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WHY ISN'T CONGRESS MORE CORRUPT?: A PRELIMINARY INQUIRY

Richard L. Hasen*

INTRODUCTION

In the aftermath of the indictment of New York State Assembly Speaker Sheldon Silver on corruption charges, law professor (and recent reformist gubernatorial candidate) Zephyr Teachout published an op-ed in the *New York Times* entitled “Legalized Bribery.”¹ In it, she argued that campaign contributions are a “gateway drug” to bribes and that politicians are “pre-corrupted” by taking campaign contributions and doing favors for contributors.² She wants campaign finance limits, public financing, and limits on outside income for legislators.³ Although Teachout used powerful rhetoric and suggested worthy reforms, I see her as offering an empirical hypothesis about the relationship between campaign contributions and bribery: the easier it is to take campaign contributions, and the higher the contribution limits, the more politicians are primed to be bribed and therefore the more public corruption cases will emerge.

But if campaign contributions lead to corruption, why do we not see more corruption in Congress? After all, members of Congress may take up to \$5,400 each election;⁴ they also may set up leadership political action

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1. Zephyr Teachout, Opinion, *Legalized Bribery*, N.Y. TIMES (Jan. 26, 2015), <http://www.nytimes.com/2015/01/26/opinion/zephyr-teachout-on-sheldon-silver-corruption-and-new-york-politics.html> [<http://perma.cc/VQ6R-R93Q>].

2. *Id.*

3. *Id.*

4. Rebecca Ballhaus, *FEC Raises Contribution Caps for 2016*, WALL STREET J.: WASH. WIRE (Feb. 2, 2015), <http://blogs.wsj.com/washwire/2015/02/02/fec-raises-contribution-caps-for-2016/> [<http://perma.cc/N26D-Z76G>]. The amount was \$1000 per election (or \$2000 per election cycle) until 2002, when the McCain-Feingold law raised it to \$2000 per election (or \$4000 per election cycle) and indexed that amount to inflation. *Campaign Finance Law Quick Reference for Reporters*, FED. ELECTION COMMISSION, http://www.fec.gov/press/bkgnd/bcra_overview.shtml#Contribution%20Limitations%20and%20Prohibitions (last visited Oct. 21, 2015) [<http://perma.cc/6NNC-Q575>].

committees (PACs) to take more money often used to benefit themselves,⁵ and now they can help Super PACs raise money.⁶ Further, prosecutors and the media have great incentives to uncover public corruption of our national legislature. Yet, as this Article shows, we see much more public corruption prosecuted on the state and local levels than in the U.S. Congress. New York legislators, for example, are seven times more likely to be convicted of corruption-related offenses than members of Congress.⁷ Additionally, public corruption prosecution rates vary significantly from state to state, in ways that seem uncorrelated with campaign finance laws. The preliminary evidence does not support the Teachout hypothesis.

In this short Article, I explore three possible explanations for relatively low rates of bribery and corruption in Congress compared to many states. I then make suggestions for reform based upon these explanations. First, the presence of muckracking media, widely consumed by the relevant public, deters corruption. A recent study in the *American Economic Review* demonstrates that state capitals that are far from population centers experience more corruption, likely because of the absence of enough investigative media and avid consumers of such media.⁸ The study uses geographical isolation and a concomitant lack of accountability to explain state variations in corruption rates.⁹ The logic of the study also may explain the relative lack of corruption in Congress, where media scrutiny is by far the most intense in the United States.

Second, thanks to gridlock, complex rules, and committee structures, members of Congress may have less influence to sell than state and local officials, and therefore there is less demand by corrupt persons and entities to bribe them. This hypothesis is plausible but uncertain. Members of Congress may have important informal powers even in the era of gridlock that are bribe worthy. Further, proving this hypothesis would require a good measure of relative legislative power.

Finally, part-time legislators may have greater incentive to act corruptly than full-time legislators because of a need for additional money to

5. *60 Minutes: Washington's Open Secret: Profitable PACs* (CBS television broadcast Oct. 21, 2013), <http://www.cbsnews.com/news/washingtons-open-secret-profitable-pacs/> [<http://perma.cc/2ET6-HBKY>]. As the television program explained:

Over time the leadership PACs that were created as a way for congressional leaders of both parties, to raise money and distribute it to their members, have evolved into something different. Today, nearly every congressman and senator has a leadership PAC, not just the leaders. And they are used to solicit contributions from friends and supporters in order to advance their political agendas, their careers and, in many cases, their lifestyle.

Id.

