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Legislative Ethics and Codes of Conduct

Riccardo Pelizzo and Rick Stapenhurst

Introduction

In the course of the past two decades, both the international community and the scholarly community paid increasing attention to the causes and the consequences of corruption.¹ As chapter 2 has shown, corruption is often a symptom of a deeper institutional weakness, and to reduce corruption, it is necessary to eliminate the conditions that favor the existence of corrupt practices and other forms of misconduct.

The establishment of ethics regimes, by adopting either ethics codes or codes of conduct, represents a valuable anti-corruption tool. In fact, by creating ethics regimes, parliaments (a) establish a standard for parliamentarians' behavior, (b) clarify what forms of behavior are acceptable and what forms are improper, (c) create an environment that is less likely to tolerate misconduct and other forms of unethical behavior, and, by doing so, (d) create an environment in which parliamentarians are less likely to engage in corrupt practices.

The purpose of this chapter is to discuss how some parliaments have attempted to create ethics regimes and to show how such regimes may be used to promote good governance and, by doing so, to create a system of disincentives for corrupt practices.

This chapter is organized in the following way. The first section provides a fairly detailed discussion of the ethics regimes and of how ethics regimes can contribute to fighting corruption and other forms of misconduct. Particular attention is paid to the fact that ethics regimes can be established by adopting codes of conduct, codes of ethics, or ethics rules. It discusses what are the most important differences between these institutional tools. Building on this discussion, the second section shows that while codes of conduct are generally more specific than ethics codes, they vary with regard to how specific are their provisions. The third section argues that the effectiveness of codes of conduct is affected by a variety of factors, such as the existence and severity of sanctions; the institutionalization of the code (which refers to which institution is in charge of administering those sanctions); cultural factors (attitudes, values, and norms); and the training of parliamentarians. The

¹ This chapter is an adaptation, in part, of Pelizzo and Stapenhurst (2004).

fourth section draws some conclusions and formulates suggestions as to what the international community could do to contribute to the establishment of successful ethics regimes and, by doing so, to eliminating corruption.

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 and the selection of the government.

Yet, as soon as corruption emerges, two problems appear. The first is that those citizens who have more financial means at their disposal and use these to corrupt elected officials acquire additional influence over the political process. This is a violation of the spirit of democracy: that citizens should exercise equal power on the political process.

However, corruption creates a second, and not less menacing, problem for democracy because corrupt politicians could utilize illicitly obtained resources for their electoral campaigns, thus acquiring an advantage over the other candidates and improving their chances of being elected. By so doing, corrupt candidates distort electoral competition and prevent the people's will from being properly expressed; this poses a direct threat to democracy.²

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 threat to the democratic system. As Seymour Martin Lipset pointed out more than four decades ago, the single most important condition for making democracy survive is that democratic system's legitimacy (Lipset 1959, 69–108).

Surveys around the world show that legislatures around the world are facing a "democratic deficit"—that there are low, and generally declining, levels of public trust in legislatures. As figure 13.1 indicates, the legislature ranks as the least publicly trusted institution in certain Latin American countries, although in others it ranks much more favorably.

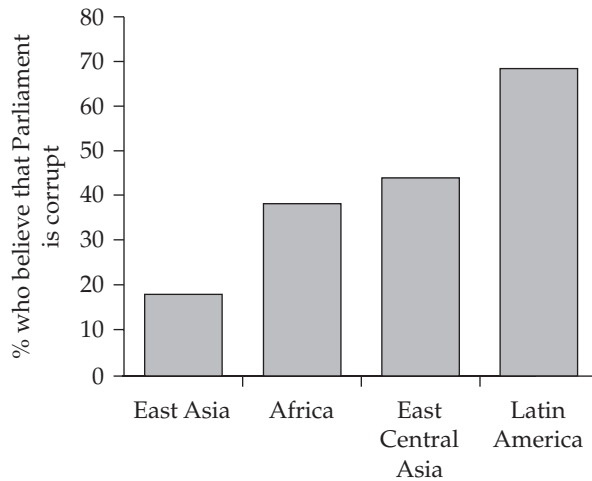
Similarly, public opinion polls around the world consistently rate public trust in politicians as low.

