Institutional Friction and Change: The Development of Ethics Rules and the Declining Legitimacy of Congress' Power of Self-Discipline

Denis Saint-Martin

Département de Science politique

Université de Montréal

June 2012

Manuscript under review

Do not cite without author's permission

ABSTRACT: The creation of the Office of Congressional Ethics in 2008 constituted a major reversal in the policy preferences of powerful actors in Congress, which is what this paper seeks to explain. The analysis focuses on the feedback effects of the rules and processes that House Representatives have designed in the past 50 years to regulate their conduct. The more ethics became governed by formal bureaucratic rules, the more Congress' power of self-discipline created inconsistencies with the norm of independence and beliefs in due process. It is within this friction between a power-oriented approach that favors political discretion and a rules-based system that the mechanism of change leading to the creation of the OCE can be located.

I. INTRODUCTION

After taking control of the House of Representatives in the 2006 midterm election, Democrat leaders stated that they were committed to running "the most ethical Congress in history" (Branigin, 2006). Citing the mandate from voters to clean up a "culture of corruption," House Speaker Nancy Pelosi promised to strengthen the internal rules and procedures that govern the conduct of House members. "The ethics process has lost the confidence of the American people," Pelosi said shortly before announcing the creation of a bipartisan task force to study the creation of an independent ethics office to enforce standards of conduct in the House (Chaddock, 2006). The well-publicized failures of the House ethics process over the years – the ethics wars, partisan abuse of the process and failure to deal with cases of obvious misconduct - have led to growing demands for an independent ethics enforcement mechanism (Amer, 2006). But lawmakers have long resisted such a move, preferring their traditional system of ethics self-regulation in which members enforce their own rules through internal congressional committees. As the task force was completing its work, Pelosi announced in June 2007 her intention to delegate part of the ethics enforcement process to an independent entity. On March 11, 2008, the House passed a resolution to create an independent Office of Congressional Ethics.

The OCE is led by a board of six outsiders[1] jointly appointed by the Speaker and Minority Leader for a four-year term. It has the power to initiate and conduct preliminary investigations of potential ethical violations and to make referrals and recommendations to the House Ethics Committee. The committee may then decide whether to start its own investigation. It can take no action, issue a letter of reproval criticizing unethical conduct or vote to send the matter to the full House for a possible vote on stronger punishment such as expulsion. In reporting and referring matters to the Ethics Committee, the OCE is restricted to stating only findings of fact and a description of relevant information it was unable to obtain, but it is expressly prohibited from stating "any conclusions regarding the validity of the allegations" upon which the referral is based, and has to remain silent as to the "guilt or innocence of the individual who is the subject of the review" (Maskell and Petersen, 2008: 14). That decision can only be made by the House itself.

Whether the new OCE will actually "bring greater accountability and transparency to the ethics process" as its supporters claim is still an open question (Pelosi, 2008). Partisan obstacles and multiple veto points will undoubtedly make the OCE's work difficult. But while such factors may well frustrate the ambitions of reformers, they do not say much about how a growing number of politicians in the House came to see the creation of an outside ethics watchdog as their preferred policy option. This constitutes a major reversal in the policy preferences of powerful actors in Congress, and this is what I seek to explain in this paper. Since the adoption of their first formal ethics code in 1958, politicians in Congress have tenaciously and consistently rejected any suggestion that their conduct should be subject to the authority of any external body or person (Williams,

---

[1] Four former House Representatives, one former House Chief Administrative Officer, and one academic.

2002). Politicians invoke ancient authority for their intransigeance. The constitutional provision (Article 1, section 5) granting Congress the authority to punish members, they claim, implies that only members should discipline other members for ethics violations.

Whether led by a Democratic or Republican majority, this is the position that the House has consistently defended for the past 50 years (Baker, 1985). The idea of switching from a system of self-regulation to one that includes outsiders has a long pedigree. It first emerged in 1951 when Senator Fulbright presented a resolution proposing the establishment of an ethics commission to be composed of 10 private citizens. This body would make recommendations to both the executive and legislative branches. When asked why he wanted the commission to be staffed by outsiders, Senator Fulbright responded, "If we undertake to discipline our own members and that sort of thing, we will really bog down in recrimination and will not accomplish anything" (cited in Getz, 1966: 25).

But this path was not taken, and the resolution never passed. In 1989, the idea of an independent ethics office re-emerged and was rejected by the Task Force on Ethics on the "grounds that such mechanism ignores the basic responsibility of Congress under the Constitution to discipline its own Members for disorderly behavior" (United States Congress, 1989: 19). And again in 1997, after having heard evidence that the inclusion "of 'outsiders' would enhance public trust and confidence in the standards process," the Ethics Reform Task Force (of which Rep. Pelosi was a member) decided "to forego the recommendations that non-House Members participate in disposing of misconduct allegations" (United States Congress, 1997: 6). Task Force members came to that conclusion because they were

> concerned with the explicit Constitutional responsibility of the House. They expressed the view that House Members better understand the rules, customs, and practices of the House, and they expressed the strong preference that House Members accused of misconduct be judged by their peers (United States Congress, 1997: 6).

How did the House switch from a "strong preference" for a peer review system to one that now includes the presence of outsiders in the ethics enforcement process? What accounts for the 2008 change creating the new Office of Congressional Ethics? These are the questions this paper addresses. In the following pages I look at the institutional development of ethics in Congress to uncover the feedback effects of the rules and processes that House Representatives have designed in the past 50 years to regulate their conduct. I show how the layering or accumulation of procedures designed to grant politicians the power to veto certain courses of action (as a way to ensure that ethics rules could not be used unfairly against them by their opponents) and give them the final say in the enforcement process has generated, over time, feedback effects eroding the credibility and legitimacy of Congress' ethics process. By opting for a system in which members are both judges and parties and that excluded the presence of outsiders as Senator Fulbright

had first suggested in 1951, the self-regulation approach to ethics in the House cultivated the seeds of its own demise. The introduction in the 1960s of a rules-based ethics process on top of an almost "pre-modern" self-enforcement system that remained highly personalized or "clan-like" (Ouchi, 1980), led to the creation of a parallel and "subversive" institutional track that ultimately altered the trajectory of the ethics process.

With each new scandal and partisan abuse of the process, pressures for a more independent form of mechanism for enforcing ethics rules grew stronger over time. The more ethics became quasi-judicialized or institutionalized - in Polsby's (1968) sense of being governed by impersonal, bureaucratic and universalistic rules - the more Congress' power of self-discipline granting elected representatives full political discretion in the ethics enforcement process created inconsistencies with the norm of independence and beliefs in due process. It is within this friction between a power-oriented approach that favors political discretion and a rules-based system that we can locate the mechanism of change leading to the creation of the OCE in 2008.

