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# Open-Door or Closed-Door?

## Transparency in Domestic and International Bargaining

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## **Abstract**

In recent years there have been numerous calls for making the operations of international organizations more “transparent”. One element in these demands involves the idea that international negotiations should be open to the same level of outside scrutiny that is presumed to prevail with bargaining in domestic contexts. While transparency of this sort may have clear benefits by facilitating attempts to hold officials accountable, scholars have made less effort to consider whether making international bargaining more public might also have detrimental effects. I develop a game-theoretic model that provides four hypotheses about the relative benefits of open-door versus closed-door bargaining, and about the preferences of different actors with regard to this type of transparency. This model, which can be applied to both international and domestic contexts, helps extend positive theories about the design of institutions while also providing insights for the normative question of when transparency is desirable. I show that the hypotheses developed are supported both by historical evidence from eighteenth century disputes about publicity in national parliaments, and by evidence from the more recent dispute about making European Council of Ministers deliberations public.

# 1 Introduction

It has become common for scholars, activists, and other outside observers to recommend that international organizations become more “transparent” in their operations. One important aspect of these calls for openness involves the idea that deliberations, discussions, and bargaining in international fora should be subject to outside scrutiny, and, in particular, to the same level of scrutiny that is presumed to exist for political bargaining within democratic states. Members of the public should have the right to either directly observe international negotiations, or they should have access to detailed minutes of proceedings. Calls for greater transparency have been made for a plethora of international organizations, including the Bretton Woods institutions, the WTO, and the institutions of the European Union.<sup>1</sup> While transparency has attracted much recent attention, the subject is hardly a new one; after World War I there were frequent demands for greater openness in international diplomacy, symbolized by Woodrow Wilson’s call for “open covenants of peace, openly arrived at.”<sup>2</sup> The motivation behind demands for transparency in international bargaining is clear; the more that citizens know about the actions of government officials, the easier they will find it to judge whether officials are acting in the public interest. Ultimately, transparency can make officials more accountable for their actions. It may also have other benefits. Advocates of deliberative democracy emphasize that when deliberation occurs in public, this will increase both the quality and the legitimacy of decisions taken. While many normative arguments have been made in favor of making international organizations more transparent, there has been much less effort to develop

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<sup>1</sup>For several recent discussions that consider issues related to transparency in international organizations see Keohane (2002), Risse (2000), Nielson and Tierney (2003), Hawkins, Lake, Nielson, and Tierney (2003), Martin (2002), and Jacobsson and Vifell (2003).

<sup>2</sup>The citation is from the first of Wilson’s fourteen points. For discussions of calls for more open diplomacy during this period see Nicolson (1939).

and test positive hypotheses about the concrete effects of making bargaining public. In this paper I develop a game-theoretic model which shows that while transparency in bargaining may make governments more accountable, it may also prompt officials to posture, leading to more frequent breakdowns in negotiations. I also discuss several alternative and complementary arguments. I then provide evidence to support four propositions derived from the model, based on the current dispute whether to make European Council of Ministers debates public, and based on earlier, eighteenth century conflicts over levels of “publicity” for parliamentary debate.

Given that accountability of public officials is a widely shared goal in democracies, one might be prompted to ask how one could ever argue in favor of secrecy in government, barring those cases where revelation of information risks jeopardizing national security or violating individual rights. In the international context, if transparency allows national governments to usefully retain control over international organizations, then since national governments establish such organizations, we might ask why they do not always insist on monitoring procedures that ensure as much transparency as possible. In fact, both classic contributions from democratic theory and more recent contributions by authors using game-theoretic models suggest that “transparency” or “publicity” (I use the two terms interchangeably) may have important costs. When government officials bargain in front of an audience, they may face a greater incentive to posture by adopting uncompromising bargaining positions. These positions can be used to send a signal about the alignment of representatives’ preferences with those of their constituents. Likewise, the presence of an audience may make officials more reluctant to retreat from initial claims when faced with superior evidence.

In order to explore these issues formally, I develop a game-theoretic model that compares the outcomes of bargaining behind closed doors with open-door bargaining where the public observes all actions taken by officials. In the model, two jurisdic-

tions, A and B must bargain over a policy choice, and bargaining for each jurisdiction is conducted by an agent (the “representative”) on behalf of a principal (the “public”). The bargaining procedure is kept very simple by assuming that one representative is selected at random to make a proposal which the other representative must then either accept or reject. If the proposal is rejected then the public from each jurisdiction receives a disagreement payoff. In addition, I assume that there are two sources of asymmetric information in this game. For one, the members of the public in jurisdiction A are uncertain whether their representative shares their policy preferences, or alternatively, whether their representative is biased. Second, there is uncertainty about the minimal offer that the public from each side will find acceptable, and representatives have private information about this variable. I then consider two alternative bargaining scenarios. Under open-door bargaining the public observes who is chosen to make an offer, it observes the content of any bargaining offer, and it observes the final outcome of bargaining. Under closed-door bargaining the public observes only the final outcome and none of the intermediate steps.

The model presented here is similar to a two-level game developed by Putnam (1988), although with one key difference - rather than being constrained by the need for subsequent ratification of an agreement by a constituency, in my model bargainers are constrained by the fact that actions taken during negotiations can influence a constituency’s belief whether a bargainer is biased. The setup for my model draws on a recent contribution by Fingleton and Raith (2002) that does not specifically consider political bargaining. While these two authors model a situation where there are different “types” of bargainers that vary in their level of expertise (ability to determine the optimal bargaining offer), I focus on a more political context where there are different types of representatives who have different preferences over policy. I adopt this assumption because current debates about the need for transparency in in-

ternational organizations, as well as eighteenth century disputes about parliamentary transparency, have centered on the risk that representatives have biased preferences. The model in this paper also differs significantly from Fingleton and Raith (2002) in that I assume that bargainers care both about their reputation and about the bargaining outcome (otherwise it would be meaningless to be biased), whereas Fingleton and Raith assume that bargainers care only about their reputation. As discussed in section 2, this has significant implications for predictions about the desirability of transparency.

When we compare open-door and closed-door bargaining in the model, we observe two potential effects of moving from one practice to the other. The first involves an accountability effect, as open-door bargaining increases the likelihood that both unbiased and biased representatives will propose a policy that is close to the outcome most preferred by the public. Were this the only effect of transparency, then we could conclude that it is unambiguously beneficial for the public. However, transparency may also have negative consequences. When there is uncertainty about disagreement payoffs, then this can create an incentive for representatives to “posture” by adopting uncompromising bargaining positions. These uncompromising positions may be adopted in order to convince the public that a representative is not caving in to opposition demands because she is biased. Under these conditions, it is possible for open-door bargaining to actually make the public of jurisdiction A worse off if, in equilibrium, both unbiased and biased representatives posture in this manner.<sup>3</sup>

Based on the above model, I present four propositions about the causes and consequences of transparency. These propositions build on existing literature that uses

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<sup>3</sup>This posturing incentive for both types of representatives is similar to the “political correctness effect” identified by Morris (2001). Koremenos (2003) has identified an alternative potential cost of open-door bargaining, suggesting that it can increase susceptibility of decision-makers to interest group lobbying.

rational choice theories to examine the motivations for actors to choose different forms for international institutions.<sup>4</sup> They also follow the suggestion by Martin and Simmons (1998) that authors consider how international institutions are simultaneously causes and effects. Finally, my propositions also build on the existing idea from the two-level games literature that negotiators may use asymmetries of information (such as holding closed-door sessions) to increase their degree of insulation from constituencies and thus alter the size of their “win-set”.<sup>5</sup> My first proposition suggests that when representatives are sufficiently concerned about their reputation, under open-door bargaining they are more likely to make bargaining proposals close to those most preferred by citizens. However, the second proposition suggests that when reputational concerns are significant, open-door bargaining will also prompt representatives to posture by taking uncompromising positions that may result in bargaining breakdowns. In a third proposition, I suggest that the public will prefer open-door bargaining if there is a significant fear that representatives may be biased. Finally, the model predicts that both biased and unbiased representatives will prefer closed-door bargaining.

One interesting feature of recent calls for greater transparency in international organizations is the extent to which these current disputes parallel earlier, eighteenth century conflicts over the degree of transparency that should prevail in national legislative institutions. In order to demonstrate that my propositions can apply to both international and domestic bargaining, Section 3 reviews historical evidence regarding “publicity” and the eighteenth century House of Commons, the French Constituent Assembly of 1789, and representative assemblies in the early American republic. In both the British and US cases, the initial norm was to hold deliberations behind closed

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<sup>4</sup>This includes in particular the contributions in Koremenos, Lipson, and Snidal (2001), as well as in Goldstein, Kahler, Keohane, and Slaughter (2001).

<sup>5</sup>Putnam (1988) p.445 observes that negotiations may be held behind closed doors for this purpose. See also Moravcsik (1994) and Milner (1997).



doors, but this practice gave way, under external pressure. There is clear evidence for both the US and UK that demands for transparency appeared during periods of heightened fears that representatives were biased. In strong contrast, during periods where fears of bias were less present, the public was more accepting of closed-door sessions. We can also observe that in the French Constituent Assembly, where an open-door policy prevailed from the outset, legislators were more responsive to the opinions expressed by the public, but there was also a great deal of posturing by representatives that arguably resulted in several bargaining breakdowns. All of these observations are consistent with the theoretical propositions developed in Section 2.

In Section 4 I examine whether my propositions about transparency are supported by recent evidence from the European Council of Ministers. Unlike debates of the European Parliament, Council deliberations are not open to the public, and before 1993 there was no procedure for the public to gain access to minutes of Council meetings. In 1995 *The Guardian* newspaper launched a lawsuit with the European Court of First Instance to obtain access to records of meetings of the Council. This suit was opposed by a majority of EU governments. Much like eighteenth century demands for openness, the current dispute in the EU has emerged during a period of increased fears that representatives may be biased. In a context of rising concerns about Europe's "democratic deficit", proponents of transparency have insisted that the public gain access to Council deliberations for reasons of accountability. The EU governments that oppose such a move have argued that open-door bargaining would lead to clear inefficiencies, as governments bargaining before an audience would find it more difficult to strike compromises. This situation contrasts strongly with that which prevailed in Europe during the mid-1980s around the time of the signature of the Single European Act. During this earlier period there were fewer fears of a disjuncture between the preferences of representatives and the public over policy, and one observes few criticisms

of Council secrecy. The fact that demands for transparency have emerged during a period of perceived bias is consistent with the my theoretical propositions, as are the observed consequences of Council secrecy, which facilitates compromise but weakens accountability. Several recent studies of the EU Council of Ministers support this contention. Section 4 draws on recent literature on committee decision making within the EU to argue that a similar pattern is seen within the committees that report to the Council of Ministers, and in particular the Committee of Permanent Representative (COREPER), and the Economic and Financial Committee.

