

FORGET TRANSPARENCY. FOCUS ON THE HONEYPOT.

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Friday, 10 November 2017

ABSTRACT

Transparency about the identity of donors and lobbyists is often seen as crucial to maintaining local government integrity. However, a growing body of evidence shows that transparency alone is rarely effective at removing the temptation, or indeed the action, of favouring related parties through local government decisions such as zoning and government procurement. A better way to tackle this temptation is to focus on the 'honeypot', or the private value of public decisions. Removing the value of favours, such as by charging market prices for favourable rezoning decision, removes the economic incentive to donate or lobby local government representatives in the first place. The ACT has successfully maintained such a planning system for nearly half a century, and if it was adopted in other states in Australia it would raise \$11 billion per year rather than allowing that multi-billion dollar honeypot to be given to private interests with political discretion.

Prepared for Australian Public Sector Anti-Corruption Conference, 14 to 16 November 2017

THE SYSTEM UNDER CONSIDERATION

Planning systems are a method by which the bundle of property rights held by competing private and public interests can be managed to ensure the orderly and cohesive development of towns, cities and regions. But because changing components of the planning system necessarily involves giving away new property rights to some landholders, the modifying rules and plans within the planning system has enormous power to make millionaires out of some landholders. It is this honeypot of valuable new property rights that is the key to tackling corruption in the planning system. Because where there is honey, you attract flies.

Mostly however, the community of activists and policy wonks has instead focussed on the transparency of political donations, or on banning donations from certain organisations, like property developers. These ideas stem from the incorrect view that corruption and political favouritism is the result of moral human frailties that tempt them to try and bribe (and accept bribes), and that if they knew they were being watched they would instead act ethically. Those who trade in political favours are proud of it, and feel great for looking after their mates! That's why corruption is always so hard to genuinely tackle, and one reason transparency will not get the outcomes it is often hoped to.

THE PUSH FOR TRANSPARENCY

A concerted lobbying effort by political parties and activists resulted in the Queensland government introducing 'real time' disclosure of political donations in 2016. The Electoral Commission Queensland now hosting a publicly accessible electronic database with immediate publication of donations given and received. It is now quite easy to see, for example, that The Trustee for GPG

Management Trust donated \$10,000 to the Queensland LNP on the 6th of October 2017. Rather than having to wait six months, we know immediately that some hidden unknowable entity with unknowable corporate and financial relationships has donated to a major political party.

In effect, the public has gained nothing. And I expect that donations through more elaborate corporate and trust structures will continue to be routine unless a concerted effort to allow only individually-named donors is made.

The fundamental economic rationale for transparency is also not clear. So what if everybody sees you donate? The whole point of a donating is to be seen in order for political parties and organisation know who to favour, and who to expect will reciprocate favours in the future!

Donations are most certainly not bribes for a select set of political decisions, despite this being a commonly held view. In a study in rezoning decisions in Queensland I took data on landholders immediately within, and those immediately beside, rezoning boundaries, and looked at data on corporate records, political donations, lobbying activity, industry group membership, and other relationships (Murray & Frijters, 2016). What was clear from the data is that donations do not help predict which landholders got the favourable rezoning over those who just missed out. What did predict which landholders were winners in the rezoning lottery were two things; 1) hiring a professional lobbyist, and 2) being well-connected in the industry through corporate and industry group associations. Therefore, the focus on tackling corruption in planning should at a minimum be focussed on relationship networks, the revolving door, and professional lobbyists.

Indeed, the logic of donations as bribes overlooks the fact that 1) donations are made to political parties, not people, therefore any individual rewards are extremely low, 2) the amounts donated are tiny in comparison to the size of the favours given, 3) that 60% of donations come from entities who donate to both sides of politics in equal amounts (Murray & Frijters, 2017), and 4) that it is possible to 'pay for political favours' afterwards, rather than beforehand, by giving well-paid jobs directly to key politicians and in effect giving far greater sums of money directly.