6. Aaron Bycoffe, *FEC Allows Candidate to Solicit Limited Contributions for Super PACs*, SUNLIGHT FOUND. (June 30, 2011), <http://sunlightfoundation.com/blog/2011/06/30/fec-allows-candidates-solicit-limited-contributions-super-pacs/> [<http://perma.cc/ZQ94-NXH Z>].

7. See *infra* note 15 and accompanying text.

8. Felipe R. Campante & Quoc-Anh Do, *Isolated Capital Cities, Accountability, and Corruption: Evidence from U.S. States*, 104 AM. ECON. REV. 2456 (2014).

9. See generally *id.*

supplement their incomes. Indeed, pointing to the Silver case¹⁰ and allegations that bribes to Silver were hidden as outside income, Teachout calls for limits on outside compensation for New York legislators.¹¹ This argument appears logical, yet the preliminary evidence does not support the claim that the part-time nature of a state legislature or low legislator compensation are positively correlated with a state's level of public corruption.

In the end, campaign financing and public corruption are separate problems demanding separate solutions. Based upon my preliminary analysis, I suggest we deal with public corruption primarily through subsidies of investigative journalism on the state level ("the ProPublica model") and through appropriate law enforcement. The campaign finance problem is essentially one of inequality, not corruption, and we should use public financing and campaign limits to insure greater equality.

I. THE LACK OF CONNECTION BETWEEN CAMPAIGN FINANCE LAWS AND THE LEVEL OF PUBLIC CORRUPTION

If campaign contributions are a gateway drug to bribery, the bigger the dose of the former, the more likely the addiction to the latter. But the evidence from across the states does not show such a simple relationship. In Table 1, I list the top five states ranked in terms of the most federal public corruption prosecutions from 1996 to 2010 and list the individual contribution limits to those donating to a candidate for the lower house in each state.¹²

10. See William Rashbaum & Thomas Kaplan, *Sheldon Silver, Assembly Speaker, Took Millions in Payoffs U.S. Says*, N.Y. TIMES (Jan. 22, 2015), http://www.nytimes.com/2015/01/23/nyregion/speaker-of-new-york-assembly-sheldon-silver-is-arrested-in-corruption-case.html?_r=0 [<http://perma.cc/3NZK-M3XG>].

11. See Teachout, *supra* note 1.

12. The data on public corruption contributions in the next three tables comes from Harry Enten, *Ranking the States from the Most to Least Corrupt*, FIVETHIRTYEIGHT (Jan. 23, 2015), <http://fivethirtyeight.com/datalab/ranking-the-states-from-most-to-least-corrupt/> [<http://perma.cc/XT8H-7WQE>], and DICK SIMPSON ET AL., CHICAGO AND ILLINOIS, LEADING THE PACK IN CORRUPTION (2012), <https://web.archive.org/web/20140402153827/http://www.uic.edu/depts/pols/ChicagoPolitics/leadingthepack.pdf> (looking at public corruption prosecutions from 1976 to 2010) [<http://perma.cc/MV3G-T546>]. The data on current campaign contribution limits comes from NAT'L CONFERENCE OF STATE LEGISLATURES, STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES (2013), http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2012-2014.pdf [<http://perma.cc/CU6U-C3WJ>]. Some of these limits no doubt changed during the 1976 to 2010 period, and a more nuanced analysis would have to look at potential changed limits during this period to fully flesh out the relationship.

Table 1

States with Most Public Corruption Convictions	Contribution Limit for Assembly Candidate
1. New York	\$4100/election
2. California	\$4100/election
3. Illinois	\$5300/election cycle
4. Florida	\$1000/election
5. Pennsylvania	Unlimited

The contribution limitations range from the relatively low \$1000 per election in Florida to unlimited contributions in Pennsylvania. There is no obvious relationship shown by the chart. This analysis is of limited value for two reasons, however: First, states differ in size, and therefore absolute numbers of corruption prosecutions can be deceptive; bigger states should see more corruption prosecutions even if corruption levels do not vary across states. Second, looking at the size of contribution limitations in isolation does not tell us if there is variation between high corruption states and low corruption states. It should be that contribution limits are higher on average in the high corruption states.

Tables 2 and 3 remedy these problems. Table 2 lists the contribution limitations in the five states with the most public corruption prosecutions per capita. Table 3 does the same for the five states with the fewest corruption prosecutions per capita.

