

# Guarding the Guardians: Legislative Self-Policing and Electoral Corruption in Victorian Britain\*

Andrew C. Eggers<sup>1,2</sup> and Arthur Spirling<sup>3</sup>

<sup>1</sup>*Department of Politics and International Relations, University of Oxford*

<sup>2</sup>*Nuffield College, 1 New Rd, Oxford OX1 1NF, UK;*

*andrew.eggers@nuffield.ox.ac.uk*

<sup>3</sup>*Department of Government and Institute for Quantitative Social Science,  
Harvard University, Cambridge, MA 02138, USA;*

*aspirling@gov.harvard.edu*

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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 demonstrate that delegating responsibility over corruption trials to judges was an important institutional step in cleaning up elections. By focusing on an institutional explanation for Victorian electoral corruption (and its demise), we provide an account that complements the existing literature while offering clearer implications for contemporary policy debates.

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## 1 Introduction

The magnitude of political change in nineteenth century Britain has made it one of the most widely studied episodes of democratization in history (e.g., 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,<sup>1</sup> the decline in corrupt practices in election contests is no less remarkable (O’Leary, 1962; Hanham, 1978, p. 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 *et al.*, 2009; Gonzalez-Ocantos *et al.*, 2010). It remains relevant, therefore, to understand why electoral corruption was so widespread in mid-nineteenth 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 *et al.* (2013) 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 article, we emphasize an institutional explanation for the prevalence of electoral corruption in nineteenth-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

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<sup>1</sup> Phillips and Wetherell (1995, p. 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.

in 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, after reviewing the evidence and legal arguments, issued formal rulings. Our main claim in this article 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. Replacing MPs with judges in 1868, we argue, appears to have led to more reliable adjudication and thus 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, scholars have interpreted the high number of petitions filed in the 1850s and 1860s as evidence that electoral corruption was at its worst in mid-century (Porritt, 1906; Rix, 2008; Stokes *et al.*, 2013). In this article, 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 article 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.<sup>2</sup>

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

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<sup>2</sup> Although this is not the focus of our article, one clear implication of recognizing the strategic nature of filing petitions is that we must use care in trying to infer the nature or extent of electoral corruption from the set of petitions that were filed.

causes of this decline whose independent contributions can never be neatly disentangled.<sup>3</sup> Our approach in this article 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 contributed to 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. Other reforms such as 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 continue to differ markedly in how they decide election disputes (Massicotte *et al.*, 2004). The constitutional issues at stake in the nineteenth century Britain (i.e., whether elections should be policed by the legislators who compete in them or by separate entities) remain alive today.

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. 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 — i.e., acquitting an MP who was actually guilty of corruption or convicting one who was actually innocent — would encourage corruption, because 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 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 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

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<sup>3</sup> For example, the Second Reform Act (1867), Parliamentary Elections Act (1868), and Ballot Act (1872) all likely had an impact on electoral corruption; because they were enacted in such rapid succession, it is difficult to measure the effect of any single reform, let alone disentangle the impact of legislative reform from that of broader social changes.

error-prone. Our strongest evidence is drawn from a newly collected data set of rulings issued between 1840 and 1880. A remarkable feature of trials heard by committees of MPs is that each petition was heard by a different set of MPs, with the partisan majority alternating from one tribunal to the next; effectively, it was as good as random whether a given case was assigned to a Liberal or Conservative tribunal. Taking advantage of this unique feature of these cases, we show that 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 suggests 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 questioning the legal competence of tribunals of MPs as well as data on petition and conviction rates over time, our empirical evidence points to the 1868 reform 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.<sup>4</sup> 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 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 seventeenth century Parliament secured this right for itself as part of a broader assertion of

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<sup>4</sup> 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).

independence from the Crown (Porritt, 1897).<sup>5</sup> Over the next two centuries the House of Commons employed various procedures for conducting trials of election petitions.<sup>6</sup> 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 alternated 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 to 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 surfaced. 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 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

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<sup>5</sup> 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).

<sup>6</sup> 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 11 members chosen by the litigants, from 33 randomly selected MPs (The Practice on Election Petitions, 1837).

several speakers argued made it more difficult for committees to find out what happened in the election.<sup>7</sup> 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.<sup>8</sup> 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 with these tribunals 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.”<sup>9</sup>

Although it is beyond the scope of this article 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, the general understanding was that by making these decisions more accurate they could discourage electoral corruption, which was thought to be a priority following the expensive and corrupt elections of 1865 (O’Leary, 1962, pp. 27–31). 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.”<sup>10</sup> 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

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<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> HC Debs, July 6, 1868, Col 724.