In the following section I present the theoretical components of my argument in more detail. The layering approach to institutional change is promising, but the politics of institutional design involve more than a contest between "winners" and "losers seeking to take their revenge later on. Actors' preferences change as they also face pressures to do what is appropriate and legitimate. The historical empirical analysis in the third section of the paper focuses on four types of policy feedback effects. First, I show how ethics rules provide resources and incentives for the formation and activity of multiple networks of "good government" groups campaigning for changes to Congress' ethics process. The ethics process created niches for political entrepreneurs in groups like Common Cause, Public Citizens, the League of Women Voters and many others who, for years, have used various institutional levers to push for a more transparent and effective ethics process. Second, I look at how, once adopted, ethics rules and institutions have become what Ginsberg and Shefter (1990) call "weapons of political combat" that politicians use to attack and discredit their opponents. A third type of feedback effects I examine is the impact of this new form of "gotcha politics" on public opinion. Public policies, such as ethics rules, not only produced resource effects but interpretative effects as well: they convey meanings and information to citizens. Policies create framing effects that influence what people see and what they do not, which issues attract their attention and how they feel about those issues (Baumgartner, De Boef and Boydstun, 2008). Ethics rules affect public opinion because they make violations (or allegations of violations) known. The development of ethics rules has always been justified by the need to raise public confidence in political institutions, which has been on the constant decline, especially since Watergate. Without making a functionalist argument that causally links the decline in public confidence to the creation of the OCE in 2008, it nevertheless constitutes a "slow-moving social process" that crucially changed the broader political context in which Congress' ethics process operates (Pierson, 2004). The fourth type of feedback effects I look at is connected to processes of institutional diffusion or "institutional isomorphism" (DiMaggio and Powell, 1983). Since Congress adopted its first formal ethics rules in 1958, most U.S. state legislatures have followed with the institutionalization of various codes of conduct, and as of 2006, more than 20 states had

established independent commissions, boards or offices to oversee enforcement of ethics rules for their state legislators (Casal Moore and Kerns, 2006). Experts and bureaucrats working in these agencies have increasingly come to define third-party enforcement as the appropriate "institutional technology" to regulate legislative ethics. These groups of professionals are densely networked and have considerable resources and incentives to disseminate models of appropriate action. As a result, arrangements that are outside the consensus (such as Congress' self-enforcement system) have suffered a decline in legitimacy and faced strong pressures to adapt. In conclusion, the paper emphasizes how, over time, even "plastic" or "toothless" institutions can "bite". Institutions, such as Congress' ethics process, can be "plastic", but over time their very plasticity (i.e. lack of autonomy vis-à-vis their political principals) generates legitimacy problems and feedback effects that can lead powerful actors to support an option (e.g. the creation of an independent ethics office) that they initially did not favour and consistently rejected in the past.

2. WHEN CAUSES AND EFFECTS ARE SEPARATED IN TIME

To understand the creation of the OCE in 2008, rational actor models focusing on "snapshot" views of major policy changes would likely suggest that we look at changes in power dynamics. This would undoubtedly include the Democrats retaking control of the House in 2006, as well as the Jack Abramoff scandal, which disrupted the balance of political forces in Congress. But similar scandals and changes in power dynamics have occurred many times before, without ever modifying Congress' position against the establishment of an independent ethics office (Gabaldon, 1996). For instance, in 1989, Speaker Jim Wright was forced from office over charges that the income he received from a book violated the House ethics rule setting limits on honoraria and outside income (Davis, 2007). In the early 1990s, in the midst of the so-called "banking scandal", the entire House was under investigation following a GAO report indicating that over 8,000 checks had bounced at the House bank between 1989-1990 (Williams, 1998: 104). In 1995 the Republicans took over Congress, and two years later, Newt Gingrich was the first speaker in congressional history to be reprimanded by the Ethics Committee for having misled the House (Yang and Dewar, 1997).

So, if "institutional realignments occur when the interests and/or power of relevant actors change" (Pontusson, 1995: 140) as rational choice theory supposes, why then did earlier changes in the balance of power not lead to a change in the institutions governing the ethics process? The key difference, I show in the following pages, is one of time because the processes that account for the House's new preference for an independent ethics office unfolded over a period that began half a century ago when Congress decided *not to* delegate the ethics enforcement process to an outside body. As we shall see, the "road not chosen" never disappeared, however.

The mechanisms behind path dependence arguments – feedback effects and self-reinforcing processes - are a key part of the analysis set out below. But I reject those versions of path dependence that paint a deterministic picture of irreversibility where the "road not chosen" at a critical juncture or beginning of a policy trajectory becomes an

increasingly distant and unreachable alternative. Such arguments often draw too sharp a contrast between contending options present at the outset of a policy path. Options are not always mutually exclusive, and democratic politics generally involves the blurring of opposition and the search for the middle ground. The option not taken does not automatically become impossible to recapture later on because some of its features may have been grafted to the alternative that prevailed in the early stage of the policy path. Shickler (2001) describes this grafting process as "layering", a political strategy that reformers in Congress use to work around those elements of an institution that have become unchangeable. Layers add up in a disjointed rather than self-reinforcing way according to Shickler, because in Congress "losers in one round of institutional reform do not go away; instead they (or successors with similar interests) typically remain to fight another day" (2001: 255).

It is highly unlikely, however, that the creation of the OCE can be accounted for by the role of "losers" from previous rounds of ethics reform who took their revenge in 2008, since most politicians in Congress - Republicans and Democrats alike – have always been "winners" in the past, to the extent that a majority of them have consistently rejected the idea of creating an independent ethics watchdog. More importantly, why should "losers" and their "successors" have "similar interests"? This assumes that preferences are stable and frozen in time, but they are not. "Layers", as they accumulate over time, also reshape actors' preferences. Institutional development involves more than the pursuit of rational self-interest. It is also driven by a "logic of appropriateness" where actors seek to do what is expected and legitimate (March and Olsen, 1989). To explain the shift from a system of ethics self-regulation to one that now includes a more independent element, I rely on what Mahoney calls a "legitimation explanation" (2000: 523). As he explains, in a path-dependent framework, a legitimation explanation focuses on how institutional reproduction is grounded in actors' subjective orientations and beliefs about what is appropriate or morally correct. Once an initial precedent has been set about what constitutes a legitimate institutional standard, a familiar cycle of self-reinforcement occurs. This is exactly what happened in the case of Congress' ethics process, which now includes with the OCE a form of independence that various scandal-led reforms have made incrementally stronger over time as a way to revamp the legitimacy of congressional ethics.

