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Legislative Ethics and Codes of Conduct

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Legislative Ethics and Codes of Conduct

Rick Stapenhurst, Riccardo Pelizzo

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Legislative Ethics and Codes of Conduct

Rick Stapenhurst and Riccardo Pelizzo¹

The purpose of this paper is to discuss why and how ethics reforms have been enacted by many parliaments in the course of the past decade. Our argument is fairly straightforward. Politicians' perceived irresponsiveness, various forms of misconduct and corruption scandals have eroded voters' trust in politicians and political institutions. In order to induce a more ethical behavior among politicians as well as to rebuild public trust in political institutions, ethics regimes have been adopted by several legislatures. Such regimes have generally taken two main forms: ethics codes and conduct codes. Ethics codes tend to be fairly general documents: they formulate broad principles of behavior but they do not define what is appropriate and what is inappropriate behavior, nor do they establish sanctions for violations of the code. By contrast, codes of conduct tend to contain very specific provisions with clear sanctions for those who violate the dispositions of the code. Terminological confusion arises, however, because some parliamentary ethics codes include dispositions and sanctions that are more commonly found in codes of conduct. This paper attempts to clear this terminological confusion, reviewing the dispositions and sanctions that may be included in both ethics and conduct codes, with special attention to probable success factors. It underlines the importance of cultural factors, suggesting that one of the success factors is whether the individuals that the code is regulates actually share the same ethical standards, have a common understanding of what is appropriate behavior and a common understanding of what constitutes misconduct.

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Foreword

As part of its Governance program, the Poverty Reduction and Economic Reform Division of the World Bank Institute (WBIPR) has sought to strengthen parliamentary oversight – in part, by improving parliaments’ own accountability to the electorate. In parallel, efforts have been made within WBI and elsewhere in the Bank to promote the ethical behavior in both the public and private sectors.

Starting from the premise that if parliaments are to promote greater government accountability and transparency, they must be more accountable to the citizenry and transparent in their operations, this Paper investigates how some legislatures have attempted to create an ethics regime and illustrates how such regimes and codes of conduct can promote good governance.

The Paper is divided in two parts. The first part examines the need for an effective ethics regime. It is argued that as corruption and other forms of legislative misconduct are bad for democracy, they must to be eliminated and that the establishment of an ethics regime can be helpful in so doing. The second part provides an in depth investigation of codes of conduct. The evidence presented reveals that there is considerable variation in how specific might be the dispositions of a code of conduct, in how severe might be the sanctions imposed by the code of conduct and in the type of institutions that might enforce the ethics regimes. The Paper concludes with a section drawing tentative conclusions about the utility of such codes and rules and what factors may contribute to their success.

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Introduction

In the course of the past decade, citizens' satisfaction with democracy in the developed countries has markedly declined. This decline was caused by interaction of several factors, including the non-responsiveness of politicians, the non-accountability of politicians, and voters' perceived loss of political efficacy. Indeed, an increasing percentage of citizens developed the beliefs that politicians are principally concerned with power, that politicians do not care about what people think, and that normal citizens are unable to affect the political decision making process. In other words, what citizens were worried about was that the responsiveness of the political system was vanishing and that this trend was coupled with voters' perception of their diminishing efficacy in the political arena.

These phenomena are fairly well known in the political science literature. Some scholars even argued that political systems, by discounting voters' political demands, had come to resemble oligopolistic markets². The fact that parties and politicians are perceived to discount voters' demands not only explains the sense of low political efficacy or the sense of limited responsiveness of the system, but it also provides a compelling explanation for the emergence of protest politics³.

Voters' dissatisfaction with parties, politics and politicians, indeed, how democracy works, increased even further when major corruption scandals were discovered in several established democracies. The discovery of corruption practices, of corrupt officials and corrupt politicians had a profound impact on the political system of several countries, not only because it significantly affected the electoral fortunes of several parties, but also - and more importantly - because it changed voters' perception of the political system. Indeed, the fact that parties and politicians were not particularly accountable and responsive could be interpreted as a sign of the fact that democracy was not working very well.

The lack of parties' responsiveness, voters' perceived loss of political efficacy and political corruption eroded the credibility of democratic politics and led to a widespread and mounting cynicism. A 1998 report noted that in Australia "esteem for politicians is so low at the present - and still declining - that voters are dealing with the problem by insulating themselves from it. They repeatedly talk of the need for leadership, of the mongrels in Parliament, of polities with their snouts in the trough, of the spinelessness of the Prime Minister...conversations about politics were characterized

² The notion of a cartel of party was originally developed by Richard S. Katz and Peter Mair, "Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party", *Party Politics*, vol. 1, n. 1, 1995, pp. 5-28. See also Mark Blyth and Richard S. Katz, "From Catch-all-ism to Reformation: The Political Economy of the Cartel Party", European Consortium for Political Research Joint Sessions of Workshops, Grenoble, March 2001; Mark Blyth, "The Political Economy of Political Parties: Beyond the Catch-all-ic Church?", paper prepared for the 2002 Meeting of the Council for European Studies, Chicago, 14-17 March; Richard S. Katz, "Whose Agent? Principles, Principals and Party Politics", paper prepared for the 2002 Meeting of the Council for European Studies, Chicago, 14-17 March. The most comprehensive discussion of these and similar issues can be found in Riccardo Pelizzo, *Cartel Parties and Cartel Party Systems*, Dissertation submitted to Johns Hopkins University in conformity with the requirements for the Degree of Doctor of Philosophy, Baltimore, MD, 2003.

