Guarding the Guardians

Legislative Self-policing, Corruption and Judicialization in Victorian Britain[1]

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Abstract

We offer an institutional explanation for the dramatic decline in corrupt practices that characterizes British political development in the mass suffrage era. Parliamentary candidates who faced corruption charges were judged by tribunals of sitting MPs until 1868, when this responsibility was passed to the courts. We draw on theory and empirical evidence to argue that delegating responsibility over corruption trials to judges was an important institutional step in cleaning up elections. With reference to a formal model, we show that error-prone adjudication of corruption trials encourages electoral candidates to engage in corruption. We then provide new evidence that tribunals of MPs were unreliable adjudicators, largely because of partisan favoritism in their rulings; we also show that judges were significantly less partisan and therefore more effective at containing corruption. In contrast to traditional explanations for the decline and fall of electoral corruption in Victorian Britain, our complementary focus on institutional reform has clearer implications for contemporary policy debates.

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1 Introduction

The magnitude of political change in 19th century Britain has made it one of the most widely studied episodes of democratization in history (among others Bagehot, 1873/2011; Trevelyan, 1922; Gash, 1952; Woodward, 1962; Cox, 1987; Acemoglu and Robinson, 2000). While scholars have paid much attention to the massive expansion of the suffrage during this period,[2] the decline in corrupt practices in election contests is no less remarkable (O'Leary 1962, Hanham 1978, 262, Kam 2009). Today, suffrage is essentially universal in all democracies but the corrupt practices that plagued Victorian elections, such as vote buying, turnout buying, coercion by landlords and employers, even violence, persist in many developing countries (Stokes, 2005; Hyde, 2007; Nichter, 2008; Myagkov, Ordeshook and Shakin, 2009; Gonzalez-Ocantos et al., 2010). It remains relevant, therefore, to understand why electoral corruption was so widespread in mid-19th century Britain and why it subsequently declined.

Several explanations for the prevalence and decline of Victorian electoral corruption have received well-deserved attention. O'Leary (1962) emphasizes permissive campaign finance arrangements and open voting (i.e. the absence of the secret ballot), pointing to the 1872 Ballot Act and the 1883 Corrupt and Illegal Practices Act as key regulatory measures that eliminated corrupt practices. Cox (1987) highlights the attractiveness of corrupt electioneering in small electorates, pointing to franchise extension as the decisive step toward cleaner elections. Stokes (2011) stresses that vote buying was preferable to programmatic campaigning because voters were poor, suggesting that industrialization "killed" vote buying in Britain in part by making most voters too wealthy to bribe.

In this paper, we emphasize an institutional explanation for the prevalence of electoral corruption in 19th-century Britain that arguably has more direct relevance to contemporary contexts: we focus on the procedure by which electoral corruption statutes were enforced. As we explain in

[2] Phillips and Wetherell (1995, 413) report that an estimated 400,000 individuals were eligible to vote prior to the 1832 Act, while Craig (1989) has some 6.7 million people eligible to vote in the 1900 General Election.

greater detail below, the chief deterrent against vote buying and other corrupt electoral acts was the threat that, having won the seat, one would be unseated as the result of a successful election petition filed by the losing candidate. Until 1868, election petitions were handled by small ad hoc tribunals of MPs who heard arguments and witness and issued formal rulings. Our main claim in this paper is that the unreliability of these tribunals (as illuminated most clearly by the partisan favoritism we detect in their rulings) contributed substantially to the prevalence of corrupt electoral practices in this period, and replacing MPs with judges in 1868 contributed to the subsequent decline in corruption.

One of the key challenges facing any attempt to explain electoral corruption in Victorian Britain (or indeed any other setting) is that we do not directly observe the corrupt practices we are trying to explain. In the case of Victorian Britain, historians and political scientists have relied heavily on committee reports from election petition trials for evidence of the nature of electoral corruption at the time (e.g. Seymour, 1915; O'Leary, 1962; Richter, 1971; Kam, 2009). Scholars have also used the number of petition trials following each election as a measure of the prevalence of corruption itself; for example, the fact that more petitions were filed in the 1850s and 1860s than before or after has been taken as evidence that electoral corruption was at its worst in mid-century (Porritt, 1906; Rix, 2008; Stokes, 2011).[3] In this paper we focus on election petition trials not as a barometer of electoral practice but as a determinant of electoral practice. We recognize that the decision to file a petition, like the decision to engage in corrupt electoral tactics, was strategic. The incentives to file a petition alleging vote-buying, like the incentives to engage in vote-buying, depended in part on the ability of the tribunals deciding petition trials to correctly ascertain guilt and innocence. Our goals in this paper are to try to understand how these incentives may have varied with institutional changes in the process for adjudicating petitions and, in doing so, to shed additional light on the causes of electoral corruption in Victorian Britain.

[3]For example, "The heyday of 'patent, flagrant, and unashamed' electoral corruption was the half century following the Great Reform Act of 1832" (Stokes, 2011, p. 19).

We accept the consensus view that electoral corruption was much less common by 1900 than it was in 1850, and we accept that there are multiple causes of this decline whose independent contributions can never be neatly disentangled.[4] Our approach in this paper is to rely on a mix of theory and empirical evidence to make the case that politicized and arbitrary handling of election petitions by tribunals of sitting MPs was an important cause of mid-century electoral corruption and that reforms that judicialized the process contributed to corruption's decline. We contend that our focus on enforcement is justified in part by the enduring policy relevance of the question of how legislators should be regulated. The secret ballot and franchise extension also likely contributed to the decline in corruption in Victorian Britain, but no democracy today questions whether ballots should be secret or whether poor people should be allowed to vote; by contrast, democracies differ in whether they decide election disputes in the legislature, in ordinary courts, or in special tribunals (Massicotte, Blais and Yoshinaka, 2004).

After providing a brief institutional background of electoral corruption tribunals in Victorian Britain, we address the question of how the accuracy of the decisions made by these tribunals would have affected the prevalence of electoral corruption. Because we do not observe whether MPs are actually guilty of corruption (and thus neither the accuracy of tribunals's decisions nor the overall prevalence of corruption), we study this question by analyzing a model in which candidates choose electoral tactics (corrupt or non-corrupt) and the winner may subsequently face a corruption trial. Intuitively, it may seem obvious that error in the outcome of these trials – e.g., acquitting an MP who was actually guilty of corruption or convicting one who was actually innocent – would encourage corruption, as greater error increases the attractiveness of using corrupt tactics and decreases the attractiveness of not using corrupt tactics. The situation is not so clear when, as was the case in Victorian Britain, MPs are only put on trial when the losing candidate strategically chooses to file

[4]For example, the Second Reform Act (1867), Parliamentary Elections Act (1868), and Ballot Act (1872) all likely had an impact on electoral corruption, and the fact that they were enacted in such rapid succession makes it difficult to measure the effect of any single reform, let alone disentangle the impact of legislative reform from that of broader social changes.

a (costly) petition, because error could either encourage or discourage losing candidates from filing. We show formally that error does in fact undermine deterrence in this setup when the cost of filing a petition is fairly high, a condition we argue was likely met in our setting.