In the remainder of the paper I first develop my theoretical propositions about the causes and consequences of transparency in Section 2, followed by an empirical application to eighteenth century parliamentary debates in Section 3, and to the current dispute about transparency in EU Council of Ministers deliberations in Section 4. Section 5 concludes.

## **2 Causes and consequences of transparency**

The most commonly cited benefit of transparency in government is that it makes it easier to hold officials accountable for their actions. As an early advocate, Jeremy Bentham (1816) argued that “publicity” in a parliamentary context would “constrain members of the assembly to perform their duty” and that it would also “secure the confidence of the people, and their assent to the measures of the legislature”. In the absence of such publicity, it may be difficult for electors to judge whether a representative has taken their interest in consideration when bargaining over policy, or alternatively, whether unseen actions by lobby groups are dominating outcomes. In economic terms this would be referred to as a problem of moral hazard, the risk that representatives will pursue private goals over those of their electors. The classic strategy for reducing

moral hazard is to make the actions of an agent (in this case an elected official) more observable (Holmström, 1979).

Many recent writers about public affairs make the implicit assumption that transparency in government is unambiguously beneficial, precisely because it can make officials more accountable, and it can help facilitate emergence of a consensus over policies. As a result, we might conclude that, except in rare cases, transparency should be the rule. Bentham (1816) suggested that “publicity” should only be limited in cases where it would jeopardize national security, where there would be a risk of violating privacy, or if it would “inflict too severe a punishment upon the guilty”. This unbounded optimism about the effect of public opinion was not shared by a number of subsequent critics. John Stuart Mill argued that Bentham’s political propositions went too far in “riveting the yolk of public opinion closer and closer round the necks of all public functionaries”, thus excluding the possibility that a representative might use his or her own reason in making a decision (1838, pp.87-88). Alexis de Tocqueville took a similar view (1835, p.244) As argued by Habermas (1962), Mill’s and Tocqueville’s critiques of Bentham were part of a more general move, beginning in the nineteenth century, to conceptualize public opinion as a force that could have both negative and positive consequences.<sup>6</sup>

Observers have identified at least two potential negative consequences of transparency: a risk of pandering by public officials and a risk of posturing during bargaining. Though I focus primarily on the latter phenomena, it is worth considering both here, because they are closely related. Pandering can be defined as a situation where elected representatives choose policies based on voter opinion, even if representatives themselves believe that voters are incorrectly informed about their true interests (one

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<sup>6</sup>Criticisms of transparency in government have existed at least since Thomas Hobbes (1651), Chapter 19. I would like to thank an anonymous referee for this point.

might prefer to use the term “responsiveness” given that pandering has quite negative connotations in common usage). More specifically, in recent discussions of pandering it is suggested that voters may be uncertain about the link between policies and outcomes (Canes-Wrone, Herron, and Shotts, 2001, Maskin and Tirole, 2001, Besley, 2003). This could apply to situations as diverse as tax-cut proposals, calls for global environmental regulation, or monetary policy decisions. If the public is indeed incompletely informed about the consequences of a given policy choice, then the temptation for an individual representative to pander might be higher the greater the extent to which the public is able to directly observe the representative’s actions. Prat (2003) has presented a model with a quite general result showing that when a principal cannot observe the consequences of actions taken by an agent, then it may be optimal to also keep the actions themselves secret.

Posturing is a phenomenon related to pandering that refers to the incentive for representatives to adopt uncompromising positions during negotiations, in order to demonstrate to their constituents that they are effective or committed bargainers. The problem with posturing is that it can provoke a break-down in bargaining that has a negative impact for all concerned. Fingleton and Raith (2002) have recently developed a model that examines how posturing may occur if two agents each bargain for a principal, if the agents have private information about the minimal offer acceptable to the other side, and if the agents vary in their ability to determine this minimal offer. In what follows I present a model that draws on their contribution, but where I assume that the public is instead uncertain about a representative’s preferences, and where I also assume that representatives care both about the policy outcome and about their reputation. As argued in the introduction, this assumption that agents vary in terms of policy preferences is better suited for addressing both classic debates about publicity in parliamentary settings and recent debates about transparency in

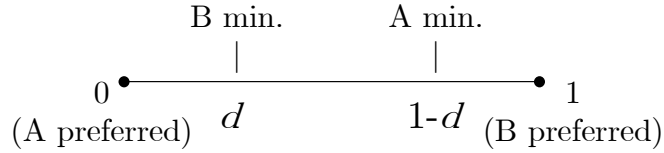


Figure 1: Preferred and minimum acceptable policies

international institutions. The assumption also results in a different prediction from Fingleton and Raith (2002) regarding the preferability of open-door bargaining, as discussed under proposition 3 below.

## 2.1 Formalizing the problem

I consider a scenario where two jurisdictions, A and B, must bargain over a unidimensional policy choice  $[0, 1]$ . Members of the public from jurisdiction A prefer a policy of 0 while the public from jurisdiction B prefers 1. Given a policy choice  $x$ , the public from jurisdiction A receives utility  $U_A = (1 - x)$  and the public from jurisdiction B receives utility  $U_B = x$ . Policy is chosen through delegated bargaining whereby a representative negotiates on behalf of each jurisdiction. The bargaining game is kept simple by assuming that one of the two representatives is selected at random to make a proposal  $o$  which the other representative must then either accept or reject.<sup>7</sup> If the policy is accepted it is implemented; if the policy is rejected then a disagreement payoff  $d$  applies (with  $d \leq 0.5$ ). The disagreement payoff determines the minimal acceptable proposal for the public from each jurisdiction, as shown in Figure 1.

In a one-stage bargaining game with complete information we would normally

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<sup>7</sup>The assumption that proposal power is random here is a convenient way of introducing uncertainty into the outcome of the game. All of the results reported here would still hold if proposal power was not random, provided there was some other possibility for a random event beyond players' control to influence the bargaining outcome.

expect B’s representative,  $R_B$ , to propose A’s minimum acceptable policy  $(1 - d)$ , and we would expect  $R_A$  to propose  $d$ . In order to make the issue of open-door versus closed-door bargaining relevant, I add two further assumptions to the model: there is a risk that the representative for jurisdiction A is biased, and there is asymmetric information about the value of the disagreement payoff  $d$ .

To consider the potential effect of a bias for representatives, I assume that with probability  $p$ , representative  $R_A$  shares the preferences of the public from jurisdiction A, and with probability  $(1 - p)$  she is biased and instead prefers a policy outcome  $x = 1$ . Representative  $R_A$  derives utility both from policy and from the public’s *ex post* assessment of the probability that she is unbiased, given the bargaining outcome and the bargaining proposal  $\Pr(u|x, o)$ , as expressed in (1) or (2) below. The parameter  $\alpha$  determines the relative weight that  $R_A$  places on achieving the desired bargaining outcome, versus creating a reputation for being unbiased. Making the payoff for an agent conditional on the principal’s *ex post* assessment of her type is a common specification in the literature on “career concerns” in principal-agent relationships.<sup>8</sup> In the political context considered here, one could motivate the assumption by suggesting that the probability that the representative will be retained by the public for some future (unspecified) periods of play is an increasing function of the posterior  $\Pr(u|x, o)$ .<sup>9</sup> The representative from the second jurisdiction,  $R_B$  is assumed for simplicity to always share the preferences of the public from jurisdiction B.

$$U_{R_A-unbiased} = \alpha(1 - x) + (1 - \alpha) \Pr(u|x, o) \tag{1}$$

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<sup>8</sup>Following the canonical paper by Holmström (1982). See Ottaviani and Sorensen (2003) for a recent review of the literature on agents with “career concerns”.

<sup>9</sup>All of the theoretical results presented below would also hold if I adopted the alternative strategy of specifying an explicit two-period model where the public would decide based on the first period bargaining offers and outcome whether to retain representatives, provided that there was some uncertainty on the part of representatives about the actions that would lead to their replacement.

$$U_{R_A\text{-biased}} = \alpha x + (1 - \alpha) \Pr(u|x, o) \quad (2)$$

To consider the effect of asymmetric information about disagreement payoffs, I also assume that representatives  $R_A$  and  $R_B$  each receive a private signal about the utility that the public from the other jurisdiction receives from disagreement. For each jurisdiction the utility from disagreement is assumed to be either  $d$  with probability 0.5 (and  $d < 0.5$ ), or 0.5 with probability 0.5, implying that the best deal that can be achieved is an even split. This signal  $s \in \{d, 0.5\}$  is accurate with probability  $q$  with  $1 > q > 0.5$ . The idea behind these additional assumptions is that during the course of any negotiation, bargainers are likely to form more certain beliefs about the minimal offer acceptable to their opponent. Odell (2000) has provided abundant evidence that participants in international economic negotiations have incomplete information about disagreement payoffs of other parties.<sup>10</sup> Because these signals are private, they cannot be directly observed by the public either under closed-door or open-door bargaining. The signals represent the intuition of individual bargainers. Crucially, I also assume that these signals cannot be credibly transmitted by a representative to the public. Because some representatives are biased, there would be a clear incentive to misrepresent signals if they were communicated. The bargaining game proceeds in the following stages.

1. Nature determines whether  $R_A$  is biased and it determines the disagreements payoffs.
2.  $R_A$  and  $R_B$  each receive a signal about the other jurisdiction's disagreement payoff.

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<sup>10</sup>He also argues convincingly that bargainers may be uncertain of *their own* disagreement payoffs, though I do not consider that case here.

