Weaponized Transparency

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“Senators may over several days ‘cast back-to-back’ votes on a dizzying array of dozens of amendments,’ many designed to provide campaign ammunition (so-called gotcha amendments) for the next election.”

– Oleszek 2015

“The amending process [since 1970] became a ‘gotcha’ process rather than a legislative process. It enabled all of these single-issue groups to get a roll call on everything and run a TV ad against you financed by special interests.”

– David Obey 2015 (from Schudson)

Few consider the possibility that an amendment may be written exclusively to harm someone. Sadly this appears to be the express intent of the vast majority of amendments written in both the US Congress and in State Legislatures around the country. And while notions of this problem litter the literature, no systematic discussion of this process – which is entirely driven by the increased transparency amendments of the 1970 Legislative Reorganization Act – has even been made. Moreover, this and other forms of weaponized transparency are forms of corruption and legislative decay that are entirely immune to campaign finance reforms and other congressional fixes that do not rely on secrecy.

¹ This paper is an early draft for part of a larger project. Please do not cite this paper. We have benefited from the thoughtful reflections of several colleagues, including Jenny Mansbridge, Jon Elster, Walter Oleszek, Bill Bianco and Scott Adler. We welcome – indeed we encourage – comments and suggestions.

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Warfare on the Floor and in Committee

All transparency can be weaponized. But this is especially true of amendments because they are so particulate and easy to draft. Members can destroy bills with weaponized amendments or take out other members by proposing legislation that divides their base back home. Because of this, transparency turns the legislative process into all out warfare and destroys all sense of legitimacy and bipartisanship. Weaponization is considered to be the main driver of the surge in member voting between 1970 and 1978. And continues to be a major force today.

For a preview of the paper watch this section of our talk on weaponized transparency. Also, an excellent source is Smith’s 1989 chapter called “Revolution in the House” – the good stuff starts about halfway into the chapter.

Amendments as Bullets

Below we’ve pasted some clippings on the topic. Of note, this is not a partisan issue, both sides are equally guilty, but there is some evidence that minority groups are more likely to employ the tactic.
In place of genuine reforms, Republican leaders inundate the public with meaningless show votes. These bills and amendments are often poorly drafted and not intended to become law, but rather to give representatives talking points to bash the other side in the media and in our districts.

weapon against the day-to-day wheeling and dealing of politics. For Conlon, the wheeling and dealing fired his imagination and won his love. Transparency? Not for its own sake. Former Rep. David Obey remarked, “Every action you have in Congress has a positive and negative impact.” The recorded teller vote, he recognized, is in principle good for democracy, but even this has another side. “The amending process became a ‘gotcha’ process rather than a legislative process. It enabled all of these single-issue groups to get a roll call on everything and run a TV ad against you financed by special interests.” Conlon and his DSG colleagues took “anti-secrecy” as a workable slogan, and they had no trouble wrapping it in the theory and spirit of democracy. But their aim was not theoretical. It was practical. They wanted to pass progressive legislation, and anti-secrecy reforms helped them do it. Obey’s cogent second thoughts notwithstanding, the reforms also made Congress more publicly accountable than ever before.
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1. It is crucial to recognize that, in the presence of selection bias, we cannot recover relevant information about the unobserved votes from the observable roll-call votes alone. It is well known from the literature on selection bias (e.g., Achen 1986) that, in such a situation, re-weighting the roll-call votes sample to better reflect the distribution of all legislative votes on some particular characteristic (e.g., policy area) is not a solution.

2. Party leaders might also request roll-call votes to showcase an issue of concern to their voters or to embarrass opponents by forcing them to take an unpopular public stance on a vote.

3. Jenkins and Stewart (2003) have described how the Whigs and Democrats used roll-call votes as a tool of party discipline in the U.S. Congress. Similarly, Fennel (1974, 400) surveyed members of the Argentine Chamber of Deputies and found that the most common explanation for the observed increase in roll-call votes was that roll-call votes helped maintain party cohesion.

4. Although we will refer to the two sets of actors as parties, one could equivalently think of them as a pair of coalitions. In fact, the model’s findings quite easily generalize to multipartite systems. We discuss this point in more detail later in the...
advance its arguments, level its criticisms, and tout its successes. The majority party attempts to monopolize the agenda for its message, while the minority party contests the majority’s control and tries to change the subject to its advantage (Evans 001; Sinclair 006, 55–307).

Minority party members continually try to force the majority to take positions on difficult or controversial issues. In many cases, minority members fully recognize that the amendments they offer will not affect policy outcomes, but they want to force majority party members to go on record on matters that may prove embarrassing or contentious. In response, the majority will often engage in bloc voting to table troublesome amendments and dodge thorny issues.

Control of the agenda can affect not only the ideological content of

the minority quickly rallies the majority at the last minute because they do not want to appear as losers. . . . Voting against is a political act and one should think a lot before voting against . . . most of the time one gives up, it is useless to vote against . . . and on top of that, the votes are publicly displayed with green, red and yellow arrows! Member states do not want to be seen in a minority position. And after the Council, they have to do a press conference! For sure, the big proportion of decisions made without opposition is partly due to the fact that the minority joins the majority at the last moment. (December 2007)

National representatives assume a negativity bias of the journalists and the public at large (Kahneman and Tversky 1984); they expect that the journalists and the public in their home country will perceive negative votes or abstentions as evidence of failure in the negotiation process and for this reason will pay more attention to these votes than to the absence of opposition. National representatives also want to avoid the possibility that their political opponents will use their negative vote against them. A representative of a member state X explained that such votes trigger media attention while journalists usually overlook measures adopted without opposition:

When we are isolated, we prefer not to express our opposition because the journalists in X would make big titles with it – “X voted against in the Council” – without reporting that on twenty points, X got what it wanted, focussing only on the negative vote. (October 2007)

The problem here is not to know whether this belief shared by national representatives is justified, but to clarify how decision makers react to publicity. However, let us note that in a study of the press officers in the Council, Lauren