We then provide a mix of empirical evidence to indicate that the adjudication of electoral petitions by tribunals of sitting MPs was indeed quite error-prone. Our strongest evidence is drawn from a newly-collected dataset of rulings issued between 1840 and 1880. We show that, faced with a similar set of cases, tribunals of different partisan majorities convicted defendants at strikingly different rates, suggesting inconsistency and error in judging MPs' guilt. The error that we detect in these decisions is consistent with pervasive partisan favoritism: Liberal tribunals were especially likely to convict Tory defendants and vice versa. We also show that this partisan error was sharply lower in the period after 1868, when responsibility for judging election petition cases was passed to the courts. In conjunction with contemporary accounts deriding tribunals of MPs as "more or less incompetent" as well as data on petition and conviction rates over time, our empirical evidence points to the 1868 decision to entrust judges with ruling on electoral corruption cases as an important contributor to the overall decline in corruption during the period.

2 Adjudicating election petitions in Victorian Britain

Electoral corruption in Victorian Britain was proscribed by common law and over a dozen statutes, some of which were hundreds of years old.[5] These laws were enforced by what amounted to a system of private lawsuits among candidates, adjudicated until 1868 by tribunals of sitting MPs in the House of Commons. In this section we describe the operation of this system in order to place the subsequent analysis in context.

Historically, the issue of what body had the right to determine who was elected to Parliament

[5]In an 1850 treatise, Erskine May counted 61 statutes relating to the election of MPs, 16 of which related to bribery, treating, and intimidation; these laws were consolidated in the 1854 Corrupt Practices Prevention Act (May, 1850).

was a matter of serious constitutional importance. The Tudor monarchs had claimed the right to hear electoral corruption charges and other election disputes in their own courts; in the early 17th century Parliament secured this right for itself as part of a broader assertion of independence from the Crown (Porritt, 1897).[6] Over the next two centuries the House of Commons employed various procedures for conducting trials of election petitions.[7]

Finally in 1839 the House settled on a new process by which a General Committee on Elections would be responsible for selecting a committee of seven members (five after 1848) to hear each petition; by convention (as described in more detail below) the majority party on these committees was alternates from one case to the next. Considerable effort was devoted to the design of these tribunals: committees were to be small in order to make each member take his work seriously and to not occupy too much of the House's resources at any one time; members of the tribunals were selected according a rotating method in order to distribute the burden fairly among MPs while avoiding the possibility of partisan or personal favoritism in assigning MPs to hear particular cases (Warren, 1853).

Despite these efforts to ensure competence and impartiality on election petition tribunals, dissatisfaction with the handling of election petitions periodically resurfaced. The criticisms came to a head in 1867 when the Conservatives under the leadership of Disraeli put forward a proposal to remove jurisdiction over election petitions from the House of Commons and delegate the responsibility to higher court judges. In debate surrounding the measure, MPs offered a variety of opinions about whether tribunals of MPs were suited to the task of deciding electoral corruption cases against other MPs. The common thread running through MPs' complaints about the present method of hearing cases was that these tribunals issued seemingly arbitrary decisions on the basis

[6]The constitutional significance of the legislature's right to certify its own members in English history is reflected in the United States Constitution, Article 1, Section 5, Clause 1, which states, "Each House shall be the Judge of the elections, Returns, and Qualifications of its own Members..." (Jenkins, 2004; Reed, 1890).

[7]Before 1770 petitions were heard either by the Committee on Privileges and Elections or by the whole House; after 1770, each petition was heard by a different select committee of eleven members chosen by the litigants' from thirty-three randomly-selected MPs (*The Practice on Election Petitions*, 1837).

of limited insight into either the law or the facts of the cases before them. Reporting on the deliberations of a committee assigned to investigate the matter, Sir Robert Collier (Liberal MP for Plymouth) stated that "Almost everyone was agreed that the jurisdiction on Election Petitions was not satisfactorily exercised by the Committees of that House" (HC Debs, May 21 1868, Col 662). He emphasized three shortcomings widely discussed in the broader debate. First, petition trials took place at Westminster, rather than in the constituency where the election took place, which several speakers argued made it more difficult for committees to find out what happened in the election.[8] Second, petition hearings could be held only when Parliament was in session, meaning that a considerable delay could intervene between the election and the trial, which critics thought made it even more difficult to arrive at the truth.[9] Third, MPs simply were not on the whole qualified "to decide the intricate questions arising in election cases", such as whether the petitioner in a particular case had convincingly shown that the defendant had authorized corrupt tactics. In the words of Edward Pleydell-Bouverie, Liberal MP for Kilmarnock, the problem was that "they were more or less incompetent. They were presided over by Gentlemen who had no legal training – who were not skilled in the law of evidence, or capable of dealing with questions of complicated law and fact."[10]

Although it is beyond the scope of this paper to determine why MPs criticized what they perceived as incompetent adjudication of electoral corruption trials, it is clear from reading the contemporary debate that they generally believed that inaccurate adjudication undermined deterrence. That is, while some MPs seemed to object to the injustice of having tribunals issue arbitrary and inconsistent decisions, the general understanding was that by making these decisions more ac-

[8] As argued by Sir Charles Selwyn, Conservative MP for Cambridge University and Solicitor General, "When a witness was examined in his own town with the people standing before and around him, who all knew what he had been doing, it was almost impossible, from the instant murmur or gesture that arose, for the witness to tell an untruth. The case was often very different when the witness was examined in London ...." (HC Deb, 25 June 1868, col 2178)

[9] For example, in the words of George Ward Hunt, Conservative MP for Northamptonshire North and Chancellor of the Exchequer, it was desirable to have trials as soon as possible after the election "[b]ecause when there was a considerable lapse of time between the complaint and the investigation there was greater opportunity for having resort to manoeuvres for getting rid of witnesses and suchlike proceedings." (HC Debs, May 21 1868, Col 687)

[10] HC Debs, July 6, 1868, Col 724.

curate they could discourage electoral corruption. For example, in advocating a bill to have judges rather than MPs decide election corruption cases, George Ward Hunt (then Conservative MP for Northamptonshire North and Chancellor of the Exchequer) argued that "the plan embodied in the Bill was that which would give the public the greatest amount of confidence in the decisions on Election Petitions, and that it would effectually tend to check bribery and corruption."[11] Commenting on the same bill, John Stuart Mill (who at this time served as a Liberal MP for Westminster) argued that reforming the process of election petitions would make it harder for unfit candidates to buy their seats and thus elevate the quality of MPs on average:

> The Bill was a bold attempt to grapple with an acknowledged political and moral evil. . . . It was no party measure, and no party were interested in passing it, except the party of honesty. They desired to diminish the number of men in this House, who came in, not for the purpose of maintaining any political opinions whatever, but solely for the purpose, by a lavish expenditure, of acquiring the social position which attended a seat in this House, and which, perhaps, was not otherwise to be attained by them. . . . They were the political counterparts of those who were contemptuously described by Dante as "neither for God nor the enemies of God, but for themselves only."[12]

Contemporaries thus saw a causal connection between the shortcomings of the election petition system and the pervasiveness of electoral corruption in Victorian Britain. Our task is to assess whether they were correct: should we count problematic self-regulation as one of the important causes of electoral corruption? We see this task as having both a theoretical and an empirical component. The theoretical component requires us to determine whether in principle adjudicatory error undermines deterrence, even in a context where lawsuits are filed strategically.[13] The empirical

[11] HC Debs, May 21, 1868, Col 688.
[12] HC Debs, May 21, 1868, Col 686.
[13] The link between adjudicatory error and deterrence is complicated in general (e.g. Craswell and Calfee, 1986), and especially in a setting in which private parties must decide whether or not to file suit (e.g. Polinsky and Shavell, 1989; Hylton, 1990).)

component requires us to determine when, in fact, adjudication of electoral petitions was especially error prone, and whether that error was reduced by subsequent reforms. We now address each of these components in turn.