³ Russell J. Dalton, *Citizen Politics. Public Opinion and Political Parties in Advanced Western Democracies*, Chatam, NJ, Chatam House Publishers, 1996, pp. 67-85.

by a sense of bewilderment that things have got so bad; a sense of deep mistrust of politicians on both sides; a level of cynicism bordering on contempt”⁴. The situation was not very different in Canada, where Donald H. Oliver observed that “there is little doubt that there is considerable public cynicism towards politics and politicians...the public has also become more distrustful of politicians in general. Whether we as a group are in fact less ethical today than in the past is unclear and perhaps irrelevant. What is essential is that we respond to the existing climate by making more efforts than in the past to be, and to be seen to be, men and women of integrity”⁵.

As discontent and cynicism mounted, politicians became increasingly aware of and sensitive to voters’ dissatisfaction. Some legislatures and legislators made concrete efforts to regain voters’ trust and confidence, principally by making concrete efforts to create ethics regimes. The creation of ethics regimes, in turn, required a double strategy, namely an internal and an external strategy. With regard to the external strategy, legislatures needed to publicize their rules not only to show the public that they were genuinely committed to creating and enforcing an ethics regime, but also to clarify to the voters what behavior was appropriate (and should not be criticized) and what behavior was inappropriate (and should be criticized and punished). With regard to the internal strategy, legislatures needed to take several steps to prevent various forms of legislative misconduct (and, above all, corruption) from occurring, to punish clear instances of misconduct, and to improve the behavior of legislators⁶.

The purpose of the present paper is to investigate how some legislatures have attempted to create an ethics regime and to show how such regimes and codes of conduct can promote good governance in developing and/or democratizing countries.

This paper is divided in four parts. The first part of the paper is devoted to the need for an effective ethics regime. The argument in this section is pretty straightforward: It will be argued that as corruption and other forms of legislative misconduct are bad for democracy, they must to be eliminated and that the establishment of an ethics regime is quite helpful to do so. This part of the paper also discusses how an ethics regime can be established (e.g. through the establishment of codes of conduct and ethics rules). In this part of the paper we argue that there is a considerable confusion with regard to what is exactly a code of conduct and what is exactly a code of ethics. This terminological confusion is very important as it is the reason why the ethics rules (and sanctions) that are found in countries that have adopted a formal code of conduct are not dramatically different from those which have not. The second part of the paper provides an in depth investigation of codes of conduct. The evidence presented in this part of the paper reveals that there is considerable variation in how specific might be the dispositions of a code of conduct, in how severe might be the sanctions imposed by the code of conduct and in the type of institutions that might enforce the ethics regimes. The third part of the paper makes an important point as it shows that the success of ethics

⁴ H. Mackay, *Mind and Mood*, June 1998 as quoted by Dr. Andrew Brien (Consultant), *A Code of Conduct for Parliamentarians?* Research Paper 2, 1998-99, Department of the Parliamentary Library, Parliament of Australia.

⁵ Hon. Donald H. Oliver, *Code of Conduct. Consideration of Final Report of Special Joint Committee Debate Adjourned*, Debates of the Senate, 2nd Session, 35th Parliament, volume 136, March 20, 1997.

⁶ Scholars have pointed out that there is a difference between misconduct and corruption. Misconduct is the failure to comply with the rules and the dispositions of a code of conduct, but it is not a criminal offence. Corruption is instead a criminal offence. On this see Chris Skelcher and Stephanie Snape, “Ethics and Local Councilors: Modernising Standards of Conduct”, *Parliamentary Affairs*, 2001, pp. 72-78.

reforms and ethics codes depends on what we call complementary factors. Specifically we discuss how the effectiveness of ethics codes relate to factors such sanctions, political attitudes, political culture and training. The fourth, and final, part of the paper draws some tentative conclusions about the utility of such codes and rules and what factors may contribute to their success.

Part One: The Need for an Effective Ethics Regime

In a democratic system, each citizen has the right to exercise as much influence on the political process as any other citizen. In fact, in democratic regimes each citizen has the right to cast his or her vote at the elections and to influence, through the vote, the composition of the legislature as well as the selection of the government.

Yet, as soon as corruption phenomena develop, two basic problems emerge. One is that those citizens who have more financial means at their disposal and then use these financial means to corrupt elected officials, acquire additional influence over the political process. This is a violation of the spirit and the principles of democracy, that is that each citizen is supposed to exercise equal power on the political process.

However corruption creates a second, and not less menacing, problem for democracy, because corrupt politicians could utilize for their electoral campaigns their illicitly obtained resources, acquire an advantage over the other candidates, and improve their chances to be elected. By doing so, corrupt candidates distort electoral competition, prevent the people's will from being properly expressed and, by doing so, they violate the spirit of democracy. And to the extent that it violates the spirit of democracy, corruption poses a direct threat to democracy.

However, corruption is not the only threat to democracy. Any form of legislative misconduct undermines the public trust in the democratic system and, by doing so, it poses an indirect, albeit not less menacing, threat to the democratic system⁷. As Martin Lipset pointed out more than four decades ago the single most condition for making democracy survive is that democratic system's legitimacy⁸.

The creation of an ethics regime represents an attempt to regulate the behavior of legislators and to rebuild the public trust in the political system. The question is: is this really true? And, if so, how can an ethics regime be established? What are the basic elements of an ethics regime?

Creating an Ethics Regime: Companies and the Global Market

The notions of ethics regimes, ethics reforms, codes of conduct, codes of ethics, ethics rules were originally developed with regard to the private sector. As the economy and the markets went global, and states were no longer able to control, assess, and possibly sanction violations of labor codes and environmental standards.

