PATH DEPENDENCE AND SELF-REINFORCING PROCESSES IN THE REGULATION OF ETHICS IN POLITICS: TOWARD A FRAMEWORK FOR COMPARATIVE ANALYSIS

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ABSTRACT: *In some countries, concerns over the erosion of public trust have led legislatures to introduce some form of independent element in their arrangements for regulating political ethics, while legislators in other countries are refusing to make similar changes even if they also face severe problems of declining confidence in politics. Why? To explain these differences, this article explores the fruitfulness of historical-institutionalist approaches, and of path dependence in particular. It suggests that ethics regulation processes are self-reinforcing over time, leading to more rules that are still enforced through self-regulation mechanisms (the no-change scenario, as in the U.S.) or to path-shifting changes where legislatures, hoping to break the ethics inflationary cycle, opt for a more depoliticized form of ethics regulation (as in the UK and Canada).*

In most countries, the constitution assigns the legislature the responsibility for disciplining its own members. Rules of conduct for members of parliament or the U.S. Congress are generally enforced through a system of self-regulation. Yet, countries like Canada and Britain have recently adopted measures allowing, for the first time, the involvement of outsiders in their system of ethics regulation, making it less internal and more external. The move towards a more external form of ethics regulation is designed to enhance public trust and confidence in the procedures that parliament uses to discipline its members. It is intended to depoliticize the process of ethics regulation. The goal is to mitigate the perception that MPs face an inherent and inescapable conflict of interest when they sit in judgment of fellow MPs. Yet, even if the maxim that no one should be the judge in his own cause has great moral power and seems difficult to oppose, both the U.S. Congress and the Australian Parliament are still sticking to their

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traditional system of self-regulation and refusing to follow Britain and Canada in creating a more independent or more depoliticized form of ethics regulation. How can we explain these differences? This is the key question I seek to answer in this article. The goal is to explore the fruitfulness of historical-institutionalist approaches, and of path dependence in particular, to address why in some countries concerns over the erosion of public trust led legislatures to introduce some form of independent element in their arrangements for regulating political ethics, while legislators in other countries are refusing to make similar changes even if they also face severe problems of declining confidence in politics.

The article is divided into four sections. The first is a brief overview of the different models that exist for regulating political ethics. The second is about theory. It introduces an approach that stresses the interplay between formal institutions and policy feedback, pointing out how policies function as institutions, imposing on actors norms and rules, and conveying, through their design, subtle messages to citizens (Ingram and Schneider 1993), which subsequently reshape politics itself. In the third section I discuss the notion of path dependence and suggest how it can be recast in a less deterministic way so that it can explain both institutional continuity and change. The last section presents a framework that could be used in future research for explaining variation in how legislatures discipline their members.

VARIETIES OF ETHICS REGULATION REGIMES

Most systems of ethics regulation fall along a spectrum which has pure self-regulation at one end and wholly external regulation at the other, with some form of co-regulation in the middle. But as Dennis Thompson (1995) argues, any process of self-regulation-- which has traditionally been the norm for all legislatures--raises suspicion. It creates what he calls an institutional conflict of interest. As he writes, "Members judging members raises reasonable doubts about the independence, fairness, and accountability of the process" (131). In seeking to address these reasonable doubts, a growing number of national and subnational jurisdictions have been moving, in the past few years, toward systems that includes some external form of ethics regulation (Carney 1998). This is because, as one British politician argues, traditional systems of self-regulation are now discredited. They can no longer command public confidence (Committee on Standards in Public Life 2002, 8).

Three diverging approaches to institutionalizing codes of conduct are apparent in comparable democracies. One approach involves enshrining ethics rules 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 rules, oversees the conduct of the members of the legislature, and reports to the legislature. This is the model in place in the Canadian provinces and in the federal Parliament with the recent adoption of Bill C-4. The Standards in Public Office Commission in Ireland is also based on this model.

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 working in collaboration with an independent parliamentary commissioner, established under

standing orders or a resolution of the house. This is the co-regulation approach (which involves a certain element of independence in the presence of the parliamentary commissioner for standards) that Britain has adopted following the 1995 Nolan recommendations.

The third option is that followed in the U.S. Congress and in the Australian Parliament. In this approach, discipline is internal to the legislature and based upon a detailed set of rules and guidelines as in the U.S., or traditions and standing orders as in Australia. Each chamber has its own ethics committee (or Members' Interests Committee as this is called in Australia), and each committee provides interpretative and advisory rulings and can investigate allegations of improper conduct and impose sanctions.

If "self-regulation appears to have little credibility with the public," as one comparative study on legislative ethics concluded (Brien 1998, 16), and if the trend towards what Mackenzie calls always "more ethics" (2002, 5) is driven by the erosion of public confidence in politics, one would expect that countries facing a problem of decline in public trust would have all converged toward systems of ethics regulation that includes at least some form of external or independent involvement. But this is not the case. There is no indication that the standards of conduct that the American or Australian public expects of politicians has risen less significantly than in Canada or Britain. Yet, in the two former countries, politicians are still sticking to their traditional system of self-regulation and have resisted for years attempts at introducing any form of outside involvement in the regulation of legislative ethics.

