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Regulating Parliament:
the regulatory state within Westminster

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Contents

Introduction.....	1
‘Regulation’	2
What is regulated?.....	5
Who regulates?.....	6
The rise of the regulators?.....	8
The Regulatory Web	10
Questions for future research	14
Appendix 1: Regulators of British MPs and their methods	15

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Regulating Parliament: the regulatory state within Westminster*

Robert Kaye

Introduction

The rise of the ‘regulatory state’ (Majone, 1994; Loughlin and Scott, 1997; Moran, 2001) has not been limited to regulation of the privatised sector, or even of the private sector more generally. There is now a considerable ‘regulatory state within the state’ (Hood et al, 1999), and it seems to be growing. The literature on regulation of government has so far concentrated on the bureaucracy. At times, however, the regulatory environment that applies to government (as documented by Hood et al) can extend to political decisions. Ombudsmen, including the Local Government Ombudsman and the Information Commissioner, have not shied away from criticising decisions taken by political actors where these amount to maladministration.

If government remains the regulator of last resort for the private sector, then very often it is legislative institutions which ultimately regulate the political executive and the higher bureaucracy. It is notable, for instance, that both the Comptroller and Auditor General and the Ombudsman, are officers of Parliament, and report to Parliamentary Committees. The National Audit Office (NAO) may audit government, but it is the Public Accounts Commission, a House of Commons Select Committee, which audits the NAO. Even on a narrow definition of regulation, in framing statutes and approving statutory instruments, Parliament – its members, committees and officers – play a significant role in the regulation of both public and private sectors. Departmental Select Committees offer ‘sustained and focused oversight’ (Selznick, 1985) not only of government departments (Drewry, 1985; Flegmann, 1980) but also of organs of quasi-government and even of private companies where these come under a nebulous umbrella of ‘public services’.

If members of the political executive are increasingly subject to regulation of their executive actions, so too legislators find themselves in an increasingly ‘regulatory’ environment. Codes of Conduct for politicians have become commonplace (Behnke, 2002). The release of the ministerial handbook ‘Questions of Procedure for Ministers’ in 1992, effectively transformed it from a ‘tips for beginners’ (Hennessey, 1996) to a Code of Conduct (Baker, 2000; Fleming and Holland, 2001),¹ a change recognised in its official designation as the ‘Ministerial Code’ in 2001. A Code of Conduct for MPs was introduced in 1995, followed by a code for Peers in 2002, and requirements for ‘ethical regulation’ were contained in the legislation setting up the devolved assemblies in Scotland, Wales and Northern Ireland. The Local Government Act of

* Working Paper: please do not cite without permission.

¹ Public Administration Committee: 2000/01: HC 235; 2001/02: HC 439.

2001 included a requirement that local councils in England adopt a local Code of Conduct, in this case overseen by a new dedicated regulatory agency, the Standards Board for England.

However, the regulatory regime in which politicians operate goes much wider than the dedicated regulatory machinery: in addition to specialist institutions, political behaviour may be controlled by the actions of bodies for whom regulation is either only one of many functions, or even – as in the case of the media (Besley et al, 2002) – a consequence of their activities rather than an objective. Importantly, many of these bodies may in fact have been busy regulating MPs for years. It is crucial not to assume that just because applying concepts of regulation to MPs is relatively new, that regulation itself is. This paper attempts to map the regulatory environment for British legislators, especially Members of Parliament. In doing so, however, it raises a further possibility: that the perceived rise of the regulatory state inside politics is a result of a narrow view of regulation; that in reality it is a move towards ‘hard regulation’ from softer forms (Behnke, 2002: 689-704), from ‘etiquette to edicts’ (Mancuso, 1992).

‘Regulation’

Much of the public policy literature on regulation is incompatible with regulation inside Parliament. Baldwin, Scott and Hood (1998), for instance, identify three distinct meanings of ‘regulation’:

- Direct state intervention in the economy.
- All mechanisms of social control.
- Promulgation, monitoring and enforcement of rules by government.

Clearly, the first of these is far too narrow to cover regulation within Parliament. Increasingly anachronistic, it is probably too narrow also to cover professional self-regulation, the regulation of dangerous dogs, and most regulation of the public sector. Indeed, the exponents of ‘regulatory state’ argue that it is the *absence* of direct economic powers that gives rise to reliance on regulation (eg, Majone, 1994).

The second definition, by contrast, goes too wide and would cover many instances which we would not conventionally think of as regulation. Street design, for instance, is an instrument of social control, and modifies the behaviour of individuals. In the context of parliament, it could include factors as diverse as sitting hours, resources, ideology – not to mention education, religious affiliation, or etiquette; all of which control to some extent MPs’ behaviour. It is not clear that we could realistically talk of these controls as being regulatory.