3.  $R_A$  or  $R_B$  is randomly selected to propose.
4. The proposal is implemented if the non-proposing representative accepts. Otherwise disagreement payoffs apply.
5. Under open-door bargaining, the public observes the proposal  $o$ , as well as the bargaining outcome  $x$ . Under closed-door bargaining the public observes only  $x$ .
6.  $R_A$  receives a payoff based on the posterior of her type:  $\Pr(u|x, o)$

Given the above assumptions, representative  $R_A$  has an incentive to make a bargaining proposal that will result in a policy outcome close to her ideal point, but she may also have an incentive to use her proposal to signal that they she is unbiased. In what follows, I consider how these incentives vary depending on whether bargaining takes place behind closed-doors or in an open-door setting. The key conclusion will be that open-door bargaining presents a trade-off. It may discipline a biased representative by prompting her to make a bargaining proposal closer to the preferred outcome of the public from jurisdiction A, but it may also prompt both biased and unbiased representatives to posture.

### 2.1.1 Open-door bargaining

I begin by considering perfect bayesian equilibria of the bargaining game under open-door bargaining (all proofs are presented in the appendix).<sup>11</sup> Under open-door bargaining the public observes the bargaining outcome, and it also directly observes which representative is selected to make a proposal, as well as the content of the proposal.

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<sup>11</sup>I assume that representatives are restricted to pure strategies, and that they may offer either  $d, 0.5$ , or  $1 - d$  in equilibrium. This latter restriction simplifies the exposition of the model while not altering any of the results or propositions.



The public’s inference about  $R_A$ ’s type, given the outcome and her proposal, can be expanded as follows using Bayes’ rule.

$$\Pr(u|x, o) = \frac{\Pr(x, o|u)p}{\Pr(x, o|u)p + (1 - p) \Pr(x, o|b)} \quad (3)$$

From the public’s point of view, the ideal outcome of the game would involve some mechanism which ensures that both the biased and the unbiased representative pursue the following bargaining strategy: propose  $d$  if their private signal is  $d$ , and propose 0.5 if their private signal is 0.5. Unfortunately for the public, it can never be an equilibrium for both types to play this “truthful” strategy. If both the unbiased and the biased representative played the “truthful” strategy, then the probability for the public of observing either a proposal of 0.5 or a proposal of  $d$  would be the same regardless of whether  $R_A$  is biased. This implies that  $\Pr(u|o = 0.5) = \Pr(u|o = d)$ . Under these conditions, a biased representative will have an incentive to ignore her signal and always propose 0.5.

If there is no “truthful” equilibrium, the next question is what alternative equilibria are possible. In what follows I show that while there are some ranges of parameters for which multiple equilibria exist, and where biased and unbiased representatives may make different proposals, as long as representatives care sufficiently about their reputation, there is a unique “posturing equilibrium” of the bargaining game. In this posturing equilibrium both an unbiased and biased representative  $R_A$  will propose  $d$  regardless of their private signal in order to avoid appearing biased.<sup>12</sup> This result makes intuitive sense; transparency should have the biggest impact on representatives who are concerned about their reputation.

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<sup>12</sup>Given that she is by assumption known to be unbiased, the equilibrium behavior of  $R_B$  is particularly straightforward and is presented in the appendix.

When reputational concerns are weak, both an unbiased and a biased representative may have an incentive to posture, but it is also possible for two separating equilibria to exist where the two types pursue different strategies. In the first separating equilibrium a biased representative always proposes  $(1 - d)$ , and an unbiased representative plays the truthful strategy. When a biased representative cares above all about policy, rather than reputation, she will have an incentive to make the closest proposal possible to her preferred bargaining outcome, even if this results in full revelation of her type. She will have an incentive to pursue this strategy in equilibrium as long as  $\alpha \geq \frac{2}{3-2d}$ . Even if the disagreement payoff is zero, this equilibrium can only exist when the biased representative places at least twice as much weight on the bargaining outcome as on her reputational payoff. In the second separating equilibrium an unbiased representative plays the truthful strategy, while the biased representative always proposes 0.5. This equilibrium can also only exist if reputational concerns are weak, because otherwise an unbiased representative who receives a signal  $s = 0.5$  will have an incentive to deviate by proposing  $d$ , so that the public fully learns her type (remembering that the biased representative never proposes  $d$  in this equilibrium). In addition, this second equilibrium cannot exist if reputational concerns are *very* weak, or else the biased representative will have an incentive to propose  $(1 - d)$  even if this fully reveals her type. As shown in the appendix, this implies that the second equilibrium can only exist when the public's prior belief that the representative is unbiased is relatively high  $p \geq \frac{2}{2q+1}$ .

When reputational concerns are sufficiently strong, there will be a unique equilibrium of the bargaining game where both the biased and the unbiased representative posture by always proposing  $d$  irrespective of their private signal. When representatives give significant weight to reputational concerns ( $\alpha$  is low), they will have an incentive to use their bargaining proposal to signal that they are unbiased. A biased

representative will find it increasingly costly to pursue a strategy of proposing  $(1 - d)$  or 0.5. An unbiased representative will find it increasingly costly to propose 0.5, even if she believes that not proposing 0.5 will result in disagreement, because a proposal  $o = 0.5$  may be taken as an indication that she is biased. The end result is that the only possible equilibrium strategy is for both the biased and unbiased representative to always propose  $d$ . This equilibrium has the advantage for the public of disciplining the biased representative, but it has the disadvantage of also ensuring that the unbiased representative fails to make use of her private information.

As shown in the appendix, at a minimum, the posturing equilibrium is unique whenever  $p < \frac{2}{3}$  and  $\alpha < \frac{2}{3}$ .<sup>13</sup> As the private information of representatives becomes less accurate, and as the disagreement payoff grows larger, the range of parameter values for which posturing is the unique equilibrium expands. Since neither 0.5 nor  $(1 - d)$  are proposed in the posturing equilibrium, the equilibrium also includes a specification of the “out of equilibrium belief” that the public attaches to a proposal  $\tilde{o} \in \{0.5, (1 - d)\}$ . The two conditions for existence of the posturing equilibrium, which are presented in (4) and (5), involve the unbiased representative’s incentive to offer 0.5 rather than  $d$ , and the biased representative’s incentive to offer  $(1 - d)$  rather than  $d$ .

$$p - \Pr(u|\tilde{o} = 0.5) \geq \frac{\alpha}{1-\alpha}(d + q - 2qd - 0.5) \quad (4)$$

$$p - \Pr(u|\tilde{o} = 1 - d) \geq \frac{\alpha}{1-\alpha}(1 - 2d) \quad (5)$$

We can conclude that unless reputational concerns are weak, open-door bargaining will produce posturing behavior on the part of representatives.

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<sup>13</sup>Based on the two inequalities (14) and (15).

### 2.1.2 Closed-door bargaining

Equilibrium outcomes change significantly when representatives bargain in secrecy. Under closed-door bargaining the public observes the final outcome of the bargaining process, but it does not observe who was selected to propose, nor does it observe the content of the proposal.<sup>14</sup> As a consequence, the public must establish inferences about  $R_A$ 's type based exclusively on the bargaining outcome  $\Pr(u|x)$ . This greater difficulty in inferring a representative's type has two contrasting effects; a biased representative will now have less of an incentive to mimic the actions of unbiased representative, but an unbiased representative will also have less of an incentive to ignore her private signal. This presents a clear trade-off for the public.

Under closed-door bargaining there is in fact a unique perfect bayesian equilibrium in pure strategies where a biased representative always proposes  $(1 - d)$  and the unbiased representative plays the truthful strategy. This pair of strategies constitutes an equilibrium for a greater range of parameter values than is the case under open-door bargaining, because a biased representative will now incur a lower reputational cost from proposing  $(1 - d)$ . When the public observes an outcome  $(1 - d)$ , it will revise its belief that the representative is biased downwards  $\Pr(u|x = 1 - d) < p$ , but the posterior will not be zero, because it is also possible for the outcome  $(1 - d)$  to occur with an unbiased representative if  $R_B$  is selected to propose. For the public this separating equilibrium is unsatisfactory to the extent that a biased representative always proposes an unfavorable policy, but the equilibrium is advantageous to the extent that an unbiased representative uses her private information efficiently, rather than posturing.

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<sup>14</sup>I also assume for simplicity that under closed-door bargaining the public cannot distinguish between an outcome where a proposal of  $(1 - d)$  is accepted, in which case the public receives utility  $d$ , and a breakdown in bargaining, in which case the public also receives utility  $d$ . None of the results presented depend on this assumption.

As discussed in the appendix, we can rule out three alternative possibilities for equilibria under closed-door bargaining: both representatives playing truthfully, both posturing, and the biased representative always proposing 0.5 while the unbiased representative plays truthfully. In any of these three equilibria the posterior probability that the public attaches to the outcome  $(1 - d)$  would be simply  $p$ . This is because the outcome  $(1 - d)$  could be observed if  $R_B$  was selected to propose, and it would be equally probable with either a biased or an unbiased representative. As a result, the biased representative could always propose  $(1 - d)$  and achieve an improvement in the bargaining outcome without any loss of reputation.

Based on the possible equilibrium outcomes under open-door and closed-door bargaining we can make the following two propositions about the effect of open-door bargaining on bargaining outcomes.

**Proposition 1** *Transparency ensures that representatives will make proposals close to the preferred outcomes of citizens, provided reputational concerns are sufficiently strong.*

As long as representatives are sufficiently concerned about their reputation, under open-door bargaining we will observe a unique equilibrium where both biased and unbiased representatives always propose  $d$ . When we compare this with the unique pure-strategy equilibrium under closed-door bargaining, we can observe that the expected proposal under transparency will always be closer to the public's preferred outcome.

**Proposition 2** *Transparency will prompt representatives to posture, provided reputational concerns are sufficiently strong, and the public perceives a risk of bias.*

Under open-door bargaining the posturing equilibrium will be the unique equi-

librium as long as reputational concerns are sufficiently strong. In any empirical investigation we should expect to see more uncompromising positions taken during open-door bargaining, greater polarization of debate, and more frequent breakdowns in bargaining than would otherwise be the case.