Senator Fulbright's 1951 proposal for an independent ethics commission was not adopted, but neither was it entirely rejected (Getz, 1966: 26). It set a precedent about what a legitimate ethics process should look like: one where standards of conduct would be enforced by an autonomous third party. When it began to develop institutions for regulating the ethics of its members in the 1960s, Congress did not adopt a fully independent enforcement process, and it still has not done so, even with the 2008 OCE[2].

---

[2] The independence of the House's ethics process is still limited, to the extent that the OCE only intervenes at the preliminary investigation stage. After investigation, the OCE may recommend that a "matter requires further review", but the decision to do so continue to be exclusively within the jurisdiction of the House Ethics Committee. A conduct matter that the new Office considers substantive, upon a recommendation to the Ethics Committee for further review, could still be buried, stonewalled, or not acted upon by the members of the House who make up the Ethics Committee, as there is no requirement for the committee to conduct such investigation or to make any disciplinary recommendations upon a matter referred to it from

It did, however, adopt a system that sought to neutralize partisan politics. The Ethics Committee (officially known as the Committee on Standards of Official Conduct) is unique in the House of Representatives: it is the *only* standing committee whose membership is equally divided by party to assure at least some bipartisanship in the consideration of issues relating to ethics and standards of conduct.

When it was created in 1967, the Ethics Committee was vested with key advisory and adjudicatory powers to oversee standards of conduct in the House. It has been compared to a "tribunal of legislative ethics" (Thompson, 1995: 131) functioning with quasi-judicial procedures similar to those used by the disciplinary board of a medical or bar association. In practice, however, it quickly became apparent that equal party membership did not ensure that the committee worked in a non-partisan way. Doubts were soon raised about the independence, fairness and accountability of a process in which members are judging other members with whom they have to work day after day. "Clubbiness" (Rhodes, 1973: 378), "folkways" (Matthews, 1960) and other informal norms of partisanship and loyalty conflicted with formal ethics rules and institutions. As the credible commitment literature suggests, self-enforcement is more prevalent in high-trust and highly interdependent contexts, where actors have a great deal of knowledge about each others and are involved in repeat dealings (North, 1993; Ostrom, 1990; Shepsle 1991). In the "clubbiness" of committee-era Congress, when ethics was governed by "etiquette" (Atkinson and Mancuso, 1992), self-enforcement might not have attracted much political attention. But the development in the 1960s of an ethics process based on bureaucratic and impersonal rules eroded the legitimacy of Congress' power of self-discipline over time, thus setting in motion a path-altering dynamic leading to the adoption of a more independent ethics enforcement mechanism.

Over Time, Even Toothless Institutions Can Bite
Because it violated the basic principle "that no one should be the judge in its own cause", the ethics process came to be described by observers and critics as "toothless" (Rosenson, 2005: 114), "minimalist" (Thompson, 1987: 97), "inconsistent" (Herrick, 2003: 23), and "malleable" (Hayden, 1998: 61). In more theoretical terms, Congress' ethics process has been characterized for most of its history by a relatively high level of what Hall (2007: 133) and Pierson (2004: 124) call "institutional plasticity". Plastic institutions are structures that basically mirror the interests of their creators or political principals, to use the language of delegation theories (Bendor, Glazer and Hammond, 2000; Moe, 1984). As Streeck and Thelen argue, institutions are plastic when their stability depends almost "exclusively on the self-interested behavior of those directly involved" (2005: 11). Such institutions simply reflect some more fundamental causal forces (e.g. the interests of farsighted rational designers or the power of political elites). When "organizations are

---

the OCE. Therefore, the potential still exists for so-called "partisan gridlock," where the Ethics Committee, evenly divided between majority and minority party members, could not agree by the required majority of the members to proceed on a matter. However, because there will be a recommendation from the new Office to further investigate a matter, and because such report from the OCE to the Ethics Committee will be made public within a certain limited time frame, there might be more public and political pressure on the members who make up the Ethics Committee to act on a matter that an "independent," non-member board has concluded merits investigation.

plastic," according to Hannan and Freeman, "then only the intentions of organizational elites matter" (1989: 33).

The key point to emphasize here is that when theorists talk about plasticity, they are describing cases where there is no apparent gap between intentions and effects. When, for instance, observers argue that congressional ethics involves "a system of quiet collusion that both parties practice in an effort to conceal their own members' mistakes" (Tolchin and Tolchin, 2001: 9), or when they suggest that "the rules are designed to protect members and to minimize the prospect that ethical investigation and adjudication procedures will be used as a venue for unwarranted political attack" (Sinclair and Wise, 1995: 51-52), they are more or less implicitly saying that the ethics process is producing effects that are in line with what politicians want. There is no perceived gap because, in the case of congressional ethics which until recently has been characterized by self-regulation, *the rule makers are also the rule takers*. This is why it is a policy area that provides a robust case to test assumptions regarding the plasticity of institutions in rational actor models. If the strategic calculations and intentionality of rational actor theories hold anywhere, it should be in this case, since lawmakers have had a fairly free hand in designing the ethics process. But as we shall see, rational actor arguments get the causality backwards. Rather than powerful actors generating the new Office of Congressional Ethics, it is the previous institutional arrangements for ethics enforcement that played a powerful role in generating the preferences of a majority of lawmakers for a new OCE.

Members of Congress have long resisted calls for an independent ethics enforcement mechanism. Members find ethics rules intrusive and feel that they do not need an ethics process with more "teeth" to strengthen their accountability (Baker, 1985). They believe that they are already more accountable than other professionals who exercise power over people because they are subject to the most fatal form of discipline of all – loss of office. Since they stand for election, many politicians think that judgments about their ethics should be made by constituents, not by their peers or by bureaucrats working in some independent ethics agency. Judgments about the ethical behaviour of legislators should rely mainly on the electoral verdict: "let the voters decide". As former House Speaker Sam Rayburn reportedly said in the 1950s, "the ethics of a member of Congress should be judged by the voters at election time" (cited in Sasser, 1977: 359). But as result of the policy feedback effects described in the following section, members of Congress have had to adapt. They had "to bite the bullet and take the measured steps necessary to restore credibility to the ethics process," as Thomas Mann argued in his testimony before the House Ethics Task Force (2007: 3).