In much the same way, the widely held belief that ethics reform is a scandal-driven process has difficulties accounting for the differences between, for instance, Britain and the U.S. In the British case, the cash for questions scandal in the early 1990s (Ridley and Doig 1995) led to Parliament accepting, albeit belatedly, the need for an independent element in the investigative part of the ethics regulation process. But although there also were numerous ethics wars and scandals taking place in the U.S. Congress during the Gingrich era in the 1990s (Tolchin and Tolchin 2001), this did not lead to the same outcome as in Britain. Why? I argue in the next section that formal institutions and policy feedback from previous political choices are most important.

HISTORICAL INSTITUTIONALISM AND THE REGULATION OF POLITICAL ETHICS

There is a growing body of research in political science--often grouped under the name of historical-institutionalist analysis--emphasizing how relatively stable, routinized arrangements structure political behavior (Thelen 1999). Most of the work on political ethics is reflective of analytical strategies that tend to treat policy (ethics regulation) as the result of various social and political forces. But in this research I take a different approach, arguing not only that politics creates policies, but that policies also remake politics. This suggests that ethics regulation is not purely a product of what has variously been described as the "politics of trust" or the "politics of ethics" (Mackenzie 2002, 53), but rather that ethics regulation also produces the politics of trust.

Formal Political Institutions

In discussing the impact of formal institutions--or constitutional arrangements--on the regulation of political ethics, at least two dimensions need to be distinguished. First, the constitutional principle of legislative autonomy means that the legislature has sole responsibility for disciplining its own members. For instance, both Westminster and the U.S. Congress have tenaciously and consistently resisted any suggestion that the conduct of their members should be subject to the authority of any external body or person. In the American case, Article 1, Sec. 5 of the U.S. Constitution of 1789 holds that each house may punish, including expelling, its members. In the British case, Article 9 of the Bill of Rights of 1689 suggests that it is not possible for outside bodies to call into question the actions of MPs in Parliament (Williams 2002). For more than 300 years, the House of Commons has maintained that its decisions, including those on the disciplining of its members, cannot be challenged in the courts. "Self-regulation has a constitutional importance because the House is sovereign. In order to fufill its responsibilities as a sovereign institution, Parliament must have the freedom of privilege so that it is protected from outside interference" (Committee on Standards in Public Life 2002, 9). In all parliamentary systems based on the Westminster model, the role of parliamentary privilege is considered essential to maintain the constitutional doctrine of separation of powers and the principle of free speech by the representatives of the people. Parliamentary privilege gives the legislature its authority for creating and controlling its own ethics regulation machinery. For instance, in Canada, the recent adoption of a bill to create an independent ethics commissioner to regulate parliamentary ethics has been denounced by some as a possible encroachment on the principle of legislative autonomy. A number of parliamentarians object to having their actions overseen by an ethics officer based in law, fearing that this could allow the courts to interfere in their business. They prefer a nonstatutory model (as in Britain) where the parliamentary commissioner for standards was established by a simple resolution of the House. "Parliament," they say, "is an institution that should remain the sole manager of its discipline . . . The issue of court revision is something that is of great concern. Judges should not be involved in the disciplining of parliamentarians. Otherwise, you mix up the two systems" (reported by Paco Francoli in his article "PM Ethics Bill Headed for Roadblock" in the *Ottawa Hill Times*, 26 May 2003).

The point here is that despite the fact that politicians may be invoking ancient constitutional authority for defending their traditional system of self-regulation, there have been some changes, as the British and Canadian cases indicate. They may not be radical changes, but they nevertheless imply an important departure from practices that have very deep historical roots. The fact that these changes have taken place in parliamentary systems points to a second dimension of formal institutions that needs to be underlined: the concentration of power. Analysts interested in explaining policy change have often argued that because the concentration of political authority lowers the number of veto points, governments operating in parliamentary systems have a much greater capacity to pursue significant policy shifts (Bonoli 2000). As long as the governing party or parties has a majority, legislation can be passed even over heated opposition. By contrast, the American system of checks and balances can often lead to deadlock or inaction. Party discipline is much weaker in the U.S. Congress. There are,

moreover, many veto points in the legislative process at which opponents can effectively block policy changes (Weaver and Rockman 1993).

As a basic account of the concentration versus the dispersion of power and its impact on policy outcome (change or no change) this is rather convincing. It is helpful to understand the differences between Britain and Canada on one hand, and the U.S. on the other--but not between Australia and the two other parliamentary systems. The presence or absence of some independent element in the ethics regulation process is not simply a matter of formal institutions. The U.S. Congress may be resisting calls for a more independent form of ethics regulation, but this is not simply because it has a separation of powers system. After all, there are in the U.S. more than thirty state legislatures with similar institutional arrangements that have independent ethics commissions. Australia may well have formal political institutions that would make the creation of an independent ethics commissioner a relatively easy task, but it has been constantly rejecting such suggestions over the past years (McKeown 2003). Formal institutions may facilitate or impede policy change, but they are insufficient to explain why political actors are more likely to follow one particular trajectory of policy development rather than another. Formal institutions may frustrate reformers who are seeking changes but do not explain why they are pursuing them. This is more a matter of actors' interest and preferences which, I argue below, are profoundly shaped by previous policy choices.

