentice-Hall, 1982); Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984).

[59] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 2009).

[60] John Simmons, *Moral Problems and Political Obligations* (Princeton, New Jersey: Princeton University Press, 1981).

and/or laws that regulate the activities of voluntary organizations in a more general sense.

The popularity of voluntary charitable organizations in the US, were able to fill the gap in social welfare programs where the young Government's efforts proved insufficient. Another suggestion is that many early Americans embraced charitable organizations over Government programs because, as Lester Salamon argues, they feared "…the rebirth of monarchy or bureaucracy".[61] The privileged tax treatment that the Government grants to charitable and member-serving organizations can be traced to the earliest versions of United States tax law. In general, however, those early exemption provisions were notable for their broadness and lack of specificity. As legal scholars Boris Bittker and George Rahdert have observed, non-profit organizations of many different kinds were "lumped together and exempted from tax as though fungible members of an undifferentiated mass".[62] This includes organized political and non-political organizations. For example: Internal Revenue Code (IRC) §501(c)(6) exempt organisations include "business leagues, chambers of commerce, real estate boards, boards of trade, and [oddly] professional football leagues".[63]

Rodney Smith states categorically that money matters. He argues the legislation today is less restrictive on political money than it was historically. Smith also suggests that incumbents have a greater likelihood of re-election due to the influence of political money which greatly diminishes the chances of candidates who do not have the support of significant funding. This is supported by the evidence he produces that demonstrates unequivocally that those who lack the

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[61] Lester M. Salamon, *America's Nonprofit Sector: A Primer* (New York: The Foundation Centre, 1992).
[62] Boris I. Bittker and George K. Rahdert, "The Exemption of Nonprofit Organizations From Federal Income Taxation," *Yale Law Journal* 85 (1976): 299–358.
[63] John Francis Reilly, Carter C. Hull, and Barbara A. Braig Allen, *IRC 501(c)(6) Organizations. IRS Exempt Organizations-Technical Instruction Program for FY 2013* (Washington: Internal Revenue Service, 2013).

financial resources to buy media time and space are effectively silenced. Smith argues that the lack of effective campaign finance reform has unwittingly unbalanced the checks and balances written into the constitution.[64]

Alexander Meiklejohn is both at odds with Smith but also in part, in agreement. He argues that the First Amendment requires that not all voices should be heard, but "… everything worth saying shall be said".[65] Meiklejohn's theory postulates that the concentrations of wealth that limit access to media should be remedied by legislation. This is supported by Stephen A Gardbaum who argues that restricting dissemination from what he refers to as "important voices within the community", the role of Government is to enhance the voice of the less wealthy or minorities to ensure that "Citizens hear and consider all relevant viewpoints".[66] However, a key difference between Gardbaum and Meiklejohn appears to be their understanding of the relationship between a functioning democracy and freedom of expression. This is articulated very well by Paul Stern. Stern suggests that one of the contemporary criticisms is that the scope of the free speech argument is generally restricted to political speech and does not easily extend to other traditionally protected speech as art and literature.[67] This is supported by Robert Reich who argues that representative government requires an active and on-going debate that legitimizes the positions taken by the elected representatives. Reich argues that while Meiklejohn's theory is optimistic and pragmatic, it fails to provide

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[64] Rodney A. Smith, *Money, Power and Elections: How Campaign Finance Reform Subverts American Democracy* (Baton Rouge LA: Louisiana State University Press, 2006).
[65] Alexander Meiklejohn, *Political Freedom: The Constitutional Power of the People* (Westport, CT: Greenwood Press, 1960).
[66] Stephen A. Gardbaum, "Broadcasting, Democracy and the Market," *Georgia Law Journal* 82 (1993): 373–96.
[67] Paul G. Stern, "A Pluralistic Reading of the First Amendment and Its Relation to Public Discourse'," *Yale Law Journal* 99, no. 4 (1990): 925–44.

a coherent definition that defines a legislative protection for political speech against speech that is unrelated to politics.[68]

Michel Rosenfeld argues that the legitimacy of law can only be measured from the perspective of a group of strangers who reciprocally identify with one another as equals, and as a consequence, mutually participate in a communicative act to create a legal order to which they all accord their unimpeded compliance.[69] This concept can be traced back to Plato, who demonstrated that collectives arise naturally as individuals realize that they cannot survive independently but instead must rely on a division of labour to provide all the necessary goods and services in a community.[70] This is in concurrence with Jürgen Habermas[71] who garners support from Gunther Teubner and Max Weber, among others, to expand the notion of Discourse Theory.

Because the US is a Federal Republic, political power is constitutionally apportioned between the Federal government and the State governments. Daniel Elazar, characterized federalism as: "…the mode of political organization that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both".[72] This suggests that basic policies should be made and implemented through a process of negotiation that involves all policies concerned, and that federal system enables all to share in the overall system's decision-making and executing processes. Therefore, federalism can be demonstrated as a form of political assimilation through the compounding of

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[68] Robert B. Reich, *Locked in the Cabinet* (New York: Alfred A Knopf, 1998).
[69] Michel Rosenfeld, "Can Rights, Democracy, and Justice Be Reconciled Through Discourse Theory? Reflections on Habermas's Proceduralist Paradigm of Law," *Cardozo Law Review* 17 (1996 1995): 791–824.
[70] G.R.F. Ferrari, ed., *The Republic by Plato* (Cambridge: Cambridge University Press, 2000).
[71] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehq (Cambridge, MA: MIT Press, 1996).
[72] Daniel J. Elazar, *American Federalism: A View From the States* (Hammersmith: Harper Collins, 2005).

political systems that endure as an approach to political activity that requires an extension to infinite complaisant interactions.

Christian Fritz defines people (without differentiating between natural and corporate persons) as: "…the sovereign whose written constitution grants and guides the legitimate exercise of government authority." This suggests that the people (natural persons) are the legitimate rulers of their nation. This is supported by the argument that people's sovereignty is the theory and practice of associating written constitutions with the government they create with 'the people'.[73] Given this, the clarification of what is a 'person' in relation to corporate personhood defies reason in academic discourse and minds of the majority of US natural person citizens.

Political scientist Westel Willoughby argued:

> It is unfortunate that the word 'person' as a technical term, should have found lodgement in jurisprudence, for the idea connoted by it is quite distinct from the meaning attached to it by the moralist or psychologist, and, the difference not being steadily kept in mind, much confusion of thought has resulted.[74]

Bryant Smith concurred suggesting that: "…most of the confusion of thought with respect to the subject comes from the disposition to read into legal personality the qualities of natural human personality".[75] Both Willoughby and Smith are correct in stating that the meaning attached to 'person' by a moral theorist, or a psychologist, or even the average citizen who is accustomed to thinking about a natural person is quite different from a legal definition, and the difference must be kept in mind when considering how personhood is applied.

[73] Christian G Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge: Cambridge University Press, 2008).
[74] Westel Woodbury Willoughby, "The Juristic Conception of the State," *The American Political Science Review* 12, no. 2 (1918): 192–208.
[75] Bryant Smith, "Legal Personality," *The Yale Law Journal* 37, no. 3 (1928): 283–99.

In an attempt to reconcile the long standing concerns relating to persons and 'other', John Dewey argued that:

> The root difficulty in present controversies about natural and associated bodies may be that while we oppose one to the other, or try to find some combining union of the two, what we really need to do is overhaul the doctrine of personality which underlies both of them.[76]

This almost leads Dewey into the realms of legal positivism, but his rejection of aspects of that concept has placed him outside contemporary legal positivism discourse.

Members of the legal positivism school of thought argue that the ascription of legal personhood to the corporation is a simple cut and dry matter of assigning a particular legal status without any connections to ethics or morality. While the most important roots of legal positivism lie in the conventional political philosophies of John Austin, Jeremy Bentham and Herbert L.A. Hart, it is Leslie Green that provides us with the most relevant description. He stated: "Whether a society has a legal system depends on the presence of certain structures of governance, not on the extent to which it satisfies ideals of justice, democracy, or the rule of law". [77] This suggests that laws are part of a system which depends on what community values its representatives accept as authoritative. These may include: legislation, regulation, judicial decisions and cultural customs; essentially, what are accepted norms. If a law is considered just or prudent, it is never sufficient reason to think that it is actually the law. The antithesis being if a law is considered unjust or imprudent, it is never sufficient reason for doubting that it is

[76] Anne S. Sharpe, ed., *John Dewey, the Collected Works, 1882-1953* (Carbondale: Southern Illinois University Press, 1991).

[77] Leslie Green, "Law and Obligations," in *The Oxford Handbook of Jurisprudence and Philosophy of Law* , edited by Jules L Coleman, Kenneth Einar Himma and Scott J Shapiro (Oxford: Clarendon Press, 2004), 514–47.

actually the law. Therefore, according to legal positivism, law is a social construct.[78]

Ronald Myles Dworkin subsequently challenged Green and other legal positivists by advocating that the Constitution should be applied in a moral context; the Court should apply the Constitution consistently and based on the morals of justice and fairness.[79] This, Dworkin argued, would demonstrate integrity of the law and of society. The Roberts Court appears to be taken a conservative path in interpreting the Constitution.

At the heart of the conflict between the concepts of conservatism, neo-liberalism and constitutionalism is the subjective interpretation of the rule of law. In neo-liberalism, Rachel Turner argues, the powers held by government must be subservient to the rule of law that is the foundation of the constitution. For neo-liberalism, the rule of law is crucial to the proper functioning of the market as it prevents government from restricting or limiting individual incentives to pursue individual ends or desires. This is in stark contrast to the liberal political ideal of the rule of law with collectivist and arbitrary market modelling.[80] However, neo-liberalism's inflexible concept of a government bound by the law and embedded in the rule of law, appears to create contradictions and challenges to the concept. This clearly indicates the confusion between what may be considered as conservatism; a political concept, and neo-liberalism; an economic concept. Certainly recent opinions from the Court have attempted to interpret the Constitution from a conservative perspective, which places restrictions on what the

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[78] Ibid.

[79] Ronald Myles Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge, MA: Harvard University Press, 1997).

[80] Rachel S. Turner, "Neo-Liberal Constitutionalism: Ideology, Government and Rule of Law," *Journal of Law and Politics* 1, no. 2 (2008): 47–55.

Government may regulate; this in turn offers opportunity for the market, the corporate sector, to follow the neo-liberal path.

While that court effectively ended legal debate on the matter of corporate personhood, the matter is not so simple. With the bestowal of legal personhood, it became conceivable to many theorists that corporations may have a claim to moral personhood. Business Ethicist Thomas Donaldson argues that: "… in the majority the general public perceives the corporation to be a moral entity because the public recognizes an irrefutable characteristic of morality in the corporation, that of the duty to acknowledge and abide by norms and laws".[81] This is confirmed by CIGT which accepts that CSR is an accepted corporate norm.

As large influential entities that can make significant impact on the course of human events, corporations are perceived as moral agents just like individual persons who are moral agents.[82] The recognition of a corporation as a moral agent causes anger among people who feel corporations are too influential, with some activists who argue that corporations are too influential as moral actors, blame that enormous power of corporations on their status as persons.[83] The argument is centred on granting legal personhood effectively grants corporations all the rights and privileges that should only be granted to individual human persons under the Constitution.

As a consequence, there is a small but vocal grassroots movement to revoke the corporation's legal status as a person as a first step in controlling the

[81] Donaldson, *Corporations and Morality*, p 1.

[82] Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979): 207–15. For example, the general public blames British Petroleum for the massive oil spill in the Gulf of Mexico and demands recompense from the corporation rather than blaming the individual stockholders, the workers on the oil well, or the local management. The other end of the scale is corporations such as The Body Shop. The Body Shop is regarded as a pioneer of modern corporate social responsibility as one of the first companies to publish a full report on its efforts and initiatives.

[83] Thom Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights* (Emmaus PA: Rodale Press, 2002).

power of large companies. Thomas Hartmann and many others, including supporters of 'Reclaim Democracy' have taken the position that: "…by calling corporations' persons, the public have been deceived into believing that corporations are legitimate contenders for the status of person with rights". They argue that granting corporations the status of legal persons, effectively "…rewrites the US Constitution to serve corporate interests as though they were human interests".[84] Move to Amend argues that when the US Supreme Court decided for corporations in the *Citizens United* "… it elevated knowledge of the doctrine of corporate personhood to new heights".[85] In the *Citizens United* ruling in 2010, Justice Stevens in dissent argued that:

> Corporations have no consciences, no beliefs, no feelings, no thoughts, [and] no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their 'personhood' often serves as a useful legal fiction. But they are not themselves members of 'We the People' by whom and for whom our Constitution was established.[86]

Move to Amend argues that corporate personhood was 'concocted' by corporate lawyers 129 years ago. In *Santa Clara* the Court is said to give corporations the first foothold in the Constitution. Move to Amend challenges the Court to amend this case as a precursor to challenges on later cases that used *Santa Clara* as a precedent.[87] This is part of a wider grass-roots movement to encourage the US natural person citizenry to take ownership of their personhood.[88] Virginia Harper Ho goes some way to describing the attributes of the modern corporation.

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[84] Reclaim Democracy, "Corporate Personhood," 2010, http://reclaimdemocracy.org/corporate-personhood/[accessed 24 November 2011].
[85] Move to Amend, "May 10th, 2013 Day of Action Against Corporate Personhood," 2013, https://www.movetoamend.org/May10, [accessed 11 May 2013].
[86] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).
[87] Move To Amend, "Santa Clara v. Southern Pacific Railroad,"2011, https://movetoamend.org/, [accessed 18 May 2011].
[88] Thom Hartmann, *Rebooting the American Dream: 11 Ways to Rebuild Our Country* (San Francisco: Berrett-Koehler Publishers, 2010).

However, there are aspects of the modelling based on law that do not reflect the actualities of a 21st century corporate entity. As a method to bring US corporate law, particularly Delaware corporate law, up to date, it shines a bright light. However, for this work to be considered as ground-breaking, it would need to be removed from its insulated silo and exposed to other disciplines. [89]

Peter Linebaugh, in chapter eight of his monograph, considers the *Magna Carta* and the Supreme Court. The US began as what Linebaugh describes as a 'bourgeois republic'. Therefore, the *Magna Carta*, well known before the colonial period, had great relevance.[90] The relationship between the Constitution and the Bill of Rights, and the *Magna Carta* is clear and succinct. Of relevance to this paper, is the relationship that Linebaugh articulates between the *14th amendment* and the *Magna Carta* with regard to ownership of property. Arguably, this is behind *Santa Clara* where the term personhood was stated as an opinion of the Supreme Court.

The US judicial system is premised in part on the principle of '*stare decisis'*, which is the norm of requiring that the Justices follow precedent. As *Publius*, Alexander Hamilton wrote "[judges] should be bound by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them".[91] Thomas Hansford and James Spriggs argue that: "A Supreme Court decision contains two commonly recognized outcomes". These are the disposition of the case and the legal principle on which the disposition is based. Hansford and Spriggs suggest that political scientists, legal scholars and

[89] Virginia Harper Ho, "Theories of Corporate Groups: Corporate Identity Reconceived," *Seton Hall Law Review* 42 (2012): 879–992.

[90] Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (Berkley, CA: University of California Press, 2008) The importance of the *Magna Carta* to the US is best exemplified by the fact an original is on display in Washington DC next to an original of US Constitution.

[91] Publius, *Federalist 78*, 1788, http://thomas.loc.gov/home/histdox/fed_78.html, [accessed 30 January 2013].

practicing lawyers alike, recognise that precedent is one of the central components of the US legal system. They define precedent as: "…legal doctrines, principles, or rules established by prior Court opinions".[92] However, the Court rarely defines a doctrine or principle in a complete manner in one ruling; there is often an evolution through several opinions to which shape or clarity of a doctrine or principle occurs. Through this process, Justices endeavour to create legal policy that will positively influence legal and extra-legal outcomes in a considered manner. This is supported by Supreme Court Justice Fred M. Vinson when he wrote in 1949: "What the Court is Interested in is the actual, practical effect of the disputed decision; its consequences for other litigants and in other situations".[93] Martin Van Hees and Bernhard Steunenberg challenge Vinson by suggesting that: "Justices' need to legitimise their policies; Precedent can limit their flexibility or discretion".[94]

Lawyers presenting *stare decisis* recognise this aspect, and utilise this in presenting their perspectives of precedent to the Court in subsequent cases. In any given case, there may be a diverse number of legally defensible positions, thus the concept of precedent may not subscribe to, or result in, a particular outcome. As the lower Courts are expected to follow precedents set by the Supreme Court; "…this norm provides the Court with an opportunity to influence broadly policy outcomes".[95] This would suggest that without *stare decisis* as a normative value, precedent would be less meaningful and the Courts ability to act as a significant policy maker would be diminished considerably.

Of relevance to this thesis, is an understanding of how the nomination process in Congress operates and how outcomes are influenced. In addition to the

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[92] Hansford and Spriggs, *The Politics of Precedent on the U.S. Supreme Court*.
[93] Fred M. Vinson, "Work of the Supreme Court," *Texas Bar Journal* 12 (1948): 551–78.
[94] Martin van Hees and Bernard Steunenberg, "The Choice Judges Make: Court Rulings, Personal Values, and Legal Constraints," *Journal of Theoretical Politics* 12 (2000): 305–23.
[95] Hansford and Spriggs, *The Politics of Precedent on the U.S. Supreme Court,* p. 22.

wealth of evidence contained in Congressional Records, Nancy Scherer *et al* suggest lobbying tactics employed by the corporate sector to influence judicial selections are a mixture and relational use of different strategies regardless if a nomination is to the Supreme Court or for a nomination to the lower federal courts.[96] Gregory A. Caldeira *et al* concur but suggest that the intensity of the methodologies employed does appear to vary according to the importance of the office and the ideology of the Senate majority.[97] In a non-specific analysis of why, but more particularly how, Barry Friedman provides a detailed examination on how the Court has been 'stacked' by Conservative Presidents in particular, ably supported by a compliant Congress.[98] While this broad area must be considered significant, literature that analyses why the corporate sector influences the judicial nomination process, as opposed to how, is limited. Jeffery H Birnbaum writes eloquently about what he refers to as 'legal bribery'[99] with Thomas Gaia writing extensively about Campaign Finance issues and inequality,[100] and Mark Green providing a long list of how the corporate sector influences outcomes in Congress.[101] However, the 'why' is rarely touched upon, if ever.

Any conversation on Constitutional Law must acknowledge the lifelong work of John Nowak and Ronald Rotunda. The 8th edition of 'Constitutional Law' is the foundation on which all legal interpretation and understanding is held to account

[96] Nancy Scherer, Brandon L. Bartels, and Amy Steigerwalt, "Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process," *The Journal of Politics* 70, no. 4 (2008): 1026–39.
[97] Gregory A. Caldeira, Marie Hojnacki, and John R. Wright, "The Lobbying Activities of Organized Interests in Federal Judicial Nomination," *The Journal of Politics* 62, no. 1 (2000): 51–69.
[98] Gary Friedman, *The Will Of The People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution* (New York: Farrar, Straus and Giroux, 2009).
[99] Geoffrey H. Birbaum, *The Money Men : The Real Story of Fund-Raining's Influence on Political Power in America* (New York: Crown Publishers, 2000).
[100] Thomas Gaia, *Improper Influence: Campaign Finance Law, Political Interest Groups, and the Problem of Equality* (Ann Arbor, MI: University of Michigan Press, 1998).
[101] Mark Green, *Selling Out: How Big Corporate Money Buys Elections, Rams Through Legislation, and Betrays Our Democracy* (New York: Harper Collins, 2002).

by this thesis.[102] Not being a reader of law has challenged this writer, with the task of reading and understanding literally thousands of pages of legislation, policy determinations and Court rulings beyond the scope of the remit. The 1800 page single volume treatise by Nowak and Rotunda has provided a level of comprehension for this natural person who commenced this journey illiterate in the craft of Constitutional Law.

While the literature referred to in this review is not exhaustive, it covers key literature that have contributed to an understanding of the broader topic areas and context to which the respective chapters have been crafted. The bibliography will demonstrate the literature recorded here as well as other literature that has contributed to this thesis.

[102] John E. Nowak and Ronald D. Rotunda, *Constitutional Law*, 8th ed. (St Paul, MN: West Publishing, 2010).

Chapter 3: Influence Defined

Politics is supposed to be the second oldest profession. I have come to realize that it bears a very close resemblance to the first.

Ronald Reagan [103]

This chapter defines the application of influence; in particular, corporate influence over legislative, regulatory and judicial decision making. While contemporary discourse provides various definitions, the concept of power is defined to specifically address how the corporate sector orchestrates outcomes beneficial to its requirements. In addition, the confluence between corporate voice and that of its board and senior executives; natural persons, is rarely considered. Therefore, in order to create a different approach, contemporary discourse must be reconsidered. Contemporary political discourse; traditional theories on influence, reside in a silo where related concepts from other disciplines are rarely considered. Therefore, the concepts of social exchange theory, reciprocal altruism, beneficial narcissism and self-interest will be introduced as contributory components of influence. This can be argued as promoting Influence from a concept to that of a theory in relation to this topic area. However, proving this theory would require testing against areas outside of this thesis.

Corporate structures operate in what must be considered a 'strategically selective' manner, establishing incentives or disincentives or other rationales that may lead elected representatives and/or government agencies to favour certain developments or choices over others. Typically, structural factors can be considered as the result of embedded historical processes; they arguably form a broader background context in which specific institutions operate. In dealing with

[103] Ronald Reagan, *Transcript of Remarks to a Corporate Sector Conference* (Simi Valley, CA: Ronald Reagan Presidential Library, 1977).

dialectic interactions between corporate sector structures, elected representatives and institutional structures such as government agencies, the approach here considers the work of Margaret Archer who postulates agents, institutions, and structures as being analytically distinct in the sense that each has properties that are not simply reducible to the other at any given point in time.[104] Stephen Bell extends this ideation by arguing agents, institutions, and structures operate in a dialectical, mutually constitutive relationship over time with institutional and structural effects as ultimately mediated and actualized by agency.[105] Through this, Archer is accepted in part but also challenged by Bell who contends that it is generally accepted that the classic arguments regarding the 'structural power' of business are too 'structuralist'.[106] Consequently, contemporary research has focused on an increasingly diverse array of independent variables that shape the variability of such power.

However, the notion of structural power is often in conflict with the notions of normative power and how realists perceive the notion of power.[107] Furthermore, it fails to address how the application of power is influenced or by what means. This shortfall is typified by Stephen Ball who argues "The ideas and the ideational processes through which government leaders construct threat perceptions regarding structural power can be important in mediating such power".[108] Similar

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[104] Margaret Archer, *Structure, Agency and the Internal Conversation* (Cambridge: Cambridge University Press, 2003), pp 127-128. See also Stephen Gill and David Law, "Global Hegemony and the Structural Power of Capital," *International Studies Quarterly* 33, no. 4 (1989): 475–99.
[105] Stephen Bell, "How Governments Mediate the Structural Power of International Business," in *The Handbook of Global Companies*. edited by John Mikler (Hoboken, NJ: Wiley and Sons, 2003), 113–33; Mattias Vermeiren, "The Crisis of US Monetary Hegemony and Global Economic Adjustment," Globalizations 10, no. 2 (2013): 245–59.
[106] Stephen Bell, "Do We Really Need a New 'Constructivist Institutionalism' to Explain Institutional Change?" *British Journal of Political Science* 41, no. 4 (2011): 883–906.
[107] Margaret Archer, Realist Social Theory: The Morphogenetic Approach (New York: Cambridge University Press, 1995). See also Colin Hay, "Globalisation and Public Policy," in *Oxford Handbook of Public Policy*. edited by Martin Rein, Michael Moran, and Robert Goodin (Oxford: Oxford University Press, 2006), 587–606.
[108] Stephen Ball, "The Power of Ideas: The Ideational Shaping of the Structural Power of Business," *International Studies Quarterly* 56, no. 4 (2012): 661–73.

literature argues that power shapes ideas and disciplines target subjects. In the context of 'financial power' in the US, Martijn Konings argues;

> "The notion of structural power is meant as a shift away from the conventional focus on the direct dimensions and empirically observable qualities of power relations: it expresses the idea that powers also operates in a more indirect and diffuse way, for instance, through shaping preferences and influencing the structural conditions under which other actors make decisions".[109]

While this position tends to ontologise the distinction between Government and the corporate sector, it lends support to the thesis argument that the power of corporate interests is well placed to influence government policy.[110] However, the notion of the application of influence is assumed and not defined clearly in numerous accepted descriptors or theories.

David Hart argues that existing interest group frameworks do not work. This argument is based on the notion that a business is not an interest group.[111] In contradiction, I argue that a framework of corporate influence is a necessity for developing a theory that best encapsulates Corporate Interest and offer evidence to support this claim. Traditional disciplinary subfields most suited to such issues, have often understood corporations as working similarly to interest groups and have not sought understanding of the unique position corporations hold in politics, economics and society. Moreover, contemporary interest group theories, due to a tendency of a focus upon a single potential avenue of influence, lack a central explanatory framework. Therefore due to an excessive focus on analytical rigour,

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[109] Martijn Konings, "The Construction of US Financial Power," *Review of International Studies* 35, no. 1 (2009): 69–94.

[110] Colin Scott, "Privatization and Regulatory Regimes," in *Oxford Handbook of Public Policy*. edited by Martin Rein, Michael Moran, and Robert Goodin (Oxford: Oxford University Press, 2006), 651–68.

[111] David Hart, "'Business' Is Not an Interest Group: On the Study of Companies in American National Politics," *Annual Review of Political Science* 7, no. 1 (2004): 47–69.

contemporary interest group theories ignore a multitude of conceptual questions required to underpin such rigour.[112] This is problematic.

David Lowery and Virginia Gray go further by arguing interest group research has adopted methodologies and an ill-informed approach unsuitable to the questions that originally motivated discourse in this field of discovery.[113] Additionally, wide ranging discourse over many decades has been based upon the notion of corporate power being analogous to greater financial resources. This has contributed to the "easy assumption, so often made by journalists and activists, that campaign contributions purchase Congressional votes".[114] This simplistic approach, while considered populist and commercial, fails to acknowledge that corporate influence is remarkably complex; it must be considered irreducible to one causal mechanism, contingent upon innumerable circumstances and must be grounded on the ideational structure of society. In order to evaluate the interrelated concepts of power and influence in the corporate sector, it is first necessary, to define power.

Power is defined as, the ability or capacity to do something or act in a particular way; in the context of corporate power, the capacity or ability to direct or influence the behaviour of others or the course of events.[115] Based on this definition, I analytically subdivide power into visible, hidden and invisible forms. Visible power can be defined as the functions of an actor within society; hidden power relates to manoeuvres and agenda setting of an actor, and invisible power

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[112] Roland M. Czada, "Interest Groups, Self Interest and the Institutionalization of Political Action," in *Institution and Political Choice: On the Limits of Rationality*. edited by Roland M. Czada, Adrienne Heritier and Hans Keman (Amsterdam: VU Press, 1991), 229–56.

[113] David Lowery and Virginia Gray, "A Neopluralist Perspective on Research on Organized Interests," *Political Research Quarterly* 57, no. 1 (2004): 164–75.

[114] Timothy Werner and Graham Wilson, "Business Representation in Washington DC," in *Oxford Handbook of Business and Government* edited by David Coen, Wyn Grant, & Graham Wilson. (Oxford: Oxford University Press, 2012), 261–84.

[115] John Gaventa, "Finding the Spaces for Change: A Power Analysis," *Institute of Development Studies Bulletin* 37, no. 6 (2011): 23–33.

to the supportive discourses that provide a structure that empowers the actor and that the actor utilise.

By analysing each element singularly or inter-relatedly, an understanding of power permits the development of several different perspectives which can be reconciled and thereby facilitate an understanding of how forms of power interact and reinforce each other. It is only when an understanding of how these forms of power interact at a corporate level; when decision making processes and resulting corporate actions as an ever changing mix of perspectives are defined, can an understanding of corporate interests and resultant influence become viable.

I argue that *money is power is influence*; this being the basis on which influence is defined. Influence as defined is an essential component of key aspects of *CIGT*. These being: "…the government is a desirable extension of corporate influence," and "…the right and responsibility of the elite to have considerable influence over the US political economy".[116]

Persuasion

The influence of a person or persons, be them natural or corporate, requires various forms or levels of persuasion. Persuasion is a powerful force in daily life and has a major influence on society today as a whole. Politics, legal decisions, mass media, news and advertising are all methodologies employed to influence us, to persuade us to act in a particular way. Persuasion has been defined as a: "...symbolic processes in which communicators try to convince other people to change their attitudes or behaviours regarding an issue through the transmission of a message in an atmosphere of free choice".[117] Persuasion is also

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[116] See Appendix 1

[117] Richard M Perloff, *The Dynamics of Persuasion: Communication and Attitudes in the Twenty-First Century* (New York: Routledge, 2010).

symbolic; it is a causal mechanism that utilizes words, images, and sounds to shape and reinforce a causal effect.[118] The causal mechanisms employed will likely include the various forms of media with the multiplex of information potentially drowning out the listener and also those with less of a voice. This is a deliberate attempt by a minority to influence the majority. The subsequent result is self-persuasion; a seemingly magic key where people are not overtly coerced, but are instead orchestrated to choose freely in a particular direction.[119] Complex studies centred around what is referred to as the "Electronic Imperative"[120] have been reinforced by media sector research that demonstrated the average US citizen spends 8 hours per day on a screen.[121] Further evidence of this homogenization suggests that the number of intentionally persuasive announcements the average US adult is exposed to each day ranges between 300 and 3000, and that contemporary persuasion has become more subtle.[122]

Moneyed corporations, and their organisational structure, permit cost-effective marketing time and expertise in a diverse range of formats. When this is applied to the biennial election cycle, corporations exercise significantly greater influence on the perceptions of rank and file voters than less wealthy groups and individuals whose arguments are drowned out. Political funding, most of it from the corporate sector, plays an increasing role in winning elections. Despite conflicting assertions, funding does not come without obligations. Funding plays a particularly

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118 James Price Dillard and Michael W Pfau, *The Persuasion Handbook: Developments in Theory and Practice* (Thousand Oaks: Sage Publications, 2002).

119 Don M. Burks, "Persuasion, Self-Persuasion and Rhetorical Discourse," *Philosophy & Rhetoric* 3, no. 2 (1970): 109–19, doi:10.2307/40236711, [accessed 10 December 2014].

120 Arthur Asa Berger, *Media and Society: A Critical Perspective*, 3rd ed. (Lanham, MA: Rowman & Littlefield Publishers, 2012).

121 Brian Stelter, "Eight Hours a Day Spent on Screens, Study Finds," *The New York Times*, March 27, 2009. This article is based on a study by the Council for Research Excellence, a media sector funded think tank, established by Neilson Media Research, to provide research to member organizations. See http://www.researchexcellence.com/ [accessed 2 January 2015].

122 Richard M Perloff, "Perceptions and Conceptions of Political Media Impact: The Third-Person Effect and Beyond," in *The Psychology of Political Communication,* edited by Ann N Crigler (Ann Arbor, MI: University of Michigan Press, 1996), 177–97.

disproportionate role in the election of Senators and House members. As election outcomes can be argued as less than beneficial to the broader natural person citizenship, many natural persons have become increasingly marginalised with the mass denial of sovereignty a causal effect of corporate influence.

As the broader community is increasingly diverse, persuasion has become more complex with persuasion professionals adopting innovative methods to effectively disseminate their message. In situations where direct Congressional influence has not had a desired outcome, organisations may be inclined to employ the majority of their short-term future political investments to deter agencies once legislation is in place. Evidence from numerous sources clearly identifies policy challenged in the Court has become a successful tool in the arsenal at the disposal of organizations.[123] This multi-pronged methodology employed by organizations can divide the allocation of expenditure between legislators and agency policy makers; this creating an incentive to reduce the stringency of that legislation and/or agency policy.[124] At the same time, the allocation of expenditure affects the potency in application of legislation; it may constrain the scope of an agency's authority, which in turn shapes the interaction between Congress and agency.[125] Therefore, the relationship between the Congress and the agency and that between the agency and the regulated sector are mutually re-enforcing; each influences the other in an informal yet structured equilibrium.

[123] James F Spriggs, "The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact," *American Journal of Political Science* 40, no. 4 (1996): 1122–51.
[124] Bradley C Canon, "Courts and Policy: Compliance, Implementation, and Impact," in *The American Courts: A Critical Assessment*, edited by John Gates and Charles Johnson (Washingon: CQ Press, 1991), 435–66.
[125] R. Douglas Arnold, *Congress and the Bureaucracy: A Theory of Influence* (New Haven: Yale University Press, 1979).

Money is Power is Influence: A continuum

Influence is often defined in the context of power. I argue that *money is power is influence*, not the traditional definition proposed by Dahl; "A influences B to the extent that he gets B to do something that B would not otherwise do".[126] Dahl fails to address how influence is represented in the complex relationships between the corporate sector, Congress, the Court, agencies and natural person citizens. Nagel *et al* also only address part of this complexity but extends Dahl by suggesting that influence is a causal relation between individuals in which both the cause and effects must be the behaviour of those individuals.[127]

Money is the initial causal mechanism of the *money-power-influence* continuum in the context of complex relationships between the corporate sector, Congress, the Court, agencies and natural person citizens. The notion 'money talks' is symbolized by the voice of the corporate person who uses money to make speech. Speech is a metonymy for money in the corporate sense. Therefore speech (as money) becomes power becomes influence; a continuum that interacts seamlessly with the concept of transactional corporate speech. Money is also used directly by the corporate sector for commercial speech. Therefore money becomes power becomes influence in a commercial context. The application of money and speech as power becomes influence; a series of causal mechanisms results in a causal effect where that causal effect is itself a causal mechanism along the continuum. Therefore, the theory of influence is defined as a capability to have an effect on the character, development, or behaviour of someone or

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[126] Robert A. Dahl, *Modern Political Analysis* (Englewood Cliffs, NJ: Prentice-Hall, 1963).
[127] Jack H. Nagel, *The Descriptive Analysis of Power* (New Haven: Yale University Press, 1975).

something, or the effect itself.[128] The notion of 'Authority' is specifically excluded as "…authority is the formal rights that come to a person who occupies a particular position" and as "…power does not necessarily accompany [that] position"[129] is therefore subjective.

How influence is sought and applied also varies considerably. General interest groups commonly contribute to candidates in close elections with the view of affecting the outcome of the election but will invariably never contribute to candidates with an opposing ideology and only contribute to ideologically aligned candidates in close elections. However, corporate interest groups (CIG's) contribute significantly to known incumbent-candidates or known candidates who invariably share ideological interests in order to maintain influence on the policies which the probable victor would promote and/or continue to implement. When the race is close, CIG's rely significantly on out of equilibrium threats in relation to candidates that are not incumbent-candidates; they contribute to both the incumbent-candidate and an opposing candidate to ensure that their influence is maintained regardless of the outcome. The commonality between the incumbent-candidate and the candidate in this scenario is in the greatest majority, not parties based alignment but a compatible ideology. As CIG's influence incumbent-candidates and candidates in policy areas where policy commitments can be made, they will likely condition their payments on the policy platforms that

[128] In general see: Herman Aguinis et al., "Perceptions of Power: A Cognitive Perspective," *Social Behavior and Personality: An International Journal* 22, no. 4 (1994): 377–84. See also: Jeffrey W. Lucas and Amy R. Baxter, "Power, Influence, and Diversity in Organizations," *Annals of the American Academy of Political and Social Science* 639, no. 1 (2012): 49–70, doi:10.2307/41328590; Philip M Podsakoff and Chester A Schriescheim, "Field Studies of French and Raven's Bases of Power: Critique, Reanalysis, and Suggestions for Future Research.," *Psychological Bulletin* 97, no. 3 (1985): 387–411; Brian Shaffer, Paul M Percy, and Bennett J Tepper, "Further Assessment of the Structure of Hinkin and Schrlesheim's Measures of Interpersonal Power," *Educational and Psychological Measurement* 57, no. 3 (1997): 505–14; Fred C. Lunenburg, "Power and Leadership : An Influence Process," *International Journal of Management, Business and Administration* 15, no. 1 (2012): 1–9; Marcus Goncalves, *The Knowledge Tornado: Bridging the Corporate Knowledge Gap* (New York: ASME Press, 2012).

[129] John Kotter, *Power and Influence* (New York: Free Press, 1985), p. 86.

incumbent-candidates and candidates announce. As the appendices, cited above, relating to the FIRE sector indicate, contribution (influence) is targeted toward achieving a specific outcome.

For example, it is generally accepted that agency effectiveness can be limited by budgetary constraints. This provides for another method of influence in the arsenal of corporations and organisations whereby corporations' and organisations lobby for budgetary reductions of a particular agency.[130] Federal agency regulatory action is mandated by legislation yet limited by budgetary constraints. Therefore, an agency governs to the extent to which an agency may decline to attempt to enforce legislation against an individual corporation or organisation when it is made known or it is common knowledge that it will be strongly contested. Evidence conclusively demonstrates that "…individual organization's political investments yield reduced bureaucratic scrutiny when indicating that organisation's willingness to contest agency decisions". Specifically, organisations that can "…credibly signal their intention to contest an agency on decisions that affect them adversely can sometimes deter regulatory oversight by the agency from the outset".[131]

Moreover, conclusive evidence demonstrates that when challenging an organisation proves too costly for the agency, relative to the benefits of detecting and correcting infractions, an agency will likely consider alternative options. Agency personnel facing a battle with an intransigent organisation may prefer either to scrutinise other firms whose noncompliance is more easily corrected or to

[130] B.D. Wood and Richard W. Waterman, "The Dynamics of Political Control of the Bureaucracy," *The American Political Science Review* 85, no. 3 (1991): 801–28.

[131] Erik K. Austin, "The Possibility of Effective Participatory Governance: The Role and Place and the Social Bond," *Public Administration and Management* 15, no. 1 (2012): 221–58. See also: Gordon and Hafer, "Corporate Influence and the Regulatory Mandate."

direct resources toward non-enforcement activities. This has a flow-on affect to other corporations or like-minded organisations by creating precedent.[132]

This is clearly demonstrated with an example of SEC actions in 2006. Due to increased media interest in investor concern over the increasingly elevated levels of director and executive remuneration, along with the lack of transparency, the SEC announced draft regulations in January 2006 and final regulations in August 2006 that sought to 'tighten disclosure' of executive and director remuneration.[133] The SEC relaxed the rules on December 22nd 2006, having been persuaded by the corporate sector that the regulations had the misleading and undesirable effect of inflating pay figures.[134] Responding to the SEC's move, Representative Barney Frank, (D.MA) the incoming chairman of the HCFS for the 110th Congress, announced in a press release he would push for stricter legislation.[135] Frank stated:

> I am very disappointed with both the substance and the procedure used to reach the SEC's Christmas Eve decision to loosen reporting requirements for the pay of the top executives of public corporations. It is especially ironic that the SEC would relax the rules regarding stock options at precisely the time that widespread abuses of the practice are coming to light. The problem of executive pay that is both greatly excessive and deliberately obscured is a grave one. I had been encouraged when the SEC recognized this problem in

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[132] John M. de Figueiredo and Emerson H. Tiller, "The Structure and Conduct of Corporate Lobbying: How Firms Lobby the Federal Communications Commission," *Journal of Economics and Management Strategy* 10, no. 1 (2001): 91–122. See also: Theodore J. Lowi, *The End of Liberalism* (New York: Norton, 1969); James Q. Wilson, *Political Organizations* (New York: Basic Books, 1973).

[133] Nancy M. Morris, "Securities and Exchange Commission, (Draft) 17 CFR PARTS 228, 229, 239, 240, 245, 249 AND 274, RELEASE NOS. 33-8655; 34-53185; IC-27218; FILE NO. S7-03-06, RIN 3235-AI80, Executive Compensation and Related Party Disclosure. January 27, 2006," 2006, http://www.sec.gov/rules/proposed/33-8655.pdf [accessed 20 January 2013]. See also: Nancy M. Morris, "Securities and Exchange Commission, (Final) 17 CFR PARTS 228, 229, 232, 239, 240, 245, 249 AND 274 [RELEASE NOS. 33-8732A; 34-54302A; IC-27444A; FILE NO. S7-03-06] RIN 3235-AI80. Executive Compensation and Related Person Disclosure. August 29, 2006," 2006, http://www.sec.gov/rules/final/2006/33-8732a.pd [accessed 20 January 2013].

[134] J. Lynn Taylor, "Securities and Exchange Commission. 17 CFR PARTS 228 and 229 [RELEASE NOS. 33-8765; 34-55009; FILE NO. S7-03-06] RIN 3235-AI80. Executive Compensation Disclosure. December 22, 2006," 2006, http://www.sec.gov/rules/final/2006/33-8765.pdf [accessed 20 January 2013].

[135] Siobhan Hughes, "SEC Reversal Irks a Committee Chief," *Wall Street Journal*, December 28, 2006.

its initial proposal, and while that continues to provide improvements in the relevant rules, this slippage is regrettable both substantively and for not having been open to more public discussion. Backtracking by the SEC on this important matter of stock options reinforces my determination that Congress must act to deal with the problem of executive compensation that is now unconstrained by anything except the self-restraint of top executives, a commodity that is apparently in insufficient supply.[136]

Building on his displeasure, Frank, along with Senate Banking Committee former Chairman Chris Dodd (D.IA), co-sponsored the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [137] expanding on the compensation clawback concept introduced in §304 of the *Sarbanes-Oxley Act.*[138] §954 of the *Dodd-Frank Act* require all listed companies to adopt their own internal clawback policies covering incentive-based compensation. However, the application of the detail within the legislation will be set by SEC regulations.

Future shareholder derivative suits challenging executive remuneration in publicly listed corporations are likely to have the same outcomes in 2015 as they did in 1933; the Court will continue to defer to the business judgment of the 'independent' directors. The legal threshold will be whether the plaintiffs (shareholders) can adequately prove that the board's compensation committee is not really 'independent' or that 'independent' does not mean the same thing to the SEC and the Delaware Chancery Court.[139] Resolving these issues remains a near impossible feat, just as it was during the Great Depression.

[136] US House. Committee on Financial Services, "Barney Frank: Chairman-Designate Frank 'Very Disappointed' with the SEC's Decision on Executive Pay Reporting Requirements," December 27, 2006, http://www.highbeam.com/doc/1P3-1186401921.html, [accessed 3 January 2015].

[137] *Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub L No 111–203, H.R. 4173*, 2010.

[138] *Sarbanes–Oxley Act of 2002 Pub L No 107–204, 116 Stat. 745*, 2010.

[139] Robert E. Scully, "Executive Compensation, the Business Judgement Rule and the Dodd-Frank Act: Back to the Future for Private Litigation," *The Federal Lawyer*, 2011, 36–41.

Another example of influence is where the reaction by agencies to pressure from Congress may be reflected in the influence applied to freeloaders by larger organisations. By demonstrating that organisations, perceived as freeloading, are more intensely scrutinized by federal regulatory authorities, and/or market forces applied, is an orchestrated effort to negate the freeloader effect.[140] Therefore, all organizations within a particular sector are encouraged to participate in the collective good, thus reinforcing the effect of mechanical solidarity. The value of maintaining such a political footprint, as an implicit threat to regulators, facilitates the ability of individual organizations to commit to systematic rewarding of legislators in exchange for favourable legislation and/or influence over agency regulation. Therefore, as obtaining favourable treatment from an agency is a selective benefit, this articulates through to a mechanism through which competing corporations may overcome any freeloader problems through industry lobbying coalitions.

While individual corporations may encounter credibility difficulties committing to rewarding legislators for favourable legislation, the costs to the broader sector may prove politically and/or socially unpopular and enhance the electoral prospects of an opposing candidate or one less favourable to that organisation or sector.[141] However, this risk can be offset by supporting an opposition candidate that has similar or allied ideologies and/or can be so influenced accordingly.[142] Therefore, other methodologies are employed to ensure a wider palatability within the general population include utilization of the various

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[140] L Cataldo et al., “An Analysis of SEC and PCAOB Enforcement Actions against Engagement Quality Reviewers: A Comment and Extension in Support of the Nevada Effect,” *Journal of Forensic & Investigative Accounting* 6, no. 2 (2014): 157–99.

[141] Carmen Valor, “Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability,” *Business and Society Review* 110, no. 2 (2005): 191–212. See also: Peter Pruzan, “Corporate Reputation: Image and Identity,” *Corporate Reputation Review* 4, no. 1 (2001): 50–64.

[142] Dirk Matten, Andrew Crane, and Wendy Chapple, “Behind the Mask: Revealing the True Face of Corporate Citizenship,” *Journal of Business Ethics* 45, no. 1–2 (2003): 109–20.

forms of media, along with programs and advertising designed to persuade; to ensure the correct outcome for the organizations.

Other forms of Influence

Based on the causal mechanisms employed, evidence suggests that the complexity of agency design is itself a causal mechanism contributing to regulatory capture.[143] Although organised efforts to reduce regulatory capture may be complicated by a professionalised career civil service, the *modus operandi* of Federal agencies ensures outright bribery of individual agency personnel is extremely unlikely, or at best, short lived.[144] While this argument may appear to hold water, the revolving door as a causal mechanism and regulatory capture as the causal effect are not acknowledged.

Regulated sectors may flex their collective muscles to create a perception of strength that enhances their political footprint via campaign and lobbying expenditures. Critically, this mechanism does not presuppose any perception of regulatory capture in the traditional sense. The resultant causal mechanism reconciles two seemingly conflicting aspects of the relationship between organisational based corporate political expenditures and political outcomes. Therefore, the documentation of a systematic relationship between political contributions and legislative action is difficult. Why corporations deemed to be politically connected appear to obtain favourable treatment from agencies that are ostensibly neutral politically, and in the absence of any apparent direct legislative intervention on their behalf is generally accepted as being the norm.[145] While this

[143] Rachel E Barkow, "Insulating Agencies: Avoiding Capture Through Institutional Design," *Texas Law Review* 89, no. 15 (2010): 15–80.
[144] Schlozman and Tierney, *Organized Interests and American Democracy*, p. 344.
[145] Wesley Magat, Alan J Krupnick, and Winston Harrington, *Rules in the Making: A Statistical Analysis of Regulatory Agency Behavior* (Abingdon: Routledge, 2013).

argument maintains the required perceived legitimacy of Congress as a legislative body, it fails to consider the fundamental nature of natural persons and avoids at its peril, the legal concept of corporate persons.[146] When relating to these perspectives; that both the legislative process and publicly deemed requirements have been met with the application of that legislation, this therefore creates the seemingly plausible scenario of deniability of individual accountability.

While challenging the notion of unlimited shareholder responsibility,[147] legislation is passively supportive, or at the very least benign, with a less than intensive application of legislation (policy development), centred around large, well-established organisations with considerable experience and success.[148] This actuality fosters an illusion in the public domain of corporate accountability; this is despite corporations receiving favourable treatment as both legislators and regulators attempt to preserve their reputations as experts by betting on proven organizations.

Amicus Curiae (Friends of the Court) must be considered when defining Influence in the US political system. Through the opinions of the Justices, the Court establishes norms where guidelines for behaviour and the constitutionality of particular programs, provides direction to lower court judges and future Courts who are charged with adjudicating on challenges that may have similar factual circumstances. There is a growing body of evidence that the Court increasingly relies on the *Amicus* briefs it permits as the Justices are motivated by legal and policy goals.[149] An interrogation of the historic background to *Amicus* briefs through

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[146] Thomas Hobbes, *Elements of Law, Natural and Political* (Abingdon: Routledge, 2013).
[147] Henry Hansmann and Reinier Kraakman, "The End of History for Corporate Law," *Georgetown Law Journal* 89 (2000): 439–68.
[148] Franklin A Gevurtz, "The Globalisation of Corporate Law: The End of History or a Never-Ending Story?(2011)," *Washington Law Review* 86 (2011): 475–521.
[149] Pamela C Corley, Paul M Collins, and Bryan Calvin, "Lower Court Influence on US Supreme Court Opinion Content," *The Journal of Politics* 73, no. 1 (2011): 31–44.

to the current Courts, clearly demonstrates the growth in recent decades of the Courts reliance.[150] How the Court arrives at opinions, is based in part on precedent, the individual Justices' interpretation of the Constitution, legislation, and increasingly, advice and guidance delivered through *Amicus* briefs. Additionally, under the doctrine of *stare decisis*, a lower court must honour findings of law made by a higher court that is within the appeals path of cases a lower court considers.

Power as a concept

As a causal mechanism along the *money-power-influence* continuum, power as a concept must be defined. Several definitions of power have been offered by exchange theorists. While some theorists view power as distinct from exchanges, others view it as "a kind of exchange and others believe power is a medium of exchange".[151] However, the most useful definition of power is "the theory of power-dependence relations".[152] According to this theory, the dependence a person has on another relates to the concept of power. Power differentiation affects social structures by affecting inequalities between members of different groups; an example being a corporate person or natural person having superiority over another.[153] The logical extension to this concept that can be readily applied to clearly demonstrate the power and influence the corporate sector has over legislative outcomes when compared to individual persons in an electorate. As power within the theory is governed by two variables; "the structure of power in

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[150] Paul M Collins, *Friends of the Supreme Court: Interest Groups and Judicial Decision Making* (Oxford: Oxford University Press, 2008). See Appendix 3 for Amicus Briefs Citizens United

[151] Erin Watson and Pennie Foster-Fishman, "The Exchange Boundary Framework: Understanding the Evolution of Power within Collaborative Decision-Making Settings," *American Journal of Community Psychology,* 51, no. 1 (2013): 151–63.

[152] Richard M Emerson, "Social Exchange Theory," *Annual Review of Sociology* 2 (1976): 335–62.

[153] Jeffrey Pfeffer and Gerald R Salancik, *The External Control of Organizations: A Resource Dependence Perspective* (Palo Alto, CA: Stanford University Press, 2003).

exchange networks and strategic use," this theory further supports the concept of reciprocal altruism.[154]

Both natural persons and the corporate persons develop patterns of exchange to cope with power differentials and to deal with the costs associated with exercising power. These patterns describe behavioural rules or norms that indicate how people trade resources in an attempt to maximize rewards and minimize costs.[155] These are the key tenants of social exchange theory which is based on the notions of human temperaments, the characteristics of relationship and economic conceptions. There are three different matrices that have been used to illustrate the patterns persons develop. These are the given matrix, the effective matrix and the dispositional matrix.[156] Collectively, they describe the actions between individuals that develop through reciprocity; a subjective cost-benefit analysis and the comparison of alternatives.

Social Exchange Theory

The previous section, as stated, defined the application of influence; how influence occurs in the context of corporate influence over legislative, regulatory and judicial decision making. This section defines the human factor; how and why

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[154] David Willer, Michael J Lovaglia, and Barry Markovsky, "Power and Influence: A Theoretical Bridge," in *Network Exchange Theory*, edited by David Willer (Westport, CT: Greenwood Publishing Group, 1999), 229–47.

[155] David A Baldwin, "Power and Social Exchange," *The American Political Science Review* 72, no. 4 (1978): 1229–42.

[156] John W Thibaut and Harold H Kelley, *The Social Psychology of Groups.* (New York: Wiley, 1959) The three matrices are: (a) The given matrix represents the behavioural choices and expected outcomes that are determined by a combination of external factors, such as the environment, and internal factors, such as the skills each have to offer; Richard L West and Lynn H Turner, *Introducing Communication Theory: Analysis and Application* (New York: McGraw-Hill, 2007) (b)The effective matrix represents an expansion of alternative behaviours and/or outcomes which ultimately determines the behavioural choices in social exchange; Lindon J Robison and Bryan K Ritchie, *Relationship Economics: The Social Capital Paradigm and Its Application to Business, Politics and Other Transactions* (Farnham: Ashgate, 2010); (c)The dispositional matrix represents the way two people believe that rewards ought to be exchanged between them Michael E Roloff, *Interpersonal Communication: The Social Exchange Approach* (Beverly Hills, CA: Sage Publications, 1981).

corporate influence is driven by the corporate decision makers. Social Exchange theory serves as a theoretical foundation to explain the differing circumstances of political money. The investment model of social exchange theory is a useful model whereby investments serve to stabilize relationships.[157] The greater the investments a corporate person has in a natural person, the more stable the relationship is likely to be. However, when both corporate persons and natural persons find they have invested too much to abandon a relationship, they will likely increase resources to protect their initial investment. Corporate persons evaluate economic outcomes from each transaction and compare them to what they feel they deserve. Corporate persons will also seek additional benefits provided by other natural persons while ensuring their other investments are maintained.

In the context of political money, reciprocity is therefore a transactional pattern of interdependent exchanges based around a division of power and of influence. This has the potential of becoming a generalized exchange involving indirect reciprocity between three or more individuals. For example, one incumbent gives to another and the recipient responds by giving to another incumbent other than the first person. This is clearly demonstrated when analysing the flow on effect of campaign contributions. Statistics clearly demonstrate an historical average of 70% of incumbent-candidates donate to another incumbent-candidates and other candidates and so on.[158] This power/influence form of reciprocity can also be shown to be self-serving at varying levels and different with each transaction or exchange.

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[157] Laura Stafford, "Social Exchange Theories," in *Engaging Theories in Interpersonal Communication: Multiple Perspectives*, edited by Leslie A Baxter and Dawn O Braithwaite. (Thousand Oaks, CA: Sage, 2008), 377–89.

[158] Damon M Cann, *Sharing the Wealth: Member Contributions and the Exchange Theory of Party Influence in the US House of Representatives* (Albany, NY: SUNY Press, 2008).

This is indicative of political money relating to PACs' and SuperPacs'. The notion is the idea that a productive exchange is where both actors have to contribute for either one of them to benefit as all persons involved incur benefits and costs simultaneously.[159] While this, and another common form of exchange, negotiated exchange, which focuses on the negotiation of rules in order for both parties to reach a beneficial agreement, such formalization would likely not apply to political money due to legal concerns relating to the perception of corruption.[160] What may be perceived as corruption varies significantly; it may be by inference in media presentation, a perceived lack of integrity or one or more varying circumstance. However, not all influence is determined by circumstance or on a specific need basis. A culture of influence can be orchestrated over a period of time; a seemingly benign culture where norms can become firmly entrenched in the actions by both individuals and collective bodies and are rarely challenged.

Social exchange theory, as a broad theory of exchange, was presented in 1958 by sociologist George Homans. Homans defined social exchange as the "exchange of activity, tangible or intangible, and more or less rewarding or costly, between at least two persons".[161] Homans' work emphasized the individual behaviour of actors in interaction with one another. Although there are various modes of exchange, Homans centred his studies on dyadic exchange or dyadic process model. This model is basically concerned with the development of a long-term buyer-seller relationship rather than one-off selling situations. It is framed as a meeting between the between the buyer and seller and/or their agents and moves through a number of stages which presumably take place over time and a

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[159] Edward J Lawler, Shane R Thye, and Jeongkoo Yoon, "Emotion and Group Cohesion in Productive Exchange," *American Journal of Sociology* 106, no. 3 (2000): 616–57.
[160] Arnold J Heidenheimer and Michael Johnston, *Political Corruption: Concepts and Contexts*, 3rd ed. (New Brunswick: Transaction Publishers, 2009).
[161] George Caspar Homans, *Social Behavior: Its Elementary Forms* (New York: Harcourt Brace Jovanovich, 1961).

number of meetings. While research continues around the central themes of the theory, the three key propositions of success, stimulus, and deprivation–satiation proposition have relevance to this thesis.[162]

- “Success proposition: When one finds they are rewarded for their actions, they tend to repeat the action.”
- “Stimulus proposition: The more often a particular stimulus has resulted in a reward in the past, the more likely it is that a person will respond to it.”
- “Deprivation–satiation proposition: The more often in the recent past a person has received a particular reward, the less valuable any further unit of that reward becomes”.[163]

This theory supports the deeper and older analysis contained within the concept of reciprocal altruism.

Reciprocal altruism

The relationship between elected representatives, agents acting for the corporate sector and corporate persons must be considered variably as both reciprocity and self-interest.[164] Reciprocity, as a social psychology concept, refers to responding to a positive action with another positive action. “The theory that human exchanges in personal and professional relationships require reciprocal balance for harmonious relationships; namely where the contribution of each party meets the expectations of the other party”.[165]

[162] Homans, George Caspar, “Behaviourism and After,” in *Social Theory Today* , edited by George Caspar Homans, A Giddens, and J Turner (Stanford: Stanford University Press, 1987), 58–81.
[163] Ibid, pp 59-61.
[164] The term ‘persons’ as utilised in this analysis, is that stated in FECA and confirmed by the Court in various rulings. See: 2 U.S.C.A. § 431(11) (2002) (a “person” includes “an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government. . .”).
[165] Nick Founder, *The Book about Life: Finding reciprocal balance in your personal relationships*. Unpublished transcript. 2014.

As a political psychology concept, reciprocity suggests persons are more cooperative than predicted by the self-interest model; conversely, in response to hostile actions they are less cooperative and may demonstrate negative behaviour.[166] Reciprocity should be considered a strong determining factor of behaviour of persons. The focus of reciprocity is centred more on trading favours than making a negotiation or a contract with another person. With reciprocity, a small favour can produce a sense of obligation to a larger return favour. This feeling of obligation allows an action to be reciprocated with another action with a perceived sense of future obligation of reciprocity contributing to the development of and continued relationships with 'persons'. Consequently, 'persons' evaluate an action by reviewing its consequences and also by perceived intentions of the other party. Even if the consequences are the same, underlying intentions can cause an action to be reciprocated differently.[167] While intimately related, positive reciprocal actions may differ from altruistic actions as these actions may follow on from other positive actions and they differ from social gift giving in that those are not actions taken with the hope or expectation of future positive responses. However, the intimate relationship between reciprocity and altruism tends to produce outcomes that may be considered a blend (in a political sense) of both, or even constructed to ensure a perception of altruism over reciprocity.[168]

Developing a form of strategy in a repeated prisoner's dilemma would require a 'person' to cooperate unconditionally in the first period and behave cooperatively (altruistically) as long as the other 'person' does this as well. This can be demonstrated by evaluating the development of the concept of reciprocal

[166] Ernst Fehr and Simon Gächter, "Fairness and Retaliation: The Economics of Reciprocity," *The Journal of Economic Perspectives* 14, no. 3 (2000): 159–81.
[167] Armin Falk and Urs Fischbacher, "A Theory of Reciprocity," *Games and Economic Behavior* 54, no. 2 (2006): 293–315.
[168] Robert Boyd, "Is the Repeated Prisoner's Dilemma a Good Model of Reciprocal Altruism?," *Ethology and Sociobiology* 9, no. 2 (1988): 211–22.

altruism from the discipline of Biology; the following four conditions are individually necessary and jointly sufficient for an instance of reciprocal altruism:

1. The behaviour must reduce a donor's fitness relative to a selfish alternative;
2. The fitness of the recipient must be elevated relative to non-recipients;
3. The performance of the behaviour must not depend on the receipt of an immediate benefit;
4. Conditions 1, 2 and 3 must apply to both individuals engaging in reciprocal helping.[169]

Conditions 1 and 2 are what make the behaviour altruistic. Condition 3 distinguishes reciprocal altruism from mutualism, in which the donor acts altruistically only if the recipient simultaneously provides a return benefit. Condition 4 makes the altruism reciprocal.

At least two further conditions are necessary for reciprocal altruism to evolve:

5. A mechanism for detecting 'cheaters (free loaders)' must exist;
6. A large (indefinite) number of opportunities to exchange aid must exist.

These formulae can be applied directly to corporate political influence and corporate political money by demonstrating the relationship between persons as defined in this chapter.[170]

1. The behaviour must reduce a donor's fitness relative to a selfish alternative;

When a corporate donor provides political money, this reduces the donors' fiscal position and potentially reduces the funds available for distribution to shareholders.

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[169] Christopher Stephens, "Modelling Reciprocal Altruism," *The British Journal for the Philosophy of Science* 47, no. 4 (1996): 533–51. See also :Robert L Trivers, "The Evolution of Reciprocal Altruism," *Quarterly Review of Biology* 46 (1971): 35–57 Both Stephens and Trivers offer this theoretical framework to demonstrate the mutually beneficial relationship between organisms.

[170] The 6 conditions listed here in italics refer to the six conditions referred to in the Stephens framework as referenced.

When the donor is a legislator for example, the relationship between the legislator and the electorate and associated credibility is potentially diminished.

2. *The fitness of the recipient must be elevated relative to non-recipients;*

Recipients of political money have enhanced potential, when compared to their rivals, for re-election due to the 'war-chest' available directly and/or support from donors through various forms of media.

Recipients of government contracts or other beneficial outcomes have the opportunity to expand their business and improve their fiscal position.

3. *The performance of the behaviour must not depend on the receipt of an immediate benefit;*

The giving or receiving of a financial benefit is based on trust and should be considered as an investment; this investment producing a potential future return. For example, the provision of political money to a candidate, incumbent or otherwise, builds a relationship that will likely provide a significant return over time.

4. *Conditions 1, 2 and 3 must apply to both individuals engaging in reciprocal helping.*

Political money by way of campaign donations and/or support through PAC's and Super PAC's is balanced with access to/by legislators with to/by donors with resulting influence over legislation and/or policy. The reciprocal relationship is mutually beneficial.

Again, conditions 1 and 2 are what make the behaviour altruistic. Condition 3 distinguishes reciprocal altruism from mutualism, in which the donor acts altruistically only if the recipient simultaneously provides a return benefit. Condition 4 makes the altruism reciprocal. As is the original biological model, the two additional conditions are necessary for reciprocal altruism to evolve. These have

potentially limitless opportunities to be demonstrated in the relationships between persons.

5. A mechanism for detecting 'cheaters(free loaders)' must exist;

Should a donor not live up to expectations and contribute political money to an opposing candidate, while the access relationship will remain, the opportunity to build on the relationship and drive influence is diminished. Should a recipient not ensure access and influence as expected, the likelihood of re-election is diminished. A donor will invest political money in an alternative candidate. Long term, it is fiscally more prudent to invest in incumbents as opposed to new candidates as can be witnessed in the increased incumbency rate in Congress. Business' that grow due to relationships with people of influence, potentially improve their fiscal position both short and long term. The issue of freeloading is addressed in this mechanism with freeloaders unable to influence outcomes within Congress and their resultant weakness becoming the focus of predatory corporate actions.

6. A large (indefinite) number of opportunities to exchange aid must exist.

Due to the building on and establishment of long term relationships between persons, the opportunities of mutually beneficial exchange increase exponentially. Given the strong base of relationships between members of Congress and the corporate sector due to mutual memberships of professional organizations, religious affiliations', sporting organizations and University alumni, the opportunities to expand opportunities is significant.

In the physical science of chemistry, dynamic equilibrium can be described as the state of a reversible reaction where the rate of forward reaction is equal to the rate of the reverse reaction, resulting in no observable net change in the system. Reactions are continuing to proceed in the forward and reverse direction

dynamically; however, there is no net change in the amount of product or starting material. Dynamic equilibrium is also referred to as a steady state; a state of balance between continuing processes. In the early stage of a reversible reaction, the forward reaction proceeds more quickly than the reverse until the equilibrium state is reached when the forward and reverse rates are equal.[171]

This process can be directly applied to the relationship between (potential) candidates and the corporate sector in the context of a reversible reaction and dynamic equilibrium in the context of a sitting member. The financial support for a candidate is reversible until the state of equilibrium is reached when the reciprocity between the member and the corporate sector becomes beneficial. This state of dynamic equilibrium is maintained while beneficial reciprocity is maintained with the corporate sector able to invoke a reverse reaction should the reciprocity be degraded. This supports the notion that the corporate sector, by controlling financial support for a member or candidate, is the dominant party in the relationship, while preferring a dynamic equilibrium as offering the best return on the investment.

Another comparative is that of the structure of 'society' in the insect world. This has long been compared to the societal structure of humans. The altruistic reciprocity that exists in ant colonies[172] provides another clear correlation the corporate sector and the representative of natural persons. The altruistic reciprocity that exists in the world of entomology is generally not well known whereas the relationship between the corporate sector and elected or appointed representatives of natural persons is well known but generally ignored.

[171] Peter Atkins and Julio de Paula, *Physical Chemistry*, 8th ed. (Oxford: Oxford University Press, 2006), Section 5.2, pp 161-163.
[172] Edward O Wilson, *On Human Nature* (Cambridge, MA: Harvard University Press, 2012), pp 104-105.

Historically, in the human world, this can be seen in the Republic of Rome, on which the US Republic model is based. One of the more distinctive features of the Roman Republic, which has redeveloped by chance or design in the US, is the way a combination, hierarchy, power, authority and obedience has evolved. The Roman Republic was interwoven with complex horizontal and vertical relationships, considered today as being both hierarchical and asymmetrical.[173]The vertical relationships, not unlike today, were centred on varying degrees of wealth and influence with the horizontal relationships centred around patronage; in particular a patron-client relationship. This reciprocity, similar to what we witness today in the US, was based on a moral, if not, a legally binding relationship. Reciprocity, as described earlier, suited the economic and social variables in the Roman Republic; again not unlike the US of today.

That said; reciprocation in inter-person relationships rarely follows a mathematical formula with the level of reciprocation a variable depending on the personalities involved. This is why it is difficult to arrive at a traditional vertical model of analysis; one size does not fit all. This factor alone results in many issues that should be of concern, failing to meet the functional requirements of academic merit. Situational factors such as which person has more control or influence must also be considered. It is often the case that one person will typically be the lead reciprocator with the other being the responsive reciprocator. At times, a person may require more support than another with this changing at different times depending on the relative situation of each party. As reciprocation is often influenced by specific circumstances, reciprocation from person to person will vary in intensity and potentially over-ride self-interest. If, for example, a person has a large inner circle of friendships with reciprocation as the key element of friendship,

[173] Karl J. Holkeskamp, *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research* (Princeton, New Jersey: Princeton University Press, 2010), p 33.

then the level of reciprocation within the inner circle will influence the depth of a friendship therein. However, in some circumstances, reciprocity can be self-serving.

Self Interest

Self-interest, as a psychological concept, is concerned with psychological egoism; the view that persons are always motivated by self-interest, and narcissism; which is a (potentially unhealthy) self-absorbed sense of self. This can be translated directly as a political concept by exploring the two key components; psychological egoism and narcissism.

Psychological egoism is the notion that persons are always motivated by self-interest even in what seem to be acts of altruism. It claims that, when persons choose to assist others, they do so ultimately because of the personal benefits that they themselves expect to obtain, directly or indirectly, from doing so. One notable (and sometimes misunderstood) aspect of psychological egoism is that it can be to one's self-interest to make a sacrifice, such as granting a person a favour, because the immediate sacrifice will be met with proportional benefits in the future, such as increased trust and a reciprocated favour in the future. While this is a descriptive rather than normative perspective, it does reinforce perceived realities about how things are, not how they ought to be. This perspective is further supported by other normative forms of egoism, such as ethical egoism and rational egoism.

Narcissism is categorized as a personality disorder, "…a mental disorder, in which people have an inflated sense of their own importance and a deep-seated need for admiration. Those with narcissistic personality disorder believe that

they're superior to others and have little regard for other people's feelings”.[174] Arguably, healthy narcissism may exist in all individuals. Freud argues that this is an original state from which the individual develops the love object. He argues that “…healthy narcissism is an essential part of normal development”.[175] However, narcissists perceive themselves to be unique and special people and as such are oriented towards success by being, for example, approach oriented.[176] This is supported by organizational psychologist Alan Downs who described corporate narcissism, with successful leaders described as literally having only one thing on their minds; profits.[177] This thesis does not propose to analyse individual leaders but promotes the notion that successful corporate, political and judicial leaders are, by their nature, beneficially narcissistic.[178] This suggests that beneficial narcissism is an essential requirement of successful corporate leadership to ensure a return on investment. However, does this suggest that corporate natural person leaders are equal to corporate persons or can this only apply to corporate natural person leaders; specifically excluding the corporate person? Given corporate persons have no ‘voice’ and rely on a *money-power-influence* continuum to be heard, corporate persons can only be perceived as narcissistic as the corporate natural person leaders.

[174] Mayo Clinic, “Narcissistic Personality Disorder,” 2014, http://www.mayoclinic.org/diseases-conditions/narcissistic-personality-disorder/basics/definition/con-20025568.

[175] Sigmund Freud, “On Narcissism: An Introduction,” in *Standard Edition of the Complete Psychological Works of Sigmund Freud*, edited by James Strachey, Anna Freud and Carrie Lee Rothgeb vol. 14, 1914, 67–102.

[176] W Keith Campbell et al., “Narcissism and Comparative Self-Enhancement Strategies,” *Journal of Research in Personality* 34, no. 3 (2000): 329–47; Paul Rose and W Keith Campbell, “Greatness Feels Good: A Telic Model of Narcissism and Subjective Well-Being.,” in *Advances in Psychology Research*, edited by Serge P Shovov (New York: Nova Science Publishers, 2004), 3–27.

[177] Alan Downs, *Beyond the Looking Glass: Overcoming the Seductive Culture of Corporate Narcissism* (New York: Amacom, 1997).

[178] Agnieszka Golec de Zavala et al., “Collective Narcissism and Its Social Consequences.,” *Journal of Personality and Social Psychology* 97, no. 6 (2009): 1074–96. See also Victor Hill, *Corporate Narcissism in Accounting Firms* (Melbourne: Penguin Books, 2005); Michael Maccoby, *The Productive Narcissist: The Promise and Evil of Visionary Leadership* (New York: Broadway Books, 2003).

Conclusion

In *CIGT*, it is critical to comprehend the patterns of interdependence among organizational participants and to diagnose their relative influence. The same model of influence can be applied to Congress, the Court, and Agencies. Therefore, there is a need for all players to diagnose the political landscape within any given scenario in order to apply influence beneficially; the notion of an interdependent relationship between all players. Influence involves natural persons at all levels where social exchange theory, reciprocal altruism, beneficial narcissism and self-interest contribute to the actions of both corporate and natural persons.

Money is demonstrated to be the causal mechanism of a *money-power-influence* continuum in the context of complex relationships between the corporate sector, Congress, the Court, agencies and natural person citizens. Speech, as a metonymy for money in the corporate sense, becomes power with the application of money and speech as power becoming influence. These are a series of causal mechanisms that results in a causal effect where that causal effect is itself a causal mechanism along a continuum. Therefore, influence has been defined as a ‘theory’ that has an effect on the character, development, or behaviour of someone or something, or the effect itself. Influence on a continuum also confirms the confluence between corporate voice and that of its natural person board and senior executives and legislative, regulatory and judicial decision makers; a continuum that interacts seamlessly with the concept of transactional corporate speech. A legal corporation, unless enhanced with natural person voice, would remain, like so many ‘registered’ corporate entities, a document on file; an entry in a corporate register.