3 Adjudicatory Error and the Prevalence of Electoral Corruption

Suppose that electoral candidates have access to corrupt tactics such as vote buying or fraud; a candidate who uses these tactics is thereby more likely to win, but he is also more likely to lose his seat in a post-election corruption trial. The purpose of this section is to investigate how candidates' incentives to engage in corrupt tactics depends on the accuracy (or, conversely, error rate) of the decisions handed down at the possible trial stage. First we show that, if the probability of a trial is fixed and exogenous, equilibrium corruption is weakly lower when error is lower. Does this intuition extend to a situation where lawsuits are filed strategically? We show that it does as long as the cost of filing petitions and/or the starting level of corruption is sufficiently high.[14]

3.1 Setup: baseline model

Two candidates compete for office. At the electioneering stage, each candidate chooses between running a clean campaign (C) or a dirty one (D). Holding fixed the other player's action, playing D increases a candidate's probability of winning by $\delta \in [0, 1/2]$; it also costs $d > 0$. We assume that the candidates are evenly matched, so that the probability of each winning when both play C or both play D is $1/2$ and the probability of i winning if i plays D and j plays C is $1/2 + \delta$. Table 1 depicts the probabilities of victory corresponding to different combinations of campaign actions.

[14] By contrast, Polinsky and Shavell (1989) analyze a situation in which the plaintiff's beliefs about the defendant's guilt depend on the defendant's action but are exogenously given. Hylton (1990) derives the plaintiff's beliefs about the plaintiff's guilt as part of the equilibrium under a specific negligence rule.

Table 1: The electoral game: probabilities of winning as a function of players' actions

		Candidate 2: Clean	Candidate 2: Dirty
Candidate 1	Clean	$1/2, 1/2$	$1/2-\delta, 1/2+\delta$
	Dirty	$1/2+\delta, 1/2-\delta$	$1/2, 1/2$

After the winner of the election is determined, a process of enforcing corruption statutes begins. We start by assuming that with a fixed probability p the winner is put on trial. The tribunal correctly judges guilt and innocence with error rate $\theta \in (0, .5)$: if the winner played C he will be convicted with probability θ; if he played D he will be convicted with probability $1-\theta$.[15] The payoff to the winner is 1 if he keeps his seat (either because he was not put on trial or because he was not convicted) minus d if he played C; the loser gets 0 if he played C and $-d$ if he played D.

3.2 Analysis: baseline model

With an exogenous probability of trial, the Nash equilibrium of the game consists of a set of electioneering strategies. Denote by α the probability that one's opponent plays D. Then the payoff from playing C is

$$\pi_C(\theta, p, \alpha) = \left(\alpha\big(\frac{1}{2}-\delta\big) + (1-\alpha)\frac{1}{2}\right) \times \big(1-p\theta\big) \tag{1}$$

and the payoff from playing D is

$$\pi_D(\theta, p, \alpha) = \left(\alpha\frac{1}{2} + (1-\alpha)\big(\frac{1}{2}+\delta\big)\right) \times \big(1-p+p\theta\big) \tag{2}$$

[15]The error rate need not be the same for guilty and innocent defendants, but assuming symmetry makes the analysis simpler while still conveying the main point.

where in each case the first term is the probability of winning and the second term is the probability of retaining the seat, conditional on winning. Setting α to 0 or 1, we find that a Nash equilibrium in which both players play C can be sustained only if

$$\theta < \frac{\frac{1}{2}p - \delta(1-p)}{p(1+\delta)} \equiv \theta_C^* \tag{3}$$

and a Nash equilibrium in which both players play D can be sustained only if

$$\theta > \frac{\frac{1}{2}p - \delta}{p(1-\delta)} \equiv \theta_D^*. \tag{4}$$

Algebra reveals that $\theta_C^* > \theta_D^*$, which indicates that there is an interval in which both equilibria (and a mixed-strategy Nash equilibrium) can be sustained. We thus have an intuitive result relating error to deterrence: for a fixed probability of a trial taking place, candidates are deterred from corruption if the rate of adjudicatory error is low but not if it is high; for intermediate ranges there are multiple equilibria.

3.3 Analysis: strategic filing of petitions

Now suppose that, after the election has taken place and a winner has been chosen, the winner faces a trial only if the loser chooses to pay a cost k to file a petition and sue the winner. The trial then takes places as assumed above: a non-strategic court assesses guilt and decides correctly with probability $1 - \theta$. If the winner is convicted, the loser receives a benefit $b < 1$; aside from the costs and potential benefits of filing suit, the payoffs are the same as above. At the point when the loser chooses whether to sue, neither player knows the campaign action chosen by his opponent; the loser does however know his own campaign action and can use that information to make inferences about the winner's action.

When enforcement depends on the loser's decision to file suit, the relationship between error

and deterrence is not so intuitively clear: the loser might be *more* likely to file suit in an error-prone court if he thinks the errors are likely to be in his favor. Indeed, the analysis is substantially more complex when we make lawsuits strategic. In order to manage the complexity, we begin by making the following assumptions:

Assumption 1. $\delta \geq \frac{2d}{1-b+2k}$.

Assumption 2. *Both candidates play D with certainty if doing so constitutes an equilibrium.*

As explained in the Supplementary Information, Assumption 1 ensures that there are no asymmetric pure-strategy Nash equilibria (i.e. equilibria where one candidate plays C with certainty while the other plays D); Assumption 2 eliminates the complication of multiple pure-strategy Nash equilibria.

Define $\alpha^*(\theta)$ as the candidates' equilibrium probability of playing D, as a function of θ.[16] We focus on sequential equilibrium, which requires that the loser's belief about the winner's guilt reflects the winner's true probability of being corrupt, updated using Bayes Rule by his own electoral strategy. The following proposition defines the set of parameters for which a reduction in adjudicatory error would reduce corrupt electioneering:

Proposition 1. *Given $\theta'' < \theta'$: $\alpha^*(\theta'') > \alpha^*(\theta')$ if and only if $\delta > d$, $k/b < 1/2$, and $\theta' < \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$.*

Proposition 1 essentially says that reducing adjudicatory error could increase corruption only if the cost of suing and the starting level of adjudicatory error are relatively low; otherwise, reducing adjudicatory error weakly reduces corruption.

Proof. First, we show that, under Assumptions 1 and 2, reducing error weakly increases equilibrium corruption rates if $\delta > d$, $k/b < 1/2$, and $\theta' < \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$ (i.e. in the lower-left region of Figure 1). Then we show that the reverse is true if any of these conditions is not met.

[16] Given Assumption 1 and the fact that the players are identical, it is reasonable to focus on symmetric equilibria.

If $\delta > d$ and $k < 1$, $\alpha^*(\theta)$ is as depicted in Figure 1 (under Assumptions 1 and 2). (Details in Supplementary Information.) Note that where $k < b/2$ and $\theta' < \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$, reducing error weakly increases equilibrium corruption: $\alpha^*(\theta'') = \alpha^*(\theta') = 0$ where $\theta'' > k/b$ and $\alpha^*(\theta'') > \alpha^*(\theta')$ where $\theta'' < k/b$. Elsewhere in the figure, reducing error weakly reduces equilibrium corruption. Where $k > b/2$ or $\theta' > \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$, $\alpha^*(\theta'') = \alpha^*(\theta') = 1$ if $\theta'' > 1 - k/b$ or $\theta'' > \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$ and $\alpha^*(\theta'') < \alpha^*(\theta') = 1$ if $\theta'' < 1 - k/b$ and $\theta'' < \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$.