Table 2

States with Most Public Corruption Convictions Per Capita	Contribution Limit for Assembly Candidate
1. Louisiana	\$2500/election
2. Mississippi	Unlimited
3. Alaska	\$500/year
4. South Dakota	\$1000/year
5. North Dakota	Unlimited

Table 3

States with Fewest Public Corruption Convictions <i>Per Capita</i>	Contribution Limit for Assembly Candidate
46. Minnesota	\$1000/election
47. New Hampshire	\$1000/election
48. Utah	Unlimited
49. Washington	\$900/election
50. Oregon	Unlimited

There is no appreciable difference in the variation of the contribution limitations in the five worst states compared to the five best states. In each group, two of the states have unlimited contributions, and the other three states have relatively low contribution limits. Further, only one of the ten states of those at the top and the bottom—Minnesota—offers candidates partial public financing. The amount of public corruption, then, does not seem correlated with the basic campaign finance rules.¹³

Further evidence that the size of campaign contribution limits does not matter in terms of the number of corruption prosecutions comes from comparing congressional convictions. By my count, only six members of Congress from 2000 to 2014 were convicted of bribery or similar offenses related to their congressional service.¹⁴ This compares to fifteen New York state legislators during the same period.¹⁵ These figures do not include

13. *Overview of State Laws on Public Financing*, NAT'L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx> (last visited Oct. 21, 2015) [<http://perma.cc/T7X2-MB7F>]. There is also an endogeneity problem: some states, but not all states, may adopt low limits because of high rates of public corruption. This is not the first article to question the lack of simple connections between campaign finance or bribery and political outcomes. See generally Stephen Ansolabehere, John de Figueiredo & James M. Snyder, Jr., *Why Is There So Little Money in U.S. Politics?*, 17 J. ECON. PERSP. 105 (2003); Jeffrey Milyo, David Primo & Timothy Groseclose, *Corporate PAC Campaign Contributions in Perspective*, 2 BUS. & POL. 75 (2000); Eric Rasmusen & J. Mark Ramseyer, *Trivial Bribes and the Corruption Ban: A Coordination Game Among Rational Legislators*, 78 PUB. CHOICE 305 (1994).

14. They are: Jim Traficant (D-OH), Randy "Duke" Cunningham (R-CA), Bob Ney (R-OH), William Jefferson (D-LA), Jesse Jackson, Jr. (D-IL), and Rick Renzi (R-AZ). A list of federal officeholders convicted of crimes from 2000 to the present appears at *List of American Federal Politicians Convicted of Crimes*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_American_federal_politicians_convicted_of_crimes (last visited Oct. 21, 2015) [<http://perma.cc/X6VG-RTYZ>].

15. The convicted Assembly Members and Senators are: William Boyland, Jr., Gloria Davis, Pedro Espada, Efrain Gonzalez, Diane Gordon, Roger Green, Shirley Huntley, Carl Kruger, Vincent Leibell, Brian McLaughlin, Clarence Norman, Tony Seminerio, Nicholas Spano, Eric Stevenson, and Guy Velella. For a list of New York State legislators involved in scandal, see Jeremy Smerd, *Big Reason NY Legislators Leave Office?: Corruption*, CRAIN'S N.Y. BUS. (Feb. 14, 2011), <http://www.craigslist.com/article/20110214/FREE/110219936/big-reason-ny-legislators-leave-office-corruption> [<http://perma.cc/GW7R-EB3P>], and

legislators who were acquitted, such as Joseph Bruno,¹⁶ or those involved in noncorruption scandals, such as spousal abuse, or non-legislators, such as governors, acting corruptly. Of course, the average size of congressional districts is larger than the average size of New York State Assembly or Senate districts, making the “per capita” comparison look even better for Congress and worse for New York. And there are only 213 New York legislators, compared to 535 senators and members of Congress. The percentage of members involved in incidents of corruption within the New York legislature during the relevant period—about 7 percent, or 15 out of 213 members—is seven times greater than the percentage in Congress—about 1 percent, or 6 out of 535 members.¹⁷

This methodology is not perfect. Federal public corruption figures include all public officials and witnesses and not just legislators. My methodology assumes that federal prosecutors have equal resources and desires to pursue public corruption in all states and that unscrupulous officials have equal ability to hide their activities in each state. This may not be true, for example, depending upon the state’s campaign finance disclosure rules. Further, prosecutors may be more reluctant to bring suit against members of Congress, fearing public embarrassment over losing a high profile case. This may explain the failure of the Department of Justice’s (DOJ) to prosecute U.S. Senator John Ensign for corruption.¹⁸ Or perhaps there are partisan biases where a U.S. attorney from one party in a particular state seeks to prosecute members of the other party—a frequent, although often unproven, allegation.¹⁹