The globalization of the world economy has certainly created new opportunities for companies. For example companies can now shift their production to parts of the world where the cost of labor is cheaper, reduce their production costs and thus increase their profits. But globalization has also created new restrictions for companies. As the world economy became increasingly globalized, customers became increasingly concerned with the ethical, environmental, labor standards of the

⁷ A discussion of corruption and misconduct can be found in Chris Skelcher and Stephanie Snape, "Ethics and Local Councilors: Modernising Standards of Conduct", *Parliamentary Affairs*, 2001, pp. 72-78.

⁸ Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy", *American Political Science Review*, vol. 53, n.1, 1959, pp. 69-108.

companies that had gone global. Customers, for example, boycotted products and companies which were suspected not to respect some basic ethical standards.

Customers' rising ethical concerns has rapidly and radically reshaped the environment in which companies operate. Companies' reputation has now become a precious asset and companies need to protect it. The economic success and the company's survival may be depend on the companies' reputation. Not surprisingly, companies in the past fifteen years have made conscious efforts to protect their reputation and reassure their customers.

They have done so by adopting codes of ethics, codes of conduct, by establishing internal monitoring mechanisms or even by allow independent auditors to investigate and report whether companies manage to meet the ethical standards that they set for themselves⁹.

Creating an Ethics Regime: the Public Sector

In the past decade, the public has become increasingly sensitive to ethics violations not only with regard to the private sector but also, and more importantly, with regard to the public sector. The public in several industrialized democracies became increasingly displeased by what it considered to be patent ethics violations (corruption, misconduct, and so on). Citizens' dissatisfaction with the functioning of various political regimes, quickly translated into falling levels of satisfaction with democracy, into falling levels of trust, and into increasing level of popularity of protest parties and protest politics.

To revert these trends, to reconstruct citizens' trust in the functioning of the political system and the public sector, legislators, administrators and bureaucrats understood the need for ethics reforms. The adoption of an ethics regime was intended to serve both an internal and external function. Internally, the enforcement of an ethics regime was intended to improve the ethical standards and performance of public officials¹⁰. Externally, it was intended to regain the confidence of the public.

The questions are "Do we have any evidence as to whether the perception of public officials' behavior is affected by the adoption of ethics reforms?" and "Do we have any evidence of the fact that officials' behavior perceived to be more ethical when ethics regimes are enforced?" The answer is yes, we do. In 1993, Willa Bruce mailed a questionnaire to 1,286 members of the International Institute of Municipal Clerks¹¹. More than 40% of them responded. Bruce found that public

⁹ Ann Fiorini, "Business and Global Governance: The Growing Role of Corporate Codes of Conduct", *Brookings Review*, vol. 2, 2003, pp. 4-8; Dara O' Rourke, "Outsourcing Regulations: Analyzing Nongovernmental Systems of Labor Standards and Monitoring", *The Policy Studies Journal*, vol. 31, n. 1, 2003, pp. 1-29 ; Gay W. Seidman, "Monitoring Multinationals: Lessons from the Anti-Apartheid Era", *Politics and Society*, vol. 31, n. 3, 2003, pp. 381-406.

¹⁰ It is a well known fact in the literature that ethical public officials are actually productive. See Willa Bruce, "Ethical People are Productive People", *Public Productivity Review*, vol. 17, n. 3, 1994, pp. 241-252. See also Willa Bruce, "Controlling Corruption in Municipal Governments around the Globe", in Uri Berlinsky, Aaron Friedberg and Simka B. Werner (eds.), *Corruption in a Changing World, Comparisons, Theories, and Controlling Strategies*, Jerusalem, Chen Press, 1994.

¹¹ The results discussed in this paragraph were originally presented by Willa Bruce, "Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 23-29.

officials of the cities in which a code of conduct had been enacted were perceived to be more ethical than those employed in cities without a code had been adopted. About 94 % of the respondents “would say that employees in my city are generally ethical”, while only 88 % of the respondents would make a similar statement in cities without code of conduct. The perception of unethical acts was more widespread in cities with code of conduct (43% of the respondents) than in cities with a code of conduct (29% of the respondents). The percentage of respondents who believes that ethics violations are reported was higher in the cities with the code (84%) than in the cities without a code (72%).

These findings sustain the claim that as ethics reforms are enacted and ethics regimes, a larger percentage of the population perceived that the behavior of public officials is consistent with ethical standards. A further question is “How are ethics regimes created?”

Ethics Reforms, Codes of Conduct, Codes of Ethics

Ethics regimes are created by adopting codes of conduct, codes of ethics, ethics rules or all of the above. But what is a code of conduct? What is a code of ethics? Do they differ from each other? If so, how?

Let us begin by stressing an important point. There is a considerable confusion concerning the meaning of these concepts. According to the National Democratic Institute (NDI)¹², the major difference between codes of conduct and ethics rules is represented by the fact that the content of the codes of conduct is fairly general, while the content of ethics rules is fairly specific. The NDI paper pointed out that the objective of the codes of conduct “is to outline the overall principles of proper conduct. Given their aspirational and general nature, codes of conduct must be accompanied by detailed and specific “ethics rules”...these rules provide the details necessary to fulfill the goals set forth by codes of conduct”¹³. The paper placed a great emphasis on the fact that what differentiates a code of conduct from ethics rules is that the former is general and the latter are specific. In fact, it underlined that “unlike ethics rules that dictate expected behavior in great detail, codes of conduct are basic documents written in easily understood language that set forth broad goals and objectives that legislators seek to achieve”¹⁴. In sum, the content of a code of conduct is general and its nature is aspirational, while the content of ethics rules is specific and their nature is prescriptive.