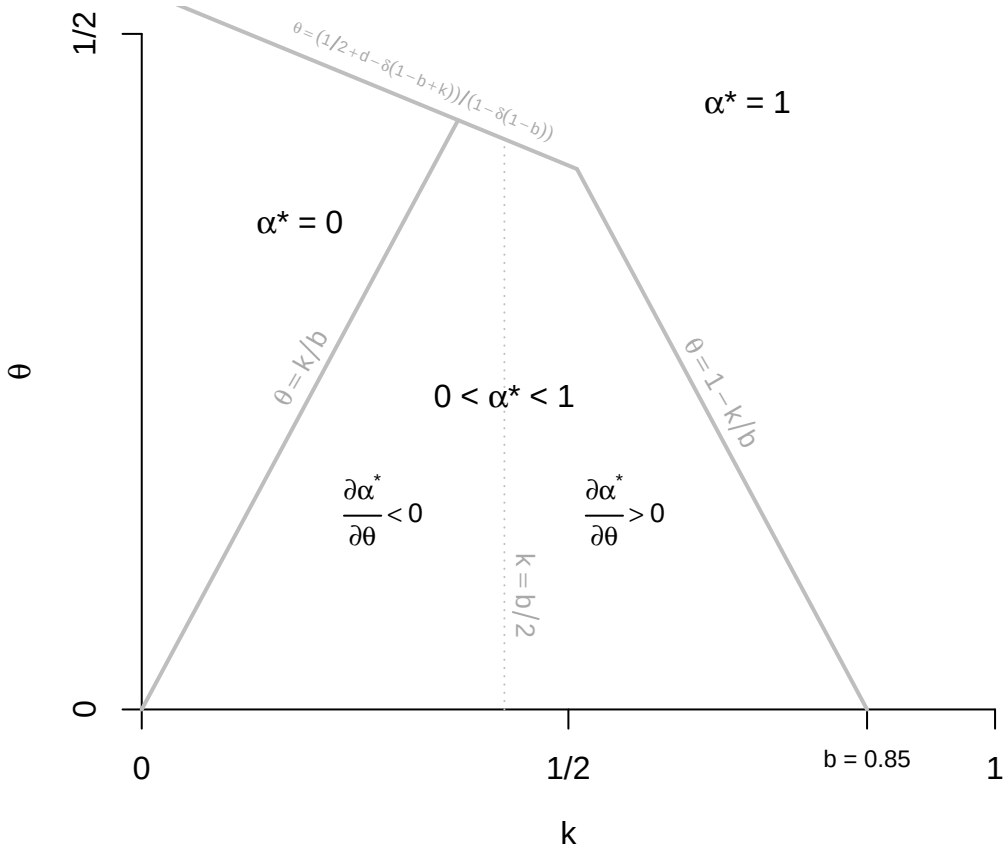
Finally, if $\delta < d$, we have $\alpha^*(\theta'') = \alpha^*(\theta') = 0$. □

Proposition 1 highlights the fact that, in a system in which a competition is followed by a possible trial initiated by the loser, reducing adjudicatory error at the trial stage can either increase or decrease cheating in the competition stage. The idea that making the trial outcome more accurate would deter cheating seems intuitive, especially in a situation (like the baseline model above) in which the probability of a suit is exogenous. Proposition 1 shows that this intuition extends to a situation with strategic petitioning as long as the cost of suing is high enough (and/or the error rate is high enough). When suing is expensive, losing candidates sue only when it is likely that the winner was corrupt; in that situation, making adjudication more accurate makes losing candidates even more likely to sue, amplifying the deterrent effect of accuracy. When suing is inexpensive, however, the intuitive relationship between accuracy and deterrence breaks down: losing candidates sue so readily that the marginal defendant (i.e. the defendant who is marginally worth suing) is probably innocent, such that making trials more accurate makes suing less attractive and thus fails to deter corruption.

3.4 Costs and benefits of filing petitions in Victorian Britain

The foregoing analysis highlights the importance of petitioning costs in determining the effects of adjudicatory error in a setting with strategic petitioning. Before providing evidence of substantial error from tribunal decisions in the next section, we first briefly provide evidence that the costs of

Figure 1: Summary of equilibrium values of α as a function of θ and k where $\delta > 0$



NOTE: Figure assumes $b = .85$, $d = .05$, $\delta = .25$, as well as Assumptions 1 and 2. As explained in text, k refers to the cost of filing a petition, θ to the probability of adjudicatory error, b the benefit of winning a petition, and α the probability of playing "dirty" electoral strategies.

petitioning were indeed high relative to the benefits and thus that higher adjudicatory error would have contributed to higher corruption rates.

In debate and in select committee reports MPs regularly complained about the high cost of petitioning a sitting MP; indeed, one of the main stated justifications for reforming the system of hearing petitions in 1868 was to reduce the cost of petitioning and thus encourage trials to take places in constituencies where corrupt practices were widely suspected.[17] To take an extreme example, George Melly, Liberal MP for Stoke-on-Trent, noted in debate in 1868 that a recent petition contest had cost the petitioner £11,000; another MP gave an example in which the legal costs amounted to £500 per day for 6 days.[18] The benefits accruing to the winner of a petition contest appear to have been limited in comparison: in the vast majority of cases a successful petition resulted in a by-election being held to fill the seat of the guilty MP, and an analysis of these by-elections shows that a candidate of the same party as the unseated MP was elected in over two-thirds of cases; not only did the petitioner himself rarely claim the seat, then, but the petitioner's party did not usually benefit either. As an additional piece of evidence that the costs of petitioning were high relative to the benefits, the proportion of constituency contests resulting in a petition hearing never rose much above 10%; if petitioning were cheap relative to the benefits, we would expect a higher petitioning rate even if there was actually no electoral corruption taking place. All of this suggests that the costs of petitioning were high enough relative to the benefits that adjudicatory error would have contributed to high corruption rates.

4 Partisanship and Adjudicatory Error

In Section 2 we provided examples of MPs criticizing electoral corruption tribunals for being ineffective. MPs alleged that, because these tribunals met in London (not in the constituency where the

[17] For example, one of John Stuart Mill's suggested reforms (not adopted) was to provide public compensation for petitioners whose corruption charges are upheld (HC Debs, 14 July 1868, Col 1176)

[18] HC Debs, 21 May 1868, Col 667. Approximate value in current pounds is about 70 times higher.

race took place) well after the election was held and were composed of politicians without special legal qualifications,they were largely unable to accurately distinguish between guilty and innocent defendants. The analysis in the previous section indicates that the high degree of adjudicatory error implied by these critiques would have encouraged parliamentary candidates to engage in vote buying and other corrupt practices. To this point all of our evidence that tribunals of MPs were error-prone has been anecdotal, and we have provided no evidence that any other arrangement was necessarily better. In this section we go further by analyzing a new dataset of election petition rulings to show evidence of a particularly political type of adjudicatory error in these rulings.

We show that the outcome of petition trials depended strongly on whether the tribunal hearing the case was majority-Liberal or majority-Conservative. In particular, despite the fact that (given the way cases were matched with tribunals, described below) Liberal and Conservative tribunals should have heard very similar cases, they differed sharply in their conviction rates in a way that strongly suggests pervasive favoritism towards defendants of one's own party. These patterns provide *prima facie* evidence of error: put bluntly, if the outcome of a case depends on the partisanship of the tribunal, then even without knowing the correct outcome we know that one of those tribunals is wrong.[19] We also show that this partisan error was lower in the set of cases heard by judges in the period after 1868.

