

## The Evolution of Transparent Corruption<sup>1</sup>

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*The idea of corruption has long been associated with secrecy. In this paper we investigate the importance of transparency to corruption and find that corruption can not only exist in an environment of end-to-end transparency, but it can also flourish therein. Indeed, end-to-end transparency appears to provide enormous advantages for the application of grand scale corruption, as it provides both a sense of legitimacy and a way to interface easily with legislators. As such, we theorize that institutions looking to bend legislation in their favor will increasingly act entirely in the sunshine. We see this empirically and we color our argument with salient examples. We also explore examples of zero cost corruption and running tallies, both important tools which allow special interests to gain low cost leverage over legislators.*

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<sup>1</sup> This paper is an early draft for part of a larger project and intended to support our claim that legislative accountability overwhelmingly benefits those in power. We have benefited from the thoughtful reflections of several colleagues, including Nolan McCarty, Mo Fiorina, Jenny Mansbridge, Jon Elster, Walter Oleszek, Bill Bianco and Scott Adler. We welcome – indeed we encourage – comments and suggestions.

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## Corruption Does Not Require Secrecy

To many, corruption<sup>3</sup> conjures up ideas of smoke-filled rooms, silenced whistle blowers and money-filled suitcases changing hands in dark alleys. But this notion that corruption relies on secrecy is a mistake. Even in the most hush-hush negotiations, some modicum of sunshine is essential, as all bribery, intimidation and extortion requires intimate knowledge to be shared among the participants themselves. Indeed, these three common forms of corruption require that the participants have not only a robust and shared knowledge of who did what and when (i.e. knowledge of the bribe and the resulting corruption) but also imply the power to reward or punish each other's actions (accountability).

When these notions are applied to government corruption (the most common form), the applicable word for this 'shared knowledge' is *transparency*. This is because, regardless of whether the corrupt deal is brokered by bribery, extortion or intimidation, the back-end results of a government action (usually policy decisions) must, by necessity, come to the light and be verifiable – for example public funds must be allocated, the tax code must be altered, a regulation must be avoided, or a buddy must be assigned to a public office and so on – all publicly observable conditions. So even if the front-end (the deal-making) is kept secret, the back-end (the verifiable result) must be transparent, if not to the general public then at least to the corrupt actors. And therefore increased transparency provides essential information to corrupt actors.

And so, while it might appear that government corruption relies on both transparency and secrecy, that is not the case. Ironically, while some level of transparency is essential to government corruption, secrecy is not. This is because the deal-making front-end – the actual bribe, extortion or intimidation – can also be transacted in sunlight via public declarations in the press or the media (numerous examples to follow). Which means that both the bribe and the payoff can be carried out in the sunshine. But, if both the front-end and the back-end can be made fully transparent, then the entire process of corruption can transacted in broad daylight – no dark alleys, brass knuckles or overcoats required.

What this means, however, is that by focusing exclusively on the supposedly corrosive aspects of secrecy or the presumed curative powers of transparency, we might be fomenting government corruption instead of reducing it. And so instead of calling for increased transparency (as is the goal of many congressional reforms or reformers), we might be better served by cutting back on the sunshine.

But some things are easier said than done. And cutting back on transparency is not always so easy. For example, it is virtually impossible to prevent a venal meter maid from pocketing a bribe or a lone guard at a border crossing from extorting those who cross. And, while these two cases

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<sup>3</sup> We define and discuss corruption in Appendix A.

are often perceived of as a problem of too much secrecy, they might be better conceived of as a problem of too much transparency. Indeed in both cases, the 'who' is transparent – the individual government official (the meter maid or the border guard) is known explicitly. And, this knowledge of 'who' is a crucial element of corruption, as a bribe offered to the *specific* government official makes corruption significantly more likely than if a bribe was offered to *any* government official.