<sup>10</sup> HC Debs, May 21, 1868, Col 688.

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.<sup>11</sup>

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.<sup>12</sup> The empirical component requires us to determine whether, in fact, MPs were especially poor adjudicators of corruption petitions and whether judges were any better. 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.<sup>13</sup> 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

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<sup>11</sup> HC Debs, May 21, 1868, Col 686.

<sup>12</sup> 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).

<sup>13</sup> We use male pronouns because all MPs and candidates in this period were men.



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 error is sufficiently high.<sup>14</sup>

### 3.1 Setup: Baseline Model

Two evenly-matched 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  $d > 0$ . Table 1 depicts the probabilities of victory corresponding to different combinations of campaign actions.

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. A non-strategic tribunal correctly judges guilt and innocence with error rate  $\theta \in (0, 1/2)$ : if the winner played  $C$  he will be convicted with probability  $\theta$ ; if he played  $D$  he will be convicted with probability  $1 - \theta$ .<sup>15</sup> 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  $D$ ; the loser gets 0 if he played  $C$  and  $-d$  if he played  $D$ .

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

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

<sup>14</sup> 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.

<sup>15</sup> 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.

### 3.2 Analysis: Baseline Model

The Nash equilibrium of the game consists of a pair of electioneering strategies. Denote by  $\alpha$  the probability that one's opponent plays  $D$ . Then the payoff from playing  $C$  is

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

and the payoff from playing  $D$  is

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

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  $\alpha$  to 0 or 1, we find that a Nash equilibrium in which both players play  $C$  can be sustained only if

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

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

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

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. If we employ a common refinement requiring that players coordinate on the equilibrium with the highest payoffs, we have a weakly monotonic positive relationship between adjudicatory error and corruption.

### 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.<sup>16</sup> 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: if the probability that the winner played dirty is below  $1/2$ , then greater error could lead to more suits being filed (and thus better deterrence) because an erroneous decision would tend to benefit the petitioner. 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 Appendix A.1, 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  $\theta$ .<sup>17</sup> We focus on sequential equilibrium, which requires that the loser's belief about the winner's guilt reflects the winner's true probability of playing dirty, updated using Bayes Rule by his own electoral strategy. The following proposition clarifies the conditions under which reducing error

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<sup>16</sup> We assume for simplicity that only the petitioner pays legal costs; in fact, both sides of course sustained legal costs in the event of a petition trial. See Appendix A.2 for discussion of how the analysis depends on the distribution of costs. Note that each side paid their own costs regardless of the outcome of the lawsuit, in contrast the usual "English Rule", in which the loser pays all legal costs (Warren, 1853, pp. 650–652). An exception was made for "frivolous and vexatious" suits.

<sup>17</sup> Given Assumption 1 and the symmetry of the game, it is reasonable to focus on symmetric equilibria.

tends to encourage corrupt electioneering:

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

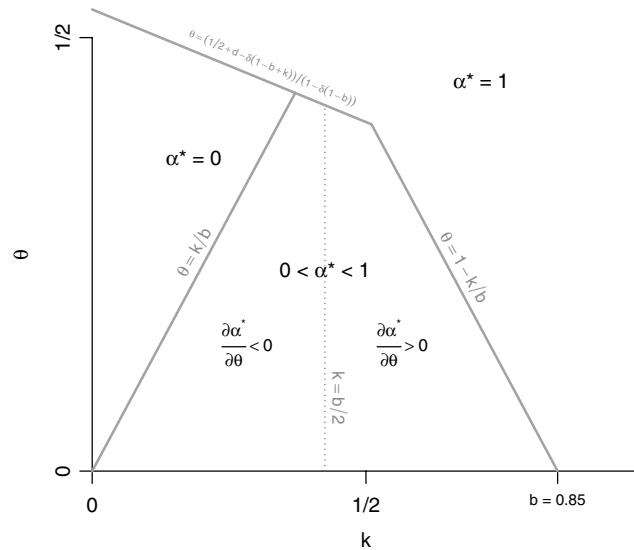
Proposition 1 essentially says that reducing adjudicatory error weakly reduces corruption if the cost of suing is high enough relative to the benefit of winning the suit, or if the starting level of adjudicatory error is high enough.