Chapter 4: Universitas (The Corporation)

The money powers pray upon the nation in times of peace and conspire against it in the times of adversity. It is more despotic than a monarchy, and more insolent than autocracy and more selfish than a bureaucracy. I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. Corporations have been enthroned, an era of corruption will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people, until the wealth is aggregated in a few hands, and the republic destroyed. …

Abraham Lincoln [179]

This chapter considers various aspects of the modern US Corporation and the role of the corporate sector, to understand how that sector influences legislative, regulatory and judicial decision making. In the introduction I defined a corporation in the US context as a separate publicly listed legal entity that legally possesses personality and is owned by itself. However, as traditional definitions of corporation are less than adequate, *CIGT,* also defined above, best describes the inherent interests and nature of the corporate sector and will be the theory on which this chapter will be argued.

In the 230 + years since the Declaration of Independence, the corporation has evolved to such a degree that the Founding Fathers would likely not recognise the modern corporation. If they did, it is reasonable to believe they would be severely perturbed. A brief outline of US corporate history leads into the *modus operandi* of the modern corporation. Money as speech, political and commercial, is considered within the context of Court rulings; this contributing in subsequent chapters how corporate speech has become a 1st Amendment right. Shareholding

[179] Emanuel Hertz, *Abraham Lincoln: A New Portrait*, vol. 1 (New York: H. Liveright, Incorporated, 1931), p. 954.

is portrayed as a corporate orchestrated myth with the concept of corporate purpose, *Business Judgement Rule* and the *Principle Agent* model dismantled to demonstrate that the contemporary corporate model is based on a legal fiction; a fiction perpetuated by the corporate sector and a complicit government. These facts as presented confirm the theory of influence as defined in the previous chapter and *CIGT* are compatible with the contemporary corporate model.

Corporations and the US: the early years

The power and influence of the East India Company contributed significantly to the colonial anger that led to the Revolutionary War in the American Colonies. In the newsletter '*The Alarm'*, the author who called himself 'Rusticus' warned:

> Are we in like manner to be given up to the disposal of the East India Company, who have now the assurance, to step forth in aid of the Minister, to execute his plan, of enslaving America? They have levied War, excited rebellions, dethroned lawful Princes, and sacrificed millions for the sake of gain. Fifteen hundred thousands, it is said, perished by famine in one year, not because the Earth denied its fruits; but [because] this Company and their servants engulfed all the necessaries of life, and set them at so high a rate that the poor could not purchase them.[180]

The US Constitution makes no mention of corporations. However, by the late 1700s corporations began to be chartered by the states. This was not without opposition. Thomas Jefferson stated: "I hope we shall crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our government in a trial of strength, and bid defiance to the laws of our country".[181]

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[180] Rusticus, "Letter on the Tea Tax from 'The Alarm' November 27, 1773," in *Memoirs of the Historical Society of Pennsylvania* (Philadelphia, Pa.: Historical Society of Pennsylvania, 1895), 459; The writing style of *Rusticus* is remarkably similar to George Robert Twelvetrees Hewes, a friend of Paul Revere and George Washington and an active participant in the Boston Tea Party. James Hawkes, *A Retrospect of the Boston Tea-Party: With a Memoir of George RT Hewes, a Survivor of the Little Band of Patriots Who Drowned the Tea in Boston Harbour in 1773* (New York: SS Bliss, 1834).

[181] Paul Leicester Ford, ed., *The Writings of Thomas Jefferson*, vol. X (New York: G.P. Puttman's and Sons, 1899), http://www.constitution.org/tj/jeff.htm [accessed 15 December 2014].

The fear that early US citizens exhibited in respect to corporations was symptomatic of the individualist economic theory that was the foundation of early American thought. This was centred around Adam Smith's theories that the predominant economic unit was the individual who produced goods for sale in the market and the individual who bought the goods for consumption.[182] Other than the few joint-stock companies that caused division in the broader community, very few other businesses took the corporate form.

The individualist perspective was consistent with the generally accepted understanding of the law and theories of the corporate form. Even today, some theorists disagree with fiction theory; they espoused group theory which held that human beings are the true bearers of rights and duties. As such, humans have the right to do business as a group, but the group was not a legal person in itself.[183] Historically, the law only protected individuals. It was from the tradition of individualism that fiction theory and group theory of corporate law arose. Others argue that corporations could be included within the definition of legal persons arguing that legal persons included both natural and artificial persons, therefore: "Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic".[184] Despite the fear held by the Founding Fathers of the rise of corporations such as the East India Company, corporations were on the rise and were beginning their assent as legal persons as the fledging American nation came of age.

[182] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations, Bk. IV: Of Systems of Political Economy, Of Restraints upon the Importation from Foreign Countries of Such Goods as Can Be Produced at Home* (London: W. Strahan and T. Cadell, 1776), pp 8-9.
[183] David Fagundes, "Note, What We Talk About When We Talk About Persons: The Language of a Legal Fiction," *Harvard Law Review* 114, no. 6 (2001): 1745–68.
[184] William Blackstone, "The Founders' Constitution. Chapter 3. Right of Revolution. William Blackstone, Commentaries 1:119--23, 157, 237--38, 243--44," 2000, http://press-pubs.uchicago.edu/founders/documents/v1ch3s3.html [accessed 5 January 2015].

The theories of Adam Smith were taken seriously by several prominent citizens of the new Republic including the founding fathers. In a letter from Thomas Jefferson to John Adams on October 28, 1813, Jefferson warned of the problems caused by large corporations: "The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent its ascendancy".[185] Some of the strongest anti-corporate sentiments are found in the writings of John Adams. He stated: "Increasingly, it would seem, the average American works for a corporation, trades with corporations, owns stock in corporations".[186] Yet for all this he traditionally has viewed the corporation with misgivings, often with elevated levels of antagonism. Adams argued:

> Emotionally, our attachment still is to small enterprise and individual proprietorship. We obviously have during a good share of our national history, thoroughly mistrusted, feared and at times hated and reviled a partner we have been neither able nor willing to live without.[187]

The effects of the origin of the 'intent' of the founding fathers would reveal an enlightened cross-section of numerous historic aspects of religion, human morality and institutional psychology. Of greater significance to the concept of corporate personhood is the fact that the underlying controversies and their introduction into legal theory and contemporary legal discourse, denotes tension with immense social, economic and political ramifications. Significant issues have led to these tensions becoming a methodology employed by the corporate person to pursue the question of legal definition. This reflects the struggle between dynastic and popular representative forms of government; the conflict between the

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[185] Thomas Jefferson, "Letter to John Adams 1813," in *The Writings of Thomas Jefferson*, vol. XIII, edited by R.H. Johnston (New York: G.P. Putman's and Sons, 1899).
[186] John Adams, "Letter to Thomas Jefferson 1813," in *The Writings of Thomas Jefferson*, vol. XIII, edited by R.H. Johnston (New York: G.P. Putman's and Sons, 1899).
[187] Graham, *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the Conspiracy Theory, and American Constitutionalism*, pp 372-3.

economic need produced by the industrial revolution; the development of national territorial states; the conflict between the labour and capitalist class; the struggle between nationalism and internationalism, or trans-national relations; among others. One persuasive motive for the insistence upon the real personality of the corporate person, one that is independent of the state, is opposition to the claim that the state is the sole or even supreme person.

The Constitution places the people collectively as being supreme to all else, yet notionally reflects the importance of the state. This notion confers, upon the state, unobstructed power over the citizenry as well as affecting negatively, the complex economic interdependences shaped by modern methods of industry and commerce.[188] Arguably, the founding fathers believed in the twin notions of co-operation between individuals and their common dependence on one another, as opposed to the isolation of individuals; that mutually beneficial outcomes of co-operation extend beyond the bounds of the State. This form of political pluralism rejected the traditional notion of sovereignty yet the Constitution vested a hybrid form of totalitarianism in a Congress that remains today in conflict with the pluralistic notion that no authority should be vested in the state to the extent that individuals become insignificant; a circumstance whereby the greatest majority of the citizenry becomes disenfranchised.[189]

In *Trustees of Dartmouth College v. Woodward*, (*Dartmouth*) Chief Justice Marshall maintained that the Court viewed the corporation as:

> [A corporation is] an artificial being, invisible, in tangible, and existing only in contemplation of law. Being the mere creature of law, he possesses only those properties which the law of his creation confers upon him, either

[188] Alexander Dunlop Lindsay, "The State in Recent Political Theory," *Political Quarterly* 128 (1914): 128–45.
[189] Urmilo Sharma and S.K. Sharma, *Principles and Theory of Political Science*, vol. 1 (New Delhi: Atlantic Publishing and Distribution, 2000), p 167.

expressly or as incidental to his very existence. Those are such as are supposed to be best calculated to effect the object for which he is created.[190]

Yet Marshall left the proverbial door wide open by not clearly defining the properties of the law of corporate creation, nor defining the law complicit or incidental to the corporate existence. As the corporation is not mentioned in the constitution, such an entity could be considered as a legal fiction. However, artificial is not synonymous with fictitious.

> That which is artificial is real, and not imaginary … A corporation cannot be at the same time 'created by the state' and fictitious. If a corporation is 'created' it is real, and therefore cannot be a purely fictitious body having no existence except in the legal imagination.[191]

The fear that early US citizens exhibited in respect to corporations was symptomatic of the individualist economic theory that was the foundation of early American thought. *Dartmouth* was a landmark decision from the Court dealing with the application of the Contract Clause of the Constitution to private corporations.[192] *Dartmouth* settled the nature of public versus private charters and resulted in the rise of the US model of the business corporation and the US free enterprise system.

A history of the US provides considerable evidence that people, natural or otherwise, have banded together to form strong cohesive organizations to promote political agendas. Tocqueville recognized this aspect of US society in 1830 when he stated: “No country in the world has the principle of association been more successfully used or applied to a greater multitude of objects, than in America”.[193]

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[190] Dartmouth College v Woodward, 17 US 518 (1819), at 636.

[191] Arthur W Machen, “Corporate Personality,” *Harvard Law Review* XXIV, no. 4 (1911): 253–67.

[192] In *Dartmouth*, the Supreme Court upheld the sanctity of the original charter of the college granted in 1769 by King George III. This pre-dated the creation of the US and the Constitution so is therefore based on the UK-US history of common law that stemmed from the Magna Carta.

[193] Mansfield and Winthrop, *Alexis de Tocqueville Democracy in America (1835-1840)*, p 95.

It is reasonable to argue that the institutional structure of Government at all levels encourages group activity with actions by individuals more difficult to achieve. At the Federal level, the separation of powers enhances the prospects of organized and/or incorporated groups to access the labyrinth of the bureaucracy along with the complexities of the judicial system. The corporate model is arguably the archetypical free association; the freedoms to form companies, to accumulate capital and to seek profit are cornerstones of US social and economic development.

At the 1787 Constitutional Convention, James Madison proposed placing the Federal Government in control of corporations, when a corporation was required for the public good, as the authority of a single state was incompetent.[194] Madison's proposal failed because many of the delegates feared that granting this potentially enormous power to the Federal Government would open the doors for a US version of the East India Company. These delegates believed that the best preventative measure against these large and powerful corporations was to keep the corporate charter at the state level.[195] The final text of the Constitution did not mention corporations. Still fearful of the rise of monopolies such as the British joint-stock companies, Jefferson and Madison went so far as to propose an amendment which would ban monopolies in commerce and would prohibit corporations from owning other corporations.[196] This proposal also did not gain traction with the other delegates. The colonial fear of joint-stock corporations

[194] Gaillard Hund and James Brown Scott, eds., *The Debates in the Federal Convention of 1787, Which Framed the Constitution of the United States of America, Reported by James Madison, a Delegate from the State of Virginia: August 18, 1787* (Oxford: Oxford University Press, 1920), http://avalon.law.yale.edu/18th_century/debates_818.asp [accessed 9 September 2011].

[195] Ted Nace, *Gangs of America: The Rise of Corporate Power And the Disabling of Democracy* (San Francisco: Berrett-Koehler Publishers, 2005), p 48.

[196] Thomas Jefferson, Letter to Alexander Donald 7 February 1788." In *The Writings of Thomas Jefferson*, Vol. XIII, edited by R.H. Johnston. New York: G.P. Putman's and Sons, 1899.

carried over to an early American fear of all types of large corporations as corruptors of civic virtue.

Ethos in the US was largely built upon rugged individualism. However, corporations represented the emergence of collectivist institutions in which an association of wealthy and powerful people could unite to subvert the efforts of individuals. At a constitutional convention to revise the state constitution of Michigan, corporations were called: "… soulless, heartless, remorseless, and conscienceless… regardless of the dying or the dead".[197]

The new nation of thirteen sovereign states had very few business corporations. The corporations that survived the Revolution were mainly non-profit institutions such as colleges. For example, there was not a Bank of the United States until 1780. Most of that first bank's stock was owned by the government with that charter not renewed in 1785 due to the charges levied against its operation. "The agrarian charges were numerous… the bank was a monstrosity, an artificial creature endowed with powers not possessed by human beings and incompatible with the principles of a democratic social order".[198] By 1790 corporate charters had been granted to four banks by states; these banks were not private institutions as they served as financial institutions for the states that chartered them.[199] Not unlike the banks, early corporations were closely supervised by the state legislatures that granted their charters. Legislators argued that State governments had an absolute right to amend or repeal a corporate

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[197] Rowland Berthoff, *Republic of the Dispossessed: The Exceptional Old-European Consensus in America* (Columbia, Mo: University of Missouri Press, 1997), p170.
[198] Hammond Bray, *Banks and Politics in America from the Revolution to the Civil War* (Princeton: Princeton University Press, 1991), pp 48-9.
[199] Ibid, pp 65-7.

charter under the 10th Amendment.[200] However, this was never challenged in the Supreme Court.

By the dawn of the 19th Century, the corporate entity was used mainly to undertake activities deemed to be in the public interest or at least the provision of services. Up to that year only 335 profit-seeking corporations appear to have been formed in the US, nearly all incorporated in the last decade of the Eighteenth Century. Of these, 219 were turnpike, bridge and canal companies, with another 36 establishing water supplies, fire services and dock facilities. Banks and insurance companies had just begun to assume corporate form and numbered 67 at the opening of that century. Manufacturing industry lay almost wholly outside the corporate field, being represented by only 6 corporations.[201]

By the late 18th and early 19th centuries, the corporation's profit motive was acknowledged. However, the corporation was thought to serve the needs of the state, and not simply the private profit of the stockholders, with faith in the state to alter or rescind corporate charters and privileges when public welfare was determined to be in jeopardy. During the 1837 convention to revise Pennsylvania's constitution, the subject of corporations arose. A report from this convention portrayed corporations in an unflattering light with an unknown contributor reporting:

> All corporations are unrepublican and radically wrong. [They are] a compromise of the principle of equality with that of property. These legislative monsters which had no souls to damn and no bodies to whip were permitted

[200] Richard L. Grossman and Frank T. Adams, *Taking Care of Business, Citizenship and the Charter of Incorporation* (Cambridge: Charter Ink, 1993), pp 11-12.

[201] Joseph S. Davis, *Essays in the Earlier History of American Corporations: Volume II* (Cambridge: Cambridge University Press, 1917), p 24.

> the easy virtue of operating without concern for energy and economic. [They require] careful circumspection and wise frugality.[202]

Yet as late as the early 1850s, many people still demonstrated fear of corporations as they believed that they unequally favoured certain individuals.[203] In Indiana, it was briefly considered to disqualify corporate officers and perhaps stockholders from public office. Although the stockholders and corporate officers had individual rights, Indiana lawmakers challenged: "…who could pretend that the rights of the individuals incorporated and unincorporated are equal?"[204] However, the challenge of how to balance the rights of individuals to participate in corporations by investment and/or stockholding, against protecting the rights of the individuals from the power and influence of those corporations, could not be met.

As the industrial era progressed, social divisions in the US became more apparent. While the wealthy elite added value to their investments, there was a growing upper middle class that aspired to join the wealthy elite.

> The middle-class, wage earners, women, and farmers all experienced industrialization differently. In middle-class families, husbands and wives functioned in separate spheres of responsibility, while Improvements in urban transportation allowed them to move out of city centres into a fast developing urban sprawl.[205]

Unskilled wage earners faced a difficult time with industrialization as machines took the place of manual work, with workers "…subject to swings of the business

[202] C.J. Ingersoll, "Reports on the Currency in the Pennsylvannia Election: Tuesday May 23, Minority Report," *Niles Weekly Register*, June 3, 1837, 217.
[203] Lee Soltow, "Economic Inequality in the United States in the Period from 1790 to 1860," *The Journal of Economic History* 31, no. 4 (1971): 822–39.
[204] Berthoff, "Conventional Mentality: Free Blacks, Women, and Business Corporations as Unequal Persons, 1820-1870."
[205] Martha Vicinus, *A Widening Sphere : Changing Roles of Victorian Women* (Abingdon: Routledge, 2013), p 30.

cycle and associated poverty".[206] Although strikes revealed working-class unrest, many in the working class still believed that with ability and hard work they could rise from their circumstances.

Farmers in more established areas benefited from technology and easy access to urban markets. However, farmers in general increasingly lived at the mercy of financial and industrial cycles. The working class and the problems of the cities were of particular concern during this era, probably because the influential urban middle and upper middle classes faced them every day. "Working class slums and ethnic neighbourhoods were being filled by new immigrants from southern and eastern Europe, alarming many with their alien customs and their reputed radicalism".[207]

As the technology advances brought about by the Industrial Revolution increased production and profitability in the manufacturing and agricultural sectors, the number of corporations began to steadily increase. From 1776 to the early 1800's, about three hundred companies were incorporated through state governments with the majority forming in the New England states.[208] These companies formed to take advantage the limited liability for investments and the unlimited life of the corporation.[209] One well-known corporation of the early 1800s was the Boston Manufacturing Company which incorporated in 1813.[210] The corporation had a large investment pool of US$400,000 which it used to

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[206] Alan Trachtenberg, *The Incorporation of America: Culture and Society in the Gilded Age* (New York: Macmillan, 2007), pp 23-25.
[207] Ibid, p 114.
[208] Mansfeld G Blackford and K. Austin Kerr, *Business Enterprise in American History* (Boston: Houghton Mifflin Company, 1986), pp 119-120.
[209] Ibid, p 145.
[210] William Cobb Wilde, ed., "An Act to Incorporate The Boston Manufacturing Company (Approved by the Governor Feb 23, 1813)," in *The Laws of the Commonwealth of Massachusetts from February 28, 1807, to Feb 27, 1813*, vol. 1 (Boston, MA: Thomas and Andrews, 1813), p 415.

consolidate the various elements involved in textile manufacturing.[211] The Boston Manufacturing Company owned the Waltham mill which produced the waterpower to power looms in the Appleton textile mill which it also owned. It also manufactured and sold textile machinery.[212] This corporation was one of the early examples of horizontal integration in which a corporation takes over all the various elements of production.

While the Boston Manufacturing Company was breaking ground in the manufacturing industry, railroads were becoming increasingly powerful corporations as they forged alliances with one another and dominated the transportation industry. The capital required to build railroad networks was vast and therefore required investments by a large number of people. As more and more individuals invested in the railroad corporations, the corporations were transformed from small, closely managed firms to large mega-firms requiring an extensive management system. Railroads began a managerial revolution by creating bureaucracies of business professionals to manage the innumerable railroad operations including management of funds, capital investments, pricing and advertising, and finally, the operation of the rolling stock. The railroad corporations, with their large management structures complete with bureaucracies of middle management, were the predecessors of the modern day corporations as we understand them.[213] It would be within the railroad industry that the law would adjudicate the destiny of the corporation as a legal person.

During the Gilded Era, Government sought a cooperative relationship with business and labour in the hopes that cooperation would result in general

[211] $1 in 1813 dollars was worth around $14.29 in 2013. Therefore US$400,000 in 1813 had a 2013 value of US$5,716,000

[212] Blackford and Kerr, *Business Enterprise in American History*, p 100.

[213] Ibid, p 9.

economic prosperity.[214] This was reinforced by the reliance the Government had on the key bankers and financiers, the very same people who owned the majority of the stock in the Railroad corporations. This is typified when, in 1895, a desperate President Grover Cleveland was faced with the US economy collapsing under the burden of falling prices and rising unemployment that began with the Panic of 1893. Without a central banking system and a currency backed by gold, the Treasury's reserves had fallen to dangerous levels; the US was technically bankrupt. Cleveland and Treasury Secretary, John Carlisle, negotiated a deal with Wall Street and railway tycoon John Pierpont Morgan, to bail out the US government.[215]

The management structures of the railroads in which groups of middle managers and investors, rather than individual actors, were the main players was in stark contrast to the traditional individualistic perception of the firm. The myriad of minority stockholders were increasingly prevented from taking an active role in the management of the corporation, as ownership and the means of production began to separate.[216] The turn of the Twentieth Century ushered in the era of management structures and correspondingly management theories of corporations. The scope of the corporation shifted from being able to do things specifically allowed by its charter to having the latitude to do anything not specifically prohibited in the charter.[217] This shift to the general incorporation laws made incorporation appear unexceptional along with the wave of regulatory

[214] Robert L Rabin, "Federal Regulation in Historical Perspective," *Stanford Law Review* 38, no. 5 (1986): 1189–1326.
[215] John Steele Gordon, *Empire of Wealth: The Epic History of American Economic Power* (New York: Harper Collins, 2004), pp 268-80. See also: Charles R. Morris, *The Tycoons: How Andrew Carnegie, John D. Rockefeller, Jay Gould, and J. P. Morgan Invented the American Supereconomy* (New York: Henry Holt and Co, 2006).
[216] William W. Bratton, "The New Economic Theory of the Firm: Critical Perspectives From History," *Stanford Law Review* 41, no. 6 (1989): 1471–1527, p 1471.
[217] H Bradley Jones, "The Professional Corporation," *Fordham L. Rev.* 27, no. 3 (1959): 353–72.

measures enacted by state legislatures to ratify the autonomy of the corporation; the state supplying a corporation's robes and even, for some businesses, a subsidy. The state had become both the source of a corporation's purpose and power.[218] It was during this period that many of the initial corporate personhood cases were heard by the US Supreme Court.

A significant shift in corporate and political culture began in the early 1970s with corporate lawyer Lewis F. Powell driving a change whereby the corporate sector was challenged to take charge of its own destination by developing long term agenda that placed that sector at the front and centre of political and legal discourse. In what became known as the Powell memo, inspired the corporate sector, who had long felt disadvantaged by liberal policy and union power, to put in place fundamental changes to the political and judicial culture within the US.

Powell powerfully argued that:

> … [learning] the lesson that political power is necessary; that such power must be assiduously cultivated; and that when necessary it must be used aggressively and with determination-without embarrassment and without reluctance which has been so characteristic of American business. [219]

Central to such efforts was Powell's insistence that "…conservatives nourish a new generation of scholars who would go on to become university academics, politicians, corporate leaders, agency heads and members of the judiciary." They would function as public intellectuals actively shaping the future direction of policy issues. He also advocated the creation of "a conservative speaker's bureau, staffed by scholars capable of evaluating textbooks, especially in economics,

[218] Mark, "The Personification of the Business Corporation in American Law", p 1456.
[219] Lewis F. Powell, "Memorandum: Attack on American Free Enterprise System," 1971, http://law.wlu.edu/powellarchives/page.asp?pageid=1251.

political science and sociology." In addition, he advocated for the US Chamber of Commerce with corporate support to organize:

> …a corps of conservative public intellectuals who would monitor the dominant media; publish their own scholarly journals, books and pamphlets, and invest in advertising campaigns to enlighten [students, academics and shareholders] on conservative issues and policies.[220]

An almost accidental flow-on effect from this, as has been clearly demonstrated, was an increase in the Conservative voting base.[221] As the result of this epiphany, the corporate sector invested heavily in university research, think tanks, lobby groups and campaign finance; political money at all levels, to ensure that the desired ideological shift pervaded all aspects of political and judicial discourse in the US. The key institutions; The Business Roundtable (1972), the American Legislative Exchange Council (ALEC - 1973), Heritage Foundation (1973), the Cato Institute (1977), the Manhattan Institute (1978), Citizens for a Sound Economy (1984 - now Americans for Prosperity), Accuracy in Academe (1985), and others are all conservative institutions founded and funded by the corporate sector, either directly or indirectly through the US Chamber of Commerce.

This has resulted in legislation, agency policy and arguably, judicial outcomes from the Court, all being part of a preordained process; a process that is based on an evolution of the underlying ideology; developing a new norm. Deliberate legislative and/or regulatory creep is another aspect that has contributed

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[220] Ibid. See Appendix 10

[221] Stephen Ansolabehere, Jonathan Rodden, and James M Snyder, "Purple America," *The Journal of Economic Perspectives* 20, no. 2 (2006): 97–118. See also: Alan Abramowitz, "Partisan Polarization and the Rise of the Tea Party Movement," 2011, 1–26; Lawrence C Dodd and Bruce I Oppenheimer, "A Decade of Republican Control: The House of Representatives, 1995-2005," vol. 8 (presented at the Congress Reconsidered, Washington, DC: CQ Press, 2005).

significantly to events in the US that has had global effects.[222] When combined, forms of new conservative norms, devised at the behest of the corporate sector, have contributed to the orchestrated effects of globalization and associated neo-liberal economic policy, globally.

The successful nomination by Nixon of Chief Justice Warren Burger to the Court, the subsequent appointments of three more conservative Justices including Lewis F. Powell, the election of Reagan, and the associated concept of Reaganomics, are significant early milestones and have contributed significantly to the continuation of the expansion of that culture.[223] The passage through Congress of the *Gramm-Leach-Bliley Act* must be considered as a significant outcome reflecting the on-going concerted influence over Congress by the FIRE sector.[224]

The consequences of corporate influence continue to enjoy significant beneficial outcomes for the corporate sector, along with similar effects in the majority of western nation-states. This supports *CGIT* in that as the US is arguably no longer a democratic republic; the various branches of the US government are the beneficial agents of the broader corporate sector.

Corporations in the 21st Century

In the late 20th and early 21st Centuries, the reality was that corporations had become major institutions rivalling the US Government in wealth and power. It is no accident that much of the debate over the nature and purpose of the

[222] Emily Eisenlohr, *Fairy Tale Capitalism: Fact and Fiction Behind Too Big to Fail* (Bloomington, IN: Author House, 2010); Rachel Brand, *Tales of Regulatory Creep 21 October 2013*, The Houston Lawyers Chapter of The Federalist Society for Law and Policy Studies, n.d., https://www.fed-soc.org/events/detail/tales-of-regulatory-creep [accessed 10 November 2013].
[223] Mark Tushnet, "The Politics of Constitutional Law," in *The Politics of Law: A Progressive Critique* , edited by David Kairys (New York: Pantheron Books, 1990), 219–36.
[224] *Financial Services Modernization Act (Gramm-Leach Bliley Act) of 1999, Pub L No 106-102, 113 Stat 1338*, 1999.

corporation had its origin in the 1930s; in the aftermath of the Great Depression, when the influence of modern corporations on society began to grow. After a repositioning of the corporation in the years after World War II, and the realignment of direction as the result of the Powell memo, the corporation has become the dominant entity in the 21st Century.

> The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state - economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation... The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organization. The law of corporations, accordingly, might well be considered as a potential constitutional law for the new economic state, while business practice is increasingly assuming the aspect of economic statesmanship.[225]

The effects of Globalisation have significantly increased the political footprint of corporations on a global basis. The corporate sector in the US, during the period of the 110th-112th Congress', have received significant funding from the US Government while significantly affecting the socio-economic position of US natural person citizens.[226] This has had a significant flow-on effect globally which is still unfolding.

The modern corporation: a problematic definition

As demonstrated in the evolution of US corporate history, there remains an inconsistency in how the concept of a corporation is defined. In the introduction, I provided a definition that I subscribe to in this thesis. However, legal theorists and

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[225] Berle and Means, *The Modern Corporation and Private Property*, pp 215-6.

[226] See Appendix 9. These tables list the top 200 corporations by contributions. The last table denotes FIRE sector only within that top 200.

the Court have long wrestled with the problem of how to conceptualize what a corporation actually is. As Justice Stevens states in his dissenting opinion in *Citizens United*:

> The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it. Austin set forth some of the basic differences. Unlike natural person citizens, corporations have 'limited liability' for their owners and managers, 'perpetual life,' separation of ownership and control, and favorable treatment of the accumulation and distribution of assets, . . . that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments.[227]

He noted several dramatic differences between people and corporations under the law. Furthermore, "…the conceit that corporations must be treated identically to natural person citizens in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case".[228] This reinforces the notion held by many that majority opinion in *Citizens United* erred by stating that the corporate person must be treated identically under the law. The inherent differences between the corporate person and a natural person citizen make it necessary and prudent for the law to treat the corporate person differently than natural person citizens. Perhaps most importantly, is that the range of concerns and motivations for corporate persons are institutionally motivated and only constrained by legislated efforts or the risks associated from profit and loss.

[227] Citizens United v Federal Election Commission 130 S. Ct. 876, 971 (2010),) (Stevens, J., concurring in part and dissenting in part), quoting *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652, 658-659 (1990).

[228] Citizens United v Federal Election Commission 130 S. Ct. 876, 930 (2010), Stevens, J., concurring in part and dissenting in part).

Political money and the corporation

The notion that political donations potentially lead to political favors is not new. Various forms of patronage have a history going back to at least the Roman Republic. A favor, making a large donation or introducing connections, has an intrinsic value. Ordinarily, people feel inclined to reciprocate favors'. "Do a bigger favor for someone, that is, write a larger check, and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings".[229]

While explicit quid pro quo arrangements are rare, such 'understandings' are quite common. Access to a member of Congress or key staffer is part of the process.[230] Since political donations lead to political favors, the logical progression is that more political donations lead to more political favors. As the post *Citizens United* environment allows unlimited political spending, it stands to yield unlimited political favors. This is contrary to good public policy as a democracy should be about the merits of ideas, not the money behind them.

Citizens United supporters will argue that campaign contributions do not determine the results of election. While such claims seem quite specious, it does not actually matter if the contributions impact an election's outcome or not. Corporate political speech is not about betting on the winning horse and then receiving a payout. Rather, large donors contribute to both sides to acquire access and influence.[231] Unlimited corporate political speech means that a corporation can now seek to acquire as much access and influence as it can afford.

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[229] McConnell v Federal Election Commission, 251 F Supp. 2d, 493 (2003), (J. Kollar-Kotelly) (quoting declaration of Robert Rozen, partner, Ernst & Young 14; see 8-R Defs. Exhs., Tab 33).

[230] Josh Brodbeck, Matthew T. Harrigan, and Daniel A. Smith, "Citizen and Lobbyist Access to Members of Congress: Who Gets and Who Gives?," *Interest Groups & Advocacy* 2 (2013): 323–42.

[231] See charts in Chapter 5

The tendency for corporations to donate to both sides of a campaign is a widespread phenomenon. "…in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to both major national parties".[232] This trend has become more extreme in the wake of the *Citizens United* ruling. More than 70 of the top 100 political donors contributed to both Democrats and Republicans in the 2012 election cycle. [233] It should come as no surprise that all 100 of the current top donors are organizations such as Political Action Committees (PACs) and corporations; there is not one natural person citizen amongst their ranks. Playing both sides of the political field is now commonplace for corporations and this strongly indicates that corporate political speech is not ideological in nature, but merely transactional. Furthermore, not only are most of the top donors hedging their bets between both the Democrats and Republicans, but both parties are well aware of this and seek to exploit this source of funding.

> [But] if you're giving a lot of soft money to one side, the other side knows. For many economically-oriented donors, there is a risk in giving to only one side, as the other side will likely read through FEC reports and have staff or a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed. They'll get a message that basically asks: 'Are you sure you want to be giving only to one side? Don't you want to have friends on both sides of the aisle?' If your interests are subject to anger from the other side of the aisle, you need to fear that you may suffer a penalty if you don't give. ...during the 1990's, it became more and more acceptable to call someone, saying you saw he gave to this person, so he should also give to you or the person's opponent.[234]

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[232] Expert Report of Thomas E. Mann, Tables. 5-6 in McConnell v Federal Election Commission 540 US 93 (2003).
[233] Center for Responsive Politics, "Top Overall Donors," 2012, http://www.opensecrets.org/overview/topcontribs.php# [accessed 12 May 2013].
[234] *McConnell v Federal Election Commission, 251 F Supp. 2d, 510*, 2003 (Kollar-Kotelly, J.) (quoting *Randlett* Decl. 12, App. 715); 251 F. Supp. 2d, at 868 (Leon, J.).

Competing corporations will certainly do the same. The result will be a race between the wealthiest and most powerful corporations, where each will seek to outspend and out-influence the others in the political arena. Meanwhile, natural person citizens and small businesses that lack these same accumulations of wealth will be unable to afford any access and influence of their own.

Corporate commercial speech v. free speech

Corporate speech is commonly and arguably incorrectly classified in two forms; these forms being political speech and commercial speech. However, I argue that the two forms of speech are essentially the same. While many aspects of political speech may be classified as ideological in nature, that speech is in reality a form of what is traditionally classified as commercial speech. Commercial speech is speech made on behalf of a company or individual for the purpose of making a profit. Unlike political speech, the US Supreme Court does not afford commercial speech full protection under the First Amendment.[235] To effectively understand how the Court distinguishes commercial speech from other types of speech, there is a need to understand how Constitutional opinion has evolved and where current discourse sits in the context of the First Amendment. This will contribute to the relationship between speech protection under the First Amendment for the corporate Person and the inherent rights of the natural person citizens.

Commercial speech is speech done on behalf of a company or individual for the purpose of making a profit. Unlike political speech, the US Supreme Court does not afford commercial speech full protection under the First Amendment. To effectively understand how the Court distinguishes commercial speech from other

[235] Edwin P Rome and William H Roberts, *Corporate and Commercial Free Speech: First Amendment Protection of Expression in Business* (Westport, Conn: Quorum Books, 1985).

types of speech, there is a need to understand how Constitutional opinion has evolved and where current discourse sits in the context of the First Amendment. This will contribute to the relationship between speech protection under the First Amendment for the Corporate Person and the inherent rights of the natural person.

Whilst usually associated with advertising, commercial speech is the terminology applied to corporate communications that includes both advertising and public relations material. Advertising promotes products and services that a business is trying to sell. However, this is not the sole purpose of advertising. In addition to promoting a product or service, advertising serves multiple functions for the company and brand. These functions help companies achieve the ultimate goal; In the case of publically listed incorporated companies, the legal purpose is to enhance the return to the shareholder. Public relations material has a similar role. The aim of public relations is to persuade the public, potential customers, investors, employees, and stakeholders to maintain a certain point of view about its leadership, products, or of political decisions. Public relations material is used to inform, engage, and call people to action. Therefore, public relations material is designed to instil trust, persuade people to support, or share accomplishments. The difference between advertising and public relations is often subtle with multi-media and associated infomercials bridging the traditional divide. However, as with advertising, for publically listed incorporated companies, the legislated purpose of public relations material is to enhance the return to the shareholder. Yet the Court continues to struggle with separating advertising from public relations in the context of corporate speech and free speech protection under the First Amendment.

The origin of the conversation concerning commercial speech began in 1939 with the US Supreme Court decision in *Schneider v. State of New Jersey*.[236] In Schneider, Justice Owen Roberts held that a city handbill application procedure which required residents to apply for a license, which was subject to police permission, to hand out advertising door-to-door, arrogated citizens' First Amendment rights of free speech. While the speech in Schneider was protected, the Court's decision legalized commercial speech to be argued as dissimilar under the US Constitution. Commercial speech within a political context was first addressed by the Court in 1942 in *Valentine v. Chrestensen*. [237]In Valentine, the Court was asked again to consider city ordinances that affected handbill distribution. In New York City (NYC) there was an ordinance that expressly forbade handbill distribution when the handbill was purely commercial. Upon identifying a NYC ordinance prohibiting commercial handbills, Chrestensen sought to get around the ordinance by including a political protest about public dock policies on his otherwise commercial flyer. The Court held that Chrestensen's use of the handbill was a violation of the municipal code even though he had some political content included and that applying the ordinance to his handbill was not a violation of the First Amendment. The most remarkable aspect of Justice Roberts' opinion, delivered on behalf of a unanimous Court, is that it cites no authority.

Citing no authority or precedent itself has precedent in *Santa Clara County v. Southern Pacific Railroad Company*,[238] where the concept of 14th amendment protection within First Amendment created the doctrine of Corporate Personhood. The Roberts opinion disposed of the issue of commercial speech in one sentence: "We are . . . clear that the Constitution imposes no . . . restraint on government as

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[236] Schneider v State of New Jersey, 308 US 147 (1939).
[237] Valentine, Police Commissioner of the City of New York v Chrestensen, 316 US 52, 62 S Ct 920 (1942).
[238] Santa Clara County v Southern Pacific Railroad Company, 118 US 394 (1886).

respects purely commercial advertising".[239] The opinion avoided discussing the purposes or values underlying the first amendment, and without mentioning the first amendment except in stating Chrestensen's contentions. The ruling clearly created the precedent that commercial speech has no First Amendment speech protection.

The makeup of the U.S. Supreme Court changed in the sixth decade of 20th Century with new, and arguably more progressive justices, appointed under the Kennedy and Johnson administrations. With this progressive evolution, the legal stance on commercial speech, communication approaches in the field of public relations, including political public relations, changed in the US. The first case in a series of cases concerning commercial speech in this era was *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations et al*. in which the constitutionality of 'want ads' organized by sex was successfully challenged.[240] In Pittsburgh Press, the Court held that commercial speech was an issue not only related to content, but also editorial control. Cases like Pittsburgh Press, where commercial speech was intertwined with social and political issues, would become emblematic of the type of commercial speech cases decided by the Court throughout the 1970s.

In 1975 another case with political overtones was decided by the Court. In *Bigelow v. Virginia*,[241] a newspaper editor issued flyers in the University of Virginia community in Albemarle County, Virginia concerning the availability of abortion services in New York. While abortion was legal in New York at the time, it was illegal in Virginia. A Virginia State statute made it a misdemeanour to publish or

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[239] Valentine, Police Commissioner of the City of New York v Chrestensen, 316 US 52, 62 S Ct 920 (1942), p 54.

[240] Pittsburgh Press Co. v Pittsburgh Commission on Human Relations, 413 US 376 (1973).

[241] Bigelow v Commonwealth of Virginia 421 US 809, 822 (1975).

distribute abortion advertisements. The Court held that simply because this flyer was a form of advertisement and therefore commercial speech did not mean that it had no First Amendment protection. While referring to Valentine, the Court held that commercial speech was not simply denied First Amendment protection, but limitations on commercial speech were viewed in terms of their purpose and level of restriction. In Bigelow, the Court put forward that commercial speech is not mutually exclusive from other types of communication, especially political speech. The Court determined that issue was viewed as an important social and political issue, which led to the unconstitutionality of Virginia's statute.

This rationale for commercial speech being more than merely commercial was seen again in 1976 with *Virginia State Board of Pharmacy et al. v. Virginia Citizens Consumer Council*.[242] In this ruling, the Court again addressed the issue of state statutes banning certain commercial speech. In this case, the licensing board for Virginia pharmacists banned the use of advertising prices of pharmaceuticals. Holding that commercial speech did have some protection under the First Amendment Justice Blackmun wrote that commercial speech can contain public interest that prompts important societal discourse.[243]

In a 1978 decision, *Ohralik v. Ohio State Bar Assn*, the Court offered this defence to the position taken on commercial speech:

> "We have not discarded the 'common-sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. To require a parity of constitutional protection for commercial and non-commercial speech alike could invite dilution, simply by a levelling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalisation, we

[242] Virginia State Pharmacy Board v Virginia Citizens Consumer Council, 425 US 748 (1976).
[243] Ibid. at764-65.

instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of non-commercial expression".[244]

Ohralik did little to provide clarity to the doctrine of commercial speech, how commercial speech interfaced with the First Amendment, nor provide direction to business and Government alike. The hope that the matter was settled once and for all was short lived. By 1980, with *Central Hudson Gas & Electric Corp. v Public Service Commission of New York*,[245] the Court was again faced with the constitutionality of a ban on commercial advertising. The commercial speech being challenged concerned a New York state statute that banned all advertising by public utilities such as Central Hudson Gas and Electric Corp. The Court held that this ban on electric utility advertising was in violation of the First Amendment and introduced a four-part analysis for evaluating government regulations and statutes limiting commercial speech. Writing for the majority, Justice Lewis Powell developed a four part test evaluating regulation on commercial speech.[246] Analysing the ban on utility advertising, the Court held that such a ban was in violation of the First Amendment because the justification for the ban, lowering utility costs and promoting conservation, was not a substantial interest. While Central Hudson's four-part test initially appeared to provide a high level of protection for commercial speech it was only six years before a renewed constitutional challenge made the Court docket.

In *Posadas de Puerto Rice Associates v. Tourism Company of Puerto Rico et al*. the Court held a Puerto Rican law banning casino advertising in local media

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[244] Ohralik v Ohio State Bar Assn., 436 US 447 (1978).

[245] Central Hudson Gas & Electric Corp. v Public Service Commission of New York 447 US 557 (1980).

[246] Ibid, p 351. (1) determine if the speech gets First Amendment protection, (2) determine if there is a substantial government interest restricting the speech, (3) determine if the regulation achieves the government's interest, and (4) determine if this restriction is "not more extensive than necessary"

was constitutional because Puerto Rico had an important government interest.[247] However, in 1996, the Court struck down a ban on liquor advertising in *44Liquormart v. Rhode Island*.[248]Arguing government regulations often endangers public discourse, Justice John Paul Stevens wrote, "The First Amendment directs us to be especially skeptical [sic] of regulations that seek to keep people in the dark for what the government perceives to be their own good.[249]

By scrutinizing cases before the Court as well as lower appellate Courts, it is reasonable to argue that many purported commercial communications contain both legitimate commercial promotions but also socially important speech. This theme was reiterated in *Bolger et al v. Youngs Drug Products Corp,*[250] where the Court held that direct mailings about contraceptives, although commercial in nature, were also protected. Writing for the majority, Justice Thurgood Marshall introduced a three-part test that evaluated when speech is deemed commercial. The three part test requires court to determine: (1) whether the communication is advertising, (2) whether the communication specifically addresses a product, and (3) what the motives of the sender are in sending these communications. This three-part test for commercial speech was at the heart of *Kasky v. Nike Inc*. (2000), the one case that comes closest to specifically addressing whether public relations containing socially important information constituted commercial speech.[251] This began a series of Kasky v. Nike in State, Appellate, and Supreme Courts. Although the various courts in *Nike v. Kasky* (2004) never explained why public relations were categorized as advertising, it must be considered that the Judges and Justices viewed advertising and public relations as legally the same

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[247] Posadas de Puerto Rico Associates, dba Condado Holiday Inn v Tourism Company of Puerto Rico et al. 478 US 328 (1986).
[248] 44 Liquormart, Inc., et al. v Rhode Island et al. (94-1140), 517 US 484 (1996).
[249] Ibid, p. 503
[250] Bolger et al v Youngs Drug Products Corp. 463 US 60 (1983).
[251] Kasky v Nike Inc. 79 Cal. App. 4th 165; 93 Cal. Rptr. 2d 854 (2000).

because they both concern promotion and advocacy. Kasky involved the public relations efforts by Nike Inc. to combat an emerging story about Nike's use of sweatshops in Southeast Asian countries. [252]

What can only be described as a saga, worthy of a TV mini-series, began in 1997, when Nike hired a consulting agency headed by former U.N. Ambassador Andrew Young to examine the working conditions of Nike plants in Asia.[253] Despite such attempts by Nike to maintain a perception of good working conditions, external watchdog groups, at odds with the Young report, began to produce stories detailing the actual working conditions for employees of Nike's manufacturing plants in Southeast Asia.[254] To combat the negative public perception of Nike as a responsible corporate citizen, the corporation engaged in a specifically targeted public relations campaign at presidents of colleges that were supported with Nike products sponsorship. The campaign included press releases that specifically addressed workplace conditions and treatment of employees with the mentioning of the favorable assessment Andrew Young's investigation produced in 1997. Nike was ultimately sued by Marc Kasky under the California Business and Professions Code.

During the trial, Nike challenged the basis of Kasky's suit and the trial judge granted a dismissal of the case.[255] Using the Bolger test to determine whether Nike's public relations communications were commercial speech, the California Court of Appeals held that a public relations campaign that concentrated on "corporate image" was different than "product advertisement" and was not a

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[252] Nike Inc. v Kasky 539 US 654; S. Ct. 2553 (2003).
[253] Dana Canedy, "Nike Appoints Andrew Young To Review Its Labor Practices," 1997, http://www.nytimes.com/1997/03/25/business/nike-appoints-andrew-young-to-review-its-labor-practices.htm [accessed 30 August 2014].
[254] Matt Wilsey and Scott Lichtig, "The Nike Controversy. Conference Presentation 2000," 2000, http://web.stanford.edu/class/e297c/trade_environment/wheeling/hnike.html [accessed 30 August 2014].
[255] Kasky v Nike Inc. 79 Cal. App. 4th 165; 93 Cal. Rptr. 2d 854 (2000), p 14.

violation of California law.[256] Kasky appealed the decision in the Court of Appeals of California to the California Supreme Court. At the California Supreme Court the holding in the appeals court and trial court were reversed.[257] Writing for the majority, California Justice Joyce Kennard held that the public relations communication by Nike did constitute commercial speech since the speaker Nike was a commercial entity and the receivers of the public relations campaign were commercial entities as well. Finding that the public relations campaign engaged in by Nike was in violation of California Business and Professional Code §17200, the California Supreme Court held that the public relations campaign engaged in by Nike was untruthful and deceptive. The Court further stated that when determining whether speech was commercial the Court "requires consideration of three elements: the speaker, the intended audience, and the content of the message".[258] Due to the negative result from the Supreme Court of California's decision, Nike petitioned the US Supreme Court for certiorari, which was initially granted and then later denied.[259] The Court's denial of certiorari did contain some opinions about Public Relations as commercial speech and as a forum for introducing important political and social issues. In his concurring opinion in Kasky, Justice Stevens recognized that this case presented a novel First Amendment issue "because the speech at issue represents a blending of commercial speech, non-commercial speech and debate on an issue of public importance.[260]However, Justice Breyer disagreed with the Court's decision not to hear *Nike v. Kasky* (2003). He pointed to the value of public debate on important issues as a reason why public relations, even corporate public relations, should not qualify as commercial speech. In his dissent Justice Breyer described the major issue in the

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[256] Ibid, p174 (citing Bolger et al. v. Youngs Drug Products Corp., 463 U.S. 60 (1983)).
[257] Kasky v Nike, 27 Cal. 4th 939; 45 P.3d 243 (2002).
[258] Ibid, p.960
[259] Nike Inc. v Kasky 539 US 654; S. Ct. 2553 (2003).
[260] Ibid, p 663.

case as “the freedom of Americans to speak about public matters in public debate”.[261] Breyer noted that public relations speech in Kasky was not like advertising because it was not merely about sales, rather public relations promotions, such as Nike’s, deal with much larger political and social issues that have value within public discourse and debate.

However, despite this cases’ importance to public relations, to date the issue of public relations as commercial speech has not been resolves in federal or state courts.[262] Courts struggle with what public relations communications are, and whether they fall into the category of commercial speech. In categorizing public relations as exclusively commercial speech courts are potentially limiting the freedom of public relations as a form of communication. As the cases demonstrate, commercial speech, particularly public relations communications, combines messages of political issue advocacy, awareness and action. All of those types of messages are instrumental to the democratic process because they relate directly to public awareness of political issues which is one of the cornerstones of democratic preservation.[263] However, while categorizing public relations as a form of speech that receives less protection under the Constitution creates a problem for the practice of public relations, there is recognition by courts that speech, even promotional public relations, plays a role in public political and societal debates.

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[261] Ibid, p 667.

[262] Examining commercial speech three things should be evident to public relations practitioners. First, political content within otherwise commercial speech will not necessarily garner greater First Amendment protections for public relations communications. Second, public relations practitioners should be aware that legal issues do not always arise from what an organization does; public relations departments’ communications can create lawsuits because of their content. Third, and perhaps most important, the legal definition of public relations is an evolving concept.

[263] Harold D. Lasswell and Howard H. Cummings, “Public Opinion in War and Peace: How Americans Make Up Their Minds,” *Problems in American Life* 14 (1943): 7–50.

As Justice Breyer stated in Kasky (2004) public relations, even corporate public relations, lends itself to public discourse on important societal issues. In this sense public relations is a part, if not an integral part, of the marketplace of ideas which preserves democratic society. While some cases view commercial speech, including public relations, as somehow less important, it becomes clear from these cases the boundaries between political discourse and promotions are increasingly and often blurred.[264] In Stevens's concurring opinion he puts forth multiple reasons why certiorari was denied in this case; this first being a legal technical issue relating to the California Supreme Court's failure to enter a final judgment in this case; the lack of standing of the parties in federal court; and arguably, more importantly, the contemporary understanding of commercial speech in relation to the First Amendment issues in this case.[265] The denial of certiorari contained a vigorous dissent by Justices Kennedy, Breyer, and O'Connor.[266] However, the denial of certiorari has a wider implication than the technical issues stated by Stevens in his concurring opinion.

The six areas, that Kasky claimed Nike had misrepresented itself in its public relations campaign, have not been tested. Therefore, this sends clear signals that corporations that are 'flexible with the truth' may be protected from charges of securities fraud. As Richard Epstein stated when reviewing the 1987 Court: "[I]t is difficult to conceive of ... a defense of freedom of speech so pure as to countenance securities fraud....“[267] The regulation of false or misleading

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[264] Kasky alleged Nike had used it public relations campaign to misrepresent itself in six areas: (1) Nike denied use of physical punishment for workers, (2) Nike complies with local laws concerning wages and hours laws; (3) Nike complies with health regulations; (4) Nike pays southeast Asian workers minimum wages; (5) Nike provide health and food services for its employees in southeast Asia; (6) Nike provides a "living wage" for manufacturing employees.

[265] Nike Inc. v Kasky 539 US 654; S. Ct. 2553 (2003).

[266] Vicki Mcintyre, "Nike vs. Kasky: Leaving Corporate America Speechless.," *William Mitchell Law Review* 30, no. 4 (2004): 1531–69.

[267] Richard Epstein, "Unconstitutional Conditions, State Power, and the Limits of Consent (1988)," *Harvard Law Review* 102, no. 1 (1988): 4–104.

statements of material fact under the securities laws remains problematic, with regulations of false or misleading commercial speech upheld under First Amendment analysis, despite the fact that such regulations necessarily curtail speech.[268] However, when applied to today's climate of overlapping legal, political, social, economic, and popular culture, certain types of corporate speech have increased in prevalence.

Free speech or corporate political speech

Even if corporate political speech is at least harmless or at best beneficial, to the process, (although such a claim is arguably quite specious), this is not sufficient justification to decline its control. It is not enough to merely maintain a political environment that is above corruption. The Court stated in *Buckley v. Valeo (Buckley*):

> Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.[269]

But it must be taken further if the appearance of impropriety must be avoided. Likewise, it is not enough that the participants in the political marketplace are exposed to the various ideas and viewpoints that exist; they must believe these viewpoints are being discussed genuinely and in good faith. As such:

> At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public's faith therein,

[268] *Exchange Rule Act 17 C.F.R. § 240.1Ob-5*, 2004.

[269] Buckley v Valeo, 424 US 1, 46 L Ed 2d 659, 76-1 USTC ¶9189 (1976). See also: R Franklin Balotti and Jesse A Finkelstein, *The Delaware Law of Corporations & Business Organizations* (Englewood Cliffs, NJ: Prentice-Hall, 1988).

not only the capacity of this democracy to represent its constituents [but also] the confidence of its citizens in their capacity to govern themselves.[270]

The *Citizens United* majority asserted that despite the mass amounts of wealth accumulated by the corporations, that it is the individual who ultimately has the power in the electoral process. They argue that the fact that corporations are "willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials".[271] However, as the voices of the corporations reach a fever pitch while clamoring for support of the individuals, the roles of the individuals themselves become greatly reduced in the political process. Political apathy and feelings of political powerlessness can become entrenched. "Take away Congress' authority to regulate the appearance of undue influence and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance".[272]
The majority claimed that increased political speech by corporations would not result in voters to withdrawing from the democratic process.[273] However, their declaration ignores evidence that the electorate itself has indicated otherwise.[274] Therefore, it is of utmost importance that corporate political speech be restricted to prevent the appearance of corruption and to maintain a politically engaged electorate.

Open communication alone is arguably insufficient to ensure an effective campaigning and electoral process; there must also be trust in the process. When increased political communications negatively impact this public's trust, these two

[270] Federal Election Commission v. Wisconsin Right to Life, Inc., 551 US 449 (2007) 482, (opinion of Justice Souter, dissenting.
[271] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 910.
[272] McConnell v Federal Election Commission 540 US 93 (2003), 144.(Quoting *Nixon v Shrink Missouri Government PAC*, 528 US 377, 390 (2000)).
[273] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010),910.
[274] McConnell v Federal Election Commission, 251 F Supp. 2d, 176, 577-558, 623-624 (DDC) (2003) (Opinion of Kollar-Kotell, J.

considerations must be balanced. Corporate political speech potentially leads the wider electorate to the cynical belief that the system is for sale, destroying the public's trust in the democracy.[275] The restriction of corporate political speech is a necessary to ensure that the system is as trustworthy as possible. The state has a compelling interest in stopping both political corruption as well as the appearance of impropriety. However, the elected representative's thirst for the corporate dollar has created a norm that reinforces the belief that politicians cannot, or indeed should not be trusted.

Unlimited corporate political speech does not promote a healthy democratic process. In actuality, it hinders it. Justice Stevens argues that restricting corporate political speech will actually "facilitate First Amendment values by preserving some breathing room around the electoral 'marketplace' of ideas".[276] While at face value this may appear counterintuitive, hypothetical breathing room created around ideas contributes significantly to what the founding fathers were seeking when they drafted the First Amendment. The Court appears to have acknowledged a perceived lack of state interest in preserving this marketplace of ideas and has taken the roll of permitting corporate social responsibility to prevail. This is despite the fact, the distinctive threat to democratic integrity posed by corporate domination of politics was recognized at "the inception of the republic" and "has been a persistent theme in American political life" ever since.[277] Protecting this marketplace of ideas from one of corporate influence has a very clear historical concern, even if contemporary discourse considers it a knee-jerk reaction reflecting a deviation from stare decisis; a recent evolution.

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[275] Daniel JH Greenwood, "Essential Speech: Why Corporate Speech Is Not Free," *Iowa Law Review* 83 (1998): 995–1070.

[276] Citizens United v Federal Election Commission 130 S. Ct. 876, 976 (2010) (Stevens, J concurring in part and dissenting in part).

[277] Ibid at 974 (Stevens, J., concurring in part and dissenting in part), quoting Regan, *Corporate Speech and Civic Virtue, in Debating Democracy's Discontent*. 289, 302 (A. Allen & M. Regan eds. 1999).

In Justice Kennedy's opinion of the Court, he stated that "it is our law and our tradition that more speech, not less, is the governing rule".[278] This statement makes for an excellent sound-bite, and in a truly utopian society it could be true. However, such a claim is more idealistic than realistic. It is misleading as it blurs the issue rather than clarifying it. In a vacuum, more political speech is better than less. However, political speech does not exist in a vacuum, and more speech does not come without costs and tradeoffs. Justice Stevens touches on this very idea:

> If individuals in the society had infinite free time to listen to and contemplate every last bit of speech uttered by anyone, anywhere; and if broadcast advertisements had no special ability to influence elections apart from the merits of their arguments (to the extent they make any); and if legislators always operated with nothing less than perfect virtue; then I suppose the majority's premise would be sound. In the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener's exposure to relevant viewpoints, and it may diminish citizens' willingness and capacity to participate in the democratic process.[279]

While the notion that more speech leads to better democracy sounds viable, it must be considered as having significant counter-intuitive effects in practice. The voices that can most afford to dominate the media are surely the voices that will be heard. Allowing corporations unfettered access to political speech can lead to corporate domination in the arena of political speech. This will likely crowd out opposing and/or relevant viewpoints and reduce or eliminate the possibility for a public conversation on the merits of that political speech. Justice Steven argues that the problem is exacerbated as individuals do not have unlimited free time to consume and contemplate every piece of political speech. Therefore, more speech does not mean that more speech is actually heard or

[278] Ibid at 911.
[279] Ibid at 975-976 (Stevens, J., concurring in part and dissenting in part).

carefully considered. The result is that the broader public will turn off as the confusing rhetoric will make the separation of good from bad information a virtual impossibility. Increasingly, what is being said bears little relation to what is actually being meant.

In the majority opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, Justice Brennan stated:

> The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.[280]

Thus, unconstrained corporate political speech means that the best ideas struggle to be heard unless they are accepted by those who can properly finance their diffusion among the wider community.

This outcome is undesirable, as the idea of a government that is supposedly representative of its people is dependent on a system where ideas succeed or fail because of their merits, not the funding and connections of those who back them. The restriction of corporate expenditures on political speech will therefore enhance the political process by ensuring there is no conflict between ideas and resources. The right to free speech, as protected by the First Amendment, is a highly valued and as such must be considered the most sacred element of the US system of government. It is essential for the free exchange of ideas with no truly democratic government existing without it.

It is the free exchange of ideas that is perhaps the most fundamental difference between democracy and that of more totalitarian regimes seen around

[280] Federal Election Commission v Massachusetts Citizens for Life 479 US 238 (1986), 238, 258.

the world. The majority in *Citizens United* seemed to allude to this idea in their opinion when Justice Kennedy said that "…the right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it".[281] Given that free speech is such a required precondition for self-government, First Amendment protections are necessary.

Restrictions on political speech can be legally justified by a compelling state interest.[282] While a content based approach to corporate political speech may not be viable, an identity based approach is. Political speech can and should be regulated on the basis that it is a corporation doing the speaking. This is because the very nature of the corporation causes their political speech to be transactional and it is distinguishable from other speech in a constitutionally permissible way. As the primary role of an incorporated entity is to provide a return to the shareholder, all corporate speech, must provide a return on that investment. Therefore, logic would suggest that all corporate speech should be considered as commercial speech. This would conform to both contemporary First Amendment discourse and conform to commercial speech doctrine. This would eliminate the distortion in speech that currently exists.

The Supreme Court has recognized an anti-distortion interest in limiting political speech. The Court argues that there is a need to diminish: "…the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas" is a

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[281] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).

[282] See McConnell v Federal Election Commission 540 US 93 (2003), 205 ; Austin v Michigan Chamber of Commerce, 494 US 652, 658, 110 S.Ct. 1391 (1990).

substantial government interest.[283] Given the corporation's arguably distorted incentives in the political arena, regulating their right to political speech and restricting their right to influence public policy is imperative to further the state's interest in protecting the democratic system. The *Citizens United* majority rejects this line of reasoning stating that "…if the anti-distortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate form".[284] The majority's reasoning is arguably flawed as it pushes aside the corporate form as if it were merely a minor detail. It ignores that the many inherent differences between the corporate person and natural person citizens justifies different treatment. In a system where the timeframes that speech can have an effect is short, and the process to litigate the legality of that speech is long, by incorporating corporate speech within commercial speech doctrine would enhance the effect of that speech, reduce the requirement to litigate and provide a clearly defined border between speech from a corporate person and that from a human person.

The requirement to prevent corruption in the political process is another interest that could be used to justify the restriction of corporate political speech. The Supreme Court has explicitly acknowledged Congress' legitimate interest in ensuring that the money that is spent on elections, does not exert an 'undue influence on an officeholder's judgment' and from creating 'the appearance of such influence', beyond the sphere of *quid pro quo* relationships.[285] However, the Court should have found that this is also a compelling state interest. As Justice Stevens stated: "I believe the danger of either the fact or the appearance of quid pro quo

[283] Austin v Michigan Chamber of Commerce, 494 US 652, 658, 110 S.Ct. 1391 (1990), 660.
[284] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 904.
[285] McConnell v Federal Election Commission 540 US 93 (2003), 150.

relationships, provides an adequate justification for state regulation of both expenditures and contributions".[286] The *Citizens United* majority erroneously claims that the only "…sufficiently important governmental interest in preventing corruption or the appearance of corruption" is one that is "…limited to quid pro quo corruption".[287] This perspective on corruption in the political arena was suggested and rejected in *McConnell*.[288] This fails to acknowledge that corruption is not a simple black and white issue.

In reality, corrupt practices are not limited to an explicit exchange of money for a political favor, but they can and do fall anywhere within a wide spectrum of corruption. Justice Stevens clearly articulated this concept when he stated:

> Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one's behalf. Corruption operates along a spectrum, and the majority's apparent belief that 'quid pro quo' arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other's backs, and which amply supported Congress' determination to target a limited set of especially destructive practices.[289]

It must be accepted as fact that outright bribery is corrupt and undermines the system. But to deny that corruption is present just because a relationship between a corporation and an elected representative stops short of an explicit quid pro quo

[286] Austin v Michigan Chamber of Commerce, 494 US 652, 658, 110 S.Ct. 1391 (1990), 690 (Stevens, J. concurring).
[287] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 909-910.
[288] McConnell v Federal Election Commission 540 US 93 (2003), 152.
[289] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010) (Stevens, J., concurring in part and dissenting in part).

arrangement is to deny the reality of the situation. Such a claim is tenuous at best, as it is extremely unconvincing that a corporation would spend large sums of money to influence the political process and expect no return on its investment. While more gradual and subtle than outright bribery, this sort of influence peddling has the potential to undermine the democratic system.

While the desire for objectivity is paramount, a number on concerns discussed here by Justice Stevens have not been addressed by his peers on the Court. This includes the notion that: "Under the majority's view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech",[290] has received little consideration outside of ScotusBlog despite the opportunity *Citizens United* presents looking forward.

In *Citizens United*, while the majority failed to recognize this premise, it did acknowledge the risk of quid pro quo corruption but came to an improper conclusion when they refused to allow corporate political speech to be restricted. Corporate political speech can be distinguished from other forms of speech in constitutionally permissible ways; it is therefore prudent and permissible to restrict its influence on the political system. The people's right to free speech must be considered as sacrosanct. The very nature of a corporation makes their speech inherently different from that of natural person citizens. Yet, permitting the corporate person virtually unlimited speech ultimately encroaches on that sacred right enshrined in the constitution; that of the natural person citizens to free speech. Just as it was prior to the Declaration of Independence, and every enduring decade since its foundation, the citizenry of the US fear corporations;

[290] Ibid. (Stevens, J., concurring in part and dissenting in part).

perhaps even more so today, they fear the corporation and its complicit relationship with the elite minority.

First and foremost, corporate political speech is profit-driven, not ideological in nature. While individual donors can and do engage in electioneering activity with their own economic self-interest in mind, there are additional factors that contribute to an individual's own personal politics. An individual is motivated not only financially, but by their own morals and ethics, as well as their own personal ideas of fairness and social justice.[291] When an individual spends money to further a political cause, the underlying motivations are formed and driven by these separate (and often conflicting) considerations.[292] A corporate person therefore, is insulated from these complexities; a corporate person does not have a moral compass but possesses a legally enforced ethical code that ensures the maximizing return to shareholders.

Political speech from an individual emanates from the crossroads where a diverse and often conflicting group concerns intersect. This is not the case for corporate political speech, as a corporation's concerns are far less nuanced. There is perhaps no better way to illustrate this pivotal difference between individuals and corporations than the fact that corporations routinely give "substantial sums to *both* major national parties".[293] The idea that an ideologically passionate individual would donate to competing political campaigns is ludicrous, but this is the way of the world for corporations. A corporation exists only in the intangible world; its purpose being the pursuit of profit. It is unaffected by the vast majority of consequences that any particular public policies might cause. It is

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[291] Frederico Finan and Laura Schechter, "Vote-Buying and Reciprocity," *Econometrica* 80, no. 2 (2012): 863–81.
[292] Roderick P Hart, *Campaign Talk: Why Elections Are Good For Us* (Princeton, New Jersey: Princeton University Press, 2009), p 13.
[293] McConnell v Federal Election Commission 540 US 93 (2003), 148.

important to note that a corporation does not and in fact cannot, appreciate the consequences of law, policy or societal circumstance unless it specifically relates to its own bottom line, providing it conforms to a lawful purpose.

Thus, corporate speech "…is more transactional than ideological".[294] Corporations engage in this transactional political speech to advocate for policies that promote and support their own financial interests. Considering that the motivation behind their political speech is profit driven, they will seek to influence policy in a way that promotes their own profits at the cost of any other interests. Given the nature of the corporation, that the purpose for its very existence is to pursue profit, it is ill suited to consider and advocate on broad matters of public policy.[295] From the perspective of real flesh and blood people, with multi-faceted and diverse concerns, this means public policy will, to the extent that corporate electioneering activity is successful, undervalue their own overall interests and overvalue corporate interests.

The myth of shareholding

The interface between corporate and natural persons is in the majority on three distinct levels. One is a daily business/employee relationship where natural persons are employed by the corporate sector.[296] Second is a regular business/client relationship where natural persons are the clientele.[297] Third is the concept of shareholding, either directly by natural persons or through the actions of other corporate persons. This section argues that the concept of shareholding is

[294] Supp. Brief for Committee for Economic Development as Amicus Curiae 10, Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 971.
[295] Ibid, 974 (Stevens, J., (concurring in part and dissenting in part).
[296] James K. Harter, Frank I. Schmidt, and Theodore L. Hayes, "Business-Unit-Level Relationship between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis," *Journal of Applied Psychology* 87, no. 2 (2002): 268–79.
[297] Peter C. Verhoef, "Understanding the Effect of Customer Relationship Management Efforts on Customer Retention and Customer Share Development," *Journal of Marketing* 67, no. 4 (2003): 30–45.

a myth perpetuated by the corporate sector to encourage unsecured investment in corporate activity. Despite the concept having no legal basis, shareholding has become a significant vehicle for investment; despite being an artificial construct, it has become an accepted norm. Based on the notion that the concept of shareholding is a myth, I refer to a share as a legal instrument; a specific formally executed document that is tradeable. Corporate or natural persons who purchase and sell these investments are investors.

The original concept of granting a corporate charter was ostensibly to provide the state with a tool with which to ease the difficulty of doing business either with or for individuals working as a group. The group, as the corporate entity, had the ability to buy, sell, or exchange property because the corporation provided a unified source of control over the collective property owned by the corporation's members. The corporation could also develop, produce, and promote products under the corporate name with the corporation acting as a legitimate and an autonomous economic actor in the marketplace.

Relaxing the incorporation process was a significant milestone because it altered the understanding that incorporation was a privilege granted by the state for both public and private purposes. Free incorporation suggested that incorporation was not a special privilege but a right available to any group of people seeking to do business with a purely profit motive. The process of incorporation became administrative as the state simply became a rubber stamp on the paperwork rather than the sovereign granting of special status to a company. As incorporation became routine, corporations did not have the same obligation to serve the public interest or the needs of the state.[298]

[298] Mark, "The Personification of the Business Corporation in American Law", p 1447.

The corporate charter also lends expediency to legal matters involving the corporation. For example, the case of *John Doe v. AT&T* was docketed and decided in a reasonable time. Thousands or even millions of natural persons each designated by name v. a single entity cannot be considered reasonable in terms of time and resources.[299] Additionally, by treating the corporation as a legal person, the courts can more easily prosecute corporate criminal activity by addressing and punishing the corporation directly through fines. For the corporation, the primary benefits of the corporate charter are limited liability, and the potential unlimited life of the corporation to conduct business. Therefore, the application of corporate personality is largely a matter of expediency for the purpose of transactional business.

The significant shift in the 1970s and the rise of the Chicago School of free-market economists, "…revealed the proper purpose of the public corporation clearly, and that purpose was to make money for its dispersed shareholders." Consequently, an increase in share price on Wall Street and other trading floors across the World was viewed as proof of greater economic efficiency.[300] The idea that business performance could be measured through the single metric of share price enticed a generation of economists and business school professors to produce innumerable empirical studies testing the relationship between share price and variables like board structure, capitalization, mergers, state of incorporation, and so forth, in the quest to uncover the secret to "good corporate

[299] US Internal Revenue Service, "Disclosure & Privacy Disclosure Law Reference Guide," 2012, http://www.irs.gov/pub/irs-pdf/p4639.pdf [accessed 20 February 2013].
[300] Michael C Jensen and William H Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure," *Journal of Financial Economics* 3, no. 4 (1976): 305–60, p 318.

governance".[301] This resulted in lawmakers, arguing they now had at their fingertips, a simple prescription for every corporate ill.

While granting personhood may save many legal resources, the granting the status of a person to the corporation has actually caused more complications than it has resolved.[302] Despite this problem, legal and moral issues concerning the status of the group are not recent issues. The concept of the group as opposed to the concept of the individual person is a natural concept that has been in existence for as long as human beings have formed social units.[303] Freedom of association and the right to form groups are generally considered to be basic tenets of personal liberty. Arguably, the freedom to form a corporation is part of this natural right of association. Further, once a group is formed, it is natural to consider the group as a separate entity from its component members.

The corporate model perceived as being socially beneficial by contributing along equilibria to the broader society, was discounted with *Dodge v. Ford Motor Company*.[304] In the early 1900s, Ford Motor Company had acquired a sizable capital surplus; prices for the 'Model T' car had been reduced, and demand for the vehicle was high. Henry Ford decided to cut shareholder dividends and open more plants. The intention was to employ more workers and continue to reduce the price of his cars. Ford stated:

> [It is] my ambition is to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their

[301] Su Han Chan, John D. Martin, and John W. Kensinger, "Corporate Research and Development Expenditures and Share Value," *Journal of Financial Economics* 26, no. 2 (1990): 255–76. See also: Rolf W. Banz, "The Relationship between Return and Market Value of Common Stocks," *Journal of Financial Economics* 9, no. 1 (3-18): 1981.

[302] Christopher Stone, *Where the Law Ends: The Social Control of Corporate Behavior* (New York: Harper & Row, 1975). See also: Meir Dan-Cohen, *Rights, Persons, and Organizations: A Legal Theory for Bureaucratic Society,* (Berkley, CA: University of California Press, 1986); Dewey, "The Historic Background of Corporate Legal Personality."

[303] Linton C. Freeman, "The Sociological Concept of 'Group': An Empirical Test of Two Models," *American Journal of Sociology* 98, no. 1 (1992): 152–66.