### 2.1.3 Causes of transparency

In addition to propositions about the consequences of transparency, we can also develop hypotheses about the causes of transparency, using a simple thought experiment. We could extend the model by adding an initial stage where the public from jurisdiction A, must decide whether to have open-door or closed-door bargaining. If this were the case, then transparency would prevail whenever the expected utility for the public from open-door bargaining exceeds the expected utility from closed-door bargaining. When we consider those cases where reputational concerns are sufficiently strong to make posturing the unique equilibrium outcome under transparency, it becomes clear that this trade-off will depend in large part on  $p$ , the prior probability that the public attaches to their representative being unbiased. The public's expected utility in the posturing equilibrium will be simply 0.5. Expected utility in the posturing equilibrium does not depend upon  $p$ , because both biased and unbiased representatives behave identically. In contrast, expected utility in the unique equilibrium under closed-door bargaining depends directly on  $p$ . The higher the probability that the representative is unbiased, the more the public believes that closed-door bargaining will result in the representative using her private information efficiently. The lower the probability, the greater the risk that the representative makes a proposal  $o = 1 - d$ . The public will prefer open-door bargaining whenever the inequality in (6) is satisfied.

$$p(0.5)(0.5 + q(1 - d) + (1 - q)d) + (1 - p)d < 0.5 \tag{6}$$

This simplifies to the expression below

$$p < \frac{2}{2q+1} \tag{7}$$

**Proposition 3** *The public will prefer open-door bargaining if there is a significant risk of bias and reputational concerns are sufficiently strong.*

The inverse of proposition 3 also holds when reputational concerns are sufficiently strong, as the public will prefer closed-door bargaining when there is little risk that representatives are biased. Proposition 3 would also hold if I had specified an explicit two-period model. In such a model there would be an additional advantage of the separating equilibrium in that it would allow the public to use first-period behavior to sort between biased and unbiased representatives and to retain only a representative it thought was unbiased. This would not be possible in the posturing equilibrium since both types of representative behave identically. As a result, in a two-period model the critical value of  $p$  below which the public would prefer open-door bargaining would be somewhat lower. However, one would still observe that in cases where the risk of bias is sufficiently strong, the public will prefer transparency. Finally, proposition 3 provides a different result from that obtained if one instead assumed that representatives varied in terms of bargaining skill, and that representatives did not care about the bargaining outcome, as in Fingleton and Raith (2002). In their model skilled bargainers always use their private information efficiently, regardless of whether bargaining occurs in public, and unskilled bargainers have a greater tendency to posture when there is open-door bargaining. As a result, closed-door bargaining will always provide a better expected policy outcome for the public, and one does not observe the same trade-off presented here.

Though principals will prefer open-door bargaining whenever there is a significant

expectation that their representative may be biased, representatives may themselves have different preferences with regard to the choice of bargaining institutions. An unbiased representative will always do better under closed-door bargaining if posturing would otherwise prevail under transparency. Closed-door bargaining allows an unbiased representative to use her information efficiently, and it also allows her to gain a reputation by distinguishing herself to a degree from  $R_{A-biased}$ . A biased representative will also earn higher expected utility from closed-door bargaining, because it will allow her to propose a more preferable policy from her point of view, even if this does entail some cost in terms of reputation. This leads to a fourth and final proposition.

**Proposition 4** *Representatives will prefer closed-door bargaining if reputational concerns are sufficiently strong*

As a corollary to propositions 3 and 4, if a conflict emerges between the public and a representative over the setting for bargaining, then it seems logical that during any such dispute, the public would be expected to emphasize the advantages of transparency for holding representatives accountable, while representatives could be expected to emphasize the risk that transparency will lead to more frequent breakdowns in negotiations.

## 2.2 Alternative and complementary arguments

The game theoretic model developed in this paper has provided propositions about the causes and consequences of open-door bargaining. Though the model captures a number of the trade-offs about “publicity” emphasized in democratic theory, there are several alternative observations that also deserve consideration. The first of these concerns the effect of transparency in a context where bargaining involves argument between parties who may be uncertain about the outcome of different policies. From



a normative standpoint, it has been argued that public deliberation has the advantage of building societal consensus. From a positive standpoint, authors have observed that when debate takes place in public, participants have an incentive to avoid appeals to self-interest. On the downside it has also been observed that participants in public debate may be less willing to retreat from initial opinions. I will argue here that these predictions generally complement, rather than contradict, the predictions of my model.

In many, if not most political negotiations, participants do not restrict themselves to making the sort of bargaining propositions described in the model above; they also make truth claims about the effect of different policy choices on outcomes. As a result, most political negotiations inevitably involve both an element of bargaining and an element of deliberation. The work of Jürgen Habermas has been particularly influential in suggesting that public deliberation helps to build societal consensus and legitimacy for policy choices. In the parliamentary context, Habermas has argued specifically for “publicity requirements that keep institutionalized opinion- and will-formation open to the informal circulation of general political communication” (1996 p.183). His subsequent work suggests that such conclusions could also be extended to the EU context (Habermas, 1998). However, Habermas has also indicated that he does not believe that public deliberation should necessarily be the norm in all governmental institutions (1996 p.305). The arguments made by Habermas point to important potential benefits of public debate that are not captured in the model presented above, but these arguments do not contradict the basic insights from propositions 1-4. There is a potential tension, however, to the extent that the model presented in this paper predicts that representatives will have less incentive to reveal private information when discussions are public, while the arguments of Habermas emphasize the improved quality of deliberation when it takes place in public.

If negotiations involve an element of deliberation, then the presence of an audience may also produce a further effect that Elster (1998, 1991) refers to as the “civilizing force of hypocrisy”. When deliberation takes place in public, he suggests actors face strong incentives to base their arguments on claims regarding the general interest, rather than on selfish appeals. Though Elster’s main concern has been with deliberation in national settings, recently Risse (2000) has used this same proposition to suggest that the establishment of publicity in international negotiations will also have a “civilizing” force on actors. This “civilizing” force is a further potential benefit of public debate that does not emerge from the game-theoretic model developed above, which is limited to a bargaining context where preferences of the public over outcomes are known and fixed.

Though public deliberation may have benefits in terms of building consensus and in prompting officials to make claims based on general interest, it can also have clear disadvantages. A number of authors have suggested that the presence of an audience may make officials more reluctant to retreat from initially stated positions when confronted with persuasive counter-arguments (Elster, 1998, 1991). If deliberation occurs in public, then officials may also be more reluctant to venture opinions that deviate from “received wisdom”. This additional consequence of open-door deliberation is closely related to the problem of posturing in open-door bargaining that is presented in this paper.

### **3 Eighteenth century disputes over “publicity”**

Though today we take it for granted that parliamentary debate should occur in public, when modern forms of representative democracy first emerged, the more common expectation was that deliberations of any legislative body should take place in se-

cret. In Great Britain, the House of Commons banned publication of its debates, and following this example, colonial and revolutionary assemblies in North America deliberated behind closed doors. The proceedings of the United States Senate also initially took place in secret. By the end of the eighteenth century, this norm of closed door proceedings gave way in response to demands that the public should be better informed about the actions of its representatives. The issue of closed-door vs. open-door proceedings in eighteenth century assemblies has interested a number of different democratic theorists and historians.<sup>15</sup> This section briefly considers the debate about parliamentary “publicity” in the US, the UK, and France. For both the US and UK there is strong evidence that public demands for transparency emerged during periods where there were substantial fears that legislators were biased. In strong contrast, in periods where there were fewer fears of bias, the public was much more accepting of closed-door legislative sessions. This is consistent with proposition 3. Evidence about the type of arguments made by those favorable and those opposed to openness also support my theoretical model. Finally, in this section I also consider the consequences of publicity, arguing that eighteenth century experience provides clear evidence of a trade-off, with public bargaining increasing both accountability and the risk of posturing.

### 3.1 Explaining opposition to and support for publicity

*The English House of Commons* - An early dispute about publicity of House of Commons sessions took place during the Convention Parliament of 1689. This was the Parliament convened immediately after the Glorious Revolution. A number of Whig MPs favored dropping the historic ban on publishing debates, but a majority of MPs

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<sup>15</sup>Among contributions by democratic theorists see Habermas (1962), Manin (1997), and Elster (1991). For discussions of the issue by historians see Rossiter (1966), Stewart (1969), Schwoerer (1977), and Siebert (1952).

opposed any such change, suggesting that this would restrict the freedom of parliamentary debate. What is particularly striking about the Convention Parliament's ban on publication of its proceedings is that there was no public protest at this measure. Based on extensive research of newspapers from the period, Schwoerer (1977) concludes that there were a large number of leaked reports of parliamentary debates, but she was unable to find any instances where the authors of these publications protested against the official ban. One potential reason why the British public in 1689 accepted parliamentary secrecy is that this was not a period where there was a particularly strong fear of a bias on the part of representatives. While Whig majorities in the Commons would, beginning in the 1720s, be increasingly criticized as corrupt and unrepresentative oligarchies, there was far less expression of such sentiment during this earlier period of Whig rule (Kenyon, 1977). In sum, the 1689 episode is consistent with proposition 3 from the theoretical model; during a period where there was relatively little fear that representatives might be biased, the public accepted parliamentary secrecy.

The next dispute over publishing House of Commons deliberations occurred in a radically changed political context, as fears that the Commons majority was biased helped feed public demands for greater information about proceedings within Parliament. In 1738, prompted by the fact that clandestine reports of proceedings regularly appeared in newspapers, several MPs presented a motion, which eventually received majority support, calling for the Commons to reaffirm its traditional prohibition of the publication of its debates. Some supporters of the motion, and most notably the leader of the Commons majority, Robert Walpole, argued that it was necessary because of the danger that a partisan press would misrepresent the content of speeches.<sup>16</sup> Others, including some of Walpole's traditional opponents, argued that opposition would

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<sup>16</sup>Cobbett's Parliamentary History of England, vol.10 pp.810-811.

restrict freedom of debate precisely because it would increase accountability.<sup>17</sup> It is useful to remember the political context underlying this dispute. By 1738, Robert Walpole had been a leader of the ruling Whig party for over twenty years, and his rule was subject to increasing criticism. Historians of the period have referred to a growing public perception that Walpole's Commons majority was an oligarchy held together by corruption financed by "monied interests".<sup>18</sup> By 1738 a number of anti-Walpole newspapers had appeared, including the two best-selling British dailies of the period, *The Craftsman* and *The Gentleman's Magazine*, each of which regularly reported parliamentary debates (Holmes and Szechi, 1993). In stark contrast to the 1689 episode there is also clear evidence that the parliamentary effort to maintain secrecy in 1738 generated substantial public opposition. This is consistent with Proposition 3; as the British public grew more fearful that representatives were biased, it grew more intolerant of parliamentary secrecy.