3. THE FEEDBACK EFFECTS OF ETHICS RULES

Given the division of powers and the institutional rivalry between the executive and legislative branches of government, Congress has generally been more interested in imposing stricter ethics standards on executive branch officials than on its own members (Roberts, 2007). Legislators have usually felt that government employees – because they are not elected - should be subject to tougher ethics standards to compensate for their lack

of direct public accountability. This is why, on the ethics front, Congress was the "first mover", enacting – ahead of the executive branch - a 10 point general Code of Ethics for Government Service in 1958. Adoption of the new code came as a result of a House committee investigation of influence-peddling charges involving President Eisenhower's chief of staff and a Boston industrialist. Aspirational in tone, the code had no legal force but it soon raised questions about whether similar rules should apply to Congress as well. Senator Jacob Javits declared in 1963 that it was "completely incongruous for Senate committees to question executive appointees vigorously on their financial affairs when those of us in Congress are not subject to similar standards". He concluded, "We cannot continue to function on this double standard of ethics – a complete set for executive branch but none for the legislative branch" (cited in Baker, 1985: 24).

Concerns about the lack of specific congressional standards of conduct gathered momentum in the 1960s in the wake of ethical allegations against Secretary to the Senate Majority Bobby Baker and Representative Adam Clayton Powell. As a result of these two cases, the Senate Select Committee on Standards and Conduct was created in 1964, and the House Committee on Standards of Official Conduct in 1967 (Jennings, 1981). In 1968, the House adopted a code of conduct with rules for administering gifts, outside earned income and employment, and financial disclosure requirements. House members were required to disclose publicly financial interests of more than $5,000 and income of more than $1,000 from companies doing business with the government. The Ethics Committee was given the authority to investigate allegations of wrongdoing by members, officers, and employees; to adjudicate evidence of misconduct; to recommend penalties, when appropriate; and to provide advice on actions permissible under congressional rules and law. The rules stipulated that investigations could be undertaken "only upon receipt of a complaint, in writing and under oath, from a Member of the House." However, the question of how much initiative the committee itself should take in launching an investigation was left open (Straus, 2011).

For several years, the House Ethics Committee was reluctant to undertake any public investigation of misconduct. In May 1976, eight years after its creation, it undertook its first investigation of a member – Rep. Robert L. F. Sikes (D. FL). In 1975, investigative reporting disclosed that Sikes had used his influence as chair of the Military Construction Appropriations Subcommittee for purposes of self-interest. The Ethics Committee would not investigate the affair because no complaint had been lodged by a member. But the political atmosphere changed dramatically after *60 Minutes* broadcast a story about Sikes that was based on information provided by Common Cause, a "good government" group created by liberal Republican John Gardner in 1970. Common Cause worked behind the scenes on a letter-writing campaign in key districts and assembled a group of 44 House members to complain about Sikes' behavior to the Ethics Committee (McFarland, 1984: 185). The committee held hearings and recommended that Sikes be reprimanded by the full House, which did so in July 1976 by a 381-3 vote.

The Institutionalization of Ethics and the Rise of Good Government Groups
The House members who worked with Common Cause were part of the "Watergate babies" who came to Congress following Nixon's resignation. Elected on the promise to

clean up Washington, the Watergate babies put forward an ambitious program of institutional reform to foster ethics and transparency in public affairs (Zelizer, 2004). Like the Progressives before them and the vast networks of social groups that Clemens described as the "people's lobby" (1997), the Watergate babies and their allies in civil society mobilized to limit the influence of money on politics.

From this new reform coalition emerged a series of rules in the 1970s about conflict of interest, financial disclosure, new ethics codes and processes for regulating the conduct of lawmakers in Congress, provisions on gift bans, as well as diverse restrictions on post-government employment (Stark, 2000). These measures were part of the new "ethics edifice" (Mackenzie, 2002: 83) or the "anticorruption apparatus" (Anechiarico and Jacobs, 1996: 12) created in the aftermath of Watergate. The development of a policy area devoted to strengthening integrity and detecting unethical behavior in politics provided a fertile institutional ground for the growth in the 1970s of "public interest groups," defined "as groups that seek a collective good, the achievement of which does not selectively and materially benefit the membership of activists of the organization" (Berry, 1977: 9). Organizations like Common Cause and Public Citizen founded by Ralph Nader in 1972 constitute the prototype of this new activism (Rothenberg, 1992). In the 1970s, "at the national level alone, over one hundred citizen organizations representing more than six million dues-paying members formed to press for change in the political process" (McCann, 1986 : 15). Common Cause made congressional reform a central feature of its campaign activities in the 1972 elections through "Operation Open Up the System," in which members would mobilize popular engagement and submit to congressional candidates questions on key reform issues related to financial disclosure, ethics and lobbying (McFarland, 1984: 69). Common Cause, the League of Women Voters, the National Committee for an Effective Congress and over forty other "good government" groups subsequently joined forces to form the Committee for Congressional Reform. In the wake of the 1976 Sikes scandal, the reform coalition stepped up its pressure to strengthen ethics regulations. At the same time, Jimmy Carter was campaigning on a platform that promised to restore public trust in government by adopting far-reaching ethics standards against conflict of interest. In the post-Watergate atmosphere, no politician wanted to be on the side of less ethics: "fuelled by the constant pressure of public interest groups such as Common Cause, ethics became the motherhood issue of its time. Everyone was for ethics, the more the better" (Mackenzie, 2002: p.34).

When Congress convened in January 1977, both chambers had new leaders. Tip O'Neill made passage of stronger ethics rules a condition for approving the pay increases for Congress that the quadrennial Commission on Executive, Legislative, and Judicial Salaries had proposed a few months earlier. Adopted in March 1977, the new House ethics rules significantly strengthened the requirements for disclosing a member's and spouse's financial interests, limited honoraria and other earned income to 15 per cent of a member's salary, and abolished office accounts funded by private contributions. The disclosure provisions were codified in law when the 1978 Ethics in Government Act replaced the House ethics rule on financial disclosure. The Act delegated to the Ethics Committee the review, interpretation and compliance responsibilities for the public

financial disclosure reports that were to be filed with the Clerk of the House (Malbin, 1994).