4.1 Measuring error from case outcomes

As noted above, it is impossible to directly measure the rate of error in a set of rulings because there is no way to know which defendants were actually guilty and which ones were innocent. We therefore adopt an indirect approach that infers a lower bound on adjudicatory error by observing

[19]This assumes that there *is* a correct outcome, i.e. that the defendant is either corrupt or not. This is clearly the case in a world where, as in the model, candidates face a binary choice between clean or dirty electoral actions. If there is a continuum of actions the analysis in the model becomes more complicated, but the basic relationship remains between partisan effects in case outcomes and error: if there exists a statute that distinguishes between clean and dirty actions, then tribunals are incorrectly applying this standard if they would issue different rulings on the same case.

partisan differences in conviction rates on similar sets of cases.

To motivate our approach, consider a situation in which tribunal A and tribunal B are each given three cases to decide. Suppose that A convicts the defendant in two of its cases and B convicts in one. Suppose also that it is known that the same number of defendants is actually guilty in the two sets of cases. What can we say about the accuracy of the two tribunals' decisions? Although we cannot pin down the exact number of cases that were incorrectly decided, we can state that at least one of the six cases was decided in error: In the best case scenario, two defendants were guilty in each set of cases, all of A's rulings were correct, and B's sole conviction was correct but one of his acquittals was an error. (Or, one defendant was guilty in each set of cases, all of B's rulings were correct, and A's sole acquittal was correct but one of his convictions was an error.) Without knowing true guilt or innocence in any one case, then, we can calculate a lower bound on the error rate from comparing the rulings in two sets of cases under the assumption that the correct conviction rate is the same in the two sets.

To begin to apply this idea to our setting, consider Table 2, which reports the conviction rates for Liberal and Tory defendants separately according to whether their case was heard by a Liberal or Tory tribunal.[20] Suppose for now that Liberal defendants whose cases were heard by Liberal tribunals were no more likely to be guilty of corruption than those whose cases were heard by Tory tribunals, and that the same holds for Tory defendants. (We justify this assumption below.) What is most striking about Table 2 is that the proportion of Tory defendants who were convicted depends hugely on whether the case was heard by a Liberal tribunal or a Tory tribunal (and the difference in proportions is statistically significant, $p < 0.01$). The difference for Liberal defendants

[20]We gathered data on election petition trials from a number of sources. Throughout the period we examine, the House of Commons published occasional reports of petition trials taking place over a certain period; these reports can be found in the digitized House of Commons Parliamentary Papers, http://parlipapers.chadwyck.co.uk/. For the period from 1852 to 1868, the reports included the principal information we needed (name of defendant, composition of tribunal, case outcome); for the period between 1840 and 1852, we augmented the listings of petitions with information from reports on individual petitions published in the Parliamentary Papers and announcements of the assignment of tribunals published in the Journal of the House of Commons. For background on the defendants and tribunal members, we draw from a database on the 19th century House of Commons that we have assembled from the work of Craig (1977; 1989) and other sources.

Table 2: Proportion of defendants losing seat by party of defendant and tribunal, 1840-1868

	Liberal tribunal	Tory tribunal
Liberal defendant	31/82 (0.38)	30/71 (0.42)
Tory defendant	29/43 (0.67)	16/60 (0.27)

is smaller (and not statistically significant). The data appears consistent with allegations of partisan favoritism in tribunals' rulings in the sense that Liberal tribunals have a higher conviction rate than Tory tribunals *only* when they face a Tory defendant, and vice versa.

What do these proportions tell us about the prevalence of error in petition outcomes? Focus on Liberal defendants, and suppose that one-half of the Liberal defendants judged by Liberal tribunals and Tory tribunals was actually guilty. Then, following the logic outlined above, the best case is that Tory tribunals correctly convicted .27 of defendants and incorrectly acquitted .23, while Liberal tribunals correctly convicted .5 of defendants and incorrectly convicted .17. Assuming the two sets of cases is equally sized, the minimum proportion of cases incorrectly decided overall is at least $\frac{1}{2}(.23 + .17) = .2$. Now, observe that without knowing the true proportion of guilty defendants, this proportion can be expressed as

$$\frac{|\pi_T - \pi_L|}{2}, \tag{5}$$

where π_T and π_L represent the conviction rates by Tory and Liberal tribunals, respectively.[21] We define this object as the Minimum Partisan Error (MPE). The MPE is the component of adjudicatory error that arises from differences in judgements between tribunals of different partisanship due to favoritism, differences in doctrine, or other causes.

Before continuing, we stress that partisan error is related to but distinct from partisan favoritism. "Partisan error" denotes a situation in which tribunals treat defendants differently based on the party of the tribunal; under the assumption that all acts can be classified as either legal or illegal, there must be adjudicatory error if the same acts are treated differently by different

[21] This is true as long as the true proportion is between π_T and π_L, which is true of the best-case scenario.

classes of tribunals.[22] "Partisan favoritism", by contrast, denotes a situation in which tribunals treat defendants differently based on whether the tribunal and the defendant come from the same political party. For example, if Liberal tribunals convicted 90% of Liberal defendants and 90% of Tory defendants while Tory tribunals convicted 10% of Liberal defendants and 10% of Tory defendants, then we would have considerable evidence of partisan error but no real evidence of partisan favoritism (under assumption that Tory and Liberal tribunals face similar cases, conditional on party).

The MPE is only a meaningful indicator of adjudicatory error if it is reasonable to assume that, at least conditional on covariates, the true proportion of guilty defendants is the same in cases heard by tribunals of different partisanship. Is that assumption reasonable in this case? We argue that it is reasonable because of the highly unpredictable, if not random, way in which tribunals were assigned to cases. When the House of Commons was convened following an election, losing candidates had two weeks to file a petition, after which period an official list of petitions would be announced in which petitions were ordered by the date on which they had been approved (Warren, 1853). Only then, when the order was fixed, were tribunals assigned to each case, following the alternation procedure mentioned above.[23] It would have been very difficult for a petitioner to arrange to have his petition placed e.g. fourth on the list, especially considering that petitions were occasionally rejected on technical grounds or withdrawn before the final petition list was announced. This unpredictability implies that Liberal and Tory tribunals heard similar kinds of cases and thus, in the absence of error, should have convicted a similar proportion of defendants, at least conditional on the defendant's party. As evidence for this, Table 6 compares characteristics of

[22] What we are calling "error" could also be called "uncertain legal standards" (Craswell and Calfee, 1986).

[23] Each tribunal was composed of two MPs from each party plus a chairman whose party generally alternated as the petitions went down the list. This convention was described in 1844 by Serjeant Digby Wrangham, a former MP who often represented parties in election petition trials, before a committee inquiring into the election petition process. Asked how he recommended tribunals should be constituted, he replied that "I should be disposed much rather to name them out of a certain panel by chance, than name them by taking one from each party, as I understand to be the course now, and a Chairman either alternately or not strictly alternately, but taken from either party" (Parl. Papers 1844, 373, pg. 59). That the Chairman's Committee generally (but not strictly) followed this convention is indicated by comparing the party of the chairman assigned to each petition in a given year with the ordered list of petitions announced at the end of the petition submission period.

cases and defendants assigned to Liberal and Tory tribunals, showing that (conditional on defendant party) very few of these characteristics differ significantly.