The question of publishing parliamentary debates arose again in 1771 when the House of Commons attempted to prosecute several printers who had published accounts of its proceedings. As with the Walpole episode of 1738, this attempt by the Commons to reassert its right to secrecy and the criticism of the secrecy rule that this unleashed in the press, both occurred during a period where there was a growing sentiment that the House of Commons majority did not faithfully represent the British public. Such fears were driven in part by the fact that an archaic design of constituencies allowed some MPs to be elected by borough constituencies where corruption was rife. The parliamentary reformer John Wilkes argued that "disenfranchising the mean, venal and dependent boroughs would be laying the axe to the root of corruption and treasury

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<sup>17</sup>Cobbett's Parliamentary History of England, vol 10, pp.808-9.

<sup>18</sup>Speck (1977 p.163) suggests that "the aristocracy and gentry, together with merchants, plutocrats and leading professional men, amalgamated to form a narrow oligarchy which controlled all the levers of power, at the centre and in the provinces".

influence, as well as aristocratical tyranny.”<sup>19</sup> Proponents of constituency reform like Wilkes also advocated making Commons proceedings public, precisely because this would make it easier to hold potentially corrupt representatives to account (Holmes and Szechi, 1993).

Within the House of Commons, MPs continued to suggest that secrecy was necessary in order to preserve freedom of debate. Countering the idea that the Commons should simply reflect the preferences of the people, Charles Fox referred to the danger of pandering by suggesting that “ [w]e are bound to promote their true interests in preference to the dearest desires of their hearts”.<sup>20</sup> The printers’ case of 1771 ended with the Commons voting to create a special committee that would be charged with making recommendations on the case. However, after 1771 publication of clandestine reports of Commons proceedings became increasingly widespread (Siebert, 1952).

Overall, the evidence from the above three episodes supports propositions 3 and 4. Calls for greater transparency in 1738 and 1771 were driven by a growing sentiment that the Commons majority of the time was a corrupt oligarchy, dominated by financial interests. In 1689 we observe a much different pattern; during a period where there was less perception of bias, parliamentary secrecy was not challenged by the public.

*Assemblies in the Early Republic* - For the United States there is clear evidence that increased fears that legislators were biased led to a shift in public attitudes after 1787, from accepting legislative secrecy to demanding transparency. The Continental Congress, the Constitutional Convention of 1787, and in fact all state assemblies during the colonial period met in secret. As had been the case in the British House of Commons, supporters of the Constitutional Convention’s strict secrecy rule argued that it was necessary in order to preserve freedom of debate, and hence the quality

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<sup>19</sup>Speech of John Wilkes in favor of parliamentary reform, 1776, published in E.N. Williams (1965), *The Eighteenth Century Constitution*, Cambridge.

<sup>20</sup>Cobbett’s Parliamentary History of England, vol 17, pp.145.

of decisions taken. In later years James Madison provided a particularly succinct formulation of this argument.

Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of argument.<sup>21</sup>

The case of the Constitutional Convention is particularly interesting, because there is solid evidence that the American public broadly accepted the secrecy of its proceedings. Writing about the Convention's secrecy rule, the constitutional historian Clinton Rossiter (1966, p.143) observed "The remarkable thing about this rule is not that it was so readily adopted, but that it was so rigidly observed by the delegates and so uncomplainingly accepted by the press and public." Rossiter provides evidence from several newspaper accounts that did not challenge the secrecy rule. A letter from James Madison to Thomas Jefferson provides further support, as Madison observed regarding the Convention's closed-door sessions that "The public mind is very impatient for ye event, and various reports are circulating which tend to inflame Curiosity. I do not learn however that any discontent is expressed at the concealment."<sup>22</sup> When the time came for individual states to ratify the Constitution, the fact that the document had been negotiated in secret did not generate significant opposition.<sup>23</sup>

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<sup>21</sup>Farrand Vol.III p.478. This passage has been previously cited by Elster (1991).

<sup>22</sup>Letter from James Madison to Thomas Jefferson, July 18, 1787, reported in Farrand's Records vol.3, p.60. Jefferson, who was in Paris during the Summer of 1787, later wrote to John Adams criticizing the precedent set by the Convention's secrecy rule, but his opinion seems to have been atypical. Thomas Jefferson to John Adams, August 30th 1787.

<sup>23</sup>Apart from Patrick Henry's protest against secrecy during the Virginia ratifying convention, *Elliot's Debates*, which extensively documents the ratification debate in individual state conventions, records no widespread protest at the fact that the Constitution had been negotiated in secret. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, Jonathan Elliot, 1836, Philadelphia, Lippincott & co. For Patrick Henry's speech see vol.3, pp.169-170.

By the early 1790s in the United States there was considerably more opposition to closed-door legislative sessions than had been the case in 1787. During the First Congress, the House of Representatives had opened its debates to the public, but the members of the Senate kept with tradition by voting to keep their proceedings secret. Closed-door Senate proceedings soon came under widespread attack. A number of state legislatures, which had the responsibility of electing senators, called for the Senate to publish its proceedings as a means of ensuring accountability of individual senators (McPherson, 1946). The secrecy of Senate debates also came under severe criticism in newspapers (Stewart, 1969). Faced with substantial outside pressure, the Senate finally voted in 1794 to open its debates to the public.

One obvious explanation for the public's shift between accepting secrecy in 1787 and opposing it a few years later is that by the early 1790s many observers believed that the Federalist administration was biased in favor of financial speculators and commercial interests. The financial policies of Alexander Hamilton, involving increased taxation, creation of a national bank, and full repayment of national debt had helped create a split between what would become the Federalist party and an opposition party, often called the Jeffersonian Republicans. The study by Stewart (1969) demonstrates that opposition to the Federalists led to the creation of a number of newspapers devoted to criticizing the administration. In these papers, criticism of the Federalist administration for being unduly influenced by speculators went hand in hand with calls for openness in government, and in particular the abolition of secret Senate sessions.<sup>24</sup> Similarly, McPherson (1946) demonstrates that the reason why Southern state legislatures, which were predominantly controlled by Jeffersonian Republicans, argued for an abolition to Senate secrecy is that they sought to establish greater control over potentially biased senators in a Senate dominated by a Federalist majority.

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<sup>24</sup>See Stewart (1969) chapters II and XII.



*The French Constituent Assembly of 1789* - Unlike in the American and British cases, publicity of legislative debate was a guiding principle of French representative assemblies from the first days of the 1789 revolution (Manin, 1997). At the outset of the revolution, Louis XVI had attempted to decree that deliberations would occur in secret in order to “preserve greater freedom of action” for the deputies.<sup>25</sup> Apart from a few rearguard attempts to enforce secrecy of deliberations, the vast majority of French deputies to the Constituent National Assembly appear to have favored the principle of publicity. It also seems clear that publicity was seen as a means of ensuring that decisions within the Constituent Assembly were not subject to undue influence from the court at Versailles. This is consistent with proposition 3 from the theoretical model; a potential bias involving lobbying pressure by the court led to demands for proceedings to occur in public.

### **3.2 Consequences of publicity in eighteenth century assemblies**

We can examine the consequences of publicity (or secrecy) in eighteenth century parliaments by drawing comparisons both across countries and over time. Given limited space, I consider three specific comparisons involving the UK, the US, and France.

In a fascinating article, Jon Elster (1991) has contrasted the pattern of debate at the US Constitutional Convention of 1787, which held all of its proceedings in secret, with the French Constituent Assembly of 1789, which also served a constitutional convention, but where all debates took place in front of an audience. Elster argues that the proceedings in Paris were marked by much more posturing than occurred in Philadelphia, precisely because the debates took place in front of an audience. If the presence of an audience for French Constituent Assembly debates prompted deputies to posture, observers have suggested the exact opposite for the US Constitutional

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<sup>25</sup> *Archives Parlementaires*, 23 juin 1789, p.144.

Convention. Clinton Rossiter (1966) claimed that secrecy helped facilitate the compromises during the Convention that led to a constitution being successfully adopted. Towards the end of his life, James Madison offered the opinion that the Constitution would never have been successfully adopted if the debates had been held in public.<sup>26</sup>

We can also consider the effects of transparency by comparing events in legislative assemblies before and after the establishment of open-door deliberations. With the British House of Commons, as noted above, publicity gradually became tolerated, even if the House made no formal decision allowing reporting of its debates. Writing in the mid nineteenth century, John Stuart Mill observed that the shift to publicity had bound members of Parliament more closely to their constituents (Mill, 1861 [1972] pp.312-314).

Finally, one might also argue that the establishment of publicity played a role in the evolution of the US Senate after 1794. Swift (1996) shows how the move to open-door debates was one of a series of institutional changes that helped transform the Senate into a legislative body that was more directly linked to constituents.

## 4 Current disputes about transparency in the EU

Recently, a debate has emerged about the secrecy of European Council of Ministers proceedings, and the opposing sides in this dispute have staked out positions that closely parallel those taken by eighteenth century opponents and proponents of “publicity” in national parliaments. To its critics the Council is at once the most powerful and the least transparent institution of the European Union. Council proceedings are not public, and there is no generalized rule allowing access to transcripts or complete minutes of its meetings. Moreover, there is a similar lack of access to minutes from

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<sup>26</sup>James Madison as reported in an interview by Jared Sparks (1830), cited in Farrand vol.III, p.478.

the numerous committees of officials that make recommendations to the Council, such as COREPER (the Committee of Permanent Representatives) and the Economic and Financial Committee (EFC). Criticisms regarding secrecy can also be leveled against the European Council, which is the regular meeting of EU heads of state and government.<sup>27</sup> This critical view of current Council practice is not shared by all observers. Moravcsik (2002) argues that concerns about the lack of transparency of EU institutions like the Council are overstated. Moreover, a majority of EU governments have claimed that secrecy is necessary in order to facilitate efforts to reach compromises within the Council of Ministers.