It turns out that this transparency of 'who' is especially important when we focus our discussion on corruption in Congress. This is because, even in a legislature, with hundreds of MoCs, the vast majority of corruption requires knowledge not just of the final vote count, but also of the specific actions, votes and decisions of individual MoCs. And therefore legislatures, because they are so big, are ideally set up to counter corruption, because if the doors are closed and the votes are made secret, the actions of the individual 'who' is concealed. This line of reasoning follows the logic of the secret ballot precisely – just as it is significantly easier to bribe an individual voter when their vote is made public, public knowledge of a MoC's actions makes them more susceptible to outside pressures as well. Indeed, congressional corruption is usually tied to the specific and individual 'yeas' or 'nays' of each MoC's public voting record. And, it is therefore a problem of this transparency of 'who.'

Historically, this wasn't the case. For nearly two hundred years (1789-1970), the vast majority of an individual MoC's decision-making was secret. Both James Madison and John F Kennedy (when they served in Congress) deliberated behind closed doors and over 90% of their votes were never released to the public and the individual records were not kept. As a result we know nothing about Madison or JFK's positions on even the most important committee votes.

But, in the early 1970s, this secrecy of the 'who' changed on a dime with the passage of the Legislative Reorganization Act. Suddenly, for the first time in history, the vast majority of congressional committees were forced open and the individual committee votes were made public. And this transparency of 'who' changed the game, as every MoC could be held individually accountable for every action not just by the public (who via their vote have exceedingly limited power) but by the wealthy special interests as well. And because accountability is highly correlated to power, the greater the power a group has, the more the pressure can be applied and the more the laws can be bent in their favor. Therefore, this notion that congressional corruption is fomented by secrecy is a myth and grand scale corruption is fully compatible with transparency. And it was at this time that campaign finance and the number of lobbyists soared, as money began flooding into Washington.

But that's not where the story ends. Surprisingly, increased sunshine actually streamlines and legitimizes the process of corruption. Indeed, due to the public's willing acceptance of anything deemed 'transparent,' many of the larger special interests have increasingly found it safer and more efficient to cut their corrupt deals (the front-end of corruption) in the sunshine. And the trend, therefore is for special interests to avoid secrecy altogether. For example, the Chamber of Commerce (CoC) publishes a list of upcoming amendments that they label as 'pro-business,' and

they publicly endorse MoCs based on how the individual MoCs vote on the list. And, the more a MoC casts their votes in accordance with the published 'pro-business' agenda of the CoC, the more likely the MoC is to receive the CoC's endorsement. Thus, the front-end deal (which reeks of bribery) is brokered entirely in the public. And because the back-end results (the publicly verified votes delivered by the 1970 laws) are also transparent, the entire pathway is publicly observable. And while few would be brazen enough to call the CoC's actions as 'bribery', what is the difference? By acting transparently, the CoC, accomplishes everything that a corrupt organization might hope to do in secrecy without risking incrimination.

Thus, this end-to-end transparency is a coup for would-be corrupters as it provides a magical sheen of legitimacy. Indeed, in much the same manner that boxing (which takes place in public settings) legitimizes assault and sometimes murder, brokering corrupt deals in the sunshine, somehow legitimizes bribery, intimidation or extortion. Indeed, it seems clear that if the CoC had acted differently by brokering the same quid-pro-quo deal in secret, any discovery of those actions would immediately be labeled as corrupt – and likely punished. Yet by broadcasting their corrupt deal, the CoC (and other groups) get a pass.

But, broadcasting a bribe is not just a safer and more effective way to broker the deal, it is more efficient as well. By broadcasting their intentions, powerful interests no longer need to secure appointments with every MoC, shuffle between their offices and whisper their intentions all while risking repercussions or arrest. Indeed, many national organizations (ALEC, the NRA, etc.) are looking to pressure state legislators as well, which pushes the total number of representatives upward to 8,000 plus – and we haven't even included the staffers and other key players. So broadcasting really helps. Protected by the first amendment, they gain the power attained by mass media, where they can spread their message quickly and precisely to every legislator instantly, conducting nationwide threats and bribes in public. And, this is precisely what they do. In this swamp-less swamp, conducted in full transparency, corruption thrives.