A very different point was made in a research paper of the Australian Parliamentary Library. According to Brien “code of ethics and code of conduct are often used interchangeably. There is, however, an important distinction. A code of ethics identifies those ethical principles and values that are regarded as the foundation of an organization...such codes are usually aspirational, rather than prescriptive”¹⁵. In contrast to the codes of ethics, “codes of conduct specify certain rules for behavior, or standards to which a person’s behavior must comply. They are more specific than a

¹² National Democratic Institute, LEGISLATIVE ETHICS: A Comparative Analysis, Legislative Research Paper #4, 1999

¹³ National Democratic Institute, LEGISLATIVE ETHICS: A Comparative Analysis, Legislative Research Paper #4, 1999, p. 5.

¹⁴ National Democratic Institute, LEGISLATIVE ETHICS: A Comparative Analysis, Legislative Research Paper #4, 1999, p. 4.

¹⁵ Dr. Andrew Brien (Consultant), A Code of Conduct for Parliamentarians? Research Paper 2, 1998-99, Department of the Parliamentary Library, Parliament of Australia, p. 10.

code of ethics, in terms of the actions prescribed and proscribed. They leave less to discretion; they are less aspirational and more prescriptive”¹⁶.

In other words, for NDI ethics rules are prescriptive and codes of conduct are aspirational, while for Brien codes of conduct are prescriptive and codes of ethics (or ethics codes) are aspirational. A possible explanation for this terminological confusion can be found in the work of Florini¹⁷, who observed that companies create codes of conduct to protect their reputation and that there are two types of codes of conduct. One is aspirational and basically states what are the company’s ethical standards, its objectives, and its general principles; this types of code does not require certification that ethical principles are respected and ethical standards are met. The other type of code is prescriptive; this code is not only quite specific as to what exactly constitutes ethical or unethical behavior, but it requires certification of whether ethical principles are respected and ethical standards are met. If Florini is correct in saying that codes of conduct can be either aspiration or prescriptive, then the terminological disagreement between the NDI document and the Research Paper of the Australian Parliamentary Library would not be particularly problematic. It would just indicate that both documents failed to acknowledge the double-nature of ethics rules and codes of conduct.

There is, however, a different explanation. According to Willa Bruce, there is a substantial confusion concerning the meaning of codes of conduct and codes of ethics (or ethics codes). According to Bruce “neither legislators nor the general public understand what a code of ethics really is. Two different scholars describe the current approach to ethics codes as one of “confusion” (...) because of that confusion, many government entities have passed legislation that they erroneously call a “code of ethics”¹⁸. But codes of ethics should not specify “sanctions for violations of their provisions”¹⁹.

What, then, are ethics codes and codes of conduct? Ethics codes “are usually products of professional associations. They serve as a quality assurance statement to society and provide a set of standard for appropriate conduct for members of the profession that issues the code. Codes of ethics for those in government service challenge employees to identify with shared professional values that describe appropriate actions about acting rightly in the service of the public good”²⁰. Codes of conduct are quite different from codes of ethics. “Codes of conduct are more concrete and practical than ethics codes for they represent executive orders or legislatively defined and enforceable behavioral standards with sanction for violation. They contain a list of the kinds of behavior required in a given set of circumstances and provide direction to those whose conduct they govern. Often called “ethics laws”, they contain minimalistic prohibitions to unquestionably subversive or crimi-

¹⁶ Dr. Andrew Brien (Consultant), A Code of Conduct for Parliamentarians? Research Paper 2, 1998-99, Department of the Parliamentary Library, Parliament of Australia, p. 10.

¹⁷ Ann Fiorini, “Business and Global Governance: The Growing Role of Corporate Codes of Conduct”, *Brookings Review*, vol. 2, 2003, pp. 4-8.

¹⁸ Willa Bruce, “Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 23.

¹⁹ Willa Bruce, “Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 23.

²⁰ Willa Bruce, “Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 23.

nal acts. They are designed to protect the government employee, the client and/or the public at large”²¹. In sum, there is a major difference between codes of conduct and codes of ethics.

²¹ Willa Bruce, “Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 24.

Part Two: Legislative Codes of Conduct

As it was previously noted codes of conduct represent one way in which parliaments and parliamentarians have attempted to establish effective ethics regimes. A formal code of conduct has been adopted by the Fiji Islands, Germany, Grenada, Israel, Japan, Philippines, the United Kingdom and the United States of America while India has a customary code of conduct, while Chile and Poland are drafting a bill to enact a code of conduct²².

A legislative code of conduct is a formal document which regulates the behavior of legislators by establishing what is to be considered to be an acceptable behavior and what is not. In other words, it is intended to promote a political culture which places considerable emphasis on the propriety, correctness, transparency, honesty of parliamentarians' behavior. However, the code of conduct is not intended to create this behavior by itself. As Skelcher and Snape pointed out "compliance with codes of conduct (...) encourages a decision-making environment in which fraud and corruption should be less prevalent. But they cannot stop such offences"²³.

How Specific Are the Provisions of A Code of Conduct?

How specific is a code of conduct? Codes of conduct are more specific than codes of ethics. Yet, there is considerable variation in how specific their provisions can be.

This point can be illustrated by the following examples. The dispositions of the American, British and South African codes of conduct are fairly general. "The United States House of Representatives provides a 12-point code of conduct for its members, who along with officers and staff, "must conduct themselves at all time in a manner which reflects creditably on the House"...the Code of Conduct for the Members of Parliament in the United Kingdom stresses that members "shall at all time conduct themselves in a manner that will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute"...(and) the South African parliamentary codes of conduct urges members to "maintain the highest standards of propriety to ensure that their integrity and that of their political institutions in which they serve are beyond question"²⁴. In each of these cases, the dispositions of the code of conduct were relatively general.