#### 4.1 Background to the dispute

In 1993 the European Commission and the Council of Ministers established a “Code of Conduct” which specified that the European public should have “the widest possible access to documents”. Under this code the Council also amended its own internal rules to clarify exactly when such access would be granted. In so doing the Council gave itself wide latitude to keep any document secret by stating that “access to a Council document may be refused in order to protect the confidentiality of the Council’s proceedings.”

Using the new procedures, John Carvel of *The Guardian* newspaper requested a number of documents from the Justice Council, the Agriculture Council, and the Social Affairs Council, but only the latter accepted the request, and it was later learned that the Social Affairs Council had only agreed to release the documents as a result of an administrative error. In the letter refusing access to other documents, the Council

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<sup>27</sup>For discussions of the Council of Ministers and the committees that report to it see Lewis (2003a, 2003b, 2000, 1998), Verdun (2000), Jacobsson and Vifell (2003), and Wallace (2002). For discussions of the EU’s democratic deficit more generally see Hix (1997), Habermas (1998), and Moravcsik (2002, 1994).

noted that granting the access Carvel requested would “fail to protect the confidentiality of its proceedings”, and that “the documents in question contain confidential information relating to the position taken by the members of the Council during its deliberations”.<sup>28</sup> Making previously confidential information public was precisely the motivation behind the request, however, and so Carvel and *The Guardian* took the case to the European Court of First Instance. This legal action was supported by the governments of the Netherlands and of Denmark, and it also received support from the European Parliament. A majority of EU governments opposed the action.

The Court of First Instance ultimately found against the Council, but because of the content of its judgment, the case did relatively little to reduce the secrecy of Council deliberations. The Court found that in deciding to refuse access to certain documents, the Council had not exercised the proper discretion necessary, as stated in the Council’s own “Code of Conduct”. The Council’s refusal to grant access to *The Guardian* was instead a flat rejection with little explanation or justification. However, after this judgment, the Council still retained the right to refuse access to any internal document, as long as it provided evidence that it “exercised proper discretion” when deciding to preserve secrecy.

Since the 1994 case, the Council has made some effort to become more open, with increased access to documents, and a move to allow portions of several meetings per year to be viewed on closed circuit television. In June of 2002, EU heads of state and government responded to increased demands for transparency by declaring that certain additional deliberations of the Council of Ministers should be made public. This concerns meetings where the Council is acting in accordance with the procedure for codecision with the European Parliament. However, the majority of Council discussions continue to take place behind closed doors, and in particular those sessions

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<sup>28</sup>Council letter of 17 May 1994 cited in Judgment of the Court of First Instance.

that might prove controversial. So, for example, a portion of a ministers of finance meeting of July 2003 was televised, but the televised portion was restricted to a broad discussion of the Council Presidency's economic goals, whereas a more critical discussion of EMU Stability Pact enforcement was kept secret.<sup>29</sup> In addition, the work of the Committee of Permanent Representatives (COREPER), which prepares and frequently adopts Council legislation, also remains confidential. Secrecy also continues to prevail on other committees that report to the Council, such as the Economic and Financial Committee (Lewis, 2003a).

## 4.2 Causes of Council secrecy

When we consider the positions taken by those who favor and those who oppose making EU Council of Ministers deliberations public, we observe that they conform closely to the predictions of propositions 3 and 4. Calls for transparency have emerged during a period of increased concern about a disjuncture between the preferences of EU citizens and representatives on the Council. Proponents of transparency have emphasized the need for transparency in order to increase accountability, while those who favor secrecy have emphasized the efficiency benefits of closed-door bargaining.

Considering the proponents of closed-door sessions first, the 1994 case launched by *The Guardian* provides a particularly interesting opportunity to examine the motivations behind opposition to open-door bargaining, because the Council of Ministers was forced to provide a formal defense of its procedures. In its rejoinder to the Court of First Instance, the Council defended its desire for secrecy in the following terms,

The Council normally works through a process of negotiation and compromise, in the course of which its members freely express their national

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<sup>29</sup>Council of the European Union, 18 July 2003, Draft Minutes, 2520th meeting of the Council of the European Union (Economic and Financial Affairs), held in Brussels, 15 July 2003.

preoccupations and positions. If agreement is to be reached, they will frequently be called upon to move from those positions, perhaps to the extent of abandoning their national instructions on a particular point or points. This process, vital to the adoption of Community legislation, would be compromised if delegations were constantly mindful of the fact that the positions they were taking, as recorded in Council minutes, could at any time be made public through the granting of access to these documents, independently of a positive Council decision.<sup>30</sup>

The Council's defense closely follows the logic of the theoretical model in Section 2, as it is based upon the idea that open negotiations might make national representatives less likely to move away from their initial positions, triggering a greater incidence of bargaining breakdowns. One might ask whether this is an obvious result; in a democratic age what other arguments could the Council make in favor of secrecy? In fact, a plausible alternative strategy would have been to argue that opening up Council debates would risk revealing information to third parties. This would be particularly relevant in the foreign policy domain, where the Council debates actions to take with respect to non-member states. It is also possible that the Council might have relied more heavily on the simple argument that the Council is a meeting between ministers, and cabinet meetings between ministers at the national level invariably take place in secret.

When we turn to the proponents of transparency, we see that the pattern of support for making EU Council of Ministers public closely resembles that observed for the eighteenth century cases in Section 3. Widespread protests about the Council's lack of transparency have emerged since the beginning of the 1990s, during a period of

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<sup>30</sup>Emphasis in original. "Statement of Defence of the Council of the European Union in Case T-194/94", Brussels, 13 July 1994. A related statement is also cited by Fingleton and Raith.

heightened concerns that Council representatives may not be faithfully representing the preferences of their national electors. This has also been a period where the EU has acquired an expanded role over policy, making any potential disjuncture between citizen and representative preferences more salient. In contrast, during earlier periods, like the mid-1980s, one observes both that European public opinion was more favorable to Council decisions, and during these earlier periods Council secrecy provoked little public criticism. In what follows I will draw on evidence from public opinion polls in particular to support these claims, which are consistent with proposition 3.

I have already provided evidence that recently there have been demands for making the Council of Ministers more transparent. One potential explanation for these demands is that since the early 1990s the European public has felt poorly represented by EU institutions, and in particular by the Council of Ministers. A Eurobarometer survey conducted in 1992, revealed that 71% of EU citizens felt there was “insufficient democratic influence in EC decision making”.<sup>31</sup> Subsequent surveys have revealed that when citizens are asked whether they trust specific EU institutions, the Council of Ministers regularly scores the lowest among major EU bodies. In a survey conducted in 2000, 53% of respondents reported that they “tend to trust” the European Parliament, and 47% trusted the Court of Justice, but only 39% reported trusting the Council of Ministers.<sup>32</sup> This perception of a problem of insufficient representation within the EU is exacerbated by increased pessimism that certain policies decided upon at the EU level, such as internal economic liberalization, will provide a benefit to EU citizens. In a 2001 Eurobarometer poll, only 24% of respondents thought that economic liberalization within the EU would improve their personal financial position, and only 26% thought it would improve their quality of life.<sup>33</sup>

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<sup>31</sup>Eurobarometer 38, European Commission, December 1992, p.71.

<sup>32</sup>Eurobarometer 54, European Commission, conducted Nov-Dec. 2000, p.55.

<sup>33</sup>Eurobarometer 55.1, “Europeans, Globalisation, and Liberalisation”, Spring 2001, pp.34-49.

When one instead considers the EU during the mid-1980s, there is much less evidence of either demands for transparency of the Council of Ministers or fears that representatives might have been biased. The best evidence that making Council of Ministers discussions public was not a salient issue may be the simple fact that the Council did not even deem it necessary to have a formal policy on “transparency” until 1993. Further evidence is provided by the fact that before the 1990s there was not significant discussion in major European newspapers of the potential need to make Council of Ministers discussions public. This greater acceptance of Council secrecy appears to have coincided with lower levels of mistrust of EU institutions, and less evidence of pessimism about EU policies like internal economic liberalization. The nature of available data makes it difficult to prove this statement conclusively. It would be extremely useful to have access to Eurobarometer poll data from the mid-1980s on “trust in EU institutions”, but Eurobarometer surveyors only began asking questions on this issue during the 1990s, after mistrust emerged as a perceived problem.<sup>34</sup> Nonetheless, there is public opinion evidence from the 1980s which suggests that the policy of internal economic liberalization embodied in the Single European Act of 1986 had substantial public support at the time. In 1986, soon after the negotiation of the SEA, a Eurobarometer poll asked whether citizens believed that the liberalization of flows of people, goods, and capital implied by the Act was a good thing. Among those who replied, 83% agreed at least to some extent.<sup>35</sup> Results of a poll from 1987 show similarly strong support.<sup>36</sup> Though the wording of questions differs between the survey on economic liberalization from 2001 and these earlier sur-

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<sup>34</sup>Eurobarometer 38, conducted in 1992, was the first Eurobarometer survey to ask whether citizens felt they had sufficient influence over EC decision making. Eurobarometer 41, conducted in 1994, was the first survey to ask whether citizens believed that decisions taken by specific EU institutions were in their interest.

<sup>35</sup>Eurobarometer 25, European Commission, June 1986, pp.20-22

<sup>36</sup>Eurobarometer 28, European Commission, December 1987, pp.36-40.



veys, given the dramatically different responses, it would seem difficult to contest the fact that there is now a much larger disjuncture between the preferences of EU citizens and the policies decided by the EU Council with regard to liberalization, than was the case in 1987.

### 4.3 Consequences of Council secrecy

One of the implications of secrecy for the EU Council of Ministers is that there is less information available about Council deliberations than is the case for more public institutions within the EU, such as the European Parliament. This makes it difficult to ascertain with certainty whether the closed-door deliberations of the Council are indeed characterized by the lower degree of posturing, as well as by greater departures from public opinion that would be consistent with propositions 1 and 2. It is nonetheless significant that numerous studies of the Council of Ministers have made reference to its “culture of compromise” and its club-like atmosphere. Authors have in fact provided descriptions of Council bargaining that clearly conform to the idea that closed-door bargaining facilitates compromise.