The third is inadequate as it stands. The simple, dyadic notion of regulation it supposes, with government at the apex and various regulatees below it, is oversimplistic. Even in conventional discussions of regulation, it must be uncomfortably amended to take account of the array of private and self-regulatory organisations exercising ‘quasi-government’ powers, generally by seeing these as organisations

sanctioned, perhaps tacitly, by government as the regulator of last resort² (Baggot, 1989). This is particularly pertinent given a traditional reliance in common law countries towards legislative self-regulation.

In any case, legislatures and legislators are not simply ‘subjects’ of the state. They themselves occupy a role at the centre of that state. This dyadic relationship, premised on a distinction between regulatee and government regulator, cannot be adequately amended to cover the regulation of one element of government by another, let alone by non-governmental bodies. Such a relationship is implicitly rejected by Hood et al when they use organisational separation, rather than governmental status, as the test of a regulatory relationship.

A decentred view of regulation can cope more easily with this problem, as it accommodates two facets of modern governance: fragmentation within government, and the existence of non-state, hybrid and quasi-(non-)governmental actors that exercise a regulatory function (Black, 2002). This overcomes one problem with the first definition – its reliance on the state – and allows a more expansive role to regulation than just economic intervention; however, in order to avoid the pitfall implicit in the second definition, it must be refined. For the purpose of this paper, it is control over legislators *qua* legislators that is important, and instead of ‘social control’ we can apply a narrow focus on politico-legislative behaviour (broadly understood).

Despite adopting a decentred strategy, this paper does not stray far, if at all, from the centre. Regulation in Parliament is inevitably centrist; even if regulation of local politicians is less demonstrably so. Nonetheless, within the general ambit of the centre, there are a number of regulatory institutions that are decentred insofar as they *stand in a non-hierarchical relationship to one another*. It is perhaps more accurate to describe the regulation of legislators as multi-focused than decentred.

The importance of this is to distinguish ‘regulation’ from ‘management’, a term little used in discussion of regulation inside politics. (One exception is the description of the Whips as ‘party managers’). The relationship cannot be one of a simple line of command: in the study of public sector regulation by Hood et al this becomes the requirement of an ‘arm’s-length separation’ between regulator and regulatee. This distinction is somewhat problematic for regulation within Parliament, where so much of the ethical environment is characterised by self-regulation. How can we identify an arm’s-length relationship where there is considerable personnel overlap between the two organisations? For instance, if the Whips regulate MPs, and given that the Whips are themselves MPs, they are also regulating themselves: where is the arm’s-length?

Much of this theoretical problem evaporates when viewed a little more closely. Consider, for example, the position of the Standards and Privileges Committee. Although self-regulatory, insofar as it is composed of MPs themselves, the ‘regulatee set’, individual MPs are not for the most part involved in their own regulation. On the contrary, on the few occasions where complaints have been made against members of the Committee, they have withdrawn or resigned (Kaye, 2002: 17-18). And in any case, as Black (1996: 27) notes, in self-regulatory systems, the regulating self is

² See, for instance, Baggot (1989); *R v Panel on Takeovers and Mergers, ex p Datafin*.

collective, the regulatee individual.³ In most cases – a possible exception is the Speaker – the fact that regulator and regulatee are conceptually distinct entities will be sufficient to separate them.

The main problem with a decentred approach to regulation is this: if the state is removed from our understanding of regulation, are we left with anything distinguishable from control generally? That is to say, how do we prevent the concept of regulation from becoming so all-encompassing as to be at best useless and at worst meaningless?

One component that has widely, though not always, been associated with regulation is rules. Indeed, the etymology of regulation captures the idea that regulation is about ensuring conformity with laws and norms. Rules – as opposed to direct government control or state ownership – are at the heart of the third definition above. A little more loosely, Hood’s cybernetic approach insists on the promulgation of ‘standards’ as an integral component of a control mechanism. Traditionally, ‘rules’ on MPs’ behaviour have taken the form of ‘etiquette’ rather than ‘edict’ (Mancuso, 1992). Likewise, Marshall (1984) stresses the importance of conventions in regulating political behaviour. ‘Norms’ in this context are not mere patterns of behaviour, but have in some way acquired prescriptive force. There is therefore a strong argument for including such understandings, even if, as Low (1904) famously put it, ‘the understandings are not always understood’.

In order to recognise the less certain applicability of standards and norms, I argue that we can employ a ‘tiered’ approach. This concentrates on deliberate, rule-based regulation, while acknowledging the impact of a second regulatory tier, characterised by predominantly informal mechanisms, followed by a third, largely ‘voluntary’ tier of regulation.