[304] Dodge v Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (Mich. 1919) (1919).

lives and their homes. To do this we are putting the greatest share of our profits back in the business.[305]

However, minority shareholders brought suit to prevent this. While the board of the corporation did have some leeway to make decisions under the then current interpretation of the *business judgment rule*, the Court held that it could not allow Ford to do this because the corporation exists (*corporate purpose*) primarily for the profit of the stockholders and not its employees and the community.[306]

However, *corporate purpose* was considered as *mere dicta*; an offhand remark that was not needed for the court to reach its desired result in the case, and as such did not create binding precedent. More importantly, Delaware courts simply do not follow this element of *Dodge v. Ford*; the evolution of the legal doctrine still referred to as the *business judgment rule* now permits directors of public companies to enjoy virtually unconstrained legal discretion to determine a corporation's goals and objectives.[307] Why the Court considers corporate purpose *mere dicta* and not *judicial dicta*, has not appeared in any subsequent rulings relating to corporate personhood or constitutional responsibilities of the corporate entity.[308] Notwithstanding the absence of any collective agreement or specific principal on how to define *dicta*, the US legal system does not devolve into illogicality or threaten to founder. Dissimilarities as to whether a proposition is a component of a Court's position, or is merely *dicta*, regularly arise is subjective cases without unravelling the fabric of the law. Albeit there is "…broad general

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[305] Ibid.
[306] Ibid.
[307] Otis & Co. v Pennsylvania R. Co., 61 F. Supp. 905 (D.C. Pa. 1945) (1945) In *Otis*, a shareholder alleged that directors failed to obtain the best price available in the sale of securities by dealing with only one investment house. The federal district court ruled that although the directors chose the wrong course of action, they acted in good faith and therefore were not liable to the shareholders. The court reasoned that "mistakes or errors in the exercise of honest business judgment do not subject the officers and directors to liability for negligence in the discharge of their appointed duties."
[308] Pierre N. Leval, "Judging under the Constitution: Dicta about Dicta," *New York University Law Review* 81, no. 4 (2006): 1249–82. See also: Robert G. Schofield, "The Distinction between Judicial Dicta and Obiter Dicta," *Los Angeles Lawyer*, October 2002, 17–21.

concurrence on a range of issues related to decoding *dicta* and holdings, the conceptual qualms, which result from a lack of rigor on categorizing holding and dicta, converge to create significant practical difficulties in any application". [309]

Despite this, the corporate sector along with scholars and legislators has come to accept without question, the dogma that 'shareholders own publicly listed or private corporations' and that the proper purpose of the corporation is to maximize its shareholders' wealth.[310] However, this widespread perception lacks any solid basis in actual corporate law. The corporate code of Delaware, where the majority of Fortune 500 businesses are incorporated, states that corporations can be formed for any lawful purpose.[311] Correspondingly, a typical listed company charter defines a corporation's purpose as 'anything lawful'.

Even if 'shareholder primacy' cannot be defended as a legal requirement, there is a long history of advocacy for managing corporations to ensure they contribute the most to the economy and to society. This concept is based on the theory of the principal-agent model of the corporation; the 'principals' in public corporations were the 'shareholders', and directors were the 'shareholders agents'.[312] Despite the fact Jensen and Meckling were economists, not lawyers; the principal-agent model was enthusiastically embraced by academics in numerous fields as a simple way of defining the complexities of modern public corporations. Among other advantages, it appeared to provide a clear answer to the murky question of corporate purpose, because it taught that the best way to maximize the total value of the company was to focus on maximizing share price. This model of

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[309] Michael Abramowicz and Maxwell Stearns, "Defining Dicta," *Stanford Law Review* 57, no. 4 (2005): 953–1094.

[310] Andrew D. Cosh and Alan Hughes, "The Anatomy of Corporate Control: Directors, Shareholders and Executive Remuneration in Giant US and UK Corporations," *Cambridge Journal of Economics* 11, no. 4 (1987): 285–313.

[311] Balotti and Finkelstein, *The Delaware Law of Corporations & Business Organizations*.

[312] Jensen and Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure."

enhancing perceived corporate value permitting a corporation to borrow from the market to finance development and acquisitions; borrowing against a myth!

> However, there is a serious problem with this analysis.
>
> Put bluntly, the principal-agent model is wrong. Not wrong in a normative sense; there's nothing objectionable about a principal hiring an agent. But it's clearly incorrect, as a descriptive matter, to say the principal-agent model captures the reality of modern public corporations with thousands of shareholders, scores of executives, and a dozen or more directors.[313]

This argument is based on the notion that 'shareholders own corporations' is factually incorrect. Corporations are legal entities that own themselves; they are legally capable of entering into contracts, holding property in their own name, and committing their own torts. Therefore, in a legal sense, 'shareholders' are not dissimilar to other investors, bondholders, employees and creditors (suppliers). All have contractual relationships with the corporate entity. No investor, bondholder, employee or creditor 'owns' the company.

Additionally, the notion that 'shareholders' are the sole residual claimants in corporations are also flawed.[314] Again, under corporate law, 'shareholders' are only acknowledged as residual claimants are when a company falls into bankruptcy.[315] 'Shareholders' as unsecured investors only receive a return by way of a dividend when the board declares a dividend. While their liability is limited to the value of their unsecured investment in an artificial tradable document, they have no formal claim on any asset should the corporation be declared bankrupt, unlike other

[313] Lynn A Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (Berrett-Koehler Publishers, 2012).
[314] Ibid, pp 1-14.
[315] Katherine H. Daigle and Michael T. Maloney, "Residual Claims in Bankruptcy: An Agency Theory Explanation," *Journal of Law and Economics* 37, no. 1 (1994): 157–92.

forms of secured investors; usually corporate persons.[316] Furthermore, investors do not have access to the financial records on demand but must rely on periodical statements made by the corporation as required by legislation or agency requirements. Directors and corporate executives have the legal option of permitting profits to accrue, increase the salaries of executives' and/or employee wages, make corporate charitable contributions and make political contributions.[317] Therefore, corporation is its own residual claimant, with directors and executives deciding who benefits from a corporation's money.

There is also the mistaken belief that principal-agent model applies to shareholders and directors. Stout also argues that this premise is wrong. The basis of any agency relationship is that "the principal retains the right to control the agent." Stout also argues that: "…one of the most fundamental rules of corporate law is that corporations are controlled by boards of directors, not by shareholders".[318] In theory, 'shareholders' have the right to elect and remove directors. But in practice, the financial burden of mounting a proxy battle when combined with dispersed 'shareholders rational apathy' raises virtually insurmountable obstacles to organized 'shareholder' action.[319]

Due to the *business judgment rule*, 'shareholders' are prevented from taking legal action against directors who place alternative interests, such as political contributions, that may be against a 'shareholders' personal belief or wishes. As such, the legal structure of listed corporations insulates boards from

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[316] Lynn M. LoPucki, "The Myth of the Residual Owner: An Empirical Study," *Washington University Law Review* 82, no. 4 (2004): 1341–74.
[317] Jill E Fisch, "Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy," *Journal of Corporation Law* 31, no. 3 (2005): 637–74. See also: Jennifer S. Tuab, "Money Managers in the Middle: Seeing and Sanctioning Political Spending after Citizens United," *New York University Journal of Legislation and Public Policy* 15, no. 2 (2012): 443–84.
[318] Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public*, pp1-14.
[319] Bebchuk Lucian, "The Myth of the Shareholder Franchise," *Virginia Law Review* 93, no. 3 (2007): 675–732.

individual 'shareholders' wishes. Therefore, the public perception that corporate governance rules have been changed in recent years to make boards more accountable to 'shareholders' and to improve corporate performance lacks substantive evidence.[320] This legal definition that outlines corporate ownership and the discretionary security provided by corporate law to directors, suggests that money provided by way of contributions to IRS tax codes §501(c)(3), §501(c)(4), §501(C)(5), §501(c)(6), and §527 organizations, and lodgments' noted as tax code §7701, is within the remit of a corporation acting quite literally with 'a lawful purpose'. This reinforces the notion that shareholding is a myth as the corporate sector legally acts in its own best interests.

Conclusion

230 years of history clearly demonstrate an evolution of the US corporate form. This form has evolved through a concerted effort to influence beneficial change, especially over the last 40 years. Certainly, the Powell memo has contributed to the accelerated evolution moving forward. *CIGT* and the theory of Influence, when combined with the aspects of the contemporary corporation model, confirm aspects of the role of the corporate sector. This contributes to an understanding of how that sector influences legislative, regulatory and judicial decision making. Evidence also confirms that the corporation in the US context is an entity that legally possesses personality and is owned by itself. How the US model is accepted in a globalized world has not been considered as it is well outside this thesis. However, based on the information presented, the US operations of foreign headquartered corporations are not disadvantaged by the US model. Money as speech, political and commercial, is shown to be one and the

[320] Jonathon Romiti, "Playing Politics with Shareholder Value: The Case for Applying Fiduciary Law to Corporate Political Donations Post-Citizens United," *Boston College Law Review* 53, no. 2 (2012): 737–74.

same, a fact that the Court has yet to consider. The *Business Judgement Rule*, the *Principle Agent* model and the concept of *corporate purpose* have been dismantled to demonstrate that the contemporary corporate model is based on a legal fiction; a fiction perpetuated by the corporate sector and a complicit government. This fiction is extended to include the myth of shareholding that has significant ramifications to corporate financing models. The trends established in recent years show no sign of slowing which would indicate that the evolution process is not yet complete.

Chapter 5: FIRE in the House

It could probably be shown by facts and figures that there is no distinctly native, American criminal class, except Congress.

Mark Twain [321]

I have wondered at times what the Ten Commandments would have looked like if Moses had run them through the US Congress.

Ronald Reagan [322]

Consistent with Mark Twain's '*Pudd'nhead Wilson',* this chapter will illustrate that facts and figures speak for themselves. These facts and figures also explain the serious nature behind Reagans' seemingly innocuous statement. Although many natural persons believe that campaign contributions buy influence from elected legislators, scholars have had great difficulty determining whether and how much influence contributions have in the legislative process. While some studies have found little to no evidence of influence, other studies identify significant influence. The volume of information that is contained in a number of tables, graphs and charts speaks for the words that would take volumes of verbiage to elucidate.

This chapter scrutinizes the campaign contributions directed by the FIRE sector to the HCFS with the Senate Judiciary, Banking and Finance Committees included for context. While this thesis acknowledges the many sub-committees under the HCFS, and all other committees, they are considered outside the focus of this thesis. The focus is on the period of the 110th-112th Congress' by way of tables and graphs. Additional information considered complementary is also

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[321] Mark Twain, *Following the Equator*, vol. 1 (Hartford, CT: The American Publishing Company, 1898), chapter 8, p 98.
[322] Ross English, *The United States Congress* (Manchester: Manchester University Press, 2003), p 160.

provided with figures relating to the 109th and 113th Congress included, where applicable, for context. While the respective tables and graphs are briefly explained, even *Pudd'nhead Wilson'* would rapidly cognize that *money is power is influence*.

Various Congress' recognized that corporations were not due the same First Amendment rights as individuals, despite their personhood status and that corporate political money posed unique threats to the integrity of the electoral and political systems. Therefore, from 1907, Congress treated corporations as different from individuals in the context of political money. In that year, Congress passed the *Tillman Act*, banning corporations from giving direct contributions to federal candidates.[323] Congress passed the Act primarily to prevent the ever increasing corporate coffers from being used corruptly to influence politicians. As stated by Justice Stevens in *Citizens United*:

> The [1907 Tillman] Act was primarily driven by two pressing concerns: first, the enormous power corporations had come to wield in federal elections, with the accompanying threat of both actual corruption and a public perception of corruption; and second, a respect for the interest of shareholders and members in preventing the use of their money to support candidates they opposed.[324]

Four decades after the enactment of the *Tillman Act*, Congress passed the *Taft-Hartley Act, (Taft Hartley)* also known as the *Labor Management Relations Act*.[325] This 1947 law prohibited corporations and Labor unions from making independent expenditures in support of, or in opposition to, federal candidates.[326]

[323] *Tillman Act of 1907, 34 Stat. 864, Codified at 2 U.S.C. § 441(b) (2).*, 1907.
[324] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 952 (Justice Stevens, concurring in part and dissenting in part).
[325] *Taft–Hartley (Labor Management Relations) Act of 1947, Pub L No 80-101, 61 Stat 136*, 1947.
[326] Ibid § 304 at 159

Taft-Hartley was the precursor to the provision of *McCain-Feingold* struck down by the Court in *Citizens United*.

Almost twenty-five years later, in 1971, Congress passed the *Federal Election Campaign Act (FECA)*.[327] In 1974 and 1976, Congress passed significant amendments to that Act to address challenges raised in the Court.[328] The *FECA*, among other things, maintained the corporate restrictions contained in the *Tillman Act* and the *Taft-Hartley Act* and codified the ability of corporations and Labor unions to use PACs to make independent expenditures.[329] Congress enacted the *FECA* and subsequent amendments to that act for the same two reasons it enacted the *Tillman Act*; to guard against corruption that may arise from corporate political spending and to protect the shareholders of corporations that sought to spend money in the political marketplace.[330]

Congress' next major overhaul of the campaign finance system came in 2002 with the passage of the *Bipartisan Campaign Reform Act* of 2002 (*BCRA*).[331] The *BCRA* strengthened the *FECA*'s prohibition on corporate spending on advertisements advocating the election or defeat of federal candidates by closing

[327] *American Recovery and Reinvestment Act (ARRA) of 2009, Pub L 111–5*.

[328] *Federal Election Campaign Act (FECA) Amendments of 1974, Pub L No 93-443, 88 Stat 1263*, 1974; *Federal Election Campaign Act (FECA) Amendments of 1976, Pub L No 94-283, 90 Stat 475*, 1976.

[329] See 2 U.S.C. § 441b (2006). In 1972, the Court cited a member of Congress who proclaimed that the use of Political Action Committees (PAC's) allowed for "the proper balance in regulating corporate and union political activity required by sound policy and the Constitution." See: Pipefitters Local Union No 562 et al v United States, 407 US 385 (1972) interpreting the *Taft-Hartley Act*, which had created the PAC option. See also: A. Winkler, "Other People's Money: Corporations, Agency Costs, and Campaign Finance Law," *Georgia Law Journal* 92 (2004): 871–934; A. Winkler, "The Corporation in Election Law," *Loyola of Los Angeles Law* Review 32 (1999): 1243–62.

[330] The two primary purposes of § 441b of the FECA, which contained the prohibition against corporations from using general treasury funds on independent expenditures, were to: (1) "…ensure that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions"; and (2) "…protect the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed." FEC v. National Right to Work Comm., 459 U.S. 197 (1982) at 207–08

[331] Bipartisan *Campaign Reform (McCain–Feingold) Ac*t *of 2002, Pub L No 107–155, 116 Stat 81*, 2002 (codified in 2 and 47 U.S.C).

certain loopholes in the law.[332] Section 203 of the *BCRA*, which prohibited corporations from using general treasury funds on electioneering communications, was drafted as a response to a loophole created by the Buckley Court. The Buckley Court read the *FECA* as prohibiting speakers from making independent expenditures only where the communication contained the so-called 'magic words' of express advocacy.[333] Congress attempted to address the concerns of the Court with legislation and amendments' and a considerable number of bills that never made it past the various committees.

For example, the *Follow the Money* bill of 2013, *S.791*, attempted to address the concerns of 'dark money' and Super-PAC's in response to Citizens United.[334] I was fortunate to be involved in the process of drafting the initial concept from my first day in Senator Wyden's' office in January 2013.[335] The bill was initially referred to colloquially as 'Disclose' in deference to the 2010 '*Democracy Is Strengthened by Casting Light on Spending in Elections' (Disclose)* bill that failed to pass through the Senate due to a filibuster.[336] A substantial evolution of the draft took place in January and February 2013. Subsequent to the eventual acceptance by both Senators Ron Wyden, (D. OR) and Lisa Murkowski, (R. AK), the draft was

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[332] Ciara Torres-Spelliscy, "Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to robust Federal Campaign Finance Disclosure Laws," *Nexus* 16 (2010): 59–97. See: Richard L Hansen, "Beyond Incoherence: The Roberts Court's Deregulatory Turn in FEC v. Wisconsin Right to Life," *Minnesota Law Review* 92 (2008): 1064–1109.

[333] Buckley v Valeo, 424 US 1, 46 L Ed 2d 659, 76-1 USTC ¶9189 (1976) at 44 n.52; These so called 'magic words' included 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' and 'reject.' Therefore, as long as a communication avoided use of these 'magic words', a corporation, PAC or natural person citizens alike, could spend unlimited funds on communications that in essence advocated for the election or defeat of a federal candidate or candidates. The loopholes created suggest that Congress has a legislative 'culture' where-by legislation is both reactive and negative; a culture shared at the agency level also.

[334] Robert C. Lowry, "Mobilizing Money : Political Action Committees and Political Participation," *American Politics Research* 41, no. 5 (2013): 839–62.

[335] I was fortunate to be included in the 2013 Flinders University Internship program to Washington DC. This program has assisted more than 200 students with placements with key members of Congress, House and Senate, over a 15 year period.

[336] The original DISCLOSE Act, H.R.5175, which responded to Citizens United, was passed by the House, with corresponding bill S.3628 introduced in the Senate. Library of Congress, Bill Summary & Status 111th Congress (2009 - 2010) S.3628, All Congressional Actions 23rd September, 2010. Upon reconsideration, cloture on the motion to proceed to the bill (S.3628) not invoked in Senate by Yea-Nay Vote. 59 - 39.

submitted to the relevant constitutional legal specialists to have the plain English 'translated' into 'legislative text'. The bill was first tabled in the Senate on Tuesday, April 23, 2013.[337]

Senators Wyden and Murkowski were motivated by very different reasons to co-sponsor this bi-partisan bill in the Senate. Wyden, widely acknowledged as a bi-partisan 'Mr Fix-it', was disturbed by the influence of the Super-PAC's and unregulated money in the 2010 and 2012 elections. This was shared by many of his Democrat colleagues including the President.[338] Murkowski had lost the 2010 Republican pre-selection, despite being the Republican incumbent, to 'Tea Party' candidate, Joe Millar who was heavily funded by 'dark money' and openly supported by Sarah Palin.[339] Murkowski was re-elected after she ran as a Republican independent as a write-in candidate.[340] As witness to the powerful rhetoric emanating from both Senators, I was (perhaps mistakenly) left under no illusion as to the intensity of the passion that both Wyden and Murkowski placed on ensuring *S.791,* was passed by Congress. However, despite bi-partisan support, the bill became bogged down, like so many other bills, in the Committee

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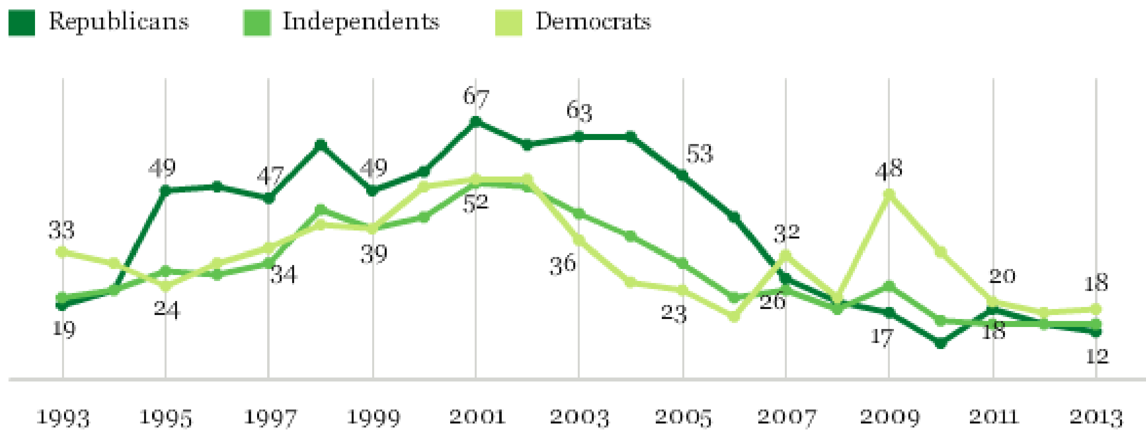
[337] *Follow the Money bill of 2013*, S.791 http://thomas.loc.gov/cgi-bin/query/z?c113:S.791.IS:/ [accessed 5 January 2015]

[338] Barack Obama, "State of the Union Address to Congress 2010," 2010, http://www.nationaljournal.com/whitehouse/exclusive-obama-to-declare-the-rules-have-changed--20110125 [accessed 5 January 2015] "I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems."

[339] US News, "Palin Endorses GOP Challenger in Alaska Senate June 3, 2010," 2010, http://www.usnews.com/news/articles/2010/06/03/palin-endorses-gop-challenger-in-alaska-senate [accessed 2 January 2015].

[340] A write-in candidate does not have their name on the voting paper and relies on voters to write the candidates name in a section of the voting paper. The win by Murkowski, only the second write-in win in US history, came after a challenge to the number of voting papers, where her name was not correctly spelt, was dismissed. See Chad Flanders, "How Do You Spell MURKOWSKI: Part I: The Question of Assistance to the Voter," *Alaska Law Review* 28 (2011): 1–28; Sean Cockerham, "98% of Write-in Votes Go to Murkowski," *Anchorage Daily News*, November 11, 2010 (Quoting the Alaska Director of Division of Elections: "If I can pronounce the name by the way it's spelled, that's the standard I'm using.");; CBS News, "Miller Concedes Loss to Murkowski," December 31, 2011, www.cbsnews.com/stories/2010/12/31/politics/main7201772.shtml [accessed 11 January 2011]. The final blow was dealt in Federal District Court, which dismissed all of Miller's remaining claims post-election claims against the State of Alaska including lifting the stay, resolving pending motions, and the dismissing case. *Miller v. Treadwell, 736 F. Supp. 2d 1240 (D. Alaska 2010).*

process.[341] This is but one example where gridlock in Congress, has contributed to the plummeting congressional approval.[342]



The flow of political money from the FIRE sector to members of the HCFS and the flow of support back from Congress to that sector; the period being the 110th-113th Congress' are summaries of the information obtained by trawling FEC and other agency databases. I have also included, where relevant, the values for the 2004 election (109th Congress) and the 2014 election (114th Congress) to demonstrate patterns. This is the period of the GFC and subsequent 'bailout' programs and *Citizens United*. In addition, tables, graphs and charts detail overall funding during this period from all corporate sectors to provide a baseline against non-corporate funding as well as an historic aspect.

Whilst a synopsis is provided to bridge the tables, graphs and charts, the information contained does speak volumes as to the ubiquitous nature of political

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[341] "Follow the Money Act of 2013 Bill Summary & Status 113th Congress (2013 - 2014)," *Congressional Record* S.791 (2014), http://thomas.loc.gov/cgi-bin/bdquery/D?d113:791:./list/bss/d113SN.lst:[accessed 5 January 2015]. Despite Senator Wyden being elevated from the Chair of the Committee on the Environment to the Chair of the Committee on Finance for the 2014 calendar year of the 113th Congress, the bill did not make progress.
[342] "2014 U.S. Approval of Congress Remains Near All-Time Low" http://www.gallup.com/poll/180113/2014-approval-congress-remains-near-time-low.aspx [accessed 5 January 2015]

money in the ‘people’s house’. I have factored in a 0.05% variance to cover contributions made and subsequently reversed due to FEC rulings and additional variances deliberately included in the FEC database as a methodology employed to limit automated data mining leading to cold canvassing for contributions. The election period is noted as the election year leading to the congressional period. For example, the 2008 election is for the 110th Congress; the years of the 110th being 2009-2010.

For each of the three Congressional periods; the 110th-112th, the top 10 FIRE sector contributors will receive closer attention to demonstrate the connection between the ‘voice’ of the corporate person and the collective voices of board members, executive officers and their respective families. While the main focus is the 110th-112th Congress’, the 109th and the 113th have been included where applicable to provide context and to demonstrate linkages.

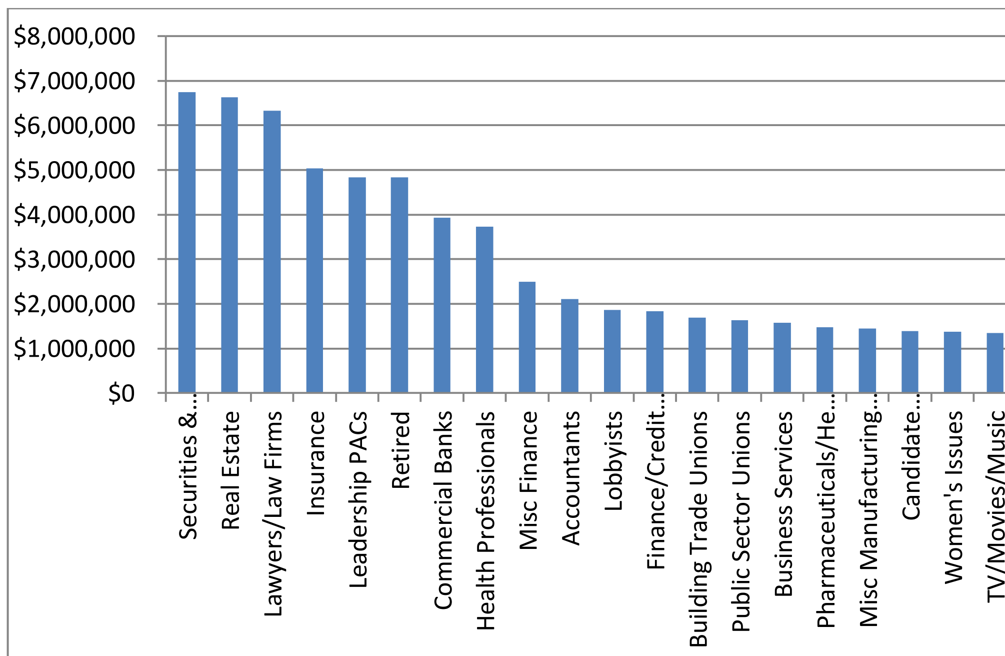
All $ figures are consistent with the relevant time period unless stated otherwise. Graphs will show the % of the highest $ value contributory sectors with lesser $ values collectively referred to as other.

The first five table and graphs list the top 20 contributing sectors to the HCFS on a per cycle bases, from the 109th -113th. These list the sector contributions as a monetary value and a breakdown by Democrat and Republican. While there are variations that could logically be attributed to ideological preference, even those with significant ideological focus, still contribute to the other side. For example, Building sector Unions in the 109th, split their contributions 69/27 in favour of Democrats. But the Republican party/Conservative sector (Tea Party) contributions in the 110th were 100% toward Republican incumbents.

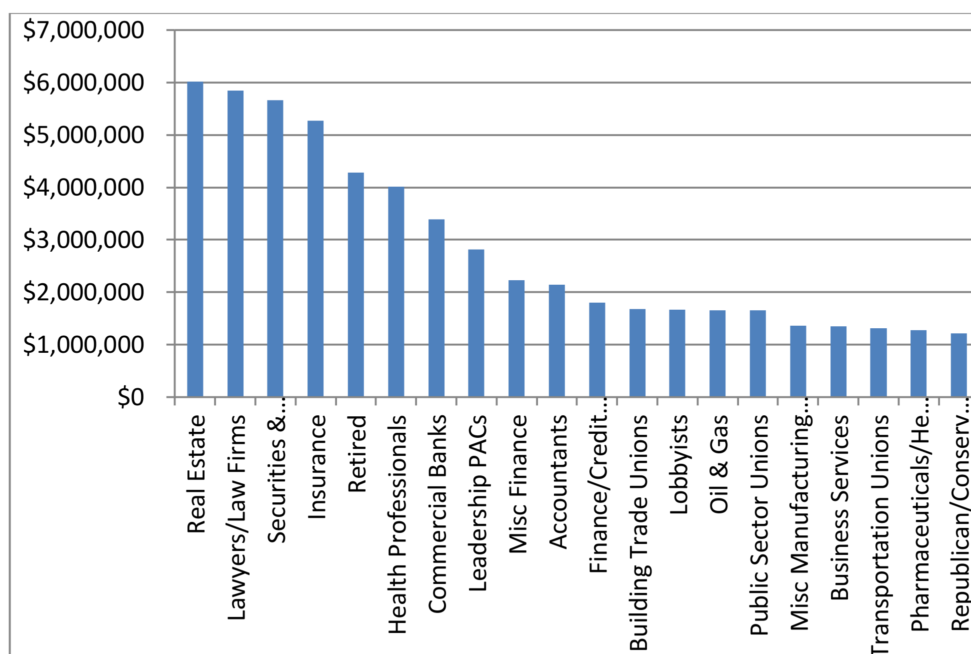
The majority of contributions were within a broad band that clearly supports the notion that the corporate sector contributes to both as a form of investment. The Real Estate sub-sector of the FIRE sector split their contributions during the 110th 51/49 to Democrats. By the 113th, that split was 40/60 to Republicans. This level of variation could be contributed to varying perceptions of investment return along with a myriad of other reasons. But this generally supports the notion of investment.

The table that follows that detail 'Individual Campaign Contributions to members of the HCFS by sector/election period (Congress)' list contributions made by individuals employed within the listed sectors and their immediate families directly to the committee member. The table that follows details 'PAC Campaign Contributions to members of the HCFS by sector/election (Congress)' list contributions made by corporations within the listed sectors. These are direct contributions and do not include money contributed to PAC's or Super-PAC's where, post *Citizens United*, where contribution are not directed to a candidate, and/or disclosure is not required. This includes the so-called 'Dark Money".

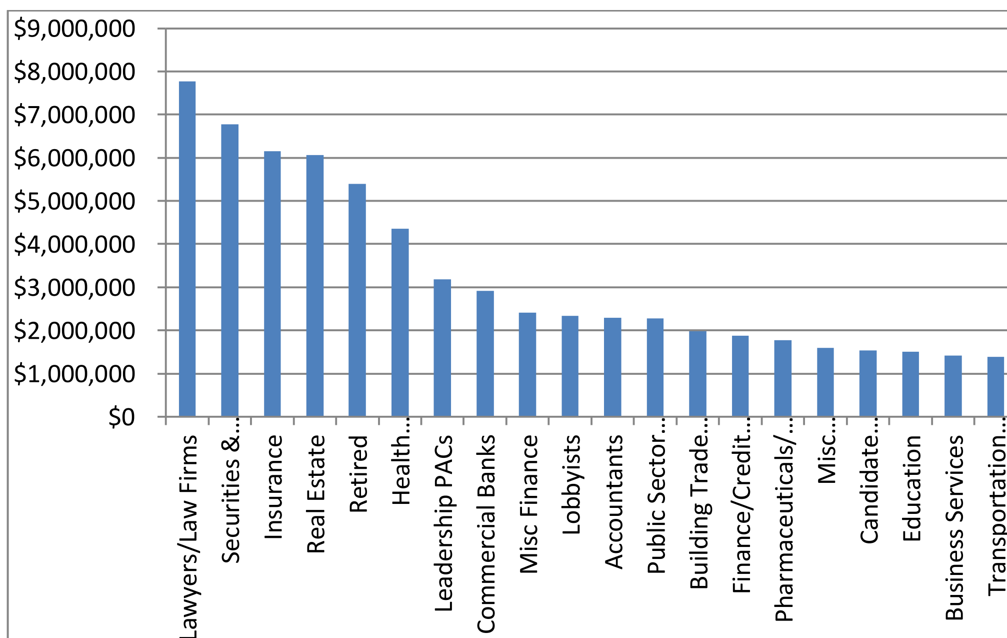
	109th Top 20 Sectors by Contribution to House Committee on Financial Services	Sector total	% Democrat	% Republican
1	Securities & Investment	$6,743,809	49%	51%
2	Real Estate	$6,626,252	41%	58%
3	Lawyers/Law Firms	$6,322,919	55%	43%
4	Insurance	$5,032,343	34%	66%
5	Leadership PACs	$4,829,707	16%	82%
6	Retired	$4,829,263	28%	64%
7	Commercial Banks	$3,929,654	35%	65%
8	Health Professionals	$3,737,844	28%	70%
9	Misc. Finance	$2,497,377	43%	56%
10	Accountants	$2,105,583	34%	65%
11	Lobbyists	$1,866,859	37%	62%
12	Finance/Credit Companies	$1,840,367	41%	59%
13	Building Trade Unions	$1,692,572	69%	27%
14	Public Sector Unions	$1,631,794	79%	17%
15	Business Services	$1,573,672	50%	48%
16	Pharmaceuticals/Health Products	$1,473,924	32%	68%
17	Misc. Manufacturing & Distributing	$1,447,880	28%	71%
18	Candidate Committees	$1,392,735	44%	55%
19	Women's Issues	$1,375,337	95%	5%
20	TV/Movies/Music	$1,342,504	66%	31%
	Total	$62,292,395		



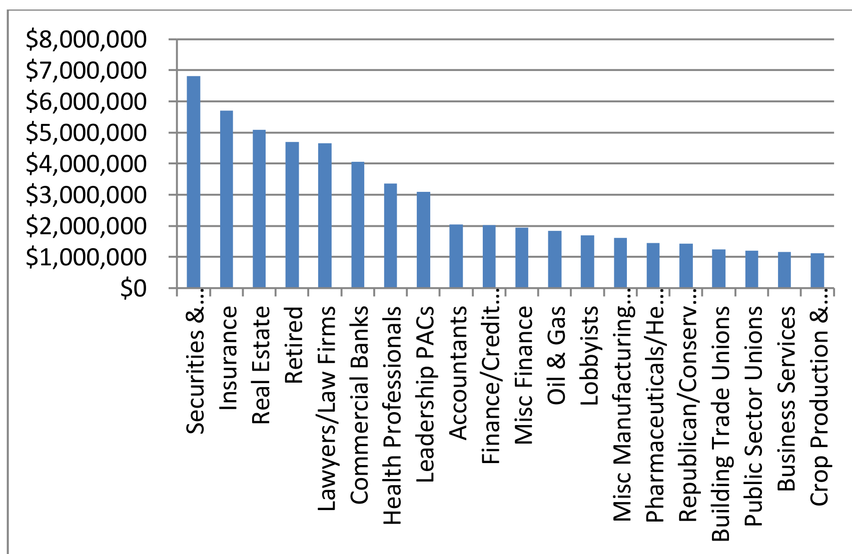
	110th Top 20 Sectors by Contribution to House Committee on Financial Services	Sector total	% Democrat	% Republican
1	Real Estate	$6,011,441	51%	49%
2	Lawyers/Law Firms	$5,851,247	68%	32%
3	Securities & Investment	$5,663,886	54%	46%
4	Insurance	$5,266,715	49%	51%
5	Retired	$4,276,505	41%	59%
6	Health Professionals	$4,011,218	47%	53%
7	Commercial Banks	$3,388,891	47%	53%
8	Leadership PACs	$2,814,348	43%	57%
9	Misc. Finance	$2,232,176	46%	54%
10	Accountants	$2,141,295	48%	52%
11	Finance/Credit Companies	$1,797,577	53%	47%
12	Building Trade Unions	$1,675,850	80%	20%
13	Lobbyists	$1,669,827	53%	47%
14	Oil & Gas	$1,659,132	22%	78%
15	Public Sector Unions	$1,658,700	84%	16%
16	Misc. Manufacturing & Distributing	$1,364,169	35%	65%
17	Business Services	$1,346,826	55%	45%
18	Transportation Unions	$1,315,100	72%	28%
19	Pharmaceuticals/Health Products	$1,280,650	42%	58%
20	Republican/Conservative	$1,210,555	0%	100%
	Total	$56,636,108		



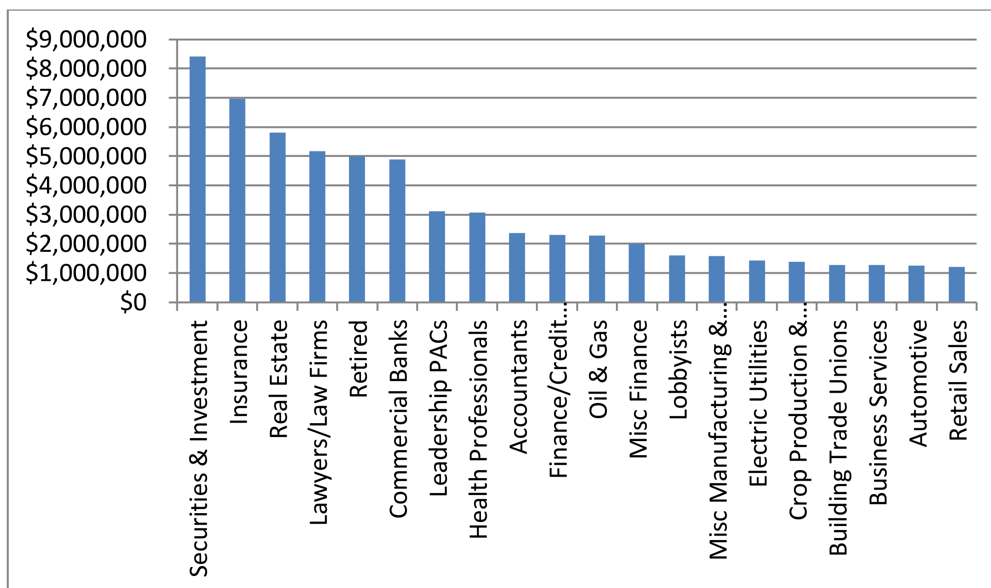
	111th Top 20 Sectors by Contribution to House Committee on Financial Services	Sector total	% Democrat	% Republican
1	Lawyers/Law Firms	$7,768,544	81%	19%
2	Securities & Investment	$6,770,796	64%	36%
3	Insurance	$6,149,021	55%	45%
4	Real Estate	$6,058,134	61%	39%
5	Retired	$5,388,041	53%	47%
6	Health Professionals	$4,362,626	54%	46%
7	Leadership PACs	$3,187,320	71%	29%
8	Commercial Banks	$2,920,411	51%	49%
9	Misc. Finance	$2,409,469	59%	41%
10	Lobbyists	$2,340,790	69%	31%
11	Accountants	$2,293,203	53%	47%
12	Public Sector Unions	$2,276,325	93%	7%
13	Building Trade Unions	$1,979,349	93%	7%
14	Finance/Credit Companies	$1,869,878	58%	42%
15	Pharmaceuticals/Health Products	$1,765,820	54%	46%
16	Misc. Manufacturing & Distributing	$1,593,856	51%	49%
17	Candidate Committees	$1,530,601	88%	12%
18	Education	$1,500,730	86%	14%
19	Business Services	$1,417,591	67%	33%
20	Transportation Unions	$1,390,000	86%	14%
	Total	$64,972,505		



	112th Top 20 Sectors by Contribution to House Committee on Financial Services	Sector total	% Democrat	% Republican
1	Securities & Investment	$6,817,768	32%	68%
2	Insurance	$5,710,354	29%	71%
3	Real Estate	$5,096,561	33%	67%
4	Retired	$4,698,843	28%	72%
5	Lawyers/Law Firms	$4,663,610	54%	46%
6	Commercial Banks	$4,051,918	26%	74%
7	Health Professionals	$3,368,128	33%	67%
8	Leadership PACs	$3,100,191	22%	78%
9	Accountants	$2,050,487	33%	67%
10	Finance/Credit Companies	$2,024,462	28%	72%
11	Misc. Finance	$1,942,969	26%	74%
12	Oil & Gas	$1,834,396	8%	92%
13	Lobbyists	$1,699,041	39%	61%
14	Misc. Manufacturing & Distributing	$1,615,830	26%	74%
15	Pharmaceuticals/Health Products	$1,440,652	40%	60%
16	Republican/Conservative	$1,419,415	0%	100%
17	Building Trade Unions	$1,232,050	76%	24%
18	Public Sector Unions	$1,197,600	87%	13%
19	Business Services	$1,170,019	37%	63%
20	Crop Production & Basic Processing	$1,111,107	24%	76%
	Total	$56,245,401		



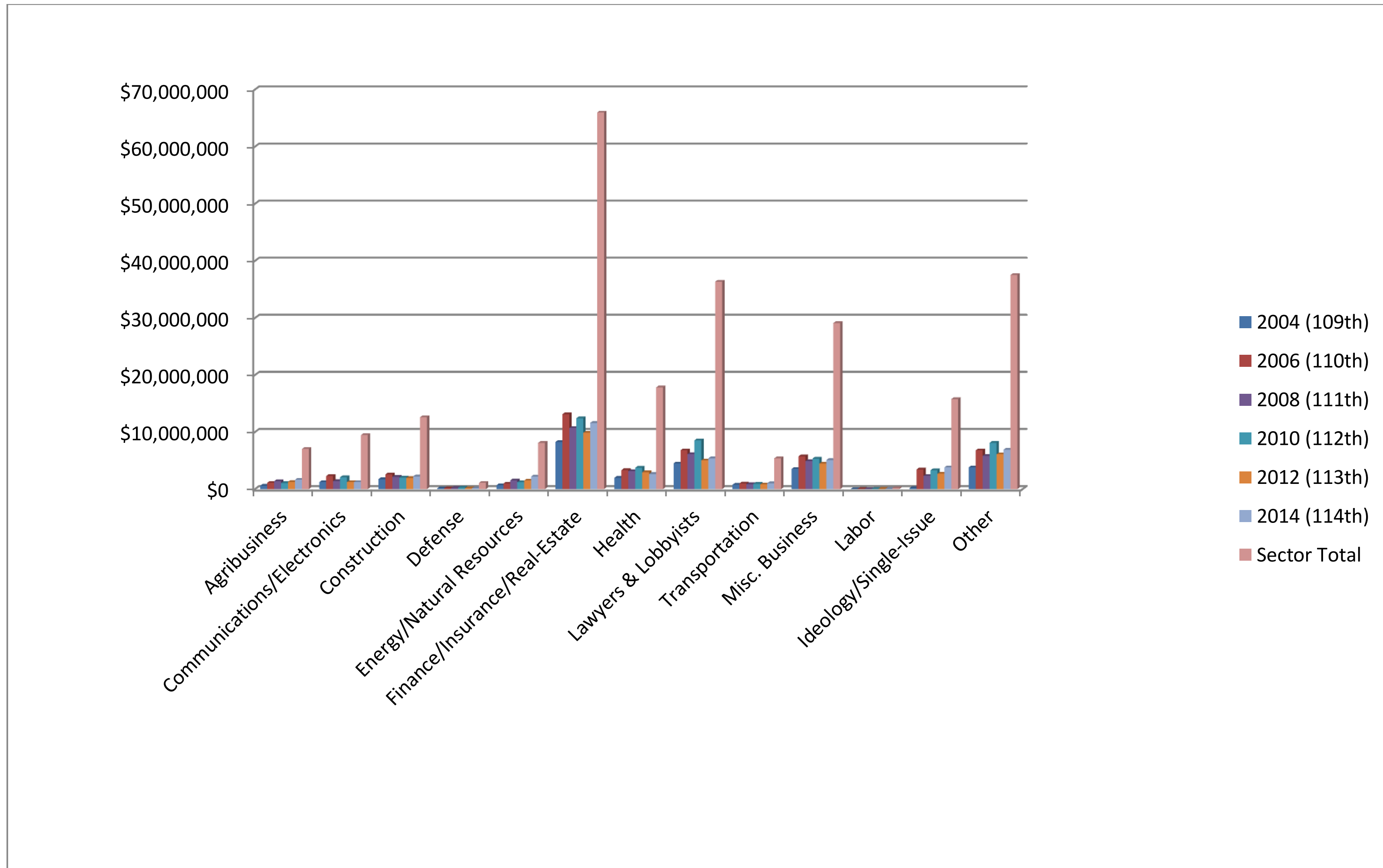
	113th Top 20 Sectors by Contribution to House Committee on Financial Services	Sector total	% Democrat	% Republican
1	Securities & Investment	$8,419,651	37%	63%
2	Insurance	$6,973,322	35%	65%
3	Real Estate	$5,808,429	40%	60%
4	Lawyers/Law Firms	$5,181,039	59%	41%
5	Retired	$5,003,452	31%	69%
6	Commercial Banks	$4,897,932	29%	71%
7	Leadership PACs	$3,104,086	40%	60%
8	Health Professionals	$3,068,558	38%	62%
9	Accountants	$2,367,617	40%	60%
10	Finance/Credit Companies	$2,295,549	30%	70%
11	Oil & Gas	$2,272,523	6%	94%
12	Misc. Finance	$2,003,037	35%	65%
13	Lobbyists	$1,603,947	38%	62%
14	Misc. Manufacturing & Distributing	$1,586,827	27%	73%
15	Electric Utilities	$1,423,820	34%	66%
16	Crop Production & Basic Processing	$1,390,929	21%	79%
17	Building Trade Unions	$1,280,950	78%	22%
18	Business Services	$1,278,587	48%	52%
19	Automotive	$1,242,301	26%	74%
20	Retail Sales	$1,212,778	26%	74%
	Total	$62,415,334		



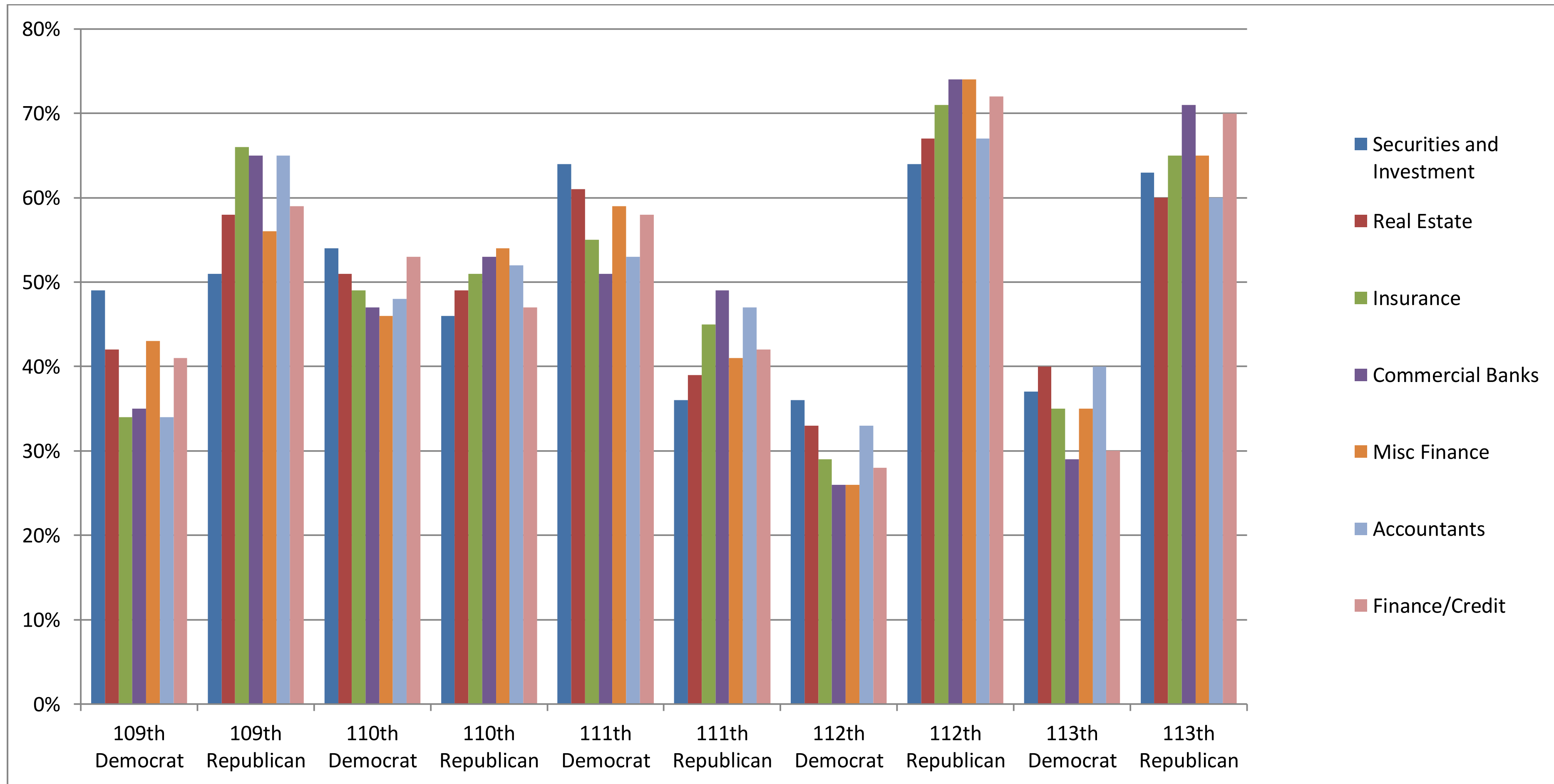
Individual Campaign Contributions to members of the House Committee on Financial Services by sector/election period (Congress).							
Sector	**2004 (109th)**	**2006 (110th)**	**2008 (111th)**	**2010 (112th)**	**2012 (113th)**	**2014 (114th)**	**Sector Total**
Agribusiness	$599,774	$1,105,618	$1,382,433	$1,048,767	$1,262,339	$1,626,434	$7,025,365
Communications/Electronics	$1,219,742	$2,295,852	$1,408,357	$2,094,424	$1,228,251	$1,226,289	$9,472,915
Construction	$1,721,401	$2,557,361	$2,129,206	$2,008,602	$1,956,676	$2,214,371	$12,587,617
Defense	$147,084	$169,019	$215,024	$231,079	$175,799	$165,927	$1,103,932
Energy/Natural Resources	$663,654	$970,254	$1,534,247	$1,210,162	$1,507,818	$2,208,507	$8,094,642
Finance/Insurance/Real-Estate	$8,257,922	$13,113,794	$10,707,907	$12,399,834	$9,874,831	$11,605,203	$65,959,491
Health	$1,982,497	$3,325,343	$3,159,381	$3,748,020	$2,954,703	$2,647,397	$17,817,341
Lawyers & Lobbyists	$4,490,173	$6,790,929	$6,122,577	$8,534,024	$5,029,922	$5,382,691	$36,350,316
Transportation	$768,052	$990,688	$864,454	$913,461	$822,559	$1,031,285	$5,390,499
Misc. Business	$3,536,160	$5,753,287	$4,904,896	$5,335,460	$4,471,308	$5,089,743	$29,090,854
Labor	$14,059	$33,264	$23,233	$28,681	$46,069	$27,445	$172,751
Ideology/Single-Issue	$196,821	$3,449,038	$2,324,037	$3,309,752	$2,693,872	$3,809,183	$15,782,703
Other	$3,805,358	$6,783,772	$5,821,889	$8,104,976	$6,099,763	$6,893,507	$37,509,265
Totals per period	$27,402,697	$47,338,219	$40,597,641	$48,967,242	$38,123,910	$43,927,982	$246,357,691

This table is also reflected in the graph below. The FIRE sector is the biggest single contributor with almost 25% coming from this sector. Note there is little real reduction in contributions in the period of the GFC other than what can be explained as House election/Presidential election cycles. This suggests that while the sector was potentially collapsing, influencing beneficial outcomes was very important.

Individual Campaign Contributions to members of the House Committee on Financial Services by sector/election period (Congress).



FIRE Sector HCFS Contribution Breakdown 109th-113th by percentage. Democrat/Republican



Congress	Securities and Investment	Real Estate	Insurance	Commercial Banks	Misc. Finance	Accountants	Finance/Credit	Average	House Majority	President
109th Democrat	49%	42%	34%	35%	43%	34%	41%	40%	R	R
109th Republican	51%	58%	66%	65%	56%	65%	59%	60%	R	R
110th Democrat	54%	51%	49%	47%	46%	48%	53%	50%	D	R
110th Republican	46%	49%	51%	53%	54%	52%	47%	50%	D	R
111th Democrat	64%	61%	55%	51%	59%	53%	58%	57%	D	D
111th Republican	36%	39%	45%	49%	41%	47%	42%	43%	D	D
112th Democrat	36%	33%	29%	26%	26%	33%	28%	30%	R	D
112th Republican	64%	67%	71%	74%	74%	67%	72%	70%	R	D
113th Democrat	37%	40%	35%	29%	35%	40%	30%	35%	R	D
113th Republican	63%	60%	65%	71%	65%	60%	70%	65%	R	D
Democrat Average	48%	45%	40%	38%	42%	42%	42%	42%		
Republican Average	52%	55%	60%	62%	58%	58%	58%	58%		

This table and the graph above reflect the FIRE Sector HCFS Contribution Breakdown 109th-113th by percentage, Democrat/Republican.

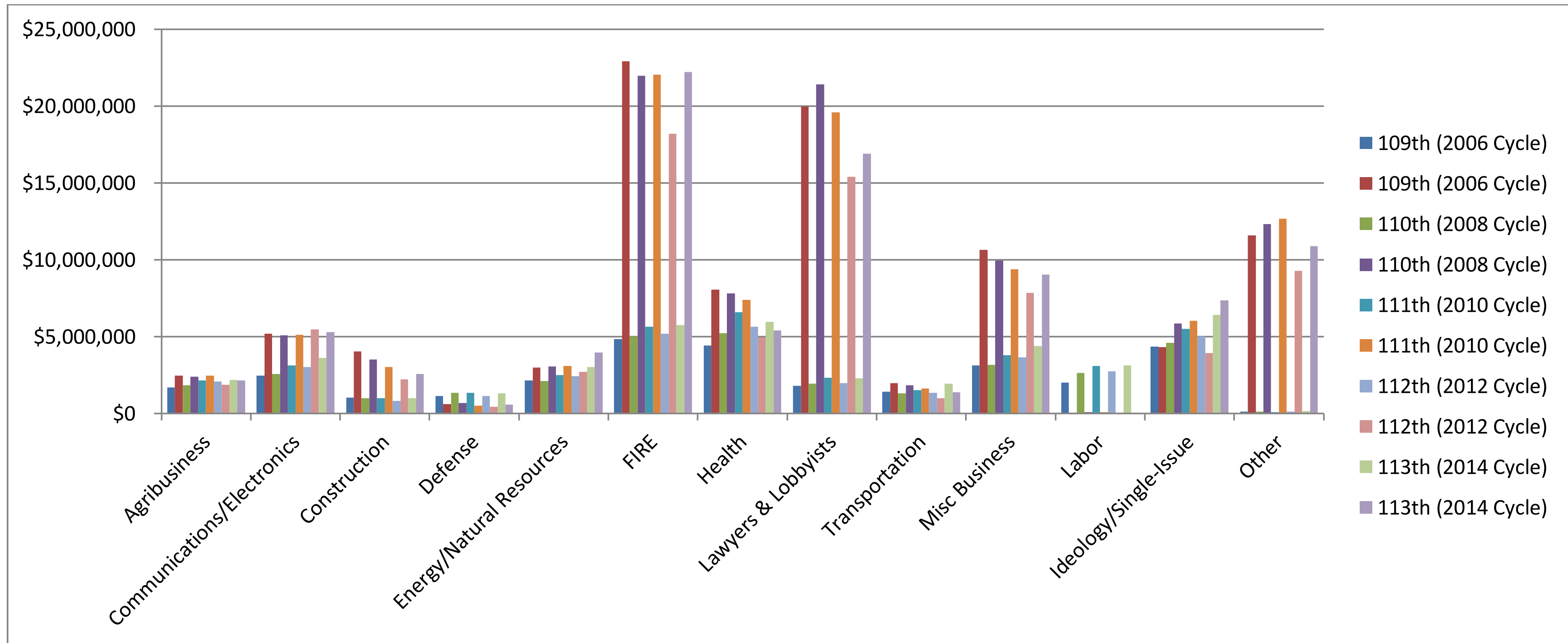
Senate Banking Committee										
Congress	**Securities and Investment**	**Real Estate**	**Insurance**	**Commercial Banks**	**Misc. Finance**	**Accountants**	**Finance/Credit**	**Average**	**Senate Majority**	**President**
109th Democrat	61%	51%	46%	48%	46%	48%	54%	50%	R	R
109th Republican	39%	49%	54%	52%	54%	52%	46%	50%	R	R
110th Democrat	65%	54%	54%	51%	48%	53%	57%	54%	D	R
110th Republican	35%	46%	46%	49%	52%	47%	43%	45%	D	R
111th Democrat	74%	55%	65%	52%	59%	52%	54%	59%	D	D
111th Republican	26%	45%	35%	48%	41%	48%	46%	41%	D	D
112th Democrat	59%	62%	47%	49%	52%	53%	55%	54%	D	D
112th Republican	41%	38%	53%	51%	48%	47%	45%	46%	D	D
113th Democrat	58%	64%	53%	52%	53%	52%	54%	55%	D	D
113th Republican	42%	36%	47%	48%	47%	48%	46%	45%	D	D
Democrat Average	64%	57%	53%	50%	52%	52%	55%	55%		
Republican Average	36%	43%	47%	50%	48%	48%	45%	45%		

This table reflects the contributions made by the FIRE sector sub-sectors to Democrat and Republican Senators on the Senate Banking Committee by percentage. This table indicates a sub-sector preference is dependent on the Senate Majority and also the party of the President. However, the overall average across the sector does not vary significantly. This suggests that ideology plays some part, but the sector fairly evenly invests in both sides of the Committee Table.

Senate Finance Committee										
Congress	**Securities and Investment**	**Real Estate**	**Insurance**	**Commercial Banks**	**Misc. Finance**	**Accountants**	**Finance/Credit**	**Average**	**Senate Majority**	**President**
109th Democrat	59%	48%	41%	48%	45%	47%	49%	48%	R	R
109th Republican	41%	52%	59%	52%	55%	53%	51%	52%	R	R
110th Democrat	59%	53%	53%	47%	55%	51%	52%	53%	D	R
110th Republican	41%	47%	47%	53%	45%	49%	48%	47%	D	R
111th Democrat	73%	66%	58%	51%	57%	55%	54%	59%	D	D
111th Republican	27%	34%	42%	49%	43%	45%	46%	41%	D	D
112th Democrat	65%	67%	51%	48%	53%	61%	51%	57%	D	D
112th Republican	35%	33%	49%	52%	47%	39%	49%	43%	D	D
113th Democrat	58%	62%	53%	43%	54%	63%	53%	55%	D	D
113th Republican	42%	38%	47%	57%	46%	37%	47%	45%	D	D
Democrat Average	63%	60%	51%	47%	53%	55%	52%	54%		
Republican Average	37%	40%	49%	53%	47%	45%	48%	46%		

This table reflects the contributions made by the FIRE sector sub-sectors to Democrat and Republican Senators on the Senate Finance Committee by percentage. This table indicates the sub-sector preference is different to the Banking committee but the overall results are similar.

Senate Judiciary Committee; PAC and Individual contributions to incumbents 109th-113th (Cycle)



This graph and the table below indicate the contributions made to the Senate judiciary Committee. While it is reasonable to expect the Lawyers and Lobbyists sector to be a significant contributor, the FIRE sector is again the majority contributor. While this requires analysis beyond the scope of this thesis, a preliminary review of the contributions, suggests that the contributions are targeted at influencing Securities Exchange Commission (SEC) regulation. This however, would require additional in-depth analysis to provide conclusive proof.

Senate Judicial Committee	109th (2006 Cycle)		110th (2008 Cycle)		111th (2010 Cycle)		112th (2012 Cycle)		113th (2014 Cycle)			
Sector	PAC	Individual	PAC	Individual	PAC	Individual	PAC	Individual	PAC	Individual		Total
Agribusiness	$1,693,223	$2,465,092	$1,825,677	$2,386,620	$2,149,078	$2,462,295	$2,059,235	$1,860,224	$2,183,464	$2,140,304		$21,225,212
Communications/Electronics	$2,446,201	$5,173,922	$2,575,163	$5,069,986	$3,107,236	$5,125,032	$3,003,542	$5,453,744	$3,610,373	$5,288,614		$40,853,813
Construction	$1,021,925	$4,018,640	$1,000,440	$3,515,004	$992,950	$3,027,502	$827,950	$2,224,945	$993,500	$2,567,908		$20,190,764
Defense	$1,127,845	$604,519	$1,323,047	$674,335	$1,329,361	$514,816	$1,143,176	$413,248	$1,303,849	$580,494		$9,014,690
Energy/Natural Resources	$2,132,726	$2,971,852	$2,103,338	$3,045,236	$2,496,628	$3,099,251	$2,433,208	$2,697,174	$3,023,650	$3,970,201		$27,973,264
FIRE	$4,835,366	$22,910,311	$5,027,576	$21,952,443	$5,622,707	$22,048,463	$5,181,453	$18,178,992	$5,749,422	$22,207,164		$133,713,897
Health	$4,424,191	$8,068,388	$5,235,482	$7,812,875	$6,569,595	$7,381,839	$5,630,122	$4,952,855	$5,957,930	$5,382,320		$61,415,597
Lawyers & Lobbyists	$1,784,092	$19,965,384	$1,939,864	$21,412,115	$2,326,662	$19,597,213	$1,974,926	$15,391,350	$2,287,478	$16,898,613		$103,577,697
Transportation	$1,412,861	$1,970,727	$1,321,455	$1,846,359	$1,512,129	$1,629,148	$1,338,715	$988,192	$1,932,252	$1,382,716		$15,334,554
Misc Business	$3,121,064	$10,624,690	$3,162,182	$9,938,007	$3,777,751	$9,390,177	$3,656,610	$7,858,682	$4,390,020	$9,041,554		$64,960,737
Labor	$2,009,783	$58,745	$2,638,053	$65,870	$3,094,344	$70,380	$2,734,800	$56,450	$3,116,100	$40,025		$13,884,550
Ideology/Single-Issue	$4,360,901	$4,319,235	$4,605,787	$5,853,576	$5,506,742	$6,029,584	$5,013,395	$3,916,183	$6,424,201	$7,341,706		$53,371,310
Other	$121,000	$11,599,700	$116,900	$12,308,029	$92,300	$12,667,113	$115,300	$9,284,882	$139,900	$10,875,672		$57,320,796
Total	$30,491,178	$94,751,205	$32,874,964	$95,880,455	$38,577,483	$93,042,813	$35,112,432	$73,276,921	$41,112,139	$87,717,291		$622,836,881

The tables that are available as Appendix 9 are a compilation based on the top 200 contributing sub-sectors rated by contribution. This covers the period of the 110th-112th Congress'. These tables list Contribution and Lobbying. This equates to total influence. The Hill coverage percentages indicate the percentage of members of Congress who received a contribution directly from that sub-sector. This does not reflect reallocation of those contributions between members. The next column reflects the value of Federal Government business awarded to that sub-sector. Federal support indicates the value of some form of ex-gratia payment made to that subsector for what-ever reason. For example, the $153 million paid to American Crystal Sugar, appears to be a subsidy to allow it to be competitive against sugar imports that are imported free of tariff through free-trade agreements. On the opposite end of the scale is the $503 billion bailout for Citigroup resulting from the GFC. The last table in Appendix 9 is the FIRE sector members isolated from the Top 200.

The tables and graphs above are a compilation of information from various sources and are used to demonstrate the monetary value that passes across the out-stretched hands of the elected representatives of natural person citizens of the US.[343]

Conclusion

The sheer volume of information contained in the FEC database and other sources is well beyond the scope of this thesis. Interestingly, the majority of published work and on-line data-bases tends to focus, in the majority, on the numbers as opposed to attempting the arduous task of analysing the why. How, it

[343] See: United States House of Representative www.house.gov ; Centre for Responsive Politics www.opensecrets.org ; Sunlight Foundation www.sunlightfoundation.com ; Open Congress www opencongress.org ; Centre for Public Integrity www.publicintegrity.org ; United States Senate www.senate.gov ; Federal Election Commission www.fec.gov. [all accessed on January 5 2015].

would appear, is more commercial. There is certainly significant opportunity for considerable in-depth analyses to understand why. However, the data analysis would be beyond the scope of an individual I would suggest.

The tables also reflect variations in FIRE sector support to the HCFS determined by which party has the majority and also the party of the President.

With a Republican majority and a Republican President, the contribution split was 60/40 in favour of the Republicans. With a Democrat majority and a Republican President, the split was an even 50/50. With a Democrat majority and a Democrat President, the split was 57/43 in favour of the Democrats. However, with a Republican majority and a Democrat President, the split increased to 70/30 in favour of the Republicans. Further research into this shift is beyond the scope of this thesis but a casual investigation suggests that the FIRE sector increased support for certain Republicans to offset the effect of the Tea Party which the sector has expressed concerns over in the past.

But there is another story that feeds into these figures. Again, while outside this thesis, there appears to be a correlation between the Senate majority, the House majority and the party of the President. There appears to be a pattern of a deliberate wedge being driven by the corporate sector between the House and the Senate. When House Democrat contributions are down, the Senate contributions are up. The same applies to the Republicans. While the variation is subtle, and overall, Republicans receive slightly more contributions than Democrats, the oscillation between House/Senate contributions is very much a business model of corporations. Corporations have many suppliers and many clients. The constant play-off between suppliers and of clients, horizontally and vertically, creates competition both suppliers and clients from which corporations benefit. Could it be that the same methodology employed by the corporate sector be contributing to

competitive (re) actions within Congress? I would suggest that this is very likely. I am well aware of the keen competition, during my time on the Hill, for beneficial access to members of Congress at all levels being a sort after prize for the corporate sector. House Representatives and Senators alike are expected to be available to their constituents. It is the makeup of that constituency that constantly evolves. The corporate sector is often the go-between between the House and the Senate. Bills must be passed by both houses, or as in more the case, a bill stalled in one side of Congress will stay stalled if the counterpart bill in the other side of Congress is also stalled. Influence works both ways.

While it is rare for specific money to be legally referred to as corruption, the billions of dollars that flow through Congress must be considered as influencing beneficial outcomes for the corporate sector. The monetary values exhibited in this chapter demonstrate that the corporate sector agenda, in an environment where money is speech, is talking very loudly to the legislators on a wide range of topics.

Chapter 6: The Agency

These independent [regulatory] commissions have been given broad powers to explore, formulate, and administer policies of regulation; they have been given the task of investigating and prosecuting business misconduct; they have been given powers, similar to those exercised by courts of law, to pass in concrete cases upon the rights and liabilities of individuals under the statutes. They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers. The Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in respect to the legality of their activities.

President Franklin D. Roosevelt.[344]

Federal agencies of the US Government fill a particular role that was never envisaged by the Founding Fathers. This demonstrated by the total absence of the mention or even the notion of a regulatory agency in the Constitution. While the *Judiciary Act* of 1789 resulted in the US Marshals being created as a *Law Enforcement agency*, it was generally accepted that representatives of the natural person citizens were able to fulfil their Constitutional role in the early years of the Republic. However, as the rise of corporations required a professional interface between the Congress, the natural person citizens and the corporation, the *Interstate Commerce Act* of 1887, created the *Interstate Commerce Commission* with the brief to ensure the burgeoning number of complex railway corporations acted lawfully under the Act. This was the first Federal regulatory agency that created the precedent for what exists today; a complex system of overlapping

[344] Franklin D Roosevelt, "Report of the President's Committee on Administrative Management (The Brownlow Committee Report) to Congress," in *Office of Administrative Management of the Government of the United States*, 1937, 86.

authorities that have an 'estimated' workforce that averages 7% of the US population. The agency is the domestic hunting ground of the corporate person, a source of potential employees to aid corporate growth. But more importantly, the walls between the Federal Government and the corporations in which revolving doors relegate the separation of state and commerce to that of a Hollywood farce. *CIGT* happily resides in this corporate created circus where influence is freely applied, thanks to the revolving door and the resultant regulatory capture. This chapter will consider the concept of agency and demonstrate the inadequacies of this regulatory model by setting up the Securities Exchange Commission (SEC) as an example of both the revolving door and regulatory capture. *Money is power is influence* is epitomised in the murky world of the Federal agency; an artificially created 4th branch of Government that benefits the corporate person at the cost of the US natural person citizen.

Regulatory capture is the concept that a state regulatory body can end up advancing the commercial interests of the major firms that it seeks to regulate. The idea is that entities with the largest interest in a particular policy will expend the most effort and energy in attempts to influence that policy. If a regulatory body is successfully 'captured' by a group of corporations that it was supposed to be regulating, then its policies will reflect that of the corporations' interests, and not those of the public.[345] The benefits to the controlling corporations are two-fold; the perception of regulation satisfies popular demand for government oversight, while the reality of the situation is that the regulation tends to serve the corporate interests rather than regulate them.[346] This phenomenon happens to individual government agencies, on a relatively small scale, but it can happen to the

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[345] Barry M Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms* (New York: Columbia University Press, 1980), p 38.
[346] Thomas Frank, "Obama and 'Regulatory Capture,'" *Wall Street Journal*, June 24, 2009.

government on a much larger scale. This risk has become even more substantial now that corporations can acquire as much access and influence as they can afford.

The last century or more, has witnessed the profuse growth of legislation authorising special adjudicative tribunals, commissions, administrative agencies and other semi-autonomous Governmental institutions. Yet the Constitution clearly identifies and prescribes functions only to Congress and thence to the Executive President and Supreme Court; the three branches sitting in an uneasy relationship at the apices of the governmental structure. Interpreted literally, the Constitution does not discuss what might be the permissible or even essential relationships of each of these three constitutional bodies to the agency determining policy. Yet it is significant that for many purposes; the rulemaking authority has been assigned, *posterius constitutionem*, to cabinet departments, independent regulatory commissions or a form of agency. It is this authority and the reasoning behind the authority that must be understood and considered when evaluating agencies in the context of political money. Given the power and influence these entities possess, it is not difficult to understand why they are collectively referred to as the Fourth Branch of Government.[347] The Executive and Congress delegate specific authority to agencies in an attempt to regulate the complex facets of the modern US Federal system of Government. Yet, as stated in the Brownlow Committee report to Congress in January 1937, President Franklin D. Roosevelt clearly understood the problems that agencies, in their various guises, created.

Agencies, as the regulatory body, placed between Congress' as the legislative body and the regulated sector, face hurdles that frequently

[347] Traditionally, 'the people' are referred to as the fourth branch of government. However, this thesis takes the position that the failure to protect the rights of citizens (natural persons), denigrates their status with 'the people' being replaced by Agencies as the fourth branch. The position of 'the people' is further disadvantaged by the position or ranking held by the corporate sector.

compromises their ability to accomplish their mandated role. The regulated sector attempts to influence Congress against the agency by promoting alternative legislation or to restrict agency funding. Congress attempts to influence agency action so as to be seen as being representative of the broader community. The regulated sector attempts to influence the agency direct to limit or restrict oversight, while challenging agency action in the Court. The skills required by the regulated sector stem from the agency with the skills required to enhance agency effectiveness can only be obtained from the regulated sector.