*Proof:* First, note that if  $\delta < d$  candidates play  $C$  regardless of other parameter values, and if  $k > 1$  no lawsuits are filed regardless of other parameter values;  $\theta$  thus has no impact on behavior in those cases. For  $\delta > d$  and  $k < 1$ ,  $\alpha^*(\theta)$  is as depicted in Figure 1 (under Assumptions 1 and 2). (Details in Appendix A.1.) At any point where  $k > b/2$ ,  $\alpha^*$  is weakly increasing in  $\theta$ . The relationship between  $\theta$  and  $\alpha^*$  is non-monotonic where  $k < b/2$ , but for  $\theta > \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$  we have that  $\alpha^* = 1$  whereas for  $\theta < \frac{1/2+d-\delta(1-b+k)}{1-\delta(1-b)}$  we have that  $\alpha^* < 1$ . ■

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 (and the underlying analysis in Figure 1 and Appendix A.1) shows that this intuition extends to a situation with strategic petitioning as long as the cost of suing is high enough (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, increasing the accuracy of adjudication 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



**Figure 1.** Summary of equilibrium corruption rates ( $\alpha$ ) as a function of adjudicatory error ( $\theta$ ) and the cost of filing a lawsuit ( $k$ ).

*Note:* Figure assumes  $b = 0.85$ ,  $d = 0.05$ ,  $\delta = 0.25$ , as well as Assumptions 1 and 2. As explained in text,  $k$  is the cost of filing a petition,  $\theta$  is the probability of adjudicatory error,  $b$  is the benefit of winning a petition, and  $\alpha$  is the equilibrium probability of playing “dirty” electoral strategies.

decisions in the next section, we first briefly provide evidence that the costs of 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 place in constituencies where corrupt practices were widely suspected.<sup>18</sup> 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

<sup>18</sup> 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). Based on hearings evaluating the effects of the reforms, it does not appear to be the case that judicialization reduced costs. See Select Committee on Corrupt Practices Prevention and Election Petitions Acts, *Report*, 28 May 1875, HC 202 1875.

day for 6 days.<sup>19</sup> 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 these cases; not only did the petitioner himself rarely claim the seat, then, but the petitioner's party usually did not 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 arbitrary and incompetent. 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. It has never been systematically shown, however, that there was anything particularly wrong with the decisions of these corruption tribunals, nor that any of their shortcomings were due to their constitution rather than, e.g., to the difficulty of determining guilt in a corruption case. In this section, we carry out the first systematic analysis of a new data set of Victorian electoral corruption trials and provide evidence that they suffered from a particularly political type of adjudicatory error.

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, although 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

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<sup>19</sup> HC Debs, 21 May 1868, Col 667. Approximate value in current pounds is about 70 times higher.

a Liberal tribunal would find a given defendant guilty and a Conservative tribunal would find him innocent, then even without knowing the correct outcome we know that one of those tribunals is wrong. 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*

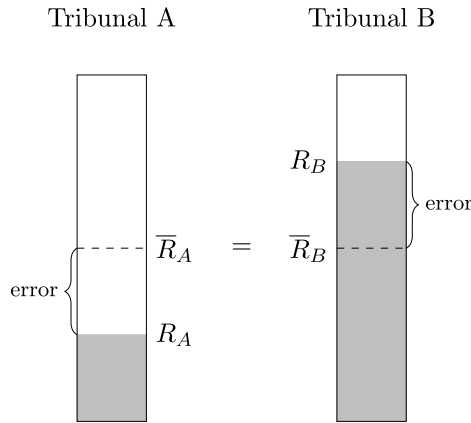
As noted above, it is impossible to directly measure the rate of error in a set of rulings because there is no way to know which defendants were actually guilty and which ones were innocent. We therefore adopt an indirect approach that infers a lower bound on adjudicatory error by observing partisan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