Policy Feedback and Political Change

The idea of policy feedback stresses how past policy decisions influence subsequent political developments and struggles (Mettler 2002; Pierson 1993). It focuses on the ways in which the specific design choices made by preceding policymakers feed back into contemporary politics, thus constraining the options that are before the political actors of the present. Research on policy feedback suggests that public policies, once they are adopted, have feedback effects in at least two ways. First, policy design has resource effects--how the resources and incentives that policies provide shape patterns of behavior. Second, policy design has interpretative effects--how policies convey meanings and information to citizens. What does the research on political ethics have to say about the presence of these two types of effects?

Arguments about the resource effect of policies stress how new policies, and the efforts to implement them, often lead to the creation of new institutions, thereby expanding state capacities and affecting the goals and strategies of groups seeking to promote or frustrate the further extension of that line of policymaking (Skocpol 1992, 58). This is an aspect that critics of ethics regulation in the U.S. have already highlighted, arguing that "the expansion of ethics regulations and enforcement agencies and personnel [has led to growing] public controversy over the ethical behavior of public officials" (Mackenzie 2002, 112). In much the same way, Thompson claims that escalating concerns about ethics is "a product of overly zealous reformers who believe corruption is rampant and that the only way to stop it is by enacting more rules and bringing more charges. The problem, the critics say, is not political corruption but those who seek to eliminate it. The 'ethics police,' a new breed of activists who devote their

careers to fighting corruption, have produced a 'culture of mistrust' that has made the difficult job of governing that much harder" (1995, 4).

While not himself a critic of ethics regulation, Thompson nevertheless recognizes that this argument has some validity and that "public concern about ethics in Congress is generated by ethics reformers themselves," but in the end he argues that "the demand for ethics regulation has grown beyond anything the ethics police could have instigated on their own. It is a *manifestation of a public mood*" (1995, 4, my emphasis). This position, which basically argues that the demand for ethics regulation comes from society, is in sharp contrast with the idea that the most noteworthy thing about "the politics of ethics was *the absence of any identifiable public demand*" (Mackenzie 2002, 53, again, my emphasis). This is a position also shared by Ginsberg and Shefter in their *Politics by Other Means* (1990). As the two authors write, the "heightened level of public concern with governmental misconduct [as well as] the issue of government ethics [are] closely linked to struggles for political power in the United States. In the aftermath of Watergate, institutions were established and processes created to investigate allegations of unethical conduct on the part of public figures. Increasingly, political forces have sought to make use of these mechanisms to discredit their opponents . . . The creation of these processes, *more than changes in the public's moral standards*, explains why public officials are increasingly being charged with unethical violations" (1990, 7, still my emphasis).

Ginsberg and Shefter argue that because of party decline and the declining significance of the electoral arena, ethics rules have become a form of "politics by other means"--ethics rules are "weapons of institutional combat" (1990, 1). As competition in the electoral arena has declined, the significance of other forms of political combat has increased. This view is clearly one that emphasizes how ethics rules shape politics by providing resources and incentives that influence the strategies and activities of social or politically active groups.

Public policies have feedback effects also in terms of the meaning and information they convey to political and social actors. Such effects not only provide information to policymakers but also to citizens and the public in general. The idea is that the content of public policy (policy design) affects citizens' orientation by sending messages about the value of the group or groups that are the target of policy (Ingram and Schneider 1993). Policies generate cues that help social actors to interpret the world around them. As discussed earlier, self-regulation is generally the primary mechanism for enforcing ethics standards in political life. In opting for this particular type of arrangements--of policy design--most politicians probably believe that they are defending the constitution: that they are upholding the principle of legislative autonomy that allows the representative of the people in parliament (or the U.S. Congress) to be free of outside interference (Committee On Standards in Public Life 2002, 7). This is, for instance, what the parliamentary leader of the Labour government argued in the House of Commons when he said that "the refusal of the House to accept any external authority over its proceedings is a fundamental principle of British parliamentary democracy" (Williams 2002, 615). But self-regulation, as a type of policy design, may well be sending another message to the public, one that self-regulation is "self-serving and anachronistic" (612); that it favors a system of "quiet collusion" (Tolchin and Tolchin 2001, 9), or as Thompson argues, that it conveys the idea that legislators are in

a basic "institutional conflict of interest [because self-regulation] is not observing the principle that one should not judge in one's own cause" (1995, 135). In much the same way, the fact that the instruments generally used for regulating political ethics are often nonstatutory also creates the impression that the rules of conduct that legislators apply to themselves are malleable and can be easily manipulated because they lack the authoritative or coercive character of the law.

In addition, ethics regulations are very often born in scandals. The "rules are written hastily and with punitive intent, and they usually embody laundry lists of prohibitions to eliminate the most recent scandalous actions" (Dobel 1993, 161). They generally focus on conflict-of-interest definitions and the attempt to insulate public office holders from the influence of money, family, or business (Stark 2000). They try to demarcate public and private life by limiting the giving and receiving of gifts and the use of public resources for gain or for personal use. More recently, they have attempted to solve the revolving-door syndrome by constraining the post-employment possibilities of public officials.