Among scholars who specialize in the workings of the Council of Ministers and its subsidiary bodies, Lewis (2000) has argued that the Council’s Committee of Permanent Representatives (or COREPER) has become a highly efficient bargaining forum precisely because it works in secret. Wallace (2002) makes this argument about the workings of the Council of Ministers more generally, suggesting that the Council’s “club-like” atmosphere helps facilitate agreements, while she notes that this method of functioning has unfortunately depended on a lack of transparency for proceedings. In another contribution, Lewis (1998) describes several other features of behavior within COREPER that strongly support the idea that closed-door bargaining helps facilitate compromise. For one, he observes that it is common for national representatives to

COREPER to depart from original instructions by their governments. It was for this reason that the German representative to COREPER jokingly suggested that he was often referred to as the “Permanent Traitor” in his home capital, rather than the “Permanent Representative”. These observations support the Council’s own deposition in the *The Guardian* case, suggesting that secrecy was necessary precisely to allow national representatives to depart from instructions. Second, in a case study of the 1994 Local Elections Directive, Lewis (1998) provides convincing evidence that EU governments sought to keep the discussion of this directive limited to the secretive environment of COREPER, precisely because it was feared that publicity would inhibit governments from compromising.

Beyond facilitating compromise, it has also been argued that the secrecy of certain committees that report to the European Council, and most notably COREPER and the Economic and Financial Committee (EFC), encourages participants to engage in free deliberation about the advantages and disadvantages of different policies. This deliberation is seen as potentially leading to shifts in preferences and higher quality decisions. Jacobsson and Vifell (2003) report that the highly secretive Economic and Financial Committee has provided an environment within which representatives can discuss politically sensitive policy options openly.<sup>37</sup> It also seems clear that in committees like COREPER and the EFC, participants have a greater tendency to make unprepared remarks, rather than relying on the sort of pre-prepared statements that ensure accuracy but which can stifle debate. In contrast, in more open committees there tends to be far less real debate. In their survey on the extent of deliberation in EU bodies, Jacobsson and Vifell (2003) arrive at the interesting conclusion that “the more closed the forum, the more openness in discussion”. In the introduction to an

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<sup>37</sup>See also Lewis (2003b) on deliberation within COREPER and Joerges and Neyer (1997) on deliberation as a method of governance in the EU.

edited volume on decision making in different European institutions, Checkel (2003) makes a very similar proposition, suggesting that discussions based on persuasion will be more likely to occur in “less politicized and more insulated in-camera settings.”

While scholars suggest that secrecy helps increase the efficiency of the Council of Ministers in terms of reaching agreements, they also emphasize that secrecy of Council proceedings inevitably breeds suspicion about the agreements that are struck. Wallace (2002 p.331) suggests that the closed-door nature of proceedings has “the potential to estrange other national politicians and national parliaments from the EU process.” Likewise, Verdun (2000) has argued that the secrecy of the Economic and Financial Committee, which reports to the Council of Ministers, undermines democratic accountability. These arguments parallel the more general claims made by Habermas (2002) about secrecy undermining public confidence in EU institutions.

The risk of secrecy undermining public confidence in EU decisions was graphically illustrated when it was revealed during the 2002 French presidential campaign that both the Prime Minister, Lionel Jospin, and the President, Jacques Chirac, had agreed at a European Council meeting to a declaration that all EU countries should increase the average retirement age by five years.<sup>38</sup> Independent of whether one sees this measure as desirable, the declaration contradicted both Chirac’s and Jospin’s positions on the issue as stated to the French national press. A recent episode involving a documentary film on the Council provides further clear evidence that Council representatives often take public positions that differ from their positions as privately expressed in the Council. With the agreement of the President of the EU Council, in December 2002 a Danish film crew shot a documentary on the Copenhagen Council summit that included scenes with ministers having frank exchanges about enlargement questions in particular, and without apparent knowledge that the film would subsequently be

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<sup>38</sup> *Le Monde*, April 4, 2002.

aired on Danish TV. When the film was broadcast in April 2003, it provoked a storm of controversy, most notably for Germany's Foreign Minister, Joschka Fischer, who had made negative comments about potential Turkish membership in the EU, despite having supported Turkey's application in public.<sup>39</sup> More generally, one could suggest that the secrecy of Council of Ministers proceedings makes it easier for national representatives to blame certain policy decisions on "Brussels" even when they themselves have participated in, and even supported such decisions.

In sum, the recent dispute over secrecy of the EU Council of Ministers illustrates well the trade-offs from transparency. Keeping proceedings behind closed doors appears to have fostered a "culture of compromise", but this has come at the cost of a perceived lack of accountability. This perception has been particularly problematic in a period where there is increased suspicion that national representatives may not be faithfully defending the views of their constituents during Council proceedings.

## 5 Conclusion

I have argued in this paper that the issue of transparency in political bargaining presents a trade-off for society. When bargaining takes place in public, this helps ensure that representatives propose policies preferred by their constituents. But open-door bargaining also encourages representatives to posture by adopting overly aggressive bargaining positions that increase risks of breakdown in negotiations. As a result, a shift to open-door bargaining may increase accountability while nonetheless resulting in undesirable outcomes for constituents. I have suggested that when there is a strong belief that representatives may not share the policy preferences of their constituents, then transparency will be preferable, because the expected benefit from

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<sup>39</sup> "Fury Sweeps Capitals of Europe as TV Shows What Summit Leaders Really Said", *Financial Times*, April 19, 2003.

constraining the actions of biased officials will exceed the expected costs of prompting unbiased officials to posture. Empirical evidence from current debates about making the EU Council of Ministers public, as well as eighteenth century debates about “publicity” for national parliaments supports these propositions. In what follows I expand upon these conclusions by making three points relevant to international institutions.

First and most directly, authors who emphasize the importance of establishing “global governance” and “transparency” in international institutions should recognize that openness can involve costs as well as benefits. Most of the existing literature has focussed almost exclusively on the latter. As a result, in the EU case, rather than speaking of a “democratic deficit”, as far as transparency is concerned it may make more sense to follow Moravcsik (1994) by suggesting there is a “democratic dilemma”. When advocates of transparency argue that international institutions should adhere to the same norms of transparency that are presumed to prevail within domestic institutions, they often overlook the fact that the degree of openness in domestic institutions actually varies quite significantly, and in ways that many would see as being desirable. So, for example, parliamentary discussions now take place in public, but jury deliberations and court deliberations take place behind closed doors. There is no reason to believe that there should not be a similar diversity in levels of transparency in international institutions.

A second point is that the optimal design of international institutions may change over time. Rather than deciding once and for all whether it is better to have EU cooperation be based on closed-door institutions, and rather than deciding whether practices such as the “club model” of multilateral cooperation are optimal in an absolute sense, it may be more accurate to suggest that these secretive forms of international cooperation were desirable at one time, but they are suboptimal today, in an era where an increasing number of citizens perceive a bias on the part of their representatives.

One might use evidence on growing perceptions of the EU’s “democratic deficit” to support this contention, although in this article I have not demonstrated explicitly that the costs of Council of Ministers secrecy now outweigh the benefits (I have argued simply that there are both costs and benefits and perceptions of the costs have grown more acute). If the optimal level of transparency in bargaining changes over time, it would also be worth ascertaining whether there are clear cases where institutions have become *less* transparent, and this has been accepted by the public. While the model presented here implies that this could occur, empirical observation suggests that moves in the direction of greater transparency may be much more frequent.

A third and final point concerns the literature on deliberation. Advocates of deliberative democracy have emphasized that when deliberation occurs in public, this improves both the quality and the legitimacy of decisions taken. While the model I have presented here is one of bargaining, where there is no uncertainty about the link between policies and outcomes, my propositions nonetheless raise an important question about the benefits of holding deliberation in public. To the extent that deliberation depends on the willingness of participants to accurately reveal private information about policies, then this might actually be less likely to occur in a public context. Much as reputational concerns give the bargainers in my model an incentive to ignore their private information about the optimal offer, participants in an open-door deliberative proceeding might refrain from accurately revealing their private information for exactly the same reasons.<sup>40</sup> It is particularly interesting to note here that observers of EU committees have suggested that those committees that are the most secretive tend to be those that also are characterized by the most actual deliberation. Future research could explore this question more directly by constructing a formal model of deliberation that compares public and private settings.

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<sup>40</sup>See Stasavage (2004) for a model of deliberation that compares public and private settings.

## A Appendix

In order to present formal proofs of propositions 1-4, it is necessary to first demonstrate conditions for existence and uniqueness of the different equilibria under open-door and closed-door bargaining. As stated in the text, I restrict representatives to four possible pure strategies  $\{\text{truthful}, d, 0.5, 1 - d\}$ . Any equilibrium must consist of a set of offers  $\{o_{A-\text{unbiased}}, o_{A-\text{biased}}, o_B\}$  and a belief  $\Pr(u|\tilde{o}, \tilde{x})$  for each offer  $\tilde{o}$  and outcome  $\tilde{x}$  that do not occur in equilibrium. Given that she is unbiased by assumption,  $R_B$ 's equilibrium behavior is straightforward. Both under open-door and closed-door bargaining, in any equilibrium where a biased  $R_A$  makes an offer other than  $(1 - d)$ ,  $R_B$  will always play the truthful strategy. In any equilibrium where a biased  $R_A$  proposes  $(1 - d)$ ,  $R_B$  will play the truthful strategy unless the prior belief that  $R_A$  is unbiased is low  $p < \frac{1}{2q}$ . Otherwise, she will always propose  $(1 - d)$ . In what follows I consider the possible equilibrium offers of  $R_A$ . For a biased representative  $R_A$  the equilibrium offer  $o$  that leads to an equilibrium outcome  $x$  must satisfy the following inequality where  $\tilde{o}$  is an alternative offer and  $\tilde{x}$  is an alternative outcome. The relevant expression for the unbiased representative follows the same form.

$$\alpha x + (1 - \alpha) \Pr(u|o, x) \geq \alpha \tilde{x} + (1 - \alpha) \Pr(u|\tilde{o}, \tilde{x}) \quad (8)$$

### A.1 Existence of equilibria under open-door bargaining

*Truthful and pooling equilibria* - Conditions for existence of a “truthful” equilibrium and of a “posturing” equilibrium have already been presented in the text. Alternative pooling equilibria, which would include pooling on 0.5 or pooling on  $(1 - d)$ , can be ruled out using the intuitive criterion of Cho and Kreps (1987). Consider a strategy profile of pooling on 0.5. If the unbiased representative received a signal  $d$ , she

would receive an expected policy gain by deviating and proposing  $d$ . As a result, she would deviate unless there was an out of equilibrium belief for the action that satisfied  $\Pr(u|\tilde{o} = d) < p$ . This is an implausible belief, given that that a biased representative could never gain by proposing  $d$ . We can rule out an equilibrium of pooling on  $(1 - d)$  using a similar argument.