Money is the causal mechanism of the *money is power is influence* continuum in the complex relationship between the regulated sector, Congress, and the agency drives the inter-related concepts of the revolving door and regulatory capture. On the other hand, the relationship between the agency and the Court and the regulated sector and the Court can be argued as being ideological in nature. However, the regulated sector, having the greatest motivation, backed up by greater resources, can be seen as having the dominant position in this complex relationship. While the Agency has the added benefit of Authority, the perceived assault on this authority by influence of the regulated sector over a greater authority, places restrictions on how an agency acts or reacts. Despite attempts by Congress and Agencies to be proactive, they invariably are forced to become reactive; the dominant proactive role being mastered by the regulated sector. Agencies are an artificial construct that take numerous forms, designed originally to introduce additional skills into Government to supplement the decision making processes of Congress and the Executive, but have ended up with the unenviable task of being the front line troops while providing various forms of plausibility for Congress and the Executive.

Agency defined

In contemporary discourse, the term 'government agency' or 'administrative agency' applies to the independent agencies of the US government which exercise some degree of independence from the control of the President's and/or Congress. Heads or key members of Agencies are appointed by the President and confirmed by the Senate. Independent agencies, such as a commission, board or council, function as miniature versions of the tripartite federal government with the authority to develop, interpret and apply policy based on legislation through the issuing of regulations, to adjudicate disputes, and to enforce regulations. Examples of independent agencies include the Federal Election Commission (FEC), the Federal Communications Commission (FCC) and the US Securities and Exchange Commission (SEC). A broader definition of the term 'government agency' also refers to the federal executive departments that include the President's cabinet-level departments, and their sub-units. Examples of these forms of agency include the Department of Justice (DoJ), and the Internal Revenue Service (IRS), which is a bureau of the Department of the Treasury (DoT).

The majority of federal agencies are created by Congress through statutes referred to as enabling acts which defines the scope of an agency's authority. The majority of independent agencies are technically part of the executive branch; however, a few are located in the legislative branch. By enacting the *Administrative Procedure Act* (*APA*) in 1946, Congress attempted to establish a means of oversight of agency action.[348] This was in reaction to what Congress believed was in increasingly powerful Executive undermining Congress. In addition, the *APA* established uniform administrative law procedures for a federal

[348] *Administrative Procedure Act (APA), Pub L No 79–404, 60 Stat. 237*, 1946 (5 U.S.C. Subchapter II)

agency's promulgation of rules, and adjudication of claims along with a process for judicial review of agency action. However, there are numerous, and arguably considerable, inconsistencies with defining the concept of a Federal agency.

As revealed in the *Sourcebook of United States Executive Agencies*, every list of US Federal agencies in Federal publications is different.[349] The Federal Government has yet to arrive at a specific classification as legislative definitions of a federal agency are inconsistent, and arguably, incongruous. To add to the confusion, the official *United States Government Manual* published annually by the agency titled ‘Office of the Federal Register, National Archives and Records Administration’ (OFR) and printed by the agency titled ‘United States Government Printing Office’ (GPO) offers no definition.[350] The *US Government Manual* notes that:

> A typical agency description includes a list of officials heading major operating units, a summary statement of the agency's purpose and role in the Federal Government, a brief history of the agency, including its legislative or executive authority, and a description of its programs and activities, and information, addresses, and phone numbers to help users locate detailed information on consumer activities, contracts and grants, employment, publications, and other matters of public interest.[351]

To provide clarity, this thesis defines a US Federal Government Agency as any US Federal government instrument that is individually or in part, both jointly and severally; (a) subservient to a US Federal Government Department, (b) an instrument reporting to and/or directed by the US Congress, (c) an instrument reporting to and/or directed by the Executive, (d) an instrument reporting to and/or

[349] David E Lewis and Jennifer L Selin, “Sourcebook of United States Executive Agencies” (Washington, DC: Administrative Conference of the United States, Office of the Chairman, 2012) p 15. The Administrative Conference categorizes itself as an independent federal agency
[350] This claim is based on a review of the US Government manuals for the years 2007-2008, 2008-2009, 2009-2010, 2011 and 2012 US Government, “United States Government Manual,” 2014, http://www.usgovernmentmanual.gov/?AspxAutoDetectCookieSupport=1, [accessed 4 January 2015].
[351] Ibid, front matter.

directed by the US Supreme Court, (e) any instrument that has officers and/or employees that receive their remuneration and/or has expenses paid for in general by the US Federal Government, and/or (f) any person or persons who are commissioned by Congress, and/or the Executive and/or the Court, to a Federal Advisory Committee as defined by the *Federal Advisory Committee Act (FACA)*.[352]

Non-delegation Doctrine

In the US, the *non-delegation doctrine* is the principle that the Congress of the United States, being vested with "all legislative powers" by *Article One, Section 1 of the United States Constitution*, cannot delegate that power to anyone else.[353]

The origins of *Article One, Section 1,* and the *non-delegation doctrine*, can be traced back to 1690 when John Locke penned:

> The Legislative cannot transfer the power of making laws to any other hands. For it being but a delegated power from the people, they, who have it, cannot pass it over to others. . . . And when the people have said, we will submit to rules, and be govern'd [sic] by laws made by such men, and in such forms, nobody else can say other men shall make Laws for them; nor can the people be bound by any laws but such as are enacted by those, whom they have chosen, and authorised to make laws for them. The power of the Legislative being derived from the people by a positive voluntary grant and institution, can be no other, than what the positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands.[354]

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[352] *Federal Advisory Committee Act, Pub L No 92-463, 86 Stat. 770, 1972. (Codified at 5 U.S.C. App. at 1175*, 1988 This is defined as an advisory body that includes at least one person who is not a full-time federal officer or employee that conducts public meetings and opens its records to public inspection.

[353] "Constitution of the United States," 1788, http://www.archives.gov/exhibits/charters/constitution.html [accessed 2 January 2015], Article One, Section 1.

[354] Thomas Cook, ed., *John Locke: Two Treatises of Government* (New York: Hafner Publishing, 1947), p 193 Thomas Jefferson spoke of Locke as did John Adams. John Locke political writings contributed to the French and US revolutions. Locke coined the phrase 'pursuit of happiness,' in his book *An Essay Concerning Human Understanding*. Thomas Jefferson took the phrase "pursuit of happiness" from Locke and incorporated it into his famous statement of a peoples' inalienable right to "life, liberty, and the pursuit of happiness" when he penned the US Declaration of Independence. Locke is often referred to today when the

Locke was referred to when the Supreme Court ruled in In *J.W. Hampton, Jr., & Co. v. United States (Hampton)* that Congressional delegation of legislative authority is an implied power of Congress that is constitutional so long as Congress provides an '*intelligible principle*' to guide the executive branch.[355] Legislation, when passed by Congress and subsequently signed into law by the President, must include clear and concise guidance on which agencies must base their regulations. The standard of such guidance in the majority of legislation must be considered as somewhat lenient, as the obvious vagueness' has never been used to strike down legislation. In *Hampton*, the Court argued*; "*In determining what Congress may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the government co-ordination".[356] The Court stated that so long as Congress *"…*shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power".[357]

One of the earliest Supreme Court cases involving the exact limits of non-delegation was *Wayman v. Southard.* As Congress had delegated to the Courts the power to prescribe judicial procedure, it was argued that "Congress had thereby unconstitutionally clothed the judiciary with legislative powers". Interestingly, Chief Justice John Marshall conceded that "the determination of rules of procedure was a legislative function". But he went on to determine the

Supreme Court is asked to consider non-delegation doctrine and also the separation between Church and State.
; John W. Yolton, ed., *An Essay Concerning Human Understanding by John Locke* (London: Dent, 1960).
[355] J. W. Hampton, Jr. & Co. v United States, 276 US 394 (1928).
[356] Ibid., p276 at 406.
[357] In US constitutional and administrative law, the principle '*delegata potestas non potest delegari*' (no delegated powers can be further delegated) applies.

value of distinguishing between '*important'* subjects and mere details. Marshall wrote that *"…*a general provision may be made, and power given to those who are to act under such general provisions, to fill up the details".[358] One can but speculate to the ruling if it were not based on the Court determining an outcome that related to the vested authority in the Court.

1887 marked a significant Constitutional event in the US. By making the railroads the first industry subject to Federal regulation, the creation by statute of the *Interstate Commerce Commission* (ICC), introduced for the first time a new form of governance in the US.[359] What was considered at the time as a strange amalgam of Legislative, Executive and Judicial powers, posed a serious challenge to the intent of the framers of the Constitution. Congress created the concept of hybrid agencies and proceeded to enhance its powers substantially in subsequent legislation. Despite their integration into the Federal system of government, (semi) independent agencies have never quite overcome the constitutional questions that dogged the drive to establish the ICC. The basic structure of the ICC; 5 commissioners appointed by the President on approval by the Senate, remains the agency today, but with some exceptions, notably the FEC.

The success (or failure) of the ICC was admirably noted by US Attorney General and Secretary of State, Richard Olney, who stated in 1894: "The Commission is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, while at the same time that supervision is almost entirely nominal". This indicates that the issues of

[358] Wayman v. Southard. 23 US. 1, 6 L. Ed. 253, 63 S. Ct. 1019 (1825).
[359] *Interstate Commerce Act of February 4, 1887, Public Law 49-41, 49 STAT 379*, 1887.

funding commissions and the influence on that funding, was an issue in 1894 as it is today.[360]

In 1892, the Court in *Field v. Clark,* noted the fact that "…Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution" The Court held that the tariff-setting authority delegated in the McKinley Act *"…*was not the making of law*,"* but rather empowered the Executive branch to serve as a "mere agent" of Congress.[361]

During the 1930s, Congress provided the executive branch with wide powers to combat the Great Depression. It was during this period, and under the allocated powers, that the SEC was established.[362] While the constitutionality of the SEC was not challenged, other aspects of legislation from that period was struck down by the Court on the basis that Congress had set "…no criterion to govern the President's course." For example, in *Schechter Poultry Corp. v. United States*, the Court found that, since the law sets no explicit guidelines, businesses "…may roam at will and the President may approve or disapprove their proposal as he may see fit." Therefore, the Court struck down the relevant provisions of the *Recovery Act*.[363]

On a regular basis, the Supreme Court upholds federal legislation on grounds that differ to the intent of Congress. Similarly, an appellate court may uphold a lower court judgment even if that lower court's opinion expressed mistaken reasons for it. However, this is not the case of judicial review of

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[360] Matthew Josephson, *The Politicos, 1865-1896* (New York: Harcourt, Brace & Co., 1938), p 526.
[361] Field v Clark, 143 US. 649 (1892).
[362] The SEC was created by Section 4 of the *Securities Exchange Act* of 1934 (now codified as 15 U.S.C. § 78d and commonly referred to as the Exchange Act or the 1934 Act). The SEC enforces the *Securities Act* of 1933, the *Trust Indenture Act* of 1939, the *Investment Company Act* of 1940, the *Investment Advisers Act* of 1940, the *Sarbanes–Oxley Act* of 2002, and other statutes.
[363] A.L.A. Schechter Poultry Corp. v United States, 295 US 495 (1935).

agencies. Precedent created in *SEC v. Chenery Corp.* (1943) established that a court may uphold an agency's action only on the grounds upon which the agency relied when it acted.[364] The validity of agency action is therefore dependant on the validity of the agency's justification. Chenery introduced a variation to non-delegation doctrine in that the previous understanding of the doctrine demanded legislative standards centred on 'intelligible principles.' The doctrine, which Chenery enforces, holds that "…delegation is constitutionally valid only if it requires the agency exercising the delegated authority to state the grounds for its invocation of power under the statute".[365] Chenery's enforcement of this norm regulates the political accountability of agency action by ensuring that decision-makers and agency lawyers alike are accountable by embracing the grounds for an agency's actions. Therefore, it promotes a consistent rationale to agency decision-making by enforcing a practice of reason-giving.

The practical application of Chenery agencies ensures reasoned decision making to obtain deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. (Chevron).*[366] In *Chevron*, the Court set a legal test for determining whether to grant deference to a government agency's interpretation of a statute which it administers. However, Chenery insists that, to receive Chevron deference, agency decision makers must justify the bases for their decisions that bind with the force of law. Chevron has arguably become one the most frequently cited cases in US administrative law, although evidence suggests that decision has had little impact on the Court's jurisprudence, merely clarifying the Court's existing approach.

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[364] SEC v. Chenery Corp., 318 US 80 (1943).
[365] Kevin M. Stack, "The Constitutional Foundations of Chenery," *Yale Law Journal* 116, no. 5 (2007): 882–1169.
[366] Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 US 837 (1984).

However, three more recent decisions in the Court had the potential to restrict the scope of administrative agency actions that receive *Chevron* deference to agency decisions that have the force of law. That doctrine was sometimes referred to as 'Chevron step zero.' For example, a regulation circulated under the 'notice and comment' provisions of §553 of APA would be likely to receive *Chevron* deference, while a letter sent by an agency, such as a SEC "no-action" letter, would not. However, an agency action that did not receive *Chevron* deference "…may still have received some degree of deference under the old standard of *Skidmore v. Swift & Co* (*Skidmore*)".[367] The majority in *Christensen v. Harris County (Christensen)*[368] suggested that *Chevron* deference should apply to formal agency documents which have the force of law while *Skidmore* should apply to less formal agency documents in an attempt to establish a linkage with "force of law" under Chevron step zero.

In the 1989 case *Mistretta v. United States (Mistretta)*, the Court stated that:

> Applying this 'intelligible principle' test to congressional delegations, our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives. Accordingly, this Court has deemed it 'constitutionally sufficient' if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.[369]

Only rarely has the Court invalidated laws as violations of the non-delegation doctrine. Epitomizing the Court's legal reasoning in relation to the doctrine, it ruled

[367] Skidmore v. Swift & Co., 323 US 134 (1944).
[368] Christensen v. Harris County, 529 US 576 (2000).
[369] Mistretta v United States, 488 US 361 (1989).

in the 1998 case *Clinton v. City of New York (Clinton)* [370] that the *Line Item Veto Act of 1996*,[371] which authorized the President to selectively void portions of appropriation bills, was a violation of the 'Presentment Clause'.[372] This clause clearly states the formalities governing the passage of legislation. Although the Court noted that the attorneys prosecuting the case had discussed the non-delegation doctrine at length, including referring to Locke, the Court declined to consider that question. In his concurring opinion, Justice Kennedy stated that he would have found that: "…the statute to violate [is] the exclusive responsibility for laws to be made by Congress".

The 21st century breathed new life into what has become a scholarly debate over the non-delegation doctrine. In 2001, in *Whitman, Administrator of the Environmental Protection Agency, et al v. American Trucking Associations* (*Whitman*), the Supreme Court rejected a non-delegation challenge to a statute that authorized the EPA to set air quality standards. Writing for the majority, Justice Scalia articulated the current state of the doctrine. *Article I, Section 1 of the Constitution* forbids delegations of legislative power to any other branch of government by vesting "…all legislative powers herein granted.., in a Congress of the United States*"*. Scalia applied the test to the concept that if Congress delegates its legislative power to executive branch agencies it must lay down "…an intelligible principle by which the person or body authorized to [act] is

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[370] Clinton v City of New York, 524 US 417 (1998).

[371] *Line Item Veto Act of 1996, Pub L No 104–130*, 1996.

[372] *The US Constitution Article 1, Section 7, Clause 2* states: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such cases the votes of both Houses shall be determined by yeas and Nays, and the names of the persons voting for and against the Bill shall be entered on the journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which Case it shall not be a Law."

directed to conform." Justice Scalia found no constitutional violation. Justice Thomas concurred in the judgment, but provocatively called for the Court to abandon the '*intelligible principle*' test in cases in which "…the significance of the delegated decision is simply too great" to be exercised by any governmental organ but Congress.[373]

More recently, the doctrine of Chevron Step Zero has been discarded by the Court. In *City of Arlington v. Federal Communications Commission*, the Court held that an agency should receive *Chevron* deference for its interpretation of a statutory ambiguity concerning its jurisdiction; broadly, the scope of its regulatory authority. Numerous Courts of Appeal had previously held that an agency's decisions regarding the scope of its jurisdiction should not receive *Chevron* deference; this distinguishing jurisdictional questions from other questions of statutory interpretation. In the majority opinion, Justice Scalia rejected that interpretation. He went on to argue that "…judges should not waste their time deciding whether an agency's interpretation of a statutory provision is 'jurisdictional' or 'non-jurisdictional".[374] This places responsibility interpretation of legislation, the development of agency policy, clearly a responsibility of the agency. This suggests that the Court wishes to focus on the constitutionality of legislation; the responsibility of oversight of agency interpretation being the responsibility of Congress as indicated in *Whitman.*

The reintroduction of the *Chevron* deference is complete when the key wording of the Chevron U.S.A Inc. is considered. As Chevron argued:

> [An] agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent

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[373] Whitman, Administrator of the Environmental protection Agency, et al v American Trucking Associations, Inc., 531 US 457 (2001).

[374] *City of Arlington v FCC, 133 S. Ct. 1863*, 2013.

> administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices.[375]

This leaves the numerous agencies,[376] in their various guises, to take responsibility for policy development which must be considered to be of significant concern based on historic as well as contemporary actions by agencies. This concern is well represented by considerable discourse in the broader area of political money and the (in) actions of three key agencies in that area. This also infers that ultimate responsibility for agency policy decisions rests with Congress and the Executive, both institutions also being subject to corporate influence by way of the various forms of political money.

The Securities Exchange Commission (SEC)

Unlike the IRS, the SEC is an independent regulatory agency. The SEC is primarily responsible for enforcing the federal securities laws and regulating the securities industry, the nation's stock and options exchanges, and other activities and organizations, including the electronic securities markets in the US. In addition to the Securities Exchange Act of 1934 that created it, the SEC enforces the *Securities Act* of 1933, the *Trust Indenture Act* of 1939, the *Investment Company Act* of 1940, the *Investment Advisers Act* of 1940, the *Sarbanes–Oxley Act* of 2002, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* of 2010, *Jumpstart Our Business Startups (JOBS)* Act of 2012 and other legislation.[377] The SEC was created from legislation initiated by President Roosevelt in response to

[375] Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 US 837 (1984), id at 865.
[376] US Government, "United States Government Manual." In August 2012, there were 475 Federal Government Departments and Agencies listed.
[377] US. Securities Exchange Commission, "The Laws That Govern the Securities Industry," 2014, http://www.sec.gov/about/laws.shtml [accessed 2 January 2015].

the corporate failure leading to the Great Depression. President Roosevelt appointed Joseph P. Kennedy, Sr., father of President John F. Kennedy, to serve as the first Chairman of the SEC. The SEC consists of five Commissioners appointed by the President with the consent of the Senate. Their terms last five years, and are staggered so that one Commissioner's term ends on June 5 of each year. To ensure that the SEC remains non-partisan, no more than three Commissioners may belong to the same political party. The President also designates one of the Commissioners as Chairman. Several committees and sub-committees in Congress share oversight of the SEC, including the HCFS, but ultimately, the SEC is responsible to the President.

The mission statement along with the enforcement authority given by Congress allows the SEC to bring civil enforcement actions against individuals or companies alleged to have committed accounting fraud, provided false information, or engaged in insider trading or other violations of the securities law.[378] The SEC also works with criminal law enforcement agencies, such as the DoJ, to prosecute individuals and companies for offenses which include a criminal violation.

To achieve its mandate, the SEC enforces the statutory requirement that public companies submit quarterly and annual reports, as well as other periodic reports. Mandatory disclosure of financial and other information about the issuer and the security itself gives private individuals as well as large institutions the same basic facts about the public companies they invest in, thereby increasing public scrutiny while reducing insider trading and fraud. Serious irregularities along

[378] The SEC has a five-part mission: •To interpret and enforce federal securities laws;
•To issue new rules and amend existing rules; •To oversee the inspection of securities firms, brokers, investment advisers, and ratings agencies; •To oversee private regulatory organizations in the securities, accounting, and auditing fields; and •To coordinate U.S. securities regulation with federal, state, and foreign authorities.US Securities and Exchange Commission, “The Investor’s Advocate,” 2015, http://www.sec.gov/about/whatwedo.shtml [accessed 2 January 2015].

with accusations of regulatory capture and a revolving door culture within the SEC have resulted in increased scrutiny by the media and other watchdog organisations, with little effect.

Political Money and the SEC

This section will argue that the SEC fails to limit the ability of corporations to disseminate influence through political money; arguably they are complicit due to what is described as the 'revolving door' and 'regulatory capture'. The concept of regulatory capture has been debated over the past 200 years in the US in administrative law theory, economic theory and regulatory theory. It has been captured in the writing as diverse as President Woodrow Wilson and Nobel Laureate Economist George Stigler. There is an equally long history of denial. But writers from a broad spectrum of political discourse agree that the threat of or regulatory capture is ever present. Whenever moneyed interests gain influence over a regulatory agency, the integrity of the regulatory process is compromised.[379]

The Securities Exchange Act of 1934 SEC. 17. (78q) (a)(1) states:

> Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer municipal advisor, registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as

[379] George J Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.[380]

Based on this section, the SEC has the ability to regulate how the corporate sector disseminates and reports political money, especially 'dark money' that the sector is not required to report to the FEC.[381] Additionally, there is no correlation between the corporate sector reports required by the SEC, campaign contributions reporting required by the FEC, or taxation returns made to the IRS including those listed as tax codes §501(c)(3), §501(c)(4), §501(C)(5), §501(c)(6), and §527 organizations, and lodgements' noted as tax code §7701.[382] Despite the 'ability' of the SEC to regulate, action is rarely taken and may become subject to a constitutional legal challenge.

The SEC made a ruling in 1999 that became known as the *pay to play ruling*.[383] After mixed reaction with limited success and negative Court outcomes, the ruling was changed which took effect in 2011 after disclosures that investment advisers were raising money for politicians who in turn helped them win business from state pension funds.[384] The New York State Republican Party challenged the rule as a test case against the SEC in an attempt to obfuscate risk that the SEC may choose to act further in the future. The legal team for the Republican Party argued that: "… the SEC has no specialized knowledge of, or insight into,

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[380] *Securities Exchange Act of 1934, (As Amended through P.L. 112–158, Enacted August 10, 2012)*, 2012 Section 17: Accounts and Records, Examination of Exchanges, Members and Others.

[381] Sean McElwee and Liz Kennedy, "The SEC Should Shine a Light on Dark Political Donations From Corporations," *Huffington Post*, July 28, 2014.

[382] Robert E Mutch, *Buying the Vote: A History of Campaign Finance Reform* (Oxford: Oxford University Press, 2014).

[383] Elizabeth P. Gray and David W. Blass, "The SEC's Pay-To-Play : Rule Proposal for Investment Advisers. What's Behind It & What Are the Next Steps?," *Wall Street Lawyer* 13, no. 10 (2009): 1–8.

[384] Securities Exchange Commission (SEC) 17 CFR Part 275 Release No. IA-3043; File No. S7-18-09RIN 3235-AK39 Political Contributions by Certain Investment Advisers. This based on the Investment Advisers Act of 1940

campaign finance and elections".[385] Although winning 'Round 1' in the Washington District Court, the SEC took a 'soft' approach to this challenge which is consistent with SEC action when there is a concern for their funding. This notion is supported by the fact that the SEC now faces a Republican majority in the 114th Congress.[386]

Due to the failures of Congress to legislate in line with the Constitution and subsequent Court rulings, plus what may be considered the failure to include adequate *intelligible principles* within legislation, the SEC has become synonymous with the concepts of the revolving door and regulatory capture. Both concepts have intrinsic features which links them to political money.[387] To understand and demonstrate the relationship between the SEC and political money, these two key concepts must be defined. While the revolving door and regulatory capture are not unique to the SEC, there is arguably no other agency that epitomises their dominance in agency action, or indeed, no other agency where these two concepts unfailingly interface. With these two concepts understood, this section will then demonstrate how the SEC is failing the natural person citizens of the US by perpetuating the influence the corporate sector has over legislation and policy.

The Revolving Door

The revolving door can be defined as any person with previous or current government experience who also has held, or currently holds, a professional position in the private sector where they can reasonably be expected to influence,

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[385] New York State Republican Committee v. SEC, 14-cv-1345, U.S. District Court, District of Columbia (Washington (2014). See: Josh Gerstein, "Judge Mulls SEC Limits on Political Donations," *Politico*, September 12, 2014, 23.

[386] The 114th Congress will have a Republican majority in both the House and Senate.

[387] Dominic K Albino, Anzi Hu, and Yaneer Bar-Yam, *Corporations and Regulators: The Game of Influence in Regulatory Capture* (Cambridge, MA: New England Complex Systems Institute, 2013). See also: Daniel Carpenter and David A Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge: Cambridge University Press, 2013).

or be seeking to influence, public policy decisions.[388] Private sector employment may include lobbyists as well as natural persons who lead organizations that are in a position to influence public and elicit opinions, which offer or sell advice to clients on regulatory or political law, who counsel organizations on public affairs strategies, and/or publish opinions on public policy matters. This may include natural persons who may otherwise serve in a capacity to contribute ideas to the public sphere that may ultimately affect policy decisions.[389] The revolving door is unquestionably an inescapable consequence of the regulatory agency's requirement for specialized knowledge and sector-specific expertise. These forms of human capital are equally as valuable to the sector as well as to the agencies. Regulators require human capital for good regulatory performance; regulated firms require regulators' unique expertise to minimize the cost of compliance with regulations.[390] In the context of an independent federal agency, there is the potential for an unhealthy relationship to develop between the regulated sector and that government agency. This may contribute to the granting of reciprocated privileges which could be beneficial to the regulated sector and agency officials while detrimental to natural person citizens.

The US Federal Government has policies designed to manage conflicts of interest (COI) faced by federal employees. It also has rules requiring disclosure of those COI. For example, 18 §USC Section 208 prevents federal employees from handling matters in which they or their relatives have a financial interest and senior

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[388] Sanna Talja and Prehen Hansen, "Information Sharing," in *New Directions in Human Behaviour : Information Science and Knowledge Management*, edited by Amanda Spink and Charles Cole (Houten, NL: Springer, 2006), 113–34.

[389] Walter W Powell and Kaisa Snellman, "The Knowledge Economy," *Annual Review of Sociology* 30 (2004): 199–220.

[390] Yeon-Koo Che, "Revolving Doors and the Optimal Tolerance for Agency Collusion," *The Rand Journal of Economics* 26, no. 3 (1995): 378–97; Jean Tirole, "Hierarchies and Bureaucracies: On the Role of Collusion in Organizations," *Journal of Law, Economics, & Organization* 2, no. 2 (1986): 181–214 These are excellent articles.

officials in the government must disclose those COIs on forms that are available to the public upon request.[391] However, there is no legislation preventing persons who are employed in a regulated sector from seeking employment with a federal agency or a federal officer seeking employment in a sector they regulated. While the Standards of Ethical Conduct for Employees of the Executive Branch indicates that a federal employee must avoid ''an appearance of a loss of impartiality in the performance of his official duties'', which includes the handling of a matter for a company for whom he/she served as employee, contractor, agent, consultant, director, officer, or trustee within the last year, regulatory approvals usually takes several years, and history tells us that federal employees have indeed made key decisions relating to regulatory approvals beneficial to the sector in which they used to be employed.[392] This is arguably why the relationship between the revolving door and multiple regression modelling are well understood in many fields; these including Psychiatry,[393] drug and alcohol abuse,[394] and in the field of criminality.[395] However, revolving door relating to the corporate sector and government agency, especially instances whereby persons come and go through the revolving door on numerous occasions, are less well defined.[396] The revolving

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[391] Revolving Door Working Group, "A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government and What to Do about It," 2005 http://www.cleanupwashington.org/documents/RevovDoor.pdf [accessed 2 January 2015].

[392] Code of Federal Regulations, "Standards of Ethical Conduct for Employees of the Executive Branch: CFR Title 5, Chapter XVI Part 2635," 2015, http://www.law.cornell.edu/cfr/text/5/part-2635 [accessed 2 January 2015].

[393] Thomas W Haywood et al., "Predicting the' Revolving Door' Phenomenon among Patients with Schizophrenic, Schizoaffective, and Affective Disorders.," *The American Journal of Psychiatry* 152, no. 6 (1995): 856–61.

[394] Andrew Shaner et al., "Disability Income, Cocaine Use, and Repeated Hospitalization among Schizophrenic Cocaine Abusers—a Government-Sponsored Revolving Door?," *New England Journal of Medicine* 333, no. 12 (1995): 777–83.

[395] Nicola Padfield and Shadd Maruna, "The Revolving Door at the Prison Gate : Exploring the Dramatic Increase in Recalls to Prison," *Criminology and Criminal Justice* 6, no. 3 (2006): 329–52.

[396] Issues relating to the 'revolving door,' within Government agencies, while the subject of considerable discourse, have not been addressed. Arguably, this is due to the lack of will on the part of the three parties, Congress, agencies and the broader corporate sector to approve legislation and/or approve policy that would limit their own ability to utilise that door. As this is not a constitutional issue, the Court is not placed to

door exists because an agency requires industry specific expertise to regulate its constituents effectively.

This is highlighted with the Madoff case where numerous fruitless investigations over the 16 years of the infamous Ponzi scheme carried by the SEC are attributed by the Office of the Inspector General to the lack of knowledge and experience of the investigators in this type of activity.[397] Conversely, the regulated sector values the experience and knowledge of complex regulations that former regulators have acquired, to minimize their cost of compliance, be it directly or on behalf of clients. The revolving door has the potential to compromise enforcement outcomes, especially when prior experience with industry leads agency personnel to be unduly sympathetic to a sectors interest and/or where the prospect of future employment encourages agency personnel to overlook or turn a blind eye to potential violations by the regulated sector. The media, members of Congress, and academics have all raised questions over extended periods about the impact of the revolving door on the efficacy and independence of various agencies. To summarise; the revolving door leads to an agency hiring officials from the sector they regulate as well as officials resigning to work in that same sector. This will arguably lead to regulatory capture.

Regulatory Capture

Regulatory capture is a concept originally associated with the Nobel laureate economist and neo-liberalist, George Stigler. Stigler developed the 'Theory of Economic Regulation', which states interest groups and other political participants, will use the regulatory and coercive powers of government to shape

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intervene, and arguably, would not wish to involve itself in an issue that the Justices themselves and/or the Court, may have benefited.

[397] H David Kotz, *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme* (Washington, DC: Government Printing Office, 2009).

laws and regulations in a way that is beneficial to them.[398] It is the process by which regulatory agencies eventually come to be dominated by the very sector they were charged with regulating. Therefore, regulatory capture happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the sector it is supposed to be regulating, rather than the public.

It has long been argued that asymmetrical information produces regulatory capture. Wide ranging psychological literature backs up this discourse. Psychological testing has revealed that natural persons are subject to an availability heuristic, which causes them to overestimate the probability of events based on the information most immediately available to them.[399] Therefore, if the majority of the information submitted to an agency reflects a sectorial perspective of regulatory issues, or reflects an act or action that a sector wishes to explore, regulators are likely to be over-influenced by this experience, leading them to form generalizations that undermine their capacity to envisage additional policy alternatives and/or policy reasons not to agree to different policy directions. This demonstrates that over time, regulators will take on the perspective of that sector and perceive policy issues through the lens of that perspective. While public choice theory and the closely related social choice theory could be considered alongside regulatory capture, this thesis believes they are sufficiently dissociated to warrant exclusion.

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398 Stigler, "The Theory of Economic Regulation", p 1.

399 Daniel Kahneman, "Maps of Bounded Rationality: Psychology for Behavioral Economics," *American Economic Review* 93, no. 5 (2003): 1449–75. See also: Milton Freidman and Anna Jacobson Schwartz, *Monetary History of the United States, 1867-1960* (Princeton: Princeton University Press, 1971); Thomas Gilovich, Thomas, "The Availability Heuristics and Biases : The Psychology of Intuitive Judgement," in *Heuristics and Biases: The Psychology of Intuitive Judgment*, edited by Thomas Gilovich, Dale Griffin and Daniel Kahnemann (Cambridge: Cambridge University Press, 2002), 103–12.rawls

The Revolving Door and Regulatory Capture within the SEC

As previously stated, while both the revolving door and regulatory capture are arguably concerns for all agencies, the SEC will be the primary focus in this section. This section will demonstrate that the revolving door is associated with compromised regulatory oversight by the SEC. This will permit the argument that the SEC has become subject to regulatory capture with Congress and the Executive failing to adequately address the underlying issues and concerns. This will further contribute to the argument that the US Republic model of Government is no longer a democracy, but a Plutarch where the Government is subservient to the corporate sector. While examples will be offered that may be considered as examples of an appearance of illegality, no conclusion will be drawn that any person is acting outside of the law.

Former SEC chair, Mary Schapiro, testified to a US Senate Confirmation hearing in January 2009 that the SEC must seek to avoid conflicts created by employees "…walking out the door and going to a firm and leaving everybody to wonder whether they showed some favour to that firm during their time at the SEC." A 2011 GAO report contends that even the mere appearance of a conflict of interest could undermine confidence in the enforcement process at the SEC.[400]

What will become a seminal study into the SEC revolving door was recently published by Stanford University Graduate School of Business. This study collected data on the career paths of 336 SEC trial lawyers that span 284 SEC civil cases against accounting misrepresentation over the period 1990-2007.

> About 58% (or 196) of the 336 lawyers continue to work for the SEC by the end of our data collection period. About 11%, or 37 lawyers, leave the SEC to

[400] US. Government Accountability Office. Securities and Exchange Commission, "Existing Post-Employment Controls Could Be Further Strengthened. Washington D.C.," 2014, http://digital.library.unt.edu/ark:/67531/metadc296582/, [accessed 2 January 2015].

join employers [in the corporate sector] other than law firms, and the remaining 31% of the lawyers quit to join private law firms (referred to as "revolvers"). The revolver lawyers potentially work for law firms that represent clients before the SEC and are most likely to face conflicts of interest [401]

It should be noted that the lawyers referred to in this study, are specialists in their field and either join the corporate sector direct or join a limited number of legal firms that specialise in corporate regulatory law. They are employed due to their specialization, the same specialization that the SEC also seeks.

Reductions in the scope of regulatory enforcement usually constitute a collective benefit for an entire sector, potentially creating an incentive for individual firms within that industry to free ride on the efforts of others. However, this risk for smaller organisations within a particular sector are such that if they do free ride, they may be perceived by a federal regulatory authority as being a weak link are more likely to be targeted by that authority and potentially create a precedent that would likely affect larger organisations.[402] This is but one aspect of 'Regulatory capture'.[403] In economics, regulatory capture occurs when a Federal or state regulatory agency, created to act in the public interest, instead advances the commercial or special interests that dominate the industry or sector it is charged with regulating. Regulatory capture is a form of government (Governance) failure, as it can act as an encouragement for large firms to produce negative

[401] Ed DeHaan et al., "Does the Revolving Door Affect the SEC's Enforcement Outcomes : Initial Evidence from Civil Litigation," *Stanford University Graduate School of Business Research Paper* 14–14 (September 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2125560# [accessed 2 January 2015].

[402] US Congress. 110th Congress,1st Session, *Congressional Record. House*, February 5, 2007.

[403] Daniel Hardy, *Regulatory Capture in Banking* (Washington DC: International Monetary Fund, 2006), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=892925 See also: Burton A Abrams and Russell F Settle, "Pressure-Group Influence and Institutional Change: Branch-Banking Legislation during the Great Depression," *Public Choice* 77, no. 4 (1993): 687–705; Susan E Woodward, "Regulatory Capture at the US Securities and Exchange Commission," *Sand Hill Econometrics Working Paper*, 1998, http://www.sandhillecon.com/pdf/RegulatoryCapture.pdf. Accessed April 24th 2009.

externalities. These agencies are known as "captured agencies".[404] Two (of many) examples of regulatory capture in the time period of this paper, and relevant to the FIRE sector are the Federal Reserve Board of New York and the Securities Exchange Commission.

The Fed and the GFC Bailout

The Federal Reserve Bank of New York (FRBNY) is the most influential of the Federal Reserve Banking System.[405] Part of the FRBNY responsibilities is the regulation of Wall Street, but its president is selected by and reports to a board dominated by the chief executives of some of the banks it oversees.[406] While the FRBNY has always had a close relationship with Wall Street, during the period that Timothy Geithner was president, 2003-2008, he became unusually close with the scions of Wall Street banks, a time when banks and hedge funds were pursuing investment strategies that caused the 2008 financial crisis, which the Fed failed to stop and the SEC had failed to recognise.

While the major banks have received most of the media spotlight as they collapsed and set off the catastrophic chain of events that the world outside of the US refers to as the GFC, the causal mechanisms behind the failures are less well understood. The *Gramm-Leach-Bliley Act*, also known as the *Financial Services*

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[404] Michael E Levine and Jennifer L Forrence, "Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis," *Journal of Law, Economics, & Organization* 6 (1990): 167–98.

[405] The FRBNY is part of the Federal Reserve System and is one of the twelve Reserve Banks created by Congress under the Federal Reserve Act of 1913 ("Federal Reserve Act"), which established the central bank of the United States. The Reserve Banks are chartered by the federal government and possess a unique set of governmental, corporate, and central bank characteristics. The FRBNY serves the Second Federal Reserve District, which includes the state of New York; the twelve northern counties of New Jersey; Fairfield County, Connecticut; the Commonwealth of Puerto Rico; and the U.S.Virgin Islands. While the Federal Reserve system is subject to a form of oversight by a board nominated by the President, it is not 'owned' by the Federal Government or its agencies. It is 'owned' by the member banks.

[406] Federal Reserve Bank of New York, "Federal Reserve Bank of New York Annual Report," 2007, http://www.ny.frb.org/aboutthefed/annual/annual07/annual.pdf; Federal Reserve Bank of New York, "Federal Reserve Bank of New York Annual Report," 2008, http://www.ny.frb.org/aboutthefed/annual/annual08/annual.pdf [accessed 2 January 2015].

Modernization Act of 1999[407] allowed deposit institutions and investment institutions to remerge. They were separated by the *US Banking Act* of 1933, usually referred somewhat inaccurately as the *Glass–Steagall Act* which limited commercial bank securities activities and affiliations within commercial banks and securities firms.[408] As well as allowing investment institutions access to the deposit 'cookie jar', the Gramm-Leach-Bliley Act created the opportunity for members of the FIRE sector to acquire ownership of the holding companies of key ratings agencies. The holding companies of the two biggest global ratings agencies, Moody's and Standard and Poor's were acquired by key members of the FIRE sector and closely aligned sector investors.[409] The influence applied, and either ignored or not observed by the SEC, resulted in around 75% of the mortgage-backed securities rated triple-A in 2006 downgraded to junk status by 2010.[410]

In the wake of the financial meltdown, Geithner became known as the bailout king; a recovery plan that benefited Wall Street banks at the expense of U.S. taxpayers.[411] Geithner engineered the FRBNY's purchase of $30 billion of credit default swaps from American International Group (AIG), which it had sold to Goldman Sachs, Merrill Lynch, Deutsche Bank and Société Générale. By purchasing these contracts, the banks received a "back-door bailout" of 100 cents on the dollar for the contracts.[412] Had the FRBNY allowed AIG to fail, the contracts would have been worth much less, resulting in much lower costs for any taxpayer-

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407 *Financial Services Modernization Act (Gramm-Leach Bliley Act) of 1999, Pub L No 106-102, 113 Stat 1338*.

408 *Banking Act of 1933, P L No 73–66, 48 Stat. 162*, 1933.

409 Jerome Mathis, James McAndrews, and Jean-Charles Rochet, "Rating the Raters: Are Reputation Concerns Powerful Enough to Discipline Rating Agencies?," *Journal of Monetary Economics* 56, no. 5 (2009): 657–74.

410 US Senate. Permanent Sub-Committee on Investigations. Committee on Homeland Security and Government Affairs, *Wall Street and the Financial Crisis : Anatomy of a Financial Collapse* (Washington, DC: Government Printing Office, 2011).

411 Jo Becker and Gretchen Morgenson, "Geithner: Member and Overseer of Finance Club," *New York Times*, April 26, 2009.

412 Ellen Hodgson Brown, *Web of Debt*, 4th ed. (Chippenham: Third Millennium Press, 2010). See also: Serena Ng and Carrick Mollenkamp, "Top US, European Banks Got $50 Billion in AIG Aid," *The Wall Street Journal*, March 9, 2009.

funded bailout. Geithner defended his use of unprecedented amounts of taxpayer funds to save the banks from their own mistakes, saying the financial system would have been threatened. Geithner went on to become the Treasury Secretary in the Obama administration in 2009. This allowed him to assert further influence in bank bailouts, despite criticism from many eminent economists, including Nobel-prizewinning economist Paul Krugman as well as fellow Nobel laureate and former World Bank Chief Economist Joseph Stiglitz.[413]

At the January 2010 congressional hearing into the AIG bailout, the FRBNY initially refused to identify the counterparties that benefited from AIG's bailout, claiming the information would harm AIG.[414] When it became apparent this information would become public, a staff member of the legal team at the FRBNY emailed colleagues to warn them, citing difficulty in continuing to keep Congress in the dark.[415] Jim Rickards calls the bailout a crime and said "the regulatory system has become captive to the banks and the non-banks".[416]

A captured agency

The SEC has also been accused of acting in the interests of Wall Street banks and hedge funds and of dragging its feet or refusing to investigate

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[413] Corbett B. Daly, "Nobel Laureate Krugman Slams Geithner Bailout Plan," *Reuters*, March 23, 2009. See also: Joseph Stiglitz, "Obama's Ersatz Capitalism," *New York Times*, March 31, 2009.

[414] United States Senate Committee on Banking, Housing, and Urban affairs, "Transcript from Hearing January 2010," 2010, http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.List&Month=0&Year=2010; United States Senate Committee on Banking, Housing, and Urban affairs, "Cummings Leads 26 Colleagues in Requesting AIG Counterparty Payment Investigation," 2009, http://cummings.house.gov/press-release/cummings-leads-26-colleagues-requesting-aig-counterparty-payment-investigation [accessed 2 January 2015].

[415] David Reilly, "Secret Banking Cabal Emerges From AIG Shadows: David Reilly," *Bloomberg News*, January 29, 2010.

[416] Angus King, "In Response to McCutcheon, King Introduces Legislation to Improve Transparency of Campaign Donations," April 2, 2014, http://www.king.senate.gov/newsroom/press-releases/in-response-to-mccutcheon-king-introduces-legislation-to-improve-transparency-of-campaign-donation [accessed 2 January 2015].

cases or bring charges of fraud and insider trading.[417] Financial analyst Harry Markopoulos, who spent ten years trying to get the SEC to investigate Bernie Madoff, called the agency "a non-functional captive to the industry".[418] There is a long history of regulatory failures by the SEC; the most prominent of these recently being the Madoff case.[419] The SEC was found by the Senate Committee on Finance, the Senate Judiciary Committee and a federal district court, to have illegally dismissed an employee in September 2005 who was critical of superiors' refusal to pursue Wall Street titan John Mack.[420]Mack was suspected of giving insider information to Arthur J. Samberg, head of Pequot Capital Management, once one of the world's largest hedge funds.[421]

After more than four years of legal battles, former SEC investigator Gary J. Aguirre filed papers in a Freedom of Information Act (FOIA) case he had against the SEC, seeking an order to force the SEC to turn over Pequot investigation records to him on the grounds that they had not charged anyone. Aguirre had already provided incriminating evidence of Pequot's insider trading involving Microsoft trades to the SEC in a letter on January 2, 2009.[422] The morning after Aguirre's FOIA papers were filed the SEC announced they had filed charges against Pequot and Pequot had agreed to disgorge $18 million in illegal

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[417] Matt Taibbi, "Why Isn't Wall Street in Jail?," *Democracy Now*, February 16, 2011, http://www.democracynow.org/2011/2/22/matt_taibbi_why_isnt_wall_street[accessed 2 January 2015].

[418] Editorial, "Madoff Whistleblower Markopoulos Blasts SEC," *Bloomberg News*, June 5, 2009.

[419] Madoff's business as a middleman, or broker-dealer, was subject to regular scrutiny by the SEC, including a routine examination in 2005 that identified some problems and a 2007 investigation that was closed without any further action. See Binyamin Appelbaum and David S Hilzenrath, "SEC Didn't Act on Madoff Tips," *Washington Post*, December 16, 2008, B01.

[420] Aguirre v Securities and Exchange Commission Civil Action No 06-1260 (ESH). 551 F.Supp.2d 33 (2008).

[421] Editorial, "Pequot Capital and Its Chief Agree to Settle SEC Suit for $28 Million," *New York Times*, May 27, 2010.

[422] Government Accountability Project, "SEC Settles with Aguirre," June 29, 2010, http://www.whistleblower.org/press/sec-settles-aguirre[accessed 2 January 2015].

gains and pay $10 million in penalties.[423] A month later, the SEC settled Aguirre's wrongful termination lawsuit for $755,000.[424]

The list of officials who have left the SEC for highly lucrative jobs in the private sector and who sometimes have returned through the revolving door to the SEC includes Arthur Levitt,[425] Robert Khuzami,[426] Linda Chatman Thomsen,[427] Kara Scannell,[428] Richard H. Walker,[429] Gary Lynch,[430] Reed Abelson,[431] and Paul R. Berger.[432] For instance, Peter H. Bresnan, a former Deputy Director in the SEC's Division of Enforcement, resigned in December 2007 and joined the law firm of Simpson Thacher & Bartlett LLP.[433] In November 2009, Mr. Bresnan filed a statement advising the SEC that he had been "retained to represent [Redacted (b)

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423 US Securities and Exchange Commission, "SEC Charges Pequot Capital Management and CEO Arthur Samberg With Insider Trading," May 27, 2010, http://www.sec.gov/news/press/2010/2010-88.htm [accessed 2 January 2015].

424 Becker and Morgenson, "Geithner: Member and Overseer of Finance Club."

425 Arthur Levitt, *Take on the Street* (New York: Vintage Books, 2003); Michael Moore, "Arthur Levitt to Leave Policy Advisory Role at Goldman Sachs," October 31, 2014, http://www.bloomberg.com/news/2014-10-30/arthur-levitt-to-leave-policy-advisory-role-at-goldman.html; US Securities and Exchange Commission, "SEC Biography: Chairman Arthur Levitt," June 29, 2010, http://www.sec.gov/about/commissioner/levitt.htm [accessed 2 January 2015]. Levitt (in) famously stated: "Goldman Sachs wasn't transparent in its dealings with customers before the financial crisis and said the firm should stop promoting itself as putting "customers first" because the slogan ignored tensions inherent in trading."

426 US Securities and Exchange Commission, "Robert Khuzami Named SEC Director of Enforcement," February 19, 2009, http://www.sec.gov/news/press/2009/2009-31.htm [2 January 2015].

427 Gretchen Morgenson, "Top Enforcer at the SEC Steps Down," *New York Times*, February 9, 2009.

428 Kara Scanell, "Davis Polk Recruits Ex-SEC Aide," *Wall Street Journal*, April 13, 2009, http://www.wsj.com/articles/SB123958616552412509; Reuters, "Senior Government Lawyers Linda Chatman Thomsen and Raul F. Yanes Join Davis Polk," April 13, 2009, http://www.reuters.com/article/2009/04/13/idUS69668+13-Apr-2009+BW20090413 [accessed 2 January 2015].

429 Editorial, "Deutsche Bank Hires Former S.E.C. Official," *New York Times*, October 2, 2001.

430 Reed Abelson, "Gary Lynch, Defender of Companies Has His Critics," *New York Times*, September 3, 1996.

431 Reed Abelson, "Enron Board Comes Under a Storm of Criticism," *New York Times*, December 16, 2001.

432 Walt Bogdanich and Gretchen Morgenson, "S.E.C. Inquiry on Hedge Fund Draws Scrutiny," *New York Times*, October 22, 2006, http://www.nytimes.com/2006/10/22/business/22hedge.html?pagewanted=all&_r=0 [accessed 2 January 2015].

433 US Securities and Exchange Commission, "Peter Bresnan, Deputy Director of Enforcement, to Leave Commission," November 29, 2007, http://www.sec.gov/news/press/2007/2007-248.htm [accessed 2 January 2015].

(7) (C)] in connection with SEC v. Bank of America Corp. (09-Civ-6892 (JSR)) (S.D.N.Y.)".[434]

Examples of completing the cycle through the revolving door, and the influence of the SEC alumni, are Robert S. Khuzami and Richard H. Walker.[435] Khuzami was hired in 2002, by former SEC Enforcement Director, then Global Head of Deutsche Bank Litigation and Regulatory Investigations, Richard H. Walker,[436] to work at Deutsche Bank in New York. Walker first met Khuzami at Cadwalader, Wickersham & Taft where Walker was a partner and Khuzami a freshman staff member and former junior SEC employee. Khuzami became SEC's Director of Enforcement in 2009 on the recommendation of Walker, on the resignation of Linda Chatman-Thomsen.[437] Khuzami resigned from the SEC in 2013 to become a partner with Kirkland and Ellis LLP.[438] More recently, a reverse example relates to the recent appointment of Mary Jo White, former chair of the litigation department at the law firm of Debevoise & Plimpton, as the chairwoman of the SEC.[439] White is reported as being in contact with Chatman-Thomsen in

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[434] US Securities and Exchange Commission, "Bank Of America Agrees to Pay $150 Million to Settle SEC Charges Litigation Release No. 21407 / February 4, 2010. Securities and Exchange Commission v. Bank of America Corporation, Civil Action Nos. 09-6829, 10-0215 (S.D.N.Y)," February 4, 2010, http://www.sec.gov/litigation/litreleases/2010/lr21407.htm [accessed 2 January 2015].

[435] "The Association of SEC Alumni was founded in 1990 with a goal of continuing the camaraderie that existed among members when they worked together at the Securities and Exchange Commission. Today, ASECA boasts a network of 1,200 SEC alumni worldwide Association of Securities & Exchange Commission, "Association of Securities & Exchange Commission Alumni Website," accessed December 24, 2014, http://www.secalumni.org [accessed 2 January 2015].

[436] Editorial, "Deutsche Bank Hires Former S.E.C. Official."

[437] Editorial, "Khuzami Will Lead SEC Enforcement," *Wall Street Journal*, February 20, 2009, http://www.wsj.com/articles/SB123508426606527305 [accessed 2 January 2015].

[438] Kirkland and Ellis LLP, "Former SEC Enforcement Director Robert Khuzami Joins Kirkland & Ellis," July 23, 2013, http://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=10825 [accessed 2 January 2015].

[439] US Senate. 113th Congress. Committee on Banking, Housing, and Urban Affairs, "Nominations of Richard Cordray and Mary Jo White. Richard Cordray, of Ohio, to Be Director of the Bureau of Consumer Financial Protection; Mary Jo White, of New York, to Be a Member of the Securities and Exchange Commission," March 12, 2013, http://www.banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing_ID=c5eeed57-7d2b-4f3e-a657-024d404d8b3f [accessed 2 January 2015].

2001 in an effort to protect Walker from Senate investigation relating to Deutsche Bank and the dismissal of a SEC whistle blower.[440]

Reporter Matt Taibbi called the SEC "…a classic case of regulatory capture".[441] The SEC has been described as an agency that was set up to protect the public from Wall Street, but now protects Wall Street from the public.[442] On August 17, 2011, Taibbi reported that in July 2001, a preliminary fraud investigation against Deutsche Bank was stymied by Richard H. Walker, then SEC enforcement director, who began working as general counsel for Deutsche Bank in October 2001. Darcy Flynn, an SEC lawyer, the whistle-blower who exposed this case also alleged that for 20 years, the SEC had been routinely destroying all documents related to thousands of preliminary inquiries that were closed rather than proceeding to formal investigation.[443] The SEC is legally required to keep files for 25 years and destruction is supposed to be carried out by the National Archives and Records Administration. The lack of files deprived investigators of possible background when investigating cases involving those firms. Documents were destroyed for inquiries into Bernard Madoff, Goldman Sachs, Lehman Brothers, Citigroup, Bank of America and other major Wall Street firms that played key roles in the 2008 financial crisis.

While the SEC has oversight from the Office of the Inspector General (OIG), a significant number of recommendations from the OIG have not been implemented. When combined with the allegation of the SEC illegally shredding

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[440] US Senate. Committee on Finance, *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management* (Washington DC: U.S. G.P.O., 2007).
[441] Taibbi, "Why Isn't Wall Street in Jail?"
[442] Garry Bauder, "Gary Aguirre Major Source in Taibbi Blockbuster," *San Diego Reader*, February 17, 2011, http://www.sandiegoreader.com/weblogs/financial-crime-politics/2011/feb/17/gary-aguirre-major-source-in-taibbi-blockbuster/# [accessed 2 January 2015].
[443] Edward Wyatt, "S.E.C. Files Were Illegally Destroyed, Lawyer Says," *New York Times*, August 17, 2011, http://www.nytimes.com/2011/08/18/business/sec-illegally-destroyed-documents-whistle-blower-alleges.html?_r=0 [accessed 2 January 2015].

records, including Matters under Inquiry (MUI's) the SEC has well earned a growing body of critics.[444] Ranking member on the US Senate Committee on the Judiciary, Senator Chuck Grassley wrote to the SEC on August 17th 2011, asking whether "…the agency for years [had] destroyed investigative documents inappropriately or illegally." SEC's then enforcement director Robert Khuzami stated in a letter to Senator Grassley that the SEC does keep records of their MUI's and they're available to our investigators to learn about previous work on matters that have been reviewed.[445] Grassley noted in a press release September 15th 2011 after the response from Khuzami:

> The SEC's argument seems to rely on its claim that nothing significant was destroyed. But, since the documents are gone, we'll never know how important they might have been. How do you know whether you might have been helped by something you no longer have? Besides, 'no harm, no foul,' isn't a legitimate excuse for failing to comply with legal obligations. Federal records are federal records and have to be preserved, regardless of whether they're part of an 'investigation' or an 'inquiry'.[446]

However, this suggests any 'documents' obtained in connection with an MUI would likely have been disposed of. This is reinforced by a SEC policy report that states SEC staff "would typically destroy any documents" in such files "upon closing a matter".[447]

The argument from the SEC is that the 'documents' in question fell outside a 1997 government 'retention schedule' that required 'records' of preliminary

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[444] David S. Hilzenrath, "Inspector General Faults SEC in Probe on Document Shredding," *Washington Post*, November 1, 2011.

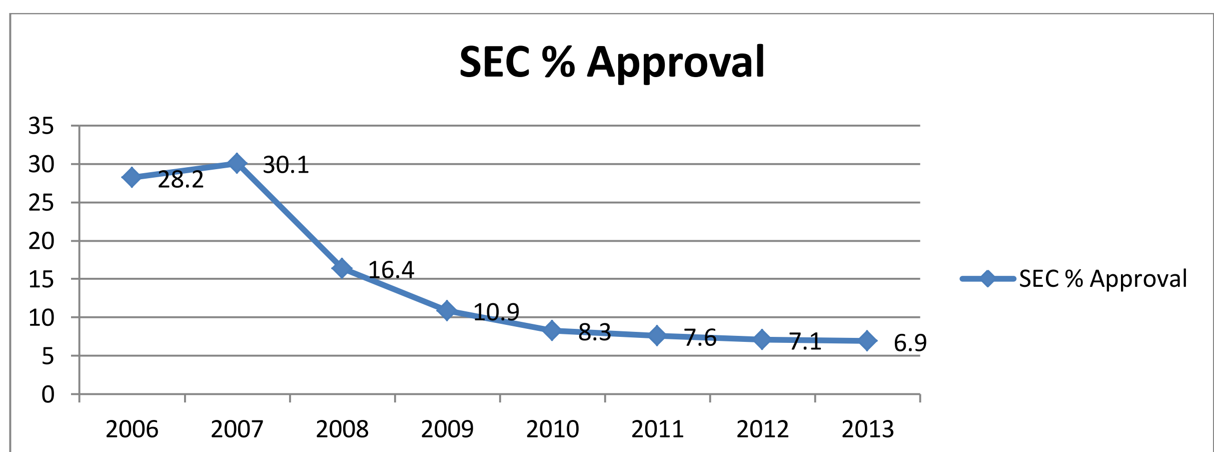
[445] For the SEC letter, see appendix 7

[446] Chuck Grassley, "Grassley: SEC Confidence on Insignificance of Destroyed Documents Is Questionable," September 15, 2011, http://www.grassley.senate.gov/print/news/news-releases/grassley%C2%A0-sec-confidence-insignificance-destroyed-documents-questionable [accessed 2 January 2015].

[447] US Securities and Exchange Commission, "Report of Investigation, United States Securities and Exchange Commission. Case No. OIG-567, Destruction of Records Related to Matters Under Inquiry and Incomplete Statements to the National Archives and Records Administration Regarding That Destruction by the Division of Enforcement," October 5, 2011, http://www.sec.gov/foia/docs/oig-567.pdf [accessed 2 January 2015].

investigations to be kept for at least 25 years.[448] However, to interrogate the SEC website, the search engine requests a document title. This would suggest that the SEC uses the words 'record' and 'document' interchangeably or selectively, depending on the circumstance being questioned. Other terminologies that appear to be used selectively are 'Inquiry' and 'Investigation'. The SEC has advised that it has changed its 'policy' on destroying documents after the SEC-OIG 'investigated' the matter.[449]

The Project on Government Oversight (POGO) released a report on May 13, 2011 which found that between 2006 and 2010, 219 former senior SEC employees sought to represent clients before the SEC.[450] Former employees filed 789 statements notifying the SEC of their intent to represent outside clients before the commission, some filing within days of leaving the SEC.[451]The reputation of the SEC, similar to the reputations of auditors, credit ratings agencies, and the regulated sector, is at an all-time low.[452]



[448] US National Archives and Records Administration, "Records Management Handbook," 2014., http://www.archives.gov/records-mgmt/handbook/ [accessed 2 January 2015].
[449] Matt Taibbi, 'Is the SEC Covering Up Wall Street Crimes?' See: US SEC Case OIG-567; US Securities and Exchange Commission, pp.30-31
[450] Project on Government Oversight, "Revolving Regulators: SEC Faces Ethics Challenges with Revolving Door," May 13, 2011, http://www.pogo.org/our-work/reports/2011/fo-fra-20110513.html [accessed 2 January 2015].
[451] See Appendix 6 for example letters.
[452] Compilation based on historic Gallup and Economist/YouGov polls; a random sample of at least 2,000 adults, aged 18 and older, and residing in all 50 US states and the District of Columbia and other sources.

Legislation will not address this concern as the Congress is also facing an historic low with the majority of natural person citizens. There is a general consensus that the SEC is a captured agency, with considerable evidence to support that consensus; the strength of that evidence resting in the arms of the SEC alumni spread across the regulated sector. This therefore, supports the notion that the agency may be suffering from a corporate form of 'Stockholm Syndrome'.[453] While this concept is not usually applied to a sector or an agency, there is sufficient anecdotal evidence to warrant further investigation; a level of inquiry outside of the current remit.

Conclusion

The revolving door, as a causal mechanism, and regulatory capture, as a causal effect, can both be clearly demonstrated by applying social exchange concepts. The dyadic relationships between employees of the regulated sector and of the regulator are long term and are developed through repeated contact through direct interface in the work environment but also through alumni and numerous other sector related institutional events, including, but not limited to, conferences. The Walker/Khuzami relationship is not isolated; merely one example of thousands over many decades that offer proof that the symbiotic relationships of reciprocity, altruism and personal greed turn the revolving door. It has been clearly demonstrated that the revolving door does lead at least to the perception of regulatory capture. With the closeness of the SEC alumnus and the wide reach that this relationship perpetuates, it has become rare for this perception to be proven. However, the mathematical modelling contained within several cited journals, when applied to publically known facts; demonstrate that

[453] Jonathan Macey, *The Death of Corporate Reputation: How Integrity Has Been Destroyed on Wall Street* (Upper Saddle River: FT Press, 2013).

the natural person citizens of the US should be concerned of the influence that is applied to regulatory outcomes. Given the Court appears to consider the perception of corruption as equally divisive as any proven act of quid pro quo corruption, one can only speculate why there is a lack of political will to make the necessary changes. The beneficial transfer of knowledge, when a natural person changes employment, is usually the primary reason why an employer makes a choice of one particular natural person over another. This is not disputed by the regulated sector or the regulator; these forms of human capital are equally as valuable to the sector as well as to the agencies. Regulators require human capital for good regulatory performance; regulated firms require regulators' unique expertise to minimize the cost of compliance with regulations. The associated distributional consequences of knowledge acquisition and dissemination are not limited to regulation; the accepted extension is the relationship between natural persons. The broader beneficial relationship between natural persons, as extended by social exchange, feeds into deeper personal motivations that are configured by a form of personal obligatory morality, demonstrated as self-interest and a healthy narcissistic attitude. Given that these attributes are considered to be natural components of humanity, and it is quite correct for the regulated sector to utilise any legal tool in their arsenal to beneficially enhance opportunities, it is reasonable to suggest that the notions of agency model, non-delegation doctrine and intelligible principles must be addressed. While the SEC has been briefly used as an example, the broader concerns that must be reconsidered are the relationship between the corporate sector and the legislative, regulatory and judicial components of the US Federal Government. Should the status quo continue, the corporate sector will continue to influence regulatory outcome.

The body of literature that has been generated about the SEC specifically and the inter-related agency deficiencies generally is significant. Yet no modelling has been developed that address the multivariate effects of the symbiotic relationships between the revolving door and regulatory capture at agency level. Therefore, it remains unclear how can the SEC and the regulated sector can share experience and knowledge yet maintain separation and integrity?

Chapter 7: The Court; Personhood and *Citizens United*

The term 'person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

Securities Act of 1933 [454]

When a natural person is born in the United States (US), this new person is allocated a social security number. However, when a corporation is created (registered), this new corporate person is issued with a Federal Employer Identification Number. A corporate person has no gender; it has no racial classification; it does not eat drink or sleep, and cannot be imprisoned or executed if found guilty of a crime. A corporate person can reside in multiple locations at the same time. It can potentially live forever, and even change its identity in a matter of minutes. It cannot be enslaved, but it can sell itself. It can neither marry nor be given in marriage. A corporate person cannot give birth, but it can remove parts of itself and turn each of the parts into new persons. It can own or sell these new persons and even buy them back later, either owning them or re-incorporating them into itself. It can own and be owned. A corporate person is not natural but (incorrectly) argued as being composed of natural persons united for a common purpose; most commonly this purpose is profit derived from a form or forms of commercial activity. A corporate person is an entity that is bought and sold. It is categorized as property; this categorization is not dissimilar to the ownership of slaves in the early decades of the US as a developing nation.

Despite its non-human property status, the Court has granted the corporation, personhood and thus the corporate person has many of the same rights and privileges as the natural person. However, the corporate person has the

[454] *Securities Act of 1933, Ch. 38, Title I, Sec. 1, 48 Stat 74, as Amended by Pub L No 112-106, Approved April 5, 2012, Sec. 2, p2.*, 1933.

ability to morph into whatever shapes it so chooses in order to take advantage of the variations in US laws that may suit it best at any given time. This includes tax concessions not available to natural person citizens and numerous rights under the US Constitution and Amendment's.

The first section of this chapter will consider the development of corporate personality, the concept now generally referred to as corporate personhood. In the US development of corporate personhood, the evolving corporate sector became the key drivers toward enhancing recognition of the corporate form of personality to equivalence akin to that of natural persons. The evolution of the corporate sector and the development of corporate personhood converged in stages, as will be demonstrated; with the ideological developments over the last four decades a specific corporate agenda to enhance their influence at all levels. The second sector of this chapter will evaluate key aspect of the 2010 *Citizens United* ruling from the Supreme Court. This will contribute to the argument that, as stated within *CIGT,* "…the government is a desirable extension of corporate influence." The position of this thesis is that the ideology behind recent Court rulings, of which *Citizens United* is being used as an example, demonstrates that the corporate sector, through a long term agenda, does in fact beneficially influence judicial decision making. This will contribute to the addressing how the corporate sector influences legislative, regulatory and judicial decision making.

Corporate personality: A History

Natural persons have been relating to each other as part of groups since the dawn of human social interactions. Therefore, the concept of the collective is not new; the corporation, as a special type of collective for commercial purposes, was not a revolutionary idea. The collective spirit for economic transactions has a foundation in early Greek philosophy. According to Plato, collectives arise naturally

as individuals realize that they cannot survive independently but instead must rely on a division of labour to provide all the necessary goods and services in a community.[455] However, the corporation as a legal person separate from its owners developed as a uniquely Western institution. Other legal systems, such as Sharia law, did not originally have a concept of legal personality separate from individual human beings.[456] Classically, the corporate form was conceived as an artificial person; it was created by a sovereign power. The prime purposes were to assemble a group of like-minded natural persons who wished to invest in a particular activity and to protect those natural person citizens from the liability of debt of the corporate form.

The concept of the corporate form originated in Roman law in its classical period.[457] This concept was further developed in the middle ages in both canon and civil law, and was adopted from civil law by the Anglo-American common law tradition. In Europe, the existence of the corporate form was crucial to the development of several other important institutions, such as the university, whose very name derives from *Universitas*, the Latin term for a corporation *and* a parliament. It has, in fact, been argued that other important Western developments such as the rise of representative democracy, industrialization and the scientific revolution can be tied to the corporate form.[458]

The corporation has evolved from its origins in Roman law through a series of four major transformations. First, the concept of the corporation as a separate

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[455] Ferrari, *The Republic by Plato*, Chapter II.

[456] George Makdisi, "Madrasa and University in the Middle Ages," *Studia Islamica* 32 (1970): 255–64. As a side note, under traditional Sharia law, no beneficial interest is charged on financial loans.

[457] In this period, an early form of shareholder company, *societas publicanorum*, existed under political patronage Peter Temin, "A Market Economy in the Early Roman Empire," *Journal of Roman Studies* 91 (2001): 169–81; This is expanded upon in: Peter Temin, "The Economy of the Early Roman Empire," *The Journal of Economic Perspectives* 20, no. 1 (2006): 133–51.

[458] On representative democracy and its connection to the borough as a corporation, generally see Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought 1150-1650* (Cambridge: Cambridge University Press, 1982).

legal person from its owners or members developed with the work of the civil law commentators in the 14th century.[459] By the middle ages, the membership corporation had legal personality, the capacity to own property, sue and be sued, and even bear criminal responsibility, unlimited life, and in which members chose their successors, was well established in both civil and common law jurisdictions.[460]

These roots of corporate personality are readily found in medieval European history. Pope Innocent IV effectively introduced the fiction theory of corporate personhood which in its simplest terms held that corporations are legal fictions created by the state and endowed with an artificial personality for the sake of convenience.[461] Although the Church provided an early example of corporate personality, the Church's activities were tied to titles and parishes, not business in the modern sense.[462]However, the modelling was not that different.

The next important step was the shift from socially beneficial membership corporations to for-profit business corporations, which took place in Europe in the 16th and the beginning of the 17th century.[463] Initially, unchartered joint-stock companies resembled the form of modern corporations, complete with centralized management, transferability of shares, limited liability, and legal personality. Because voyages to the New World were tremendously expensive and risky ventures, very few wealthy individuals had the resources to finance voyages of

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[459] Reuven S Avi-Yonah, "Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility, The," *Delaware Journal of Corporate Law* 30 (2005): 767 Showing that by the time of Bartulos of Sassoferato (1314-1357), the leading commentator on the Corpus Juris Civilis in the fourteenth century, the concept of the corporation as a separate legal person was fully developed.

[460] Joseph Canning, *Ideas of Power in the Late Middle Ages, 1296–1417* (Cambridge: Cambridge University Press, 2011) See also: Katsuhito Iwai, "Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance," *The American Journal of Comparative Law* 47, no. 4 (1999): 583–632.

[461] *Innocentius IV*; c. 1195 – 7 December 1254. Dewey, "The Historic Background of Corporate Legal Personality."

[462] Paul Vinogradoff, "Juridical Persons," *Columbia Law Review* 24, no. 6 (1924): 594–607.

[463] Joseph Angell and Samuel James, *Treatise on the Law of Private Corporations Aggregate* (Boston: Hilliard, Gray, Little & Wilkins, 1832), v.

discovery and to exploit the resources of new Colonies. Instead, individuals needed to pool their resources and share the risk of these expensive voyages. When the voyages were successful, the shared payoff was worth the investment and risk.

In 1600, Queen Elizabeth I chartered the East India Company with monopoly trading power in the Colonies. The East India Company, having gained its corporate charter directly from the Queen and to serve the pleasure of the Queen, was an example of what corporate theorists would consider the concession theory because the Queen had conceded to grant a corporate title.[464] This is the first clear example where a Head of the Church granted a charter (title) to an entity that was designed to be secular and for profit, as opposed to early charters or titles where the Church and/or religious or non-secular undertakings were the underlying activity. Joint-stock companies such as the East India Company grew in number as the concept proved to be successful. Investors grew rich as did the Crown which was entitled to a share of the profits.[465]The Queen created laws that directly benefited the East India Company, which set a precedent in the late 1680s that is still followed by modern corporations today. In return for its efforts, the Company was rewarded with a law that required a license to import anything into the Colonies, thus strengthening their monopolistic privileges.[466]

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[464] David Millon, "Theories of the Corporation," *Duke Law Journal* 2 (1990): 201–62. See also: John Micklethwait and Adrian Wooldridge, *The Company: A Short History of a Revolutionary Idea* (New York: Modern Library Chronicles, 2005).
[465] Fred S. McChesney, *Money for Nothing: Politicians, Rent Extraction, and Political Extortion* (Cambridge, MA: Harvard University Press, 1997, p 2.
[466] K.N. Chaudhuri, *The Trading World of Asia and the English East India Company: 1660-1760* (Cambridge: Cambridge University Press, 1978), p 20.

Later, they benefited from the Townsend Acts of 1767 [467] and the Tea Act of 1773.[468] These laws increased profitability to stockholders, which included the Crown, with the Company able to undercut small, local importers and drive them out of business.[469] Although the East India Company was able to gain a monopoly in the Colonies, it was continually challenged by independent colonial entrepreneurs who ran small trading ships and from independent retailers who traditionally bought from Dutch trading companies rather than the East India Company.[470]

Beginning slowly post 1918 and accelerating post 1945 saw the third transformational shift from closely held corporations to corporations whose shares are widely held and publicly traded. This also included significant changes in limited liability along with an evolution in the incorporation rules. This, along with the change from a gold based currency to a fiat currency, quickly evolved into corporations becoming multinational enterprises whose operations span the globe which continue to expand and evolve.[471] Each of these four transformations was accompanied by changes in the legal conception of the corporation.