But, the solution is trivial, and it has been proven to work. This transparent corruption (which fomented the soaring rise in campaign finance and negative advertising) can be eliminated without amending the Constitution, violating the first amendment or even reversing the decision on Citizens United. We could just reverse the transparency procedures codified in the early 1970s. This is because legislatures (because they are so big) are uniquely designed to prevent corruption. So, while the front-end (protected by free speech) can always be conducted either in secret or in broad daylight, the back-end is user selected. Legislatures can choose whether to broadcast the individual votes or not. And by refusing to broadcast congressional deliberations and votes, the most essential pathway to corruption is severed. The individual transparency of 'who' is eliminated. Indeed, by definition, corruption itself disappears. This is because as long as a MoC votes their free will, without an ounce of outside pressure (which can only be achieved by secret ballot), their action, despite how much we like the outcome, cannot be considered venal or corrupt.

And while this solution may seem extreme in this modern era of sunshine, we will show later that not only are constituents unable to follow and analyze the mass of congressional data presented to them by the increased transparency laws of the 1970s, but that even if they could, the pathways to voter accountability are devoid of precision – and so even a massive increase in voter awareness would not translate to a more responsive legislature. Indeed, the only parties who are able to effectively monitor the congressional record and hold members accountable are the powerful special interests, who have, as a result of increased transparency, been able to directly manipulate government.

Further, if we are to take cues from the Founding Fathers, we might not need to look any further. The Founding Fathers relished secrecy, conducting all their deliberations in secret, and refusing to publish the vast majority of their committee votes. And this same level of secrecy continued for 180 years right up to John F. Kennedy and Lyndon B. Johnson, until President Nixon saw fit to reverse their actions.

Indeed, in one of the few times in recent history, when Congress closed its doors to the lobbyists (ironically, relegating them back into the lobby), many of the lobbyists decided there was no point to even wait around. As they packed their bags to head home, one insurance lobbyist, when asked why he didn't want to stay said that the closed-door sessions was "equivalent to watching them build your gallows." Another said that waiting outside was "demeaning" he was forced into "waiting around and having little ability to impact it." Where "it" was referring to our national legislation. The removal of transparency meant the disappearance of lobbyists and an immediate decline in corruption.<sup>4</sup>

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<sup>4</sup> In an email interaction with Princeton congressional scholar Nolan McCarty (August 17, 2017), McCarty describes how the corruption of what we call back-end transparency fits with the principal agent literature. His writing below:

Your [back end] argument is analogous to those of Principal-Agent models with hidden actions. Consider a setting where you have a principal who is willing to pay an agent for some task. Here pay a bribe in exchange for a policy favor. The agent has to exert costly effort to procure the favor. So the principal will have to compensate accordingly.

Two cases:

1. Transparent case: The principal observes effort. Thus, she can obtain the "first-best" by offering to pay the agent provide the level of favors such that the marginal benefit of the favors equals the marginal cost. This is the efficient outcome (from the perspective of the principal and agent—not society of course). [Increases corruption]
2. Non-transparent case: Now the principal only observes a noisy signal of the agent's effort. Sometimes the policy favor is bigger than justified by the effort, and sometimes it is smaller. Accordingly the principal has to pay based on the signal not the effort. But the risk associated with high effort (agent could work hard but get a bad outcome) induces the agent to shirk. Moreover this risk forces the principal to pay for bad outcomes as well. This also reduces the agents incentives for effort. Thus, in the non-transparent case, there is less effort and this leads to fewer policy favors in expectation. [Decreases corruption]

There is a very big literature on these types of models. A book by Avinash Dixit is a very non-technical place to start.

## Zero Cost Corruption

Strangely, corruption is most often associated with bribery. But, as we've suggested above, bribery (quid-pro-quo) is not the only form of corruption that relies on this transparency of 'who', and it is likely the least effective. Intimidation (though generally ignored by scholars) provides powerful special interests with significantly more bang for the buck, and it too relies heavily on the publication of MoCs' votes.<sup>5</sup> This was evident in 2005, following Hurricane Katrina, when the distribution of federal aid to victims, as appropriated by Congress, was lower than what many observers expected. Representative Tom Davis puts the blame entirely on corruption via transparent intimidation. He states, "the only reason you had 70 MoCs vote for aid after Hurricane Sandy was because several groups, Club for Growth, Heritage Action, Freedom Works said 'we are weighing this vote,' basically threatening to go after MoCs that voted for that kind of aid." What Representative Davis didn't note however, was that if the votes were kept secret, then the same powerful groups could still threaten, but shielded by secrecy such threats would no longer be intimidating or corrupting.