Susanne Craig et al., *The Many Faces of State Political Scandals*, N.Y. TIMES (Jan. 22, 2015), http://www.nytimes.com/interactive/2014/07/23/nyregion/23moreland-commission-and-new-york-political-scandals.html?_r=0 [http://perma.cc/5ZBV-QMXM]. Joseph Bruno was recently acquitted on charges. See Reuven Blau, *Former Senate Majority Leader Joseph Bruno Defends Sheldon Silver, Says He Deserves Fair Trial*, DAILY NEWS (Mar. 1, 2015), <http://www.nydailynews.com/news/politics/joseph-bruno-defends-sheldon-silver-article-1.2133871> [http://perma.cc/C6XZ-D8F3]. Charges remain pending against John Sampson, see Greg B. Smith, *State Sen. John Sampson’s Embezzlement Case Exposes Flaw in Oversight of Foreclosed Property Sales*, DAILY NEWS (May 5, 2013), <http://www.nydailynews.com/news/politics/state-sen-john-sampson-embezzled-440g-foreclosure-funds-article-1.1337820> [http://perma.cc/Q6AB-ZSDP], Malcolm Smith, see Michael Wilson & William K. Rashbaum, *Lawmakers in New York Tied to Bribery Plot in Mayor Race*, N.Y. TIMES (Apr. 2, 2013), <http://www.nytimes.com/2013/04/03/nyregion/state-senator-and-city-councilman-accused-of-trying-to-rig-mayors-race.html> [http://perma.cc/H94B-DG8J], and Sheldon Silver, see Rashbaum & Kaplan, *supra* note 10.

16. See Blau, *supra* note 15.

17. I computed these figures using the data cited *supra* notes 14–15.

18. Senator John Ensign of Nevada was investigated on corruption-related charges but was not charged with any crime. See Eric Lipton, *Senator Ensign to Resign Amid Inquiry*, N.Y. TIMES (Apr. 21, 2011), <http://www.nytimes.com/2011/04/22/us/politics/22ensign.html> [http://perma.cc/3XLX-D9DE]; Eric Lichtblau, *Documents Reveal Details of F.B.I. Inquiry into Nevada Senator*, N.Y. TIMES (Dec. 29, 2014), <http://www.nytimes.com/2014/12/30/us/politics/documents-reveal-details-of-fbi-investigation-into-disgraced-senator-john-ensign.html> [http://perma.cc/D3T7-HPPU].

19. See Oguzhan Dincer & Michael Johnston, *Measuring Legal and Illegal Corruption in the United States: Some Results from the Edmond J. Safra Center for Ethics Corruption in America Survey 5* (Edmond J. Safra Ctr. for Ethics, Working Paper No. 58, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2579300 [http://perma.cc/9H8P-JSAB];

In addition, I cannot measure any “culture” of corruption or other extraneous factors. Nor do I consider whether the opportunity costs for congressional bribery are higher because non-indicted members of Congress have a higher expected income stream after leaving office than non-indicted state legislators.²⁰

A full regression analysis might tease out additional factors not seen by my basic look at top and bottom states.²¹ I am also not looking at all aspects of a state’s campaign finance system. In New York, for example, parties have soft money “housekeeping” funds, which provide a way of gaining influence over legislative leaders through very large donations.²² That may explain at least part of how New York acts as such an outlier and provides moderate support for the Teachout thesis, but there is no evidence these funds are being used on a widespread basis in the states that see more corruption.

Adriana Cordis and Jeffrey Milyo also fault the use of the public corruption statistics provided by the DOJ as an accurate measure of corruption across states.²³ Using a different methodology, relying on the Transactional Records Access Clearinghouse (TRAC) database of criminal prosecution data,²⁴ they arrive at a somewhat different set of top and bottom corruption states. Using TRAC’s list of states instead of the DOJ data, however, leads to the same conclusion: no discernable pattern in levels of corruption based upon campaign finance rules.²⁵

Richard L. Hasen, *Just Politics: Just Because Politics Can Be Ugly Doesn’t Make It a Crime*, SLATE (Aug. 18, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/08/the_perry_indictment_is_one_more_example_of_criminalizing_politics_watch.html?wpsrc=sh_all_dt_tw_top [<http://perma.cc/V8QR-4T7J>].

20. On post-congressional careers, see Daniel Diermeier, Michael Keane & Antonio Merlo, *A Political Economy Model of Congressional Careers*, 95 AM. ECON. REV. 347 (2005).