To motivate our approach, suppose that a sample of cases is randomly assigned to be heard by either Tribunal A or Tribunal B, and suppose further that the conviction rate for cases heard by Tribunal A is  $R_A = 0.25$  while the conviction rate for cases heard by Tribunal B is  $R_B = 0.75$ . What proportion of cases were wrongly decided? Given the randomization, in expectation the true rate of guilt among defendants is the same in the two sets of cases. In the most optimistic scenario, then, the average error rate across tribunals was  $|0.25 - 0.75|/2 = 0.25$ : if the true rate of guilt  $\bar{R}$  is .5, for example, then in the best case every conviction by Tribunal A was correct and 25% of its defendants were wrongly acquitted, while every acquittal by Tribunal B was correct and 25% of its defendants were wrongly convicted. (Figure 2 illustrates this situation.) As a general matter, under the assumption of an equal rate of guilt in cases heard by tribunals A and B, the best-case average error rate across the two tribunals is  $|R_A - R_B|/2$ .<sup>20</sup>

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.<sup>21</sup> Suppose for now that Liberal defendants whose cases were heard by Liberal tribunals

<sup>20</sup> Note that our calculation of the best-case average error rate does not require the two types of tribunals to be equally biased. Given conviction rates of .25 and .75, the best-case error rate is .25 as long as the true rate of guilt is between .25 and .75.

<sup>21</sup> 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



**Figure 2.** Using variation in conviction rates to infer best-case error rates.  
*Note:* For each tribunal  $P \in \{A, B\}$ , the true rate of guilt among defendants is  $\bar{R}_P$  and the conviction rate is  $R_P$ . If  $\bar{R}_A = \bar{R}_B \equiv \bar{R}$ , then across all possible  $\bar{R}$  a best-case estimate of the average error rate between the two tribunals is  $|R_A - R_B|/2$ .

**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)

were just as likely to be guilty of corruption as 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 goes in the opposite direction but is smaller (and

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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 nineteenth century House of Commons that we have assembled from the work of Craig (1977, 1989) and other sources.



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? Following the logic above and assuming the same true rate of guilt in cases heard by Liberal and Tory tribunals, we can estimate the best-case error rate in cases against defendants of a given party as

$$\frac{|R_T - R_L|}{2}, \quad (5)$$

where  $R_T$  and  $R_L$  represent the conviction rates by Tory and Liberal tribunals, respectively. We define this object as the minimum partisan error (MPE). Under the assumption that the true rate of guilt is the same in cases heard by Liberal and Tory tribunals (at least conditional on defendant party), the MPE provides a best-case estimate of the component of adjudicatory error that is systematically related to the partisanship of the tribunal, whether because of favoritism, differences in doctrinal approaches, or other factors.

Before continuing, we stress that partisan error is related to but distinct from partisan favoritism or partisan bias. "Partisan error" denotes a situation in which tribunals of different partisan majorities treat similar defendants differently; 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 classes of tribunals. "Partisan favoritism", by contrast, denotes a situation in which tribunals treat similar defendants differently based on whether the tribunal and the defendant come from the same political party. For example, if Liberal tribunals convicted 90% of both Liberal and Tory defendants while Tory tribunals convicted 10% of both Liberal and Tory defendants, then we would have considerable evidence of partisan error (again assuming the tribunals heard comparable cases) but no real evidence of partisan favoritism.<sup>22</sup>

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

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<sup>22</sup> As suggested by Table 2, we find strong and robust evidence of partisan favoritism or bias in electoral corruption trials. We emphasize error in this article in order to maintain a focus on how partisan adjudication affected deterrence.

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; the petitions were then reviewed and an official list was released, with the petitions listed in the order in which they had been approved 1853. Only then, when the order was fixed, were tribunals assigned to each case, following the alternation procedure mentioned above.<sup>23</sup> 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.<sup>24</sup> 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 B.1 in Appendix B compares characteristics of cases and defendants assigned to Liberal and Tory tribunals, showing that (conditional on defendant party) very few of these characteristics differ significantly.

It is worth emphasizing the importance of the quasi-random assignment of cases to tribunals in this setting. In the presence of partisan favoritism and *predictable* assignment of cases, we would expect cases heard by Liberal and Tory tribunals to differ sharply: a Liberal petitioner might sue a Tory MP based on weak evidence if he knew he would face a Liberal tribunal, but not if he knew he would face a Tory tribunal, with the result that

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<sup>23</sup> 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, p. 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.