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: can this work? And, if so, how can an ethics regime be established? What are the basic elements of an ethics regime?

Creating an Ethics Regime

To develop citizens' trust in the political system, legislators, understand the need for ethics reforms. The adoption of an ethics regime is intended to serve both an internal and external function. Internally, the enforcement of an ethics regime is intended to improve the ethical standards and performance of elected officials. Externally, it is intended to regain the confidence of the public.

² A discussion of corruption and misconduct can be found in Skelcher and Snape (2001, 72–78).

Figure 13.1 *Parliaments: Misgoverned or Honest Institutions?*

Sources: WBI diagnostics and survey data, various countries, 1998–2006.

Codes of Ethics and Codes of Conduct

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

Codes of ethics “are usually products of professional associations. They serve as a quality assurance statement to society and provide a set of standards 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” (Bruce 1996, 23).

Codes of conduct are quite different. They “. . . are more concrete and practical . . . 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. Codes of conduct contain minimalistic prohibitions to unquestionably subversive or criminal acts. They are designed to protect the government employee, the client, and/or the public at large” (Bruce 1996, 24). In sum, there is a major difference between codes of conduct and codes of ethics.

Legislative Codes of Conduct

As 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 legislatures of Chile, Fiji, Germany, Grenada, Israel, Japan, the Philippines, Poland, the United Kingdom, and the United States of America, while the Indian Lok Sabha has a customary code of conduct.³

³ On this point, see the dataset of the Inter-Parliamentary Union. This dataset can be found at www.ipu.org. The Chilean Code of Conduct can be found on the Web site of the Chilean Congress: www.camara.cl/aindex/browsers/codigo_conducta.pdf.

A legislative code of conduct is a formal document that regulates the behavior of legislators by establishing what is considered to be an acceptable behavior and what is not. In other words, it is intended to promote a political culture that places considerable emphasis on the propriety, correctness, transparency, and honesty of parliamentarians' behavior. However, the code of conduct is not intended to create this behavior by itself. As Skelcher and Snape (2001, 73–74) 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.”

How Specific Are the Provisions of a Code of Conduct?

Even though codes of conduct are more specific than codes of ethics, there is considerable variation in how specific their provisions can be. They may ask members of the legislature to disclose their interests concerning tax returns, sources of patrimonial income, investments, sources of income of the business of a partner or shareholder, ownership interest in a business, real estate interests, offices or directorships, creditor indebtedness, leases and other contacts with public entities, compensated representation before public entities, fees and honoraria, professional or occupational licenses, reimbursement of travel expenses from private sources, deposits in financial institutions, cash surrender value of insurance, private employer or nature of private employment, professional services rendered, identification of trusts by trustee, identification of trusts by beneficiary, names of immediate family members, and financial interests of spouse and children (NDI 1999, 5). The disclosure of interests before debating an issue related to those interests is a relatively common protection against conflicts of interest.⁴

In addition to asking legislators to disclose their interests, codes of conduct may impose some additional restrictions. Some apply while the legislator is in office, and some of them apply even after the legislator's tenure in office. The list of restricted activities include the following items: use of public position to obtain personal benefit, providing benefits to influence official actions, use of confidential government information, postgovernmental employment for two years, receipt of gifts by officials or employees above a certain value, receipt of fees or honoraria by public officials or employees, representation of private clients by public officials or employees, financial conflicts of interest, nepotism, political activity by employees, competitive bidding, outside employment or business activities by public officials or employees, and travel payments from nongovernment services.

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.

⁴ A discussion of the conflicts of interest can be found in Zimmerman (1994, 17–46).