21. See Dincer & Johnston, *supra* note 19. Dincer and Johnston use a measure of illegal and legal corruption tied to reporters’ perceptions of corruption in a state. This may be one measure of political culture, as is their measure of “moralistic” cultures taken from Daniel Elazar and used later in the paper. But their definitions of corruption are loose enough to include wholly legal, if unsavory, activity, which I am trying not to count in this analysis. Rather, I am trying to explain only the lack of many cases of illegal corruption in Congress. That New York does not make Dincer and Johnston’s list (see *infra* Table 7) of the “most corrupt” states makes me question the survey’s usefulness for my purposes.

22. Michelle Breidenbach, *In New York State, Sky Is the Limit on Donations to Political Party “Housekeeping” Accounts*, SYRACUSE.COM (Oct. 20, 2013), http://www.syracuse.com/news/index.ssf/2013/10/housekeeping_committees_campaign_finance_albany_moreland_commission.html [<http://perma.cc/A4AE-47PZ>].

23. See Adriana Cordis & Jeffrey Milyo, *Measuring Public Corruption in the United States: Evidence from Administrative Records of Federal Prosecutions* 34 fig.1 (Dep’t of Econ., Univ. of Mo., Working Paper No. 1322, 2013), http://economics.missouri.edu/working-papers/2013/wp1322_milyo.pdf [<http://perma.cc/M49M-6MCV>].

24. See TRANSACTIONAL RECS. CLEARINGHOUSE, <http://trac.syr.edu/> (last visited Oct. 21, 2015) [<http://perma.cc/476W-DNUB>].

25. According to Cordis and Milyo, the five most corrupt states (as measured by number of convictions using the TRAC database) are: Mississippi, Kentucky, Rhode Island, Illinois, and Tennessee. *Id.* at 43 tbl.5. Mississippi has unlimited contributions. *Id.* Kentucky has \$1000 contribution limits per election. *Id.* Rhode Island has \$1000 contribution limits per year. *Id.* Illinois has \$5300 contribution limits per election cycle. *Id.* Tennessee has \$1500

Cordis and Milyo's data also includes claims against public employees and witnesses who are not elected officials but have been prosecuted for corruption. With the help of research assistants, I counted up convictions (and plea deals) of state legislators on federal bribery or related charges from 2011 through the beginning of April 2015, primarily using the Federal Bureau of Investigation (FBI) public corruption database. The search yielded sixteen cases: seven from New York, two from Illinois, and one each from Alabama, Arizona, Iowa, Massachusetts, Ohio, Oklahoma, and Rhode Island.²⁶ In the same period, there was one congressional conviction: Representative Rick Renzi.²⁷ Once again, there is nothing about these states' campaign finance laws that seems to indicate a special tie to corruption problems. In particular, New York's law is not so different from these other laws to explain such a discrepancy.²⁸ Prosecutorial zeal, and perhaps the high profile of the U.S. attorney position in New York and pressure to create a high profile, may be a big part of the explanation for the New York case.

In short, using a variety of crude empirical approaches, the early evidence suggests that something else, aside from the ability to accept campaign contributions, is driving the amount of bribery and related convictions. Whatever the driver, the straightforward Teachout thesis appears incorrect.

II. EXPLORING POSSIBLE EXPLANATIONS FOR VARIATIONS IN LEVELS OF PUBLIC CORRUPTION

In this part, I consider three possible explanations for variations across states in levels of corruption prosecutions.

A. *Muckraking Media Read Widely by the Public*

The most plausible explanation I have come across so far for varying levels of public corruption connects geography, media, and accountability. In a recent article in the *American Economic Review*, Felipe Campante and Quoc-Anh Do examine the hypothesis that public corruption in a state is greater when the state capital is relatively far from the state's population centers.²⁹ They describe their findings in their article abstract:

We show that isolated capital cities are robustly associated with greater levels of corruption across [U.S.] states, in line with the view that this

limits per election. *Id.* The five least corrupt states are: Wyoming, Iowa, Kansas, New Hampshire, and Colorado. *Id.* Wyoming has \$1500 limits per election. *Id.* Iowa allows unlimited contributions. *Id.* Kansas has \$500 limits per election. *Id.* New Hampshire has \$1000 limits per election. *Id.* Colorado has \$200 per election. *Id.*

26. *See supra* note 25 and accompanying text.

27. I have posted a spreadsheet of the sixteen cases at <http://electionlawblog.org/wp-content/uploads/hasen-corruption-data.xlsx> (last visited Oct. 21, 2015) [<http://perma.cc/85X4-C6CK>]. The FBI Public Corruption database is available at <http://www.fbi.gov/collections/public-corruption> (last visited Oct. 21, 2015) [<http://perma.cc/QVW8-4G79>].