	Force	Enforcement	Status	Penalties
<i>Hard regulation</i>	Mandatory	Formal machinery	Codes	Sanctions
<i>Intermediate regulation</i>	Advisory	Informal	Guides	Incentives
<i>Soft regulation</i>	Voluntary	Socialisation	Norms	Disapproval

Table 1: three tiers of regulation

The regulatory status of the last level is more contestable, but it is worthy of consideration nonetheless. Much will depend on the reason why we are studying regulation. If we are concerned about the relationship between regulatory institutions, a more restrictive definition would be appropriate. If one is considering, say, the necessity of a new regulatory machinery, it would be unwise to proceed without

³ It could be questioned whether ‘enforced self-regulation’ fits this model. One response would be to question whether enforced self-regulation is indeed a variation of self-regulation, or rather a descendant of conventional inspector-led regulation. The ‘regulator’, if we need to identify one, is not the regulated firm itself, but a negotiated process between regulator and regulatee. Moreover, application is frequently restricted to organisations sufficiently complex to maintain the ‘arm’s-length’ requirement through a system of ‘Chinese walls’.

considering less formal mechanisms which might influence MPs' behaviour. For instance, a vigorous media – with no official status or mandate, judging MPs with regard to only the vaguest notion of 'standards' – might nonetheless obviate the need for a targeted regulatory machine.

What is regulated?

Although MPs are not considered in British law to hold public office (Zellick, 1979), they are, in effect, public officials who exercise power for a public purpose. But they are also political actors, who use power to achieve political ends, and who generally do so as members of a political party. This leads to a dichotomy. On the one hand, the exercise of public functions leads to institutional regulation. MPs are expected to use allowances for public purposes alone, to address constituents' grievances in an impartial manner. They are expected to comply with the House's norms of behaviour, and deal ethically in situations of conflict of interest.

On the other hand, as politicians, MPs are expected to support their party, espouse views which are in line with party ideology, and – above all – vote in accordance with the party whip. In addition, other party supporters may seek to regulate the political positions taken by MPs. For example, prior to 1994, many individual Labour MPs were sponsored by trade unions, who provided financial support to their local constituency party. On a number of occasions, sponsoring unions demanded that sponsored members should vote a particular way or sign up to a statement of principles. And, of course, electors have a right to demand their representative votes a particular way (without in any way implying that the representative has a duty to comply). This does not mean that party organisations cannot seek to regulate the first category of activity, but 'the imperative underlying party discipline must inevitably be the party's interests rather than those of the [institution]. It is true that these will often coincide ... but that will not always be the case.'⁴

In common with much professional regulation, rules are also in place which control the politician's ostensibly private activities, where these may impact in some way upon public office. Of particular note here are 'disrepute' provisions – where private activity by the practitioner is considered so scandalous as to denigrate the wider profession, and rules relating to conflict of interest, which assume that private interests *may* affect decisions taken in a professional/political capacity. The third category covers those issues ostensibly unconnected with the politician's role. The first two categories, 'sexual' and 'financial', come from the literature on media scandal – the basic stuff of political misconduct. Here, however, a residual category is necessary for other behaviour which might nonetheless bring the party or the profession into disrepute. Examples might include drink-driving, physical intimidation or violence, or discriminatory behaviour. It is worth noting, for instance, that while the MPs' Code of Conduct states that it "does not seek to regulate what Members do in their purely private and personal lives", it also contains a provision that MPs have a duty to uphold the law. Given that there is little scope for MPs to break the law in an official capacity (not least because Westminster itself is a "statute-

⁴ Third Report of the Committee on Standards in Public Life (1997), Standards of Conduct in Local Government, Cm 3702.

free zone”; Lock, 1998), this seems to imply that the House might wish to regulate potentially illegal behaviour by MPs, in addition to any action which outside agencies might take.⁵

<i>Partisanship</i>	<i>Institutional</i>	<i>Personal</i>
Ideology	Etiquette	Sexual
Opinions	Use of funds	Financial
Vote	Conflict of Interest	Residual
	Service	

Table 2: a taxonomy of regulatory spheres

Who regulates?

In a classic definition, Selznick (1985) described regulation as ‘sustained and focused oversight’. This definition captures something of the flavour of (much) regulation. It would be applicable in this form to the procedures introduced in the House of Commons in 1975 and reinforced in 1995 with a dedicated, permanent Committee to oversee the House’s rules on pecuniary interest.

The main difficulty with Selznick’s definition is that in concentrating on organisations, he neglects what Beck Jørgensen and Larsen (1987) term ‘inspector-free’ modes of regulation – such as the use of competitive processes such as league tables or the fostering of socialisation mechanisms that are designed to shape the behaviour of ‘regulatees’. In examining the regulation of legislators one takes a regulatee-focused approach, and consequently it is necessary to consider the entire regulatory environment, rather than a finite number of regulators. To omit ‘inspector-free’ approaches would be to give a partial account of the regulation of MPs.