<sup>24</sup> Occasionally, petitions were also withdrawn after a committee was assigned to a case. This could in principle lead to a tendency for unobserved case quality to be correlated with partisanship, for example, if petitioners tended to withdraw weak cases after being assigned to a non-copartisan. Table 2 suggests that this was not the case: cases against MPs of a given party were more likely to be heard by committees of that same party, which is the opposite of what we would expect if petitioners withdrew when they faced an unfriendly committee.

case quality would be systematically related to tribunal partisanship (conditional on defendant partisanship). In that situation, it would be almost impossible to learn anything about error, bias, or anything else merely from studying conviction rates. (For example, in his study of electoral petition cases in the U.S. House of Representatives, 2004 observes that the cases brought against majority-party congressmen were stronger than those brought against minority-party congressmen, with the result that bias cannot be inferred from conviction rates.) The case assignment procedure used in Victorian Britain thus creates an unusual opportunity to study the relationship between adjudication and electoral corruption.

#### 4.2 *Estimates of Partisan Error*

Table 3 reports marginal effects from logistic regressions of the form

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

where the dependent variable is a binary variable (1 if the defendant was convicted, 0 otherwise) and the other variables indicate defendant and tribunal partisanship. In columns (2)–(4) we add covariates for the case and defendant. (Covariates are listed in Table B.1 in Appendix B.) The implied conviction probabilities from column (1) are, not surprisingly, quite close to the raw proportions in Table 2. The estimates barely change when we add covariates in columns (2)–(4), which 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 MPE along with the  $p$ -values generated through permutation inference. In particular, given the regression equation above (Equation (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.<sup>25</sup> For statistical inference, we simulate the sampling distribution of the MPE under the null

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<sup>25</sup> 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** (0.091)	0.269** (0.097)	0.259** (0.094)	0.248* (0.099)
Tory tribunal	0.042 (0.076)	0.043 (0.075)	0.042 (0.076)	0.044 (0.079)
Tory defendant × Tory tribunal	−0.435*** (0.126)	−0.446** (0.137)	−0.427** (0.133)	−0.436** (0.141)
<i>N</i>	256	256	256	256
Election covariates?		✓		✓
Defendant covariates?			✓	✓
Min. partisan error	0.109***	0.111***	0.107**	0.109**
<i>p</i> -Value	0.000	0.000	0.001	0.001

*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: \*\*\* $p < 0.001$ ; \*\* $0.001 < p < 0.01$ ; \* $0.01 < p < 0.05$ ; and † $0.05 < p < 0.1$ .

hypothesis of no partisan effects by repeatedly 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 value.

Across specifications, the estimated MPE is about 0.11, 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 in principle 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. Our findings suggest that partisan error in this context was not so innocuous. Contrary to what many contemporary politicians and outside observers claimed,<sup>26</sup> 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 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

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<sup>26</sup> 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 1871.

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.<sup>27</sup>

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.<sup>28</sup> 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 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<sup>29</sup> 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 B.1 in Appendix B.

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 MPE implied by these conviction rates is just below 0.06, or around half of that for

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<sup>27</sup> 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).

<sup>28</sup> 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.

<sup>29</sup> The judges were puisne judges drawn from the Queen’s Bench, the Court of the Exchequer, and the Court of Common Pleas. From 1880, the cases were heard by two judges; in cases from that year, we code the partisanship as neutral when judges from different parties were assigned to a single case.

**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)

the earlier period. To take account of covariates and test 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 MPE for the period in which MPs heard cases (again, consistently around 0.11 and strongly significant) and the period in which judges heard cases (around 0.05 and not statistically significant). We also report the estimated difference between the two MPE estimates; across models, the drop is estimated at between about 0.05 and 0.075 and is significant at the 0.05 level in all the cases.

As noted above, many other factors changed between the period when MPs heard petition trials and the period when judges heard petition trials. Most notably, judges took over exactly when the electorate was expanded by the Second Reform Act, and the secret ballot was introduced just a few years later; these measures reportedly changed the nature of electioneering in ways that likely affected the kinds of cases judges faced as well as the potential for error in deciding those cases.<sup>30</sup> Due to these changes, we cannot be sure whether the reduction in partisan error we observe is due to changes in who decided the cases or in what kind of cases they faced. It seems likely, however, that differences between judges and MPs contributed to this drop in

<sup>30</sup> The transfer of jurisdiction also coincided with a change in the way costs were allocated in petition hearings: judges tended to assign the legal costs to the losing party (Hardcastle, 1874, p. 52). See Appendix A.2 for a discussion of how this change in the distribution of costs relates to our analysis.