What this means is that via intimidation, the only essential ingredient to the corruption is transparency, as a powerful group can achieve the same benefits of bribery without actually paying for anything at all, or even speaking directly to a MoC.<sup>6</sup> In this 'corruption by sunshine,' a powerful special interest simply broadcasts (or even implies) that they are ready to run negative advertisements, fund a challenger, conduct push polls, etc. based on how a legislator votes. And if a MoC feels threatened and changes a vote in response to the threat, corruption occurs even without a penny changing hands.

Indeed, this is the low-budget manner in which many of the most powerful special interests function today. For example, the lobbying arm of the NRA does not boast about their support of pro-NRA members (they don't even give out much cash to MoCs), instead they highlight their ability to punish those who vote against them. As their promotional video states, "we are your clenched iron fist that comes down hard and heavy on anybody that stands between you, and your Second Amendment Rights." Notably, in their letters to the Senate surrounding the crucial, 2012 Sandy Hook legislation, the NRA made it clear that they were closely watching the MoCs'

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<sup>5</sup> Intimidation is a much more efficient form of corruption than bribery. Because intimidation never involves a transfer of rewards to an MC of Congress in order to corrupt them, it often doesn't require any expenditure at all. A threat, all by itself can be whispered at any time (at zero cost) or broadcast, legally via television or email to everyone. Further, one threat can influence every MC for decades, whereas one bribe will likely influence only one MC for a short amount of time. And whereas overt bribery is often illegal and frowned upon, overt threats appear to get a free pass. But again, the most important ingredient for successful intimidation is transparency. It is impossible to threaten an MC's voting pattern if it is impossible to determine how they vote.

<sup>6</sup> Because of intimidation (which often requires no money to change hands) and a number of other factors (which we call auditioning), scholars rarely find direct correlations between money and votes. Importantly, when a wealthy group feels threatened by a certain candidate, they usually don't offer money to the candidate to change their votes, instead they fund the candidate's competitor. We call this action brubery, and it defies any correlation between money given and changing votes.

votes on gun control, and they were willing to punish accordingly.<sup>7</sup> These are threats that rely entirely on the transparency of 'who.' Zakaria (2003) puts this notion succinctly, "once lobbyists knew your every vote, they used it as ammunition," hence, transparency is readily weaponized.

However, because legislatures have so many members, they are ideally suited to counter corruption by eliminating the transparency of 'who.' Indeed, a secret ballot on all member decisions can eliminate vast forms of congressional bribery, intimidation and extortion.<sup>8</sup> Moreover, given a regime of secrecy, outsider attempts to intimidate a MoC may end up backfiring, as threatened MoCs (no matter how positive they feel about a particular piece of legislation) may vote against a group that is intimidating them out of spite. And if the threats, even to a single MoC, are made public, other MoCs (as group theory suggests) might also jump on the 'retribution' bandwagon. As such, the same groups that threaten with impunity today would likely show significant restraint if the MoCs' votes were secret. And this same logic can be applied to bribery (i.e. campaign finance) as well, as the bribed MoCs could still pocket the money and, protected by secrecy, simply decide to vote and legislate against the offender.

This line of argumentation has important implications for lobbying. Indeed, a vast amount of lobbying involves couched bribes or veiled threats, or both, all based on the transparency of 'who.' Kingdon (1989, 162) concurs; suggesting that the knowledge of how an individual MoC votes is central to any mass lobbying effort. As Frum 2014 says "Transparency is useful for lobbyists...it allows [them] to keep a close eye on events – and to confirm that the politicians to who they have contributed, deliver value." In part 3, we will show how this essential tie between transparency and lobbying can be seen empirically as well, as the explosive growth in lobbying since the early 1970s correlates precisely with increased transparency.