The failure of this 'bribe logic' is also evidence in experimental settings. I created a computer-based experiment that allowed for repeated exchanges of favours over time, small groups formed to allocate and reciprocate favours amongst each other at a cost to the rest (Murray et. al., 2017a). Students earned real money during the game and were paid in cash afterwards, so their decisions had real and immediate financial effect on others. Here, I tried to combat this behaviour by having players see photos of the other players in the game, hoping that public gaze (and even the possibility of physical violence in the elevator afterwards) would reduce favours and enhance the overall group outcomes. Instead, the photos allowed for faster formation of loyal alliances that were longer lasting. The reason being that by giving a favour while you can be seen giving it in front of the public is a very good signal of just how loyal to the alliance of favour-traders you are!

If we think of the current political climate, it too provides evidence that transparency alone is of little value. Senator George Brandis has gone so far as to defend former Liberal minister Bruce Billson who took a salary as a lobbyist while in government. All of this is out in the public and still nothing is done about it. The reason for this is that by withstanding the public scrutiny and failing to back down and investigate or even denounce the behaviour, it reinforces the loyalty amongst the party and its

backers. They have signalled that they will be loyal to the game of trading favours no matter what comes their way.

REDUCE THE ABILITY TO REPAY FAVOURS

One alternative to transparency is to instead focus on reducing the ability for those forming groups by trading favours to reciprocate. For example, one method is to increase scope and time of cooling-off periods for politicians and senior bureaucrats. In Queensland for example, former Premier Campbell Newman took a salary (indirectly) from property developer Maha Sinnathamby immediately after losing the election. Former Queensland planning Minister Terry Mackenroth has also worked for property developers after leaving office.

However, because cooling-off periods only apply to professional consultant lobbyists (who must be recorded on the lobbyist register), and not to working directly within companies or industry groups (which escape the lobbyist register despite their main activity being to lobby on behalf of their members), this behaviour was completely legal. Had there been laws in place that prohibited this behaviour, it would instead be an instance of illegal corruption.

The lesson here is that an anti-corruption agency needs rules in place that make behaviour that is unacceptable to the community against a law and therefore punishable. Instead, we have laws that ensure that what would be corrupt in many countries is just the way business is done in Australia, making any transparency of this behaviour even less effective.

REMOVE THE \$11 BILLION 'HONEYPOT'

The main solution to political favouritism in planning is to remove the enormous economic honeypot — the private economic gains from political decisions — that is given away for free at the discretion of States and councils across the country.

It seems obvious to the casual observer that if the town plan of a city remained unchanged for all time that there would be little to gain from council planning decisions. Either a development meets the plan, or it does not. The reality is instead that plans change, and these changes can be extremely valuable for some landholders who receive new property rights from the new plan.

To establish the economic size of new property rights granted to landowners through changes to the planning system, the honeypot, is it necessary to determine a plausible counterfactual situation from which these gains can be benchmarked. One such system has been in operation in the Australian Capital Territory (ACT) for nearly 50 years, and there it is now known by the rather mundane name of a Leave Variation Charge (LVC).

Put simply, in the ACT the property title records an allowable use, and when that use is changed (the property's leasehold title is varied) to one that makes the property right more valuable, these value gains are taxed at 75% of their market value. Or to put it another way, the new property rights made available by the planning system are sold to landholders who want to utilise them for a 25% discount on the market value. The ACT government raised \$19 million via these charges in 2014-15.

However, this underestimates the size of the honeypot because in the ACT there are no private land subdivisions. A government agency, the Land Development Authority (LDA), acts as a land developer, converting rural to urban land and selling serviced parcels of vacant land to home

builders. In effect, by doing this they capture 100% of net land value gains from 'rezoning' the land to urban uses, which is one of the main activities of property developers in other states. The LDA paid a \$164 million dividend to the ACT government from these activities in 2014-15, representing another method by which they capture the honeypot rather than give it away for free to private interests.

This type of system has also been achieved on a small scale in other States too. For example, in Brisbane, the Southbank area after Expo '88 was redeveloped under the control of the public South Bank Corporation, which allowed it to self-fund major public parklands by selling property rights allowing higher density to the private sector.