In *Policy Design for Democracy*, Schneider and Ingram argue (1997, 102) that public policies always involve the social construction of target populations that separate the "deservings" from the "undeservings." Based on this distinction, they develop a typology of four different kinds of possible policy targets: the advantaged (who are powerful and positively constructed); the contenders (powerful, but constructed as undeserving or greedy); the dependents (positively constructed as good people, but relatively needy or helpless and who have no political power); and the deviants (who also have no power and are negatively constructed as undeserving, violent, mean, and so forth). Politicians are, obviously, the group targeted by ethics regulations. In Schneider and Ingram's typology politicians, as a target group, are part of the contenders category, which includes "privileged and elite groups that appear to be abusing power" (117). This, they recognize, constitutes a negatively constructed image of politicians.

Looking at the message that rules intended to regulate the conduct of politicians send to the public, Dobel writes that "generally, the tone conveys a clear lack of trust and respect for public officials. The code reduces ethics to a negative prohibition on monetary and personal gain from private service, and enumerates long lists of minutia that now become ethics violations" (1993, 161). Rosenthal (1996, 10) similarly points out how the legislative ethics reforms of the 1970s have "directed public attention towards examples of legislative corruption, in part by expanding prohibited activities and introducing far greater complexity into legislative life."

Between the public and the messages sent by public policies, there is the media. Some have argued that ethics rules also have feedback effects on what the media do (e.g., Sabato 1991). Ethics rules, in seeking to reduce conflict-of-interest situations, break down barriers between private and public life, thus making personal aspects such as friendships, family, and business interests subject to public scrutiny and judgement. Most ethics rules or codes are built around reporting and disclosure requirements, which make it possible for the media to identify hidden conflicts of interest by linking actions to revealed private interests. The failure to disclose properly or fully also becomes a violation of the rules, and the disclosure forms become important information for the media. Dobel notes that "disclosure forms are a mother lode for investigative reporting.

Given the information on disclosure forms and the way ethics codes extend culpability to family members or to friendship patterns, the opportunity to uncover wrongdoing or verify patterns suggestive of wrongdoing invites media intervention. In addition, the simple failure to report information adequately and in great detail now becomes a publicized 'violation' in the press" (1993, 162).

In *Scandal Proof*, Mackenzie also suggests that more ethics rules have produced more media investigations. "The public," he argues, "only knows what it hears and sees and reads. And all those receptors are filled almost constantly with stories that, far from suggesting high levels of public integrity, too often suggest just the opposite" (2002, 112).

Policy Feedback and the Regulation of Ethics in Politics

Arguments about policy feedback are broadly persuasive. As the preceding section indicates, there are various signs in existing research suggesting that ethics rules have both resource and interpretative effects on the strategies of politicians, parties, bureaucrats (e.g., the ethics police), the media, and the public. But before going further, it is important to recast some aspects of the policy feedback approach to make it more relevant for the study of ethics regulation.

Undoubtedly, Paul Pierson has been one of the foremost theorists of policy feedback since the publication of his book *Dismantling the Welfare States?* (1994). In fact, most of the research in political science using the policy feedback approach is to be found in welfare state studies (Esping-Andersen 1999; Pierson 2002). While this research has been extremely innovative, its usefulness for the type of questions I want to explore in this research is not without limit. First, the policies that seek to enforce standards of conduct in public life are very different from social policies. To use Lowi's typology (1972), the policies on which this study focuses are regulatory and not primarily redistributive as social policies are. This is not to deny that there is no regulatory dimension involved in redistributive policies (or vice versa). Rather, the point is that each type of policy, at least in the case of ethics regulation, involves different types of actors. For instance, in looking at the interpretative effects of policy feedback, Pierson focused primarily on those interest groups receiving some form of direct benefit from social policy, such as the Association of American Retired People (AARP) in the case of the U.S. Pierson showed that New Right leaders failed to achieve their goals of significantly reducing the welfare state. This, he argued, was mainly due to the power of pluralistic interests attached to various social programs. Pierson's work very much focused on the sources of resistance to change as he discovered that little change had occurred in British and American social policies despite the political will of Thatcher and Reagan.

But in the case of ethics regulation, the social or the interest groups' side of the equation is much less visible than in the case of social policies. No group in society derives direct material benefits from the regulation of political ethics. In Pierson's work, those like the pensioners, who received an essentially positive message (constructed as deserving people who worked hard all their lives) from the policies of the postwar welfare state, mobilized energetically against retrenchment, and the outcome was no change or only minor change. But to the extent that members of the public are affected

by ethics regulation, the message they receive seems to be a negative one, which portrays politicians as people who are often tempted to abuse power. Taking their cues from the informational content of ethics rules, citizens may either become actively engaged in advocacy groups such as Common Cause in the U.S. and Democracy Watch in Canada. Or they can, more simply, express themselves through public opinion polls indicating that they have less confidence in politics. But in the two scenarios, citizens, or public opinion more generally, are likely to act as a force for change regarding ethics regulation, whereas in Pierson's work they were more a force that limited change.

In fact, in Pierson's analysis those pushing for changes were the New Right leaders elected in the 1980s who sought to dismantle the welfare state. But in the case of ethics regulation, the situation seems to be the reverse: politicians, rather than citizens or interest groups, are often those who are more forcefully opposing changes.[1] To put it simply, if the AARP in the U.S. represented in Pierson's work the entrenched interests blocking change, in the case of ethics regulation this role is more likely to be played by politicians themselves than by groups in civil society.