However, this does not mean that a code of conduct must always be fairly general in its dispositions. Code of conduct may require members of the legislature to disclose their interests concerning:

- 1) Tax returns
- 2) Sources of patrimonial income
- 3) Investments
- 4) Sources of income of business of a partner or shareholder
- 5) Ownership interest in a business

²² On this point see the dataset of the Inter-Parliamentary Union. This dataset can be found at the following website: www.ipu.org.

²³ Chris Skelcher and Stephanie Snape, "Ethics and Local Councilors: Modernising Standards of Conduct", *Parliamentary Affairs*, 2001, pp. 72-78. The quote is taken from pp. 73-74.

²⁴ National Democratic Institute, LEGISLATIVE ETHICS: A Comparative Analysis, Legislative Research Paper #4, 1999, p. 5.

- 6) Real estate interests
- 7) Offices and/or directorships held
- 8) Creditor indebtedness
- 9) Leases and other contacts with public entities
- 10) Retainers
- 11) Compensated representation before public entities
- 12) Fees and honoraria
- 13) Professional or occupational licenses held
- 14) Reimbursement of travel expenses from private sources
- 15) Deposits in financial institutions
- 16) Cash surrender value of insurance
- 17) Private employer or nature of private employment
- 18) Professional services rendered
- 19) Identification of trusts by trustee
- 20) Identification of trusts by beneficiary
- 21) Names of immediate family members
- 22) Financial interests of spouse.

In addition to asking legislators to disclose their interests, codes of conduct may impose some additional restrictions. Some of the restrictions apply while the legislator is in office (concerning for example the gifts a legislator is entitled to receive while he/she serves in office or remuneration for travel expenses) and some of them apply even after the legislator's tenure in office (as in the case of employment opportunities). The list of restricted activities include the following items:

- 1) use of public position to obtain personal benefit
- 2) providing benefits to influence official actions
- 3) use of confidential government information
- 4) post-governmental employment for 2-years
- 5) receipt of gifts by officials or employees above a certain value
- 6) receipt of fees or honoraria by public officials or employees
- 7) representation private clients by public officials or employees
- 8) financial conflicts of interest
- 9) nepotism
- 10) political activity by employees
- 11) competitive bidding
- 12) outside employment or business activities by public officials or employees
- 13) travel payments from non government services

Most of the provisions concerning financial disclosure, disclosure of interests, and employment restrictions (either during or after tenure in office) can be found in several countries. For example, the disclosure of all economic and financial interests (that is assets and income) by MPs is a practice that is found in 23 percent of the world countries for which the Inter-Parliamentary Union (IPU) data are available. In fact, 41 countries out of 181 require that members declare their personal assets. These countries are in alphabetical order: Algeria, Australia, Austria, Belarus, Belgium, Bolivia, Bulgaria, Cape Verde, the Czech Republic, Egypt, Equatorial Guinea, Estonia, the Fiji Islands, France, Hungary, Indonesia, Israel, Italy, Jamaica, Japan, Kenya, Latvia, Lesotho, Namibia, New Zealand, Paraguay, Poland, Portugal, Slovakia, Spain, Sri Lanka, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, the United Kingdom, the United States of America, Uruguay and Zambia.

The disclosure of interests, that is the fact that that parliamentarians should declare their present interests before debating an issue related to those interests, is also a relatively common protection against the so called ‘ conflict of interests’²⁵. This practice is included in the ethics rules of several countries, among which Australia, Canada, Czech Republic, France, Germany, Ireland, Korea, Mexico, Poland, South Africa, Spain, Sweden, Taiwan, the United Kingdom and the USA. In all of these countries conflict of interest restrictions try to prevent personal gains from the exercise of the public mandate. Interestingly, however, there is considerable variation in how strict are these regulations. For example, in Germany, Ireland and in the United Kingdom members must disclose their interests and possible conflicts of interest but they are allowed nonetheless to participate in the deliberations. By contrast, in Australia, Canada and South Africa members of the parliament are not allowed to vote on issues that may generate a conflict of interest. Similarly, the Swedish Parliament in 1996 ruled that “ A Member may not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter which concerns him (or her) personally or a close relative”.

Gift and travel restrictions are also fairly common as they are envisioned by the ethics rules of various countries. In Argentina, where the issue is directly regulated by the Criminal Code, MPs are not allowed to accept gifts which are given because of the members’ post. In Australia, members are allowed to receive gifts, unless these gifts may seem to generate a conflict of interest. Moreover, the Australian parliament ruled - with the 1984 House resolutions and the following modifications (respectively in 1986, 1988 and 1994)- that gifts must be disclosed on Registry of Members’ Interests if valued more than Aus \$ 500 (US \$ 329 in 1999) for gifts received from official sources and more then 200 Australian \$ if received from unofficial sources. Gifts received from relatives and personal friends are exempted from disclosure. In the Czech Republic and France, MPs can receive gifts but in France gifts must be declared and in the Czech republic MPs have to disclose the gifts’ value in their financial report. In Germany, there are no restrictions on the types of gifts parliamentarians can receive, but all gifts valued more than 1DM 0,000 (US \$ 5,425 in 1999) must be disclosed. In the UK gifts and benefits not related to the membership in the House are exempted from disclosure. By contrast, all gifts valued more than 125 Sterling Pounds and benefits valued more than .5% of the salary (or about US \$ 278 in 1998) of member or spouse must be disclosed. The strictest regulations are to be found in the USA, where all gifts must be disclosed, where no gift valued more than US \$ 50 can be accepted and where gifts from one source may not exceed an annual cumulative value of US \$ 100. Note that these regulations in the US are not set by the code of conduct, but are set in addition to the code of conduct.