**Table 5.** Conviction probabilities as a function of defendant and tribunal partisanship, 1840–1880.

	(1)	(2)	(3)	(4)
Tory defendant	0.285** (0.093)	0.274** (0.096)	0.264** (0.095)	0.251* (0.098)
Tory tribunal	0.043 (0.077)	0.044 (0.079)	0.043 (0.079)	0.044 (0.08)
Tory defendant × Tory tribunal	−0.448** (0.138)	−0.455** (0.15)	−0.436** (0.142)	−0.441** (0.15)
Tory defendant × post-PEA	−0.285* (0.141)	−0.289* (0.142)	−0.27* (0.135)	−0.257† (0.143)
Tory tribunal × post-PEA	0.144 (0.17)	0.087 (0.177)	0.146 (0.161)	0.105 (0.174)
Tory defendant × Tory tribunal × post-PEA	0.193 (0.251)	0.302 (0.252)	0.196 (0.242)	0.29 (0.259)
<i>N</i>	403	403	403	403
Election covariates?		✓		✓
Defendant covariates?			✓	✓
Min. partisan error: MPs	0.112**	0.114**	0.109**	0.11**
<i>p</i> -value	0.003	0.001	0.003	0.001
Min. partisan error: judges	0.064	0.038	0.06	0.038
<i>p</i> -value	0.436	0.761	0.469	0.781
Diff. in min. partisan error	−0.048*	−0.076**	−0.049*	−0.073**
<i>p</i> -value	0.014	0.002	0.012	0.003

*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.

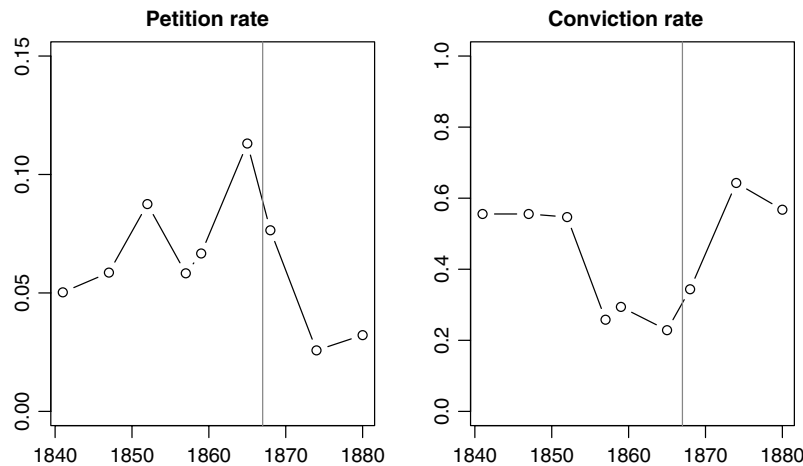
error. Judges had many advantages over the MPs who had previously heard electoral corruption trials, including the advantage of holding these trials more promptly and locally than had previously been the case. Despite the political background of many of these judges, they also probably faced less political pressure to produce a favorable decision. We interpret our finding 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 way of 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 3, 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.<sup>31</sup> Most straightforwardly, making outcomes less arbitrary may have simply discouraged losing candidates who had little or no evidence of



**Figure 3.** Petition rate and conviction rates, 1840–1880.

*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.

<sup>31</sup> 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 *et al.* (2013), the petition rate dropped even more drastically in the subsequent period.

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.

## 6 Conclusion

This article 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 1840–1868; in conjunction with the formal analysis and evidence of high petition costs in this period, our findings of partisan error suggest that self-policing by MPs contributed to the pervasiveness of electoral corruption in Victorian Britain. Finally, this article 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 nineteenth-century 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 *et al.*, 2004; Williams, 2009; Orozco Henríquez *et al.*, 2010). Although some view self-certification as having been “discredited beyond repair” (Mozaffar and Schedler, 2002, p. 16), legislatures continue to play a role in deciding election disputes in many countries (Massicotte *et al.*, 2004); meanwhile, allegations of partisanship and error persist even in settings where electoral governance

has been delegated to “independent” institutions (e.g., Hayward and Dumbuya, 1985; Mozaffer, 2002; Popova, 2006; Høglund *et al.*, 2009; Herron, 2010). Thus the institutional context for regulating electoral competition remains relevant.