### Size Matters or The Problem with Running Tallies

As we suggest above, secrecy doesn't work in a vacuum. In order for secrecy to prevent corruption, a legislature must be large enough to protect the secrecy of the individual actor. Indeed, the larger the representative body, the less likely a bribe will pay off. In the US House of Representatives, for example, successfully bribing a single member would only capture one vote out of a necessary 218. Milbrath (1963) points to this dynamic by stating, "a lobbyist who thinks about using bribery must consider the enormous cost of switching even a few votes." Indeed, a single bribe would only pay off only under the condition that all the other members were

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<sup>7</sup> It is important to note that the punishments doled out by the NRA are rarely policy related. When the NRA runs an elaborate and expensive negative ad campaign against an MC (as they did against Debra Maggart and Joe Manchin), they often leave out any discussion of guns or the second amendment. Instead, they run ads on whatever they have determined will cause the candidate the most harm. As such, they are not engaging in policy discussion, they are engaging entirely in intimidation.

<sup>8</sup> Despite the advent of cell phones with cameras, etc., true secrecy of the secret ballot can be assured in a legislature by using the same (or similar) methods that Aristotle developed 2500 years ago. These same methods, while impractical for the general electorate, appear ideally suited to legislatures.

deadlocked (in the House this would mean 217 yeas and 217 nays). This is exceedingly rare, and one-vote outcomes occur much less than simple math might predict. As such, the costs (both of the bribes themselves and of the potential of being caught or spurned) likely outweigh any potential benefit.<sup>9</sup>

But this size advantage of a legislature is often undermined by another pernicious form of transparency called running tallies. In an open legislature (like that of the US Congress), it is not only possible to verify each member's vote (as we discuss above), but one can also monitor the vote totals as the vote is taking place.

Numerous accounts reveal that congressional leaders often secure "hip-pocket votes" or "if you need me" pledges from rank-and-file legislators. These are essentially options on votes. Leaders exercise sufficient options-pay legislators to convert to favorable votes-when those options will yield victory. Otherwise, they release the options.

– King, Zeckhauser 2003

This 'real time vote verification' allows a corrupting influence to use a wait-and-see tactic in order to more efficiently bribe or threaten individual members (what King and Zeckhauser call 'congressional vote options'). Because of this, in a tight race, as each vote gets tallied (and more members go on record), the value of each successive vote increases, and the benefits of corrupting a single member soar. Indeed, as the vote comes to a close, the effective size of the legislature drops, as all attention turns to those members (or even single member) who have not yet voted. As such, a lot of action can take place at the end of a vote as the value of a bribe or threat increases exponentially.

For example, if the vote is sufficiently lopsided a corrupting influence would likely save their cash by walking away from the vote altogether and offer neither a bribe nor threat to any member. But if the vote is close, they can pull out the stops. Indeed, in the extreme scenario, where the vote is tied (say 217-217), the special interests are now able to focus all their attention on just one person – the member who has yet to vote. This means, that because of running tallies, the effective size of the legislature has dropped to one – and the outcome of the vote is in the hands of a single member.

Unfortunately, in the US Congress, these votes aren't just transparent to other members, but to the entire world.<sup>10</sup> As such increased pressure can be exerted both internally (by other members of Congress) as well as externally (by the President, pressure groups, etc.). As King and Zeckhauser state "When votes look as though they may be close, clever leaders [or outside influences] seek out those members, often cross-pressured already, whose votes might be tipped

<sup>9</sup> And again, bribing a single member in a secret legislature may be impossible anyways.

<sup>10</sup> The number one function of the Whips in Congress is vote counting. Since the Legislative Reorganization Act of 1970 (LRA) the whipping infrastructure in Congress has increased dramatically. And whipping can be thought of as another form of running tally, as the whips gather voting information ahead of crucial votes so that pressure can be applied on only those members who are sitting on the fence.



in their direction most cheaply. Leaders then induce them – through compromises, side payments, and threats – to pledge their votes should they be needed.” As such, these congressional vote options

(maintained entirely by transparency) not only provide an enormous savings in cost to a potential corrupting influence, but they also provide a more powerful, laser-like control for the corruption of legislation.