What is remarkable however is that throughout all of these changes spanning two millennia, the same three theories of the corporation can be discerned? Those theories; aggregate theory, views the corporation as an aggregate of its members or shareholders; artificial entity theory, which views the corporation as a creature of the State, and; real entity theory, which views the

[467] David Lee Russel, *The American Revolution in the Southern Colonies* (Jefferson NC: McFarland and Co, 2000), pp 40-42.

[468] Nelson Klose and Robert F. Jones, *United States History: To 1877* (Hauppauge, NY: Barrons Educational, 1983), p 71.

[469] Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights,* pp 51-52.

[470] Klose and Jones, *United States History: To 1877*, p 102 See also: Russell Shorto, *The Island at the Centre of the World: The Untold Story of Dutch Manhattan and the Founding of New York* (London: Doubleday, 2005).

[471] Avi-Yonah, “Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility.”

corporation as neither the sum of its owners nor an extension of the state, but as a separate entity controlled by its managers.[472]

Corporate personhood: The theory

To comprehend Citizens United, the notion of corporate personality and the evolution of corporate personhood must be understood. Legal, metaphysical and moral concepts are three relatively different notions of what constitutes personhood that are intertwined in western tradition. This complex quandary is manifested in Locke's account of personal identity. He writes that the term person: "… [is] a forensic term, appropriating actions and their merit; and so belongs only to intelligent agents, capable of law, and happiness, and misery." He extends this argument by postulating that by consciousness and memory, only persons are capable of extending themselves into the past and thereby become "concerned and accountable".[473] Locke is arguably correct in citing the law as the primary origin of the term 'person.' However, by upholding that its legal usage entails a metaphysical sense, an agency; and whether or not either sense, but especially the metaphysical, is interdependent on the moral sense and accountability, remains contentious. There are two very distinct schools of thought in the correlation between metaphysical and moral persons.

According to one school of thought;

> [To] be a metaphysical person is to be a moral one; to understand what it is to be accountable one must understand what it is to be an intelligent or a rational agent and vice-versa; while according to the other, being an agent is a necessary but not sufficient condition of being a moral person.[474]

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[472] Millon, "Theories of the Corporation."

[473] Yolton, *An Essay Concerning Human Understanding by John Locke*), Bk. II, Ch. XXVII..

[474] Jensen and Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure."

While Locke places both moral and metaphysical persons in interdependence, he also places both moral and metaphysical persons in the juristic person. This seemingly contradictory stance has a modicum of support in current thinking which argues for some version of the pre-condition view of the relationship between the metaphysical and moral person and also adopts a particular view of the legal personhood of corporations that effectually excludes corporations per se from the class of moral persons. While philosophers and economists argue for the least defensible number of possible interpretations of the juristic personhood of corporations, their doing so allows them to systematically sidestep the question of whether corporations can meet the conditions of metaphysical personhood.[475] Therefore, the notion that the corporate person is simply a form of legal fiction which serves as a nexus for contracting relationships remains in the wilderness.

This thesis finds no argument that the corporation is a legal entity. This notion, as applied millennia ago in the Republic of Rome, is referred in in contemporary discourse as Fiction Theory. This has been characterized as: "…the personality of a corporate body is a pure fiction and owes its existence to a creative act of the state".[476] It must be noted that the Fiction Theory is enshrined in English law in regard to corporate bodies by Sir Edward Coke who stated in the *Case of Sutton Hospital* part X that corporations "rest only in intendment and consideration of the law".[477]

While it may be argued that the Rawlsian view of corporate persons could not be motivated by acceptance of Fiction Theory, Rawls himself would not be

[475] Daniel Dennett, "Conditions of Personhood," in *The Identities of Persons* , edited by Amelie Oksenberg Rorty, (Berkley, CA: University of California Press, 1976), 175–96.
[476] Frederick Hallis, *Corporate Personality* (Oxford: Oxford University Press, 1930), xlii.
[477] Edward Coke, *The Reports of Sir Edward Coke-1572-1671* (Indianapolis, IN.: Liberty Fund, 1600), v 5 p 32.

drawn on the dichotomy between real and artificial persons.[478] Aggregate theory (of Corporations) is similar disadvantaged as although it holds that the names of corporate bodies are only umbrellas that cover, but not shield directors, executives and stockholders, it accepts biological status as having legal priority and corporate existence as an apparatus for purposes of summary reference. Both Rawls and Aggregate Theory, despite their respective popularity in legislatures and the Court, fail to acknowledge key socio-economic and historical facts of corporate existence as discussed elsewhere in this thesis.

The metaphysical natures of the corporation and the corporate person have traditionally been considered both individually and collectively. However, this thesis takes the position that one is the manifestation of the other; a corporate person can only be the seen as the corporation that it represents. It is a symbiotic relationship whereby one in an intrinsic part of the other at an individual level; an entity. The purpose of recognition of corporate personhood, as argued before the Court, was to provide rights for the corporation under the Constitution, the most significant evolution being under the 14th Amendment which has since provided for protection under the *1st Amendment*; this being protection of speech.

Ontologically, the corporate entity does exist, even if only as a file as a registered company. It is recognised in law as a methodology employed for various reasons, including the ability of the corporate entity to own property; it fulfils the basic notion of being. However, it lacks cognition as decisions and actions are not causally determined by an unbroken chain of prior occurrence in its own right; merely actions carried out in its name by paid agents. How those agents determine their actions is determined by other paid agents, and/or in the case of senior executives or directors, actions of their own person in the name of the

[478] Rawls, John "A Theory of Justice" In *Utilitarianism: With Critical Essays by John Stuart Mill*, edited by Samuel Gorovitz, 244–45. Indianapolis, IN.: Bobbs Merrill, 1971.

corporate entity. Therefore, a corporate entity is not a rational agent in its own right as it cannot control its own actions and decisions; there is no relationship between freedom and causation. A corporation is an extension of the board and executives, not an agent of the shareholders, with the voice and actions of the company being the same song as that of the board and the executive.

This argument is further extended when considering the corporation as a moral being. The concept of corporate personhood, under any popular interpretation, is virtually useless for moral purposes.[479] While the right of responsibility can be delegated to a third party, this is not the case in issues of moral responsibility. No deniability, no matter how plausible, can occur because no person is excluded from the relationship: moral responsibility relationships are held reciprocally and without prior agreements among all moral persons. No special arrangement needs to be established between persons or agents for anyone to hold someone morally responsible for his acts, as every person is a party to a responsibility relationship with all other persons as regards the doing or refraining from doing of certain acts: those that take descriptions that use moral notions.

This challenges the notion of morality as it applies to corporate personhood and therefore the corporation. Should an agent/employee (this can be a board member or an executive) of a corporation act immorally or even illegally, then the agent/employee may be held libel under the law unless the agent/employee can demonstrate that they were acting in the interest of the corporate entity. The business judgment rule is a US case law-derived doctrine in corporation law where courts defer to the business judgment of corporate executives. This doctrine is rooted in the principle that:

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[479] Manuel G Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do," *Business & Professional Ethics Journal* 2, no. 3 (1983): 1–18. See also: Johan Wempe and Muel Kaptein, *The Balanced Company : A Theory of Corporate Integrity* (Oxford: Oxford University Press, 2002).

> Directors of a corporation . . . are clothed with [the] presumption, which the law accords to them, of being [motivated] in their conduct by a bona fide regard for the interests of the corporation whose affairs the stockholders have committed to their charge.[480]

If that agent/employee is unable to demonstrate an action was in the best interests of the corporate entity, that agent/employee may be fined and/or imprisoned. Should proof be offered that the agent/employee acted in the interests of the corporate person, the corporate person may face a financial penalty? Historically such penalties are less than the profit gained from a proven or conditionally accepted illegal/immoral activity. Such penalties affect the return to investors (shareholders) but have little or no effect on the corporate person.[481] This supports the notion that a corporate person is not a moral person as there is no reciprocal moral relationship between all natural person citizens or agents.

Based on this notion, the argument then pursues the notion that to be a metaphysical corporate person is to be a moral corporate person. While ontologically, a corporate person can be shown to materially exist, even as a document, the two remaining conditions, that of determinism and free will, are clearly not addressed. A corporate person lacks cognition as moral decisions and moral actions are not causally determined in its own right; merely actions carried out in its name by paid agents whereby the corporate person is not tied by an unbroken chain of reciprocal moral responsibility.

As the corporation grew in scope and power, theories of corporate personhood also evolved and changed. As states modified their incorporation laws, theorists began to reconsider the social reality of the corporation.

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[480] Gimbel v Signal Cos., 316 A.2d 599, 608 (Del. Ch. 1974) (1974). This is based in part on *Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (1919).*

[481] C Kennedy, "Criminal Sentences for Corporations: Alternative Fining Mechanisms," *California Law Review* 73, no. 2 (1985): 443–82.

Corporations were increasing in strength and number, and were playing a role in political affairs. Theorists began to consider the reality of the corporation as a separate entity from its members and as a very real legal person in its own right. Real person theory holds that a corporate person, just like a natural person citizens, has legal and even moral rights and responsibilities. The juncture of the contemporary conversation in the US centres on how the Court interprets the Freedom of Speech rights enshrined in the First Amendment of the US Constitution.

However, the contemporary conversation is not new discourse; the concerns raised and the arguments proposed stem from the corporate actions of the East India Company in the Colonies. These actions were the very reason that the peoples of the colonies rose against Great Britain and declared itself Independent. But the catalyst for freedom from corporate control over a period of more than two centuries of jurisprudence still faces the same challenges today; this challenge being home grown but equally as difficult to address. In recent times, a confluence of Court rulings on the rights of Corporations to provide political money, along with the inability of the Court to clearly define Commercial Speech, has had the effect of disenfranchising natural person citizens within the political economy of the US. This supports the notion that the 'voice 'of the corporate person drowns out the 'voice' of the natural person citizens. This has a history that predates US independence. To understand where the US is today and to postulate where it may be going, there is a need to understand where corporate personhood in the US has evolved from.

Corporate Personhood: The Constitution and the Court

When Charles Carroll, the only surviving signatory to the Declaration of Independence, turned a ceremonial spade of soil on Independence Day 1828, the

scene was set for a change in the corporate model that had far-reaching consequences that a globalized world suffers from today. The scene signified the physical beginning of the first railroad chartered in the US, the Baltimore and Ohio Railroad. It was the railroad industry that became the catalyst for the sweeping changes to the Court's doctrine on corporate personality. Part of this process was the progressive break down of the individualist economic doctrine that had prevailed historically in the US: the modern corporation had arrived. Groups of professional managers rather than individual actors become the key economic players as ownership and the means of production began to separate.[482] Although large corporations were very successful, many corporate strategies of this period were completely at odds with the popular sentiment of the period.

While most people were in favour of natural rights arguments as applied to humans, they were not in favour of granting immunities and privileges to corporations. Even though the concept of laissez faire was popular in an increasingly influential corporate sector and the moneyed elite, the majority of citizens still favoured state rights to regulate commerce.[483] Despite the grass-roots fears, the promise of successful railroad companies who were able to unite a vast region and promote commerce at a level never seen before, won favour with politicians and the courts alike. As demonstrated during the Jacksonian period, the number and importance of corporations, including banks, increased, with legislators and the Courts indicating their willingness to subjectively interpret key words and ignore phraseological limits.[484] Even the young Abraham Lincoln could be found in 1854 defending the Illinois Central Railroad against state regulation in

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[482] Bratton, "The New Economic Theory of the Firm: Critical Perspectives From History."
[483] Graham, *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the Conspiracy Theory, and American Constitutionalism*, p 71.
[484] Glenn C Altschuler and Stuart M Blumin, "Limits of Political Engagement in Antebellum America : A New Look at the Golden Age of Participatory Democracy," *The Journal of American History* 84, no. 3 (1997): 855–85.

Illinois Central Railroad.[485] Lincoln noted that the Illinois Constitution required uniform taxation of all persons. He argued that the railroad was a person; therefore non-uniform taxation of different railroad projects was unconstitutional.[486] Lincoln won the case and secured uniform taxation for the railroad, but the Illinois Supreme Court rejected his personhood argument. Nonetheless, the personhood argument resonated with other attorneys for the railroads across the country; there was significant increase in suit filed against local and state governments arguing that corporations had historically been referred to as artificial persons and thus should be considered persons under the 14th Amendment and enjoy the protections of the Constitution.

Railroad lawyer and House member John A. Bingham, with 14 others, was appointed to a subcommittee of the Joint Committee on Reconstruction in the 39th Congress tasked with considering suffrage proposals.[487] As a member of the subcommittee, Bingham submitted several versions of an amendment to the Constitution with which he intended to apply the Bill of Rights to the States. His final submission, which was accepted by the Committee and reported to both the Senate and the House on February 10th 1866, read:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;[488] nor shall any State deprive any person of life, liberty, or property without due process of law,[489] nor deny to any person within its jurisdiction the equal protection of the laws.

[485] Illinois Central Railroad Company v the County of McLean and George Parke, Sheriff and Collector 17 Ill. 291 (1856).
[486] Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights*, p 106.
[487] US. Congress. Joint Committee on Reconstruction, *Report of the Joint Commission on Reconstruction, at the First Session, Thirty-Ninth Congress* (US Government Printing Office, 1866). . Republicans controlled both the House and the Senate.
[488] Relates to Article 4, Section 2 of the Constitution
[489] Relates to the 5th Amendment of the Constitution

The Committee recommended that the language become Section 1 of the 14th Amendment to the United States Constitution. The Amendment subsequently passed both houses in June 1866, mainly thanks to the considerable Republican Party majority. Analysis of the drafts bought to the sub-committee by Bingham indicates that the words 'person' and 'citizen' was used collectively and interchangeably and certainly the centre of debate in the committee.[490] However, the placement of these two words in the accepted draft embraced the potential for the word 'person' to be interpreted in favour of corporations and thus 14th Amendment protection. While the 14th Amendment was being drafted, many conflicts were being waged within Congress over various railroad issues such as right of ways, freight taxes, and state monopolies. Members of the drafting committee, including Thaddeus Stevens, Reverdy Johnson, John A. Bingham, and Roscoe Conkling, were all aware of these issues and were involved to various degrees in these matters.[491] While it can be concluded that the 14th Amendment was not drafted in a vacuum, it was left to the Court to interpret the intent of Congress.

While railroad cases were gaining momentum in the lower courts, insurance companies became the first sector to seek corporate personhood rights from the Court. Insurance companies were subject to strict state control and were treated as foreign corporations in other states in terms of licenses and taxes. However, insurance companies sought relief through the *Comity Clause* rather than Due Process.[492] The Court held that corporations were not 'citizens' and insurance was not 'commerce' therefore effectually denying the insurance company's claim under

[490] Benjamin Burks Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* (New York: Columbia University Press, 1914).
[491] Graham, *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the Conspiracy Theory, and American Constitutionalism*, p 446. See also: Hartmann, *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights*.
[492] Commonwealth v Milton 12 V. Mon. 212 (1851).

the *Comity Clause*. Although the Court took a conservative approach in these four cases, the stage was set for the largest corporate person case to reach the Court.

In 1882, the California Supreme Court upheld assessment and mortgage deduction provisions that applied to railroads. The California Court based its opinion on the Due Process provisions of the 14th Amendment and the ruling in *Insurance Company v. New Orleans*.[493] The railroads appealed their case to the Supreme Court.[494] Although this case was perhaps the singularly most influential case in establishing corporate personhood, the Court did not have the opportunity to decide the case. Before a decision was made, a settlement was reached and the Southern Pacific Railroad paid its taxes.

Despite the fact that no ruling was required, the arguments for personhood before the Court set the stage for subsequent cases. The lead counsel for the Southern Pacific Railroad, former Senator Roscoe Conkling, contended that the drafters of the 14th Amendment had intended the word 'person' to include corporations.[495] He produced his journal from the Committee, which he quoted to prove his point.[496] His argument was successful in that it convinced many legal scholars of the day as well as Supreme Court justices; this contributing to the *Santa Clara* headnote four years later. Speculation was rife that shrewd Republican Congressmen had manipulated the language of the 14th Amendment to give business more judicial protection against state legislatures.[497] The fact that successful railroad lawyer and Ohio Congressman John A. Bingham had also been a member of the committee that drafted the 14th Amendment added fuel to

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[493] Insurance Company v New Orleans. Circuit Court, D. Louisiana. November term (1870).
[494] San Mateo County v Southern Pacific R.R., 116 US 138 6 S. Ct. 317, 29 L (1882).
[495] James Willard Hurst, *The Growth of American Law: The Law Makers*, Reprint (Clark, N.J.: The Law book Exchange, 2007, p 228).
[496] San Mateo County v Southern Pacific R.R., 116 US 138 6 S. Ct. 317, 29 L (1882).
[497] A Charles and Mary R Beard, *The Rise of American Civilization*, vol. 2 (Cambridge: Macmillan, 1927, pp 114-115).

the fire. Bingham was notorious for his success in defending the railroads, and the fact that he had been instrumental in drafting the 14th Amendment gave plausibility to this argument.

Duly ratified by 1868, the 14th Amendment to the United States Constitution had become law. Section 1 of that amendment states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[498]

In one of the first Supreme Court rulings on the 14th Amendment in 1873, Justice Samuel F. Miller stated that:

> The one pervading purpose… [of the 14th Amendment] was the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him.[499]

But the powerful owners of railroad corporations believed that the 14th Amendment could prove beneficial to them. Lawyers developed the notion that corporations, as a group of persons, even though one person might own shares in many corporations, should have the same constitutional rights as individual persons. If they could convince the courts that corporations were persons, they could assert that the states, which had chartered the corporations, would then be constrained by the 14th Amendment from exercising power over the corporations. The railroads had become the most powerful corporations in the country; the growing agriculture

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[498] "Constitution of the United States." *Amendment XIV* Passed by Congress June 13, 1866. Ratified July 9, 1868.
[499] Slaughter-House Cases 83 US 36 (1872), 81.

sector was dependent on them, as was the manufacturing sector for the transport of coal, raw materials, manufactured products or any other materials.

The legal teams acting for the railroad corporations orchestrated a concerted campaign to make corporations full, unqualified legal persons. This is demonstrated by the Supreme Court making several decisions in 1877 in which this was an issue. In four cases that reached the Supreme Court in 1877, it was argued by the railroads that they were protected by the 14th Amendment from states regulating the maximum rates they could charge.[500] In each case the Court did not render an opinion as to whether corporations were persons covered by the 14th Amendment. Bypassing that issue, they simply stated that the 14th Amendment was not meant to prevent states from regulating commerce. Similarly, in *Munn v. Illinois*, the Supreme Court rule that the 14th Amendment did not prevent the State of Illinois from regulating charges for use of a business's grain elevators, ignoring the question of whether Munn & Scott were a corporate person.[501]

The silence on the issue of personhood was taken as a victory; from 1877 to 1886 corporate lawyers assumed that corporations were persons. In *Santa Clara County v. Southern Pacific Railroad Company,* the question of whether corporations were persons had been argued in the lower court with these arguments submitted in writing to the Supreme Court for a ruling. However, before oral argument took place, Chief Justice Waite stated:

> The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a

[500] Chicago, Burlington & Quincy Railroad Company v Iowa, 94 US 155 (1876); Peik v Chicago & Northwestern Railway Company, 94 US 164 (1876); Chicago, Milwaukee & St. Paul Railroad Company v Ackley, 94 US 179 (1876); Winona & St. Peter Railroad Company v Blake, 94 US 180 (1876).
[501] Munn v Illinois, 94 US 113 (1876).

State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.[502]

It was not considered unusual that the Court would render such an opinion, given their allegiance to the propertied class. However, as a 'headnote' made before oral argument, this must be considered unusual.[503] The Court had previously avoided this issue. By making that statement, the Justices avoided having to explain how an amendment relating to slavery had converted artificial entities into the legal equivalent of natural person citizens. This opinion without explanation, given before argument had even been heard, became enshrined in US law when it was, arguably, improperly cited as *stare decisis* in *Minneapolis & St. Louis RR Co. v. Beckwith in* 1889.[504] Future Courts refused to reconsider the question, preferring to build on it, though occasionally future justices would try to raise the question again.

In *Northwestern National Life Ins. Co. v. Riggs* in 1906, having accepted that corporations are people, the Court still ruled that the 14th Amendment was not a bar to most state laws that effectively limited a corporation's right to contract business as it pleases.[505] The methodology employed by the corporate legal team was based upon the notion that: "All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."[506] This concerted effort by the corporate sector to create, then

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502 Santa Clara County v Southern Pacific Railroad Company, 118 US 394 (1886).

503 Jack Beatty, *Age of Betrayal: The Triumph of Money in America, 1865–1900* (New York: Alfred A Knopf, 2007). This 'headnote', unlike the majority of opinions, was not written by a Law Clerk See: William E. Nelson, Scott I. Rishikof, and Michael Jo, "The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?," *Vanderbilt Law Review* 62, no. 6 (n.d.): 1749–1814. See also: Artemus Ward and David L. Weiden, *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court* (New York: New York University Press, 2006).

504 Minneapolis & St. Louis Railway Company v Beckwith, 129 US 26 (1889).

505 Northwestern National Life Insurance Company v Riggs, 203 US 243 (1906).

506 A Schopenhauer, *Die Welt Als Wille Und Vorstellung, (1844) Translated by EFJ Payne as The World as Will and Representation*, vol. 1 (New York: Dover, 1969).

encourage, acceptance of new norms is not lost on the natural person citizens of the first decades of the 21st Century.

Citizens United

> *With all due deference to separation of powers, last week the Supreme Court reversed a century of law that, I believe, will open the floodgates for special interests, including foreign corporations, to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests or, worse, by foreign entities. They should be decided by the American people* [507]

Citizens United is a §501(c)(3) "…organization dedicated to restoring our Government to citizens control".[508] Citizens United produced and sought to air a documentary about Hillary Clinton regarding her candidacy for the Democratic presidential nomination. They were concerned that this would subject them to penalties for airing a prohibited electioneering communication under 2 U.S.C. § 441b. This law prohibited "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election.[509] In *Citizens United*, they sought declaratory and injunctive relief against the Federal Election Commission (FEC) regarding this documentary.[510] The Supreme Court did not decide this case on narrow grounds, and instead reviewed the constitutionality of the law. In doing so, they reviewed several previous Court opinions dealing with challenges to campaign finance laws.

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[507] Obama, "State of the Union Address to Congress 2010."

[508] Citizens United, "Who We Are," 2014, http://www.citizensunited.org/who-we-are.aspx [accessed 2 January 2015].

[509] 2 U.S.C. § 434(f)(3)(A) (2014).

[510] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010), 888.

Citizens United v. FEC

In 2010, the U.S. Supreme Court decided *Citizens United v. Federal Election Commission* (*Citizens United*).[511] The controversial 5-4 decision from the Court significantly expanded the First Amendment rights of corporations, granting them a virtually unlimited right to political speech. It is reasonable to argue the majority erred as they failed to consider organizational theory concepts in order to correctly distinguish between speech of an ideological nature and transactional political speech, and as such they did not properly consider how such speech can and should be regulated. The majority could have concluded that corporate political speech that is transactional in nature is distinguishable in a constitutionally permissible way and is subject to government regulation whereas speech that is ideological in nature is a right and therefore not subject to regulation. Arguably, the dissenting statement from the minority on the Court, demonstrated a clearer understanding of political speech and the transactional nature of that speech. Justice Stevens concluded his dissent with:

> At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.[512]

The fact that the Court was divided 5-4 along ideological lines between Conservative and Liberal Justices is of significance.[513]

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[511] Ibid.
[512] Dissenting, Citizens United v. Federal Election Commission, 558 US (2010).
[513] See Appendix 8

As Justice Stevens notes in *Citizens United*:

> The Court's blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process. Americans may be forgiven if they do not feel the Court has advanced the cause of self-government today.[514]

Corporations cannot and should not be given the right to unrestricted political speech because it affects the political process to the detriment of natural person citizens. It has been proposed that corporations create their own benefits and leave others to pay the social and/or environmental costs. This is not because of some form of deliberate malice or negligence on the part of the corporation or those who control it. Rather, it is simply inherent in: "…the nature of the firm is to create financial wealth by producing goods and services for profit; without regulatory or contractual limits, the firm has every incentive to externalize costs onto those whose interests are not included in the firm's current financial calculus".[515]

It is this very tendency of corporations that makes them poorly suited to engage in the political process. As their political speech is merely transactional in nature, they will engage in these speech transactions to create financial wealth. It is in their nature, and their best interest, to influence public policy in such a way that the costs associated with this wealth creation will be borne by others, while they reap the benefits. They are not suited for considering broader issues and concerns of public policy because their ability to do so is severely limited. After all, to a corporation, it's just business. Failure to exercise this political speech would

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[514] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010) (Stevens, J., concurring in part and dissenting in part).

[515] Kent Greenfield, "The Puzzle of Short-Termism," *Wake Forest Law Review* 46, no. 3 (2011): 627–40.

be a mistake on the corporation's part, at least from a profit maximization and wealth creation standpoint. This ability is an effective tool that can be used to influence any environment in which they do business.

Corporations are further under-qualified to participate in the US political process because of the liability concerns relating to mandate of their 'ownership'. With the advent on the new model of multi-national corporations' post 1945, what became 'lawful purpose' relates to the country of a particular operation. In 1944, as World War II was drawing closer to the end, representatives of 44 allied (Western) nations met in Brenton Wood, New Hampshire where the dollar, backed by gold, was accepted as the world reserve currency. The US was granted unprecedented benefits as the issuer of the dollar. However, the gold standard restricted the US Federal Reserve from printing money unless it had gold to back up the new currency. In 1971, under President Nixon, The US moved away from a gold-backed monetary system to a fiat paper debt-based monetary system which allows US corporations to become global entities. This post Bretton Wood evolution opened up the doors for globalization and a rise in corporate influence globally.

Within a globalized environment, corporations are at risk of being influenced, in whole or in part, by non-US resident foreign citizens. Non-resident foreign citizens, much like the intangibility of the corporation, do not exist within the boundaries of the US and thus are largely insulated from the impact that the laws and public policies might have. Granting political speech to corporations' results in non-resident foreign citizens having a vehicle to influence the US government by the influence applied to corporate activity on a global scale. While non US natural persons are not permitted to contribute directly to US election campaigns, through corporate speech they are potentially able to influence corporate activity in relation

to any candidate or policies they desire from thousands of miles away while avoiding the locally felt consequences of that influence.

The majority justified their decision when deciding *Citizens United* on broad constitutional grounds because of the use of a more narrowly tailored approach was impossible without "…chilling political speech".[516] They claim this because determinations if any particular instance of political speech is permitted can be a quite complex undertaking. They also claim that litigating in order to concretely determine if the speech is permitted is very time consuming, and cannot be realistically completed in the short window of a campaign season.

Such restrictions may silence political speech, since a corporation will not risk speaking if it cannot be sure that such speech is permitted. Justice Scalia stated that:

> [Many] persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech, harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas.[517]

Furthermore, the majority stated that *"…*by the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on…"[518] Thus it is impractical, if not impossible to determine if the speech would be permitted in the short time frame where political speech still has any purpose.

This is poor justification for their ruling, as it ignores the consequences of prohibiting restrictions on corporate political speech. Free speech is an essential

[516] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).
[517] Virginia v Hicks, 539 US 113, 119 (2003).
[518] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).

element of a successful democracy. It is this free exchange of ideas that allows the citizens to be informed so that they can hold their government accountable for its actions.[519] However, in applying the idea that unlimited corporate political speech furthers a successful democracy, the majority goes astray. This view is an oversimplification that misses a key issue. The ability to communicate ideas freely is necessary, but that alone is not enough. The ability to speak is devalued without the opportunity of being heard; powerful voices will asphyxiate the rest in a system that permits unrestricted corporate political speech. The end result is the same sort of 'chilling' effect on political speech that the majority felt must be avoided. Except in an environment that allows unfettered corporate political speech, it is the corporate voice that is amplified, and it is the voice of the individual that is suppressed. Furthermore, unlimited political speech is an enabling vehicle for widespread regulatory capture.

The repealing of campaign finance laws and removal of restrictions on corporate political speech fits into this paradigm. Unlimited corporate political speech certainly seems to benefit corporations at the expense of the wider public. Post *Citizens United*, unlimited corporate political speech is a tool that the corporations can use to further promote their own policies and extend their influence even further throughout the government. In fact, one might suggest that the removal of these restrictions indicates that large scale government capture is already in progress. The effects of excessive corporate influence in the nation's public policy are potentially extremely damaging and this influence can have a snowballing effect. As corporations gain more and more control over the government, it stands to reason that they will attempt to further manipulate the environment in which they operate to maintain this control. The risk is that it may

[519] Ibid. Quoting *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976).

be difficult, if not impossible; to undo the damage should portions of the government become sufficiently captured by these corporate interests.

The Court notes that corporations have been afforded First Amendment protection.[520] However, the mere fact that a Constitutional right exists does not mean that such a right is unlimited. In *Citizens United*, the problem is in the majority's all or nothing view of these rights. As Justice Stevens points out in his dissenting opinion, "Our jurisprudence over the past 216 years has rejected an absolutist interpretation" (of the First Amendment).[521] However, *"…*they are not themselves members of 'We the People' by whom and for whom the (US) Constitution was established".[522] The majority's interpretation of the First Amendment, as applied to corporations, is flawed because it treats corporations identically to natural person citizens.

As far as the First Amendment is concerned, the *Citizens United* majority effectively classified corporations to be the same in the eyes of the law as a natural person. This perspective ignores all nuances and subtlety that should be considered when determining what a corporation actually is and instead it treats corporations as if they were actual people.[523] This conclusion is incorrect because corporations are very different from people and there is good reason to treat them differently. They have very different incentives and very different motivations for their speech. This conclusion ignores these differences, and could also prove to

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[520] First National Bank of Boston v Bellotti, 435 US 765, 778 (1978) citing *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 (1977); *Time, Inc. v. Firestone*, 424 U.S. 448, (1976); *Doran v. Salem Inn, Inc*., 422 U.S. 922, (1975); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, (1975); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, (1974); *New York Times Co. v. United States*, 403 U.S. 713 (1971) (per curium).

[521] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010) (Stevens, J., concurring in part and dissenting in part) (citing *Federal Election Commission v. Wisconsin Right to Life, Inc.,* 551 U.S. 449, 482 (2007) (opinion of ROBERTS, C.J.).

[522] Ibid. (Stevens, J., concurring in part and dissenting in part).

[523] Jocelyn Benson, "Saving Democracy: A Blueprint for Reform in the Post-Citizens United Era," *Fordham Urban Law Journal* 40, no. 2 (2012): 723–72.

be quite dangerous, especially when considering the nature of the legal attributes that make corporations distinct entities from actual people.

In *Buckley v. Valeo*, (*Buckley*) the Court had recognized a "sufficiently important" government interest in “the prevention of corruption and the appearance of corruption,” and this interest justified regulation of speech.[524] The Court also stated that direct contributions to candidates could be distinguished from independent expenditures, claiming that the potential for quid pro quo corruption was not present with independent expenditures.[525] *Buckley* required Congress and relevant agencies to “…restrict the speech of some elements of society in order to enhance the relative *voice of others”.*[526] *Congress* recodified the limitations on independent corporate and union expenditures shortly after this case.[527] It was then challenged again, in *First National Bank of Boston v. Bellotti*. (*First National*) Here, the Court said that the government cannot restrict political speech based on the speaker’s identity as a corporation.[528] These rulings held until *Austin v. Michigan Chamber of Commerce (Austin)* was decided. These precedents were overruled in *Austin* as the Court identified a government interest that was not cited in previous cases; an anti-distortion interest. In *Austin*, the Court found a compelling government interest in preventing “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas”.[529] This holding was largely responsible for the

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[524] Buckley v Valeo, 424 US 1, 46 L Ed 2d 659, 76-1 USTC ¶9189 (1976), 25.
[525] ibid, 47.
[526] Ibid, 48-49
[527] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).
[528] First National Bank of Boston v Bellotti, 435 US 765 (1978), 784-785.
[529] Austin v Michigan Chamber of Commerce, 494 US 652, 658, 110 S.Ct. 1391 (1990).

Court's upholding of limits on electioneering communication in *McConnell v. Federal Election Commission*. (*McConnell*).[530]

In *Citizens United*, the majority rejected the rationale found in *Austin* and in *McConnell*, arguing that "the worth of speech does not depend upon the identity of its source, whether corporation, association, union, or individual".[531] They further argued that "…the First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion".[532] The objections to campaign finance limits appear to come down to one singular idea; there must be a strict rule of equality under the First Amendment among all speakers.[533] This demonstrates clearly that the Court did not understand the transactional nature of certain forms of speech.

A rule of strict equality among speakers is ideal when applied to natural persons. It would be contrary to US core democratic principles to restrict a natural person's voice based on his or her identity. After all, a key concept of a democracy is that no one person's voice is more important than another, regardless of some other classification such as ethnicity or religious beliefs. However, this strict rule of equality among speakers is arguably distorted when applied to corporate persons. Such a rule suggests that there is no permissible basis on which to discriminate between speakers and questions the ability of government to equalize the power of different speakers for any reason. This ignores more than just the vast wealth and power that corporations can accumulate; it ignores the very nature of a corporation. Corporations are not just more powerful than individuals, they are inherently different. Corporate political speech is distinguishable in a

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[530] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).
[531] Ibid. Quoting *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976).
[532] Buckley v Valeo, 424 US 1, 46 L Ed 2d 659, 76-1 USTC ¶9189 (1976).
[533] Frances R Hill, "Nonparticipatory Association and Compelled Political Speech: Consent as a Constitutional Principle in the Wake of Citizens United," in *Money Politics and the Constitution,* edited by Monica Youn (New York: Century Foundation Press, 2011), 77–93.

constitutionally permissible way from other speech because of these inherent differences.

Not all corporations, let alone other juridical entities, are created equally. They come in various sizes, structures, and even motives. Ignoring these differences means the law must, as Justice Stevens points out, "…treat a local nonprofit news outlet exactly the same as General Motors".[534] Rather than clarify the legal issues, the Citizens United decision actually further obfuscates them. There is no need to treat all corporations the same under the law, much less treat them all as if they were the same as a natural person. In *Citizens United*, the majority claims that the exception for media corporations is "…all but an admission of the invalidity of the anti-distortion rationale" because "the law exempts some corporations but covers others, even though both have the need or the motive to communicate their views".[535] Again, their insistence on a strict rule of equality for all speakers is at the root of their error. In *Austin*, the Court noted that this does not automatically make the law unconstitutional; such distinctions can be justified by a "…*compelling state purpose"*.[536] Media companies are inherently different from other corporations, and the *Austin* Court articulated these differences:

> [Media] corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public. We have consistently recognized the unique role that the press plays in informing and educating the public, offering criticism, and providing a forum for discussion and debate.[537]

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[534] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010 (Justice Stevens concurring in part and dissenting in part).
[535] Ibid. 906.
[536] Austin v Michigan Chamber of Commerce, 494 US 652, 110 S.Ct. 1391 (1990), 667.
[537] Austin v Michigan Chamber of Commerce, 494 US 652 110 S.Ct. 1391 (1990) 660, (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 781 (1978)).

This distinction between corporations that are in the business of disseminating news to the public and other corporations that are not engaged in such business provides the government with a compelling reason to exempt media corporations from the political speech restrictions and justifies different treatment for media corporations under the law.[538] The Court could have upheld the exception on the corporate political speech restrictions for media companies if they had addressed the significant issue of media ownership as represented by the Murdoch family dynasty.

Corporations are different from a natural person, both in reality and in their legal status, because they are merely legal fictions. The legal fiction that is corporate personhood has its benefits. In fact, allowing them to own property, as well as to bring lawsuits and be sued, are essential grants by the state to allow them to exist and operate for commercial purposes. However, this does not mean they are automatically entitled to rights enjoyed by natural persons, and granting them the same legal status as natural persons as it relates to free speech is neither prudent nor necessary. Chief Justice Marshall articulated this idea when the US nation was still in its infancy:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created.[539]

The majority in *Citizens United* conveniently ignored this when it denied the state the ability to regulate political speech of corporations. Corporations are chartered only by statute. They exist only because the state has granted them

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[538] Austin v Michigan Chamber of Commerce, 494 US 652, 110 S.Ct. 1391, 668.
[539] Dartmouth College v Woodward, 17 US 518 (1819).

their existence. By imposing restrictions on the state that prevent regulation of corporations, the majority has swung the pendulum of power away from the state and towards the corporation. Corporations are creatures of the state's creation, but this broad extension of First Amendment rights means that the state no longer has the power to reign in corporate behavior. Perhaps in an effort to quell fears, Justice Kennedy, writing for the majority in *Citizens United*, noted that while the Court held that laws restricting commercial entities' expenditures on political messages violated their First Amendment-protected speech, he very pointedly left the door open for Congress to pass laws compelling commercial entities to disclose their expenditures by arguing:

> With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.[540]

The Congress has yet to see fit to venture through the door….

The Constitution precludes the Supreme Court from exercising its overruling power as a matter of unbridled discretion.[541] The Fifth Amendment's Due Process Clause constrains the Court's power to overrule its constitutional precedents. Justice Sotomayor acknowledged in *Alleyne v. United States* (*Alleyne*), for *stare decisis* to have any meaning at all, the Court should follow some mistaken precedents.[542] Based on this vaguer, should the Court overrule a precedent it does not believe to be mistaken or overrule a precedent it does believe to be a mistake? In the present context, the role of *stare decisis* is to

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[540] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010).Justice Kennedy concurring with the majority.

[541] *The Constitution of the United States, Amendment 5*, 1791.

[542] Alleyne v United States 133 S. Ct. at 2164 (2013) .at 2164 (J. Sotomayor concurring).

identify those precedents that, whether or not mistaken, should not be overruled. Unquestionably, *stare decisis* fosters *Rule of Law* values.[543] These values include consistency, equal treatment, stability, and predictability at any one time and over time. For these values to be challenged the Court should justify clearly and succinctly why the existing values are wrong and how changing them will enhance the sovereignty of those recognised in the Constitution.[544] Clearly, in *Citizens United*, the majority has not applied the required reasoning under *stare decisis* and has instead, chosen a path of changing artificial values based on ideology that do not contribute to the key requirements of the Constitution or the *Rule of Law*.

The *Citizens United* decision rests on three key premises:

- *It is not a problem that money buys influence.* "That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy".[545]
- *Money talks.* "All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech".[546]
- *Economic interests deserve political voice.* Restrictions on corporate speech "…muffle the voices that best represent the most significant segments of the economy".[547]

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543 Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach," *Michigan Law Review* 111, no. 1 (2012): 1–32. See also: Randy J. Kozel, "The Rule of Law and the Perils of Precedent," *Michigan Law Review* 111 (2013): 37–45.

544 Noland, "Stare Decisis and the Overruling of Constitutional Decisions in the Warren Years"; Steven J. Burton, "The Conflict Between Stare Decisis and Overruling in Constitutional Adjudication," *Cardozo Law Review* 35, no. 1 (2014): 1687–1713. See also: Youngsik Lim, "An Empirical Analysis of Supreme Court Justices' Decision Making," *Journal of Legal Studies* 29, no. 2 (2000): 721–52.

545 Paul S Herrnson, Christopher J Deering, and Clyde Wilcox, *Interest Groups Unleashed* (Washington DC: Cq Press, 2012) p. 253, (Quoting *Citizens United*).

546 Paul Siegel, ed., "Supreme Court of the United States, Citizens United v. FEC," in *Cases in Communication Law*, edited by Paul Siegel (New York: Rowman & Littlefield Publishers, 2013), 254–67, p 254.

What concerns natural person citizens about corporate speech is contrary to the understanding of the Court: The majority of natural person citizens find it problematical to allow the significant economic resources of the corporate sector to buy political influence. However, the Court has stated that the corporate person's "voice that best represents the most significant segments of the economy." Significantly, the Court also opens the door for foreign influence over elections. The Court says that corporate restrictions might be constitutional if they were limited to "…corporations or associations that were created in foreign countries or funded predominately by foreign shareholders".[548] Notably, the Court did not specifically state 'controlled by' foreign shareholders, and operating control often requires less than 50% percent ownership. Therefore, the Court has opened the door for foreign controlled corporations, even corporations controlled by foreign sovereign wealth funds, (to continue) to use their voice to influence legislative, regulatory and judicial outcomes. But more important is the ideology behind the opinion which clearly places the corporate voice over the voice of the natural person citizen of the US, even foreign corporate voice. As the Court acknowledges the vote as a form of speech, this also creates the potential, as acknowledged by Justice Stevens, that the right of the corporation to vote is at best, possible.

Conclusion

The evolution of corporate personality/personhood was driven by the corporate sector and natural persons who were rewarded by the corporate sector to achieve a particular outcome; a long term goal. One would hope that if the issue

[547] Donald P. Krommers, John E. Finn, and Gary J. Jacobson, *American Constitutional Law: Essays, Cases, and Comparative Notes: Volume 2 of American Constitutional Law*, 3rd ed. (New York: Rowman & Littlefield Publishers, 2009), p 443.

[548] Citizens United v Federal Election Commission 130 S. Ct. 876 (2010). *§441b*. See: Mark Tushnet, *In the Balance: Law and Politics on the Roberts Court,* (New York: W.W.Norton & Company, 2013), p 268.

was arising today, in a period where information is disseminated in a nanosecond, the historic legal basis for recent Court rulings would not have been established. However, the ideology of the Court with the current and two previous Chief Justices being Conservative and a preponderance toward a conservative majority, a form of corporate development would remain.

The ideological structure of the Court is not based on the individual personalities involved, but as demonstrated, a long term corporate agenda based on the Powell memo. This has ensured that various institutions, including key tertiary business and law schools, when considered alongside the close connections of the wealthy/political elite in the US, have created a culture beneficial to the corporate sector and those associated with that sector. The FIRE sector is representative of this argument. Corporate personhood, must therefore, be considered as a causal mechanism, not a causal effect. This is supported by *CIGT* as it best explains the contemporary corporate model, a model that has driven the causal mechanisms to produce a beneficial outcome for the wealthy political minority elite.

In *Citizens United*, the Court failed to 'recognize' the reason for the speech. Citizens-United speech was ideological in nature and could not be argued as having a profit motive. While Citizens-United was openly attempting to influence a political outcome, the speech was not designed to provide a definitive financial return; it cannot be considered as an investment. Therefore, the speech by a registered non-profit organization can only be considered as ideological. This provided the Court with an opportunity to use Citizens-United as a plausible reason to widen the brief to reconsider the broader issue of limitations on corporate speech. There are many aspects noted that must be considered subjective and not conforming to the Constitution. However, the Roberts Court

have quickly embraced the ideological path taken by Roberts' predecessor and mentor and pursued the path of Conservative rule making. Citizens United is a confluence of the wealth of the corporations and the ideology of the Court; an ideology that has been 40 years in the making. This conforms to aspects of *CIGT* which elucidates that the government is a desirable extension of corporate influence and it is the right and responsibility of the elite to have considerable influence over the US political economy. This further supports the claim that corporations are protected by the Constitution. The Court, not through monetary contributions, but based on a shared ideology, are influenced by the corporate sector in their decision making. Decisions from recent Courts can only be considered as legislative and/or regulatory in nature due to the complaint Congress and agencies who make only token attempts, if at all, to object to the Court sharing primacy with the corporate sector.

Conclusion

I sincerely believe that banking establishments are more dangerous than standing armies, and that the principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale

Thomas Jefferson [549]

The problems we have created cannot be solved at the level of thinking that created them.

Albert Einstein [550]

The previous chapters have examined various concepts and theories with variations in thought explored to frame Influence and the ideological culture behind the modern corporation. Instances of influence in US legislative, regulatory and judicial decision making, as described and analyzed, are by no means unique but serve to illustrate the role of influence in US politics today. The US has come a long way since the principles of the Founding Fathers were embraced in a people's Constitution. But only the US natural person citizens should decide if they want to be where they are today.

Corporations capitalize on their legal status as persons, and the associated right to speech, in an attempt to remove the restrictions on political money; the limitations on corporate speech. *Citizens United* is but one causal effect of the long term goals and benefits, orchestrated long term mechanisms, as opposed to the political sphere were the 2 year election cycle promotes the concept of short-termism; a concept that has become a political norm. In fact, the corporate sector capitalizes on short termism within Congress to beneficially enhance the long term agenda. However, the ever decreasing cycle length, with quarterly reports in

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[549] Thomas Jefferson, Letter to John Taylor 1816." In *The Writings of Thomas Jefferson*,Vol. XIII, edited by R.H. Johnston. New York: G.P. Putman's and Sons, 1899.

[550] "Albert Einstein site online". 2014. http://www.alberteinsteinsite.com/quotes/einsteinquotes.html, [accessed 2 January 2015]

addition to annual reports, when combined with the rapid increases in stock market turnover, the corporate sector may become a victim of its own success. But the corporate model is quick to evolve as it is not restrained by regulation; a political advantage it will keep at all costs, even if those costs are considerable. Given that an antonym for short-termism is leadership, the corporate sector will evolve, but at the cost of Congress and those who it is constitutionally mandated to be subject to.

Agencies and Congress suffer from a series of structural deformities. A plethora of Agencies are subject to a haphazard series of overlaps that do not represent the reality of the 21st century. This (deliberate) vagueness in the chain of accountability and responsibility contributes to non-functional and captured agencies. Congress suffers similar ills with the House and Senate committees and sub-committees (committees) as they also do not represent the 21st Century. Furthermore, the committees' (deliberate) jurisdictional overlap creates opportunities' for the corporate sector. When combined with the short term cycle of Congress, the tension between Congress and Agencies reinforces the notion that Congress should be considered as maladroit and the Agencies operationally inept.

The SEC, as the representative agency, has a level of autonomy that must be considered unconstitutional. The lack of accountability of agencies to a people's Congress is clearly demonstrated by the arrogance that shines through the letter from Khuzami to Grassley. Grassley had the right to question, as a representative of natural person citizens, the actions of the SEC.

The (successful) attempt by the Court in *Hampton* to amend the Constitution and over-ride the non-delegation doctrine, by ruling that legislation must include an *intelligible guide* that agencies must follow, is flawed. The acceptance (unchallenged) of the constitutionality of agencies is inconsistent with

the doctrine of Common law. Common law, as inherited by the 'people' referred to in the Constitution, and supported in *Dartmouth*, must be reconsidered as the basis on which the agency is reviewed. As it stands, the agency, as the fourth branch of government, accepts sovereignty from the corporate person, not the natural person citizen.

The FIRE sector, having been called to account as representative of the broader corporate sector, cannot be found guilty as legally it has done nothing wrong. This is the crux of the issue. CIGT acknowledges that corporate personhood has elevated the corporate model to such a height, that it perceives its role as that akin God; be it a multi-headed god of the ancients such as the Greek Lernaean Hydra, Hindu Brahma or the Mesopotamian Mus-sag-imin. The corporate person has money, has power and has influence. The corporation has a role in all societies. It is a method of production that enables all natural persons to work as they see fit toward a common goal. But the corporation should not, in fact must not, have any form of personhood other than as was originally devised; a legal entity that is beneficial to natural persons and not itself. Regardless if you believe in a God; natural persons should have primacy and accountability, and not be subject to a wealthy minority hiding behind an artificial corporate veil.

The Court erred in the *Citizens United* ruling in several ways. By treating *Citizens United* as a corporation, regardless as to its tax exempt status or otherwise, the Court excluded the differentiation between ideological speech made by a not for-profit corporate person and beneficial influence speech made by a for-profit corporate person. *Citizens United* speech was ideological in nature and could not be argued as having a profit motive. While *Citizens United* was openly attempting to influence a political outcome, the speech was not designed to provide a definitive financial return; it cannot be considered as an investment.

Should a for-profit corporation contribute money to an organization such as *Citizens United*, as there is no demonstrable profit motive, this is then ideological speech and outside of what should be permitted by a for-profit organization. The Court must recognize its own *stare dec*isis and accept that a for-profit corporation can only spend money on speech that has the likelihood of providing a beneficial return; investing money in any form of speech that demonstrates a return on that investment.

However, the issues are considerably deeper. Various Courts have differentiated between corporate political speech and other forms of corporate speech. A for-profit corporation utilizes money to speak for itself. Based on this notion, any money spent on lobbying, contributed to a candidate, contributed to a third party or used directly as a form of political advertising must be accepted as being an investment with a declared return. This would remove totally, any perception of corruption. Money spent on lobbying would require who lobbied whom and for what reason clearly stated. Money contributed to a candidate would require the contributor and the recipient to state the value of the contribution and what return the investment was going to provide, be it tangible or intangible. Money provided to a third party would require the same methodology of transparency applied. Any form of (in) direct corporate advertising that could be considered political, would require the corporation and any party to clearly state the beneficial outcome.

However, a PAC that is supported by employees, not the corporation, any monetary contribution or the like, even when considered to be ideological speech, should be accepted. This is speech by natural persons, not corporate persons, even if a minority of those persons currently speaks for the corporate person. But money that is contributed by employees to a PAC should have limited tax benefits

or exceptions in line with IRS regulatory policy. In addition, total remuneration packages of publically listed corporations should be legally declared in annual reports utilizing existing legislation and enforcing modified regulation. This would permit cross correlation with mandated reporting from PAC's and other not for-profit organizations; something that does not presently occur. This is a basic accounting practice whereby the money is accountable from all perspectives.

Not for-profit organizations, as opposed to non-profit, even if they are incorporated, must be considered to be legally different in that they are motivated to act and speak for natural person members that share an ideology or at least a particular perspective that is the primary focus of that organization. This differentiation would permit the Court to revisit the issue of personhood.

There is a long tradition for the issues measured in this thesis to be considered in isolation. The breadth and depth of discourse is significant on both counts which leads academia to consider aspects in detail but in isolation. This is problematic as it contributes to enhancing benefits to the corporate sector and to recipients of their influence by obfuscation of the underlying issues. This can be described as the depths of the ocean not being visible although the key component of the ocean, that of water, is transparent. The theories and concepts developed or extended in this thesis offer opportunities for future development and should contribute to an improved understanding of how the corporate sector influences legislative, regulatory and judicial outcomes. The examples used, the FIRE sector and the SEC, are representative of the issues. The issues and concerns can be extended across all Federal congressional committees and sub-committees, all Federal government agencies and all corporate sectors. This can be further extended across State and County functionalities as well as

Governments and their departments and agencies internationally. Corporate influence does not stop at political borders.

Given the likelihood that the next 50 years, or less, will challenge the Constitution with forms of non-biological non-corporate or part biological non-corporate entities claiming personhood under the current interpretations, the separation between a natural person and other forms of legal person must be clearly and concisely defined. It would be reasonable for the Court to accept and define various forms of corporate speech and other forms of corporate identity to be placed outside of the 'peoples' Constitution, yet still be accepted as legal entities in corporate law. This would require the Court to re-consider *Santa Clara* and the 'false' *stare decisis* in *Minneapolis & St. Louis RR Co. v. Beckwith* and arrive at specific differentiation between a natural person and other legal entities. Given the likelihood of evolution of some form of composite entity, instead of defining such an entity and a corporate entity, the Court should acknowledge the intent of the Constitution by defining a natural person. This would restore primacy of the natural person and therefore sovereignty over Congress and her subservient branches.

I must concur with Einstein; the problems that have been created cannot be solved at the level of thinking that created them.

Postscript #1

In response to the 2014 Supreme Court decision *McCutcheon v. Federal Election Commission*,[551] which abolished caps on an individual's total donations to federal candidates, parties and some political committees, Senator Angus King (I-Maine) introduced legislation titled 'The Real Time Transparency Act' of 2014 (Referred to Committee) would require that all contributions of $1000 or more be filed with the Federal Election Commission (FEC) within 48-hours.[552]

> "The American people deserve to know who is funding political activity – and they deserve to know in real-time, not months down the road," Senator King said. "The Supreme Court's decision will open the floodgates and make it even more difficult to track who is funding elections. This bill will modernize antiquated disclosure requirements to reflect the realities of today's political campaigns, helping to combat the impact of unchecked money in our political system and giving people the knowledge they need to make the more informed decisions at the ballot box".[553]

Specifically, the bill would amend the Federal Election Campaign Act of 1971 to:

- Require all candidates for federal office, including those for the U.S. Senate, to report contributions to the FEC within 48-hours. Candidates for the U.S. Senate are currently only required to report contributions to the Secretary of the Senate.
- Apply reporting requirements for transfers from Joint Fundraising Committees to candidates as well as for contributions from individuals directly to candidates
- Modify the $1000 threshold to make it cumulative within one calendar year, mandating that any individual who contributes $1000 or more multiple times per year report each contribution
- Require a "loop back" to a year before the date of enactment, meaning if an individual makes a contribution of $1000 or more, the candidate must report within 48 hours.

US Congressman Robert (Beto) O'Rourke (D-TX-16) introduced a companion bill in the U.S. House of Representatives which was referred to the House Committee on House Administration on March 4th 2014.[554] At the time of submission, neither bill has yet to be returned to the floor.

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[551] *McCutcheon et al v. Federal Election Commission*; in appeal from the US District Court for the District of Columbia, No. 12–536. April 2nd, 2014

[552] S.2207 - Real Time Transparency Act of 2014. A bill to amend the Federal Election Campaign Act of 1971 to require all political committees to notify the Federal Election Commission within 48 hours of receiving cumulative contributions of $1,000 or more from any contributor during a calendar year.

[553] Press Release: U.S. Senator Angus King (I-Maine) In Response to McCutcheon, King Introduces Legislation to Improve Transparency of Campaign Donations. Wednesday April 2nd, 2014. http://www.king.senate.gov/newsroom/press-releases/in-response-to-mccutcheon-king-introduces-legislation-to-improve-transparency-of-campaign-donations. Accessed April 3rd 2014.

[554] Bill H.R.4397: To amend the Federal Election Campaign Act of 1971 to require all political committees to notify the Federal Election Commission within 48 hours of receiving cumulative contributions of $1,000 or more from any contributor during a calendar year, and for other purposes.

Postscript #2

"In making assignments to the United States Foreign Intelligence Surveillance Court (FISC), Chief Justice Roberts, more than his predecessors, has chosen conservative judges and former executive branch employees who were appointed by conservative Presidents. Ten of the current court's 11 judges, all assigned by Roberts, were originally appointed to the bench by Republican presidents, while six once worked for the federal government. Since the chief justice began making assignments in 2005, 86 percent of his choices have been Republican appointees, and 50 percent have been former executive branch officials. Though the two previous chief justices, Warren E. Burger and William H. Rehnquist, were conservatives like Roberts, their assignments to the surveillance court were more ideologically diverse, according to an analysis by The New York Times of a list of every judge who has served on the court since it was established in 1978. According to the analysis, 66 percent of their selections were Republican appointees, and 39 percent once worked for the executive branch".[555]

The Chief Justice:

- Serves as the head of the federal judiciary.
- Serves as the head of the Judicial Conference of the United States, the chief administrative body of the United States federal courts.
- Appoints sitting federal judges to the membership of the United States Foreign Intelligence Surveillance Court (FISC) which oversees requests for surveillance warrants by federal police agencies (primarily the F.B.I.) against suspected foreign intelligence agents inside the United States. (50 U.S.C. § 1803).
- Appoints the members of the Judicial Panel on Multidistrict Litigation, a special tribunal of seven sitting federal judges responsible for selecting the venue for coordinated pre-trial proceedings in situations where multiple related federal actions have been filed in different judicial districts.
- Serves ex officio as a member of the Board of Regents, and by custom as the Chancellor, of the Smithsonian Institution.
- Unlike Senators and Representatives who are constitutionally prohibited from holding any other 'office of trust or profit' of the United States or of any state while holding their congressional seats, the Chief Justice and the other members of the federal judiciary are not barred from serving in other positions.

[555] Charlie Savage, Robert's Picks Reshaping Secret Surveillance Court, *New York Times*, July 25, 2013. pA1

Postscript #3

History demonstrates that omnibus spending bills traditionally pass Congress with virtually no debate. No President in recent decades has vetoed legislation to fund the government which has resulted in a plethora of seemingly innocuous items attached at the end of an omnibus bill and consequently inscribed into law. For example; the omnibus spending bill approved by Congress at the last sitting day of the 106th Congress in 1999, had attached, the *Gramm–Leach–Bliley Act (GLBA)*, also known as the *Financial Services Modernization Act* of 1999 which set the scene for the GFC.[556]

The 'lame duck' session of the 113th congress is no exception with page 1,599 of the 1,603-page *Consolidated Appropriations Act,* 2014 permitting individuals to give three times the annual cap on national party donations to three additional party committees set up for the purposes of the presidential conventions, building expenses and election recounts.[557] That allows a donor who gave the current maximum $32,400 in 2014 to the Democratic National Committee or Republican National Committee would be able to donate a total of $324,000 per annum from 2015. In a two-year election cycle, a couple could potentially donate $1,296,000 to a party's various accounts; a family group even more. This 'Millionaires clause' will allow a minority of natural person citizens who are able to contribute this level of money to further disenfranchise the majority of natural person citizens of the US; the same minority who control the major corporate donors.

> Republican and Democratic congressional leaders have entered into a Faustian bargain to return the massive corrupting contributions raised by federal officeholders for the national parties that Congress banned in the Bipartisan Campaign Reform Act of 2002. [558]

In reading the text, the '*intelligible principle'* is at best vague; therefore potential regulatory framework porous! Given the fact that the Congress struggles to name a Post Office,[559] one must conclude that the financial interests of incumbents again takes precedent over any legislation beneficial to the majority of US natural person citizens.

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[556] *Financial Services Modernization Act of 1999 (Public Law 106–102, 113 Stat. 1338)*

[557] *Consolidated Appropriations Act, 2014. Public Law 92–313*

[558] Fred Wertheimer, President of the advocacy group Democracy 21. He also stated in the press release: "These provisions have never been considered by the House or Senate, and were never even publicly mentioned before today. http://www.democracy21.org/money-in-politics/press-releases-money-in-politics/breaking-omnibus-bill-returns-huge-corrupting-contributions-to-national-parties/ Accessed December 10th 2014.

[559] US Congress, *Congress Record-House V.153, PT.3, February 5, 2007 to February 11, 2007.* GPO, 2010, pp. 3726-3727. Also see: Michael Koempel and Judy Schneider, (Eds.) *Committee Markup in the U.S. House of Representatives: Including the Committee System, House Committee Markup Manual of Procedures and Procedural Strategies, Quorum Requirements, Drafting Amendments and Amendment Strategy, Points of Order, Germaneness, Committee Reports, Role of Committee and Personal Staff, and Committee Markup and Reporting Glossary*. Capitol.Net Inc, Alexandria, VA. 2010, p.156

Bibliography

Primary Sources

Statutes, Case law

44 Liquormart, Inc., et al. v Rhode Island et al. (94-1140), 517 US 484, (1996).

Act to Prevent Pernicious Political Activities (Hatch Act), 5 U.S.C. §§ 1501-1508, 7321-7326 (1939).

Act to Prevent Pernicious Political Activities (Hatch Act) Amended Act of July 19, 1940, Ch. 640, Pub L No 76-753, 54 Stat 767, (1940).

Administrative Procedure Act (APA), Pub L No 79–404, 60 Stat. 237, (1946).

Aguirre v Securities and Exchange Commission Civil Action No 06-1260 (ESH). 551 F.Supp.2d 33 (2008), (2008).

A.L.A. Schechter Poultry Corp. v United States, 295 US 495, (1935).

Alleyne v United States 133 S. Ct. at 2164, (2013).

American Recovery and Reinvestment Act (ARRA) of 2009, Pub L 111–5, 1971.

Austin v Michigan Chamber of Commerce, 494 US 652, 658, 110 S.Ct. 1391, (1990).

Bigelow v Commonwealth of Virginia 421 US 809, 822, (1975).

Bipartisan Campaign Reform (McCain–Feingold) Act of 2002, Pub L No 107–155, 116 Stat 81, (2002).

Bolger et al v Youngs Drug Products Corp. 463 US 60, (1983).

Brandenburg v Ohio, 395 US 444, 447, (1969).

Buckley v Valeo, 424 US 1, 46 L Ed 2d 659, 76-1 USTC ¶9189, (1976).

Cation v Board of Regents, 385 US 589, 17 L Ed 2d 629, (1967).

Central Hudson Gas & Electric Corp. v Public Service Commission of New York 447 US 557, (1980).

Charitable Uses Act 1601, 43 Eliz I, c 4,(1601).

Chicago, Burlington & Quincy Railroad Company v Iowa, 94 US 155, (1876).

Chicago, Milwaukee & St. Paul Railroad Company v Ackley, 94 US 179, (1876).

Chevron U.S.A., Inc. v Natural Resources Defense Council, Inc., 467 US 837, (1984).

Christensen v Harris County, 529 US 576, (2000).

Citizens United v Federal Election Commission 130 S. Ct. 876, (2010).

City of Arlington v FCC, 133 S. Ct. 1863, 2013.

Civil Service (Pendleton) Act of 1883, Ch. 27, 22 Stat 403, (1883)

Clinton v City of New York, 524 US 417, (1998).

Commonwealth v Milton 12 v Mon. 212, (1851).

Connally v General Construction Co., 269 US 385, 70 L Ed 322 (1926).

Consolidated Appropriations Act of 2014, Pub L No 92-313, (2014).

Cramp v Board of Public Instruction, 368 US 278, 7 L Ed 2d 285 (1961).

Dartmouth College v Woodward, 17 US 518, (1819)

Dennis v United States, 341 US 494, at 507 (1951).

Dissenting, Citizens United v Federal Election Commission, 558 US, (2010).

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub L No 111–203, H.R. 4173, 2010.

Dodge v Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (Mich. 1919), (1919).

Erie Endowment v United States, 316 F 2d 151, 156 (2d Cir 1963).

Espionage Act of 1917, Pub L No 65-24, 40 Stat 217, (1917).

Exchange Rule Act 17 C.F.R. § 240.1Ob-5, 2004.

Federal Advisory Committee Act, Pub L No 92-463, 86 Stat. 770, 1972. (Codified at 5 U.S.C. App.at 1175) 1988.

Federal Corrupt Practices Act of 1925, C. 368, Title III, 43 Stat 1053, 1070; U.S.C., Title 2, § 241, et Seq., (1925).

Federal Election Campaign Act (FECA) Amendments of 1974, Pub L No 93-443, 88 Stat 1263, (1974).

Federal Election Campaign Act (FECA) Amendments of 1976, Pub L No 94-283, 90 Stat 475, (1976).

Federal Election Campaign Act (FECA) of 1971, Pub L 92-225, (1971).

Federal Election Commission Advisory Opinion 1975-23 (SUN PAC), (1975).

Federal Election Commission v Massachusetts Citizens for Life 479 US 238, (1986).

Federal Election Commission v Wisconsin Right to Life, Inc., 551 US 449, (2007).

Follow the Money Bill of 2013, S.791. 2013 http://thomas.loc.gov/cgi-bin/query/z?c113:S.791.IS:/ [accessed 5 January 2015]

Field v Clark, 143 US. 649,(1892).

Financial Services Modernization Act (Gramm-Leach Bliley Act) of 1999, Pub L No 106-102, 113 Stat 1338, (1999).

First National Bank of Boston v Bellotti, 435 US 765, 778, (1978).

Fiske v Kansas, 274 US 380 (1927).

Foreign Corrupt Practices Act of 1977, Pub L No 95-213, 91 Stat 1494 (1977) (codified as Amended at 15 U.S.C. §§ 78dd-1, et Seq. (1982).

Gimbel v Signal Cos., 316 A.2d 599, 608 (Del. Ch. 1974), (1974).

Grayned v City of Rockford, 408 US 104, 33 L Ed 2d 222 108-109 and nn. 3-4 (1972).

Hunes v Mayor of Oradell, 425 US 610, 48 L Ed 2d 243, 620 (1976).

Illinois Central Railroad Company v the County of McLean and George Parke, Sheriff and Collector 17 Ill. 291, (1856).

Insurance Company v New Orleans. Circuit Court, D. Louisiana. November term, (1870).

Interstate Commerce Act of February 4, 1887, Public Law 49-41, 49 STAT 379, 1887.

J. W. Hampton, Jr. & Co. v United States, 276 US 394, (1928).

Kasky v Nike Inc. 79 Cal. App. 4th 165; 93 Cal. Rptr. 2d 854, (2000).

Kasky v Nike, 27 Cal. 4th 939; 45 P.3d 243, (2002).

Labor Management Relations Act of 1947, 29 U.S.C. § 401-531, (1947).

Line Item Veto Act of 1996, Pub L No 104–130, (1996).

Marbury v Madison 1 Cr. 137, (1803).

McConnell v Federal Election Commission 540 US 93, (2003).

McCutcheon et al v Federal Election Commission, (2014).

McGrain v Daugherty, 273 US 135 (1927).

Minneapolis & St. Louis Railway Company v Beckwith, 129 US 26 (1889).

Mistretta v United States, 488 US 361, (1989).

Munn v Illinois, 94 US 113 (1876).

New York State Republican Committee v SEC, 14-cv-1345, U.S. District Court, District of Columbia (Washington, (2014).

Nike Inc. v Kasky 539 US 654; S. Ct. 2553, (2003).

Northwestern National Life Insurance Company v Riggs, 203 US 243 (1906).

Ohralik v Ohio State Bar Assn., 436 US 447, (1978).

Oklahoma v United States Civil Service Commission, 91 L Ed 537,67S, Ct 544, (1947).

Otis & Co. v Pennsylvania R. Co., 61 F. Supp. 905 (D.C. Pa. 1945), (1945).

Payne-Aldrich Tariff Act of 1909, Ch. 6, 36 Stat 11, (1909).

Peik v Chicago & Northwestern Railway Company, 94 US 164 (1876).

People v Thurber, 13 Ill. 554, (1852).

Pipefitters Local Union No 562 et al v United States, 407 US 385, (1972).

Pittsburgh Press Co. v Pittsburgh Commission on Human Relations, 413 US 376, (1973).

Pollock v Farmers' Loan & Trust Co., 158 US 601 (1895).

Posadas de Puerto Rico Associates, dba Condado Holiday Inn v Tourism Company of Puerto Rico et al. 478 US 328, (1986).

Publicity Act Amendments of 1911, Pub L No 32, 37 Stat 25, 28,(1911).

Publicity Act of 1910, Ch 392, 36 Stat 822, (1910).

*Real Time Transparency Act (*2014).

Regan v Taxation With Representation of Washington, 461 US 540 (1983).

Republican National Committee v FEC, 445 US 955 (1980).

Revenue Act of 1861, Sec. 49, 12 Stat 292, at 309, (1861).

Revenue Act of 1913, Ch. 16, 38 Stat 114, (1913).

Revenue Act of 1917, Pub L No 109-131, 40 Stat 300, (1917).

Revenue Act of 1918, ch.18, 40 Stat 1057, (1918).

Revenue Act of 1971, Pub L No 92-178,(1971).

Revenue Act (Wilson-Gorman Tariff) of 1894, Ch 349, §73, 28 Stat 570, (1894).

San Mateo County v Southern Pacific R. R., 116 US 138 6 S. Ct. 317, 29 L, (1882).

Santa Clara County v Southern Pacific Railroad Company, 118 US 394 (1886).

Sarbanes–Oxley Act of 2002 Pub L No 107–204, 116 Stat. 745, (2010).

Schneider v State of New Jersey, 308 US 147, (1939).

Securities Act of 1933, Ch. 38, Title I, Sec. 1, 48 Stat 74, as Amended by Pub L No 112-106, Approved April 5, 2012, Sec. 2, p2., (1933).

Securities Exchange Act of 1934, (As Amended through P.L. 112–158, Enacted August 10, 2012), 2012.

SEC v Chenery Corp., 318 US 80, (1943).

Skidmore v Swift & Co., 323 US 134, (1944).

Slaughter-House Cases 83 US 36, (1872).

Smith–Connally (War Labor Disputes) Act of 1943, Pub L No 78-89, 57 Stat 144, (1943).

SpeechNow.org v FEC, 599 F 3d 686 (D.C. Cir. 2010).

Taft–Hartley (Labor Management Relations) Act of 1947, Pub L No 80-101, 61 Stat 136, (1947)

Tillman Act of 1907, 34 Stat. 864,(1907).

United Public Workers v. Mitchell, 91 L. Ed. 509, 67 S. Ct. 556 (1947).
United States v Classic, 313 US 299 (1941).
United States v International Union United Automobile, 352 US 567, 571 (1957).
Valentine, Police Commissioner of the City of New York v Chrestensen, 316 US 52, 62 S Ct 920, (1942).
Virginia v Hicks, 539 US 113, 119, (2003).
Wayman v. Southard. 23 US. 1, 6 L. Ed. 253, 63 S. Ct. 1019, (1825).
Whitman, Administrator of the Environmental protection Agency, et al v American Trucking Associations, Inc., 531 US 457, (2001).
Winona & St. Peter Railroad Company v Blake, 94 US 180 (1876).

Government publications

Code of Federal Regulations. “Standards of Ethical Conduct for Employees of the Executive Branch: CFR Title 5, Chapter XVI Part 2635,” 2014. http://www.law.cornell.edu/cfr/text/5/part-2635 [accessed 2 January 2015].
Federal Election Commission, 2014. www.fec.gov. [accessed 2 January 2015]
———. “Winding Down Your Federal Campaign.” http://www.fec.gov/info/articles/windingdown09.pdf [accessed 2 January 2015].
Joint Committee on Taxation. *Historical Development and Present Law of the Federal Tax Exemption for Charities and Other Tax- Exempt Organizations (JCX-29-05)*. Washington, D.C: Joint Committee on Taxation, 2005. https://www.jct.gov/publications.html?func=startdown&id=1586 [accessed 2 January 2015].
Morris, Nancy M. “Securities and Exchange Commission, (Draft) 17 CFR PARTS 228, 229, 239, 240, 245, 249 AND 274, RELEASE NOS. 33-8655; 34-53185; IC-27218; FILE NO. S7-03-06, RIN 3235-AI80, Executive Compensation and Related Party Disclosure. January 27, 2006,” http://www.sec.gov/rules/proposed/33-8655.pdf [accessed 2 January 2015].
———. “Securities and Exchange Commission, (Final) 17 CFR PARTS 228, 229, 232, 239, 240, 245, 249 AND 274 [RELEASE NOS. 33-8732A; 34-54302A; IC-27444A; FILE NO. S7-03-06] RIN 3235-AI80. Executive Compensation and Related Person Disclosure. August 29, 2006,” http://www.sec.gov/rules/final/2006/33-8732a.pd [accessed 2 January

2015].

O'Rourke, Beto. *To Amend the Federal Election Campaign Act of 1971: tabled 04/03/2014. Referred to the House Committee on House Administration. H.R.4397*, 2014. https://www.congress.gov/bill/113th-congress/house-bill/4397 [accessed 2 January 2015].