Finally, while Pierson used the policy feedback approach to explain the absence of change in welfare state restructuring (his dependent variable), in this study the phenomenon to be accounted for is also the presence of change. The basic point of departure for each of the four countries included in this study is that rules of conduct for members of parliament or the U.S. Congress have always been enforced through a system of self-regulation and peer review. But as already indicated, both Britain and Canada have recently departed from this system by introducing some form of external involvement, while Australia and the U.S., despite growing pressures, have made no such change. Why?

PATH DEPENDENCE AND POLICY LOCK-IN

Research focusing on policy feedback (i.e., how past policies shape later developments) is increasingly asking such questions about institutional change and stability by using the notion of path dependence (Hall and Soskice 2001; Pierson 2002). At its weakest, path dependence is little more than the observation that history matters to current outcome. It means "that what happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time" (Sewell 1996, 262-263). The stronger claim is that once a country or region has started down a certain path, it is likely to stay on it in the future. In other words, initial choices are not easily reversed, and the path cannot be left without large costs. This notion of path dependence refers to those particular sequences which have self-reinforcing properties. It highlights how preceding steps in a particular direction induce further movement in that same direction, thereby making the possibility of switching to some other previously credible alternative more difficult. This, Pierson suggests, happens because of increasing returns. "In an increasing returns process, the probability of further steps along the same path increases with each move down that path. This is because the *relative* benefits of the current activity compared with other possible options increase over time" (2000, 252).

What does this imply for the type of questions this study seeks to explore? As seen earlier, the research on ethics regulation is divided into two camps. But what is clear is

that even if the two sides in the debate have very divergent opinions about the usefulness of ethics rules, both agree that there is something that very much looks like a path: that the steady adoption of more ethics rules (more either in terms of number or in terms of their stringency and detail) is the trajectory or direction that policymakers have taken, especially since the Watergate scandal, in seeking to restore trust in public life. I do not want to discuss the value of this path, but simply ask questions about its existence. The regulation of political ethics seems to constitute a clear case of policy lock-in, with self-reinforcing processes that are making it difficult for political actors to switch to another alternative--for instance, to what Mackenzie calls "ethics deregulation" (2002, 163)--even when they may be aware that the path on which they are is not really producing efficient outcomes (e.g., that more ethics rules, at least when they are managed through self-regulation, may not help to build more public trust).

Self-reinforcing Processes in the Regulation of Political Ethics

Policy becomes locked in to a given path because of increasing returns processes. What can these processes be in the case of ethics regulation? What are the relative benefits of ethics reform? First, arguments in support of ethics regulation suggest that tighter rules and a more transparent ethics process can increase public confidence in politics. Since citizen confidence can never be too strong in a healthy democracy, politicians have no realistic alternative. They must constantly try to improve the ethics process (Thompson 1995, 177). Second, and as a corollary, it is politically difficult to be against ethics in a democracy. "Ethics regulation," writes one observer, "has been the motherhood issue of recent times--too politically costly to oppose," even when the direct benefits are uncertain (Mackenzie 2002, 5). Third, as the work of Ginsberg and Shefter (1990, 1) suggests, ethics rules are often used as "weapons of institutional combat." They are resources that politicians can easily mobilize to attack and discredit their opponents. Fourth, ethics rules are often born in political scandals. In such a context, politicians are more interested in the short-term than in the long-term effects of their actions. Political actors will tend to act rapidly and adopt new rules to ensure that the scandal that gave rise to the crisis in the first place will not happen again. In this sense, ethics rules provide what Eldeman calls symbolic reassurance (1967). As rules, they "reassure the public that the ethics problem has been solved because a rule stands on the books" (Dobel 1993, 161). But often, the rules are "toothless" (Rosenson 2000, 220). They are politically not costly to adopt because their implementation is weak to the extent that they have always been (until recently) enforced through systems of self-regulation and peer review.

As a result of these increasing returns processes, path dependency theory tells us that policies and institutions should persist over time. In other words, politicians should keep on adopting more ethics rules because: (a) this is the proper thing to do in a democracy; (b) it is politically difficult to be against more ethics; (c) because ethics rules provide easily accessible resources for political combats; (d) they also provide symbolic reassurance against misconduct; and, (e) they are cheap to adopt because enforcement is weak. Consequently, one should not expect any major change in the regulation of political ethics. This should be a sector that is highly change resistant.

Combined together, a, b, c, d and e above should act as positive feedbacks, or as self-reinforcing processes, that are effectively locking in ethics regulation to a particular policy trajectory (e.g., self-regulation) from which it becomes extremely difficult to depart. In short, the regulation of political ethics clearly exhibits the processes of increasing returns at the heart of path-dependence theory. But one of the goals of this research is to explain the changes that have taken place in the regulation of political ethics. The cases of Canada and Britain, where some independent (or external) element has recently been introduced in the ethics regulatory process, indicate that this does not necessarily constitute an instance of policy lock-in. Initially, all legislatures in the democratic world were (and most still are) on the path of self-regulation in terms of the mechanisms and processes used for disciplining their own members. This is the basic point of departure. But Britain and Canada have recently deviated from that initial path, while Australia and the U.S. have not. How can this be explained?