‘Inspector-free’, however, does not equate to ‘regulator-free’. It is possible to draw a distinction between inspector-free processes that are nurtured as a deliberate mechanism for control, and those – such as the notion of ‘regulation by the market’ that arise spontaneously from the uncoordinated actions of independent agents.⁶ So, for instance, Hood et al acknowledge the importance of inspector-free control (Hood et al, 1999: 13, 45-49) and incorporate it into their discussion of regulatory strategy, but in focusing on organisations, limit their research to cases where there is an identifiable regulator.

⁵ This is supported by a memorandum from two senior members of the Committee which drafted the Code, stating that “the conduct of Members in their capacities other than that of a Member, should properly be dealt with by outside agencies such as the police, the courts and regulatory authorities. Of course, there may be occasions when the House would want to come to a view about the outside conduct of a Member, but only after bodies such as those mentioned above have exhausted their procedures.” Quoted in 1998/98: HC 611, Appendix 10.

⁶ Although it is important to bear in mind that competitive market pressures may be deliberately cultivated as a regulatory strategy, as demonstrated by the experience of forced competition in the privatised industries.

Hood et al identify three modes of inspector-free regulation: mutuality, competition and contrived randomness. Within Westminster, mutuality has traditionally been paramount, with formal oversight ancillary to a more general process of cultural assimilation by which it is intended that MPs will absorb and internalise expected standards of conduct (Williams, 1985; Mancuso, 1993). Unfortunately, empirical research points to a failure of this strategy. Mancuso (1993), for instance, demonstrates the extent of ethical dissensus within the House, with some MPs capable of justifying behaviour which an overwhelming majority view as manifestly corrupt – up to and including bribery! Moreover, the result of this is that by witnessing the acceptance of misconduct, MPs may come to tolerate and even endorse unacceptable behaviour. McAllister's (2000) study of Australian legislators suggests twin processes of elite socialisation and party socialisation, in which the benefits of cultural assimilation (a raising of ethical standards) are undermined by a parallel process in which MPs are expected to become subordinate to the interests of their party: 'legislators who had been elected to local government at some earlier stage had consistently lower ethical standards' while 'more party involvement results in lower ethical standards' (McAllister, 2000). In essence, reliance on mutuality stresses its regulatory capability; the empirical evidence suggests that it may have the very opposite effect.

There are also competitive pressures to be found within Parliament, chief among them the race for ministerial positions and positions on the front-benches of the Opposition parties (within which there is further competition for particular portfolios). Here there is a clear 'regulator', the parties' leaderships, and in particular their whips. But it is not so clear that competition among MPs for media attention could be considered regulation – there is no clear standard being articulated, and the competition is more a battle for a scarce resource than a means to a regulatory end.

For the most MPs, however, the prime competitive form of control is the fact that they must seek election and re-election to Parliament. A number of MPs would argue that any other form of regulation constitutes an interference with the MP's independence (a Burkean view found primarily on the right) or accountability to his/her constituents (more often found on the left).

This may be to place too much confidence in electoral competition. While there are examples of constituents exercising ethical oversight of their MP – most dramatically the failure of Neil Hamilton to retain his seat in Tatton in 1997, despite a notional majority of 22,000 – the fact remains that the personal vote is a tiny element of any election result.⁷ Moreover, even if competitive election has a theoretical impact on the behaviour of MPs in safe seats, it has no impact where the MP does not intend to seek re-election, or where for other reasons (boundary changes, perhaps) re-election can be ruled out. Furthermore, the costs imposed by competitive elections may themselves give an incentive to engage in ethically dubious behaviour (Gillespie and Okruhlik, 1991). For instance, although allegations that MPs had misused public office for personal advantage diminished after 1997, they were replaced by a series of allegations that MPs and Ministers had augmented party funds through misuse of parliamentary allowances and ethically dubious fundraising. These needs arise

⁷ Arguably, the Tatton result owed less to Hamilton's constituents than to the decision by Labour and the Liberal Democrats to stand down their candidates in favour of an independent candidate.

directly from the expensive process of seeking election. Moreover, the potential for key groups to wield disproportionate influence in a locality creates a conducive environment for clientilism, whereby politicians have an ongoing tie to particular groups, which are rewarded for electoral support with political payoffs.

In any case, in most British parliamentary seats, the real competition is not between candidates at the election but between prospective candidates at the selection stage. Consequently, the selection process must itself be considered an act of regulation; the selectorate must also be considered a regulator of MPs (prospective and incumbent). Local constituency associations have expectations of 'their' MPs (standard-setting), can monitor how the MP behaves, and have been known to use deselection as a sanction for breaches of these expectations (Butler and Butler, 2001: 251-252). There are, in addition, recent cases of MPs being effectively deselected by their constituency parties for breaches of the House's rules on conflict of interest and expense claims.