Reilly, John Francis, Carter C. Hull, and Barbara A. Braig Allen. "IRC 501(c)(4) Organizations," 2013 http://www.irs.gov/pub/irs-tege/eotopici03.pdf [accessed 2 January 2015].

———. *IRC 501(c)(6) Organizations. IRS Exempt Organizations-Technical Instruction Program for FY 2013*. Washington: Internal Revenue Service, 2013 [accessed 2 January 2015].

Taylor, J. Lynn. "Securities and Exchange Commission. 17 CFR PARTS 228 and 229 [RELEASE NOS. 33-8765; 34-55009; FILE NO. S7-03-06] RIN 3235-AI80. Executive Compensation Disclosure. December 22, 2006," http://www.sec.gov/rules/final/2006/33-8765.pdf [accessed 2 January 2015].

US Congress. "Lino Perex Jr. Post Office." *Congressional Record. House* 153, no. 3 (February 5, 2007): 3726–27.

US Congress. 75th Congress, 3rd Session. *Congressional Record* 83, no. 7 (1938)

US Congress. 110th Congress,1st Session. *Congressional Record. House*, February 5, 2007.

US Congress. Joint Committee on Reconstruction. *Report of the Joint Commission on Reconstruction, at the First Session, Thirty-Ninth Congress*. US Government Printing Office, 1866.

US Electoral College. "Historical Election Votes: Electoral Votes for President and Vice President 1789-1821." http://www.archives.gov/federal-register/electoral-college/votes/1789_1821.html [accessed 24 January 2013]

US Government . Accountability Office. Securities and Exchange Commission. "Existing Post-Employment Controls Could Be Further Strengthened. Washington D.C.," 2014. http://digital.library.unt.edu/ark:/67531/metadc296582/ [accessed 2 January 2015].

US Government. “Editorial.” *Gazette of the United States*, July 25, 1801, 1–5.

———. “United States Government Manual,” 2014. http://www.usgovernmentmanual.gov/ [accessed 2 January 2015].

———. “USA.Gov : Government Made Easy,” 2014 www.us.gov. [accessed 2 January 2015].

US House. Committee on Financial Services. “Barney Frank: Chairman-Designate Frank ‘Very Disappointed’ with the SEC’s Decision on Executive Pay Reporting Requirements,” December 27, 2006. http://www.highbeam.com/doc/1P3-1186401921.html [accessed 2 January 2015].

———.*US House Committee on Financial Services Handbook*. Washington: International Business Publications, 2009.

US Internal Revenue Service. “A General Explanation of Trusts Subject to §4947 of the Internal Revenue Code,” 2012 http://www.irs.gov/pub/irs-tege/eotopico80.pdf.[accessed 2 January 2015]

———. “Disclosure & Privacy Disclosure Law Reference Guide,” 2012. http://www.irs.gov/pub/irs-pdf/p4639.pdf [accessed 2 January 2015].

———. “Federal Guidance to Employers,” 2012. http://www.irs.gov/irm/part21/irm_21-007-013r.html [accessed 2 January 2015].

———. “Questions and Answers on 501(c) Organizations,” May 15, 2013. http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-501(c)-Organizations [accessed 2 January 2015].

———. “The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations,” 2014. http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations [accessed 2 January 2015].

US National Archives and Records Administration. “Records Management Handbook,” 2014. http://www.archives.gov/records-mgmt/handbook/ [accessed 2 January 2015].

US Securities and Exchange Commission.

“Bank Of America Agrees to Pay $150 Million to Settle SEC Charges Litigation Release No. 21407 / February 4, 2010. Securities and Exchange Commission v. Bank of America Corporation, Civil Action Nos. 09-6829, 10-

0215 (S.D.N.Y),” February 4, 2010. http://www.sec.gov/litigation/litreleases/2010/lr21407.htm [accessed 2 January 2015].

——— “Andrew Dunbar to Florence Harman,” 2008. http://www.sec.gov/2008/Harman/Dunbarletter082608.pdf [accessed 11 February 2013].

——— “Ethics to Tom Eidt,” 2010. www.sec.gov/ethics/eidtletter082010.pdf. [accessed 11 February 2013]

——— “Jill Slansky to Elizabeth Murphy,” 2011. www.sec.gov/2011/murphyletter062310.pdf [accessed 11 February 2013].

———. “Enforcement Director Linda Chatman Thomsen to Leave SEC,” February 9, 2009. http://www.sec.gov/news/press/2009/2009-22.htm [accessed 2 January 2015].

———. “Peter Bresnan, Deputy Director of Enforcement, to Leave Commission,” November 29, 2007. http://www.sec.gov/news/press/2007/2007-248.htm [accessed 2 January 2015].

———. “Report of Investigation, United States Securities and Exchange Commission. Case No. OIG-567, Destruction of Records Related to Matters Under Inquiry and Incomplete Statements to the National Archives and Records Administration Regarding That Destruction by the Division of Enforcement,” October 5, 2011. http://www.sec.gov/foia/docs/oig-567.pdf [accessed 2 January 2015].

———. “Robert Khuzami Named SEC Director of Enforcement,” February 19, 2009. http://www.sec.gov/news/press/2009/2009-31.htm [accessed 2 January 2015].

———.“SEC Director Robert S. Khuzami to Senator Charles E. Grassley,” 2011. http://www.sec.gov/news/extra/2011/grassleyletter091411.pdf. [accessed 11 February 2013].

———. “SEC Biography: Chairman Arthur Levitt,” June 29, 2010. http://www.sec.gov/about/commissioner/levitt.htm [accessed 2 January 2015].

———. “SEC Charges Pequot Capital Management and CEO Arthur Samberg With Insider Trading,” May 27, 2010. http://www.sec.gov/news/press/2010/2010-88.htm [accessed 2 January 2015].

———. “The Laws That Govern the Securities Industry,” 2014. http://www.sec.gov/about/laws.shtml [accessed 2 January 2015].

US Senate. “George Clinton, 4th Vice President (1805-1812).” 2013. http://www.senate.gov/artandhistory/history/common/generic/VP_George_Clinton.htm [accessed 2 January 2015].

———. *Report of The Committee on Privileges and Elections of the United States Senate Relative to the Right and Title of William A. Clark to a Seat as Senator from the State of Montana*. Washingon: Government Printing Office, 1900. http://www.senate.gov/artandhistory/history/common/contested_elections/pdf/89_Apr_23_1900_Clark.pdf [accessed 2 January 2015].

———. *Tariff Schedules: Briefs and Statements Filed With the Committee on Finance, United States Senate; Sixty-Third Congress, First Session on H.R. 3321 2001*. Washington, D.C: Government Printing Office, 1913.

US Senate. 25th Congress, 3rd session, *Journal of 29 February 1839*. Washington, D.C: Blair and Rives, 1839.

US Senate. 100th Congress. *Senate Hearings 100-662*. Washington: Government Printing Office, 1989.

US Senate. 113th Congress. Committee on Banking, Housing, and Urban Affairs. “Nominations of Richard Cordray and Mary Jo White. Richard Cordray, of Ohio, to Be Director of the Bureau of Consumer Financial Protection; Mary Jo White, of New York, to Be a Member of the Securities and Exchange Commission,” March 12, 2013. http://www.banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing_ID=c5eeed57-7d2b-4f3e-a657-024d404d8b3f [accessed 2 January 2015].

US Senate. Committee on Banking, Housing, and Urban affairs. “Cummings Leads 26 Colleagues in Requesting AIG Counterparty Payment Investigation,” 2009. http://cummings.house.gov/press-release/cummings-leads-26-colleagues-requesting-aig-counterparty-payment-investigation [accessed 2 January 2015].

———. “Transcript from Hearing January 2010,” 2010. http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.List&Month=0&Year=2010 [accessed 2 January 2015].

US Senate. Committee on Finance. *The Firing of an SEC Attorney and the Investigation of Pequot Capital Management*. Washington DC: U.S. G.P.O., 2007.

US Senate. Committee on Governmental Affairs. *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns*. Washington, D.C: Government Printing Office, 1998. http://www.gpo.gov/fdsys/pkg/CRPT-105srpt167/pdf/CRPT-105srpt167-pt3.pdf [accessed 2 January 2015].

US Senate. Permanent Sub-Committee on Investigations. Committee on Homeland Security and Government Affairs. *Wall Street and the Financial Crisis : Anatomy of a Financial Collapse*. Washington, DC: Government Printing Office, 2011.

US Supreme Court. "Members of the Supreme Court of the United States". 2014 [accessed 5 January 2015].

Websites

"2014 US Approval of Congress Remains Near All-Time Low". 2015. http://www.gallup.com/poll/180113/2014-approval-congress-remains-near-time-low.aspx [accessed 5 January 2015]

"Albert Einstein site online". 2014. http://www.alberteinsteinsite.com/quotes/einsteinquotes.html, [accessed 2 January 2015]

Association of Securities & Exchange Commission. "Association of Securities & Exchange Commission Alumni Website." 2014 http://www.secalumni.org [accessed 2 January 2015].

Bailey, Michael "Ideological Leaning of Supreme Court Justices" 2014. http://www9.georgetown.edu/faculty/baileyma/Data/Data_measuring1950to2011_June2012.htm. [accessed 5 January 2015].

Bauder, Garry. "Gary Aguirre Major Source in Taibbi Blockbuster." *San Diego Reader*, February 17, 2011. http://www.sandiegoreader.com/weblogs/financial-crime-politics/2011/feb/17/gary-aguirre-major-source-in-taibbi-blockbuster/# [accessed 2 January 2015].

Blackstone, William. “The Founders’ Constitution. Chapter 3. Right of Revolution. William Blackstone, Commentaries 1:119--23, 157, 237--38, 243--44,” 2000. http://press-pubs.uchicago.edu/founders/documents/v1ch3s3.html. [accessed 5 January 2015].

Brand, Rachel. *Tales of Regulatory Creep 21 October 2013*. The Houston Lawyers Chapter of The Federalist Society for Law and Policy Studies, 2013. https://www.fed-soc.org/events/detail/tales-of-regulatory-creep [accessed 2 January 2015].

Canedy, Dana. “Nike Appoints Andrew Young To Review Its Labor Practices,” 1997 http://www.nytimes.com/1997/03/25/business/nike-appoints-andrew-young-to-review-its-labor-practices.htm.

CBS News. “Miller Concedes Loss to Murkowski,” December 31, 2011. www.cbsnews.com/stories/2010/12/31/politics/main7201772.shtml [accessed 2 January 2015].

“Center for Public Integrity”, 2014. http://www.publicintegrity.org/ [accessed 2 January 2015].

Center for Responsive Politics “Top Overall Donors,” 2012. http://www.opensecrets.org/overview/topcontribs.php# [accessed 2 January 2015].

Chick, Raymond, and Amy Henchey. “Political Organizations and IRC 501(c)(4),” 1995. http://www.irs.gov/pub/irs-tege/eotopicm95.pdf [accessed 2 January 2015].

Citizens United. “Who We Are,” 2014. http://www.citizensunited.org/who-we-are.aspx [accessed 2 January 2015].

Committee on Exempt, and Organizations of the Section of Taxation. “Comments of the Individual Members of the Exempt Organizations Committee’s Task Force on Section 501(c)(4) and Politics,” 2004. http://www.americanbar.org/content/dam/aba/migrated/tax/pubpolicy/2004/040525exo.authcheckdam.pdf [accessed 2 January 2015].

“Constitution of the United States,” 1788. http://www.archives.gov/exhibits/charters/constitution.html [accessed 2 January 2015].

Council for Research Excellence. “Thoughtful Dialogue Generating Excellent Research.” 2014 http://www.researchexcellence.com/ [accessed 2 January 2015].

Delaware. “General Corporation Law, Section 102” 2011. http://www.corp.delaware.gov/ [accessed 2 January 2015].

Democracy 21. “Breaking: Omnibus Bill Returns Huge Corrupting Contributions to National Parties,” December 10, 2014. http://www.democracy21.org/money-in-politics/press-releases-money-in-politics/breaking-omnibus-bill-returns-huge-corrupting-contributions-to-national-parties/ [accessed 2 January 2015].

Domhoff, G. William. “Interlocking Directorates in the Corporate Community,” 2013.http://www2.ucsc.edu/whorulesamerica/power/corporate_community.html. [accessed 5 January 2015].

Federal Reserve Bank of New York. “Federal Reserve Bank of New York Annual Report,” 2007. http://www.ny.frb.org/aboutthefed/annual/annual07/annual.pdf [accessed 2 January 2015].

———. “Federal Reserve Bank of New York Annual Report,” 2008. http://www.ny.frb.org/aboutthefed/annual/annual08/annual.pdf [accessed 2 January 2015].

Government Accountability Project. “SEC Settles with Aguirre,” June 29, 2010. http://www.whistleblower.org/press/sec-settles-aguirre [accessed 2 January 2015].

Grassley, Chuck. “Grassley: SEC Confidence on Insignificance of Destroyed Documents Is Questionable,” September 15, 2011. http://www.grassley.senate.gov/print/news/news-releases/grassley%C2%A0-sec-confidence-insignificance-destroyed-documents-questionable [accessed 2 January 2015].

Holmes, Richard, and Phil Watts. “CSR: Making Good Business Sense,” 2000. http://www.wbcsd.org/Pages/EDocument/EDocumentDetails.aspx?ID=83&NoSearchContextKey=true [accessed 2 January 2015].

King, Angus. “In Response to McCutcheon, King Introduces Legislation to Improve Transparency of Campaign Donations,” April 2, 2014. http://www.king.senate.gov/newsroom/press-releases/in-response-to-mccutcheon-king-introduces-legislation-to-improve-transparency-of-campaign-donation [accessed 2 January 2015].

Kirkland and Ellis LLP. “Former SEC Enforcement Director Robert Khuzami Joins Kirkland & Ellis,” July 23, 2013. http://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=10825 [accessed 2 January 2015].

Library of Congress. “Primary Documents in American History: The Bill of Rights.” Accessed May 9, 201 http://www.loc.gov/rr/program/bib/ourdocs/billofrights.html [accessed 2 January 2015].

Mayo Clinic. “Narcissistic Personality Disorder,” 2014. http://www.mayoclinic.org/diseases-conditions/narcissistic-personality-disorder/basics/definition/con-20025568 [accessed 2 January 2015].

Moore, Michael. “Arthur Levitt to Leave Policy Advisory Role at Goldman Sachs,” October 31, 2014. http://www.bloomberg.com/news/2014-10-30/arthur-levitt-to-leave-policy-advisory-role-at-goldman.html [accessed 2 January 2015].

Move to Amend. “May 10th, 2013 Day of Action Against Corporate Personhood,” 2014 https://www.movetoamend.org/May10 [accessed 2 January 2015].

Move To Amend. “Santa Clara v. Southern Pacific Railroad,” 2014 https://movetoamend.org/ [accessed 2 January 2015].

“National Association of Manufacturers,” 2014. http://www.nam.org/ [accessed 2 January 2015].

Obama, President Barack. “Obama States the Rules Have Changed: State of the Union Address,” January 27, 2010. http://www.nationaljournal.com/whitehouse/exclusive-obama-to-declare-the-rules-have-changed--20110125 [accessed 2 January 2015].

“Open Congress,” 2014. www opencongress.org. [accessed 2 January 2015].

Powell, Lewis F. “Memorandum: Attack on American Free Enterprise System”. 1971. http://law.wlu.edu/powellarchives/page.asp?pageid=1251[accessed 5 January 2015].

Project on Government Oversight. “Revolving Regulators: SEC Faces Ethics Challenges with Revolving Door,” May 13, 2011. http://www.pogo.org/our-work/reports/2011/fo-fra-20110513.html [accessed 2 January 2015].

Reclaim Democracy. “Corporate Personhood,” 2014. http://reclaimdemocracy.org/corporate-personhood/ [accessed 2 January 2015].

Reuters. “Senior Government Lawyers Linda Chatman Thomsen and Raul F. Yanes Join Davis Polk,” April 13, 2009. http://www.reuters.com/article/2009/04/13/idUS69668+13-Apr-2009+BW20090413 [accessed 2 January 2015].

Revolving Door Working Group. “A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government and What to Do about It,” 2005. http://www.cleanupwashington.org/documents/RevovDoor.pdf [accessed 2 January 2015].

Roosevelt, Theodore. ‘Theodore Roosevelt Papers at the Library of Congress: 1759-1919.” http://lcweb2.loc.gov/ammem/trhtml/ [accessed 2 January 2015].

“Sunlight Foundation”, 2014. www.sunlightfoundation.com. [accessed 2 January 2015].

Taibbi, Matt. “Is the SEC Covering Up Wall Street Crimes?” *Rolling Stone*, August 17, 2011. http://www.rollingstone.com/politics/news/is-the-sec-covering-up-wall-street-crimes-20110817 [accessed 2 January 2015].

———. “Why Isn’t Wall Street in Jail?” *Democracy Now*, February 16, 2011. http://www.democracynow.org/2011/2/22/matt_taibbi_why_isnt_wall_street. [accessed 2 January 2015].

US News. “Palin Endorses GOP Challenger in Alaska Senate June 3, 2010,” 2010. http://www.usnews.com/news/articles/2010/06/03/palin-endorses-gop-challenger-in-alaska-senate [accessed 2 January 2015].

Wilsey, Matt, and Scott Lichtig. “The Nike Controversy. Conference Presentation 2000,” 2000. http://web.stanford.edu/class/e297c/trade_environment/wheeling/hnike.html [accessed 30 August 2014].

Wyatt, Edward. “S.E.C. Files Were Illegally Destroyed, Lawyer Says.” *New York Times*, August 17, 2011. http://www.nytimes.com/2011/08/18/business/sec-illegally-destroyed-documents-whistle-blower-alleges.html?_r=0 [accessed 2 January 2015].

Secondary Sources

Books

Aitken, Jonathan. *Nixon: A Life*. Washington, D.C: Regnery Publishing, 1994.

Albino, Dominic K, Anzi Hu, and Yaneer Bar-Yam. *Corporations and Regulators: The Game of Influence in Regulatory Capture*. Cambridge, MA: New England Complex Systems Institute, 2013.

Alexander, Herbert E. *Financing Politics: Money, Elections, and Political Reform*. Washington: CQ Press, 1992.

Allcock, John B., ed. *Emile Durkheim, Pragmatism and Sociology*. Cambridge: Press Syndicate, 1983.

Altschuler, Glenn, and Stuart Blumin. *Rude Republic: Americans and Their Politics in the Nineteenth Century*. Princeton: Princeton University Press, 2000.

Angell, Joseph, and Samuel James. *Treatise on the Law of Private Corporations Aggregate*. Boston: Hilliard, Gray, Little & Wilkins, 1832.

Archer, Margaret. *Realist Social Theory: The Morphogenetic Approach*. New York: Cambridge University Press, 1995.

Archer, Margaret. *Structure, Agency and the Internal Conversation*. Cambridge: Cambridge University Press, 2003.

Arnold, R. Douglas. *Congress and the Bureaucracy: A Theory of Influence*. New Haven: Yale University Press, 1979.

Atkins, Peter, and Julio de Paula. *Physical Chemistry*. 8th ed. Oxford: Oxford University Press, 2006.

Austin, John. *The Province of Jurisprudence Determined*. Cambridge: Cambridge University Press, 1832.

Bacon, R., and J. Brown Scott, eds. *Elihu Root, Addresses on Government and Citizenship*. Freeport NY: Books for Libraries Press, 1969.

Balotti, R Franklin, and Jesse A Finkelstein. *The Delaware Law of Corporations & Business Organizations*. Englewood Cliffs, NJ: Prentice-Hall, 1988.

Banning, Lance. *The Jeffersonian Persuasion: Evolution of a Party Ideology*. Ithaca: Cornell University Press, 1978.

Beatty, Jack. *Age of Betrayal: The Triumph of Money in America, 1865–1900*. New York: Alfred A Knopf, 2007.

Bensel, Richard F. *The American Ballot Box in the Mid-Nineteenth Century*. Cambridge: Cambridge University Press, 2004.

Berger, Arthur Asa. *Media and Society: A Critical Perspective*. 3rd ed. Lanham, MA: Rowman & Littlefield Publishers, 2012.

Berle, Adolf, and Gardiner C. Means. *The Modern Corporation and Private Property*. New York: Macmillan, 1933.

Berthoff, Rowland. *Republic of the Dispossessed: The Exceptional Old-European Consensus in America*. Columbia, Mo: University of Missouri Press, 1997.

Birbaum, Geoffrey H. *The Money Men : The Real Story of Fund-Raining's Influence on Political Power in America*. New York: Crown Publishers, 2000.

Blackford, Mansfeld G, and K. Austin Kerr. *Business Enterprise in American History*. Boston: Houghton Mifflin Company, 1986.

Blackstone, William. *Commentaries on the Laws of England*. London: Christian, Chitty, Lee, Hovenden, and Ryland Publishers, 1832.

Borneman, Walter R. *Polk: The Man Who Transformed the Presidency and America*. New York: Bertelsmann, 2008.

Brands, Henry W. *The Money Men: Capitalism, Democracy, and the Hundred Years War over the American Dollar.* New York: W.W.Norton and Co, 2010.

Bray, Hammond. *Banks and Politics in America from the Revolution to the Civil War*. Princeton: Princeton University Press, 1991.

Brown, Ellen Hodgson. *Web of Debt*. 4th ed. Chippenham: Third Millennium Press, 2010.

Brumback, Gary. *The Devil's Marriage: Break Up the Corpocracy or Leave Democracy in the Lurch*. Bloomington, IN: Authorhouse, 2011.

Bruner, Robert F., and Sean D. Carr. *The Panic of 1907: Lessons Learned from the Market's Perfect Storm*. Hoboken: John Wiley, 2007.

Butler, Anne M., and Wendy Wolff. *United States Senate Election, Expulsion, and Censure Cases, 1793-1990*. Washingon: Government Printing Office, 1995.

Byrd, Robert C. *The Senate, 1789-1989 : V. 1 Addresses on the History of the United States Senate*. Rev. Washington, D.C: US Government Printing Office, 1989.

Cann, Damon M. *Sharing the Wealth: Member Contributions and the Exchange Theory of Party Influence in the US House of Representatives*. Albany, NY: SUNY Press, 2008.

Canning, Joseph. *Ideas of Power in the Late Middle Ages, 1296–1417*. Cambridge: Cambridge University Press, 2011.

Carpenter, Daniel, and David A Moss, eds. *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. Cambridge: Cambridge University Press, 2013.

Catanzariti, John, ed. *The Papers of Thomas Jefferson, Vol. 24, 1 June–31 December 1792*. Princeton: Princeton University Press, 1990.

Catlaw, Thomas J. *Fabricating the People: Politics and Public Administration in the Bio-Political State*. Tuscaloosa, AL: University of Alabama Press, 2007.

Chandler, Alfred D. *The Emergence of Managerial Capitalism*. Cambridge, MA: Harvard University Press, 1992.

Chandler, Alfred D., and Bruce Mazlish. *Leviathons: Multinational Corporations and the New Global History*. Cambridge: Cambridge University Press, 2005.

Charles, A, and Mary R Beard. *The Rise of American Civilization*. Vol. 2. Cambridge: Macmillan, 1927.

Chaudhuri, K.N. *The Trading World of Asia and the English East India Company: 1660-1760*. Cambridge: Cambridge University Press, 1978.

Coke, Edward. *The Reports of Sir Edward Coke-1572-1671*. Indianapolis, IN.: Liberty Fund, 1600.

Collins, Paul M. *Friends of the Supreme Court: Interest Groups and Judicial Decision Making*. Oxford: Oxford University Press, 2008.

Cook, Thomas, ed. *John Locke: Two Treatises of Government*. New York: Hafner Publishing, 1947.

Coser, Lewis A. *Masters of Sociological Thought: Ideas in Historical and Social Context*. 2nd ed. Salem, Ill: Waveland Press, 2003.

Coser, Lewis A. *The Functions of Social Conflict*. New York: Free Press, 1966.

Crain, Andrew D. *The Ford Presidency: A History*. Jefferson NC: McFarland, 2009.

Craughwell, Thomas J. *Presidential Payola: The True Stories of Monetary Scandals in the Oval Office That Robbed Taxpayers to Grease Palms, Stuff Pockets, and Pay for Undue Influence from Teapot Dome to Halliburton*. Beverly Massachusetts: Fair Winds Press, 2011.

Croley, Herbert. *Marcus Alonzo Hanna: His Life and Work*. New York: Macmillan, 1912.

Cullen, Charles T., ed. *The Papers of Thomas Jefferson, Vol. 23, 1 January–31 May 1792*. Princeton, New Jersey: Princeton University Press, 1990. http://founders.archives.gov/volumes/Jefferson/01-23.

Dahl, Robert A. *Modern Political Analysis*. Englewood Cliffs, NJ: Prentice-Hall, 1963.

Dahl, Robert A. *Who Governs?: Democracy and Power in an American City*. New Haven, CT: Yale University Press, 2005.

Dan-Cohen, Meir. *Rights, Persons, and Organizations: A Legal Theory for Bureaucratic Society,*. Berkley, CA: University of California Press, 1986.

Davis, Joseph S. *Essays in the Earlier History of American Corporations: Volume II*. Cambridge: Cambridge University Press, 1917

Denhardt, Janet V., and Robert B. Denhardt. *Public Administration: An Action Orientation*. Fort Worth: Harcourt Brace, 2006.

Derber, Charles. *Regime Change Begins at Home: Freeing America from Corporate Rule*. San Francisco: Berrett-Koehler, 2004.

Diamond, Robert A., and Stanley N. Wellborn, eds. *Dollar Politics*. Washington: CQ Press, 1974.

Dickinson, John. *The Writings of John Dickinson: Volume I Political Writings 1764-1774*. Philadelphia: Historical Society of Pennsylvania, 1895. http://archive.org/stream/memoirshistoric04penngoog#page/n16/mode/2up [accessed 2 January 2015].

Dickinson, John, and Paul Leicester Ford. *Memoirs of the Historical Society of Pennsylvania*. Vol. 14. Philadelphia: The Historical Society of Pennsylvania, 1895.

Dillard, James Price, and Michael W Pfau. *The Persuasion Handbook: Developments in Theory and Practice*. Thousant Oaks: Sage Publications, 2002.

Dodd, Lawrence C, and Bruce I Oppenheimer. “A Decade of Republican Control: The House of Representatives, 1995-2005,” Vol. 8. Washington, DC: CQ Press, 2005.

Donaldson, Thomas. *Corporations and Morality*. Englewood Cliffs, NJ: Prentice-Hall, 1982.

Douglas, William O. *Go East, Young Man: The Early Years*. Randon House: New York, 1974.

Downs, Alan. *Beyond the Looking Glass: Overcoming the Seductive Culture of Corporate Narcissism*. New York: Amacom, 1997.

Dworkin, Ronald Myles. *Freedom’s Law: The Moral Reading of the American Constitution*. Cambridge, MA: Harvard University Press, 1997.

Eisenlohr, Emily. *Fairy Tale Capitalism: Fact and Fiction Behind Too Big to Fail*. Bloomington, IN: Author House, 2010.

Elazar, Daniel J. *American Federalism: A View From the States*. Hammersmith: Harper Collins, 2005.

Elkins, Stanley, and Eric McKitrick. *The Age of Federalism: The Early American Republic; 1788-1800*. Oxford: Oxford University Press, 1995.

English, Ross. *The United States Congress*. Manchester: Manchester University Press, 2003.

Ervin, Spencer. *Henry Ford vs. Truman H. Newberry: The Famous Senate Election Contest*. New York: Arno Press, 1974.

Foner, Eric, and Olivia Mahoney. *America's Reconstruction: People and Politics After the Civil War*. New York: Harper Collins, 1995.

Founder, Nick. *The Book about Life: Finding reciprocal balance in your personal relationships*. Unpublished transcript. 2014.

Ford, Paul Leicester, ed. *The Writings of Thomas Jefferson*. Vol. X. New York: G.P. Puttman's and Sons, 1899. http://www.constitution.org/tj/jeff.htm.

Francia, Peter L. *The Financiers of Congressional Elections: Investors, Ideologues, and Intimates*. New York: Columbia University Press, 2003.

Franklin, John H. *Reconstruction after the Civil War*. Chicago: University of Chicago Press, 1964.

Freidman, Milton, and Anna Jacobson Schwartz. *Monetary History of the United States, 1867-1960*. Princeton: Princeton University Press, 1971.

French, Peter. *Collective and Corporate Responsibility*. New York: Columbia University Press, 1984.

Friedman, Gary. *The Will Of The People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution*. New York: Farrar, Straus and Giroux, 2009.

Fritz, Christian G. *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*. Cambridge: Cambridge University Press, 2008.

Fynn, John T. *Graft in Business*. New York: Vanguard Press, 1931.

Gaia, Thomas. *Improper Influence: Campaign Finance Law, Political Interest Groups, and the Problem of Equality*. Ann Arbor, MI: University of Michigan Press, 1998.

Goidel, Robert K., Donald A. Gross, and Todd G. Shields. *Money Matters: Consequences of Campaign Finance Reform in U.S. House Elections*. Lanham, ML: Rowman & Littlefield Publishers, 1999.

Goncalves, Marcus. *The Knowledge Tornado: Bridging the Corporate Knowledge Gap*. New York: ASME Press, 2012.

Gordon, John Steele. *Empire of Wealth: The Epic History of American Economic Power*. New York: Harper Collins, 2004.

Graham, Howard J. *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the Conspiracy Theory, and American Constitutionalism*. Madison WI: State Historical Society of Wisconsin, 1968.

Green, Mark. *Selling Out: How Big Corporate Money Buys Elections, Rams Through Legislation, and Betrays Our Democracy*. New York: Harper Collins, 2002.

Grossman, Richard L., and Frank T. Adams. *Taking Care of Business, Citizenship and the Charter of Incorporation*. Cambridge: Charter Ink, 1993.

Habermas, Jurgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehq. Cambridge, MA: MIT Press, 1996.

Hallis, Frederick. *Corporate Personality*. Oxford: Oxford University Press, 1930.

Hansford, Thomas G, and James F. Spriggs. *The Politics of Precedent on the U.S. Supreme Court*. Princeton: Princeton University Press, 2006.

Hardy, Daniel. *Regulatory Capture in Banking*. Washington DC: International Monetary Fund, 2006. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=892925 [accessed 2 January 2015].

Hartmann, Thom. *Rebooting the American Dream: 11 Ways to Rebuild Our Country*. San Francisco: Berrett-Koehler Publishers, 2010.

———. *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights*. Emmaus PA: Rodale Press, 2002.

Hart, Roderick P. *Campaign Talk: Why Elections Are Good For Us*. Princeton, New Jersey: Princeton University Press, 2009.

Hawkes, James. *A Retrospect of the Boston Tea-Party: With a Memoir of George RT Hewes, a Survivor of the Little Band of Patriots Who Drowned the Tea in Boston Harbour in 1773*. New York: SS Bliss, 1834.

Heard, Alexander. *The Costs of Democracy*. Chapel Hill, NC: University of North Carolina Press, 1960.

Heidenheimer, Arnold J, and Michael Johnston. *Political Corruption: Concepts and Contexts*. 3rd ed. New Brunswick: Transaction Publishers, 2009.

Herrnson, Paul S, Christopher J Deering, and Clyde Wilcox. *Interest Groups Unleashed*. Washington DC: Cq Press, 2012.

Hertz, Emanuel. *Abraham Lincoln: A New Portrait*. Vol. 1. New York: H. Liveright, Incorporated, 1931.

Hertz, Noreena. *The Silent Takeover: Global Capitalism and the Death of Democracy*. London: Arrow Publishing, 2001

Hill, Victor. *Corporate Narcissism in Accounting Firms*. Melbourne: Penguin Books, 2005.

Hobbes, Thomas. *Elements of Law, Natural and Political*. Abingdon: Routledge, 2013.

Holkeskamp, Karl J. *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research*. Princeton, New Jersey: Princeton University Press, 2010.

Homans, George Caspar. *Social Behavior: Its Elementary Forms*. New York: Harcourt Brace Jovanovich, 1961.

Hoogenboom, Ari. *Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865–1883*. Chicago: University of Illinois Press, 1961.

Horner, William T. *Ohio's King Maker: Mark Hanna, Man and Myth*. Athens, OH: Ohio University Press, 2010.

Hummel, R. *The Bureaucratic Experience: The Postmodern Challenge*. Armonk, NY: M.E. Sharpe, 2007.

Humphrey, Carol S. *The Press of the Young Republic, 1783-1833*. Westport, CT: Greenwood Press, 1996.

Hund, Gaillard, and James Brown Scott, eds. *The Debates in the Federal Convention of 1787, Which Framed the Constitution of the United States of America, Reported by James Madison, a Delegate from the State of Virginia: August 18, 1787*. Oxford: Oxford University Press, 1920. http://avalon.law.yale.edu/18th_century/debates_818.asp.

Hurst, James Willard. *The Growth of American Law: The Law Makers*. Reprint. Clark, N.J.: The Law book Exchange, 2007.

Jacobs, David C.D. *Business Lobbies and the Power Structure in America: Evidence and Arguments*. Westport, CT: Quorum Books, 1999.

Johnson, Jason. *Political Consultants and Campaigns: One Day to Sell*. Boulder, CO: Westveiw Press, 2012.

Kaiser, Robert A. *So Damn Much Money: The Triumph of Lobbying and the Corrosion of American Government*. New York: Alfred A. Knopf, 2009.

Josephson, Mathew. *The Robber Barons: The Great American Capitalists 1861-1901*. New Brunswick: Transaction Publishers, 2011(1861).

Josephson, Matthew. *The Politicos, 1865-1896*. New York: Harcourt, Brace & Co., 1938.

Kaminski, John P. *George Clinton: Yeoman Politician of the New Republic*. Lanham, ML: Rowman & Littlefield Publishers, 1993.

Kendrick, Benjamin Burks. *The Journal of the Joint Committee of Fifteen on Reconstruction*. New York: Columbia University Press, 1914.

Klose, Nelson, and Robert F. Jones. *United States History: To 1877*. Hauppauge, NY: Barrons Educational, 1983.

Knudson, Jerry W. *Jefferson and the Press: Crucible of Liberty*. Columbia, Mo: University of South Carolina Press, 2006.

Koempel, Michael, and Judy Schneider. *Committee Markup in the US House of Representatives: Including the Committee System, House Committee Markup Manual of Procedures and Procedural Stra*. Alexandria, VA: The Capitol Net Inc, 2010.

Kotter, John. *Power and Influence*. New York: Free Press, 1985.

Kotz, H David. *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*. Washington, DC: Government Printing Office, 2009.

Krommers, Donald P., John E. Finn, and Gary J. Jacobson. *American Constitutional Law: Essays, Cases, and Comparative Notes: Volume 2 of American Constitutional Law*. 3rd ed. New York: Rowman & Littlefield Publishers, 2009.

Lamoreaux, Naomi R. *The Great Merger Movement in American Business: 1895-1904*. Cambridge: Cambridge University Press, 1985.

La Raja, Raymond J. *Small Change: Money, Political Parties, and Campaign Finance Reform*. Ann Arbor, MI: University of Michigan Press, 2008.

Leibiger, Stuart. *Founding Friendship: George Washington, James Madison, and the Creation of the American Republic*. Charlottesville, VA: University Press of Virginia, 2001.

Leighninger, Robert D. Jr. *Long-Range Public Investment: The Forgotten Legacy of the New Deal*. Columbia, Sc: University of South Carolina Press, 2007.

Les Benedict, Michael. *The Impeachment and Trial of Andrew Johnson*. New York: WW Norton, 1999.

Levitt, Arthur. *Take on the Street*. New York: Vintage Books, 2003.

Lewis, David E, and Jennifer L Selin. *Sourcebook of United States Executive Agencies* Washington, DC: Administrative Conference of the United States, Office of the Chairman, 2012

Linebaugh, Peter. *The Magna Carta Manifesto: Liberties and Commons for All*. Berkley, CA: University of California Press, 2008.

Loomis, Burdett A.and Cigler, Alan J. eds. *Interest Group Politics* 6th ed. Washington: CQ Press, 2002.

Lowi, Theodore J. *The End of Liberalism*. New York: Norton, 1969.

Lukas, J. Anthony. *Nightmare: The Underside of the Nixon Years*. New York: Viking Press, 1976.

Maccoby, Michael. *The Productive Narcissist: The Promise and Evil of Visionary Leadership*. New York: Broadway Books, 2003.

Macey, Jonathan. *The Death of Corporate Reputation: How Integrity Has Been Destroyed on Wall Street*. Upper Saddle River: FT Press, 2013.

Magat, Wesley, Alan J Krupnick, and Winston Harrington. *Rules in the Making: A Statistical Analysis of Regulatory Agency Behavior*. Abingdon: Routledge, 2013.

Maier, Pauline. *Ratification: The People Debate the Constitution, 1787-1788*. New York: Simon & Schuster, 2011.

Malone, Dumas. *Jefferson and the Rights of Man*. Charlottesville, VA: University of Virginia Press, 1951.

Mansfield, Harvey C., and Delba Winthrop, eds. *Alexis de Tocqueville Democracy in America (1835-1840)*. Chicago: Chicago University Press, 2000.

McCarthy, Anna. *The Citizen Machine: Governing by Television in 1950s America*. New York: The New Press, 2010.

McChesney, Fred S. *Money for Nothing: Politicians, Rent Extraction, and Political Extortion*. Cambridge, MA: Harvard University Press, 1997.

Mead, George Herbert and Charles W. Morris. *Mind, Self and Society: From the Standpoint of a Social Behaviorist*. Chicago: Chicago University Press, 1934.

Meiklejohn, Alexander. *Political Freedom: The Constitutional Power of the People*. Westport, CT: Greenwood Press, 1960.

Micklethwait, John, and Adrian Wooldridge. *The Company: A Short History of a Revolutionary Idea*. New York: Modern Library Chronicles, 2005.

Mintz, S., and S. McNeil. “The Pendleton Act (1883) Digital History,” 2013. http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=1098 [accessed 2 January 2015].

Misa, Thomas J. *A Nation of Steel: The Making of Modern America, 1865-1925*. Baltimore, MD: John Hopkins Press, 1998.

Mitnick, Barry M. *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms*. New York: Columbia University Press, 1980.

Moody, John. *The Truth about the Trusts: A Description and Analysis of the American Trust Movement*. Westport, CT: Greenwood Press, 1968.

Morris, Charles R. *The Tycoons: How Andrew Carnegie, John D. Rockefeller, Jay Gould, and J. P. Morgan Invented the American Supereconomy*. New York: Henry Holt and Co, 2006.

Murphy, Walter, C. Herman Pritchett, Lee Epstein, and Jack Knight, eds. *Courts, Judges and Politics: An Introduction to the Legal Process*. Columbus, OH: McGraw-Hill, 2005.

Mott, Frank L. *American Journalism: A History of Newspapers in the United States through 260 Years: 1690 to 1950*. New York: Macmillian, 1950.

Mutch, Robert E. *Buying the Vote: A History of Campaign Finance Reform*. Oxford: Oxford University Press, 2014.

Mutch, Robert E. *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law*. New York: Praeger, 1988.

Nace, Ted. *Gangs of America: The Rise of Corporate Power And the Disabling of Democracy*. San Francisco: Berrett-Koehler Publishers, 2005.

Nader, Ralph. *In Pursuit of Justice: Collected Writings 2000-2003*. New York: Seven Stories Press, 2011.

Nagel, Jack H. *The Descriptive Analysis of Power*. New Haven: Yale University Press, 1975.

Noonan, John T. *Bribes*. New York: Macmillan, 1984.

Nowak, John E., and Ronald D. Rotunda. *Constitutional Law*. 8th ed. St Paul, MN: West Publishing, 2010.

Olsen, M. *The Logic of Collective Action*. Cambridge, MA: Harvard University Press, 1965.

Olson, Keith W. *Watergate: The Presidential Scandal That Shook America*. Lawrence, KA: University Press of Kansas, 2003.

Ostrogorskii, Moisei. *Democracy and the Party System in the United States: A Study in Extra-Constitutional Government*. New York: Macmillan, 1910.

Overacker, Louise. *Money in Elections*. New York: Macmillan, 1932.

Overton, George W., and Jeannie Carmedelle-Frey, eds. *Guidebook for Directors of Nonprofit Corporations*. 2nd ed. Chicago Ill: American Bar Association Committee on Nonprofit Corporations, 2002.

Parsons, Talcott. *The Social System*. London: Tavistock Publications, 1951.

Perloff, Richard M.*The Dynamics of Persuasion: Communication and Attitudes in the Twenty-First Century*. New York: Routledge, 2010.

Peters, Richard, ed. *The Statutes at Large: Volume 3: 13th-17th, 1813-1823*. Boston: Carles C. Little and James Brown, 1846..

———. , ed. *The Statutes at Large: Volume 4: 18th-23rd, 1823-1835*. Boston: Charles C. Little and James Brown, 1846.

Pfeffer, Jeffrey, and Gerald R Salancik. *The External Control of Organizations: A Resource Dependence Perspective*. Palo Alto, CA: Stanford University Press, 2003.

Plato. *The Republic*. ed. G.R.F. Ferrari. Cambridge: Cambridge University Press, 2000.

Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 2009.

Reagan, Ronald. *Transcript of Remarks to a Corporate Sector Conference*. Simi Valley, CA: Ronald Reagan Presidential Library, 1977

Reich, Robert B. *Locked in the Cabinet*. New York: Alfred A Knopf, 1998.

Robison, Lindon J, and Bryan K Ritchie. *Relationship Economics: The Social Capital Paradigm and Its Application to Business, Politics and Other Transactions*. Farnham: Ashgate, 2010.

Roloff, Michael E. *Interpersonal Communication: The Social Exchange Approach*. Beverly Hills, CA: Sage Publications, 1981.

Rome, Edwin P, and William H Roberts. *Corporate and Commercial Free Speech: First Amendment Protection of Expression in Business*. Westport, Conn: Quorum Books, 1985.

Rothbard, Murray N. *A History of Money and Banking in the United States: The Colonial Era to World War II*. Auburn, Al.: Ludwig Von Mises Institute, 2002.

Russel, David Lee. *The American Revolution in the Southern Colonies*. Jefferson NC: McFarland and Co, 2000.

Sabato, Larry J. *PAC Power: Inside the World of Political Action Committees*. New York: W.W.Norton & Company, 1984.

Salam, Abdus *Unification of Fundamental Forces: The First 1988 Dirac Memorial Lecture*. Cambridge: Cambridge University Press, 1990.

Salamon, Lester M. *America's Nonprofit Sector: A Primer*. New York: The Foundation Centre, 1992.

Schlozman, Kay Lehman, and John T Tierney. *Organized Interests and American Democracy*. Ann Arbor, MI: University of Michigan Press, 2008.

Schmeckebier, Laurence F. *The Bureau of Internal Revenue: Its History, Activities and Organization*. Baltimore, MD: John Hopkins Press, 1923.

Schopenhauer, A. *Die Welt Als Wille Und Vorstellung, (1844) Translated by EFJ Payne as The World as Will and Representation*. Vol. 1. New York: Dover, 1969.

Scott, Austin W. *Select Cases and Other Authorities on the Law of Trusts*. Cambridge, MA: Cambridge University Press, 1940.

Sharma, Urmilo, and S.K. Sharma. *Principles and Theory of Political Science*. Vol. 1. New Delhi: Atlantic Publishing and Distribution, 2000.

Sharpe, Anne S., ed. *John Dewey, the Collected Works, 1882-1953*. Carbondale: Southern Illinois University Press, 1991.

Shorto, Russell. *The Island at the Centre of the World: The Untold Story of Dutch Manhattan and the Founding of New York*. London: Doubleday, 2005.

Simmons, John. *Moral Problems and Political Obligations*. Princeton, New Jersey: Princeton University Press, 1981.

Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations, Bk. IV: Of Systems of Political Economy, Of Restraints upon the Importation from Foreign Countries of Such Goods as Can Be Produced at Home*. London: W. Strahan and T. Cadell, 1776.

Smith, Bradley A. *Unfree Speech: The Folly of Campaign Finance Reform*. Princeton, New Jersey: Princeton University Press, 2001.

Smith, Rodney A. *Money, Power and Elections: How Campaign Finance Reform Subverts American Democracy*. Baton Rouge LA: Louisiana State University Press, 2006.

Steeples, Dougkas, and David O. Whitten. *Democracy in Desperation: The Depression of 1893*. Westport, CT: Greenwood Press, 1998.

St. John, Burton III. *Press Professionalization and Propaganda: The Rise of Journalistic Double-Mindedness, 1917-1941*. Amherst, NY: Cambria Press, 2010.

Stone, Christopher. *Where the Law Ends: The Social Control of Corporate Behavior*. New York: Harper & Row, 1975.

Stout, Lynn A. *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public*. Berrett-Koehler Publishers, 2012.

Summers, Mark W. *The Plundering Generation: Corruption and the Crisis of the Union, 1849–186*. Oxford: Oxford University Press, 1987.

Sydnor, Charles S. *American Revolutionaries in the Making: Political Practices in Washington's Virginia*. New York, NY: Free Press, 1952.

Thayer, George. *Who Shakes the Money Tree?: American Campaign Finance Practices from 1789-Present*. New York: Simon and Schuster, 1974.

Thibaut, John W, and Harold H Kelley. *The Social Psychology of Groups.* New York: Wiley, 1959.

Tierney, Brian. *Religion, Law, and the Growth of Constitutional Thought 1150-1650*. Cambridge: Cambridge University Press, 1982.

Tomlins, Christopher L. *The United States Supreme Court*. Boston, MA: Houghton Mifflin Harcourt, 2005.

Trachtenberg, Alan. *The Incorporation of America: Culture and Society in the Gilded Age*. New York: Macmillan, 2007.

Trefousse, Hans. *Historical Dictionary of Reconstruction*. Westport, CT: Greenwood Press, 1991.

Tushnet, Mark. *In the Balance: Law and Politics on the Roberts Court,*. New York: W.W.Norton & Company, 2013.

Twain, Mark. *Following the Equator*. Vol. 1. Hartford, CT: The American Publishing Company, 1898.

Vicinus, Martha. *A Widening Sphere : Changing Roles of Victorian Women*. Abingdon: Routledge, 2013.

Ward, Artemus, and David L. Weiden. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. New York: New York University Press, 2006.

Waxman, Henry, and Joshua Green. *The Waxman Report: How Congress Really Works*. New York: Twelve, 2009.

West, Richard L, and Lynn H Turner. *Introducing Communication Theory: Analysis and Application*. New York: McGraw-Hill, 2007.

Whitcomb, John, and Claire Whitcomb. *Real Life at the White House: 200 Years of Daily Life at America's Most Famous Residence*. Chicago: The Book List, 1969

Wempe, Johan, and Muel Kaptein. *The Balanced Company : A Theory of Corporate Integrity*. Oxford: Oxford University Press, 2002.

Wiarda, Howard J., Paul S. Adams, and Paul Rego, eds. *Comparative Politics: Critical Concepts in Political Science*. Abingdon: Routledge, 2005.

Willoughby, Westel Woodbury. *The Fundamental Concepts of Public Law*. New York: Macmillan, 1924.

Wilson, Edward O. *On Human Nature*. Cambridge, MA: Harvard University Press, 2012.

Wilson, James Q. *Political Organizations*. New York: Basic Books, 1973.

Yolton, John W. ed. *An Essay Concerning Human Understanding by John Locke*, London: Dent, 1960

Young, William H., and Nancy K. Young. *The Great Depression in America: A Cultural Encyclopaedia*. Westport, CT: Greenwood Press, 2007.

Chapters in Books

Adams, John. "Letter to Thomas Jefferson 1813." In *The Writings of Thomas Jefferson*, Vol. XIII, edited by R.H. Johnston, New York: G.P. Putman's and Sons, 1899.

———. "Papers of John Adams: Vol 4 Josiah Quincy to John Adams, June 13th 1776," 2014 http://www.masshist.org/publications/apde/portia.php?id=PJA04d174. [accessed 2 January 2015].

Bell, Stephen. "How Governments Mediate the Structural Power of International Business." In *The Handbook of Global Companies*, edited by John Mikler.113–33. Hoboken, NJ: Wiley and Sons, 2003.

Canon, Bradley C. "Courts and Policy: Compliance, Implementation, and Impact." In *The American Courts: A Critical Assessment*, edited by John Gates and Charles Johnson, 435–466. Washingon: CQ Press, 1991.

Crain, W., and Robert E. McCormick. “Regulators as an Interest Group.” In *The Theory of Public Choice II*, edited by James M Buchanan and Robert D Tollison, 287–304. Ann Arbor, MI: Michigan University Press, 1984.

Czada, Roland M. “Interest Groups, Self Interest and the Institutionalization of Political Action.” In *Institution and Political Choice: On the Limits of Rationality*, edited by Roland M. Czada, Adrienne Heritier and Hans Keman 229–56. Amsterdam: VU Press, 1991.

Dennett, Daniel. “Conditions of Personhood.” In *The Identities of Persons*, edited by Amelie Oksenberg Rorty, 175–196. Berkley, CA: University of California Press, 1976.

Diner, Hasia. “Teapot Dome, 1924.” In *Congress Investigates: A Documented History, 1792-1974,* edited by Arthur Meier Schlesinger and Roger A. Bruns, New York: Chelsea House Publishers, 1975.

Freud, Sigmund. “On Narcissism: An Introduction.” In *Standard Edition of the Complete Psychological Works of Sigmund Freud*, edited by James Strachey, Anna Freud and Carrie Lee Rothgeb, 14:67–102, 1914.

Gilovich, Thomas, “The Availability Heuristics and Biases : The Psychology of Intuitive Judgement.” In *Heuristics and Biases: The Psychology of Intuitive Judgment*, edited by Thomas Gilovich, Dale Griffin and Daniel Kahnemann, 103–112. Cambridge: Cambridge University Press, 2002.

Green, Leslie. “Law and Obligations.” In *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Jules L Coleman, Kenneth Einar Himma and Scott J Shapiro, 514–547. Oxford: Clarendon Press, 2004.

Grier, Kevin B. “Money.” In *The Elgar Companion to Public Choice*, edited by William F Shughart II and Laura Razzolini, 311–312. Cheltenham: Elgar Publishing, 2001

Hay, Colin. “Globalisation and Public Policy.” In *Oxford Handbook of Public Policy*, edited by Martin Rein, Michael Moran, and Robert Goodin.587–606. Oxford: Oxford University Press, 2006.

Hill, Frances R. “Nonparticipatory Association and Compelled Political Speech: Consent as a Constitutional Principle in the Wake of Citizens United.” In *Money, Politics and the Constitution: Beyond Citizens United*, edited by Monica Youn, 77-94. New York: Century Foundation Press, 2011.

Homans, George Caspar, “Behaviourism and After.” In *Social Theory Today*, edited by George Caspar Homans, A Giddens, and J Turner, 58–81. Stanford: Stanford University Press, 1987.

Jefferson, Thomas. “Letter to John Adams 1813.” In *The Writings of Thomas Jefferson*, Vol. XIII, edited by R.H. Johnston. New York: G.P. Putman’s and Sons, 1899.

———. “Thomas Jefferson, Letter to Alexander Donald 7 February 1788.” In *The Writings of Thomas Jefferson*, Vol. XIII, edited by R.H. Johnston. New York: G.P. Putman’s and Sons, 1899.

———. Thomas Jefferson, Letter to John Taylor 1816.” In *The Writings of Thomas Jefferson*, Vol. XIII, edited by R.H. Johnston. New York: G.P. Putman’s and Sons, 1899.

McCraw, Thomas K. “Rethinking the Trust Question.” In *Regulation in Perspective,* edited by Thomas K McCraw, 1–55. Cambridge, MA: Harvard University Press, 1981.

Mutch, Robert E.“The First Federal Campaign Finance Bills.” In *Money and Politic$*, edited by Paula Baker, 30–48. University Park: Pennsylvania State University Press, 2002.

———. “Three Centuries of Campaign Finance Law.” In *A Users Guide to Campaign Finance Reform*, edited by Gerald C Lubenow, 1–24. Lanham, MD: Roman and Littlefield, 2001.

Perloff, Richard M. “Perceptions and Conceptions of Political Media Impact: The Third-Person Effect and Beyond.” In *The Psychology of Political Communication*, edited by Ann N Crigler, 177-197. Ann Arbor : University of Michigan Press, 1996.

Rawls, John “A Theory of Justice” In *Utilitarianism: With Critical Essays by John Stuart Mill*, edited by Samuel Gorovitz, 244–45. Indianapolis, IN.: Bobbs Merrill, 1971.

Roosevelt, Franklin D. “Report of the President’s Committee on Administrative Management (The Brownlow Committee Report) to Congress.” In *Office of Administrative Management of the Government of the United States*, 86, 1937.

Rose, Paul, and W Keith Campbell. “Greatness Feels Good: A Telic Model of Narcissism and Subjective Well-Being.” In *Advances in Psychology Research*, edited by Serge P Shovov, 3–27. New York: Nova Science Publishers, 2004.

Rusticus. “Letter on the Tea Tax from ‘The Alarm’ November 27, 1773.” In *Memoirs of the Historical Society of Pennsylvania*, 459. Philadelphia, Pa.: Historical Society 177–197. Ann Arbor, MI: University of Michigan Press, 1996.

Scott, Colin. “Privatization and Regulatory Regimes.” In *Oxford Handbook of Public Policy*, edited by Martin Rein, Michael Moran, and Robert Goodin.651–68. Oxford: Oxford University Press, 2006.

Siegel, Paul. “Supreme Court of the United States, Citizens United v. FEC,.” In *Cases in Communication Law*, edited by Paul Siegel. 254–267. New York: Rowman & Littlefield Publishers, 2013.

Smith, Stephen A. “Schenck v. United States and Abrams v. United States.” In *Free Speech on Trial: Communication Perspectives on Landmark Supreme Court Decisions*, edited by Richard A Parker. 20–35. Tuscaloosa, AL: University of Alabama Press, 2003.

Stafford, Laura. “Social Exchange Theories.” In *Engaging Theories in Interpersonal Communication: Multiple Perspectives*, edited by Leslie A Baxter and Dawn O Braithwaite. 377–389. Thousand Oaks, CA: Sage, 2008.

Talja, Sanna, and Prehen Hansen. “Information Sharing.” In *New Directions in Human Behaviour : Information Science and Knowledge Management*, edited by Amanda Spink and Charles Cole.113–134. Houten, NL: Springer, 2006.

Thomas, Clive S. “Understanding and Comparing Interest Groups in Western Democracies.” In *Comparative Politics: Critical Concepts in Political Science*, edited by Howard J Wiarda. 152–153. Abingdon: Routledge, 2005.

Tushnet, Mark. “The Politics of Constitutional Law.” In *The Politics of Law: A Progressive Critique*, 2nd ed, edited by David Kairys.219–236. New York: Pantheron Books, 1990.

Werner, Timothy, and Graham Wilson. “Business Representation in Washington DC.” In *Oxford Handbook of Business and Government*, edited by David Coen, Wyn Grant, & Graham Wilson. 261–84. Oxford: Oxford University Press, 2012.

Wilde, William Cobb, ed. “An Act to Incorporate the Boston Manufacturing Company (Approved by the Governor Feb 23, 1813).” In *The Laws of the Commonwealth of Massachusetts from February 28, 1807, to Feb 27, 1813*, Vol. 1. 434. Boston, MA: Thomas and Andrews, 1813.

Willer, David, Michael J Lovaglia, and Barry Markovsky. “Power and Influence: A Theoretical Bridge.” In *Network Exchange Theory*, edited by David Willer. 229–247. Westport, CT: Greenwood Publishing Group, 1999.

Journal articles

Abelson, Reed. “Enron Board Comes Under a Storm of Criticism.” *New York Times*, December 16, 2001, PA2.

———. “Gary Lynch, Defender of Companies Has His Critics.” *New York Times*, 3 September1996, PA3.

Abramowicz, Michael, and Maxwell Stearns. “Defining Dicta.” *Stanford Law Review* 57, no. 4 (2005): 953–1094.

Abramowitz, Alan. “Partisan Polarization and the Rise of the Tea Party Movement,” 1–26, 2011.

Abrams, Burton A, and Russell F Settle. “Pressure-Group Influence and Institutional Change: Branch-Banking Legislation during the Great Depression.” *Public Choice* 77, no. 4 (1993): 687–705.

Adams, Greg, and Peverill Squire. “Incumbent Vulnerability and Challenger Emergence in Senate Elections.” *Political Behavior* 19, no. 2 (1997): 97–111. doi:10.1023/A:1024853907894.

Aguinis, Herman, Mitchell S Nesler, Brian M Quigley, and James T Tedeschi. “Perceptions of Power: A Cognitive Perspective.” *Social Behavior and Personality: An International Journal* 22, no. 4 (1994): 377–384.

Altschuler, Glenn C, and Stuart M Blumin. “Limits of Political Engagement in Antebellum America : A New Look at the Golden Age of Participatory Democracy.” *The Journal of American History* 84, no. 3 (1997): 855–885.

Amable, Bruno. “Morals and Politics in the Ideology of Neo-Liberalism.” *Socio-Economic Review* 9, no. 1 (2011): 3–30.

Anderson, Alistair R., and Sarah L. Jack. “The Effectiveness of Embeddedness on the Entrepreneurial Process.” *Journal of Business Venturing* 17, no. 5 (2002): 467–487.

Anechiarico, Frank, and James B. Jacob. "Visions of Corruption Control and the Evolution of American Public Administration." *Public Administration Review* 54, no. 5 (1994): 465–473.

Ansolabehere, Stephen, Jonathan Rodden, and James M Snyder. "Purple America." *The Journal of Economic Perspectives* 20, no. 2 (2006): 97–118.

Antieau, Chester J. "The Rule of Clear and Present Danger: Scope of Its Applicability." *Michigan Law Review* 48, no. 6 (1950): 811–840.

Appelbaum, Binyamin, and David S Hilzenrath. "SEC Didn't Act on Madoff Tips." *Washington Post*, December 16, 2008, B01.

Austin, Erik K. "The Possibility of Effective Participatory Governance: The Role and Place and the Social Bond." *Public Administration and Management* 15, no. 1 (2012): 221–258.

Avi-Yonah, Reuven S. "The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility." *Delaware Journal of Corporate Law* 30, no. 3 (2005): 767–818.

Aynes, Richard L. "On Misreading John Bingham and the Fourteenth Amendment." *Yale Law Journal* 103, no. 1 (1993): 57–104.

Bader, William D. "Some Thoughts on Blackstone, Precedent, and Originalism." *Vermont Law Review* 19, no. 1 (1994-1995): 5–18.

Baldwin, David A. "Power and Social Exchange." *The American Political Science Review* 72, no. 4 (1978): 1229–1242.

Ball, Stephen. "The Power of Ideas: The Ideational Shaping of the Structural Power of Business." *International Studies Quarterly* 56, no. 4 (2012): 661–73.

Banks, Jeffery S., and Barry R. Weingast. "The Political Control of Bureaucracies under Asymmetric Information." *American Journal of Political Science* 36, no. 2 (1992): 509–524.

Banz, Rolf W. "The Relationship between Return and Market Value of Common Stocks." *Journal of Financial Economics* 9, no. 1 (3-18): 1981.

Barkow, Rachel E. "Insulating Agencies: Avoiding Capture Through Institutional Design." *Texas Law Review* 89, no. 15 (2010): 15–80.

Bearfield, Domonic A. "What Is Patronage? A Critical Re-Examination." *Public Administration Review* 69, no. 1 (2009): 64–76.

Becker, Jo, and Gretchen Morgenson. "Geithner: Member and Overseer of Finance Club." *New York Times*, April 26, 2009, PA1

Beitz, Charles R. “Rawls’s Law of Peoples.” *Ethics* 110, no. 4 (2000): 669–696.

Belk, Russell W., and Melanie Wallendorf. “The Sacred Meanings of Money.” *The Journal of Economic Psychology* 11 (1990): 35–67.

Bell, Stephen. “Do We Really Need a New ‘Constructivist Institutionalism’ to Explain Institutional Change?” *British Journal of Political Science* 41, no. 4 (2011): 883–906.

Benson, Jocelyn. “Saving Democracy: A Blueprint for Reform in the Post-Citizens United Era.” *Fordham Urban Law Journal,* 40, no. 2 (2012): 723-772.

Berger, Linda L. “Of Metaphor, Metonymy, and Corporate Money: Rhetorical Choices in Supreme Court Decisions on Campaign Finance Regulation.” *Mercer Law Review* 58 (2006): 949–990.

Bernstein, Marver H. “The Loyalty of Federal Employees.” *The Western Political Quarterly* 2, no. 2 (1949): 254–264.

Berthoff, Rowland. “Conventional Mentality: Free Blacks, Women, and Business Corporations as Unequal Persons, 1820-1870.” *The Journal of American History* 26, no. 3 (1989): 753–784.

Bishin, Benjamin G. “Constituency Influence in Congress: Does Subconstituency Matter?” *Legislative Studies Quarterly* 25, no. 3 (2000): 389–415.

Bittker, Boris I., and George K. Rahdert. “The Exemption of Nonprofit Organizations From Federal Income Taxation.” *Yale Law Journal* 85 (1976): 299–358.

Blackburn, George M. “Radical Republican Motivation: A Case History.” *The Journal of Negro History* 54, no. 2 (1969): 109–126.

Bloch, Scott J. “The Judgement of History: Faction, Political Machines, and the Hatch Act.” *University of Pennsylvania Journal of Labour and Employment Law* 7, no. 2 (2005): 220–277.

Bogdanich, Walt, and Gretchen Morgenson. “S.E.C. Inquiry on Hedge Fund Draws Scrutiny.” *New York Times*, October 22, 2006, p B22.

Boyd, Robert. “Is the Repeated Prisoner’s Dilemma a Good Model of Reciprocal Altruism?” *Ethology and Sociobiology* 9, no. 2 (1988): 211–222.

Braekevelt, Jonas, Frederik Buylaert, Jan Dumolyn, and Jelle Haemers. “The Politics of Factional Conflict in Late Medieval Flanders.” *Historical Research* 85, no. 227 (2011): 13–31.

Bratton, William W. “The New Economic Theory of the Firm: Critical Perspectives From History.” *Stanford Law Review* 41, no. 6 (1989): 1471–1527.

Brodbeck, Josh, Matthew T. Harrigan, and Daniel A. Smith. “Citizen and Lobbyist Access to Members of Congress: Who Gets and Who Gives?” *Interest Groups & Advocacy* 2 (2013): 323–342.

Burks, Don M. “Persuasion, Self-Persuasion and Rhetorical Discourse.” *Philosophy & Rhetoric* 3, no. 2 (1970): 109–119. doi:10.2307/40236711[accessed 2 January 2015].

Burton, Steven J. “The Conflict Between Stare Decisis and Overruling in Constitutional Adjudication.” *Cardozo Law Review* 35, no 1 (2014): 1687–1713.

Caldeira, Gregory A., Marie Hojnacki, and John R. Wright. “The Lobbying Activities of Organized Interests in Federal Judicial Nomination.” *The Journal of Politics* 62, no. 1 (2000): 51–69.

Campbell, W Keith, Glenn D Reeder, Constantine Sedikides, and Andrew J Elliot. “Narcissism and Comparative Self-Enhancement Strategies.” *Journal of Research in Personality* 34, no. 3 (2000): 329–347.

Cataldo, L, J Anthony, Lori Fuller, and Thomas Miller. “An Analysis of SEC and PCAOB Enforcement Actions against Engagement Quality Reviewers: A Comment and Extension in Support of the Nevada Effect.” *Journal of Forensic & Investigative Accounting* 6, no. 2 (2014): 157–199.

Catlaw, Thomas J. “Authority, Representation, and the Contradictions of Post-Traditional Governing.” *American Review of Public Administration* 36, no. 3 (2006): 261–287.

Chan, Su Han, John D. Martin, and John W. Kensinger. “Corporate Research and Development Expenditures and Share Value.” *Journal of Financial Economics* 26, no. 2 (1990): 255–276.

Che, Yeon-Koo. “Revolving Doors and the Optimal Tolerance for Agency Collusion.” *The Rand Journal of Economics* 26, no. 3 (1995): 378–397.

Clement, Priscilla F. “The Works Progress Administration in Pennsylvania: 1935-1940.” *Pennsylvania Magazine of History and Biography* 95, no. 2 (1971): 244–260.

Cockerham, Sean. “98% of Write-in Votes Go to Murkowski.” *Anchorage Daily News*, November 11, 2010.

Cooley, Charles Horton. “The Sphere of Pecuniary Exchange.” *The American Journal of Sociology* 19 (1913): 188–189.

Cooper, Charles J. “Stare Decisis: Precedent and Principle in Constitutional Adjudication.” *Cornell Law Review* 73, no. 2 (2014): 401–410.

Corley, Pamela C, Paul M Collins, and Bryan Calvin. “Lower Court Influence on US Supreme Court Opinion Content.” *The Journal of Politics* 73, no. 1 (2011): 31–44.

Coser, Lewis A. “Social Conflict and the Theory of Social Change.” *The British Journal of Sociology* 8, no. 3 (1957): 197–207

Cosh, Andrew D., and Alan Hughes. “The Anatomy of Corporate Control: Directors, Shareholders and Executive Remuneration in Giant US and UK Corporations.” *Cambridge Journal of Economics* 11, no. 4 (1987): 285–313.

Cox, Archibald. “Ethics, Campaign Finance, and Democracy.” *Society* 35, no. 3 (1998): 54–59. doi:10.1007/BF02686136.

Dagan, Hanoch. “Political Money.” *Election Law Journal* 8, no. 4 (2009): 349–367. doi:10.1089/elj.2009.0040 [accessed 2 January 2015].

Daigle, Katherine H., and Michael T. Maloney. “Residual Claims in Bankruptcy: An Agency Theory Explanation.” *Journal of Law and Economics* 37, no. 1 (1994): 157–192.

Daly, Corbett B. “Nobel Laureate Krugman Slams Geithner Bailout Plan.” *Reuters*, March 23, 2009.

Daschle, Thomas A. “Bipartisan Campaign Reform Act of 1999 in Response to Amendment No 2229.” *Congressional Record* 145, no. 18 (October 14, 1999): 25518.

De Figueiredo, John M., and Emerson H. Tiller. “The Structure and Conduct of Corporate Lobbying: How Firms Lobby the Federal Communications Commission.” *Journal of Economics and Management Strategy* 10, no. 1 (2001): 91–122.

DeHaan, Ed, Simi Kedia, Kevin Koh, and Shivaram Rajgopal. “Does the Revolving Door Affect the SEC’s Enforcement Outcomes : Initial Evidence from Civil Litigation.” *Stanford University Graduate School of Business Research Paper* 14–14 (September 2014). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2125560#[accessed 2 January 2015].

“Developments in the Law : Corporations and Society.” *Harvard Law Review* 117, no. 7 (2004): 2169–2295.

Dewey, John. “The Historic Background of Corporate Legal Personality.” *The Yale Law Journal* 35, no. 6 (1926): 655–673.

De Zavala, Agnieszka Golec, Aleksandra Cichocka, Roy Eidelson, and Nuwan Jayawickreme. “Collective Narcissism and Its Social Consequences.” *Journal of Personality and Social Psychology* 97, no. 6 (2009): 1074–1096.

DiMartino, Danielle, and John V. Duca. “The Rise and Fall of Subprime Mortgages, Federal Reserve Bank of Dallas.” *Economic Letter 2* 11 (November 2007): 1–8

Doh, Jonathon P., and Terrence R. Guay. “Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective.” *Journal of Management Studies* 43, no. 1 (2006): 47–73.

Donson, Craig. “From Crisis to Reform: A Historical Perspective.” *Democracy at Large* 2, no. 4 (2006): 10–12.

Douglas, William O. “Stare Decisis.” *Columbia Law Review* 49, no. 6 (1949): 735–758.

Easthope, Gary, Andrew Bell, and James Wilkes. “Bernstein’s Sociology of the School.” *Research Intelligence* 1, no. 1 (1975): 37–48.

Editorial. “Deutsche Bank Hires Former S.E.C. Official.” *New York Times*, October 2, 2001.

———. “Khuzami Will Lead SEC Enforcement.” *Wall Street Journal*, February 20, 2009. http://www.wsj.com/articles/SB123508426606527305.

———. “Madoff Whistleblower Markopoulos Blasts SEC.” *Bloomberg News*, June 5, 2009.

———. “Pequot Capital and Its Chief Agree to Settle SEC Suit for $28 Million.” *New York Times*, May 27, 2010.

———. “Politicians for Rent.” *The Economist (UK)* 342, no. 8003 (1997): 23.

———. “SEC Settles with a Former Lawyer.” *New York Times*, June 29, 2010.

Emerson, Richard M. “Social Exchange Theory.” *Annual Review of Sociology* 2 (1976): 335–362.

Engdahl, David E. “Federal Question Jurisdiction under the 1789 Judiciary Act.” *Oklahoma City University Law Review* 14, no. 3 (1989): 521–545.

Ensley, Michael J. “Incumbent Positioning, Ideological Heterogeneity and Mobilization in U.S. House Elections.” *Public Choice* 151, no. 1 2 (2012): 43.

Epstein, Richard. “Unconstitutional Conditions, State Power, and the Limits of Consent (1988).” *Harvard Law Review* 102, no. 1 (1988): 4–104.

Erikson, Robert S, and Thomas R Palfrey. “Campaign Spending and Incumbency: An Alternative Simultaneous Equations Approach.” *Journal of Politics* 60, no. 2 (1998): 355–373.

Ewig, K.D. “The Legal Regulation of Campaign Finance in American Federal Elections.” *The Cambridge Law Journal* 47, no. 3 (1988): 370–402.

Fagundes, David. “Note, What We Talk About When We Talk About Persons: The Language of a Legal Fiction.” *Harvard Law Review* 114, no. 6 (2001): 1745–1768.

Falk, Armin, and Urs Fischbacher. “A Theory of Reciprocity.” *Games and Economic Behavior* 54, no. 2 (2006): 293–315.

Fehr, Ernst, and Simon Gächter. “Fairness and Retaliation: The Economics of Reciprocity.” *The Journal of Economic Perspectives* 14, no. 3 (2000): 159–181.

Fellowes, Matthew C., and Patrick J. Wolf. “Funding Mechanisms and Policy Instruments: How Business Campaign Contributions Influence Congressional Votes.” *Political Research Quarterly* 57, no. 2 (2004): 315-324. doi:10.1177/106591290405700212 [accessed 2 January 2015].

Finan, Frederico, and Laura Schechter. “Vote-Buying and Reciprocity.” *Econometrica* 80, no. 2 (2012): 863–881.