*Separating equilibria* - Given the four possible strategies  $\{d, 0.5, (1 - d), t\}$  (where  $t$  stands for “truthful”), there are twelve possible candidates for separating equilibria in pure strategies. All but two of these can be quickly ruled out. The biased representative could deviate from any of the following strategy profiles and gain in terms of policy (reputation) without losing in terms of reputation (policy):  $(o_{A\text{-biased}}, o_{A\text{-unbiased}}) \in \{(t, d), (t, 0.5), (t, 1 - d), (d, t), (d, 0.5), (d, 1 - d), (0.5, 0.5), (0.5, 1 - d)\}$ . Likewise, the unbiased representative would gain in terms of policy without losing in terms of reputation by deviating from  $\{(1 - d, 0.5), (1 - d, d)\}$ .

This leaves two possible separating equilibria. In the first of these, the biased representative always proposes  $(1 - d)$  while the unbiased representative plays the truthful strategy. It is trivial to show that an unbiased representative could never gain from deviating from this equilibrium. A biased representative will not deviate by offering  $\tilde{o} = 0.5$ , as long as  $\alpha((1 - d) - 0.5) \geq 1 - \alpha$ , which implies that this equilibrium exists as long as  $\alpha \geq \frac{2}{3-2d}$ .

In the second possible separating equilibrium, the unbiased representative plays truthfully, while the biased representative always offers 0.5. The biased representative will not deviate from this equilibrium by offering  $(1 - d)$  as long as the following inequality is satisfied.

$$0.5\alpha + (1 - \alpha) \Pr(u|o = 0.5) \geq \alpha(1 - d) + (1 - \alpha) \Pr(u|\tilde{o} = 1 - d) \quad (9)$$



$$\frac{0.5p}{0.5p+(1-p)} - \Pr(u|\tilde{o} = 1-d) \geq \frac{\alpha}{1-\alpha}(0.5-d) \quad (10)$$

By the intuitive criterion, it is implausible that the out of equilibrium belief  $\Pr(u|\tilde{o} = 1-d)$  could be anything other than 0, because an unbiased type would never have an incentive to make this offer.

The unbiased representative would not deviate from offering  $o = 0.5$  (if she received a signal 0.5) by offering  $d$  as long as the following inequality is satisfied (a biased representative would never deviate by offering  $d$  if the following inequality was satisfied).

$$0.5\alpha + (1-\alpha)\frac{0.5p}{0.5p+(1-p)} \geq \alpha(qd + (1-q)(1-d)) + (1-\alpha) \quad (11)$$

$$\frac{\alpha}{1-\alpha} \geq \frac{2(p-1)}{(p-2)(0.5-(qd+(1-q)(1-d)))} \quad (12)$$

We can conclude that this separating equilibrium will exist when

$$\frac{0.5p}{(1-0.5p)(0.5-d)} \geq \frac{\alpha}{1-\alpha} \geq \frac{2(p-1)}{(p-2)(0.5-(qd+(1-q)(1-d)))} \quad (13)$$

Irrespective of the value of  $\alpha$ , the above inequality can only be satisfied when  $p \geq \frac{2}{2q+1}$ . We can conclude that posturing is the unique equilibrium under open-door bargaining when either of the two conditions in (14) or (15) is satisfied and thus neither of the separating equilibria exist. This implies that at a minimum, the posturing equilibrium is unique whenever  $p < \frac{2}{3}$  and when  $\alpha < \frac{2}{3}$ .

$$\alpha < \frac{2}{3-d} \text{ and } p < \frac{2}{2q+1} \quad (14)$$

$$\alpha < \frac{2}{3-d} \text{ and } \frac{\alpha}{1-\alpha} < \frac{2(p-1)}{(p-2)(0.5-(qd+(1-q)(1-d)))} \text{ and } p > \frac{2}{2q+1} \quad (15)$$

## A.2 Existence of equilibria under closed-door bargaining

*Truthful and pooling equilibria* - We can rule out a truthful equilibrium, or any pooling equilibrium, under closed-door bargaining using the following reasoning. In any truthful or pooling equilibrium, the biased and unbiased representatives make the same proposals with the same probabilities, and as a result  $\Pr(u|x) = p$ . The posterior for any offer that is made by  $R_B$  but which is not made by either the biased or unbiased representative will also be  $p$ . Given that  $R_B$  will always propose  $o = (1 - d)$  with positive probability, a biased representative will always deviate from any strategy other than proposing  $(1 - d)$ .

*Separating equilibria* - We can use similar reasoning to rule out any separating equilibrium where the biased representative makes a proposal other than  $(1 - d)$ . With any of the three alternative strategies to proposing  $(1 - d)$ ,  $\tilde{o} \in \{d, 0.5, t\}$ , given that  $R_B$  proposes  $(1 - d)$  with positive probability, and given that an unbiased representative would never propose  $(1 - d)$  in equilibrium, this implies that the following condition must be satisfied for  $\tilde{o}$  to constitute an equilibrium proposal (where  $\tilde{x}$  is the policy outcome associated with  $\tilde{o}$ ):  $\Pr(u|\tilde{x}) > p$ . This implies that  $\Pr(\tilde{x}|u) > \Pr(\tilde{x}|b)$  must also hold, but there is no possible pair of strategies that could satisfy this requirement, without prompting one of the two types to deviate.

In the unique pure-strategy equilibrium under closed-door bargaining, the unbiased representative plays the truthful strategy and the biased representative proposes  $(1 - d)$ . The biased representative will not deviate from this equilibrium by offering  $d$ , instead of  $(1 - d)$ , if the following inequality is satisfied (this applies as long as  $R_B$  plays the truthful strategy, otherwise different values apply for  $\Pr(x = 1 - d|u)$  and  $\Pr(x =$

$1 - d|b)$ .

$$\alpha(1-d) + (1-\alpha) \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p+(1-p)0.75} \geq \alpha d + (1-\alpha)(q+(1-q) \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p+(1-p)0.75}) \quad (16)$$

$$\frac{\alpha}{1-\alpha} \geq \frac{3q(1-p)}{(2d-1)(p+pq-3)} \quad (17)$$

The biased representative would not deviate by offering 0.5 as long as

$$\frac{\alpha}{1-\alpha}(0.5 - d) \geq \frac{0.5p}{0.5p+(1-p)0.25} - \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p+(1-p)0.75} \quad (18)$$

$$\frac{\alpha}{1-\alpha} \geq \frac{2p(4+q-4p-pq)}{(2d-1)(1+p)(p+pq-3)} \quad (19)$$

An unbiased representative would not deviate by offering  $d$  if the signal was  $s = 0.5$  as long as

$$0.5\alpha + (1-\alpha) \frac{0.5p}{0.5p+(1-p)0.25} \geq q(\alpha d + (1-\alpha) \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p+(1-p)(0.75)}) + (1-q)(\alpha(1-d) + (1-\alpha)) \quad (20)$$

$$\frac{\alpha}{1-\alpha} \geq \frac{p-pq-1+q}{(1+p)(d+q-2qd-0.5)} \quad (21)$$

### A.3 Proof of proposition 1

Posturing is the unique equilibrium under open-door bargaining when reputational concerns are sufficiently strong to satisfy either (14) or (15). Under these conditions, when compared with the unique equilibrium under closed-door bargaining, a shift from closed-door to open-door will always result in the biased representative shifting from proposing  $(1 - d)$  to proposing  $d$ . An unbiased representative will shift from

the truthful strategy to always proposing  $d$ . Proposition 1 will also hold for those parameter values for which a separating equilibrium exists under open-door bargaining where the biased type proposes 0.5 and the unbiased type plays truthfully.

#### A.4 Proof of proposition 2

Proposition 2 is proved by demonstrating the conditions for uniqueness of the posturing equilibrium (i.e. when either (14) or (15) is satisfied).

#### A.5 Proof of proposition 3

When the inequality in (14) holds, posturing will be the unique equilibrium under open-door bargaining, and, as demonstrated in expressions (6) and (7) in the text, this equilibrium will provide higher expected utility for the public when compared with the unique equilibrium under closed-door bargaining. When (15) holds posturing is the unique equilibrium under open-door bargaining, and the public will earn higher expected utility from closed-door bargaining.

#### A.6 Proof of proposition 4

Whenever the posturing equilibrium is the unique equilibrium under open-door bargaining, an unbiased representative will always obtain a more preferable policy outcome under closed-door bargaining, as long as  $(q(1-d) + (1-q)d) > 0.5$ , which must hold given that, by assumption  $0.5 < q < 1$ . The unbiased representative will also obtain a higher reputational payoff under closed-door bargaining as long as the following inequality is satisfied. This inequality holds for all possible parameter values of  $p$  and  $q$ .

$$p < 0.5 \frac{0.5p}{0.5p + (1-p)0.25} + 0.5(q + (1-q) \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p + (1-p)0.75}) \quad (22)$$

A biased representative will prefer closed-door bargaining as long as the following inequality is satisfied

$$\frac{\alpha}{1-\alpha}(1-2d) > p - \frac{(0.25+0.25(1-q))p}{(0.25+0.25(1-q))p+(1-p)0.75} \quad (23)$$

This inequality is satisfied for all parameter values for which the two equilibria exist.

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