In fact, in Sydney between 1970 and 1973 there was a 30% betterment levy on land converted from rural to urban uses, which was implemented due to concerns about funding infrastructure investment for the growing city. The levy raised over \$1 million in its first year, peaking at \$7 million in 1972-73 during its last full year of full operation, for a total revenue of over \$17 million (including delayed payments that arrived in later years). As Archer (1976) noted in a review of the scheme:

The abolition of the levy was, in effect, a gift from the N.S.W . Labour Opposition and the N.S.W. Government to the landowners (at the expense of the future land users).

Returning now to the present, through its combined schemes the ACT raised over \$183 million in 2014-15 from land value gains that in other States go to directly private landholders at no charge, and provide no additional incentive to develop. Scaling up from the average price and quantity of new dwellings in the ACT to the prices and quantity of new dwellings in other states, a ballpark estimate of the total public revenue available across the country from adopting a similar system is \$11 billion per year (Murray & Frijters, 2017).¹ This is the size of the honeypot that landholders swarm around in other states, and the available jackpot from their investments in lobbying, cajoling and even in rare cases bribing, public officials and politicians.

Any policy reform that seeks to reduce outright corruption in town planning, or radically reduce the completely legal and routine political favouritism we see in the planning system, needs to get rid of this honeypot. The ACT provides one method, which is easily adopted in other states. But São Paulo, Brazil, offers another way.

Since 2002 São Paulo has offered new property rights in the form of *Certificates of Additional Construction Potential* for sale to landholders in certain parts of the city who wish to develop their parcels to higher density. In the twelve years to 2014 the city raised over USD 2 billion from selling these property rights at periodic auctions in just a few select parts of the city.

We also know that taking away the honeypot works in experiments on favour trading. In the same setup where I tested transparency, I also tested what would happen if the size of the favours able to be traded was reduced. Here, the formation of groups completely ceased — it simply was not worth the risk to try and form a group and find loyal counterparts for such small rewards (Murray et. al. 2017b).

¹ This comprises \$3.6 billion for NSW, \$3.3 billion for Victoria, \$1.8 billion for Queensland, \$1.6 billion for Western Australia, \$400 million for South Australia, and \$80 million each for the Northern Territory and Tasmania.

REMOVE DECISION-MAKING POWERS

An even more radical option to reduce corruption is to take the decision-making power of town planning away from politicians and bureaucrats altogether by instead having citizen juries make decisions about planning schemes, with the role of the planning departments or council officers, simply to assess applications strictly against that plan.

This would ensure that the ultimate decision-makers, the jury, could not establish long-run games of reciprocal favour-trading. And it would likely produce planning documents that are far more clear and accessible to both the public and potential property developers. Such plans could also nominate the public infrastructure investments that could be conditions of approving developments, which would align the incentives of developers and the councils to both pursue infrastructure upgrades as areas develop. In Germany, such jury systems have been used hundreds of times in past decades develop city plans.

IN SUM

There is nothing stopping us cleaning up the planning system except a misdiagnosis of the problem. The problem is not that people are bad and are hence tempted to bribe officials and politicians by using political donations. The problem is that people are good at favouring their mates when they have the discretion to do so, and at the same time convince themselves that what is good for their mates if good for society. To come back once again to my computer experiments, those that have formed loyal groups of mates who traded favours at the expense of others were happier (they felt good looking after their mates) and easily able to justify their behaviour on the basis that it was 'the nature of the game', and that 'everyone else would do it'.

If our ambition is to have a planning system as corrupt and unaccountable as NSW, then we can certainly focus on banning donations from property developers and transparency of other donations. But this misses the real issue. The real issue is about groups of loyal mates forming to exchange favours, and one of the most valuable favours is the ability to decide through the planning system which landholders will be given multi-million property rights from the community that instead could be sold to them.

If the Australian States simply copied the system that has worked successfully in the ACT for nearly half a century they could raise \$11 billion per year, and in doing so, remove the incentive to influence council politics and State planning. Rather than make NSW our ambition, it would be an absolute pleasure to have anti-corruption agencies investigating cases of corruption in planning over amounts of five or ten million, as recently happened in the ACT. Instead, we are \$11 billion behind and politicians are rewarded for giving property rights from the public to their mates for free, and all of it is completely legal.

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