The new rules required members to make public data on their income, gifts received, financial holdings, debts, securities, commodity transactions and real estate dealings. Spouses had to report much the same information. For good government groups, all this information provided resources and institutional levers they could activate to sound the alarm and to play the role of a public "watchdog" that "barks" when rules are not respected, or when they need to be modified to adapt to unforeseen situations. Specialized public interest groups, such as Congress Watch, focus full time on exposing corruption and documenting cases of wrongdoing. They scrutinize disclosure forms and publicize any unsavory financial ties they find. The "institutionalization of rights requiring government to disclose important information and to open decision processes to public view", writes McCann, "enable continuous scrutiny by unofficial public interest watchdogs and help stir public debate concerning the workings of government" (1986: 59). This shows how policies can create "niches' that stimulate the development of groups. Ethics rules signal to the public the standards of conduct citizens can expect from their elected officials. They constitute a form of "fire-alarm" control and good government groups are the outside interests that have been enfranchised in the ethics process to sound the alarm (McCubbins and Schwartz, 1984).

The Politics of Ethics and its Self-Reinforcing Character
Policies not only create feedback effects that facilitate the organization and mobilization of social groups, but they also produce new types of politics. By the late 1970s, there were more rules to violate and a more developed institutional infrastructure to enforce ethical conduct (Katz, 1981). In just the 10 years following the 1977 reform, four members were reprimanded, four were censured, and one was expelled. This is a higher rate than for the previous 100 years, which a saw a total of only five disciplinary actions (Maskell, 2005). More cases of ethics violations also meant an increase in congressional scandal coverage (Herrick, 2003: 3).

New ethics policies generated a new kind of politics in Washington in at least two ways. First, they produced a new politics of ethics where the goal was to win credit for raising the "ethics bar" to constantly higher levels (Saint-Martin, 2008). The development of good government groups in this context creates an "interest" among those seeking to gain political capital by championing the causes that those groups defend. As McFarland indicates in his history of Common Cause, with people becoming more distrustful of government following Watergate, politicians were "eager to show the electorate a dynamic response to governmental decay by sponsoring a Common Cause proposal" (1984: 69). Throughout the 1970s, "150 to 175 members of the House of Representatives were typically in initial agreement with a major Common Cause lobbying position" (McFarland, 1984: 110). Second, new ethics policies led to what has been described variously as the "politics of scandals" (Mann and Ornstein, 2006: 75), "gotcha politics" (Davis, 2007), or the "politics of ethics probes" (Ginsberg and Shefter, 1995). In their *Politics by Other Means*, Ginsberg and Shefter (1990) explain how 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: 26).

Once adopted, ethics rules become politicized and used as "weapons of institutional combat" that politicians mobilize to attack their adversaries (Ginsberg and Shefter, 1990: 1). Nowhere was this new form of combat most obvious than in the case that led to the resignation of Speaker Jim Wright in June 1989 (Doss and Roberts, 1997). In May 1988, following several complaints filed by Newt Gingrich, Common Cause called for the Ethics Committee to inquire into the financial arrangements surrounding the publication of a book by Wright. Under intense pressure and scrutiny of the press, the committee voted to appoint an outside counsel to investigate the allegations against Wright. This unusual step was justified by the position of power that Wright occupied in the legislature. As the Ethics Committee chairman (Julian C. Dixon) said, "the American people will feel more comfortable if the Speaker is investigated by someone who is not on the congressional payroll" (CQ Almanac, 1988: 38). Common Cause urged the committee to give a public assurance that the special counsel would be given enough "authority and independence" to conduct a credible inquiry. "The House Ethics Committee has run into serious problems in the past when this was omitted," said Archibald Cox, former Watergate special prosecutor and Common Cause chairman in a letter to the Ethics Committee (Common Cause, 2005: 8). Cox was referring to the two previous cases where the committee retained the services of outside counsels. In the 1978 "Koreagate" influence-peddling investigation, the special counsel quit after a dispute with the committee chairman over the conduct of the inquiry. In the 1981 investigation of the "Abscam" bribery scandal, the outside counsel resigned after the committee decided not to recommend disciplinary action against Rep. John P. Murtha (CQ Almanac, 1988: 38).

In the Wright case, special counsel (Richard Phelan) did not resign. As he subsequently argued, in cases involving powerful members of Congress, "justice can only be done when an outside counsel – a lawyer with independence and stature who can investigate allegations of wrongdoings and stand up to a powerful Congressman - is assigned to the case" (cited in Common Cause, 2005: 2). When the Ethics Committee first hired an outside counsel to investigate the Korean lobbying scandal in 1977, members of Congress and the press described it as a "symbol of credibility" (CQ Almanac, 1977: 822). The goal was to inject a certain degree of independence into the ethics process. Of course, that independence appears to have been limited, as the two instances of resignation suggest. But this nevertheless was a key institutional move that departed from the traditional system of congressional self-regulation. It paralleled similar institutional

changes that Congress was making as part of the 1978 Ethics in Government Act and its independent counsel provisions (Harriger, 2000). Those provisions were meant to ensure the appearance of independence for a special prosecutor charged with investigating the executive branch, but they also set similar standards for the legislative branch, with the Ethics Committee subsequently relying on outside counsels in more than 10 instances to investigate possible ethics violations (McGehee, 2007: 3).

As in the "double standard" debate discussed earlier in the context of the 1958 ethics code, this shows how ethics regulation in the US system of divided government is characterized by "tight institutional coupling", in the sense that adoption of ethics rules in one branch (or possibly in one of the two legislative chambers), often raises questions of parallelism or comparison with the other branch, which is then under pressure to adopt complementary or similar rules. It is precisely this type of coupling or connection that Vice-President Bush tried to make in 1988 when he fired back in response to questions regarding the special prosecutor investigation of Attorney General Edwin Meese by calling for an independent counsel to investigate charges of wrongdoing by House Speaker Jim Wright. "Talk about ethics" he said. "You talk about Ed Meese - how about talking about what Common Cause raised about the Speaker the other day? Are they going to look into it? Are they going to go for an independent counsel so the nation will have this full investigation? Why don't people call out for that? I will right now. I think they ought to" (cited in Hoffman, 1988).

In 1989, the Ethics Committee found Wright guilty of having circumvented limitations on honoraria and outside earned income by selling large numbers of copies of his book, *Reflections of a Public Man*, to lobbyists who had invited him to speak. After the Wright scandal, both houses introduced a complete honoraria ban as part of the 1989 Ethics Reform Act, which further expanded the responsibilities of the House Ethics Committee. These included enforcement of the act's ban on honoraria, limits on outside earned income, and restrictions on the acceptance of gifts. The Act also established the Office of Advice and Education. The office is part of the Committee on Standards of Official Conduct but separate from its enforcement functions. It provides guidance and recommendations to members, officers and employees of the House on standards of conduct applicable to their official duties. The bipartisan task force which developed the 1989 ethics package had mentioned in its report that it was not its intention "that such an office be an autonomous entity" (United States Congress, 1989: 21). Instead, the office director is appointed by the Ethics Committee chair, in consultation with the ranking minority member.