But the problems with running tallies don't stop here. This interplay between voting and transparency is not lost on even the lowest ranking, least interested member of Congress. Previously powerless, the low-

"They're suppose to have 15 minutes to leave the voting machines open and it was open for almost three hours," Dan Burton R-Ind explains. "The votes were there to defeat the bill for two hours and 45 minutes and we had leaders going around and gathering around individuals, trying to twist their arms to get them to change their votes." Walter Jones R-N.C. says the arm-twisting was horrible... "You couldn't even walk to the steps of the Capitol without having somebody, maybe one or two, coming up to you to say, 'Can't you change your vote? Can't you vote for this bill?'"

– 60 Minutes 2007 “Under The Influence”

ranking member can suddenly exploit these running tallies to reap vast rewards via extortion. In a secret regime, indifferent members would likely not show up to vote at all. This makes sense – given that no one can verify whether they have voted or not, their time would likely be better spent elsewhere, talking to constituents or drafting legislation that they care about. But in a transparent regime, the members who care the least about a bill suddenly have the most to gain. Indeed, they are best served by waiting until the end of the voting session to cast their vote, knowing that, if the vote remains tight, all the focus will be on them, and they will likely become the recipients of increasingly beneficial offers. Thus, because of running tallies, we get a vicious cycle, where important legislation turns on the interplay between the most powerful special interests and the weakest (and most disinterested) members of Congress.

As such, increased transparency not only allows a special interest to save money as they better control all legislation, but it also yields pathways for extortion by disinterested members. Again we see this empirically. And perhaps the best-documented example of this is the 2003 Medicaid Part D vote (covered in vivid detail in the 2007 Sixty Minutes segment “Under the Influence”). While most of the members voted early and watched the shenanigans (the vote was kept open for a record four hours), a handful of members were attacked, bullied and bribed to reverse their votes until, finally, the last five votes were secured and the gavel was struck. This resulted in one cornered member sobbing on the floor, and another member, in order to defend her, shouted to the CNN cameras, “stop the arm-twisting!”<sup>11</sup>

<sup>11</sup> Miles away, flying on Air Force 1, the President was participating in the arm-twisting dialing the undecided members directly.

But this idea of running tallies doesn't just apply during the intended fifteen minutes of an open vote. Because of transparency, it can happen in the months leading up to important votes as legislators are often forced to go on record before important bills make it to the floor. And any MoC who switches their vote (from what they announced earlier) can find themselves subject to an onslaught of demeaning press. These months-long running tallies are particularly evident on divisive bills on topics like health care, where any MoC who announces their intention to vote against their party finds themselves immediately pressured by interest groups, the press etc. And those few MoCs who claim to be undecided, are bombarded by the various interests, likely transforming their indecision into a form of power, as their votes (in a close contest) suddenly count more, and they can extort concessions from their party and/or special interests. In any case, these moments highlight the intense partisan pressures and special interest powers that exist simply by providing for transparent voting. And it is evident that transparency is not just a strong driver of partisanship, but also a powerful tool for undecided legislators and interest groups who both gain substantially by being able to focus their efforts where the payoff is the highest.

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## Appendix – Defining Corruption / Rethinking Klitgaard

Corruption is poorly defined and poorly understood even by scholars and anti-corruption groups.<sup>12</sup> And few scholars recall that legislatures were expressly designed (by Madison and others) to curb corruption, something we believe might still be achieved. Because of this a good working definition of corruption is necessary, and in the process, distinguishing between administrative and legislative corruption is essential.

To begin with, there are two important types of corruption. The first type has nothing to do with legislatures. It is administrative (or executive) corruption and it corresponds precisely with the notion put forward by Klitgaard and is expressed in his familiar equation: **Corruption = Monopoly Power + Discretion – Accountability**. Klitgaard observes that corruption is more likely when one person or small group of people have a monopoly power to deliver contracts or goods (including funds) and they either keep the goods for themselves or give the goods and contracts to others based on nepotism, bribery, extortion or intimidation. And so according to Klitgaard, if these individuals (executors) have monopoly decision power, corruption is increased. And if they can act discreetly without accountability, corruption is more likely still.