Sanctions

There is some variation in the severity of the sanctions established for the violation of a code of conduct. Violations of the code of conduct can be punished with various sanctions such as censure, reprimand, fines, loss of seniority, and expulsion. (The data are presented in table 13.1.)

There is some variation in the severity of the sanctions established for a violation of the code. In Fiji, for example, the violation may be punished by the loss of mandate; in most other countries, there is a gradation of sanctions, ranging from reprimand and fine up to loss of mandate and (in the case of the Philippines) imprisonment.

Table 13.1 *Codes of Conduct and Sanctions*

<i>Country</i>	<i>Sanction</i>	<i>Sanctions administered by</i>
Fiji	Loss of mandate	n.a.
Grenada	Warning, reprimand, order to withdraw, suspension Loss of mandate	House of Representatives High Court
India	Reprimand or admonition, imprisonment, suspension, expulsion Disqualification from membership on grounds of defection	House of the People Speaker of the House
Israel	Remark, warning, rebuke, severe rebuke Suspension from office Loss of mandate	The Knesset Ethics Committee The Knesset Ethics Committee The Knesset
Japan	Admonition to abide by the standards of conduct, admonition to refrain from presenting at the House for a certain period of time, admonition to resign from the chairmanship of a committee	Deliberative Council on Political Ethics
Philippines	Imprisonment, disqualification to hold public office	n.a.
United Kingdom	Committal, reprimand or admonition, suspension from the House, expulsion	House of Commons
United States of America	Censure, reprimand, fines, loss of seniority, expulsion	House of Representatives

Source: Bruce 1996.

Sanctions are generally administered by one of the following bodies: independent commission, parliamentary ethics committee, parliament, speaker of the parliament, or court.⁵

Are sanctions effective? The question has two levels of answers. The first concerns whether sanctions are effective in eliminating misconduct while the second is whether sanctions affect the citizens' perception of the morality of legislators.

Although there is no evidence as to whether sanctions are able to curb corruption and other forms of misconduct, there is some evidence on whether (and how much) sanctions affect public officials' perceived morality. The evidence was gathered by a survey conducted by Willa Bruce in 1993 shows that "a clearly worded code of ethics with sanction" is the best way to curb corruption in government; at the same time, however, the survey also found that citizens' perception was influenced by the existence of a code of conduct rather than the presence or severity of sanctions (Bruce 1996, 27).

Institutionalization

A further difference can be observed between the various codes of conduct concerning the institutionalization of the code (that is, which institution is in charge of sanctioning those members who violate the code). In general, there are two principal variations: an independent commission (as in the case, for example, in Alberta, New South Wales, and Ontario) and an internal parliamentary body (either a parliamentary committee, as in Japan, or a parliamentary commissioner, as in the United Kingdom [see annex at end of this chapter, "Case Study of the House of Commons"]). In the case of extreme sanctions, cases may be referred to the High Court (as in Grenada) or to the Speaker of the House (as in India).

Attitudes, Culture, and Successful Codes of Conduct

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

The analysis of the role of political culture with regard to parliamentary ethics must be twofold. First, it is necessary to study whether the existence of a specific political culture is conducive to the enactment of ethics reforms; second, it should be questioned 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 (1996, 51–57) revealed that there is no detectable relationship between

⁵ A discussion of some of the institutions that can administer sanctions can be found in Dr. Andrew Brien (consultant) (1998–99), "A Code of Conduct for Parliamentarians?" Research Paper 2, Department of the Parliamentary Library, Parliament of Australia. In addition to the solutions identified in this Research Paper, the data presented in table 13.1 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).

political culture and whether ethics reforms are enacted. Attempts to create ethics regimes are generally a response to other forces, such as media investigations, scandals, and falling levels of public trust.