Finally, contrived randomness works by creating unpredictable processes to deter corruption and capture. In the Parliamentary context this is most obviously exhibited in the opportunity structures for corrupt behaviour. One such constraint is the lack of control MPs have over their own parliamentary destiny. Appointments to Select and Standing Committees are largely in the hands of the party managers. MPs cannot predict with certainty which committees they will be appointed to, if they are appointed whether they will be re-appointed and how long they will remain on a Committee. In terms of activity on the floor of the House, an MP has only limited scope to determine the subject matter for debate (and this is subject to a ballot) and cannot be certain he will be called to deliver a speech or ask a question. This limits the ability of MPs to deliver on any promises made to outside paymasters.

It is weaknesses in these inspector-free processes that has prompted the growth of formal oversight. Ethical reforms in Westminster in the mid-1990s were prompted by scandals in which MPs had engaged in highly unethical behaviour, which neither benign self-regulation, nor party competition, nor electoral forces, seemed adequate to prevent (Behnke, 2002: 694-695). Indeed, the scandals seemed to vindicate those who had suggested that social pressures within Parliament could lower ethical standards, if MPs saw the unethical behaviour of their peers tolerated and accepted (Mancuso, 1995).

The rise of the regulators?

In 1975 the House of Commons voted to introduce a dedicated regulatory committee, the Committee on Members' Interests. This was a light-rein system of oversight, accompanied by an observation that the new Select Committee and Registrar of Members' Interests should not be thought of as enforcement officers. It was not until 1996 that the House of Commons adopted a fully-fledged Code of Conduct, overseen by a dedicated regulator, the Parliamentary Commissioner for Standards.

Hood et al identify five methods of oversight: inspection, audit, certification, authorisation and adjudication.⁸ It could be argued that the Register of Members'

⁸ Hood et al (1999: 46-47).

Interests is a limited form of audit, although it falls far short of the ‘tax return’ approach favoured by some commentators.⁹ There is remarkably little audit within Westminster, even of MPs’ use of public funds.¹⁰ For the most part, the House has confined itself to adjudication, and even this has been with demonstrable reluctance, with the Members’ Interests Committee requiring complainants to provide *prima facie* evidence of misconduct before it would launch an investigation into a Members’ behaviour. Checking the accuracy of a Members’ Register entry, a form of inspection has been left by the Committee to journalists, members of the public, and occasionally inquisitive MPs.

The regulator that comes closest to using all five methods is the Electoral Commission. Although the Commission is not able to enforce penalties for non-compliance it can mount investigations and pass the results on to law enforcement agencies. It requires returns relating to donations to and expenses of political parties, candidates and – where they participate in elections – public office holders; and the auditing of political parties’ accounts. Its permission is required to register a political party (a statutory requirement to contest elections with a designation other than ‘independent’), and is responsible for authorising the question to be used in any referendum. Though its methods are varied, however, its scope is very much limited. The individual MP is unlikely to have contact with it more than once every four years.

At the other end of the scale lies the whip system, with a ‘roving brief’, but little strategy. As a semi-formal system of oversight, their activities would fit Selznick’s definition of regulation: it is sustained, focused oversight. They are a dedicated regulatory institution. As Table 3 shows, their remit is across the range of MPs’ activities. However, ‘hard regulation’ – explicit rules backed up with formal sanctions – is reserved for the marshalling of MPs in divisions. As the table shows, most regulation of MPs is ‘thin-regulation’ – fully-fledged regulatory mechanisms are the exception rather than the norm, and their remit is severely circumscribed.

⁹ See, for example, Sheila Gunn’s evidence to 1991/92: HC 326.

¹⁰ 2002/03: HC 435, and Appendix 1.

	Party													
	Parliamentary							External						
	<i>Speaker</i>	<i>Fees Office</i>	<i>Standards Commissioner</i>	<i>Standards Committee</i>	<i>Whips</i>	<i>Leadership</i>	<i>Colleagues</i>	<i>National Executive Committee (Lab)</i>	<i>Ethics + Integrity Committee (Con)</i>	<i>Selectorate</i>	<i>Electorate</i>	<i>Constituents</i>	<i>Media</i>	<i>Electoral Commission</i>
Partisanship														
Ideology					*	**	*	*	**	**	*	*	*	
Opinions					**	**	*	*	**	**	*	*	*	
Vote					***	**	*	*	**	**	*	*	*	
Personal														
Sexual					**	*			**	*	*	*	*	
Financial			***		**	*	*		**	*	*	*	*	***
Other					**	*			**	*	*	*	*	
Institutional														
Etiquette	***				**	***	*						*	
Conflict of Interest	*		***	***	**	***	*		**	**	*	*	*	***
Financial		**/ ***	**/ ***	**/ ***	**					*			*	***
Service					**		*			**	*	*	*	