During its hearings, the bipartisan task force heard complaints "relating to the due process rights of the accused" (United States Congress, 1989: 18). The most commonly heard was that the same persons conducting the investigation were also in charge of deciding guilt and recommending sanctions to the House. While the task force considered proposals for an independent investigative office or special prosecutor for Congress, it decided instead to divide the investigative and adjudicative functions within the Ethics Committee into two sets of subcommittees – the so-called "bifurcation approach". Under this new approach, whenever the Ethics Committee votes to undertake an investigation, a

subcommittee on investigation consisting of four to six members (with equal partisan representation) is appointed to conduct the inquiry. If the investigative subcommittee issues a Statement of Alleged Violations, the statement cannot be released to the public until the accused has been afforded an opportunity to respond. A subcommittee on adjudication, consisting of the remaining members of the Ethics Committee is then constituted to hear evidence and determine guilt. The 1989 reform also included a right to counsel, allowing an accused member to be accompanied by counsel on the House floor when facing an Ethics Committee's investigation, as well as a statute of limitation prohibiting the Ethics Committee from undertaking an investigation involving a matter that occured prior to the third previous Congress.

The bifurcation approach was a direct response to a criticism made by Speaker Wright in his resignation speech[3]. The goal was to strengthen due process and create a distance between investigation and adjudication; a space for "independent judgment" (Thompson, 1995: 149). It was intended to lessen the problem of prejudgement when the committee that decided whether there is sufficient evidence to go forward with a case is the same committee that decides whether the accused member is guilty and should be punished.

### The Ethics Wars and Declining Public Trust
In his 1989 resignation speech, Wright denounced the "mindless cannibalism" of ethics investigations and portrayed himself as a casualty of a partisan war being fought through attacks on the ethics of politicians (CQ Almanac 1989: 39). As payback for his attacks on Wright, Democratic leaders launched a fusillade of charges against Gingrich. The Ethics Committee received several complaints against Gingrich, involving either the financing behind a 1984 book he co-authored with his wife or allegations that he gave bonuses to his Hill staff for campaign work. In March 1990, the committee decided to drop the proceedings but reprimanded Gingrich for relatively minor violations: an omission from his financial disclosure form and misuse of congressional stationery by an aide (CQ Almanac, 1989: 44). The following year, as the House banking scandal unfolded following a GAO report showing that in 1989-1990, 8,331 "bouncing" checks had been written against members' House bank accounts, Gingrich pressured the Ethics Committee to reveal the name of members who abused the system (Krauss, 1992). In 1992, the committee released the names of 325 current and former members of the House, and singled out 22 as the worst offenders. The scandal contributed to a perception of corruption and malfeasance that eroded trust in government (Bowler and Karp, 2004).

---

[3] "Maybe the committee - as it's currently required to sit as kind of a grand jury and petit jury both - ought to have a different composition, rather than those who issue the statement of alleged violations being the same people who have to judge them. I think it clearly is difficult to expect members who've publicly announced a reason to believe there's a violation to reverse their position at a hearing stage and dismiss charges against a member. Maybe once a report of alleged violations is issued, the committee rules ought to allow the member to respond expeditiously. You know, to deny a member the opportunity to reply quickly can cause serious political injury. It's unfair. Once alleged violations are announced, the committee ought to just immediately release to the member all the evidence that it could have to indicate that that's happened. In my case, for example, the committee has yet to release any witness testimony or documents that it obtained during the investigation." (May 31, 1989).

"Congress Hits Bottom" read a headline in the October 28, 1991, issue of the *Polling Report*, a compilation of survey data. A New York Times/CBS News poll indicated that three out of five respondents said they considered half or most members of Congress "financially" corrupt (CQ Almanac, 1991: 39). Survey data indicated that public trust in government in the early 1990s reached a new nadir for the era of survey research (Orren, 1997). This highlights how public policies also have feedback effects in terms of the meaning and information they convey to political and social actors. Policies generate interpretative effects and provide meanings that help actors make sense of the social world (Mettler, 2002; Soss and Schram, 2007). Policies produce "framing" effects that influence what actors see and think about political issues (Mettler and Soss, 2004). In much the same way, ethics rules that seek "to clean up" politics also affect public opinion by making public cases where rules have (or allegedly) been violated (Herrick, 2000; Kimball and Patterson 1997). As Figure 1 below indicates, the period in which ethics regulation began to grow in the 1970s coincided with one of the steadiest declines in citizens' trust of politicians' honesty.

Honesty and Ethical Standards of Members of Congress

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low, or very low? How about ...members of Congress?*
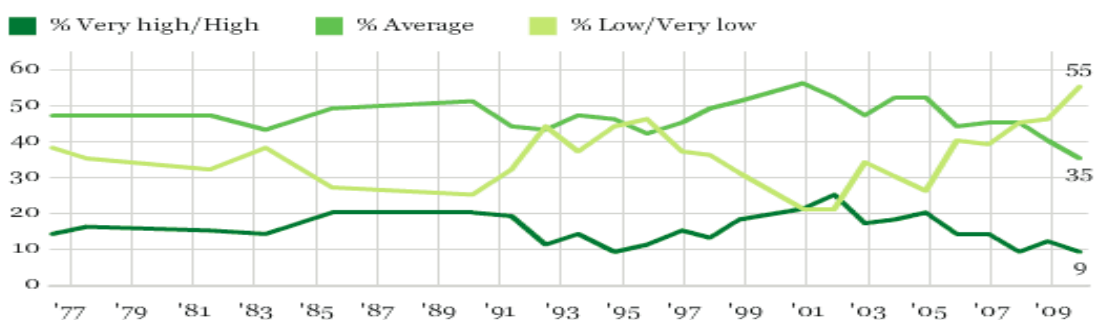
2009 wording split sampled with "Congressmen" (trend wording); combined results shown.

GALLUP

There is indeed a close historical connection between the institutionalization of ethics and the erosion of citizens' trust in political institutions (Chanley, Rudolph and Rahn, 2000). Ethics rules are intended to foster public trust. They are generally seen as an effect whose cause is to be found in the erosion of public confidence (Feldheim and Wang, 2003). But making empirical connection between ethics regulation and public trust is a complex task, and research increasingly suggests the need to reverse the causal arrow (Atkinson and Bierling, 2005; Behnke, 2007-08; Rosenthal, 2005). As Mackenzie concludes in his in-depth study of the U.S. case,

> The expansion of ethics regulation and enforcement agencies and personnel has not produced a concomitant increase in public confidence in government integrity… In fact, they have usually done the opposite. The more ethics regulations designed and implemented, the more personnel assigned to enforce them, the more air has filled with news –

> often caustic and depressing news – about government ethics…
> Whatever the new ethics regulations may have accomplished in cleaning
> up government, they have done little to reduce publicity and public
> controversy in the behavior of public officials (Mackenzie, 2002: 112).