Similarly, the ethics rules adopted by several Parliaments also establish some travel restrictions. In Australia all sponsored travels must be declared. In Canada only foreign trips financed by foreign donors must be disclosed. In France, there is no restriction upon members’ travels, provided that they declare whether travels had been paid by another party. German and Irish parliamentarians must disclose travel expenses only if they exceed respectively the US \$ 5,425 and US \$ 660. In Italy, all contributions and services exceeding US \$ 5,500 must be disclosed along with the name of the donor. In the USA members (and staff) are allowed to travel at the expense of private sources and may accept payment for travel expenses of the spouse or one child. However, national travels cannot last more than 4 days and international travels cannot last longer than 7 days, and all

²⁵ A discussion of the conflict of interests can be found in Joseph Zimmerman, *Curbing Unethical Behavior in Government*, London, Greenwood Press, 1994, pp. 17-46.

travel expenses must cover transportation (or covering travel-related expenses) to members and staff. Travels can be paid by foreign sources only if travels are part of a mutual cultural exchange.

In sum, codes of conduct can establish restrictions and regulations with regard to several matters. There is considerable variation in how specific are these restrictions and regulations. Another point that is worth stressing is that one the features that distinguishes codes of conduct from ethics codes is that codes of conduct (unlike ethics codes) design sanctions for those who violate the prescriptions of the code itself.

Part Three : Are There Complementary Factors That Can Contribute to the Effectiveness of Codes of Conduct?

Several factors may contribute to the effectiveness of legislative codes of conduct, including the existence of sanctions, institutionalization, cultural attitudes and training. Each of these will be considered in turn.

Sanctions

There is some variation in the severity of the sanctions established for the violation of a Code of Conduct. In the Fiji Islands the violation of the code of conduct may be punished by the loss of mandate. In Grenada the violation of the code of conduct is punished by warning, reprimand, order to withdraw, suspension and loss of mandate. In India, violations are punished with reprimand or admonition, imprisonment, suspension, expulsion, disqualification from membership on ground of defection. In Japan, violations to the code of conduct are punished with admonition to abide to the standards of conduct, admonition to refrain from presenting herself at the House for a certain period, and admonition to resign from the Chairmanship of a Committee. In the UK, a violation of the code of conduct is punished committal, reprimand or admonition, suspension from the house, and expulsion. In the USA, violations to the code of conduct are punished with censure, reprimand, fines, loss of seniority and expulsion. The data are presented in Table 1.

Table 1 : Examples of Sanctions

Country	Sanction	Competent body
Fiji Islands	Loss of mandate	Na
Grenada	Warning, Reprimand, Order to withdraw, suspension,	House of Representatives
	Loss of mandate	
India	Reprimand or admonition, imprisonment, suspension, expulsion,	High Court House of the People
	Disqualification from membership on ground of defection	Speaker of the House
Israel	Remark, warning, rebuke, severe rebuke,	The Knesset Ethics Committee
	Suspension from office,	The Knesset committee
		The Knesset
Japan	Loss of mandate Admonition to abide the standards of conduct, admonition to refrain from presenting at the House for a certain period of	Deliberative Council on Political Ethics

	time, admonition to resign from the Chairmanship of a Committee	
Philippines	Imprisonment, disqualification to hold public office	Na
UK	Committal, reprimand or admonition, suspension from the House, expulsion	House
USA	Censure, reprimand, fines, loss of seniority, expulsion	House

But Are Sanctions Effective?

It is generally believed that the success of an ethics regime, of an ethics reform or of a code of conduct, is a function of the severity of the sanctions that it designs for the violations of its prescriptions. In other words, the more severe the sanctions devised by a code, the more successful the code is going to be.

This notion is however somewhat problematic. It is not clear what is meant by success. Does success mean that the code induces a more ethical behavior among the individuals it is intended to regulate? Does it mean instead that the public is less likely to question the morality of legislators and public officials when severe sanctions are designed by the code?

Evidence in the first respect is at best anecdotal. It is in fact generally believed but rarely demonstrated that severe sanctions prevent individual from misbehaving. The interesting question is however: does the severity of sanctions affect voters' perception of the morality of public officials? The survey conducted by Willa Bruce in 1993 provides some evidence in this respect²⁶. Willa Bruce found that "a clearly worded code of ethics with sanction" is the best way to curb corruption in government. On the basis of this finding, Bruce hypothesized that "employees in cities that have legislated conduct codes that contain sanctions will report greater emphasis on ethics than those in cities whose codes do not contain sanctions"²⁷. By testing this hypothesis, Bruce found "that the presence of sanctions did not affect respondent perceptions"²⁸. The study found that what affects the respondent perception of ethics in government is not whether there are sanctions or not, but whether there is a code.

Institutionalization

A further difference can that be observed between these various codes of conduct, concerning the institutionalization of the code of conduct, that is, which institution is in charge of sanctioning

²⁶ As it was previously noted, in 1993 Willa Bruce conducted a survey to investigate whether the adoption of ethics codes and codes of conduct affects the perception of ethics in government. The survey questionnaire was sent to 1,286 members of the International Institute of Municipal Clerks. Willa Bruce received 522 usable responses. Further details concerning the data and the findings can be found in Willa Bruce, "Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, pp. 23-29.