Political Authority and the Correction of Path Inefficiencies

Path-dependence accounts have often been accused of excessive determinism, unable to account for variance in the dependent variable they seek to explain (Saint-Martin 2002). If path-dependent mechanisms work the way leading theorists suggest, it is difficult to know why institutions and policies ever change at all. In a recent critique, Stewart Wood argues that one way out of this excessive determinism is not to claim that "there is only one possible route after a momentous initial turn," but to suggest rather "that certain moves are ruled out by past events in a sequence" (2002, 373). Viewed in this less deterministic way, "path-dependence becomes capable of accommodating change as well as continuity, by delineating the limits within which change can occur and identifying the factors that both mitigate against change and influence its direction" (ibid.).

This, Wood suggests, can best be done by questioning the issue of path inefficiencies. According to Pierson and others, because of increasing returns processes, inefficient institutions and policies tend to persist over time. In the economic world, where market competition provides effective selection mechanisms, inefficiencies may be more easily corrected. However, Pierson argues, in the political world such corrections are especially difficult (2000, 261). Inefficient political outcomes are not always selected out because of their inefficiency (in part because it is difficult to know what inefficient political outcomes are). Also, political actors, because of the logic of electoral politics, tend to have short-time horizons that reduce the incentive to tackle inefficiencies, particularly when the payoff to doing so is diffused or delayed.

It is true that selection mechanisms do not operate to privilege more over less efficient policies in the realm of politics. Inefficient outcomes may have long lives. But inefficiencies do have costs for actors, and the fact that these may persist or even accumulate as further steps down a given path are taken can serve to magnify their impact. At some point (a tipping point, as Wood calls it [2002, 373]), we should expect actors to seek policy change to correct an inefficiency. However, rectifying inefficiencies need not necessarily imply wholesale overthrow of a policy. Inefficiencies can be corrected through modifications to existing practice that fall in between continuation of the status quo and complete policy shifts. This, I hypothesize,

is precisely what happens in Britain and Canada. In these two cases, the introduction of some independent element in the ethics regulation process was partly designed to address what Thompson calls the "deficiencies of self-regulation" (1995, 147). But these changes do not necessarily constitute a radical departure from the initial policy path of self-regulation. In Canada, as in the British case (Kaye 2002), critiques have been raised against the insufficient degree of independence of the ethics regulation system that Bill C-4 creates (Saint-Martin 2003). Critics in the two countries want more independence because they think that the initial decision to depoliticize the regulation of ethics did not go far enough. Even if the two countries may no longer have a system of "pure self-regulation," as this has been called (Committee on Standards in Public Life 2002, 10), and even if some changes did take place, the regulation of political ethics nevertheless remains path dependent. What distinguishes a path-dependent process is that it is self-reinforcing: the probability of one outcome rather than another increases with each step down the path after an initial event. The fact that some degree of independence may have been introduced (even if small) means that ethics regulation in Britain and Canada is likely in the future to focus increasingly around that issue, and that the political costs of exit--of trying to switch to the previous system of pure self-regulation--will rise over time.

What the British and Canadian cases suggest is that politics is not only something that makes the identification of policy inefficiencies difficult. Recall Pierson's position that in politics, inefficient policies have long lives. The complexity and ambiguity of political life may well favor institutional inertia and continuity. But it is also the authoritative nature of politics that offers opportunities for changes of direction. As Wood argues, "the *concentration of political authority* in political contexts means that the interests of the few may dictate the fate of policies that apply to all" (2002, 374, my emphasis).

The key theoretical point here is that when the costs of the perceived inefficiency of certain policy trajectories are concentrated among those that have access to policymaking powers or to significant political resources, changes in policy are always possible. This suggests a more modest claim for the effects of path-dependence processes. There is no reason why the murkiness of politics should always compel policy continuity.

LOOKING AHEAD

Using the research on policy feedback, I have argued that ethics regulation should be conceived as an independent variable. This hypothesis is schematically described in figure 1.