A good example of how this dynamic operates is provided by the Ethics Committee's decision to release the names of those involved in the House banking scandal, which in the 1992 elections led to the greatest turnover in the House of Representatives in more than 40 years (Dimock and Jacobson, 1995; Hibbing and Theiss-Morse, 1995: 70). Concerned with public perceptions about their conduct, legislators launched an intense self-examination effort. During the first half of 1993, the Joint Committee on the Organization of Congress, a bipartisan committee of House and Senate members, held hearings on eight different areas of possible institutional reform. One of those areas was ethics and integrity. The Committee held two hearings on the ethics process in February 1993.

In his opening statement, the committee chair, Rep. Lee H. Hamilton, said that "on the question of ethics reform, one of our key goals is to look at the public image of the institution. All of us want to improve the public confidence in Congress…No other part of our agenda is more crucial to public confidence in Congress than the way we consider cases of alleged misconduct by sitting members" (United States Congress, 1993: 1). The most discussed topic for reform was including non-members as a part of the ethics process. The committee held 36 hearings and took testimony from more than 200 witnesses, including academic experts such as Dennis Thompson from Harvard University and good government groups like Common Cause, all arguing in favour of an independent ethics entity (United States Congress, 1993a). As one committee member (John M. Spratt, D-South Carol.) stated, "in the eyes of the public, we will never be seen as impartial and disinterested, and as able to discipline our own and consequently, to redeem the public's esteem for Congress and our own reputation, we have got to have a completely outside body of citizens who would sit in judgment" (United States Congress, 1993: 21). Conversely, other members wanted to keep the system of self-regulation intact. Former House Ethics Committee chairman Louis Stokes said he was "particularly troubled by a proposal to shift some of Congress' constitutional enforcement responsibilities to outsiders… Why would an outside group not accountable to members or voters do a better job of convincing the public of the wisdom of their decisions?" (United States Congress, 1993: 4). Another concern was that outsiders might not understand the norms of Congress and the competing duties and roles of members. But in the end, it was recommended that "the Committee on Standards of Official Conduct should be authorized to use, on a discretionary basis, a panel of non-members in ethics cases". Allowing "outside individuals to be used in the ethics process", according to the report's drafters, "should enhance the public's confidence in Congress. The public believes that internal self-discipline presents inherent conflicts for Members who have difficulty judging their peers" (United States Congress, 1993b). That proposal was never implemented but as the table below indicates, support for similar ideas subsequently grew, with members introducing more bills and resolutions that would establish some version of an independent ethics commission.

Table 1:
Bills and resolutions calling for the creation of an independent ethics watchdog

bills	0	3	4	1	0	0	0	2	1	7	8
resolutions	1	1	1	1	1	4	2	3	2	1	4
Congress	93rd	94th	95th	96th	100th	102nd	103rd	104th	105th	109th	110th
	1973-74	1975-76	1977-78	1979-80	1987-88	1991-92	1993-94	1995-96	1997-98	2005-06	2007-08

The public opinion environment that prevailed when Congress first decided *not* to create an independent ethics commission in the 1950s changed radically with the Watergate scandal and the development of the ethics machinery that followed it. Congress decided to enforce ethics rules through self-regulation *before* the Watergate scandal, when public confidence in politics was stronger and had not yet begun to unravel as it did afterward. Growing political recognition of declining public trust as a "problem" requiring institutional solutions made it increasingly popular for politicians to promise tougher ethics rules in the name of more accountability. Proposals to create independent ethics commissions became in this context a useful way to win political credit by raising ethics standards to new levels (Saint-Martin, 2008). When House Members opted for self-regulation in adopting their first ethics rules, they might have claimed that they were defending the Constitution: that they were upholding the principle of legislative autonomy that allows the representative of the people in Congress to be free of outside interference. But over time self-regulation acquired a different - less "noble" – political meaning (Chafetz, 2007). This happened largely because of the politicization of the ethics process, which grew stronger after the 1994 Republican takeover of Congress and the election of Newt Gingrich as House Speaker (Tolchin and Tolchin, 2001).

During Gingrich's term as Speaker, 84 ethics charges were filed against him, most of which were leveled by the House Democratic Whip. The fist charges involved a book advance of $4.5 million that he had accepted (two weeks before he was to be sworn in as Speaker) from a publishing company owned by Rupert Murdoch, who had spent the previous year lobbying Congress for deregulation of the broadcast industry. Gingrich returned the money but in December 1995 the ethics committee unanimously found him guilty of violating House rules. The committee imposed no punishment but said that it "strongly questions the appropriateness of what some could describe as an attempt to capitalize on your office" (CQ Almanac 1995: 1-22). The ethics panel announced at the same time that it had retained an outside counsel to investigate charges that Gingrich violated federal tax laws by using a tax exempt college course for political purposes. The committee subsequently found that Gingrich had brought discredit to the House and provided the committee with "inaccurate, incomplete and unreliable information" about the role of a political action committee in a college course he taught. On January 21,

1997, the House voted to reprimand Gingrich. This was the first time in the House's history that the Speaker had been disciplined for ethics violations.

Independent Ethics Commissions and Institutional Isomorphism
The highly partisan atmosphere surrounding the investigation of Speaker Gingrich prompted the House to review its ethics process. In February 1997, House leaders announced the creation of a bipartisan ethics task force. The announcement was accompanied by a two months moratorium on the filing of new ethics cases. "After the past few tumultuous months, I think we must have a brief cooling-off period where members can sit back and examine where the ethics process works, where it does not and how it might be improved" said Majority Leader Dick Armey (CQ Almanac 1997: 1-32).

The task force held public hearings and took testimony from "good government" groups such as Common Cause and the Congressional Accountability Project, and from experts in think tanks such as the Brookings Institution, the Heritage Foundation and the American Enterprise Institute (United States Congress, 1997: 2-3). All recommended proposals for the involvement of outsiders as a way to strengthen the legitimacy of the ethics process. Although similar recommendations had been made before, in 1997 they gained new political traction, making Congress increasingly look like a "laggard" when compared to what was happening during the 1990s on the ethics front, both at the state and international levels and in professional organizations.