- *** Hard regulation: Mandatory / Codes / Formal enforcement / Sanctions
- ** Intermediate: Advisory / Guides / Informal enforcement / Incentives
- * Soft regulation: Voluntary / Norms / Socialisation / Disapproval

Table 3: regulatory type by domain and regulator

It is clear that the hardest type of regulation of British MPs – defined codes with formal methods of enforcement, backed up by penalties for non-compliance – is very rare. This is not to say that Westminster is a rule-free zone: the House passed a rule prohibiting MPs acting as advocates in Parliament as early as 1666; and Erskine May, which collates various rules on parliamentary practice, was first published in 1844. But it was not until 1975 that the House approved detailed rules on disclosure of financial interests, and not until 1996 that the House approved a fully-fledged Code of Conduct. Moreover, it was only with these last two developments that the House began to construct a formal machinery of enforcement, with the creation of the Select Committee on Members’ Interests Committee in 1976, and a more wide-ranging Standards Committee in 1996. If a regulatory state within Westminster is being constructed, it is happening only slowly and in very limited spheres.

The Regulatory Web

As Appendix 1 shows, multiple actors impact in various regulatory ways upon the individual MP. This creates a case for a re-centring of MPs’ regulations, whereby

instead of identifying a prime regulator, we view the MP at the middle of a regulatory web, surrounded by multiple actors.

Such an approach has the advantage of being far more amenable to inter-institutional comparison. Rather than simply noting fundamental differences in formal control and accountability, it is possible to examine (i) the existence of comparable bodies in different legislatures, and (ii) how far the various units regulate the behaviour of individual legislators. Indeed, one could go further and examine separately the formality of regulation in force, penalties, enforcement and status, or the degree to which each body is involved in standard-setting, monitoring and behaviour modification. So, for instance, if we were to examine the Scottish Parliament, we could use many of the same categories, but we would find that the Standards Commissioner and Standards Committee use far more explicit codes in regulating etiquette: the Scottish Code, for instance, covers the use of terms such as ‘your local MSP’, and the use of Scottish Parliament notepaper. If we were to consider local authorities, it would be necessary to include the Standards Board and the Local Government Ombudsman as additional external officially-sanctioned regulators.

In Figure 1, various regulators of MPs are mapped along two axes (although these are not strictly quantitative): the horizontal axis illustrates how far these are parliamentary institutions; the vertical axis the extent of party penetration. Thicker arrows denote ‘thicker’ – more rule-based, more formal – regulatory relationships.

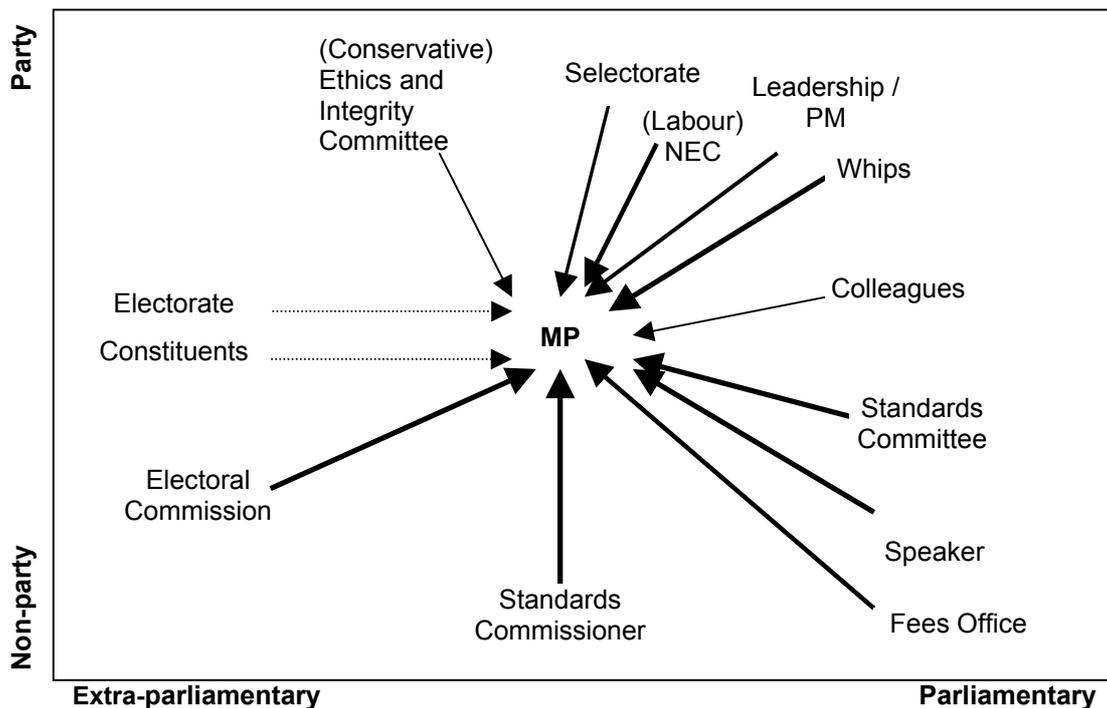


Figure 1: the regulatory web of an individual (backbench) MP

A number of points can be drawn from this analysis. First, in regulatory terms the ‘public’ – the electorate specifically and the MP’s constituents more generally – are at some remove from the individual MP. Their capacity to frame standards, let alone enforce them, is severely circumscribed. They have no formal status except as electors