### Appendix A.1: 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  $\sigma$  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

$$\sigma(1 - \theta) + (1 - \sigma)\theta > \frac{k}{b}. \quad (\text{A.1})$$

Equation (A.1) implies that the losing candidate will choose to sue as long as

$$\sigma > \frac{k/b - \theta}{1 - 2\theta} \equiv \tilde{\sigma}. \quad (\text{A.2})$$

Note that

$$\frac{\partial \tilde{\sigma}}{\partial \theta} = \frac{2k/b - 1}{(1 - 2\theta)^2}, \quad (\text{A.3})$$

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 (A.1), if  $\theta > 1 - k/b$ , a losing candidate will not choose to sue even when he knows the winner is guilty; given that the winner will never be sued, both candidates will play  $D$  as long as  $\delta > d$ . 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

$$\theta < \frac{1/2 + d - \delta k}{1 + \delta(1 - b)}, \quad (\text{A.4})$$

and will both choose to play  $D$  if

$$\theta > \frac{1/2 + d - \delta(1 - b + k)}{1 - \delta(1 - b)}. \quad (\text{A.5})$$

Assumption 1 requires that the RHS of Equation (A.5) be less than the RHS of Equation (A.4); when this is met, there are parameter values for which both Equations A.4 and (A.5) 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 (A.5) is met; both play  $C$  if  $\theta > k/b$  and Equation (A.5) 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 (A.5) is met) is a mixed one in which candidates play  $D$  with some probability  $\alpha$  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  $\alpha$ , 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.<sup>32</sup> 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

$$\sigma_D = \frac{\alpha}{1 - 2\delta(1 - \alpha)}, \quad (\text{A.6})$$

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<sup>32</sup> For an MSNE with a given value of  $\alpha$ , 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.

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

$$\sigma_C = \frac{\alpha + 2\delta\alpha}{1 + 2\delta\alpha}. \quad (\text{A.7})$$

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.<sup>33</sup> Now, setting  $\sigma_D$  from Equation (A.6) equal to  $\tilde{\sigma}$  from Equation (A.2) and solving for  $\alpha$ , we derive an equilibrium campaign strategy  $\alpha_D^*$  that causes the losing candidate to sue with positive probability only if he played  $D$

$$\alpha_D^* = \frac{\tilde{\sigma}(1 - 2\delta)}{1 - 2\tilde{\sigma}\delta}, \quad (\text{A.8})$$

and, setting  $\sigma_C$  from Equation (A.7) equal to  $\tilde{\sigma}$  from Equation (A.2) and solving for  $\alpha$ , we derive an equilibrium campaign strategy  $\alpha_C^*$  that causes the losing candidate to sue with certainty if he played  $D$  and with positive probability if he played  $C$

$$\alpha_C^* = \frac{\tilde{\sigma}}{1 - 2\tilde{\sigma}\delta + 2\delta}, \quad (\text{A.9})$$

which MSNE obtains (one in which candidates play  $D$  with probability  $\alpha_D^*$  and losers sue with positive probability only after playing  $D$ , or one in which candidates play  $D$  with probability  $\alpha_C^*$  and losers sue for certain if they played  $D$  and with positive probability after playing  $C$ ) will depend on parameter values, but for the purpose of relating  $\alpha^*$  to  $\theta$  we can simply observe that both objects are increasing in  $\theta$  when  $k > b/2$ :

$$\frac{\partial\alpha_D^*}{\partial\theta} = \frac{b(2k - b)(1 - 2\delta)}{(b(1 - 2\theta + 2\theta\delta) - 2\delta k)^2}, \quad (\text{A.10})$$

and

$$\frac{\partial\alpha_C^*}{\partial\theta} = \frac{b(2k - b)(1 + 2\delta)}{(b(1 - 2\theta + 2\delta(1 + \theta)) - 2\delta k)^2}. \quad (\text{A.11})$$

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

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<sup>33</sup> Put differently, Equations (A.6) and (A.7) 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.

## Appendix A.2: Alternative assumptions about costs

The model assumes that the only cost of a petition trial is paid by the petitioner; it further assumes that this cost is paid by the petitioner whether or not he wins the suit. In reality, of course, both the petitioner and the respondent sustained legal costs; furthermore, from 1868 the losing party typically paid both sides' costs (an arrangement known in law as the "English Rule").