²⁷ Willa Bruce, "Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, p. 27.

²⁸ Willa Bruce, "Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government, *Public Integrity Annual*, CSG & ASPA, 1996, p. 27.

those members who violate the code of conduct. Three different variations were identified Andrew Brien²⁹, who noted that :

“one approach involves enshrining the code in some sort of legislative framework through, for example, establishing by legislation a body that is external to, and independent from, the legislature. Such a body administers the code, oversees the conduct of the members of the legislature and makes reports either to the legislature or a committee. This is the model that has been adopted in Alberta (70), and Ontario.(71) It is likely to be adopted in a much more stringent form in New South Wales(72), where breach of the code would constitute a breach of law. Actual enforcement may well be a duty of the Independent Commission Against Corruption, rather than the Parliament or a Committee of it, as is the case in the Canadian parliaments.(73)

The second approach is to establish within the legislature a body that oversees the conduct of members. This may take the form of a parliamentary committee (as in the Japanese case) or it may take the form of an independent parliamentary commissioner, established under standing orders or a resolution of the House (rather than independent, judicable legislation). Such a body would report to a committee of the legislature or the legislature itself. This is the approach that has been adopted in the United Kingdom.(74) It also has been proposed for the federal legislature in Canada.(75)

The third option is that followed in the United States Congress. In this approach, discipline is internal to the legislature and is based upon a detailed set of rules and guidelines. Each House has its own Code of Official Conduct for Members and staff. Each House has an ethics committee, which operates independently of the other. Each committee provides interpretative and advisory rulings, has jurisdiction over the members and officers of each House, and can investigate allegations of improper conduct and can impose sanctions”³⁰.

In addition to the solutions identified in the Research Paper issued by the Department of the Parliamentary Library of the Parliament of Australia, the data presented in Table 1 suggest two additional options. One is that extremely severe sanctions, such as the loss of mandate, are decided by a High Court (as in the case of Grenada). The other is that sanctions may be imposed by the Speaker of the House (as in the Indian case).

These five bodies (Independent Commission, Parliamentary Committee, Parliament, Speaker of the Parliament, Court) that sanction the violations of the codes of conduct in those countries in which a code of conduct has been enacted, are also in charge of punishing legislators’ misconduct in those countries in which ethics rules (but not a code of conduct) have been adopted. For example, parliamentary committees sanction the behavior of parliamentarians in Belarus, Ethiopia and Egypt³¹. Parliaments have the power to punish the misconduct of their members in Argentina, Bolivia,

²⁹ Op cit

³⁰ Andrew Brien, “ A Code of Conduct for Parliamentarians?”, op. cit., p. 13.

³¹ In Egypt the Ethics Committee, the General Committee or the Joint Committee have the authority to enact the following punishments: reprimand, ban on taking part in the work of the Assembly in a certain session, ban on taking part in the work of the Assembly for a period of two to ten sittings. Parliamentarians can appeal these sanctions in the People’s Assembly. The People’ s Assembly has the authority to punish a parliamentarian with the loss of mandate.

Cameroon, Chad, Hungary, Italy, Paraguay, Slovakia, Turkey and Ecuador³². The Haitian Speaker of the House has the power to call members to order, while the Spanish Speaker of the House has the power to punish parliamentarians with the temporary suspension from the status of deputy³³. High Courts, Supreme Courts, or Constitutional Courts have the power to punish parliamentarians' misconduct in Austria, Botswana, Bulgaria, Chile, Greece, Jamaica and Thailand³⁴.

The differences concerning how specific is the code, how severe are its sanctions, and who administers the code produce considerable variation in the family of the codes of conduct.

Attitudes, Culture and Successful Conduct Codes

In the political science literature, several political phenomena are explained on the basis of political culture, that is the values and attitudes shared by a group. The literature on parliamentary ethics is no exception in this respect as it also emphasizes the role of political culture.

What role does political culture play with regard to parliamentary ethics? This question has two distinct meanings. On the one hand, it asks whether the existence of a specific political culture is conducive to the enactment of ethics reforms, while on the other hand it asks whether the existence of a specific political culture affects whether and to what extent ethics reforms are successful.

A study conducted by Marshall R. Goodman, Timothy J. Holp and Karen M. Ludwig revealed that there is no detectable relationship between political (as well as institutional) culture and whether ethics reforms are enacted. Ethics reforms, the attempts to create ethics regimes are generally a response to forces other than political culture. According to Goodman, Holp and Ludwig ethics reforms are made to respond to media investigations, scandals, and falling levels of trust among the public³⁵.

On the other hand, scholars have underlined that cultural factors, such as, for example, the existence of a common political culture, a common set of political values and standards is a necessary condition for the success of ethics reforms. As Skelcher and Snape pointed out that the success of an ethics regime requires the existence of a homogenous political culture, that is of a common set of attitudes and values³⁶. A code of conduct functions properly under three (cultural) conditions: 1) if the individuals, whom the code is intended to regulate, share the same attitudes and values; 2) if

³² The case of Ecuador is of great interest. In fact, in Ecuador the National Congress impose the following penalties: suspension, loss of mandate, and other sanctions. Yet, parliamentarians can also be punished with the loss of the mandate which can be revoked by the voters themselves before the end of the mandate.

³³ In Spain however the Speaker of the House shares the power to punish the misconduct of parliamentarians with the Congress and with some Congressional Committees.

³⁴ Note that in Thailand the Senate has the power to remove parliamentarians from office, while the violations of the penal code are punished by the Supreme Court's Criminal Division for Person Holding Political Positions.