once every four years or so, and perhaps potentially as complainants to the Parliamentary Commissioner for Standards. If they follow this second route, however, they will find that it is the House's standards, not the electors', that are being enforced. As a former Commons officer put it:

It's apparent to me that there are a few MPs who are not: who are nasty to the people who come to them for help, who are rude to them, and who are dismissive ... Those aren't things that I can look into.

(Filkin, 2000)

Second, there are some differences between the parties. The Conservative Party now has a dedicated ethics machinery, the Ethics and Integrity Committee (E&IC). This body, two non-MP lawyers chaired by a senior backbencher, is at greater remove from the party than the Labour Party National Executive Committee (NEC), although in relation to regulation of MPs they have broadly comparable powers against members. Control by the leadership over this body is weak, weaker than that of the Labour leadership over the NEC. Its importance as an instrument of central control lies in the fact that only the Leader or the Board of the Conservative Party can refer cases to it: against the 'clean' MP this discretion is not an effective tool; it comes into its own where a case *can* be articulated against an MP, who may or may not come under the protection of the Leader.

The most important point taken from the regulatory 'web', however, is the extent to which the various regulatory spheres overlap. For instance, with Labour in government and the leadership consequently accountable to Parliament – in practice, to Labour MPs – there is a line of regulation between these MPs ('colleagues') and the leadership. At the same time, these MPs are subjected to the authority of the Whips, appointed by, and answerable to, the Prime Minister. This has a nice sort of symmetry, but such symmetry is not an inevitable consequence. Rather, the pattern that emerges is one of regulatory 'spaghetti', of intertwined lines of regulatory authority. The operation of one line of authority can have consequences for other lines (see Figure 2).

the Speaker (who is elected by the House, in which the Government has a majority), five appointees of the Speaker (ditto), and the chair of the select committee overseeing the department responsible for elections (whose appointment is largely in the hands of the government whips).

Questions for future research

To map the various regulators is only the beginning. The next task is to construct order from the chaos. How important is each regulator to the individual MP, and what factors – such as powers, resources, relational distance – influence this relationship? Does the importance of various regulators differ from MP to MP and if so, what factors determine this – the MP's status? His/her majority? Does it vary between domains? What are the dynamics – for instance, is the centre becoming more or less important in controlling the actions of backbenchers?

The value of this approach is the greater scope for cross-national research. How far does the extent of regulation vary between states? Is there a 'national style of regulation'? And is Britain (still) a 'haven for self-regulation' (Baggot, 1989)? What factors influence the choice of regulatory regime – cultural, historical, institutional? How responsive are states to pressure from international non-governmental organisations (NGOs) to alter their regulatory machinery for politicians?

Finally, how do the regulatory regimes for each category (partisan, institutional, personal and abuse of power) differ between political systems and how does regulation differ *within* the state but *between* spheres? This question should enable us to ascertain whether the regulatory regime for legislators is a product of the spheres under regulation, or a product of the state's political system.

Appendix 1: Regulators of British MPs and their methods

<i>Oversight</i>		<i>Competition</i>	<i>Mutuality</i>	<i>Contrived Randomness</i>
Standards Commissioner	Investigations; 'Audit' of Members' Interests	Competitive pressures created by Register of Members' Interests	Ethical induction sessions for new MPs	Allegedly arbitrary nature of investigations
Standards Committee	Response to Reports by the Commissioner		'Peer review' nature of response to Commissioner's Reports	
Speaker	Points of order; Speaker's rulings; Naming	Calls for Questions		Calls for Questions; Ballot for Private Members' Bills
Leadership		Competition for preferment and ministerial appointment		High degree of unpredictability in ministerial appointments
Whips	'Black book' oversight; management of divisions		Pastoral role of Whips	
Colleagues		Party factionalism	'Westminster village' environment, especially within parties	
NEC/E&IC	Investigations	NEC: wider role in party management, elections etc	MP representation on NEC/E&IC	
Selectorate	Decision (not) to reselect	Initial selection	Social aspect of constituency party organisations	Sporadic nature of constituency vacancies
Electorate/ Constituents	Local press; casework	Competitive election	MPs' Surgeries	

References

Baggot, R. (1989) 'Regulatory Reform in Britain: the changing face of self-regulation', Public Administration, 67 (4): 435-454.