Inevitably, diagrams such as this have a static, ahistorical quality. Let me underline, therefore, that I take from the policy feedback approach the fundamental insight that policies need to be studied over time; that once enacted, policies restructure subsequent political processes. Public policies, in the form of ethics rules, have both resource and interpretative effects. In terms of resources, ethics rules can be seen as weapons of institutional combat that politicians and parties can use to discredit their opponents. This, in turn, may lead to more ethics investigations and increases publicity and public controversy about the ethical behavior of public officials. It creates, in the words of
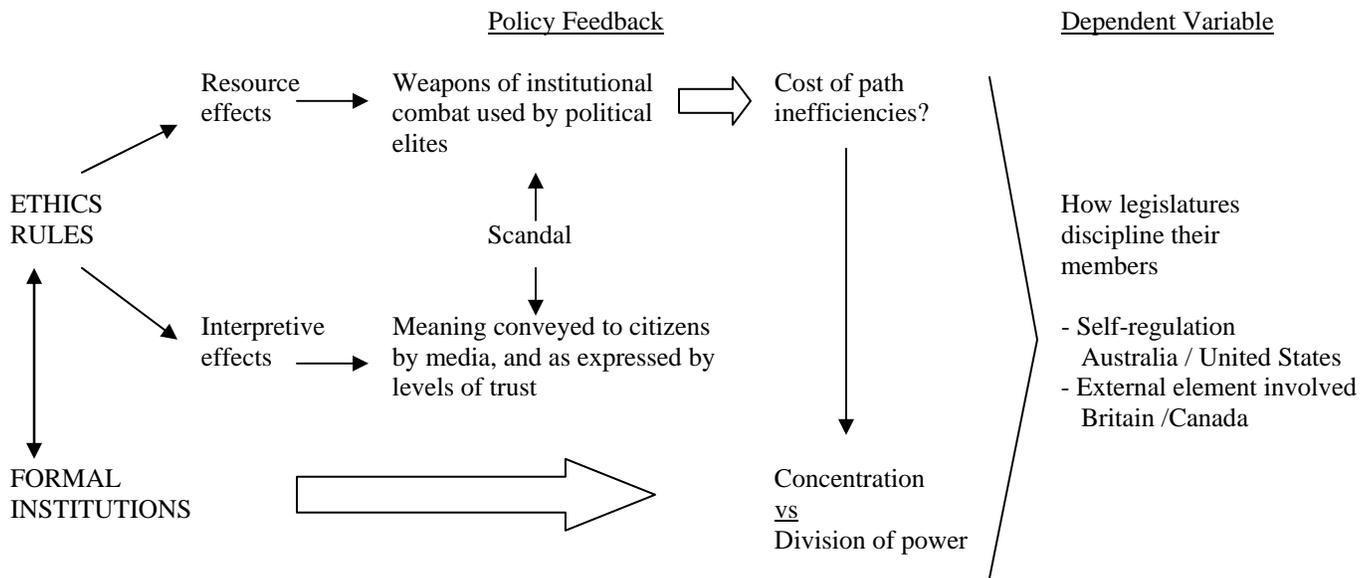
```
                    Resource        Weapons of institutional        Cost of path
                    effects         combat used by political        inefficiencies?
                                    elites

   ETHICS                                                                          How legislatures
   RULES                                    Scandal                               discipline their
                                                                                  members
                    Interpretive    Meaning conveyed to citizens                  - Self-regulation
                    effects         by media, and as expressed by                   Australia / United States
                                    levels of trust                               - External element involved
                                                                                    Britain /Canada

   FORMAL
   INSTITUTIONS                                                  Concentration
                                                                vs
                                                                Division of power
```

FIGURE 1.   Policy Feedback and Formal Institutions in the Regulation of Political Ethics

John B. Thompson, the impression that "political scandal is more prevalent today" (2000, 106). Ethics rules also convey meanings to citizens regarding the standards of conduct they can legitimately expect from those in public life. In this process the media plays a key role. The more ethics rules are used as weapons in partisan struggles, the more likely the air will be filled with news about political ethics. This in turn will affect the level of citizen confidence in politics, leading either to active mobilization (Democracy Watch, Common Cause, etc.) or to more passive expressions of disenchantment towards politics.

As path-dependence theory suggests, all these processes are self-reinforcing over time, leading to at least two types of scenarios. In the first instance, they can lead to more rules that are still enforced through self-regulation mechanisms, as in the U.S., for instance (the no-change scenario). Malbin explains how this path-dependent dynamic works in the case of the U.S. Congress. New ethics rules always bring " a broader range of behavior subject to official review. In this way, the new standards themselves have become catalysts for bringing attention to situations that once might have been accepted without question. This attention, in turn, creates pressure for still more changes in the formal rules and standards" (1994, 1155). But path dependence can lead to a different outcome (e.g., the change scenario). If we take the cases of Britain and Canada we can see, following the discussion on path inefficiencies, that at some point, when the feedback of previous policy choices start to create negative effects--when they produce diminishing returns--actors will seek to change policy to correct the inefficiency. Again, the key point here is that when the costs of the perceived inefficiency of certain policy paths are concentrated among those that have access to policymaking powers, changes are always possible. Notice that at this stage of the causal chain of reasoning illustrated in figure 1, the relevant factor leading to variation in the dependent variable points

towards formal political institutions (i.e., concentration versus dispersion of powers). Formal institutions need to be studied together with policy feedback. But the question of whether legislatures are opting for an internal or external form of ethics regulation process is not simply a product of formal institutions. The fact that formal political arrangements facilitate or impede change is not what shape actors' views and policy preferences. This is primarily a matter of policy feedback, of previous experiences with similar policy decisions. Reformers and activists in Democracy Watch Canada do not want more ethics rules because they think that such rules are more likely to be enacted in a parliamentary rather than in a congressional system. In much the same way, even if a concentration of powers system allows for more radical policy shift, MPs, either in Canada or Britain, do not seem to appreciate ethics rules more than their American counterparts in the U.S. Congress. Finally, the last element in figure 1 is the dependent variable, which broadly refers to the way legislatures discipline the conduct of their members. As we have seen, this is something that varies along a continuum which has pure self-regulation at one end and external regulation at the other, with some form of co-regulation in the middle.