28. *See supra* Table 1 (listing New York and other states' contribution limit laws).

29. Campante & Do, *supra* note 8.

isolation reduces accountability. We then provide direct evidence that the spatial distribution of population relative to the capital affects different accountability mechanisms: newspapers cover state politics more when readers are closer to the capital, voters who live far from the capital are less knowledgeable and interested in state politics, and they turn out less in state elections. We also find that isolated capitals are associated with more money in state-level campaigns, and worse public good provision.³⁰

The story Campante and Do tell is one of accountability driven by media coverage. The media covers state politics less frequently when state capitals are isolated, and readers in such states consequently read state politics news less. Voter turnout in state elections is lower in states with isolated capitals as well, perhaps because voters believe they do not have enough information to cast intelligent votes or because there is no scandal news to give voters a signal or reason to vote. The lack of accountability creates an opening for corruption.

The authors' findings on campaign finance are especially interesting. Campaign contributions are higher in states with isolated capitals, and donations in those states are dominated by people who live closer to those isolated capitals.³¹ The authors speculate that "with lower media scrutiny and reduced involvement by voters, an isolated capital opens the way for a stronger role of money in shaping political outcomes."³² This evidence provides more limited support for Teachout's gateway drug hypothesis, in the context of campaign contributions in isolated capitals in which no one is watching.

The geographic/accountability explanation also provides good reason for why there is not more corruption in Congress. The amount of media concentration in Washington, D.C., covering politics dwarfs coverage of any state capital. Every move, every campaign finance filing, and every congressional vote is a potential story for enterprising political reporters. The proliferation of news operations and websites from *Politico* to *Vox* to *FiveThirtyEight*, as well as new breaking political news operations and blogs on traditional sites such as the *New York Times* and *Washington Post*, further create demand for media content, especially scandalous political content. In this environment, a corrupt politician has to work very hard to keep things secret.

B. Members of Congress Have Less Influence to Sell

The geographic/accountability explanation seems to go a long way in explaining the relative differences in the number of corruption convictions across states. But there are other possibilities as well. Another explanation

30. *Id.* at 2456.

31. *Id.* at 2475–76.

32. *Id.* at 2478. The key is not geography but accountability through a strong press. My impression of the corruption in the small cities around Los Angeles is that, until the recent Bell scandal, there was little media attention paid to local politics and therefore less accountability and more corruption.

focuses not on the chances of corruption detection, but on the demand for corrupt politicians.

It may be that the general power structure in Washington gives individual members of Congress less power than typical individual legislators. An individual U.S. representative, especially one who is not a committee chair or in the leadership of the majority party, has very little leverage to offer something of use to many people looking for a special interest deal.

In contrast, in state (and local) governments, legislators may have greater power to take care of matters of more local concern. Some state legislatures are organized with local delegations having great power to decide matters of local concern. State legislators often help steer contracts toward those who do them favors.

Consider a recent New York bribery case involving Assemblyman Eric Stevenson. Stevenson got favorable legislation for a local nursing home in exchange for a relatively small \$22,000 bribe.³³ He was able to deliver something that an unscrupulous person was willing to pay for, and there were not numerous legislative obstacles to Stevenson doing so.

While the argument that members of Congress have relatively less power than average state legislators is plausible, it would take much more work to see if this explanation provides any leverage to explain variations in states. We would need a measure of relative legislator power across states.

Further, there are many measures of power. For example, it may be wrong to assume that individual members of Congress or the U.S. Senate lack power even given gridlock and committee structures. In addition to the power of individual senators to withhold consent from virtually any Senate business, subject to an override by Senate vote, U.S. senators seem to have considerable power to exercise informally in dealing with executive agencies. Consider the current corruption prosecution of U.S. Senator Robert Menendez from New Jersey. According to a federal prosecutor, “Robert Menendez, a U.S. senator, and Dr. Salomon Melgen, a Florida ophthalmologist, were indicted today in connection with a bribery scheme in which Menendez allegedly accepted gifts from Melgen in exchange for using the power of his Senate office to benefit Melgen’s financial and personal interests.”³⁴

If it is true that U.S. senators have great relative power, then the power explanation does not hold up well to the evidence of corruption convictions. In the 2000 to 2014 period, none of the six convicted federal legislators came from the U.S. Senate; all came from the House.³⁵ As of this writing, Senator Menendez has not been convicted of a corruption-related crime.

33. Benjamin Weiser, *Former Bronx Assemblyman Sentenced for Corruption*, N.Y. TIMES (May 21, 2014), <http://www.nytimes.com/2014/05/22/nyregion/former-bronx-assemblyman-sentenced-for-corruption.html> [http://perma.cc/7NC7-X54M].