4.2 Estimates of partisan error

Table 3 reports marginal effects from logistic regressions of case outcomes (1 if the defendant was convicted, 0 otherwise) on the partisanship of the defendant and tribunal (interacted). In column (1) we simply regress the outcome on the partisanship indicators; in columns (2)-(4) we add covariates for the case and defendant. (Covariates are listed in Table 6.) The implied conviction probability from column (1) are, not surprisingly, quite close to the raw proportions in Table 2. The fact that adding covariates in columns (2)-(4) barely changes these estimates provides additional evidence that case characteristics were largely independent of the partisanship of the tribunal.

At the bottom of Table 3 we report our estimates of Minimum Partisan Error (MPE) along with p-values generated through permutation inference. In particular, given a regression equation like

$$\text{convict}_i = \beta_0 + \beta_1 \text{ToryDefendant}_i + \beta_2 \text{ToryTribunal}_i + \beta_3 \text{ToryDefendant}_i \times \text{ToryTribunal}_i + \epsilon_i, \quad (6)$$

we estimate the overall MPE as

$$\text{MPE} = \frac{|\beta_2| + |\beta_2 + \beta_3|}{4}, \quad (7)$$

which is the average of the MPEs across the two parties.[24] For statistical inference, we simulate the sampling distribution of the MPE under the null hypothesis of no partisan effects by repeated permuting the vector of tribunal partisanship indicators and estimating the implied MPE; the reported p-value indicates the proportion of simulations producing an MPE larger than the observed

[24] Following convention, we estimate regression coefficients using logistic regression; we then estimate marginal effects (reported in Table 3) and use these in our estimates of MPE. Results are essentially identical using a linear probability model and directly inserting regression coefficients into Equation 7.

Table 3: Conviction probabilities as a function of defendant and tribunal partisanship, 1840-1868

	(1)	(2)	(3)	(4)
Tory defendant	0.277**	0.269**	0.259**	0.249*
	(0.093)	(0.092)	(0.1)	(0.1)
Tory tribunal	0.042	0.044	0.042	0.045
	(0.073)	(0.075)	(0.074)	(0.075)
Tory defendant × Tory tribunal	−0.435**	−0.449***	−0.427**	−0.438**
	(0.133)	(0.134)	(0.133)	(0.144)
N	256	256	256	256
Election covariates?		✓		✓
Defendant covariates?			✓	✓
Min. partisan error	0.109**	0.112**	0.107**	0.11***
p-value	0.001	0.001	0.001	0

NOTE: Marginal effects are shown for logistic regressions in which the dependent variable is a 1 if the defendant is convicted and 0 otherwise. Election covariates include the number of electors, an indicator for borough constituencies (cf. county constituencies), indicators for England, Ireland, Scotland and Wales, and a measure of competitiveness (the effective number of candidates divided by the district magnitude). Defendant covariates include an incumbency indicator, age, an indicator for whether the MP had previously spoken in parliament, and an indicator for whether the MP had held a cabinet office. Minimum partisan error measures the magnitude of the difference in conviction rates between tribunals of different partisanship, conditional on defendant party. The p-value refers to a test of the null hypothesis of zero partisan error and is calculated via permutation inference as described in the text. Guide to significance codes: *** indicates $p < .001$; ** indicates $.001 < p < .01$; * indicates $.01 < p < .05$; and † indicates $.05 < p < .1$.

value.

Across specifications, the estimated MPE is about .11, indicating that at least 11% of cases (averaging across the two parties) were incorrectly decided due to inconsistencies between Liberal and Tory tribunals. The way we have defined MPE, this error could come simply from differences in the legal standard applied by tribunals of different partisanship: it could be, for example, that tribunals of one party systematically applied a higher standard of evidence and thus convicted a lower proportion of defendants regardless of the defendant's party. It is worth noting that the partisan error we observe in these cases appears to derive from favoritism rather than from these kinds of more innocuous differences. Contrary to what many contemporary politicians and outside observers claimed,[25] MPs' partisan loyalties appear to have colored their judgment in electoral corruption trials; this partisan favoritism contributed to the unreliability of the adjudication system and thus encouraged electoral corruption.

5 Did Judicialization Deter Corruption?

The Parliamentary Elections Act of 1868 transferred the responsibility of hearing election petitions from the House of Commons to the courts. Moving jurisdiction to the courts addressed many of the perceived shortcomings of the old system. Judges could hold trials "on the spot" and without waiting for the House of Commons to convene following an election; judges also of course far exceeded MPs in their knowledge and experience of handling evidence, following legal procedure, and applying statute and legal precedent to particular cases. Of particular relevance to the foregoing

[25]For example, speaking in debate on the Parliamentary Elections Act, Edward Pleydell-Bouverie, Liberal MP for Kilmarnock, stated of the institution of election petition committees, "It was not alleged by anybody well acquainted with the facts that it was partial; during the last twenty years I have been Chairman of a very great number of such Committees, and I have a strong opinion that they did their best to try the question submitted to them with the greatest impartiality. Indeed, I believe their decision was very often against the party feeling of the majority.... Speaking on the whole, there was no party colour in their decisions" (HC Deb, 6 July 1868, Col 723). See also the speech by Philip Wykeham-Martin ("If I were to be tried for my life I should be perfectly satisfied to trust my case in the hands of a Committee of that House"), as well as the address to the Juridical Society by F.D. Maurice (Maurice, 1871).

discussion of partisan error, judges were also not sitting politicians with a direct political interest in the proceedings. In conjunction with the formal analysis of Section 3, all of this suggests that the Parliamentary Elections Act helped to reduce electoral corruption by making adjudication more accurate.

In this section, we marshal two kinds of more concrete evidence suggesting that judicialization in fact led to more accurate adjudication and thus helped to contain corruption in Victorian Britain. We again resort to indirect methods, both because we do not observe corruption directly and because other reforms that probably reduced corruption were implemented around the same time (most importantly, the Second Reform Act in 1867 and the Ballot Act in 1872).

5.1 Judicialization and partisan error

The judges who heard election corruption trials after 1868 were not sitting politicians, but almost all of them had known political leanings. Many of them had in fact served in the House of Commons or stood as a parliamentary candidate. Indeed, one of the criticisms of the Parliamentary Elections Act in 1868 had been that it would do little to alleviate partisan favoritism because judges had partisan allegiances just as MPs did.[26]

To get a sense of whether judges were in fact less partisan in their rulings, we extend the analysis of the previous section into the post-1868 period.[27] As in the previous section, it is important to establish that the cases that Liberal and Tory judges heard were comparable, at least conditional on covariates. Fortunately, the system by which cases were assigned to judges was similarly unpredictable *ex ante*, which helps to ensure that the true proportion of guilty defendants

[26]For example, Edward Pleydell-Bouverie, Liberal MP for Kilmarnock, argued that "Judges are not angels, but are – like other men — liable to be influenced by their political feelings in political matters" (HC Debs, 21 May 1868, Col 684). John Stuart Mill stated in debate that he "was far from being disposed to place implicit confidence in the Judges" because he "could not forget that they had been politicians, and that they were sometimes thought to be politicians still" (HC Debs, May 21, 1868, Col 683.)

[27]We assign partisan labels to judges based on their prior political service and authoritative biographical accounts when possible; in the few remaining cases we use the party of the government appointing them.

Table 4: Proportion of defendants losing seat by party of defendant and tribunal, 1868-1880

	Liberal tribunal	Tory tribunal
Liberal defendant	24/55 (0.44)	6/11 (0.55)
Tory defendant	15/35 (0.43)	4/13 (0.31)

was similar across judges. Under the new system, as under the old system, losing candidates had two weeks after an election to file petitions; each case was then assigned to one of three superior court judges[28] according to the order in which it stood on the final list of petitions. Consistent with effectively random assignment of judges to petitions, we again find that candidate characteristics appear to be balanced across cases assigned to Liberal and Conservative judges, as reported in Table 6 in the Appendix.