Fisch, Jill E. “Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy.” *Journal of Corporation Law* 31, no. 3 (2005): 637–674.

Flanders, Chad. “How Do You Spell MURKOWSKI: Part I: The Question of Assistance to the Voter.” *Alaska Law Review* 28 (2011): 1–28.

“Follow the Money Act of 2013 Bill Summary & Status 113th Congress (2013 - 2014).” *Congressional Record* S.791 2014. http://thomas.loc.gov/cgi-bin/bdquery/D?d113:791:./list/bss/d113SN.lst: [accessed 2 January 2015].

Frank, Thomas. “Obama and ‘Regulatory Capture.’” *Wall Street Journal*, June 24, 2009.

Frederick, Brian. “Constituency Population and Representation in the U.S. House.” *American Politics Research* 36, no. 3 (2008): 358-381.

Freeman, Linton C. “The Sociological Concept of ‘Group’: An Empirical Test of Two Models.” *American Journal of Sociology* 98, no. 1 (1992): 152–166.

Freidrich, Carl J. “The Rise and Decline of the Spoils Tradition.” *Annals of the American Academy of Political and Social Science* 189 (1937): 10–16.

French, Peter A. “The Corporation as a Moral Person.” *American Philosophical Quarterly* 16, no. 3 (1979): 207–215.

Friedmann, Wolfgang G. “Corporate Power: Government by Private Groups, and the Law.” *Columbia Law Review* 57, no. 2 (1957): 155–186.

Frug, Gerald E. “The Ideology of Bureaucracy in American Law.” *Harvard Law Review* 97, no. 6 (1984): 1276–1388

Gardbaum, Stephen A. “Broadcasting, Democracy and the Market.” *Georgia Law Journal* 82 (1993): 373–396.

Gaventa, John. “Finding the Spaces for Change: A Power Analysis.” *Institute of Development Studies Bulletin* 37, no. 6 (2011): 23–33.

Gerstein, Josh. “Judge Mulls SEC Limits on Political Donations.” *Politico*, September 12, 2014, 23.

Gevurtz, Franklin A. “The Globalisation of Corporate Law: The End of History or a Never-Ending Story?(2011).” *Washington Law Review* 86 (2011): 475–521.

Gilens, Martin, and Benjamin I. Page. “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens.” *Perspectives on Politics* 12, no. 3 (2014): 564–581.

Gil, Troy. “Money and Politics: The Oldest Connection.” *The Wilson Quarterly* 21, no. 3 (1997): 14–18.

Gill, Stephen, and David Law. “Global Hegemony and the Structural Power of Capital.” *International Studies Quarterly* 33, no. 4 (1989): 475–99.

Gordon, Sanford C., and Catherine Hafer. “Corporate Influence and the Regulatory Mandate.” *Journal of Politics* 69, no. 2 (2007): 300–319.

Gray, Elizabeth P., and David W. Blass. “The SEC’s Pay-To-Play : Rule Proposal for Investment Advisers. What’s Behind It & What Are the Next Steps?” *Wall Street Lawyer* 13, no. 10 (2009): 1–8.

Greenfield, Kent. “The Puzzle of Short-Termism.” *Wake Forest Law Review* 46, no. 3 (2011): 627–640.

Greenhouse, Linda. “Justices, in a 5-4 Decision, Back Campaign Finance Law That Curbs Contributions.” *The New York Times*, 2003.

Green, Lesley. “Positivism and Conventionalism.” *Canadian Journal of Law and Jurisprudence* 12 (1999): 35–52.

Greenwood, Daniel JH. “Essential Speech: Why Corporate Speech Is Not Free.” *Iowa Law Review* 83 (1998): 995–1070.

Griffin, Larry J., Michael E. Wallace, and Beth A. Rubin. “Capitalist Resistance to the Organization of Labor Before the New Deal: Why? How? Success?” *American Sociological Review* 51, no. 2 (1986): 147–167.

Hansen, Richard L. “Beyond Incoherence: The Roberts Court’s Deregulatory Turn in FEC v. Wisconsin Right to Life.” *Minnesota Law Review* 92 (2008): 1064–1109.

Hansmann, Henry, and Reinier Kraakman. “The End of History for Corporate Law.” *Georgetown Law Journal* 89 (2000): 439-468.

Harris, William Overton. “A Corporation as a Citizen in Connection with the Jurisdiction of the United States Courts.” *Virginia Law Review* 1, no. 7 (1914): 507–519.

Hart, David. “‘Business’ Is Not an Interest Group: On the Study of Companies in American National Politics.” *Annual Review of Political Science* 7, no. 1 (2004): 47–69.

Harter, James K., Frank I. Schmidt, and Theodore L. Hayes. “Business-Unit-Level Relationship between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis.” *Journal of Applied Psychology* 87, no. 2 (2002): 268–279.

Haywood, Thomas W, Howard M Kravitz, Linda S Grossman, James L Cavanaugh, John M Davis, and Dan A Lewis. “Predicting the‘ Revolving Door’ Phenomenon among Patients with Schizophrenic, Schizoaffective, and Affective Disorders.” *The American Journal of Psychiatry* 152, no. 6 (1995): 856–861.

Heady, Ferrel. “American Government and Politics: The Hatch Act Decisions.” *The American Political Science Review* 41, no. 4 (1947): 687–699.

Helms, E. Allen. “The President and Party Politics.” *Journal of Politics* 11, no. 1 (1949): 42–64.

Hill, Forest G. “Veblen, Berle, and the Modern Corporation.” *American Journal of Economics and Sociology* 26, no. 3 (1967): 279–295.

Hill, Frances R. “Probing the Limits of Section 527 to Design a New Campaign Finance Vehicle’.” *Tax Notes* 86 (2000): 387–402.

Hilzenrath, David S. “Inspector General Faults SEC in Probe on Document Shredding.” *Washington Post*, November 1, 2011.

Hoffinger, Roy E. “First Amendment Limitations on Patronage Employment Practices.” *University of Chicago Law Review* 49, no. 1 (1982): 181–202.

Hollihan, John P. “The Federal Election Campaign Act Amendments of 1974: The Constitutionality of Limiting Political Advertising by the Non-Candidate.” *Florida State University College of Law* 3 (1975): 266–289.

Holt, Michael F. “The Primacy of Party Reasserted.” *The Journal of American History* 86, no. 1 (1999): 151–157.

Horowitz, Irving L. “Socialization without Politicization: Emile Durkheim’s Theory of the Modern State.” *Political Theory* 10, no. 3 (1982): 353–377.

Hovenkamp, Herbert. “Regulatory Conflict in the Gilded Age: Federalism and the Railroad Problem.” *Yale Law Journal* 97, no. 6 (1988): 1017–1072.

Ho, Virginia Harper. “Theories of Corporate Groups: Corporate Identity Reconceived.” *Seton Hall Law Review* 42 (2012): 879–992.

Howard, Glen S. “Patronage Dismissals: Constitutional Limits and Political Justifications.” *The University of Chicago Law Review* 41, no. 2 (Winter 1974): 297–328.

Hughes, Siobhan. “SEC Reversal Irks a Committee Chief.” *Wall Street Journal*, December 28, 2006.

Huza, Elias. “Legislative Control over Administration: Congress and the W. P. A.” *The American Political Science Review* 36, no. 1 (1942): 51–67.

Ingersoll, C.J. “Reports on the Currency in the Pennsylvannia Election: Tuesday May 23, Minority Report.” *Niles Weekly Register*, June 3, 1837, 217.

Iwai, Katsuhito. “Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance.” *The American Journal of Comparative Law* 47, no. 4 (1999): 583–632.

James, Scott C. “Patronage Regimes and American Party Development from The Age of Jackson to the Progressive Era.” *British Journal of Political Science* 36, no. 1 (2006): 39–60. doi:10.1017/S0007123406000032 [accessed 2 January 2015].

Jensen, Michael C, and William H Meckling. “Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure.” *Journal of Financial Economics* 3, no. 4 (1976): 305–360.

Jones, H Bradley. “The Professional Corporation.” *Fordham L. Rev.* 27, no. 3 (1959): 353–372.

Justice Goldberg. “Keeping Faith With the Constitution.” *Christian Science Monitor*, April 20, 1987, 15–16.

Kahneman, Daniel. “Maps of Bounded Rationality: Psychology for Behavioral Economics.” *American Economic Review* 93, no. 5 (2003): 1449–1475.

Kasel, Shayla. “Show Us Your Money: Halting the Use of Trade Organizations as Covert Conduits for Corporate Campaign Contributions.” *The Journal of Corporation Law* 33, no. 1 (2007): 297-324.

Katyal, Neal Kumar. “Internal Separation of Powers.” *Yale Law Journal* 115 (2006): 2331–2336.

Kennedy, C. “Criminal Sentences for Corporations: Alternative Fining Mechanisms.” *California Law Review* 73, no. 2 (1985): 443–482.

Kessler, Mark. “Legal Discourse and Political Intolerance: The Ideology of Clear and Present Danger.” *Law & Society Review* 27, no. 3 (1993): 559–598.

Kiewiet, D. Roderick, and Mathew D McCubbins. “Congressional Appropriations and the Electoral Connection.” *Journal of Politics* 47, no. 1 (1985): 59–82.

Kitch, Edmund W. “The Law and Economics of Rights in Valuable Information.” *The Journal of Legal Studies* 9, no. 4 (1980): 683–723.

Konings, Martijn. “The Construction of US Financial Power.” *Review of International Studies* 35, no. 1 (2009): 69–94.

Kozel, Randy J. “The Rule of Law and the Perils of Precedent.” *Michigan Law Review* 111 (2013): 37–45.

Kroll, Andy. “Follow the Dark Money: The down and Dirty History of Secret Spending, PACS Gone Wild, and the Epic Four-Decade Fight over the Only Kind of Political Capital That Matters” *Mother Jones* 37, no. 4 (2012): 16-26.

Lasswell, Harold D., and Howard H. Cummings. “Public Opinion in War and Peace: How Americans Make Up Their Minds.” *Problems in American Life* 14 (1943): 7–50.

Lawler, Edward J, Shane R Thye, and Jeongkoo Yoon. “Emotion and Group Cohesion in Productive Exchange.” *American Journal of Sociology* 106, no. 3 (2000): 616–657.

Lederle, John W. “Political Committee Expenditures and the Hatch Act.” *Michigan Law Review* 44, no. 2 (1945): 294–299.

Leupold, Robert J. “The Kentucky WPA: Relief and Politics, May–November, 1935.” *Filson Club History Quarterly* 49, no. 2 (1975): 152–168.

Leval, Pierre N. “Judging under the Constitution: Dicta about Dicta.” *New York University Law Review* 81, no. 4 (2006): 1249–1282.

Levine, Michael E, and Jennifer L Forrence. “Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis.” *Journal of Law, Economics, & Organization* 6 (1990): 167–198.

Lewis, Alfred E. “5 Held in Plot to Bug Democrats’ Office Here.” *Washington Post*, June 18, 1972.

Lim, Youngsik. “An Empirical Analysis of Supreme Court Justices’ Decision Making.” *Journal of Legal Studies* 29, no. 2 (2000): 721–752.

Lindsay, Alexander Dunlop. “The State in Recent Political Theory.” *Political Quarterly* 128 (1914): 128–145.

LoPucki, Lynn M. “The Myth of the Residual Owner: An Empirical Study.” *Washington University Law Review* 82, no. 4 (2004): 1341–1374.

Lowery, David, and Virginia Gray. “A Neopluralist Perspective on Research on Organized Interests.” *Political Research Quarterly* 57, no. 1 (2004): 164–75.

Lowry, Robert C. “Mobilizing Money : Political Action Committees and Political Participation.” *American Politics Research* 41, no. 5 (2013): 839–862.

Lucian, Bebchuk. “The Myth of the Shareholder Franchise.” *Virginia Law Review* 93, no. 3 (2007): 675–732.

Luckowski, Jeana and James J. Lopach. “Freedom versus Equality in Campaign Finance Reform.” *The Social Studies* 93, no. 3 (2002): 124–129.

Lunenburg, Fred C. “Power and Leadership : An Influence Process.” *International Journal of Management, Business and Administration* 15, no. 1 (2012): 1–9.

Machen, Arthur W. “Corporate Personality.” *Harvard Law Review* XXIV, no. 4 (1911): 253–267.

Mcintyre, Vicki. “Nike vs. Kasky: Leaving Corporate America Speechless.” *William Mitchell Law Review* 30, no. 4 (2004): 1531–69.

Madow, Michael. “Private Ownership of Public Image: Popular Culture and Publicity Rights.” *California Law Review* 81, no. 1 (1993): 125–240.

Makdisi, George. “Madrasa and University in the Middle Ages.” *Studia Islamica* 32 (1970): 255–264.

Mark, Gregory A. “The Personification of the Business Corporation in American Law.” *The University of Chicago Law Review* 54, no. 4 (1987): 1441–1483.

Martin, Jennifer S. "The House of Mouse and Beyond: Assessing the SEC's Efforts to Regulate Executive Compensation." *32 Delaware Journal of Corporate Law* 32, no. 2 (2006): 481–529.

Mathis, Jerome, James McAndrews, and Jean-Charles Rochet. "Rating the Raters: Are Reputation Concerns Powerful Enough to Discipline Rating Agencies?" *Journal of Monetary Economics* 56, no. 5 (2009): 657–674.

Matten, Dirk, Andrew Crane, and Wendy Chapple. "Behind the Mask: Revealing the True Face of Corporate Citizenship." *Journal of Business Ethics* 45, no. 1–2 (2003): 109–120.

Mayer, Lloyd H. "The Much Maligned 527 and Institutional Choice." *Boston University Law Review* 87 (2007): 625–688.

McElwee, Sean, and Liz Kennedy. "The SEC Should Shine a Light on Dark Political Donations From Corporations." *Huffington Post*, July 28, 2014.

McGovern, James J. "The Exemption Provisions of Subchapter F." *Tax Lawyer* 29, no. 3 (1975- 1976): 530-552

Millon, David. "Theories of the Corporation." *Duke Law Journal* 2 (1990): 201–262.

Morgenson, Gretchen. "Top Enforcer at the SEC Steps Down." *New York Times*, February 9, 2009.

Mori, Jennifer. "Languages of Loyalism: Patriotism, Nationhood and the State in the 1790s." *The English Historical Review* 118, no. 475 (2003): 33–58. doi:10.1093/ehr/118.475.33 [accessed 2 January 2015].

Nelson, Dalmas H., and Paul J. Hoffmann. "Federal Employees and Voting in Federal Elections." *The Western Political Quarterly* 22, no. 3 (1969): 581–593.

Nelson, Justin A. "The Supply and Demand of Campaign Finance Reform." *Columbia Law Review* 100 (2000): 524–534.

Nelson, William E., Scott I. Rishikof, and Michael Jo. "The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?" *Vanderbilt Law Review* 62, no. 6 (n.d.): 1749–1814.

Neuborne, Burt. "One Dollar, One Vote?" *The Nation* 263, no. 18 (1996): 21.

Ng, Serena, and Carrick Mollenkamp. "Top US, European Banks Got $50 Billion in AIG Aid." *The Wall Street Journal*, March 9, 2009.

Nichols, John. "Campaign Finance: The Sequel -- with McCain-Feingold Finally Passed, Its Time to Focus Again on Public Funding" *The Nation* 274, no. 16 (2002): 16.

Nichols, Philip M. "The Perverse Effect of Campaign Contribution Limits: Reducing the Allowable Amounts Increases the Likelihood of Corruption in the Federal Legislature." *American Business Law Journal* 48, no. 1 (2011): 77–118.

Nixon, Richard. "State of the Union Address." *Weekly Compilation of Presidential Documents* 7, no. 4 (1971): 89.

Nocera, Jo. "Who's Really Being Propped up by the AIG Bailout?" *New York Times*, March 2, 2009.

Noland, Jon D. "Stare Decisis and the Overruling of Constitutional Decisions in the Warren Years." *Valparaiso University Law Review* 14, no. 1 (1969): 101–135.

O'Grady, Dennis. "State Economic Development Incentives: Why Do States Compete?" *State and Local Government Review* 19, no. 3 (1987): 86–94.

Padfield, Nicola, and Shadd Maruna. "The Revolving Door at the Prison Gate : Exploring the Dramatic Increase in Recalls to Prison." *Criminology and Criminal Justice* 6, no. 3 (2006): 329–352.

Patterson, Michael S. "The Fall of a Bishop: James Cannon, Jr. Versus Carter Glass, 1909-1934." *Journal of Southern History* 39, no. 4 (1973): 493–518.

Persily, Nathaniel. "The Law of Democracy: Foreward." *University of Pennsylvania Law Review* 153, no. 1 (2004): 1–4.

Piety, Tamara R. "Grounding Nike: Exposing Nike's Quest for a Constitutional Right to Lie." *Temple Law Review* 78, no. 151 (2005): 151–200.

Powell, Walter W, and Kaisa Snellman. "The Knowledge Economy." *Annual Review of Sociology* 30 (2004): 199–220.

Podsakoff, Philip M, and Chester A Schriescheim. "Field Studies of French and Raven's Bases of Power: Critique, Reanalysis, and Suggestions for Future Research." *Psychological Bulletin* 97, no. 3 (1985): 387–411.

Pruzan, Peter. "Corporate Reputation: Image and Identity." *Corporate Reputation Review* 4, no. 1 (2001): 50–64.

Publius. *Federalist 78*, 1788. http://thomas.loc.gov/home/histdox/fed_78.html [accessed 2 January 2015].

Rabin, Robert L. "Federal Regulation in Historical Perspective." *Stanford Law Review* 38, no. 5 (1986): 1189–1326.

Radcliffe, Evan. “Revolutionary Writing, Moral Philosophy, and Universal Benevolence in the Eighteenth Century.” *Journal of the History of Ideas* 54, no. 2 (1993): 221–240.

Reed, John J. “A History of Presidential Elections by Eugene H. Roseboom.” *The Pennsylvania Magazine of History and Biography* 82, no. 2 (April 1958): 233–235. doi:http://www.jstor.org/stable/20089076 [accessed 2 January 2015].

Reilly, David. “Secret Banking Cabal Emerges From AIG Shadows: David Reilly.” *Bloomberg News*, January 29, 2010.

Richard Esenberg. “Citizens United Is No Dred Scott.” *Nexus* 16 (2010): 99–195.

Richards, Eric L. “Federal Election Commission v. Colorado Republican Federal Campaign Committee: Implications for Parties, Corporate Political Dialogue, and Campaign Finance.” *American Business Law Journal* 40, no. 1 (2002): 83–123.

Romiti, Jonathon. “Playing Politics with Shareholder Value: The Case for Applying Fiduciary Law to Corporate Political Donations Post-Citizens United.” *Boston College Law Review* 53, no. 2 (2012): 737–774.

Rose, Henry. “A Critical Look at the Hatch Act.” *Harvard Law Review* 75, no. 3 (1972): 510–526.

Rosenfeld, Michel. “Can Rights, Democracy, and Justice Be Reconciled Through Discourse Theory? Reflections on Habermas’s Proceduralist Paradigm of Law.” *Cardozo Law Review* 17 (1996 1995): 791–824.

Sabatino, Richard A. “The Responsible Corporation.” *American Journal of Economics and Sociology* 25, no. 3 (1966): 255–266.

Salisbury, Robert H., John P. Heinz, Edward O. Laumann, and Robert L. Nelson. “Who Works with Whom? Interest Group Alliances and Opposition.” *American Political Science Review* 81, no. 4 (1987): 1217–1234.

Scanell, Kara. “Davis Polk Recruits Ex-SEC Aide.” *Wall Street Journal*, April 13, 2009. http://www.wsj.com/articles/SB123958616552412509[accessed 2 January 2015].

Scherer, Nancy, Brandon L. Bartels, and Amy Steigerwalt. “Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process.” *The Journal of Politics* 70, no. 4 (2008): 1026–1039.

Schoenbachler, Matthew. “Republicanism in the Age of Democratic Revolution: The Democratic-Republican Societies of the 1790s.” *Journal of the Early Republic* 18, no. 2 (1998): 237-261.

Schofield, : Robert G. “The Distinction between Judicial Dicta and Obiter Dicta.” *Los Angeles Lawyer*, October 2002, 17–21.

Schroth, Peter W. “Corruption and Accountability of the Civil Service in the United States.” *The American Journal of Comparative Law* Vol. 54, American Law in the 21st Century: U.S. National Reports to the XVIIth International Congress of Comparative Law (2006): 553–579.

Scully, Robert E. “Executive Compensation, the Business Judgement Rule and the Dodd-Frank Act: Back to the Future for Private Litigation.” *The Federal Lawyer*, 2011, 36–41.

Sellers, Charles G. “Andrew Jackson versus the Historians.” *The Mississippi Valley Historical Review* 44, no. 4 (1958): 615–634.

Shaffer, Brian, Paul M Percy, and Bennett J Tepper. “Further Assessment of the Structure of Hinkin and Schrlesheim’s Measures of Interpersonal Power.” *Educational and Psychological Measurement* 57, no. 3 (1997): 505–514.

Shaner, Andrew, Thad A Eckman, Lisa J Roberts, Jeffery N Wilkins, Douglas E Tucker, John W Tsuang, and Jim Mintz. “Disability Income, Cocaine Use, and Repeated Hospitalization among Schizophrenic Cocaine Abusers—a Government-Sponsored Revolving Door?” *New England Journal of Medicine* 333, no. 12 (1995): 777–783.

Sheridan, Eugene R. “Thomas Jefferson and the Giles Resolutions.” *The William and Mary Quarterly* 49, no. 4 (1992): 589–608.

Sitkoff, Robert H. “Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters.” *University of Chicago Law Review* 69, no. 3 (2002): 1103–1166.

Smith, Bryant. “Legal Personality.” *The Yale Law Journal* 37, no. 3 (1928): 283–299.

Snyder, James M. Jr. “Campaign Contributions as Investments: The U.S. House of Representatives, 1980–1986.” *Journal of Political Economy* 98, no. 6 (1990): 1195–1227.

Soltow, Lee. “Economic Inequality in the United States in the Period from 1790 to 1860.” *The Journal of Economic History* 31, no. 4 (1971): 822–839.

Sorauf, Frank J. “Patronage and Party.” *Midwest Journal of Political Science* 3, no. 2 (1959): 115–126.

———. “The Silent Revolution in Patronage.” *Public Administration Review* 20, no. 1 (Winter 1960): 28–34.

Spriggs, James F. “The Supreme Court and Federal Administrative Agencies: A Resource-Based Theory and Analysis of Judicial Impact.” *American Journal of Political Science* 40, no. 4 (1996): 1122–1151.

Stack, Kevin M. “The Constitutional Foundations of Chenery.” *Yale Law Journal* 116, no. 5 (2007): 882–1169.

Stein, Howard F. “The Silent Complicity at Watergate.” *The American Scholar* 43, no. 1 (Winter /74 1973): 21–37.

Stein, Robert M, and Kenneth N Bickers. “Congressional Elections and the Pork Barrel.” *Journal of Politics* 56, no. 2 (1994): 377–99.

Stein, Robert M, and Kenneth N Bickers. “Congressional Elections and the Pork Barrel.” *Journal of Politics* 56, no. 2 (1994): 377–399.

Stelter, Brian. “Eight Hours a Day Spent on Screens, Study Finds.” *The New York Times*, March 27, 2009.

Stephens, Christopher. “Modelling Reciprocal Altruism.” *The British Journal for the Philosophy of Science* 47, no. 4 (1996): 533–551.

Stern, Paul G. “A Pluralistic Reading of the First Amendment and Its Relation to Public Discourse’.” *Yale Law Journal* 99, no. 4 (1990): 925–944.

Stigler, George J. “The Theory of Economic Regulation.” *The Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21.

Stiglitz, Joseph. “Obama’s Ersatz Capitalism.” *New York Times*, March 31, 2009.

Stokes, Susan C. “Constituency Influence and Representation.” *Electoral Studies* 17, no. 3 (1998): 351–367.

Sunstein, Cass R. “Political Equality and Unintended Consequences.” *Columbia Law Review* 94, no. 4 (1994): 1390–1414.

Temin, Peter. “A Market Economy in the Early Roman Empire.” *Journal of Roman Studies* 91 (2001): 169–181.

———. “The Economy of the Early Roman Empire.” *The Journal of Economic Perspectives* 20, no. 1 (2006): 133–151.

“The Income Tax of 1894.” *The Quarterly Journal of Economics* 9, no. 2 (1895): 223–234 (Appendix).

“The Supreme Court.” *Economist*, October 9, 1999, 30.

Tirole, Jean. “Hierarchies and Bureaucracies: On the Role of Collusion in Organizations.” *Journal of Law, Economics, & Organization* 2, no. 2 (1986): 181–214.

Torres-Spelliscy, Ciara. “Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws.” *Nexus* 16 (2010): 59–97.

Trivers, Robert L. “The Evolution of Reciprocal Altruism.” *Quarterly Review of Biology* 46 (1971): 35–57.

Tuab, Jennifer S. “Money Managers in the Middle: Seeing and Sanctioning Political Spending after Citizens United.” *New York University Journal of Legislation and Public Policy* 15, no. 2 (2012): 443–484.

Turner, Rachel S. “Neo-Liberal Constitutionalism: Ideology, Government and Rule of Law.” *Journal of Law and Politics* 1, no. 2 (2008): 47–55.

Urbinati, Nadia, and Mark E. Warren. “The Concept of Representation in Contemporary Economic Theory.” *Annual Review of Political Science* 11, no. 1 (2008): 387–412.

Urofsky, Melvin I. “Campaign Finance Reform Before 1971.” *Albany Government Law Review* 1 (2008): 1–61.

Valor, Carmen. “Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability.” *Business and Society Review* 110, no. 2 (2005): 191–212.

Van Hees, Martin, and Bernard Steunenberg. “The Choice Judges Make: Court Rulings, Personal Values, and Legal Constraints.” *Journal of Theoretical Politics* 12 (2000): 305–323.

Velasquez, Manuel G. “Why Corporations Are Not Morally Responsible for Anything They Do.” *Business & Professional Ethics Journal* 2, no. 3 (1983): 1–18.

Verhoef, Peter C. “Understanding the Effect of Customer Relationship Management Efforts on Customer Retention and Customer Share Development.” *Journal of Marketing* 67, no. 4 (2003): 30–45.

Vermeiren, Mattias. “The Crisis of US Monetary Hegemony and Global Economic Adjustment.” *Globalizations* 10, no. 2 (2013): 245–59.

Vinogradoff, Paul. “Juridical Persons.” *Columbia Law Review* 24, no. 6 (1924): 594–607.

Vinson, Fred M. “Work of the Supreme Court.” *Texas Bar Journal* 12 (1948): 551–78.

Vogel, David. “The Corporation as Government: Challenges & Dilemmas.” *Polity* 8, no. 1 (1975): 5–37.

Waldron, Jeremy. “Stare Decisis and the Rule of Law: A Layered Approach.” *Michigan Law Review* 111, no. 1 (2012): 1–32.

Watson, Erin, and Pennie Foster-Fishman. “The Exchange Boundary Framework: Understanding the Evolution of Power within Collaborative Decision-Making Settings.” *American Journal of Community Psychology,* 51, no. 1 (2013): 151–163.

Weidman, David J. “The Real Truth about Federal Campaign Finance: Rejecting the Hysterical Call for Publicly Financed Congressional Campaigns.” *Tennessee Law Review* 63, no. 3 (1996): 775–791.

Wells, Michael L. “Congress’s Paramount Role in Setting the Scope of Federal Jurisdiction.” *Northwestern University Law Review* 85, no. 2 (1991): 465–77.

Werner, Walter. “Management, Stock Market, and Corporate Reform: Berle and Means Reconsidered.” *Columbia Law Review* 77, no. 3 (1977): 388–417.

Wettereau, James O. “New Light on the First Bank of the United States.” *The Pennsylvania Magazine of History and Biography* 61, no. 3 (1937): 263–285.

Willoughby, Westel Woodbury. “The Juristic Conception of the State.” *The American Political Science Review* 12, no. 2 (1918): 192–208.

Wilson, James Q. “The Economy of Patronage.” *The Journal of Political Economy* 69, no. 4 (1961): 369–380.

Winkler, A. “Other People’s Money: Corporations, Agency Costs, and Campaign Finance Law.” *Georgia Law Journal* 92 (2004): 871–934.

———. “The Corporation in Election Law.” *Loyola of Los Angeles Law Review* 32 (1999): 1243–1262.

Wood, B.D., and Richard W. Waterman. “The Dynamics of Political Control of the Bureaucracy.” *The American Political Science Review* 85, no. 3 (1991): 801–828.

Woodward, Bob, and Carl Bernstein. “GOP Security Aide Among Five Arrested in Bugging Affair.” *Washington Post*, June 19, 1972.

Woodward, Susan E. “Regulatory Capture at the US Securities and Exchange

Commission." *Sand Hill Econometrics Working Paper*, 1998. http://www.sandhillecon.com/pdf/RegulatoryCapture.pdf. [Accessed 24 April 2009].

Wulfson, Myrna. "The Ethics of Corporate Social Responsibility and Philanthropic Ventures." *Journal of Business Ethics* 29, no. 1–2 (2001): 135–145.

Zardkoohi, Asghar. "On the Political Participation of the Firm in the Electoral Process." *Southern Economic Journal* 51, no. 3 (1985): 804–17.

Zietlow, Rebecca E. "Congressional Enforcement of Civil Rights and John Bingham's Theory of Citizenship." *Akron Law Review* 36, no. 4 (2003): 717–768.

Appendices

Appendix 1

The key aspects of *Corporate Interest Group Theory (CIGT)* are generally as follows:

- The theory stands in opposition to pluralism in suggesting that a democratic republic is a utopian ideal.
- The theory stands in opposition to state autonomy theory.
- The theory assumes power lies in positions of authority in key economic and political institutions.
- The theory supports Neo-liberal economic principles
- The theory supports Conservative political principles
- The theory assumes that corporations, as persons, are protected by the Constitution
- The theory assumes a deliberate un-equal access to the policy-making arena
- The theory assumes a natural form of cohesion in the marketplace
- The theory assumes a competitive process for the determining policies is unwarranted
- The theory assumes that the government is a desirable extension of corporate influence
- The theory assumes minimalist government is essential for economic stability
- The theory assumes the right and responsibility of the elite to have considerable influence over the US political economy.
- The theory addresses the consequences of interest-group competition
- The theory assumes that CSR is a natural corporate condition and therefore does not require enforcement by legislation or regulation.

Appendix 2

Definitions

The following definitions describe the context in which these theories and concepts are understood in this thesis.

Beneficial narcissism: A moderate positive form of narcissistic behaviour that has been shown to be a beneficial characteristic of leaders, both political and corporate.

Business Interest groups: Can be classified as economic interest groups but focus on benefits, not necessarily economic, for small to medium business owners including the agricultural sector.

Conservatism: Conservatism is a political doctrine and a social philosophy promotes retaining traditional social institutions in the context of a specific culture and civilization.

Constitutional Mandate: Another vague concept but generally taken to mean an authoritative command or legal instruction by a constitutionally empowered authority that is consistent with the Constitution.

Corporate person: The corporate form of person; a non-biological entity that is considered under law to have personality or personhood. See Corporation.

Corporation: A corporation in the US context is a separate publicly listed legal entity to act within legal constraints and recognized in law with corporate registration. A registered corporation possesses legal personality and is therefore not owned by shareholders; it is owned by itself.

Economic Interest groups: Economic interest groups are one of the five broad categories of interest groups in the US. These groups advocate for the economic interest and benefits of their members. These may include business, labour, professional, and trade interest groups.

Elite Theory: A theory that is used to describe and explain the power relationships in contemporary society. Elite theory and the related concept, economic-elite domination, are based on the premise or theory of the state which believes that the wealthy elite control the US political economy. The economic elite generally tend to consist of the same people as the political elite. There is an interaction with transaction theory.

Ideological interest group theory: A group of natural persons who unite on issues driven by deeply held beliefs, a specific ideology.

Influence: Influence is defined as a capability to have an effect on the character, development, or behaviour of someone or something, or the effect itself.

Intelligible Guide: While this has been determined by the Supreme Court as an ‘instruction’ to Congress, the Court has never defined ‘Intelligible Guide’. Despite this obvious oxy-moron, it is generally considered to be legislative intent that is capable of being understood, comprehensible and clear.

Interest group theory: Interest group theory, also referred to as pluralism,

considers that many different interests compete to control government policy, and that their conflicting interests can balance out each other to provide good governance.

Legal positivism: A school of thought that states legal personhood of a corporation is a simple matter of assigning a particular legal status without any connections to ethics or morality.

Liberalism: In US politics, liberalism is an ideology in favor of using state regulation to advance socially progressive agendas and lessen inequalities.

Mechanical solidarity: Aspects of society common to all members of a society that is greater in number than those which to apply personally to each member.

Moral Agency: Moral agency is an individual's ability to make moral judgments based on some commonly held notion of right and wrong and to be held accountable for these actions.

Natural person: A Human being; a member of the species Homo-sapiens. The term can be extended to recognise citizenship; this becoming natural person citizens.

Neo-conservatism: Neo-conservativism advocates the assertive promotion of the US form of Republic democracy including the political doctrines of Conservatism along with the promotion of US national interest, particularly in international affairs. This specifically includes military force. It relies on neo-liberalism to fulfil those goals.

Neo-liberalism: Globally, neo-liberalism is an ideology optimised by the rule of law. By distinguishing law from legislation, the rule of law constitutes the political essence of neo-liberal ideology. It restricts the coercive powers of government, and encourages economically productive behaviour, these duel aspects being safeguards and embodiment of liberty of the individual. These also ensure equality and justice by making every individual accountable to law and by preserving the legal system.

Organic solidarity: Aspects of society where differences rather than commonalities between individuals create a form of solidarity

Pluralism: Also refers to Electoral Democracy and Majoritarian Pluralism. Pluralism considers interest group politics as a methodological process that is complete in itself. Pluralist theory evaluates the political system as a whole and seeks to understand how the various interest groups make claims to the government, how the government reacts to that influence, and what effect, if any, this has on policy.

Positional or institutional duties: The duties attached to any public office that are not moral duties but as tasks and responsibilities assigned to certain institutional positions.

Reciprocal altruism: A model of shared behaviour whereby an corporate person and/or a natural person acts in a manner that may temporarily reduce its capability while increasing another corporate person and/or a natural persons capability, with the expectation that the other corporate person and/or a natural person will act in a similar manner at a later time.

Regulatory capture: Regulatory capture is a form of political corruption that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the sector it is charged with regulating. See Revolving door.

Revolving door: In politics, the revolving door is a movement of personnel between roles as legislators and regulators and regulated sectors affected by legislation and regulation. See Regulatory capture.

Self Interest: The focus on the needs or desires (interests) of the self. Several philosophical, psychological, and economic theories suggest altruistically motivated behaviour is self interest in disguise.

Separation of Powers: Separation of powers in the US is a political doctrine with three separate branches of government. Each of the three branches has defined Constitutional abilities to check the powers of the other branches.

Short-Termism: Short-termism refers to a disproportionate focus on short-term results at the expense of long-term interests. This applies to members of Congress who are in effect in permanent election mode in readiness for the biennial election.

Social exchange theory: A social psychological and sociological viewpoint that describes social change and stability as a process of negotiated exchanges.

Stake holder theory: A conceptual framework of business ethics and organizational management which attempts to address moral and ethical values in the management of an organization.

Transaction theory: Transaction theories explain the direct and often strategic interactions between individual interest groups and the government, by analysing individual interest group-government interaction at the individual and/or individual interest group level. There is interaction between Transaction theory and Pluralism.

-//-

Appendix 3

Amicus Curiae; Citizens United.[560]

Amicus Briefs Supporting Citizens United

Jurisdiction

American Civil Rights Union

Merits

Foundation for Free Expression

CATO Institute

Committee for Truth in Politics Inc.

Reporters Committee for Freedom of the Press

Institute for Justice

National Rifle Association

Wyoming Liberty Group, et al.

Alliance Defense Fund

Chamber of Commerce of the USA

American Civil Rights Union

Center for Competitive Politics

Supplemental Question

Alliance Defense Fund

ACLU

American Civil Rights Union

AFL-CIO

American Justice Partnership

California Broadcasters Association

California First Amendment Coalition

Campaign Finance Scholars

Cato Institute

Center for Competitive Politics

Center for Constitutional Jurisprudence

Fidelis Center

Former FEC Commissioners

Free Speech Defense & Education Fund

Institute for Justice

Judicial Watch

Michigan Chamber of Commerce

NRA

Pacific Legal Foundation

Reporters Committee

Senator Mitch McConnell

US Chamber of Commerce

Wyoming Liberty Group

Amicus Briefs Supporting FEC

Merits

Center for Political Accountability, et al.

Senator John McCain, et al.

Supplemental Question

American Independent Business Alliance

Campaign Legal Center

Center for Independent Media

Center for Political Accountability

Committee for Economic Development

DNC

Justice at Stake

League of Women Voters

Norman Ornstein

Rep. Chris Van Hollen

Senator John McCain

The Sunlight Foundation

Re-Argument Issues

Neither Supporting Neither Citizens United nor FEC

Former Officials of the ACLU

Hachette Book Group

Various States

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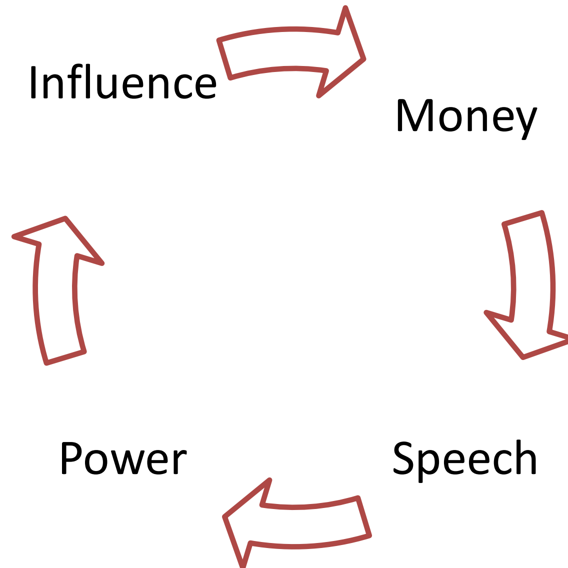
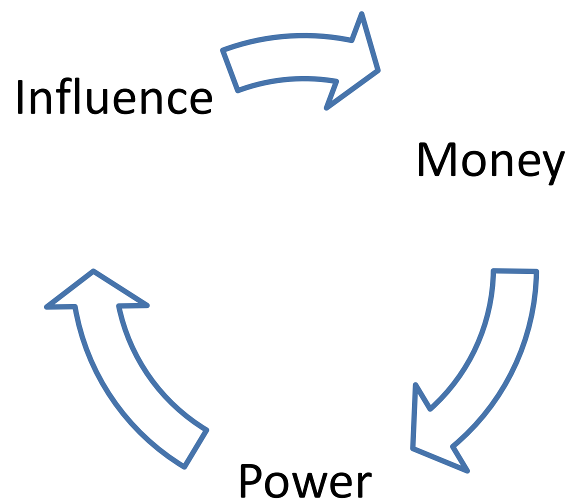
[560] *Citizens United v. Federal Election Commission*
Docket No. 08-205
The briefs in this case totalled approx. 100,000 pages

Appendix 4

Money is Speech is Power is Influence as a corporate marketing continuum.



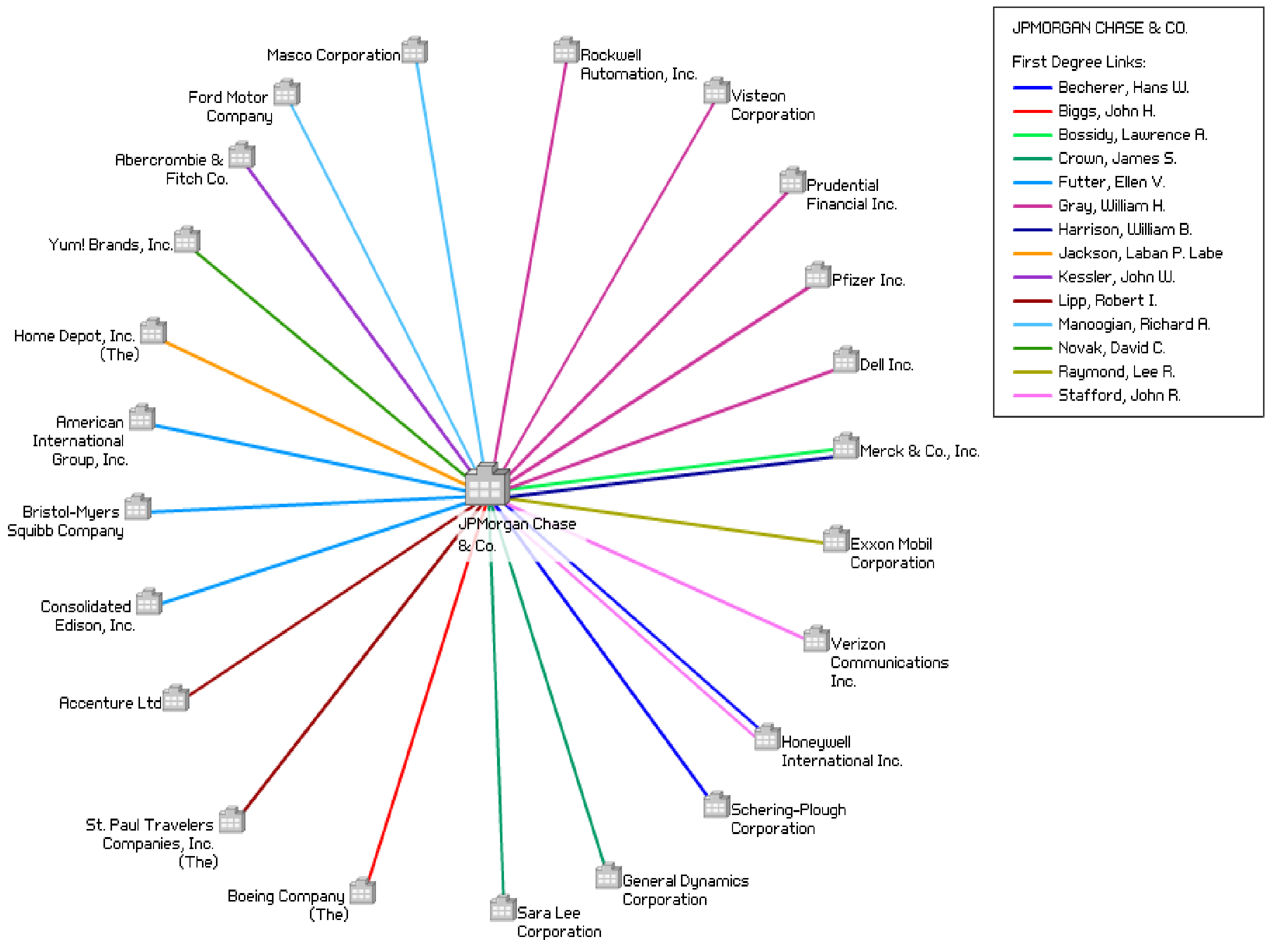
The Court has determined that corporate political money is speech. Therefore money represents speech. Money is Power is Influence as a continuum.

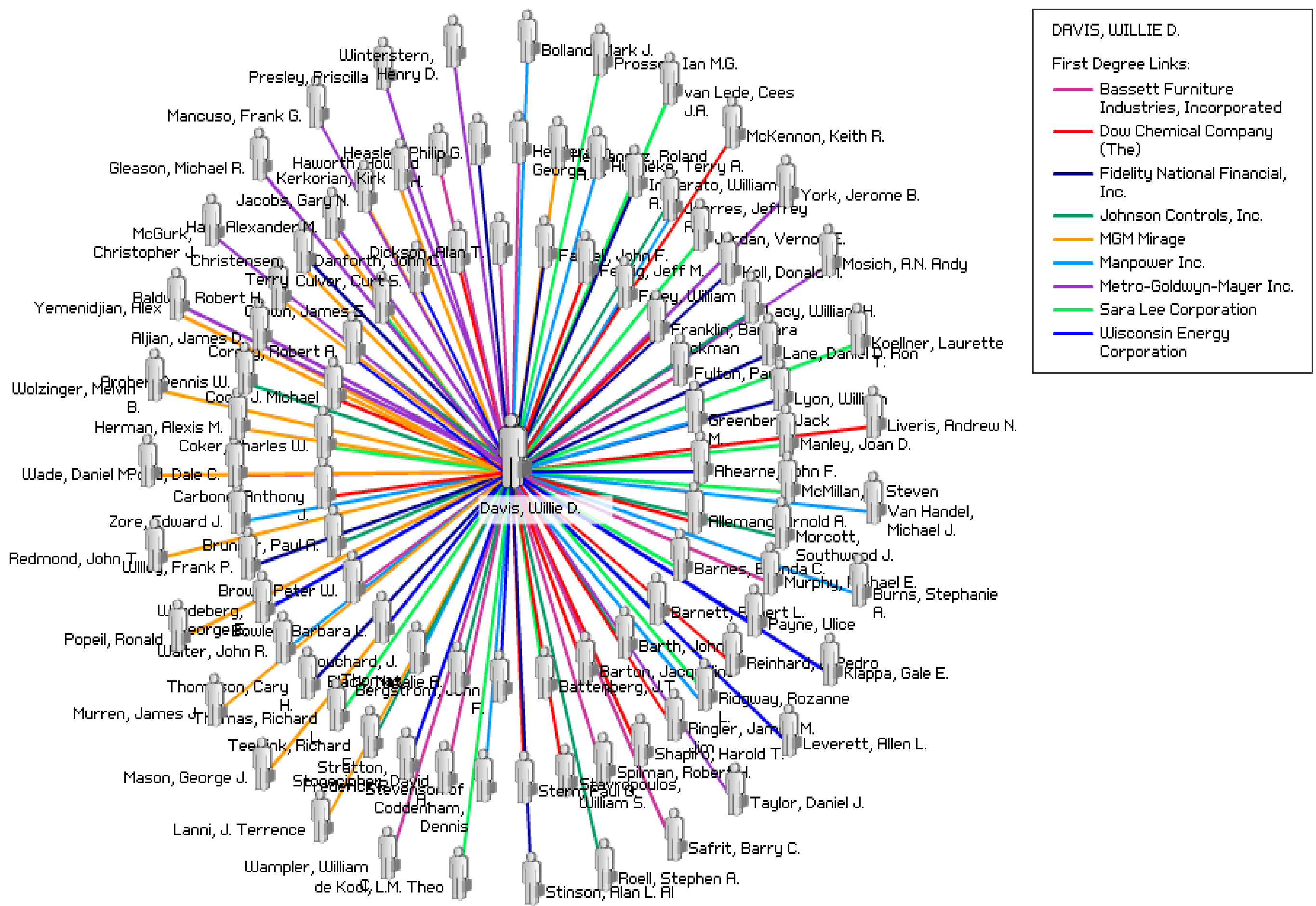


Appendix 5

This chart demonstrates first degree links between corporations by board members using JP Morgan as a sample. This chart shows two Directors are also Directors for Merck & Co and another two Directors are also Directors for Honeywell International. It also shows other Directors who sit on other boards including other FIRE sector members.

http://corp.delaware.gov/ (Accessed January 20 2013)





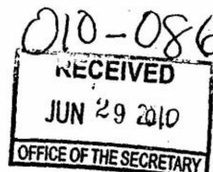
This chart demonstrates the first, second and third degree links between Directors using Willie D. Davis as an example. Mr Davis was a Director of MGM Mirage, Fidelity National Financial, Alliance Bancshares California and Hillshire Brands.
G. William Domhoff, Interlocking Directorates in the Corporate Community, http://www2.ucsc.edu/whorulesamerica/power/corporate_community.html [accessed Jan 16 2013], and http://corp.delaware.gov/ [Accessed January 20 2013]

Appendix 6

Examples of 'Revolving Door' redacted correspondence (accessed Feb 13, 2013)

Jill Slansky to Elizabeth Murphy. www.sec.gov/2011/murphyletter062310.pdf
Andrew Dunbar to Florence Harman, www.sec.gov/2008/Harman/Dunbarletter082608.pdf
Ethics to Tom Eidt. www.sec.gov/ethics/eidtletter082010.pdf

JILL SLANSKY
(b)(7)(C)



June 23, 2010

CONFIDENTIAL TREATMENT REQUESTED

Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Notice of Representation Pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b)

Dear Ms. Murphy:

This statement is filed in compliance with the Commission's notice of representation requirement.

I was formerly a senior attorney in the New York Regional Office and resigned effective December 31, 2009. This is to advise you that I have been retained to represent (b)(7)(C) in Securities and Exchange Commission v. Galleon Management LP, et. al., 09-CV-8811 (S.D.N.Y.) (JSR). The staff contact at the Commission is (b)(7)(C) New York Regional Office. In the course of my representation of (b)(7)(C) it is contemplated that I will appear before, or communicate with, the Commission or the staff of various offices of the Commission by telephone, correspondence, or otherwise.

While an employee of the Commission, to the best of my recollection, I did not have official responsibility for, nor did I participate personally or substantially in, Securities and Exchange Commission v. Galleon Management LP, et. al., 09-CV-8811 (S.D.N.Y.) (JSR), nor in the investigation of the Galleon matter.

Since my participation in this matter may continue for an indefinite period involving more than one communication with, or appearance before, the Commission or its staff, this statement is intended to cover all my appearances and communications that relate directly to Securities and Exchange Commission v. Galleon Management LP, et. al., 09-CV-8811 (S.D.N.Y.) (JSR).

In addition, I request confidential treatment for this letter because it refers to an ongoing nonpublic investigation.

See Rule 8-4c, 17 C.F.R. 200.735-8(d)(3).

Sincerely,

Jill Slansky

SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
555 WEST FIFTH STREET
LOS ANGELES, CA 90013
(213) 896 6000
(213) 896 6600 FAX

BEIJING GENEVA SAN FRANCISCO
BRUSSELS HONG KONG SHANGHAI
CHICAGO LONDON SINGAPORE
DALLAS LOS ANGELES TOKYO
FRANKFURT NEW YORK WASHINGTON, D.C.

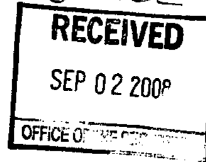
edunbar@sidley.com
(213) 896-6060

FOUNDED 1866

August 26, 2008

CONFIDENTIAL TREATMENT REQUESTED

08-122



VIA FACSIMILE AND FIRST CLASS U.S. MAIL

Florence E. Harmon, Acting Secretary
SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, D.C. 20549-1090
Facsimile: (202) 772-9324

Re: Statement of Representation Pursuant to Rule 8(b), 17 C.F.R. 200.735-8(b)

Dear Ms. Harmon:

This statement is filed in compliance with the Securities and Exchange Commission's notice of representation requirement.

I was formerly a Staff Attorney in the Division of Enforcement in the Los Angeles Regional Office of the Commission and resigned effective August 15, 2008, to accept employment with the law firm of Sidley Austin LLP.

This letter is to advise you that Sidley Austin LLP represents (b)(4) (b)(4) in connection with an informal request for information by the staff of the Los Angeles Regional Office in connection with *In the Matter of* (b)(7)(A) (b)(7)(A), and I have been asked to work on this matter. The staff contacts for this request are (b)(7) (b)(7)(C). In the course of Sidley Austin LLP's representation of (b)(4), it is contemplated that I will appear before, or communicate with, the Commission or the staff of various offices of the Commission by telephone, correspondence, or otherwise in this matter, as early as Tuesday, August 26, 2008.

While an employee of the Commission, I did not have official responsibility for, nor did I participate personally or substantially in any matter involving this matter.

Because my participation in this matter may continue for an indefinite period involving more than one communication with, or appearance before, the Commission or its staff, this statement is intended to cover all my appearances and communications that relate directly to the above-described matter.

In addition, I request confidential treatment for this letter because it may refer to an ongoing nonpublic investigation. See Rule 8-4c, 17 C.F.R. 200.735-8(d)(3).

Sincerely,

Andrew J. Dunbar

AJD/eh

LA1 1242449v.1

#010-104

(b)(7)(C)

From: (b)(7)(C)
Sent: Friday, August 20, 2010 4:09 PM
To: Tom Eidt
Cc: (b)(7)(C)
Subject: RE: Notice of Representation Pursuant to Rule 8(b)

Tom – you are clear to contact the staff on this matter. Please remember to send your regular way paper 8(b) letter to the Secretary's Office. (b)(7)(C) (b)(7)(C) Ethics Office

From: Tom Eidt [mailto:teidt@Getcollc.com]
Sent: Thursday, August 19, 2010 5:20 PM
To: ETHICS
Subject: Notice of Representation Pursuant to Rule 8(b)

CONFIDENTIAL TREATMENT REQUESTED

Re: Notice of Representation Pursuant to Rule 8(b)

Dear Ethics Office:

This statement is filed in compliance with the Commission's notice of representation requirement.

I was formerly an Assistant Director in the Office of Compliance Inspections and Examinations ("OCIE") and resigned effective July 10, 2009, to accept employment with GETCO, LLC ("GETCO" or "the Firm"), a trading firm located in Chicago. My supervisor in OCIE was (b)(6) This is to advise you that staff of the Chicago Regional Office of the U.S. Securities and Exchange Commission has requested that GETCO provide information and documents in connection with (b)(7)(A) I will be among the GETCO employees representing the Firm. The staff contact at the Commission is (b)(7)(C) in the Division of Enforcement. In the course of my employment with GETCO, it is contemplated that I will appear before, or communicate with, the Commission or the staff of various offices of the Commission by telephone, correspondence, or otherwise.

While an employee of the Commission, to the best of my recollection, I did not have official responsibility for, nor did I participate personally or substantially in, (b)(7)(A)

Since my participation in this matter may continue for an indefinite period involving more than one communication with, or appearance before, the Commission or its staff, this statement is intended to cover all my appearances and communications that relate directly to (b)(7)(A)

I am seeking pre-clearance on an expedited basis from the Ethics Office so that I may contact (b)(6) (b)(6) this afternoon regarding a pending request for information and documents.

In addition, I request confidential treatment for this letter.

See Rule 8-4c, 17 C.F.R. 200.735-8(d)(3).

Please call me with any questions or concerns at 312-931-2458.

Sincerely,
Tom Eidt

Thomas Eidt
GETCO, LLC
141 W Jackson Blvd, Suite 210
Chicago, Il 60604

teidt@getcollc.com
312.931.2458 work
(b)(6) mobile
312.931.2200 fax

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Appendix 7

Letter from SEC Director Robert S. Khuzami to Senator Charles E. Grassley

http://www.sec.gov/news/extra/2011/grassleyletter091411.pdf (Accessed February 11th, 2013)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Division of Enforcement

September 14, 2011

Robert S Khuzami
Director
(202) 551-4894
(202) 772-9279 (fax)
khuzamir@sec.gov

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Grassley:

Chairman Schapiro asked that I respond to your August 17, 2011 letter concerning the SEC Enforcement Division's document retention policy for "Matters Under Investigation." Your letter raises six specific questions, and I am writing to provide you with information responsive to those questions. In addition, we welcome the opportunity to discuss these issues further with you or your staff at your convenience.

As an initial matter, I want to clarify that the Division of Enforcement does not classify any of its activities as "Matters Under Investigation." Rather, the Division's policies and guidance recognize two general categories of matters: "Matters Under Inquiry" (MUI) and "Investigations." The distinction between a MUI and an investigation is important to an understanding of the document-related issues raised in your letter.

Based on the Division's longstanding guidance (going back to at least 1998), a MUI is a "pre-investigation inquiry" to evaluate whether opening an investigation would be an appropriate use of resources. Under that guidance, a MUI is designed to be "a quick look at readily available information, in order to determine whether an investigation should be opened." The threshold for opening a MUI is low, and a MUI can be opened based on very limited information. This low threshold is designed to encourage Enforcement staff to cast a wide net for potential violations. Because of a MUI's limited purpose, its duration also is limited. Since 1998, Enforcement staff has been directed either to close a MUI or convert it to an investigation within the earlier of 60 days or 80 hours of work. Beginning in 2003, Enforcement policy automatically converted any MUI that exceeded 60 days to an investigation. During this pre-investigation inquiry, staff does not have authority to issue subpoenas to compel testimony or the production of documents. In addition, since at least 1998, staff has been directed not to take voluntary testimony or incur non-local travel expenses. The threshold for closing a MUI is relatively low and the MUI closing procedures are abbreviated.

By contrast, an Enforcement investigation is designed to determine whether there have been violations of the federal securities laws and, if so, whether the staff should recommend that the Commission take enforcement action. According to the Division's guidance, an investigation is a more substantial undertaking than a MUI and involves a significantly greater level of work and analysis. Investigations are typically referred to as either "formal" or "informal." In a formal investigation, the Commission has issued a formal order of investigation and the staff may issue subpoenas to compel testimony and the production of documents. In an informal investigation, the staff may request voluntary testimony (which can be under oath) and the voluntary production of documents, but cannot compel testimony or document production through the issuance of subpoenas. In connection with either a formal or informal investigation, there is no prohibition on incurring appropriate travel expenses. Closing a formal or informal investigation requires a more complex analysis than closing a MUI, and involves compliance with a more detailed and extensive case closing process.

The questions raised in your letter relate to the Enforcement Division's previous document retention guidance concerning MUIs. That guidance, which had been in force since at least 1998, was changed in July 2010 after questions were raised regarding the guidance. Since that time, MUI documents have been handled under the Division's document retention policy for investigation files, which are covered by a records control schedule approved by the National Archives and Records Administration (NARA).[1]

Below I have set out responses to your specific questions. Important principles to bear in mind include:

- The SEC retained key information regarding all MUIs even under the old MUI retention guidance. As part of the Division's case tracking systems, the SEC has electronic information concerning all MUIs going back approximately 20 years. This includes information such as the title of the matter, the source of the matter, the general subject matter of the inquiry, the SEC staff members involved, the dates the MUI was opened and closed, and other parties related to the inquiry. This MUI information is searchable, available to Enforcement staff, and is a useful resource for staff in assessing whether there are other pending or closed matters that may reflect patterns of related conduct.

- Most MUIs are subsequently converted to investigations and, once converted, files for those MUIs are covered by the records control schedule, approved by NARA, applicable to SEC investigative files. The remaining MUIs are closed without becoming investigations. For those closed MUIs, the Division's guidance (from at least 1998 until

[1] Recently, questions also have been raised regarding the Division's retention policy for investigation files. Even before those questions arose, SEC staff had been reviewing that policy with NARA. In light of those questions and the ongoing discussions with NARA, and because proper disposition of records involves issues of interpretation and judgment in the application of technical provisions of federal law, we recently decided the most appropriate course was to retain all documents created, received, or maintained for all Enforcement matters (including MUIs, investigations, and litigation) until we are certain that our document retention policies meet the standards set by NARA. We remain committed to working with NARA on a going forward basis to reach prompt agreement on policies for the Division.

July 2010) was that MUI files are "not stored as official files of the Commission" and documents obtained in connection with a MUI should be discarded.

- We do not believe that current or future investigations have been harmed by the Division's old MUI retention guidance. We believe the electronic MUI information that we retain allows staff to "connect the dots" between current and closed matters. Moreover, starting in 2003, the Division automatically converted any MUI that was open for 60 days to an investigation, which took the MUI outside of the old MUI retention guidance. Thus, after 2003 the only MUIs that were subject to the old guidance were those closed within 60 days based on a judgment by the staff that an investigation was not warranted. Given that limited time period, and the other limitations on collecting information as part of a MUI, it is less likely that significant information would have been obtained in a MUI that would be both important to a current matter and not available either from the staff who handled the closed MUI, other internal SEC information resources, or third parties.

1. Has the SEC routinely destroyed MUIs, and if so, why?

As described above, the SEC has retained significant information concerning all MUIs, even under the Division's old MUI retention guidance. As part of the Division's case tracking systems, the SEC maintains electronic information concerning all MUIs opened during the past twenty years (and some going back further in time). This includes key information such as the title of the matter, the source of the matter, the general subject matter of the inquiry, the SEC staff members involved, the dates the MUI was opened and closed, and other third parties related to the inquiry. The MUI information is searchable and available to Enforcement staff.

The electronic MUI information was designed to be, and is in practice, a useful resource for Enforcement staff. Under the Division's guidance, the staff is required to search the case tracking system that contains the MUI information before opening a new MUI or investigation. The MUI information provides an important source of data about whether there are other pending or closed matters that could potentially reflect patterns of related conduct, and whether other staff members are already reviewing or have previously reviewed a matter (so as to avoid duplication of effort).

In addition to the electronic MUI information, for most MUIs – those that are subsequently converted to investigations – documents from the MUI phase of the matter are required to be retained in accordance with the Division's guidance concerning investigation files. This Division guidance implements an SEC records control schedule, approved by NARA in 1992, which applies to "Investigative Case Files" and establishes disposition standards for those files.[2] This category represents the majority of MUIs opened from FY 1993 to the

[2] A copy of the records schedule is located at: http://www.archives.gov/records-mgmt/rcs/schedules/independent-agencies/rg-0266/n1-266-91-002_sf115.pdf.

present, as well as the significant majority (approximately 70%) of MUIs opened from FY 2003 to the present.[3]

For other MUIs – those that were closed without being converted to an investigation – the Division's longstanding guidance (from at least 1998 until July 2010) was that MUI files "are not stored as official files of the Commission" and documents obtained in connection with a MUI should be discarded. In addition to the conclusion that MUI files "are not stored as official files of the Commission," we assume that this guidance also was premised in part on a view that, in light of the electronic MUI information and the staff's judgment that an investigation was not warranted, documents obtained during the course of a MUI that was closed were unlikely to be of significant additional value. We are not aware of evidence that, prior to 2010, any question had been raised about the guidance or whether it was consistent with legal requirements. As mentioned, in July 2010, the guidance was modified to instruct staff to treat documents generated in closed MUIs in the same manner as documents related to investigations.[4] As described in more detail below, we believe it is likely that documents obtained or generated in closed MUIs were retained in certain instances prior to July 2010, particularly those from more recent time periods, while in many other instances they likely were not retained because that was consistent with the longstanding guidance.

2. Is the SEC not concerned that destroying these files may have harmed future investigations? If not, please explain why not?

We do not believe that current or future investigations have been harmed by the old MUI retention guidance. The searchable MUI information allows us to identify potential relationships between parties and matters and "connect the dots" between present and past inquiries. It allows Enforcement staff to consult directly with staff members who conducted a prior inquiry, and efficiently determine whether there are relationships to be evaluated and pursued.

Moreover, particularly with respect to more recent time periods, the automatic conversion of MUIs to investigations within 60 days if not closed and the limited nature of a MUI make it unlikely that underlying documents from closed MUIs would be both important to a current matter and not available either from the staff who conducted the MUI or from another source.[5] Beginning in 2003, the Division automatically converted any MUI that was open for 60 days into an investigation. As a result, since 2003, the only MUIs that would have been subject to the old MUI retention guidance were those open for fewer than 60 days. Given that short time period, it is unlikely that significant information would have been generated that

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[3] The corresponding calendar periods are from October 1, 1992 through mid-August 2011, and from October 1, 2002 through mid-August 2011.

[4] The new guidance for closed MUIs was implemented by a change to the Division's Case Closing Manual, which directed that: "all Records and Non-Record Materials associated with the MUI" were to be handled according to the disposition guidance for investigations, including "all physical documents and objects, as well as all electronic media and documents obtained or generated during the inquiry."

[5] Our experience is that more recent closed matters have a greater potential to be relevant to current matters than historical ones – that is, it is more likely an inquiry closed in 2008 will be relevant to a 2011 investigation than one closed in 1998, 1988, or 1978.

could not in many instances be obtained elsewhere if necessary. In other words, and as described below, if information was generated in the course of a MUI that was in fact closed within 60 days, it still may be readily available from the staff or from another source either inside or outside of the SEC.

3. Is it possible for the SEC to retrieve any of this information?

We believe that, with respect to a number of MUIs that were closed without being converted to an investigation, staff members have retained some documents relating to the inquiry, notwithstanding the old MUI records guidance. For those MUIs, there would be no need to obtain the retained information from an outside source. Moreover, for documents relating to closed MUIs that were discarded, as discussed below they may be available from other sources either inside or outside of the SEC.

Many MUIs are opened based on public information such as news reports, and staff conducting a MUI frequently consult public information sources (such as press releases, EDGAR filings, and investment analyst reports) as part of the inquiry. To the extent that such information becomes relevant to a subsequent matter, it should remain readily available from those public sources. In addition, if documents obtained from a regulated entity become relevant to a current matter, they should be readily available from the entity during the statutory retention period.[6]

There also are internal Commission resources from which information concerning a closed MUI can be retrieved. These include:

- *Bluesheet Database*. Enforcement's Market Surveillance group maintains an electronic bluesheet database of the more than two billion electronic equities and options trading data obtained by the Division in connection with current and past MUIs and investigations stretching back nearly 20 years.[7] In connection with many MUIs and investigations concerning possible market abuse, Market Surveillance staff submit bluesheet requests and load the resultant trading data into the bluesheet database. To the extent such trading data was obtained in connection with a closed MUI, it would remain available in the bluesheet database. As part of the Automated Bluesheet Database Project, in the last two years the Division's new Market Abuse Unit has been developing templates that enable staff to search across this aggregated collection of trading data, conducting automated searches for suspicious trading patterns and identifying relationships and connections among multiple traders and across multiple securities.

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[6] *See* 17 C.F.R. § 270.31a-2 (requiring permanent retention of many investment company books and records and a six-year retention period for others); 17 C.F.R. § 240.17a-4 (requiring retention of most broker-dealer books and records for three to six years); 17 C.F.R. § 275.204-2 (requiring retention of most registered investment adviser books and records for at least five years).

[7] Each line of trading data includes: ticker symbol, date, purchaser or seller's name, address, the type of execution (buy or sell), account number, broker name, MPID number and related data.

- *SRO Market Surveillance Referral System (SMSR)*. SMSR is the internal component of a system that allows the receipt, tracking, and processing of electronic versions of referrals from SROs to the SEC. In use since 2003, SMSR is administered by Enforcement's Market Surveillance group. To the extent MUIs were opened as a result of SRO referrals, all of the materials supporting the referral can be obtained from the SMSR system.

4. Is Mr. Flynn correct that the SEC has destroyed MUIs related to Bernard Madoff, Goldman Sachs, Wells Fargo, Bank of America, Deutsche Bank, Lehman Brothers, and SAC Capital? If so, explain why.

As explained above, the SEC has retained key electronic information concerning all MUIs for approximately the past 20 years, including the closed MUIs described in your letter.

Some of the MUIs referenced in your letter are relatively recent, while others date back almost 20 years. For each of these MUIs, the retained electronic MUI information provides the basic facts about the MUI. For some of these MUIs, the relevant entity is identified in the title of the matter; in others, it appears as a related party. In addition, for all of these MUIs that were opened since 2003, and for at least some opened prior to 2003, we believe we have certain additional information or documentation relating to the MUI. Nevertheless, given the old MUI retention guidance, we also believe it is likely that some documents from these closed MUIs were not retained.

5. Is it current SEC policy to destroy any files related to MUIs if the investigation does not progress to a formal order approved by the Commission?

As described above, it is current Division policy to retain MUI-related files in the same manner as files relating to investigations. This is true whether the MUI is closed without being converted to an investigation, is converted to an investigation with no formal order, or is converted to an investigation in which the Commission issues a formal order. As described both above and below, we also have directed the staff to retain all documents for all matters pending our ongoing discussions with NARA on new procedures for retaining investigation files.

6. What is the SEC's understanding of its legal obligations to maintain and archive records related to MUIs and how is the SEC's policy and practice consistent with those obligations?

We believe the SEC's current policy and practice for maintaining and archiving documents relating to MUIs is consistent with its legal obligations. The SEC has a records control schedule, approved by NARA in 1992, which covers investigative case files. This schedule establishes disposition standards for those files. As described above, the Division's current policy is to treat documents relating to MUIs in the same manner as investigation files that are subject to the NARA-approved disposition schedule.

In addition, your staff has asked whether a reference to "preliminary investigations" in the 1992 records control schedule was intended to refer to MUIs. The 1992 schedule states that

it applies to: "Investigative Case Files (also known as 'complaint cases' and 'general assignment files'), including case files relating to "preliminary investigations." Although longstanding Division policy and guidance differentiates MUIs from "investigations" of any type, it is difficult to conclude with certainty the intended meaning of the 1992 reference to "preliminary investigations."

The references to "preliminary investigations," "complaint cases," and "general assignment files" in the 1992 schedule appear to have been carried over from a predecessor Enforcement schedule that was approved by NARA in 1975.[8] The term "preliminary investigation" appears to date back to the early days of the Commission, well before the establishment of either the Division of Enforcement (in 1972) or the MUI category of matters (not later than 1981). Historical SEC references to the term "preliminary investigation" appear to describe what in more recent times is typically referred to as either a "formal" or "informal" investigation.[9] (The references to "complaint cases" and "general assignment files" also appear to be historical and do not reflect terms that have been used by the Division in recent times.) To the extent that the term "preliminary investigation" has been used during the time period in which the 1992 schedule has been in effect, in one often-cited source it appears to refer to an informal investigation.[10] While we believe this background suggests that the term "preliminary investigations" in the 1992 schedule was not intended to refer to MUIs, we are unable to answer your staff's question with certainty.

The SEC has been reviewing the current Enforcement disposition schedule and its current policies and procedures governing documents and records retention for investigative case files with NARA, and we are committed to working with NARA to reach prompt agreement on procedures for the Division on a going forward basis. In light of this ongoing process, and because appropriate disposition of Enforcement records involves issues of interpretation and judgment in the application of technical provisions of federal law, we have

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[8] A copy of that schedule can be found at: http://www.archives.gov/records-mgmt/rcs/schedules/independent-agencies/rg-0266/nc-266-76-001_sf115.pdf.

[9] *E.g., In the Matter of Harold T. White, et al.*, 1 S.E.C. 574, 1936 WL 32661, at *2-3 (July 14, 1936) (Commission opinion describing as "preliminary investigation" a matter where the Commission had issued a formal order of investigation, and Commission staff subsequently took testimony and reviewed evidence and made an enforcement recommendation to the Commission); 11 Fed. Reg. 177A-729 (Sept. 11, 1946) (promulgating 17 C.F.R. § 202.4(a), which provided: "Where . . . it appears that there may be violation of the acts administered by the Commission . . . a preliminary investigation is generally made. In such preliminary investigation no process is issued or testimony compelled. When it appears . . . that there is a likelihood that a violation has been . . . committed and that the issuance of process may be necessary, the matter is reported to the Commission, which may then order a formal investigation or examination if it is deemed necessary.").