³⁵ Marshall R. Goodman, Timothy J. Holp and Karen M. Ludwig, "Understanding State Legislative Ethics Reform: The Importance of Political and Institutional Culture", in *Public Integrity Annual*, CSG & ASPA, 1996, pp. 51-57.

³⁶ Chris Skelcher and Stephanie Snape, "Ethics and Local Councilors: Modernising Standards of Conduct", *Parliamentary Affairs*, 2001, pp. 72-78. This point is made on p. 74.

they have a shared view of what are the problems that the code is supposed to eliminate; 3) if they have a shared view of how those problems can be eliminated.

Yet, this is not always the case. A recent study of the ethical standards of the British MPs have revealed not only that there is no common set of values and attitudes, but that there are quite different ethical standards. According to Mancuso “there is a multiplicity of ethical standards operative in the House [of Commons]. The conventional view that a common standard guides the behavior of MPs is simply incorrect. On many important issues there is stark dissensus among MPs as to what constitutes acceptable behavior, and many are engaging in activities that other find reprehensible”³⁷. Mancuso pushed her analysis a step further. By investigating MPs’ tolerance for conflict of interests and constituency service and how the relationship between the two types of tolerance, she was able to identify four distinct ethical types.

One of the most interesting points which emerged from her study is that all British MPs condemn corruption and criminal behavior. They also “condemned activities such as bribery, blatant misappropriation of public funds and other clear statutory violations” but Mancuso went on to say “in the problematic grey areas of constituency service and conflict of interest, the ethical consensus begins to unravel. Yet it is precisely in these areas that MPs are most likely to face dilemmas in their personal conduct”³⁸.

The fact that there are quite different ethical standards has important implications and it is something that reformers should take into consideration before enacting ethics reforms. If there is no consensus among MPs about what constitutes improper behavior, about the nature of the ethics problems, and about what changes should be made to make the ethics regime work, any ethics reform is bound to fail. This means that to make ethics reforms and ethics regimes work it is of vital importance to promote a common set of civic attitudes and ethical values among MPs.

Training

Legislative Training, that is the training of legislators, represents one way in which a common set of civic attitudes and values can be promoted. Parliamentary Training can play a crucial role in making ethics reforms and ethics regimes succeed

- by clarifying what is misconduct,
- by presenting findings of studies concerning (the roots of) misconduct,
- by showing that misconduct undermines the legitimacy of democratic regimes and may threaten their survival (in newly established democracies),
- by raising the awareness of the importance of eliminating misconduct,
- by identifying ways in which misconduct can be eliminated

³⁷ Maureen Mancuso, “Ethical Attitudes of British MPs”, *Parliamentary Affairs*, vol. 46, n. 2, (April) 1993.

³⁸ Maureen Mancuso, “Ethical Attitudes of British MPs”, *Parliamentary Affairs*, vol. 46, n. 2, (April) 1993.

Part Four: Conclusions and Recommendations

Ethics reforms and the establishment of ethics regimes serve two purposes. Ethical regimes are created with the clear intention of preventing misconduct and corruption from occurring. They do so by creating incentives for parliamentarians and legislators to perform their functions in an ethical manner. This is what we have called the internal function. Ethics regimes and ethics reforms also serve an external function. Ethics regimes are created to reconstruct the public confidence in public officials and institutions.

We have also pointed out that codes of conduct are one of the key elements in the establishment of an ethics regime. In spite of the differences between the various codes of conduct, conduct codes are characterized by some common features: they all specify what types of behavior are acceptable and what types of behavior are not acceptable (misconduct) and they also establish sanctions for violations of their dispositions.

In this paper we have discussed what conditions are more likely to make ethics regimes succeed. We did so by discussing whether the effectiveness of a conduct code is affected by the presence of sanctions, by the type of institution in charge of punishing violations of the code, by the political culture of the individuals that the code is supposed to regulate, and by legislative training. Building on previous research we observed that while the presence of sanctions does not influence the effectiveness of ethics reforms, political culture may play a key role in determining whether an ethics regime succeeds or not. Specifically, we stressed that the success of conduct code is closely tied to whether the individuals that the code is supposed to regulate have a common political culture, that is common values and attitudes. In all those circumstances in which this is not the case, it is of vital importance to promote a common understanding of what is appropriate conduct and of what instead represents misconduct, to promote a shared set of moral standards and values. We further suggested that a homogenous political culture can be promoted through legislative training.

What we have said so far has an obvious implication for the international community. Several international agencies, donors and organizations have long been concerned with promoting good governance as a way of consolidating newly established democratic regimes and of creating the conditions for sustainable development. If the elimination of misconduct, corruption and other forms of unethical behavior is necessary for the promotion of good governance, if misconduct can be eliminated by successful ethics reforms, and if these reforms succeed only if there are shared ethical values, and if these values can be promoted through legislative training, then the international community needs to understand the importance of training legislators. International donors need to understand the importance of allocating resources to finance legislative training, while international agencies and organizations need to understand how can best practices be best promoted. Ethics reforms and regulations are not adopted in the vacuum, in the empty space. They are instead enacted in countries with histories by people who have different beliefs. The plurality of political beliefs, views and ideas is a condition without which democracy would not exist. And this plurality of political beliefs needs to be protected and preserved as great good. But this plurality of beliefs should not be confused with a plurality of ethical standards, with confused ethical standards or, in some unfortunate circumstances, with the absence of ethical standards. It is important for legislators to have clear, and unanimously agreed, understanding of what is proper conduct and of what is not. This is ground on which successful ethics regimes can be built. And it is through training and learning that the international community can perhaps best help legislators prepare this homogenous ethical ground.