On the other hand, scholars have underlined that cultural factors, such as the existence of a common political culture, are a necessary condition for the success of ethics reforms. As Skelcher and Snape (2001, 74) pointed out, the success of an ethics regime requires the existence of a homogenous political culture. A code of conduct functions properly under three (cultural) conditions: (a) when the individuals, whom the code is intended to regulate, share the same attitudes and values;⁶ (b) when those individuals have a shared view of what are the problems that the code is supposed to eliminate; and (c) if the individuals 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 has revealed not only that there is no common set of values and attitudes but also that there are quite different views among MPs concerning ethical standards. According to Mancuso (1993), “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.” British MPs condemned 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. . . . [Indeed,] on many important issues, there is stark dissensus among MPs as to what constitutes acceptable behavior, and many are engaging in activities that other[s] find reprehensible.”

Mancuso pushed her analysis a step further. By investigating MPs’ tolerance for conflicts of interest and constituency service and the relationship between the two types of tolerance, she was able to identify four distinct ethical types, which she defines as “puritans, servants, muddlers, and entrepreneurs.” Puritans have little tolerance for both conflicts of interest and constituency service; servants tolerate constituency service, but not conflicts of interest; muddlers tolerate conflicts of interest, but not constituency service; and entrepreneurs will tolerate any kind of activity that is not explicitly forbidden.

The fact that there are quite different views regarding ethical standards among legislators 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, then any ethics reform is likely to face substantial problems. In other words, to make ethics reforms work, it is of prime importance to promote a common set of civic attitudes and ethical values among MPs.

⁶ This means that for the proper functioning of a code of conduct adopted in a given parliament, the members of that parliament must have a set of shared values and attitudes. The fact that legislators in another country’s parliament have a different set of values is absolutely not relevant, provided that if a code of conduct were adopted in this second parliament, its members should share a common set of attitudes and values. In other words, what is relevant for the success of a conduct code is cultural homogeneity within countries, not between countries.

Q: Recheck all quotes in this paragraph against their source. Make sure that the ellipsis (. . . .) is properly placed, also. (I could not access the source directly, but found differences in the quotations that appear in several secondary sources. – FS

Training

The training of legislators represents one way in which a common set of civic attitudes and values can be promoted. Such training—by clarifying what is misconduct; presenting findings of studies concerning the roots of misconduct; showing that misconduct undermines the legitimacy of democratic regimes (and indeed may threaten their survival, at least in newly established democracies); raising the awareness of the importance of eliminating misconduct; and identifying ways in which misconduct can be eliminated—can play a crucial role in making ethics reforms and ethics regimes succeed.

Conclusions and Recommendations

Ethics reforms and the establishment of ethics regimes serve two purposes. Ethical regimes are typically created with the intention of preventing corruption and misconduct. 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”: they can help reconstruct public confidence in elected officials and parliamentary institutions.

There are some steps that parliamentarians and legislators can take to avoid dilemmas in their conduct:

- First, parliamentarians can propose and promote the adoption of clearly worded codes of conduct. In doing so, parliamentarians must keep in mind that the successful establishment of an ethics regime depends to a large extent on the clarity of a code’s dispositions. The code should specify what forms of behavior are acceptable, what forms of behavior are not acceptable, and what sanctions will be adopted to punish violations of the code.
- Second, it is of importance that the dispositions of the conduct code are reasonable and set a standard of behavior that parliamentarians can actually respect. If the dispositions of the code are unrealistic, they cannot be enforced, and the adoption of the code will at best be useless and at worst further undermine public confidence in politicians.
- Third, parliamentarians can propose and promote the adoption of specific parliamentary committees called “ethics committees.” Such committees can perform two functions: to clarify the meaning of the code’s dispositions and to ensure that the code dispositions are enforced consistently and impartially. This point has an obvious corollary: that ethics committees should not be used in a partisan way to get rid of political opponents and to promote the interests of a particular party. Doing so will ultimately lead to the failure of the newly established ethics regime.
- Fourth, parliamentarians should refrain from engaging in any activity that may damage their personal reputation and the reputation of the parliament. Genuine commitment to preserving the parliament’s reputation is the most important condition for making ethics reforms succeed.

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