Baker, A. (2000) Prime Ministers and the Rule Book, London: Politicos.

Baldwin, R., Scott, C. and Hood, C. (1998) A Reader on Regulation, Oxford: Oxford University Press.

Beck Jørgensen, T. and Larsen B. (1987) 'Control – an attempt at forming a theory', Scandinavian Political Studies, 10 (4): 279-299.

Behnke, N. (2002) 'A Nolan Committee for the German Ethics Infrastructure', European Journal of Political Research, 41 (5): 675-708.

Besley, T., Burgess, R. and Pratt, A. (2002) Mass Media and Political Accountability, CARR Discussion Paper No. 6, London: Centre for Analysis of Risk and Regulation, LSE.

Black, J. (2002) Critical Reflections on Regulation, CARR Discussion Paper 4, London: Centre for Analysis of Risk and Regulation, LSE.

Black, J. (1996) 'Constitutionalizing Self-Regulation', Modern Law Review, 59 (1): 24-55.

Butler, D. and Butler, G. (2001) British Political Facts, Basingstoke: Macmillan.

Cain, B., Ferejohn, J. and Fiorina, M. (1987) The Personal Vote: Constituency Service and Electoral Independence, Cambridge, MA: Harvard University Press.

Drewey, G. (1985) The New Select Committees, Oxford: Clarendon.

Eldersvelt, S.J. (1978) 'The Party "Stratarchy"', in D. Abbott and E. Rogowosky, Political Parties, Chicago: Rand McNally.

Filkin, E. (2000) 'Podium', The Independent, 21 May 2000.

Finer, S. (1985) 'The Contemporary Concept of Representation' in V. Bogdanor (ed.), Representatives of the People, London: European Centre for Political Studies.

Flegmann, V (1980) Called to Account, Farnborough: Gower.

Fleming, J. and I. Holland (2001) Motivating Ministers to Morality, Dartmouth: Ashgate.

Gillespie, K. and Okruhlik, G. (1991) 'The Political Dimensions of Corruption Cleanups: a framework for analysis', Comparative Politics, 24 (1): 77-95.

- Hennessey, P. (1996) The Hidden Wiring (2nd ed.), London: Indigo.
- Hood, C., Hood, C., James, O., Jones, G. and Travers, T. (1999) Regulation Inside Government: Waste-watchers, Quality Police and Sleaze-Busters, Oxford: Clarendon Press.
- Judge, D. (1999) Representation: theory and practice in Britain, London: Routledge.
- Kaye, R. (2002) 'Regulating Westminster: the House of Commons Select Committees on Members' Interests and Standards and Privileges', unpublished DPhil thesis, Oxford: Department of Politics and International Relations, Oxford University.
- Lock, G. (1998) 'Statute Law and Case Law applicable to Parliament', in D. Oliver and G. Drewry (eds.), The Law and Parliament, London: Butterworths.
- Loughlin, M. and Scott, C. (1997) 'The Regulatory State', in P. Dunleavy et al (eds.), Developments in British Politics 5, Basingstoke: Macmillan .
- Low, S. (1904) The Governance of England, London: T. Fisher Unwin.
- McAllister, I. (2000) 'Keeping them Honest: public and elite perceptions of ethical conduct among Australian legislators', Political Studies, 48 (1): 22-37.
- Majone, G. (1994) 'The Rise of the Regulatory State in Europe', West European Politics, 17(3): 77-101.
- Mancuso, M. (1995) The Ethical World of MPs, Montreal and London: McGill-Queen's University Press.
- Mancuso, M. (1993) The Ethical World of British MPs, Montreal: McGill-Queens University Press.
- Mancuso, M. (1992) 'Edicts and Etiquette – Regulating Conflicts of Interest in Congress and the House of Commons', Corruption and Reform, 7 (1): 1 – 18.
- Marshall, G. (1984) Constitutional Conventions, Oxford: Clarendon Press.
- Moran, M. (2001) 'The Rise of the Regulatory State in Britain', Political Studies, 54(1): 19-34.
- Pitkin, H. (1972) The Concept of Representation, Berkeley, CA: University of California Press.
- Selznick, P. (1985) 'Focusing organisational research on regulation' in R. Noll et al, Regulatory Policy and the Social Sciences, Berkeley, CA: University of California Press.
- Stigler, G. (1971) 'The Theory of Economic Regulation', Bell Journal of Economics and Management Science, 2 (3): 3-21.

Williams, S. (1985) Conflict of Interest: The Ethical Dilemma in Politics, Aldershot, Gower.

Zellick, G. (1979), 'Bribery of Members of Parliament and the Criminal Law', Public Law, 31, London: Sweet & Maxwell.

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