The second type of corruption is legislative. And legislative corruption is an important and special case because, as we suggested above, legislatures are designed expressly to limit administrative corruption. And as we will see, Klitgaard's equation does not apply to legislative corruption. For example, in this article, we assume that legislatures (by virtue of having so many members) virtually eliminate nepotism and self dealing. This is because, an individual member (or a small group of members) would find it exceedingly difficult to award benefits to a family member, a friend or themselves when all the other members also have control over the same decision and likely do not see the benefit. Thus Klitgaard's equation needs to be adjusted for the specific case of legislatures in precisely the manner that Madison intended. Thus the variable, **Monopoly Power** must be divided by the total number of legislators. And so the greater the number of legislators, the less corruption.<sup>13</sup>

But that isn't the only change that legislatures bring to Klitgaard's equation. And, in this paper we explore the specific dynamics of legislative corruption through the lens of transparency, finding important cases where transparency (the lack of discretion) is essential to maintaining corruption. Thus the other two variables in Klitgaard's equation (discretion and accountability) need to be inspected for the specific case of legislatures.

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<sup>12</sup> We find intimidation to be one of the most important corruptive forces, yet it is almost entirely ignored by both congressional scholars and groups like transparency international, who do not use the word (or words that suggest threats) in their [discussions of corruption](#).

<sup>13</sup> Of course, there are salient cases where entire legislatures might tend to self dealing (as in the legislators paying themselves inordinate amounts of money), but historically this has not been a problem in developed countries. And in our idealized world we will ignore cases where individual legislatures have monopoly power over some of their financial and contractual decisions (franking rights, hiring, etc).

Indeed, the most common (perhaps only) form of legislative corruption is what we call **conditional** corruption, where the word “**conditional**” is key, as the ability to verify how a legislator votes (or acts in committee, etc) allows legislators to enter into corruptive bargains that fit all standard definitions of bribery, extortion or intimidation. Indeed a legislator’s published vote becomes the bargaining chip in a all types of quid-pro-quo arrangements. And all of these arrangement turn on the condition of being able to verify that vote. Prior to the 1970s the vast majority of a member’s actions were done in seclusion from the public. And therefore all types of lobbying, petitioning and citizen actions were unable to enter into the same precise quid-pro-arrangements. And so the threshold for corruption occurs when any group (but in particular special interests) can enter into a conditional, quid-pro-quo arrangement with legislators. Thus, when legislators hide their actions all types of lobbying, petitioning a government or citizen action are benign. But as soon as the votes are made public it becomes almost irresistible for the same groups to avoid the explicit threats and bribery that has become so common today.

This means that secret legislatures follow the following equation. Where corruption is decreased by high secrecy (discretion) and low accountability.

**Legislative Corruption = (Monopoly Power/Number of Members) – Discretion + Accountability**

There is one important caveat to this arrangement, and it has to do with legislative design. If the legislature is itself a special interest, then neither transparency or secrecy will eliminate corruption. And so in most developing countries, where the legislators are some of the wealthiest people in the country, we don’t expect to see improvements based on secrecy and we might even find improvements, then, with transparency. But the problem in this case is one of too much wealth inside the legislature, not one of transparency.

## Questions

**Question:** I am not in total agreement that corruption has to come to light in ways that are transparent to the public. Let's say someone is paid off to not enforce pollution standards against the firm. Yes, it is observable that no fine was levied, but without the information about whether a fine should have been levied in the first place, I would hardly call this situation transparent.

**Response:** First, I am entirely not concerned whether the public understands what happens or not (despite the level of transparency). So while you are correct that the public would not see a government action take place in your example, I am concerned only whether the corrupt principal and the corrupt agent can follow what happened and monitor the action, and whether or not THEY benefit from transparency. So in your case, the corrupt principal might bribe the corrupt agent (i.e. Member of Congress) not to enforce the pollution standards. Well, both the corrupt principal and the corrupt agent can see whether the agent acted in accordance with the corrupt deal or not. So the transparency delivers nothing salient to the people, but it does deliver the essential information to the corruptors. Under a secret voting scheme and a secret committee, the actions of the agent would not be available to the corrupt principal, and therefore the corrupt negotiation breaks down. This is a fascinating case. And it underlines the possibility (which I had never thought of before) that full transparency can provide the essential information ONLY to the corrupt agent and the corrupt principal. And even a vigilant public gets left out.

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More work is available at <http://congressionalresearch.org/>