34. Evan Perez & Shimon Prokupecz, *Menendez Claims Innocence After Indictment*, CNN (Apr. 2, 2015) (quoting Justice Department spokesperson Peter Carr), <http://www.cnn.com/2015/04/01/politics/robert-menendez-corruption-charges/> [http://perma.cc/K3QA-KB3N].

35. See *supra* note 14 and accompanying text.

In all, without a good measure of the true power of legislators, this hypothesis is too difficult to test. Even if we tested it and found that legislators with greater power are likely to be bribed more, it is not clear what reform would flow from such a finding.

C. Part-Time Legislators and Legislative Compensation

A final potential explanation for variance in the amount of public corruption is whether the legislature is part-time and, relatedly, whether the state compensates legislators poorly. The theory is that there should be more corruption in those states in which legislators are undercompensated because more financially strapped legislators would be willing to supply government favors for money. Further, part-time legislatures must necessarily allow legislators to get outside income in order to have a decent living, and outside income becomes an easier way to hide illegal payoffs (as alleged in the Silver indictment).³⁶

The preliminary evidence, however, contradicts the argument. Once again, I compare the top five least corrupt states per capita with the top five most corrupt states, and I use the National Conference of State Legislature's coding of the type of legislature (a "hybrid" is somewhere between a full-time legislature with professional staff and a part-time legislature). Tables 4 and 5 show once again that no distinct pattern emerges. Two of the top five and bottom five states, for example, have part-time legislatures with low pay and small staff.

Table 4

States with Most Public Corruption Convictions <i>Per Capita</i>	Type of Legislature
1. Louisiana	Hybrid (Middle)
2. Mississippi	Part-time (Lite)
3. Alaska	Full-time (Lite)
4. South Dakota	Part-time, low pay, small staff
5. North Dakota	Part-time, low pay, small staff

36. See Rashbaum & Kaplan, *supra* note 10.

Table 5

States with Fewest Public Corruption Convictions <i>Per Capita</i>	Type of Legislature
46. Minnesota	Hybrid
47. New Hampshire	Part-time, low pay, small staff
48. Utah	Part-time, low pay, small staff
49. Washington	Hybrid
50. Oregon	Hybrid

There also is no strong evidence connecting the amount of legislative compensation to the amount of corruption. The rates of pay in the top five states, aside from Alaska, are pretty low.³⁷ New Hampshire, the fourth least corrupt state, pays its legislators just \$200 for a two year term.³⁸

Table 6

States with Most Public Corruption Convictions <i>Per Capita</i>	Compensation
1. Louisiana	\$16,800 (Plus \$6000 for expenses)
2. Mississippi	\$10,000
3. Alaska	\$50,400
4. South Dakota	\$6000/session (For committees)
5. North Dakota	\$162/day during legislative sessions

37. *See infra* Table 6.

38. *See infra* Tables 6, 7.

Table 7

States with Fewest Public Corruption Convictions <i>Per Capita</i>	Compensation
46. Minnesota	\$31,140
47. New Hampshire	\$200/two-year term
48. Utah	\$273/day
49. Washington	\$42,106
50. Oregon	\$129/day

III. CAMPAIGN FINANCE AND PUBLIC CORRUPTION: TWO PROBLEMS, TWO SOLUTIONS

The issues raised by campaign finance and the issues raised by public corruption are mostly separate. Surely, campaign contributions can be bribes, and unlimited campaign contributions, especially when the funds can be converted to personal use, raise corruption concerns.

But the primary problem with our increasingly unregulated campaign system is one of inequality. Those with great economic power can use their wealth to parlay it into outsized political power, influencing both the outcome of elections as well as public policy. As I argue elsewhere,³⁹ the way to ameliorate some of the inequality is a combination of public financing in the form of campaign finance vouchers and limits on contributions and spending.