Table 4 reports the conviction rates for cases heard by judges between 1868 and 1880 in the same format as Table 2. The raw estimate of Minimum Partisan Error implied by these conviction rates is just under .06, or around half of that for the earlier period. To take account of covariates and tests for a difference in minimum partisan error between the two periods, Table 5 extends the analysis of Table 3 to incorporate this data. In each regression model we include indicators for the partisanship of the defendant and tribunal (whether of MPs or judges) and (in models (2)-(4)) a set of covariates. All terms in the regression are interacted with an indicator identifying the period in which judges heard cases ("post-PEA"), such that we effectively fit separate models for the two periods. At the bottom of each table we report the implied Minimum Partisan Error for the period in which MPs heard cases (again, consistently around .11 and strongly significant) and the period in which judges heard cases (around .05 and not statistically significant). We also report the estimated difference between the two MPE estimates; across models, the drop is estimated at between .05 and .07 and is significant at the .05 level in all cases.

Judges had many advantages over the MPs who had previously heard electoral corruption trials,

[28]The judges were puisne judges drawn from the Queen's Bench, the Court of the Exchequer, and the Court of Common Pleas.

Table 5: Conviction probabilities as a function of defendant and tribunal partisanship, 1840-1880

	(1)	(2)	(3)	(4)
Tory defendant	0.285**	0.275**	0.263**	0.251**
	(0.095)	(0.097)	(0.095)	(0.096)
Tory tribunal	0.043	0.045	0.043	0.045
	(0.076)	(0.078)	(0.075)	(0.078)
Tory defendant × Tory tribunal	−0.448***	−0.457**	−0.435**	−0.441**
	(0.134)	(0.144)	(0.139)	(0.14)
Tory defendant × post-PEA	−0.276*	−0.285*	−0.256†	−0.249†
	(0.137)	(0.135)	(0.137)	(0.141)
Tory tribunal × post-PEA	0.156	0.093	0.162	0.113
	(0.172)	(0.164)	(0.166)	(0.176)
Tory defendant × Tory tribunal × post-PEA	0.181	0.298	0.178	0.28
	(0.235)	(0.254)	(0.237)	(0.254)
N	402	402	402	402
Election covariates?		✓		✓
Defendant covariates?			✓	✓
Min. partisan error: MPs	0.109**	0.112**	0.107**	0.11***
p-value	0.001	0.001	0.001	0
Min. partisan error: judges	0.063	0.038	0.062	0.04
p-value	0.434	0.741	0.454	0.728
Diff. in min. partisan error	−0.045*	−0.074**	−0.045*	−0.07**
p-value	0.035	0.002	0.039	0.002

NOTE: See notes to Table 3. All covariates are interacted with the post-PEA indicator, which identifies cases heard after judges assumed responsibility for corruption trials in 1868.

including the advantage of holding these trials more promptly and locally than had previously been the case. Despite the fact that many of these judges had political backgrounds, they also probably faced less political pressure to produce a favorable decision. We interpret our evidence of lower partisan error in electoral corruption trials after 1868 as evidence that, through some combination of these advantages, judges issued more accurate rulings and thus helped to constrain electoral corruption.

5.2 Judicialization, petition rates, and conviction rates

An alternative approach to assessing the reliability of judges as arbiters of election petitions is to examine aggregate data on the volume of petitions filed and the outcomes of those trials. As indicated by Figure 2, the petition rate (the proportion of competitive elections that resulted in a petition) dropped substantially soon after judges assumed responsibility for these cases, while the conviction rate (the proportion of petitions that resulted in a conviction) rose. This is the pattern one would expect if, when judges took over responsibility from tribunals in the House of Commons, electoral corruption trials became more effective at convicting guilty defendants and acquitting innocent ones.[29] Most straightforwardly, making outcomes less arbitrary may have simply discouraged losing candidates who had little or no evidence of the winner's wrongdoing from filing a petition. In the presence of a large random component to trial outcomes, a losing candidate with a weak case could file a petition in the hopes of ending up with a favorable tribunal; improving accuracy would discourage such petitions and, by eliminating some petitions in which the defendant was likely innocent, increase the conviction rate.

[29]The numbers suggest that candidates did not immediately respond to the new situation, as the petition rate remained high and the conviction rate remained low in the 1868 election, the first one in which petitions trials were heard by judges. As indicated by Stokes (2011), the petition rate dropped even more drastically in the subsequent period.

Figure 2: Petition rate and conviction rates, 1840-1882

NOTE: The left panel depicts the proportion of election contests (those with more candidates than seats) that resulted in petition trials for each general election between 1840 and 1880. The right panel depicts the proportion of petitioned MPs who were convicted.

6 Conclusion

This paper makes three primary contributions. First, it clarifies the relationship between adjudicatory error in electoral corruption cases and the equilibrium level of electoral corruption in a setting where petitions are strategically filed. It shows that the intuition that adjudicatory error undermines deterrence applies in such a setting as long as the cost of filing petitions is sufficiently high. Second, it analyzes new data on petition outcomes to highlight a strong partisan component to the decisions made by tribunals of MPs in the period from 1840-1868; in conjunction with the formal analysis and evidence of high petition costs in this period, our evidence of partisan rulings suggests that politicized self-regulation by MPs contributed to the pervasiveness of electoral corruption in Victorian Britain. Finally, this paper provides evidence that judges were more reliable as arbiters of election petition cases, which suggests that delegating responsibility for these trials to judges may have reduced corruption in the last three decades of the nineteenth century. Like others, we find that independent regulation of political competition better constrains corrupt practices; our general contribution has been to solidify a theoretical basis for this claim and to empirically document it in a historically important setting.

The notion that election disputes should be resolved in the legislature (as embodied in the 19th-century of House of Commons) was once embraced in many countries as part of an assertion of parliamentary supremacy or separation of powers. The British House of Commons was in fact the first national legislature to abandon "self-certification," with similar reforms subsequently undertaken elsewhere (Lehoucq, 2002; Massicotte, Blais and Yoshinaka, 2004; Williams, 2009; Orozco Henríquez, 2010). Although some view self-certification as having been "discredited beyond repair" (Mozaffar and Schedler, 2002, pg. 16), legislatures continue to play a role in deciding election disputes in many countries (Massicotte, Blais and Yoshinaka, 2004); meanwhile, allegations of partisanship and error persist in settings where electoral governance has been delegated to "independent" institutions (e.g. Hayward and Dumbuya, 1985; Mozaffar, 2002; Popova, 2006; Hoglund,

Jarstad and Kovacs, 2009; Herron, 2010). Thus the institutional context for regulating electoral competition remains relevant.