[10] *See* W. McLucas, J. Taylor & S. Mathews, *A Practitioner's Guide to the SEC's Investigative and Enforcement Process,* 70 TEMP. L. REV. 53, 56 (1997) ("Commission investigations generally begin as 'informal' or 'preliminary' investigations. In an informal investigation, the staff cannot issue subpoenas and instead relies upon the cooperation of individuals and entities to obtain information, documents, and testimony."). Mr. McLucas was the Director of the Division of Enforcement from December 1989 to May 1998. We also are aware that the Commission's Inspector General is reviewing correspondence between staff and NARA in 2010 that uses the term "preliminary investigation." At the Inspector General's request, we have not attempted to review the facts concerning that correspondence or use of the term "preliminary investigation" in the correspondence.

directed the staff to retain all documents and records for all matters (MUIs, investigations, and litigation) until we reach agreement with NARA and implement approved procedures.

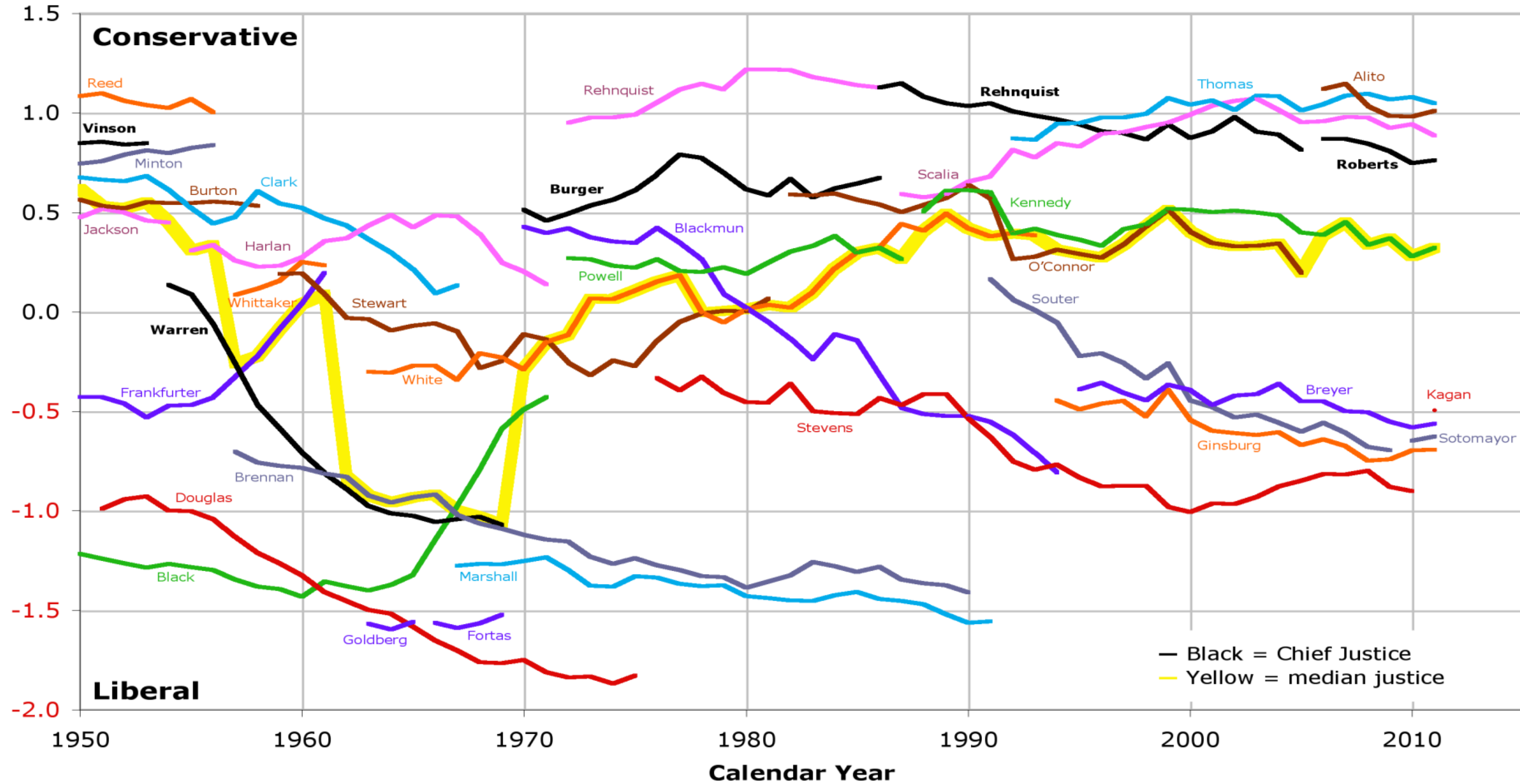
* * *

Please feel free to contact me at (202) 551-4894, or Tim Henseler (Deputy Director of the Office of Legislative and Intergovernmental Affairs) at (202) 551-2015, if you have any questions or wish to discuss these matters further.

Sincerely,

Robert S Khuzami

Appendix 8



Roberts Court: Justices for the period of the 110th-112th Congress'

Name	DOB	State	Party	Considered	Appointed	Date	Religion	University	Law School	Succeeded	Conf. Vote	Senate Maj.	Comments	
John Glover Roberts	27/01/1955	NY	R	Conservative	G. W. Bush	29/09/2005	Catholic	Harvard	Harvard	William Rehnquist	78-32	R	Chief Justice	
Antonia Scalia	1/03/1936	NJ	R	Conservative	R. Reagan	26/09/1986	Catholic	Georgetown	Harvard	Warren Burger	98-0	R		
Anthony McLeod Kenned	23/07/1936	CA	R	Conservative	R. Reagan	18/01/1988	Catholic	Stanford/LCE	Harvard	Lewis F. Powell	97-0	R		
Clarence Thomas	12/06/1948	GA	R	V. Conservative	George H.W. Busl	23/10/1991	Catholic	Holy Cross	Yale	Thurgood Marshall	52-48	D		
Ruth Bader Ginsburg	15/03/1933	NY	D	Liberal	W. Clinton	10/08/1993	Jewish	Cornell	Harvard	Byron White	96-3	D		
Steven Gerald Breyer	15/08 1938	CA	D	Liberal	W. Clinton	3/08/1994	Jewish	Stanford	Harvard	Harry A. Blackmun	87-9	D		
Samuel Anthony Alito	1/04/1950	NJ	R	V. Conservative	G. W. Bush	31/01/2006	Catholic	Princeton	Yale	Sandra Day O'Conno	58-42	D		
David H. Souter (Ret.)	17/09/1936	MA	R	Centrist	George H.W. Busl	9/10/1990	Episcopalian	Harvard	Harvard	William Brennan	90-9	R	Retired 29/06/09	
Sonia Maria Sotomayor	25/06/1954	NY	D	Liberal	B. Obama	9/08/2009	Catholic	Princeton	Harvard	David H. Souter	68-31	D		
John Paul Stevens (Ret.)	20/04/1920	Ill	R	Lib/Conservative	G. Ford	19/12/1975	Protestant	Chicago	NWU	William O. Douglas	98-0	R	Retired 29/06/10	
Elena Kagan	28/04/1960	NY	D	Liberal	B. Obama	7/08/2010	Jewish	Princeton	Harvard	John P. Stevens	63-37	D		
(Associate Justices Souter and Stevens retired during the period and were replaced with Associate Justices Sotomayor and Kagan)														
Associate Justices Scalia, Kennedy and Stevens are members of the Phi Delta Phi Honor Society with the Current Chief Justice and														
all current serving Associate Justices members of the Phi Betta Kappa Honor Society.														
Membership of Phi Betta Kappa reads as a 'Who's who of the influential elite in the US; Judicial as well as Government and Corporate.														
7 of the current Justices including the Chief Justice are Harvard graduates with the other 2 Yale.														
http://www.supremecourt.gov/about/members.aspx				(Accessed January 2nd 20150										

Appendix 9

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
1	Goldman Sachs	$16,532,620	$21,440,000	$37,972,620	46%	$21,682,741,581	$207,667,900,000	$229,426,586,821
2	Bank of America	$12,596,049	$32,574,000	$45,170,049	44%	$19,110,189,065	$457,067,022,207	$476,267,551,370
3	AT&T Inc	$12,432,809	$99,446,535	$111,879,344	88%	$2,024,056,121	$1,770,975	$2,249,585,785
4	Honeywell International	$10,444,250	$38,432,000	$48,876,250	88%	$10,011,829,117	$47,324,432	$10,156,906,050
5	JPMorgan Chase & Co	$10,421,875	$41,640,000	$52,061,875	43%	$18,020,035,703	$485,642,436,807	$503,766,596,260
6	Microsoft Corp	$9,817,171	$46,951,000	$56,768,171	58%	$715,540,121	$7,019,300	$836,095,764
7	Comcast Corp	$9,786,857	$81,311,323	$91,098,180	76%	$27,318,791	$0	$209,515,152
8	Deloitte LLP	$9,070,686	$15,080,000	$24,150,686	64%	$6,350,936,269	$44,779,312	$6,444,016,954
9	Lockheed Martin	$8,558,992	$84,138,853	$92,697,845	80%	$204,156,379,469	$127,757,309	$204,469,532,469
10	Morgan Stanley	$8,476,333	$16,890,000	$25,366,333	37%	$11,566,283,640	$115,899,600,000	$127,516,616,306
11	Boeing Co	$8,220,790	$95,474,000	$103,694,790	72%	$187,919,845,978	$167,734,401	$188,294,969,960
12	PricewaterhouseCoopers	$7,788,514	$15,930,584	$23,719,098	52%	$982,257,303	$297,370	$1,029,992,870
13	General Electric	$7,560,533	$151,530,000	$159,090,533	75%	$23,465,832,356	$19,626,876,035	$43,410,889,458
14	Verizon Communications	$7,180,908	$97,517,000	$104,697,908	72%	$1,992,732,378	$1,479,200,000	$3,681,328,195
15	Citigroup Inc	$7,016,707	$37,140,000	$44,156,707	35%	$2,359,560,268	$503,409,834,470	$505,857,708,152
16	United Parcel Service	$6,939,790	$31,446,668	$38,386,458	87%	$784,011,961	$304,888	$861,089,766
17	Northrop Grumman	$6,821,080	$93,342,879	$100,163,959	55%	$88,648,320,258	$7,645,569	$88,856,293,746
18	Blue Cross/Blue Shield	$6,729,634	$116,468,883	$123,198,517	60%	$1,248,557,519	$608,742	$1,495,563,296
19	Raytheon Co	$6,629,940	$41,720,139	$48,350,079	58%	$87,494,001,411	$87,774,370	$87,678,475,940
20	New York Life Insurance	$6,449,157	$32,290,000	$38,739,157	46%	$0	$0	$77,478,314
21	Koch Industries	$6,388,033	$64,521,750	$70,909,783	33%	$51,278,353	$0	$193,097,919
22	American Crystal Sugar	$6,264,800	$6,789,816	$13,054,616	50%	$0	$153,663,219	$179,772,452
23	Ernst & Young	$6,213,038	$13,637,737	$19,850,775	41%	$188,459,154	$0	$228,160,704
24	Blackstone Group	$6,063,384	$38,526,776	$44,590,160	18%	$275,876,284	$0	$365,056,604
25	Google Inc	$5,942,670	$41,450,000	$47,392,670	24%	$825,339	$0	$95,610,679
26	Chevron Corp	$5,877,452	$75,029,000	$80,906,452	29%	$1,952,285,590	$28,673,197	$2,142,771,691
27	Oracle Corp	$5,711,875	$34,140,237	$39,852,112	21%	$1,107,585,936	$67,952	$1,187,358,112
28	AFLAC Inc	$5,655,440	$24,730,000	$30,385,440	61%	$0	$0	$60,770,881
29	Pfizer Inc	$5,543,816	$88,519,268	$94,063,084	52%	$4,135,910,677	$0	$4,324,036,846
30	Exxon Mobil	$5,543,121	$111,520,000	$117,063,121	44%	$6,373,930,384	$0	$6,608,056,626
31	Berkshire Hathaway	$5,535,912	$51,406,917	$56,942,829	39%	$37,478,730	$28,546,668	$179,911,056
32	Wells Fargo	$5,182,484	$27,297,740	$32,480,224	41%	$22,156,319,030	$189,029,351,540	$211,250,631,018
33	Wal-Mart Stores	$5,128,871	$37,145,000	$42,273,871	55%	$682,456	$0	$85,230,199
34	General Dynamics	$4,966,014	$59,309,084	$64,275,098	48%	$61,622,862,741	$88,671,076	$61,840,084,013
35	McKesson Corp	$4,962,132	$10,689,438	$15,651,570	33%	$29,543,099,561	$0	$29,574,402,701
36	Home Depot	$4,800,516	$6,319,800	$11,120,316	45%	$12,340,135	$0	$34,580,767
37	Credit Suisse Group	$4,721,583	$12,180,000	$16,901,583	25%	$638,438,611	$224,535,000,000	$225,207,241,777

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
38	Union Pacific Corp	$4,586,067	$40,501,211	$45,087,278	48%	$2,007,153	$642,486	$92,824,195
39	Amgen Inc	$4,431,020	$68,420,000	$72,851,020	46%	$2,437,691	$0	$148,139,731
40	CSX Corp	$4,295,917	$26,476,958	$30,772,875	46%	$14,952,514	$23,465,214	$99,963,478
41	FedEx Corp	$4,090,865	$81,383,238	$85,474,103	47%	$9,236,565,972	$7,467,485	$9,414,981,663
42	Altria Group	$3,962,127	$75,145,000	$79,107,127	44%	$962,597	$0	$159,176,851
43	News Corp	$3,889,006	$34,190,000	$35,079,006	22%	$6,802,076	$0	$79,960,088
44	United Technologies	$3,888,706	$66,548,700	$70,437,406	44%	$45,208,312,118	$170,719,308	$45,519,906,238
45	Exelon Corp	$3,867,802	$33,698,752	$37,566,554	26%	$96,431,018	$195,080,356	$366,644,482
46	Massachusetts Mutual Life Insurance	$3,688,944	$19,120,000	$22,808,944	30%	$41,204	$291,500,000	$337,159,092
47	Marriott International	$3,601,401	$4,770,000	$8,371,401	21%	$42,728,036	$0	$59,470,838
48	Norfolk Southern	$3,564,499	$36,638,592	$40,203,091	35%	$772,756	$4,089,252	$85,268,190
49	Anheuser-Busch InBev	$3,562,078	$20,250,000	$23,812,078	54%	$322,542	$0	$47,946,699
50	Merck & Co	$3,538,501	$43,057,510	$46,596,011	38%	$8,405,519,830	$0	$8,498,711,852
51	USAA	$3,464,312	$34,919,336	$38,383,648	30%	$174,982,249	$0	$251,749,545
52	Cisco Systems	$3,420,020	$11,570,000	$14,990,020	22%	$19,757,890	$0	$49,737,930
53	KPMG LLP	$3,350,472	$10,385,000	$13,735,472	28%	$1,003,736,532	$4,861,482	$1,036,068,958
54	UBS AG	$3,296,356	$3,665,000	$6,961,356	28%	$9,953,925,101	$239,072,100,000	$249,039,947,813
55	UnitedHealth Group	$3,247,513	$23,504,000	$26,751,513	26%	$356,028,810	$0	$409,531,836
56	Abbott Laboratories	$3,234,695	$30,160,000	$33,394,695	27%	$452,115,759	$0	$518,905,149
57	BAE Systems	$3,117,983	$31,437,000	$34,554,983	31%	$44,161,689,605	$65,628,988	$44,296,428,559
58	Ford Motor Co	$3,034,151	$40,906,000	$43,940,151	38%	$2,836,817,462	$20,789,900,000	$23,714,597,764
59	Metlife Inc	$3,019,292	$32,930,000	$35,949,292	33%	$3,638,787	$20,524,200,000	$20,599,737,371
60	Hewlett-Packard	$3,018,179	$35,141,220	$38,159,399	33%	$7,982,869,076	$19,110,102	$8,078,297,976
61	SAIC Inc	$2,922,295	$17,211,000	$20,133,295	26%	$30,470,757,621	$31,493,625	$30,542,517,836
62	Johnson & Johnson	$2,898,925	$39,691,000	$42,589,925	36%	$149,278,475	$0	$234,458,325
63	Eli Lilly & Co	$2,883,104	$56,423,220	$59,306,324	36%	$366,469	$16,604,282	$135,583,399
64	Time Warner	$2,828,094	$25,793,000	$28,621,094	31%	$10,934,851	$0	$68,177,039
65	Accenture	$2,791,856	$19,401,137	$22,192,993	31%	$5,243,517,860	$6,128,203	$5,294,032,049
66	Intel Corp	$2,767,175	$19,081,779	$21,848,954	21%	$268,911	$50,145,890	$94,112,709
67	CME Group	$2,759,897	$12,960,000	$15,719,897	35%	$0	$0	$31,439,794
68	GlaxoSmithKline	$2,745,217	$40,425,000	$43,170,217	39%	$3,759,904,538	-$173	$3,846,244,799
69	AstraZeneca PLC	$2,738,115	$31,063,500	$33,801,615	34%	$1,807,302	$0	$69,410,532
70	McDonald's Corp	$2,695,508	$6,045,592	$8,741,100	29%	$0	$203,500,000	$220,982,200
71	Occidental Petroleum	$2,684,576	$21,788,590	$24,473,166	22%	$0	$0	$48,946,332
72	Dominion Resources	$2,643,800	$10,582,000	$13,225,800	27%	$318,411,458	$4,478,513	$349,341,571
73	Carlyle Group	$2,606,542	$5,972,400	$8,578,942	11%	$19,231,023,736	$0	$19,248,181,620
74	Bank of New York Mellon	$2,572,917	$6,694,519	$9,267,436	21%	$6,936,205	$54,427,032,372	$54,452,503,449

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
75	Southern Co	$2,516,032	$83,650,000	$86,166,032	27%	$146,785,042	$450,786,003	$769,903,109
76	Chesapeake Energy	$2,462,760	$9,221,560	$11,684,320	24%	$0	$0	$23,368,640
77	Intercontinental Exchange Inc	$2,458,345	$5,837,002	$8,295,347	6%	$0	$0	$16,590,694
78	American Express	$2,456,569	$17,850,000	$20,306,569	29%	$2,771,697	$8,984,390,000	$9,027,774,835
79	Deutsche Bank AG	$2,387,470	$7,316,000	$9,703,470	11%	$11,799,999,491	$316,427,149,423	$328,246,555,854
80	Valero Energy	$2,356,710	$4,031,000	$6,387,710	21%	$6,227,325,704	$0	$6,240,101,124
81	American Electric Power	$2,354,439	$48,423,105	$50,777,544	27%	$42,562,244	$17,493,376	$161,610,708
82	Caterpillar Inc	$2,343,423	$17,772,862	$20,116,285	26%	$3,155,372,849	$759,362,210	$3,954,967,629
83	Bechtel Group	$2,335,701	$2,630,000	$4,965,701	24%	$30,227,084,903	$2,403,473	$30,239,419,778
84	Walt Disney Co	$2,326,406	$27,525,000	$29,851,406	23%	$65,000	$10,000	$59,777,812
85	MGM Resorts International	$2,289,366	$2,588,000	$4,877,366	8%	$812,593	$0	$10,567,325
86	Humana Inc	$2,237,896	$10,872,945	$13,110,841	27%	$20,629,789,317	$0	$20,656,010,999
87	Capital One Financial	$2,201,350	$8,993,646	$11,194,996	24%	$0	$3,584,829,000	$3,607,218,992
88	Aetna Inc	$2,189,838	$19,816,055	$22,005,893	18%	$725,243	$0	$44,737,029
89	DISH Network	$2,168,350	$5,610,000	$7,778,350	12%	$797,184	$0	$16,353,884
90	Cerberus Capital Management	$2,163,638	$14,317,782	$16,481,420	13%	$8,694,752,688	$0	$8,727,715,528
91	Duke Energy	$2,144,024	$33,860,234	$36,004,258	24%	$117,496,713	$229,669,082	$419,174,311
92	Deere & Co	$2,137,706	$10,354,000	$12,491,706	24%	$1,408,569,206	$163,293,465	$1,596,846,083
93	Travelers Companies	$2,123,390	$21,550,000	$23,673,390	19%	$19,215,946	$0	$66,562,726
94	FMR Corp	$2,102,230	$16,825,000	$18,927,230	26%	$5,367,410,755	$0	$5,405,265,215
95	FirstEnergy Corp	$2,098,596	$11,960,000	$14,058,596	19%	$180,249,781	$58,384,122	$266,751,095
96	Qualcomm Inc	$2,055,258	$38,590,000	$40,645,258	15%	$12,574,671	$0	$93,865,187
97	Federated Investors Inc	$2,045,710	$4,322,000	$6,367,710	9%	$10,212,878,720	$0	$10,225,614,140
98	International Paper	$2,030,272	$20,839,133	$22,869,405	29%	$124,459,188	-$11,462	$170,186,536
99	Textron Inc	$2,027,995	$31,335,000	$33,362,995	24%	$11,808,983,889	$21,036,307	$11,896,746,186
100	Genworth Financial	$1,985,434	$24,320,000	$26,305,434	25%	$0	$202,400,000	$255,010,868
101	CenturyLink	$1,980,089	$17,005,437	$18,985,526	32%	$288,554,732	$0	$326,525,784
102	Dow Chemical	$1,965,198	$43,563,000	$45,528,198	25%	$46,395,394	$24,304,836	$161,756,626
103	Weyerhaeuser Co	$1,958,783	$16,706,400	$18,665,183	27%	$3,845,627	$362,403	$41,538,396
104	DaVita Inc	$1,958,631	$21,171,000	$23,129,631	22%	$14,225,767	$0	$60,485,029
105	Cablevision Systems	$1,945,921	$2,500,000	$4,445,921	10%	$235,287	$0	$9,127,129
106	California Dairies Inc	$1,918,900	$1,160,000	$3,078,900	18%	$0	$4,959,843	$11,117,643
107	Kindred Healthcare	$1,903,817	$12,760,000	$14,663,817	10%	$42,220,915	$0	$71,548,549
108	Coca-Cola Co	$1,867,666	$30,620,020	$32,487,686	28%	$191,819,364	$0	$256,794,736
109	Prudential Financial	$1,853,992	$43,698,063	$45,552,055	26%	$1,103,019,603	$2,456,800,000	$3,650,923,713
110	General Motors	$1,851,745	$63,506,000	$65,357,745	27%	$2,623,365,063	$67,374,752,412	$70,128,832,965
111	Safeway Inc	$1,840,098	$7,750,000	$9,590,098	27%	$67,140	$0	$19,247,336

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
112	Liberty Media	$1,837,938	$5,661,500	$7,499,438	15%	$0	$0	$14,998,876
113	OSI Restaurant Partners	$1,835,560	$622,309	$2,457,869	16%	$0	$0	$4,915,738
114	Fluor Corp	$1,830,470	$7,200,792	$9,031,262	23%	$10,069,186,957	$77,288	$10,087,326,769
115	Marathon Oil	$1,826,838	$32,890,000	$34,716,838	20%	-$9,735	$0	$69,423,941
116	ConocoPhillips	$1,807,031	$74,665,640	$76,472,671	31%	$304,403,210	$41,765	$457,390,317
117	CH2M HILL	$1,760,863	$2,342,000	$4,102,863	28%	$7,476,857,566	$25,742,070	$7,510,805,362
118	Entergy Corp	$1,758,141	$26,883,032	$28,641,173	26%	$155,554,392	$10,243,804	$223,080,542
119	Northwestern Mutual	$1,755,318	$26,622,000	$28,377,318	20%	$1,080,823,201	$0	$1,137,577,837
120	Devon Energy	$1,751,348	$7,210,000	$8,961,348	14%	$0	$0	$17,922,696
121	Forest City Enterprises	$1,707,917	$3,070,000	$4,777,917	9%	$0	$0	$9,555,834
122	General Atomics	$1,701,817	$14,740,000	$16,441,817	18%	$10,571,367,827	$375,651,045	$10,979,902,506
123	Express Scripts	$1,699,204	$8,574,020	$10,273,224	13%	$2,139,195,793	$0	$2,159,742,241
124	Charles Schwab & Co	$1,688,311	$14,954,000	$16,642,311	14%	$2,635,526,490	$0	$2,668,811,112
125	Procter & Gamble	$1,685,682	$23,269,081	$24,954,763	22%	$1,797,694,930	$0	$1,847,604,456
126	PepsiCo Inc	$1,628,748	$25,094,436	$26,723,184	26%	$981,280,619	$0	$1,034,726,987
127	Deutsche Telekom	$1,620,400	$23,985,908	$25,606,308	23%	$90,265,353	$855,000	$142,332,969
128	L-3 Communications	$1,608,869	$26,604,037	$28,212,906	22%	$35,217,360,153	$0	$35,273,785,965
129	Roche Holdings	$1,603,500	$41,985,474	$43,588,974	25%	$305,819,562	$0	$392,997,510
130	DTE Energy	$1,589,514	$8,738,254	$10,327,768	22%	$19,087,008	$0	$39,742,544
131	Parsons Corp	$1,588,334	$2,133,000	$3,721,334	31%	$3,268,250,056	$0	$3,275,692,724
132	Reynolds American	$1,587,355	$22,563,781	$24,151,136	21%	-$5,131	$0	$48,297,141
133	US Bancorp	$1,553,838	$5,068,037	$6,621,875	18%	$652,701,019	$6,755,365,136	$7,421,309,905
134	Dean Foods	$1,536,189	$5,200,000	$6,736,189	20%	$16,445,248	$0	$29,917,626
135	Harris Corp	$1,509,985	$18,028,069	$19,538,054	20%	$1,457,979,211	$0	$1,497,055,319
136	Murray Energy	$1,489,978	$2,459,000	$3,948,978	4%	$0	$0	$7,897,956
137	Darden Restaurants	$1,486,262	$6,688,880	$8,175,142	13%	$90,915	$0	$16,441,199
138	Finmeccanica SpA	$1,468,500	$31,837,030	$33,305,530	16%	$7,272,788,680	$0	$7,339,399,740
139	Brown-Forman Corp	$1,465,717	$3,735,000	$5,200,717	7%	$0	$0	$10,401,434
140	Anadarko Petroleum	$1,462,482	$16,883,370	$18,345,852	11%	$2,050,157	$0	$38,741,861
141	Crawford Group	$1,458,865	$2,617,778	$4,076,643	15%	$44,815,489	$0	$52,968,775
142	EMC Corp	$1,457,823	$10,380,000	$11,837,823	9%	$21,547,651	$0	$45,223,297
143	Peabody Energy	$1,449,915	$38,821,800	$40,271,715	10%	$0	$0	$80,543,430
144	AMR Corp	$1,445,100	$32,870,000	$34,315,100	33%	$19,572,868	$0	$88,203,068
145	Target Corp	$1,444,877	$10,790,000	$12,234,877	14%	$0	$0	$24,469,754
146	Energy Future Holdings Corp	$1,427,652	$21,580,169	$23,007,821	19%	$49,248,842	$3,660,429	$98,924,913
147	Corning Inc	$1,423,743	$5,490,547	$6,914,290	16%	$9,170,354	$9,192	$23,008,126
148	MacAndrews & Forbes	$1,418,284	$11,240,000	$12,658,284	10%	$11,626,430,433	$0	$11,651,747,001

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
149	Clear Channel Communications	$1,401,241	$7,080,000	$8,481,241	14%	$3,469,053	$30,637	$20,462,172
150	SLM Corp	$1,401,012	$20,380,000	$21,781,012	22%	$235,843,716	$191,596,145,204	$191,875,550,944
151	Hartford Financial Services	$1,380,622	$14,650,000	$16,030,622	19%	$0	$4,124,500,000	$4,156,561,244
152	Cigna Corp	$1,363,240	$10,091,436	$11,454,676	13%	$161,771,998	$0	$184,681,350
153	CVS/Caremark Corp	$1,352,061	$42,563,306	$43,915,367	17%	$3,361,257	$0	$91,191,991
154	Monsanto Co	$1,348,721	$42,415,120	$43,763,841	15%	$12,629,514	$424,126	$100,581,322
155	Edison International	$1,340,935	$13,483,000	$14,823,935	18%	$212,505,167	$66,919,984	$309,073,021
156	Amway/Alticor Inc	$1,337,945	$2,630,000	$3,967,945	7%	$1,274,153	$0	$9,210,043
157	Freeport-McMoRan Copper & Gold	$1,334,155	$3,525,000	$4,859,155	13%	$254,900	$0	$9,973,210
158	Medtronic Inc	$1,333,854	$24,625,691	$25,959,545	20%	$659,318,600	$0	$711,237,690
159	Zurich Financial Services	$1,319,175	$30,745,079	$32,064,254	19%	$0	$0	$64,128,508
160	Williams Companies	$1,315,785	$21,065,000	$22,380,785	20%	$6,900	$0	$44,768,470
161	AmerisourceBergen Corp	$1,314,338	$7,275,795	$8,590,133	16%	$4,724,397,975	$0	$4,741,578,241
162	Novartis AG	$1,313,600	$39,379,226	$40,692,826	22%	$2,055,616,833	$30,489,378	$2,167,491,863
163	PG&E Corp	$1,302,944	$87,680,000	$88,982,944	18%	$64,665,283	$28,104,010	$270,735,181
164	eBay Inc	$1,294,238	$10,874,400	$12,168,638	16%	$9,407	$0	$24,346,683
165	HSBC Holdings	$1,286,768	$17,392,573	$18,679,341	22%	$3,894,377,674	$9,889,069,851	$13,820,806,207
166	Xcel Energy	$1,269,486	$11,980,000	$13,249,486	20%	$120,878,569	$0	$147,377,541
167	Limited Brands	$1,268,787	$2,900,000	$4,168,787	8%	$0	$0	$8,337,574
168	Nucor Corp	$1,267,454	$15,660,000	$16,927,454	17%	$80,630	$0	$33,935,538
169	Boston Scientific Corp	$1,255,009	$10,410,000	$11,665,009	21%	$329,720,348	$0	$353,050,366
170	Nationwide	$1,233,179	$20,124,110	$21,357,289	18%	$0	$0	$42,714,578
171	Arch Coal	$1,227,044	$8,628,000	$9,855,044	18%	$0	$0	$19,710,088
172	Apollo Group	$1,211,820	$4,405,000	$5,616,820	9%	$4,308,661	$5,333,252,802	$5,348,795,103
173	Progress Energy	$1,207,364	$11,270,000	$12,477,364	18%	$16,562,677	$200,000,000	$241,517,405
174	PPL Corp	$1,191,499	$7,664,000	$8,855,499	12%	$48,187,514	$19,054,516	$84,953,028
175	Emerson	$1,191,147	$6,099,992	$7,291,139	9%	$35,140,908	$1,650,838	$51,374,024
176	Energy Solutions Inc	$1,182,155	$3,260,000	$4,442,155	8%	$327,961,911	$0	$336,846,221
177	Dell Inc	$1,179,688	$15,015,000	$16,194,688	11%	$7,975,194,579	$3,234,587	$8,010,818,542
178	Jacobs Engineering Group	$1,178,378	$3,270,000	$4,448,378	17%	$8,628,450,210	$220,182	$8,637,567,148
179	Computer Sciences Corp	$1,177,835	$8,324,000	$9,501,835	16%	$19,905,143,833	-$157,532	$19,923,989,971
180	Sprint Nextel	$1,175,731	$17,841,802	$19,017,533	22%	$814,379,580	$7,295,000	$859,709,646
181	Shaw Group	$1,172,221	$7,875,000	$9,047,221	10%	$6,838,457,395	$0	$6,856,551,837
182	Cintas Corp	$1,163,597	$1,180,000	$2,343,597	4%	$17,280,633	$500	$21,968,327
183	Bayer AG	$1,146,500	$37,736,453	$38,882,953	23%	$158,787,862	$1,790,000	$238,343,768
184	General Mills	$1,142,980	$5,559,300	$6,702,280	11%	$1,307,872,869	$343,013	$1,321,620,442
185	Tyco International	$1,140,204	$12,347,413	$13,487,617	14%	$633,830,468	$161	$660,805,863

Top 200 corporate contributors all sectors ranked by contribution.

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
186	Timken Co	$1,129,577	$3,397,174	$4,526,751	7%	$188,203,368	$6,652,088	$203,908,958
187	National Amusements Inc	$1,126,400	$42,578,000	$43,704,400	23%	$9,152,233	$0	$96,561,033
188	Walgreen Co	$1,123,097	$10,430,000	$11,553,097	21%	$227,608	$0	$23,333,802
189	Pacific Mutual Holding	$1,119,500	$4,757,348	$5,876,848	15%	$0	$0	$11,753,696
190	Level 3 Communications	$1,118,251	$3,010,396	$4,128,647	7%	$73,870,662	$0	$82,127,956
191	Motorola Solutions	$1,116,960	$21,163,222	$20,046,262	21%	$1,623,514,514	$0	$1,665,840,958
192	Cash America International	$1,108,650	$3,763,600	$4,872,250	16%	$0	$0	$9,744,500
193	Land O'Lakes	$1,105,097	$4,180,000	$5,285,097	19%	$407,090,403	$8,477,202	$426,137,799
194	Intuit	$1,098,108	$12,810,000	$13,908,108	11%	$887,682	$0	$28,703,898
195	US Steel	$1,097,643	$22,310,000	$23,407,643	17%	$50,869	$0	$46,866,155
196	Allstate Insurance	$1,092,813	$22,300,000	$23,392,813	20%	$0	$0	$46,785,626
197	BASF SE	$1,087,725	$7,688,623	$8,776,348	45%	$22,584	$30,621,798	$48,197,078
198	TIAA-CREF	$1,087,070	$9,360,000	$10,447,070	19%	$92,717,548	$0	$113,611,688
199	Cargill	$1,082,557	$8,480,963	$9,563,520	14%	$1,065,603,286	$5,402,892,355	$6,487,622,681
200	Halliburton Co	$1,081,362	$3,115,000	$4,196,362	17%	$934,688	$0	$9,327,412
	Totals	$597,397,401	$5,183,025,891	$5,775,189,372	27%	$1,280,248,373,850	$3,165,743,038,146	$4,457,547,024,660
	Hill coverage indicates the percentage of Senators and Representatives who recived contributions.							
	Federal Business indicates the $ value of business activities by way of contrats etc. invoiced to the Federal Governmet.							
	Federal Support indicates the $ value of Federal grants, import subsidies, bailouts etc. to that corporation.							

Rank	Organization	Contributions	Lobbying	Total Influence	Hill Coverage	Federal Business	Federal Support	Federal Total
1	Goldman Sachs	$16,532,620	$21,440,000	$37,972,620	46%	$21,682,741,581	$207,667,900,000	$229,426,586,821
2	Bank of America	$12,596,049	$32,574,000	$45,170,049	44%	$19,110,189,065	$457,067,022,207	$476,267,551,370
5	JPMorgan Chase & Co	$10,421,875	$41,640,000	$52,061,875	43%	$18,020,035,703	$485,642,436,807	$503,766,596,260
8	Deloitte LLP	$9,070,686	$15,080,000	$24,150,686	64%	$6,350,936,269	$44,779,312	$6,444,016,954
10	Morgan Stanley	$8,476,333	$16,890,000	$25,366,333	37%	$11,566,283,640	$115,899,600,000	$127,516,616,306
12	PricewaterhouseCoopers	$7,788,514	$15,930,584	$23,719,098	52%	$982,257,303	$297,370	$1,029,992,870
15	Citigroup Inc	$7,016,707	$37,140,000	$44,156,707	35%	$2,359,560,268	$503,409,834,470	$505,857,708,152
20	New York Life Insurance	$6,449,157	$32,290,000	$38,739,157	46%	$0	$0	$77,478,314
23	Ernst & Young	$6,213,038	$13,637,737	$19,850,775	41%	$188,459,154	$0	$228,160,704
24	Blackstone Group	$6,063,384	$38,526,776	$44,590,160	18%	$275,876,284	$0	$365,056,604
28	AFLAC Inc	$5,655,440	$24,730,000	$30,385,440	61%	$0	$0	$60,770,881
31	Berkshire Hathaway	$5,535,912	$51,406,917	$56,942,829	39%	$37,478,730	$28,546,668	$179,911,056
32	Wells Fargo	$5,182,484	$27,297,740	$32,480,224	41%	$22,156,319,030	$189,029,351,540	$211,250,631,018
37	Credit Suisse Group	$4,721,583	$12,180,000	$16,901,583	25%	$638,438,611	$224,535,000,000	$225,207,241,777
46	Massachusetts Mutual Life Insurance	$3,688,944	$19,120,000	$22,808,944	30%	$41,204	$291,500,000	$337,159,092
51	USAA	$3,464,312	$34,919,336	$38,383,648	30%	$174,982,249	$0	$251,749,545
53	KPMG LLP	$3,350,472	$10,385,000	$13,735,472	28%	$1,003,736,532	$4,861,482	$1,036,068,958
54	UBS AG	$3,296,356	$3,665,000	$6,961,356	28%	$9,953,925,101	$239,072,100,000	$249,039,947,813
59	Metlife Inc	$3,019,292	$32,930,000	$35,949,292	33%	$3,638,787	$20,524,200,000	$20,599,737,371
67	CME Group	$2,759,897	$12,960,000	$15,719,897	35%	$0	$0	$31,439,794
73	Carlyle Group	$2,606,542	$5,972,400	$8,578,942	11%	$19,231,023,736	$0	$19,248,181,620
74	Bank of New York Mellon	$2,572,917	$6,694,519	$9,267,436	21%	$6,936,205	$54,427,032,372	$54,452,503,449
77	Intercontinental Exchange Inc	$2,458,345	$5,837,002	$8,295,347	6%	$0	$0	$16,590,694
78	American Express	$2,456,569	$17,850,000	$20,306,569	29%	$2,771,697	$8,984,390,000	$9,027,774,835
79	Deutsche Bank AG	$2,387,470	$7,316,000	$9,703,470	11%	$11,799,999,491	$316,427,149,423	$328,246,555,854
86	Humana Inc	$2,237,896	$10,872,945	$13,110,841	27%	$20,629,789,317	$0	$20,656,010,999
87	Capital One Financial	$2,201,350	$8,993,646	$11,194,996	24%	$0	$3,584,829,000	$3,607,218,992
88	Aetna Inc	$2,189,838	$19,816,055	$22,005,893	18%	$725,243	$0	$44,737,029
90	Cerberus Capital Management	$2,163,638	$14,317,782	$16,481,420	13%	$8,694,752,688	$0	$8,727,715,528
93	Travelers Companies	$2,123,390	$21,550,000	$23,673,390	19%	$19,215,946	$0	$66,562,726
94	FMR Corp	$2,102,230	$16,825,000	$18,927,230	26%	$5,367,410,755	$0	$5,405,265,215
97	Federated Investors Inc	$2,045,710	$4,322,000	$6,367,710	9%	$10,212,878,720	$0	$10,225,614,140
100	Genworth Financial	$1,985,434	$24,320,000	$26,305,434	25%	$0	$202,400,000	$255,010,868
109	Prudential Financial	$1,853,992	$43,698,063	$45,552,055	26%	$1,103,019,603	$2,456,800,000	$3,650,923,713
119	Northwestern Mutual	$1,755,318	$26,622,000	$28,377,318	20%	$1,080,823,201	$0	$1,137,577,837
121	Forest City Enterprises	$1,707,917	$3,070,000	$4,777,917	9%	$0	$0	$9,555,834
124	Charles Schwab & Co	$1,688,311	$14,954,000	$16,642,311	14%	$2,635,526,490	$0	$2,668,811,112
133	US Bancorp	$1,553,838	$5,068,037	$6,621,875	18%	$652,701,019	$6,755,365,136	$7,421,309,905
148	MacAndrews & Forbes	$1,418,284	$11,240,000	$12,658,284	10%	$11,626,430,433	$0	$11,651,747,001
150	SLM Corp	$1,401,012	$20,380,000	$21,781,012	22%	$235,843,716	$191,596,145,204	$191,875,550,944
151	Hartford Financial Services	$1,380,622	$14,650,000	$16,030,622	19%	$0	$4,124,500,000	$4,156,561,244
152	Cigna Corp	$1,363,240	$10,091,436	$11,454,676	13%	$161,771,998	$0	$184,681,350
159	Zurich Financial Services	$1,319,175	$30,745,079	$32,064,254	19%	$0	$0	$64,128,508
165	HSBC Holdings	$1,286,768	$17,392,573	$18,679,341	22%	$3,894,377,674	$9,889,069,851	$13,820,806,207
170	Nationwide	$1,233,179	$20,124,110	$21,357,289	18%	$0	$0	$42,714,578
189	Pacific Mutual Holding	$1,119,500	$4,757,348	$5,876,848	15%	$0	$0	$11,753,696
192	Cash America International	$1,108,650	$3,763,600	$4,872,250	16%	$0	$0	$9,744,500
196	Allstate Insurance	$1,092,813	$22,300,000	$23,392,813	20%	$0	$0	$46,785,626
198	TIAA-CREF	$1,087,070	$9,360,000	$10,447,070	19%	$92,717,548	$0	$113,611,688
	Totals	$183,204,073	$917,646,685	$1,100,850,758	$ 12.95	$211,953,614,991	$3,041,665,110,842	$3,255,820,427,362

These are ranked by contribution value. While Citigroup is ranked 5th in the FIRE sector and 15th overall based on contributions, at US$ 505,678,394,738, it is the highest sector recipient value of federal money. Total sector influence value is US$1,100,850,758 with the total sector recipient value of US$3,253,618,725,833

Appendix 10

The Powell Memo: Lewis F. Powell Jr. Archives. Washington and Lee University, School of Law, Richmond VA.

See responses: http://law2.wlu.edu/deptimages/Powell%20Archives/PowellSpeechResearchAOFESMemo.pdf

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CONFIDENTIAL MEMORANDUM

ATTACK ON AMERICAN FREE ENTERPRISE SYSTEM

TO: Mr. Eugene B. Sydnor, Jr.
Chairman
Education Committee
U.S. Chamber of Commerce

DATE: August 23, 1971

FROM: Lewis F. Powell, Jr.

This memorandum is submitted at your request as a basis for the discussion on August 24 with Mr. Booth and others at the U.S. Chamber of Commerce. The purpose is to identify the problem, and suggest possible avenues of action for further consideration.

Dimensions of the Attack

No thoughtful person can question that the American economic system is under broad attack.* This varies in scope, intensity, in the techniques employed, and in the level of visibility.

There always have been some who opposed the American system, and preferred socialism or some form of statism

*Variously called: the "free enterprise system", "capitalism", and the "profit system". The American political system of democracy under the rule of law is also under attack, often by the same individuals and organizations who seek to undermine the enterprise system.

(communism or fascism). Also, there always have been critics of the system, whose criticism has been wholesome and constructive so long as the objective was to improve rather than to subvert or destroy.

But what now concerns us is quite new in the history of America. We are not dealing with episodic or isolated attacks from a relatively few extremists or even from the minority socialist cadre. Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts.

Sources of the Attack

The sources are varied and diffused. They include, not unexpectedly, the Communists, New Leftists and other revolutionaries who would destroy the entire system, both political and economic. These extremists of the left are far more numerous, better financed, and increasingly are more welcomed and encouraged by other elements of society, than ever before in our history. But they remain a small minority, and are not yet the principal cause for concern.

The most disquieting voices joining the chorus of criticism, come from perfectly respectable elements of society: from the college campus, the pulpit, the media, the intellectual

and literary journals, the arts and sciences, and from politicians. In most of these groups the movement against the system is participated in only by minorities. Yet, these often are the most articulate, the most vocal, the most prolific in their writing and speaking.

Moreover, much of the media - for varying motives and in varying degrees - either voluntarily accords unique publicity to these "attackers", or at least allows them to exploit the media for their purposes. This is especially true of television, which now plays such a predominant role in shaping the thinking, attitudes and emotions of our people.

One of the bewildering paradoxes of our time is the extent to which the enterprise system tolerates, if not participates in, its own destruction.

The campuses from which much of the criticism emanates are supported by (i) tax funds generated largely from American business, and (ii) contributions from capital funds controlled or generated by American business. The Boards of Trustees of our universities overwhelmingly are composed of men and women who are leaders in the system.

Most of the media, including the national TV systems, are owned and theoretically controlled by corporations which

depend upon profits, and the enterprise system to survive.

Tone of the Attack

This memorandum is not the place to document in detail the tone, character, or intensity of the attack. The following quotations will suffice to give one a general idea:

William Kunstler, warmly welcomed on campuses and listed in a recent student poll as the "American lawyer most admired", incites audiences as follows:

> "You must learn to fight in the streets, to revolt, to shoot guns. We will learn to do all of the things that property owners fear".*

The New Leftists who heed Kunstler's advice increasingly are beginning to act - not just against military recruiting offices and manufacturers of munitions, but against a variety of businesses:

> "Since February 1970, branches (of Bank of America) have been attacked 39 times, 22 times with explosive devices and 17 times with fire bombs or by arsonists".**

Although New Leftist spokesmen are succeeding in radicalizing thousands of the young, the greater cause for concern is the hostility of respectable liberals and social reformers.

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*Richmond News-Leader, June 8, 1970. Column of William F. Buckley, Jr.

**N. Y. Times Service article, reprinted Richmond Times-Dispatch, May 17, 1971.

It is the sum total of their views and influence which could indeed fatally weaken or destroy the system.

A chilling description of what is being taught on many of our campuses was written by Stewart Alsop:

> "Yale, like every other major college, is graduating scores of bright young men who are practitioners of 'the politics of despair'. These young men despise the American political and economic system . . . (their) minds seem to be wholly closed. They live, not by rational discussion, but by mindless slogans".*

A recent poll of students on 12 representative campuses reported that:

> "Almost half the students favored socialization of basic U.S. industries".**

A visiting professor from England at Rockford College gave a series of lectures entitled "The Ideological War Against Western Society", in which he documents the extent to which members of the intellectual community are waging ideological warfare against the enterprise system and the values of western society. In a foreword to these lectures, famed Dr. Milton Friedman of Chicago warned:

> "It (is) crystal clear that the foundations of our free society are under wide-ranging and powerful attack - not by Communist or any

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*Stewart Alsop, Yale and the Deadly Danger, Newsweek, May 18, 1970.

**Editorial, Richmond Times Dispatch, July 7, 1971.

> other conspiracy but by misguided individuals parroting one another and unwittingly serving ends they would never intentionally promote".*

Perhaps the single most effective antagonist of American business is Ralph Nader who - thanks largely to the media - has become a legend in his own time and an idol of millions of Americans. A recent article in Fortune speaks of Nader as follows:

> "The passion that rules in him - and he is a passionate man - is aimed at smashing utterly the target of his hatred, which is corporate power. He thinks, and says quite bluntly, that a great many corporate executives belong in prison - for defrauding the consumer with shoddy merchandise, poisoning the food supply with chemical additives, and willfully manufacturing unsafe products that will maim or kill the buyer. . . . He emphasizes that he is not talking just about 'fly-by-night hucksters' but the top management of blue-chip business".**

A frontal assault was made on our government, our system of justice, and the free enterprise system by Yale professor Charles Reich in his widely publicized book: "The Greening of America", published last winter.

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*Dr. Milton Friedman, Prof. of Economics, U. of Chicago, writing a Foreword to Dr. Arthur A. Shenfield's Rockford College lectures entitled "The Ideological War Against Western Society", copyrighted 1970 by Rockford College.

**Fortune, May 1971, p. 145. This Fortune analysis of the Nader influence includes a reference to Nader's visit to a college where he was paid a lecture fee of $2,500 for "denouncing America's big corporations in venomous language . . . bringing (rousing and spontaneous) bursts of applause" when he was asked when he planned to run for President.

The foregoing references illustrate the broad, shotgun attack on the system itself. There are countless examples of rifle shots which undermine confidence and confuse the public. Favorite current targets are proposals for tax incentives through changes in depreciation rates and investment credits. These are usually described in the media as "tax breaks", "loop holes", or "tax benefits" <u>for the benefit of business</u>. As viewed by a columnist in the Post, such tax measures would benefit "only the rich, the owners of big companies".*

It is dismaying that many politicians make the same argument that tax measures of this kind benefit only "business", without benefit to "the poor". The fact that this is either political demagoguery or economic illiteracy, is of slight comfort. This setting of the "rich" against the "poor", of business against the people, is the cheapest and most dangerous kind of politics.

The Apathy and Default of Business

What has been the response of business to this massive assault upon its fundamental economics, upon its philosophy, upon its right to continue to manage its own affairs, and indeed upon its integrity?

*The Washington Post, Column of William Raspberry, June 28, 1971.

The painfully sad truth is that business, including the boards of directors and the top executives of corporations great and small and business organizations at all levels, often have responded - if at all - by appeasement, ineptitude and ignoring the problem. There are, of course, many exceptions to this sweeping generalization. But the net effect of such response as has been made is scarcely visible.

In all fairness, it must be recognized that businessmen have not been trained or equipped to conduct guerrilla warfare with those who propagandize against the system, seeking insidiously and constantly to sabotage it. The traditional role of business executives has been to manage, to produce, to sell, to create jobs, to make profits, to improve the standard of living, to be community leaders, to serve on charitable and educational boards, and generally to be good citizens. They have performed these tasks very well indeed.

But they have shown little stomach for hard-nose contest with their critics, and little skill in effective intellectual and philosophical debate.

A column recently carried by the Wall Street Journal was entitled: "Memo to GM: Why Not Fight Back?"* Although addressed to GM by name, the article was a warning to all American business. Columnist St. John said:

*Jeffrey St. John, The Wall Street Journal, May 21, 1971

> "General Motors, like American business in general, is 'plainly in trouble' because intellectual bromides have been substituted for a sound intellectual exposition of its point of view".

Mr. St. John then commented on the tendency of business leaders to compromise with and appease critics. He cited the concessions which Nader wins from management, and spoke of "the fallacious view many businessmen take toward their critics". He drew a parallel to the mistaken tactics of many college administrators:

> "College administrators learned too late that such appeasement serves to destroy free speech, academic freedom and genuine scholarship. One campus radical demand was conceded by university heads only to be followed by a fresh crop which soon escalated to what amounted to a demand for outright surrender".

One need not agree entirely with Mr. St. John's analysis. But most observers of the American scene will agree that the essence of his message is sound. American business "plainly is in trouble"; the response to the wide range of critics has been ineffective, and has included appeasement; the time has come - indeed, it is long overdue - for the wisdom, ingenuity and resources of American business to be marshaled against those who would destroy it.

Responsibility of Business Executives

What specifically should be done? The first essential - a prerequisite to any effective action - is for businessmen to confront this problem as a primary responsibility of corporate management.

The overriding first need is for businessmen to recognize that the ultimate issue may be survival - survival of what we call the free enterprise system, and all that this means for the strength and prosperity of America and the freedom of our people.

The day is long past when the chief executive officer of a major corporation discharges his responsibility by maintaining a satisfactory growth of profits, with due regard to the corporation's public and social responsibilities. If our system is to survive, top management must be equally concerned with protecting and preserving the system itself. This involves far more than an increased emphasis on "public relations" or "governmental affairs" - two areas in which corporations long have invested substantial sums.

A significant first step by individual corporations could well be the designation of an executive vice president (ranking with other executive VP's) whose responsibility is

to counter - on the broadest front - the attack on the enterprise system. The public relations department could be one of the fundations assigned to this executive, but his responsibilities should encompass some of the types of activities referred to subsequently in this memorandum. His budget and staff should be adequate to the task.

Possible Role of the Chamber of Commerce

But independent and uncoordinated activity by individual corporations, as important as this is, will not be sufficient. Strength lies in organization, in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations.

Moreover, there is the quite understandable reluctance on the part of any one corporation to get too far out in front and to make itself too visible a target.

The role of the National Chamber of Commerce is therefore vital. Other national organizations (especially those of various industrial and commercial groups) should join in the effort, but no other organizations appears to be as well situated as the Chamber. It enjoys a strategic position, with a fine

reputation and a broad base of support. Also - and this is of immeasurable merit - there are hundreds of local Chambers of Commerce which can play a vital supportive role.

It hardly need be said that before embarking upon any program the Chamber should study and analyze possible courses of action and activities, weighing risks against probable effectiveness and feasibility of each. Considerations of cost, the assurance of financial and other support from members, adequacy of staffing and similar problems will all require the most thoughtful consideration.

The Campus

The assault on the enterprise system was not mounted in a few months. It has gradually evolved over the past two decades, barely perceptible in its origins and benefitting from a gradualism that provoked little awareness much less any real reaction.

Although origins, sources and causes are complex and interrelated, and obviously difficult to identify without careful qualification, there is reason to believe that the campus is the single most dynamic source. The social science faculties usually include members who are unsympathetic to the enterprise system. They may range from a Herbert Marcuse, Marxist faculty

member at the University of California at San Diego, and convinced socialists, to the ambivalent liberal critic who finds more to condemn than to commend. Such faculty members need not be in a majority. They are often personally attractive and magnetic; they are stimulating teachers, and their controversy attracts student following; they are prolific writers and lecturers; they author many of the textbooks; and they exert enormous influence - far out of proportion to their numbers - on their colleagues and in the academic world.

Social science faculties (the political scientist, economist, sociologist and many of the historians) tend to be liberally oriented, even when leftists are not present. This is not a criticism per se, as the need for liberal thought is essential to a balanced viewpoint. The difficulty is that "balance" is conspicuous by its absence on many campuses, with relatively few members being of conservative or moderate persuasion and even the relatively few often being less articulate and aggressive than their crusading colleagues.

This situation extending back many years and with the imbalance gradually worsening, has had an enormous impact on millions of young American students. In an article in Barron's weekly, seeking an answer to why so many young people are disaffected even to the point of being revolutionaries, it was said:

"Because they were taught that way".*

Or, as noted by columnist Stewart Alsop, writing about his alma mater:

> Yale, like every other major college, is graduating scores of bright young men . . . who despise the American political and economic system".

As these "bright young men", from campuses across the country, seek opportunities to change a system which they have been taught to distrust - if not, indeed "despise" - they seek employment in the centers of the real power and influence in our country, namely: (i) with the news media, especially television; (ii) in government, as "staffers" and consultants at various levels; (iii) in elective politics; (v) as lecturers and writers; and (v) on the faculties at various levels of education.

Many do enter the enterprise system - in business and the professions - and for the most part they quickly discover the fallacies of what they have been taught. But those who eschew the mainstream of the system, often remain in key positions of influence where they mold public opinion and often shape governmental action. In many instances, these "intellectuals"

*Barron's National Business and Financial Weekly, "The Total Break with America, The Fifth Annual Conference of Socialist Scholars", Sept. 15, 1969.

end up in regulatory agencies or governmental departments with large authority over the business system they do not believe in.

If the foregoing analysis is approximately sound, a priority task of business - and organizations such as the Chamber - is to address the campus origin of this hostility.

Few things are more sanctified in American life than academic freedom. It would be fatal to attack this as a principle. But if academic freedom is to retain the qualities of "openness", "fairness" and "balance" - which are essential to its intellectual significance - there is a great opportunity for constructive action. The thrust of such action must be to restore the qualities just mentioned to the academic communities.

What Can Be Done About the Campus

The ultimate responsibility for intellectual integrity on the campus must remain on the administrations and faculties of our colleges and universities. But organizations such as the Chamber can assist and activate constructive change in many ways, including the following:

Staff of Scholars

The Chamber should consider establishing a staff of highly qualified scholars in the social sciences who do believe

in the system. It should include several of national reputation, whose authorship would be widely respected - even when disagreed with.

Staff of Speakers

There also should be a staff of speakers of the highest competency. These might include the scholars, and certainly those who speak for the Chamber would have to articulate the product of the scholars.

Speaker's Bureau

In addition to full time staff personnel, the Chamber should have a Speaker's Bureau which should include the ablest and most effective advocates from the top echelons of American business.

Evaluation of Textbooks

The staff of scholars (or preferably a panel of independent scholars) should evaluate social science textbooks, especially in economics, political science and sociology. This should be a continuing program.

The objective of such evaluation should be oriented toward restoring the balance essential to genuine academic

freedom. This would include assurance of fair and factual treatment of our system of government and our enterprise system, its accomplishments, its basic relationship to individual rights and freedoms, and comparisons with the systems of socialism, fascism and communism. Most of the existing textbooks have some sort of comparisons, but many are superficial, biased and unfair.

We have seen the civil rights movement insist on re-writing many of the textbooks in our universities and schools. The labor unions likewise insist that textbooks be fair to the viewpoints of organized labor. Other interested citizens groups have not hesitated to review, analyze and criticize textbooks and teaching materials. In a democratic society, this can be a constructive process and should be regarded as an aid to genuine academic freedom and not as an intrusion upon it.

If the authors, publishers and users of textbooks know that they will be subjected - honestly, fairly and thoroughly - to review and critique by eminent scholars who believe in the American system, a return to a more rational balance can be expected.

Equal Time on the Campus

The Chamber should insist upon equal time on the college speaking circuit. The FBI publishes each year a list of speeches

made on college campuses by avowed Communists. The number in 1970 exceeded 100. There were, of course, many hundreds of appearances by leftists and ultra liberals who urge the types of viewpoints indicated earlier in this memorandum. There was no corresponding representation of American business, or indeed by individuals or organizations who appeared in support of the American system of government and business.

Every campus has its formal and informal groups which invite speakers. Each law school does the same thing. Many universities and college officially sponsor lecture and speaking programs. We all know the inadequacy of the representation of business in these programs.

It will be said that few invitations would be extended to Chamber speakers.* This undoubtedly would be true unless the Chamber aggressively insisted upon the right to be heard - in effect, insisted upon "equal time". University administrators and the great majority of student groups and committees would not welcome being put in the position publicly of refusing a forum to diverse views. Indeed, this is the classic excuse for allowing Communists to speak.

The two essential ingredients are (i) to have attractive, articulate and well-informed speakers; and (ii) to exert whatever

*On many campuses freedom of speech has been denied to all who express moderate or conservative viewpoints.

degree of pressure - publicly and privately - may be necessary to assure opportunities to speak. The objective always must be to inform and enlighten, and not merely to propagandize.

Balancing of Faculties

Perhaps the most fundamental problem is the imbalance of many faculties. Correcting this is indeed a long-range and difficult project. Yet, it should be undertaken as a part of an overall program. This would mean the urging of the need for faculty balance upon university administrators and boards of trustees.

The methods to be employed require careful thought, and the obvious pitfalls must be avoided. Improper pressure would be counterproductive. But the basic concepts of balance, fairness and truth are difficult to resist, if properly presented to boards of trustees, by writing and speaking, and by appeals to alumni associations and groups.

This is a long road and not one for the fainthearted. But if pursued with integrity and conviction it could lead to a strengthening of both academic freedom on the campus and of the values which have made America the most productive of all societies.

Graduate Schools of Business

The Chamber should enjoy a particular rapport with the increasingly influential graduate schools of business. Much that has been suggested above applies to such schools.

Should not the Chamber also request specific courses in such schools dealing with the entire scope of the problem addressed by this memorandum? This is now essential training for the executives of the future.

Secondary Education

While the first priority should be at the college level, the trends mentioned above are increasingly evidenced in the high schools. Action programs, tailored to the high schools and similar to those mentioned, should be considered. The implementation thereof could become a major program for local chambers of commerce, although the control and direction - especially the quality control - should be retained by the National Chamber.

What Can Be Done About the Public?

Reaching the campus and the secondary schools is vital for the long-term. Reaching the public generally may be more important for the shorter term. The first essential is to

establish the staffs of eminent scholars, writers and speakers, who will do the thinking, the analysis, the writing and the speaking. It will also be essential to have staff personnel who are thoroughly familiar with the media, and how most effectively to communicate with the public. Among the more obvious means are the following:

<u>Television</u>

The national television networks should be monitored in the same way that textbooks should be kept under constant surveillance. This applies not merely to so-called educational programs (such as "Selling of the Pentagon"), but to the daily "news analysis" which so often includes the most insidious type of criticism of the enterprise system.* Whether this criticism results from hostility or economic ignorance, the result is the gradual erosion of confidence in "business" and free enterprise.

This monitoring, to be effective would require constant examination of the texts of adequate samples of programs. Complaints - to the media and to the Federal Communications Commission - should be made promptly and strongly when programs are unfair or inaccurate.

*It has been estimated that the evening half-hour news programs of the networks reach daily some 50,000,000 Americans.

Equal time should be demanded when appropriate. Efforts should be made to see that the forum-type programs (the Today show, Meet the Press, etc.) afford at least as much opportunity for supporters of the American system to participate as these programs do for those who attack it.

Other Media

Radio and the press are also important, and every available means should be employed to challenge and refute unfair attacks, as well as to present the affirmative case through these media.

The Scholarly Journals.

It is especially important for the Chamber's "faculty of scholars" to publish. One of the keys to the success of the liberal and leftist faculty members has been their passion for "publication" and "lecturing". A similar passion must exist among the Chamber's scholars.

Incentives might be devised to induce more "publishing" by independent scholars who do believe in the system.

There should be a fairly steady flow of scholarly articles presented to a broad spectrum of magazines and

periodicals - ranging from the popular magazines (Life, Look, Reader's Digest, etc.) to the more intellectual ones (Atlantic, Harper's, Saturday Review, New York, etc.)*, and to the various professional journals.

Books, Paperbacks and Pamphlets

The news stands - at airports, drugstores and elsewhere - are filled with paperback and pamphlets advocating everything from revolution to erotic free love. One finds almost no attractive, well-written paperbacks or pamphlets on "our side". It will be difficult to compete with an Eldridge Cleaver or even a Charles Reich for reader attention, but unless the effort is made - on a large enough scale and with appropriate imagination to assure some success - this opportunity for educating the public will be irretrievably lost.

Paid Advertisements

Business pays hundreds of millions of dollars to the media for advertisements. Most of this supports specific products;

*One illustration of the type of article which should not go unanswered appeared in the popular "New York" of July 19, 1971. This was entitled "A Populist Manifesto" by ultra liberal Jack Newfield - who argued that "the root need in our country is 'to redistribute wealth'".

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much of its supports institutional image making; and some fraction of it does support the system. But the latter has been more or less tangential, and rarely part of a sustained, major effort to inform and enlighten the American people.

If American business devoted only 10% of its total annual advertising budget to this overall purpose, it would be a statesman-like expenditure.

The Neglected Political Arena

In final analysis, the payoff - short of revolution - is what government does. Business has been the favorite whipping-boy of many politicians for many years. But the measure of how far this has gone is perhaps best found in the anti-business views now being expressed by several leading candidates for President of the United States.

It is still Marxist doctrine that the "capitalist" countries are controlled by big business. This doctrine, consistently a part of leftist propaganda all over the world, has a wide public following among Americans.

Yet, as every business executive knows, few elements of American society today have as little influence in government as the American businessman, the corporation, or even the millions of corporate stockholders. If one doubts this, let him

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undertake the role of "lobbyist" for the business point of view before Congressional Committees. The same situation obtains in the legislative halls of most states and major cities. One does not exaggerate to say that, in terms of political influence with respect to the course of legislation and government action, the American business executive is truly the "forgotten man".

Current examples of the impotency of business, and of the near-contempt with which businessmen's views are held, are the stampedes by politicians to support almost any legislation related to "consumerism" or to the "environment".

Politicians reflect what they believe to be majority views of their constituents. It is thus evident that most politicians are making the judgment that the public has little sympathy for the businessman or his viewpoint.

The educational programs suggested above would be designed to enlighten public thinking - not so much about the businessman and his individual role as about the system which he administers, and which provides the goods, services and jobs on which our country depends.

But one should not postpone more direct political action, while awaiting the gradual change in public opinion to be effected through education and information. Business must learn the lesson, long ago learned by Labor and other self-interest

groups. This is the lesson that political power is necessary; that such power must be assidously cultivated; and that when necessary, it must be used aggressively and with determination - without embarrassment and without the reluctance which has been so characteristic of American business.

As unwelcome as it may be to the Chamber, it should consider assuming a broader and more vigorous role in the political arena.

Neglected Opportunity in the Courts

American business and the enterprise system have been affected as much by the courts as by the executive and legislative branches of government. Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change.

Other organizations and groups, recognizing this, have been far more astute in exploiting judicial action than American business. Perhaps the most active exploiters of the judicial system have been groups ranging in political orientation from "liberal" to the far left.

The American Civil Liberties Union is one example. It initiates or intervenes in scores of cases each year, and

it files briefs amicus curiae in the Supreme Court in a number of cases during each term of that court. Labor unions, civil rights groups and now the public interest law firms are extremely active in the judicial arena. Their success, often at business' expense, has not been inconsequential.

This is a vast area of opportunity for the Chamber, if it is willing to undertake the role of spokesman for American business and if, in turn, business is willing to provide the funds.

As with respect to scholars and speakers, the Chamber would need a highly competent staff of lawyers. In special situations it should be authorized to engage, to appear as counsel amicus in the Supreme Court, lawyers of national standing and reputation. The greatest care should be exercised in selecting the cases in which to participate, or the suits to institute. But the opportunity merits the necessary effort.

Neglected Stockholder Power

The average member of the public thinks of "business" as an impersonal corporate entity, owned by the very rich and managed by over-paid executives. There is an almost total failure to appreciate that "business" actually embraces - in one way or another - most Americans. Those for whom business provides jobs, constitute a fairly obvious class. But the 20 million

stockholders - most of whom are of modest means - are the real owners, the real entrepreneurs, the real capitalists under our system. They provide the capital which fuels the economic system which has produced the highest standard of living in all history. Yet, stockholders have been as ineffectual as business executives in promoting a genuine understanding of our system or in exercising political influence.

The question which merits the most thorough examination is how can the weight and influence of stockholders - 20 million voters - be mobilized to support (i) an educational program and (ii) a political action program.

Individual corporations are now required to make numerous reports to shareholders. Many corporations also have expensive "news" magazines which go to employees and stockholders. These opportunities to communicate can be used far more effectively as educational media.

The corporation itself must exercise restraint in undertaking political action and must, of course, comply with applicable laws. But is it not feasible - through an affiliate of the Chamber or otherwise - to establish a national organization of American stockholders and give it enough muscle to be influential?

A More Aggressive Attitude

Business interests - especially big business and their national trade organizations - have tried to maintain low profiles, especially with respect to political action.

As suggested in the Wall Street Journal article, it has been fairly characteristic of the average business executive to be tolerant - at least in public - of those who attack his corporation and the system. Very few businessmen or business organizations respond in kind. There has been a disposition to appease; to regard the opposition as willing to compromise, or as likely to fade away in due time.

Business has shunted confrontation politics. Business, quite understandably, has been repelled by the multiplicity of non-negotiable "demands" made constantly by self-interest groups of all kinds.

While neither responsible business interests, nor the United States Chamber of Commerce, would engage in the irresponsible tactics of some pressure groups, it is essential that spokesmen for the enterprise system - at all levels and at every opportunity - be far more aggressive than in the past.

There should be no hesitation to attack the Naders, the Marcuses and others who openly seek destruction of the system.

There should be not the slightest hesitation to press vigorously in all political arenas for support of the enterprise system. Nor should there be reluctance to penalize politically those who oppose it.

Lessons can be learned from organized labor in this respect. The head of the AFL-CIO may not appeal to businessmen as the most endearing or public-minded of citizens. Yet, over many years the heads of national labor organizations have done what they were paid to do very effectively. They may not have been beloved, but they have been respected - where it counts the most - by politicians, on the campus, and among the media.

It is time for American business - which has demonstrated the greatest capacity in all history to produce and to influence consumer decisions - to apply its great talents vigorously to the preservation of the system itself.

The Cost

The type of program described above (which includes a broadly based combination of education and political action), if undertaken long term and adequately staffed, would require far more generous financial support from American corporations than the Chamber has ever received in the past. High level

management participation in Chamber affairs also would be required.

The staff of the Chamber would have to be significantly increased, with the highest quality established and maintained. Salaries would have to be at levels fully comparable to those paid key business executives and the most prestigious faculty members. Professionals of the great skill in advertising and in working with the media, speakers, lawyers and other specialists would have to be recruited.

It is possible that the organization of the Chamber itself would benefit from restructuring. For example, as suggested by union experience, the office of President of the Chamber might well be a full-time career position. To assure maximum effectiveness and continuity, the chief executive officer of the Chamber should not be changed each year. The functions now largely performed by the President could be transferred to a Chairman of the Board, annually elected by the membership. The Board, of course, would continue to exercise policy control.

Quality Control is Essential

Essential ingredients of the entire program must be responsibility and "quality control". The publications, the articles, the speeches, the media programs, the advertising,

the briefs filed in courts, and the appearances before legislative committees - all must meet the most exacting standards of accuracy and professional excellence. They must merit respect for their level of public responsibility and scholarship, whether one agrees with the viewpoints expressed or not.

Relationship to Freedom

The threat to the enterprise system is not merely a matter of economics. It also is a threat to individual freedom.

It is this great truth - now so submerged by the rhetoric of the New Left and of many liberals - that must be reaffirmed if this program is to be meaningful.

There seems to be little awareness that the only alternatives to free enterprise are varying degrees of bureaucratic regulation of individual freedom - ranging from that under moderate socialism to the iron heel of the leftist or rightist dictatorship.

We in America already have moved very far indeed toward some aspects of state socialism, as the needs and complexities of a vast urban society require types of regulation and control that were quite unnecessary in earlier times. In some areas, such regulation and control already have seriously impaired the freedom of both business and labor, and indeed of the public generally. But most of the essential freedoms

remain: private ownership, private profit, labor unions, collective bargaining, consumer choice, and a market economy in which competition largely determines price, quality and variety of the goods and services provided the consumer.

In addition to the ideological attack on the system itself (discussed in this memorandum), its essentials also are threatened by inequitable taxation, and - more recently - by an inflation which has seemed uncontrollable.* But whatever the causes of diminishing economic freedom may be, the truth is that freedom as a concept is indivisible. As the experience of the socialist and totalitarian states demonstrates, the contraction and denial of economic freedom is followed inevitably by governmental restrictions on other cherished rights. It is this message, above all others, that must be carried home to the American people.

Conclusion

It hardly need be said that the views expressed above are tentative and suggestive. The first step should be a thorough study. But this would be an exercise in futility unless

*The recent "freeze" of prices and wages may well be justified by the current inflationary crisis. But if imposed as a permanent measure the enterprise system will have sustained a near fatal blow.

the Board of Directors of the Chamber accepts the fundamental premise of this paper, namely, that business and the enterprise system are in deep trouble, and the hour is late.

L.F.P., Jr.

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