The corruption problem is addressed more directly through appropriate prosecution and public accountability. The Campante and Do research on geography and corruption shows that the key to this accountability is an aggressive and muckraking media whose work the public consumes and acts upon.⁴⁰ Indeed, in his keynote address to the symposium of which this Article is a part, Preet Bharara, U.S. Attorney for the Southern District of New York, pointed to the media's key role in detecting and ferreting out corruption.⁴¹

39. RICHARD L. HASEN, *PLUTOCRATS UNITED* (forthcoming 2016).

40. Campante & Do, *supra* note 8.

41. A reporter describing U.S. Attorney Bharara's remarks wrote, "The media, he stated, is to serve as the biggest channel to help prevent and limit corruption." David Malinowski, *NY Prosecutor Preet Bharara Explains How a 'Veil of Ignorance' Leads to Corruption*, BENZINGA (Mar. 11, 2015), <http://www.benzinga.com/news/15/03/5306799/ny-prosecutor-preet-bharara-explains-how-a-veil-of-ignorance-leads-to-corruption> [http://perma.cc/J2HZ-9AAT]. For video footage of the keynote address, see FORDHAM L. REV., <http://fordhamlawreview.org/articles/fighting-corruption-in-america-and-abroad-keynote-address-by-u-s-attorney-preet-bharara> (last visited Oct. 21, 2015) [http://perma.cc/PBB2-WU2J]. His remarks appear at the forty-one minute mark.

For this reason, my preliminary recommendation for stemming public corruption is to subsidize muckraking journalism on the state level, along the lines of the ProPublica model.⁴² In this model, nonprofit public interest journalism partners with traditional journalism to provide muckraking content to local news outlets.⁴³ Scandals sell, and ferreting out scandals is positively associated with public-regarding legislation.

We can no longer rely on the free market in news coverage to provide this muckraking journalism. Especially in the internet era, newspaper coverage of state and local politics is sparse. There is not even enough money to cover normal state politics. In Los Angeles, for example, all the local television stations have closed their Sacramento bureaus covering California state politics.⁴⁴ Perhaps it is no coincidence that California has seen its own growing share of corruption prosecutions.⁴⁵ To take another example, until recently, smaller local cities surrounding Los Angeles were rife with corruption in part because there was no aggressive press to pay attention to the cities' politics and problems.⁴⁶ It has only been after the Bell, California corruption scandal broke that more sustained local media attention and scandal coverage has led to greater accountability in these smaller cities.⁴⁷ Corruption flourishes when no one is watching.

Subsidizing the press for an investigative function is a public good. And it could save the public money in the long run, as those who would sell out

42. For information on ProPublica's business model, see *Reflections on Progress Toward Sustainability at ProPublica*, KNIGHT FOUND. (Oct. 19, 2011), <http://www.knightfoundation.org/press-room/other/reflections-progress-toward-sustainability-propubl/> [<http://perma.cc/HBY3-MRPS>].

43. See *id.*

44. Kevin Roderick, *ABC Closes Last TV Bureau in Sacramento, Lays Off Nanette Miranda*, L.A. OBSERVED (Aug. 29, 2013), http://www.laobserved.com/archive/2013/08/abc_closes_last_tv_bureau.php [<http://perma.cc/NXC9-H9X5>].

45. Norimitsu Onishi, *California Democrats Await Fallout After 3 Are Caught Up in Scandals*, N.Y. TIMES (Apr. 3, 2014), <http://www.nytimes.com/2014/04/04/us/california-democrats-await-fallout-after-3-are-caught-up-in-scandals.html> [<http://perma.cc/62VB-QFGM>].

46. D.J. Waldie, *When No One Was Looking: Cudahy, Vernon, Santa Fe Springs, Bell*, SOCAL FOCUS (July 2, 2012), http://www.kcet.org/updaily/socal_focus/commentary/where-we-are/when-no-one-was-looking-cudahy-vernon-santa-fe-springs-bell.html [<http://perma.cc/XA7J-BCL8>].

In the past 30 years—and this is not a comprehensive list—city officials in La Puente, Monterey Park, Pico Rivera, Rosemead, Compton, and Temple City were charged with corruption. A South Gate city treasurer was found to have embezzled \$20 million. A Lynwood mayor pocketed \$6 million in kickbacks. City council members in Vernon continued a regime of startling malfeasance. City officials in Huntington Park went through several rounds of investigations, as did those in Hawthorne, Montebello, and Irwindale. Administrators in Bell undertook so brazen a scheme of looting that District Attorney Steve Cooley called it “corruption on steroids.” . . . For the past 30 years, the amount and the depth of the news media coverage of smaller and middle-size cities in Los Angeles County have declined. The big papers have withered; the little weekly papers are gone. Over the past 30 years, the level of voter participation in cities with little news coverage has drifted lower and lower. Turnouts of less than 10 percent of registered voters are not uncommon.

Id.

47. See *id.*

the public interest for a bribe are likely to cost the state significantly more than the salaries of earnest journalists looking to make state capitals an honest place.

Members of Congress are less likely to be convicted of corruption than state legislators, not because they are better people, but because everyone is watching. When the media can watch closely, and report to an interested public what they find, corruption should go down.