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Appendix: Balance tests

Table 6: Balance tests by party of defendant

Party of petitioned MP:	**Conservative**			**Liberal**		
Party of tribunal:	**Con.**	**Lib.**	p-val.	**Con.**	**Lib.**	p-val.
1840-1868 (Cases heard by MPs in the House of Commons)						
Borough	0.93	0.95	0.67	0.92	0.94	0.58
England	0.97	0.88	0.10	0.77	0.85	0.21
Electors (k)	1.60	2.93	0.04*	1.34	2.08	0.03*
Competitiveness	1.85	1.81	0.48	1.71	1.78	0.16
Close election?	0.20	0.37	0.05†	0.30	0.30	0.95
Year	1852.97	1851.47	0.33	1853.93	1854.24	0.79
Age of MP	48.67	41.07	0.00***	46.39	43.04	0.07†
Incumbent?	0.42	0.30	0.24	0.49	0.50	0.93
Years served	4.27	3.14	0.35	4.79	3.61	0.23
Speeches made	26.30	6.95	0.14	31.89	39.71	0.81
Words (k)	10.90	1.31	0.09†	9.00	21.55	0.50
Obs.	60	43		71	82	
1868 - 1880 (Cases heard by judges of the Superior Courts)						
Borough	0.83	0.97	0.10	1.00	0.87	0.22
England	0.83	0.79	0.77	0.90	0.71	0.22
Electors (k)	3.04	5.14	0.19	4.36	7.85	0.26
Competitiveness	1.91	1.91	0.97	1.93	1.87	0.37
Close election?	0.25	0.09	0.16	0.30	0.15	0.28
Year	1869.33	1869.88	0.55	1868.20	1870.65	0.01*
Age of MP	44.83	46.41	0.71	48.10	48.08	1.00
Incumbent?	0.17	0.35	0.24	0.70	0.56	0.41
Years served	1.58	2.74	0.54	7.40	5.94	0.65
Speeches made	0.58	7.29	0.26	24.40	53.60	0.54
Words (k)	0.31	2.03	0.29	5.82	21.39	0.48
Obs.	13	51		11	74	

NOTE: Each p-value corresponds to a test of the null hypothesis of no difference in the mean value of the covariate between cases assigned to Conservative and Liberal tribunals.

Supplementary information: Analysis of model

We solve the game from the end. After the election is held, the losing candidate has the opportunity to sue. Denote by σ his belief that the winning candidate played D. (Recall that the candidates never observe each other's campaign actions.) The losing candidate i will file suit if

$$\sigma(1-\theta) + \big(1-\sigma\big)\theta > \frac{k}{b}. \tag{8}$$

Equation 8 implies that the losing candidate will choose to sue as long as

$$\sigma > \frac{k/b - \theta}{1-2\theta} \equiv \tilde{\sigma}. \tag{9}$$

Note that

$$\frac{\partial\tilde{\sigma}}{\partial\theta} = \frac{2k/b - 1}{(1-2\theta)^2} \tag{10}$$

which indicates that whether error makes the loser more or less ready to file suit depends on the ratio of the cost of suing k to the benefit of winning a suit b: when $k/b < 1/2$, a higher degree of error reduces $\tilde{\sigma}$ and thus makes the loser more ready to file suit (i.e. willing to file suit when he is less confident of the defendant's guilt); otherwise, the relationship is reversed and more error makes the loser less ready to file suit.

We begin with pure-strategy equilibria. Based on Equation 8, if $\theta > 1 - k/b$ a losing candidate will not choose to sue even when he knows the winner is guilty; assuming that $\delta > d$ both candidates will play D. Similarly, if $\theta > k/b$ a losing candidate will choose to sue even when he knows the winner is innocent; given that the winner will always be sued, the candidates will both choose to play C if

$$\theta < \frac{1/2 + d - \delta k}{1 + \delta(1-b)} \tag{11}$$

and will both choose to play D if

$$\theta > \frac{1/2 + d - \delta(1-b+k)}{1 - \delta(1-b)}. \tag{12}$$

Assumption 1 requires that the RHS of Equation 12 be less than the RHS of Equation 11; when this is met, there are parameter values for which both Equation 11 and Equation 12 are satisfied and thus both equilibria exist for some $\theta > k/b$. (When Assumption 1 is not met there are parameter values at which neither condition is satisfied and asymmetric equilibria in which one player plays C and the other plays D can be sustained.) In what follows we assume that Assumption 1 is met, which rules out asymmetric pure-strategy equilibria; we also adopt Assumption 2, which eliminates the complication of multiple pure-strategy equilibria. (The basic point – that error invites corruption as long as filing petitions is expensive and error is high – would hold if we dropped these assumptions, but equilibria would be more difficult to characterize.) We thus have two regions of pure-strategy equilibria, as depicted in Figure 1: both play D when $\theta > 1 - k/b$ or Equation 12 is met; both play C if $\theta > k/b$ and Equation 12 is not met.

We now turn to mixed strategies. If $\theta < 1 - k/b$ and $\theta < k/b$, then losing candidates want to sue if they know that the winner played D but not if they know that the winner played C. The only equilibrium for these parameter values (excluding the one in which Equation 12 is met) is a mixed one in which candidates play D with some probability α and the losing candidate plays a randomized suing strategy. Because we are primarily concerned with the relationship between corruption and adjudicatory error, we focus here on equilibrium values of α, which in a mixed strategy equilibrium are probabilities of playing dirty that induce the losing candidate to be indifferent between suing and not suing, conditional on his own electoral action.[30] Using Bayes Rule, we can express the losing candidate's belief that the winning candidate played D, conditional on the loser having played D, as

$$\sigma_D = \frac{\alpha}{1 - 2\delta(1 - \alpha)} \tag{13}$$

and the corresponding belief conditional on the loser having played C as

$$\sigma_C = \frac{\alpha + 2\delta\alpha}{1 + 2\delta\alpha}. \tag{14}$$

Note that $\sigma_C < \sigma_D$ for all $\alpha < 1$, which reflects the intuition that a candidate who cheats and then loses is more likely to suspect the winner of cheating than one who does not cheat and then loses.[31] Now, setting σ_D from Equation 13 equal to $\tilde{\sigma}$ from Equation 9 and solving for α, we derive an equilibrium campaign strategy α_D^* that causes the losing candidate to sue with positive probability only if he played D

$$\alpha_D^* = \frac{\tilde{\sigma}(1 - 2\delta)}{1 - 2\tilde{\sigma}\delta} \tag{15}$$

and, setting σ_C from Equation 14 equal to $\tilde{\sigma}$ from Equation 9 and solving for α, we derive an equilibrium campaign strategy α_C^* that causes the losing candidate to sue with certainty if he played D and with positive probability if he played C

$$\alpha_C^* = \frac{\tilde{\sigma}}{1 - 2\tilde{\sigma}\delta + 2\delta}. \tag{16}$$

The line where α_D^* switches over to α_C^* depends on parameter values, but for the purpose of relating α^* to θ we can simply observe that both objects are increasing in θ when $k > b/2$:

$$\frac{\partial \alpha_D^*}{\partial \theta} = \frac{b(2k - b)(1 - 2\delta)}{\Big(b(1 - 2\theta + 2\theta\delta) - 2\delta k\Big)^2} \tag{17}$$

[30] For an MSNE with a given value of α, there is a corresponding suing strategy (a probability of suing for when the loser was clean and another for when the loser was dirty only one of which is on the interior of $[0, 1]$) such that the candidates are *ex ante* indifferent between playing clean or dirty. The expressions for these suing strategies are somewhat involved and are thus omitted here to focus on election corruption.

[31] Put differently, Equations 13 and 14 indicate that, for a fixed prior probability of one's opponent being dirty, a candidate who was dirty and lost is more likely to have faced a dirty opponent than a candidate who was clean and lost.

and

$$\frac{\partial \alpha_C^*}{\partial \theta} = \frac{b(2k-b)(1+2\delta)}{\Big(b\big(1-2\theta+2\delta(1+\theta)\big)-2\delta k\Big)^2} \tag{18}$$

We have thus characterized the relationship between $\alpha^*(\theta)$ sufficiently to construct Figure 1, on which basis Proposition 1 was proven.