Alternative arrangements for assigning costs indeed affect the incentives facing the players, but additional analysis indicates that the nature of the relationship between electoral corruption and adjudicatory error does not depend on how much it costs to be sued or whether costs are paid by the loser. To see this, first consider the possibility that there is a cost to being sued. Obviously, such a cost would not affect the decision to sue, conditional on the losing candidate's belief about the winner's probability of being corrupt. This means that where  $\theta > 1 - k/b$  losing candidates will always sue, and where  $\theta > k/b$  they will never sue, regardless of the cost of being sued. It also means that the probability of the winner having played  $D$  that makes the losing candidate indifferent between suing and not suing is given by Equation (A.8) or (A.9) (depending on the loser's own electoral action), again regardless of the cost of being sued. Thus the general arrangement of equilibria as in Figure 1 does not depend on the cost of being sued. To be sure, the cost of being sued does affect the relative attractiveness of playing  $C$  or  $D$ : in an equilibrium where the election winner has a positive probability of being sued, playing  $D$  becomes less attractive if being sued is costly, because winning effectively becomes less valuable. This means that the condition separating the PSNE in which both play  $C$  from the PSNE in which both play  $D$  (which is given by Equation (A.4) for the case where being sued is costless) does depend on the cost of being sued, as does the equilibrium level of corruption in an MSNE. But the general arrangement of equilibria will be as in Figure 1, and the relationship between adjudicatory error and the rate of corruption will be as described in Proposition 1, even if there are costs to being sued.

We can make a similar point about the comparison between the "English Rule" (loser pays legal costs) and the "American Rule" (each side pays own legal costs). From the perspective of the loser, a move to the English Rule can be thought of simply as an increase in both  $k$  (the losing candidate's cost of filing a petition) and  $b$  (the benefit he gets if he is successful). To reflect

the English Rule, think of  $k$  (the cost of filing a petition) as  $k_L + k_W$ , where  $k_L$  is the total cost of the proceedings to the losing candidate (petitioner) and  $k_W$  is the same for the winning candidate (respondent), and think of  $b$  as  $\tilde{b} + k_L + k_W$ , where  $\tilde{b}$  is the actual benefit of winning the suit (in terms of probability of winning the seat and other benefits). So we can conceive of the English Rule as a system in which you pay both sides' legal costs to file a suit, but you get those costs paid back (plus whatever benefit comes with winning the lawsuit itself) if you win. From the perspective of the loser, then, the English Rule and the American Rule imply different magnitudes of the cost and benefit but do not affect the nature of the analysis, and thus by the arguments made in the previous paragraph we expect the equilibria that obtain to be more or less the same. From an *ex ante* perspective, the way in which costs are allocated indeed affects incentives to be corrupt or not corrupt, but it does not qualitatively affect the way adjudicatory error and corruption are related.

**Appendix B: Balance tests****Table B.1.** Balance tests by party of defendant.

Party of petitioned MP: Party of tribunal:	Conservative			Liberal		
	Con.	Lib.	<i>p</i> -val.	Con.	Lib.	<i>p</i> -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 ( <i>k</i> )	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 <sup>†</sup>	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 <sup>†</sup>
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 ( <i>k</i> )	10.90	1.31	0.09 <sup>†</sup>	9.00	21.55	0.50
Obs.	60	43		71	82	
1868–1880 (Cases heard by judges of the Superior Courts)						
Borough	0.85	0.94	0.29	1.00	0.87	0.22
England	0.85	0.77	0.58	0.91	0.67	0.12
Electors ( <i>k</i> )	2.92	5.37	0.11	4.08	7.44	0.25
Competitiveness	1.91	1.90	0.78	1.93	1.87	0.34
Close election?	0.31	0.09	0.05	0.27	0.16	0.40
Year	1870.15	1870.17	0.99	1869.27	1870.84	0.14
Age of MP	44.62	45.89	0.76	46.91	47.36	0.91
Incumbent?	0.23	0.37	0.37	0.73	0.55	0.27
Years served	1.92	2.71	0.66	7.18	5.82	0.65
Speeches made	1.92	7.23	0.35	22.64	50.69	0.53
Words ( <i>k</i> )	0.82	2.05	0.43	5.64	20.23	0.48
Obs.	13	35		11	55	

*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.



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