It is important to make clear that countries where legislatures have opted for some form of external involvement in the ethics regulation process have not necessarily raised the ethics bar to a new or superior level of moral standards. Research at the state level in the U.S. suggests that independent ethics commissions are often underfunded and understaffed because they have no real allies to defend their interests, and many enemies (Rosenson 2003). The key point is that opting for a more independent form of enforcement mechanism depoliticizes (at least to some extent) the regulation of ethics. The cost of opting for such a strategy is that political actors no longer fully control the ethics regulation process. There is a strong element of risk and uncertainty that does not exist in the pure self-regulation path. But the potential benefit of deviating from this original path is that it may become more difficult for ethics rules to be used as tools of partisan combat when an external element is involved in the enforcement process. Part of the self-reinforcing aspect of ethics regulation is largely caused by the use of ethics rules as weapons of political combat. It is when ethics rules are used as weapons in power struggles that the ethics bar rises. The objective is to discredit opponents by raising ethical standards to higher levels. And as the ethics bar rises, the likelihood that behavior will not meet expectations probably becomes stronger, thus leading to more public distrust and to yet more rules. One way to break this cycle--to somehow exit from that particular policy path--might be to depoliticize ethics regulation by introducing some form of external element into the process. But if the cost of the inefficiencies created by the use of ethics rules as tools of partisan combat are dispersed, as in the U.S. Congress, then change is less likely to occur. In contrast, in Britain and Canada the costs of using ethics rules as political weapons are likely to have been felt more strongly among members of the governing majority. In the British and Canadian systems of government, the use of ethics rules as weapons of political combat primarily serves to discredit the government. But since government controls the legislature--and even if many MPs may not like the idea of no longer having their system of self-regulation--changes in the ethics process then become highly possible. For the government, depoliticizing some portions of the ethics regulation process may

provide a partial way of pulling the rug out from under the feet of its political opponents.

But in the U.S. Congress, the absence of change is not only a matter of formal institutions. The cost of using ethics rules as weapons of political combat may well be diffused as a result of the division of power system, but the sources of policy continuity are also path dependent because of increasing returns processes. In that case, the sources of policy continuity are endogenous to ethics rules themselves because politicians see some relative benefits in continuing to use them. Increasing returns processes (e.g., the five factors discussed earlier) engender a status quo bias by influencing the interests and preferences of actors in ways that incline them to support a particular course of policy development. This dynamic leads to the same outcome (i.e., absence of change) but is different from the one where policy stability is the result of constitutional obstacles that make reforms difficult. Whereas increasing returns arguments work through their effect on actors' interests and preferences, formal institutions laden with multiple veto points and separated powers may make reform difficult, but they do so by frustrating reformers rather than by influencing their policy preferences.

The Importance of Timing

As for the case of Australia, the available evidence suggests a dynamic different in many ways from the three other countries. Like the U.S., Australia has a system of pure self-regulation. But unlike the U.S., it has what Atkinson and Mancuso (1992) call an etiquette approach for regulating political ethics. Rules governing standards of behavior in the Australian Parliament are uncodified; there is no single, coherent blueprint for ethical conduct (Preston 2001). In Australia, there is no ethics code as in Britain, as well as no statutory ethics parliamentary officer such as the one recently established in Canada by Bill C-4. If ethics regulation regimes can be broadly divided between those relying on a rules-based versus an etiquette approach, the U.S. and Australia would, respectively, be the most and least rules-based regimes, with Britain and Canada somewhere in the middle, both using a mix of the two approaches. But in the three cases that have a parliamentary form of government--where the etiquette approach has long been dominant--there is a common trend toward using a more rules-based approach to ethics (Atkinson and Mancuso 1992). This trend, however, seems to be the least developed in the Australian case (Brien 1998).

In contrast to Australia (which can be described as a latecomer), of the four cases studied here the U.S. has, by far, the most more mature system of ethics regulation. In the U.S., the decision to adopt a more rules-based approach to ethics was made when the House and the Senate each adopted its own code of ethics in the 1960s. It was the initial decision made in the 1960s to formalize ethics that subsequently led to the use of ethics rules as weapons of political combat. And as argued earlier, it is precisely this kind of politicization that produces self-reinforcing processes in ethics regulation. As path-dependence theorists argue, sequencing is critical: earlier events sometimes matter more than later ones, and thus different sequences may produces different outcomes. Compared to the other cases, timing in the U.S. is different because Congress was among the first legislatures in the world to formalize ethics in the 1960s, and from the beginning politicians have always maintained that self-regulation was the most efficient means to enforce standards of conduct in the legislative sphere. Compared to their

British and Canadian counterparts, American legislators have gone much further down the path of managing ethics rules through self-regulatory mechanisms. One key hypothesis is that how far one has gone down a given policy path is critical for delimiting reform options. Reform is likely to be more difficult when a country has travelled far down a given policy path.

NOTE

1. This is because they think they will lose power when, for instance, they agree to have some form of outside involvement in the ethics regulation process, or because the type of disclosure and the opening to scrutiny of personal and family matters that ethics rules generally require is resented by officials and considered a form of harassment (Dobel 1993, 162). A recent illustration of this is the rebellion by MPs in Ottawa against the disclosure requirement for the financial affairs of parliamentarians' spouses and dependents called for in the code of conduct proposed by Oliver and Miliken (CBC News 2002).

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