In 1995, the Brooking Institution funded and supported the publication of Dennis Thompson's *Ethics in Congress* in which he defined the independent commission as the appropriate institutional "model" for governing legislative ethics (p.160). As he argued, "Many state legislatures have set up independent ethics commissions...Some city councils have created similar commissions...Most other professions and institutions have come to appreciate that self-regulation of ethics is not adequate and have accepted at least a modest measure of outside discipline. Congress should do the same" (p.159). Thompson became one of the leading academic voices and "policy entrepreneur" on ethics reform, and his proposal to create an independent body to regulate congressional ethics gained strong support among "good government" groups and was widely disseminated through their publications and advocacy work.

Thompson's ideas about the creation of an independent ethics commission did obviously not "fall from the sky". With its emphasis on creating neutral, objective bodies outside politics, the independent commission is a direct legacy of the Progressive era (Skowronek, 1982). But more specific ideas and "blueprints" about independent commissions in the area of legislative ethics developed largely in the context of institutional changes taking place at the state level throughout the 1970s and 1980s. In a book published in 1996 by another think tank, the Twentieth Century Fund, Alan Rosenthal from Rutgers University documented the development of ethics rules in state legislatures. Louisiana was the first state to establish an independent ethics commission in 1964 and more than 20 other states followed suit in the aftermath of Watergate. "The states rather than the federal government" concludes one study, "were the pioneers of a new ethics enforcement mechanism to oversee legislators" (Rosenson, 2005: 118).

Timing and sequence matter in the politics of ethics policy-making. Most states began to regulate ethics *after* Watergate. While Congress maintained its original decision of *not* delegating the regulation of ethics to an outside entity, as it did when it rejected Senator Fulbright proposal in the 1950s, states - which had not yet begun to institutionalize ethics - were less constrained and thus more able to experiment with more independent forms of ethics regulation.

The new "ethics bureaucracy", as it developed at the state level, sought to gain public support and legitimacy by acquiring organisational capacities and a reputation for efficiency and expertise. These are key attributes of bureaucratic autonomy (Carpenter, 2001), but in the case of independent ethics commissions and agencies, they are often difficult to develop, as numerous accusations of being mere "toothless tigers" suggest. These entities generally have weak support from those they are supposed to regulate (Herrmann, 1997). The creation of national associations and professional networks of state ethics commissions and agencies became in this context a crucial source of external support for building capacities. One such association is the Council on Governmental Ethics Laws (COGEL), created in 1974 following a meeting of 43 representatives of newly-formed federal and state ethics agencies seeking to exchange information and practices. COGEL organizes discussions, lectures, training sessions and workshops on topics of concerns to ethics administrators. It compiles and publishes annually a collection of data about existing ethics agencies. The Blue Book, as it is known, includes information about statutory and regulatory functions, budgets and best practices. COGEL has been disseminating a model ethics law to help states craft their own and also sponsors annual ethics education seminars for legislators. COGEL's model state ethics law is similar to that sponsored by Common Cause since the 1970s. The influence of Common Cause on state legislative ethics regulation is, according to Rosenson, "evident when we compare the text of the group's model ethics law and the conflict-of-interest statutes that have been enacted since 1972. Common Cause clearly sets the standard that state policy-makers have followed in crafting their ethics laws" (2005: 145). Another place where ethics commissions and agencies have been acquiring knowledge to build capacities is the National Conference of State Legislatures (NCSL) and its Center for Ethics in Government created in the late 1990s.

COGEL, the NCSL, together with other think tanks, "good government" groups, the bureaucrats and experts working in ethics commissions constitute a form of "epistemic community" that has helped to diffuse the independent ethics commission model (Haas, 1992). The process has not been disinterested: these actors increase their own social power and influence. They have developed strong corporate or professional interests in the work of ethics agencies and commissions. Their work facilitates institutional isomorphism and arrangements that are outside the consensus, such as Congress self-regulation system, have suffered a decline in legitimacy and faced strong pressures to adapt over time.

Those pressures were clearly at work in 1997 when the bipartisan task force went against the institutional model of independent regulation developing at the state level. Rather than following the direction of the states, the task force instead weakened the ethics

process by deciding to bar non-members from filing complaints with the ethics committee (Mitchell, 1997). Under the 1977 ethics rules, outsiders' ethics complaints could either be introduced by a member of the House or by providing three formal letters from members refusing to sponsor the complaint. In voting to repeal the so-called "three refusal rule", task force members of both parties said it had been abused and that the change was needed to protect members from frivolous ethics complaints (CQ Almanac, 1997: 1-34). Outside complaints in the past had provided an important impetus for launching investigations, especially in the case of powerful members whose colleagues feared they might retaliate against them.

The power to use ethics rules to lodge a complaint against a member allowed "good government" groups to exercise a "fire-alarm" form of control over the ethics process, as this type of monitoring is described by McCubbins and Schwartz (1984). This meant that "good government" groups were institutionalized co-partners in the governance of congressional ethics. They generally acquired this status with the support of their allies in the House, especially liberal Democrats in the Democratic Study Group (McFarland, 1984: 111). But at the same time, "good government" groups have been equally zealous in their attacks against the perceived ethical lapses of both Democrats and Republicans, as when they led the charges against Jim Wright in 1989 and Newt Gingrich in 1997. So, when the House decided to bar outside groups from filing complaints with the ethics committee, this created a major catalyst for the mobilization of the "good government" community. The director of the Congressional Accountability Project, a Ralph Nader-affiliated organization, said repeal of the "three refusal rule" would leave watchdog groups shut out of the ethics process. "We are calling this the Corrupt Politicians Protection Act" he said (CQ Almanac, 1997: 1-33).

With outside organizations no longer able to file complaints, watchdog groups and the press accused the House ethics committee of not doing its work of looking into alleged violations of ethics rules. During the 105th Congress, "the House has operated without any ethics process" complained Common Cause in a letter to the House majority and minority leaders (July 29, 1997). The moratorium on the filing of new ethics cases announced in February 1997 - although supposed to end in April of that same year - dragged on for months, even as serious complaints were accumulating against several members, including the majority whip, Tom DeLay (Seelye, 1997). The moratorium was eventually lifted but the ethics committee later recognized that it had been followed by an unwritten "ethics truce" in which both Democrats and Republicans agreed not to file complaints against the leadership of either party (Hefley and Mollohan, 2004).

As the "truce" persisted, "good government" groups decided to join their efforts and overcome their ideological differences by creating in 2003 the Congressional Ethics Coalition consisting of: Public Citizen, Common Cause, Democracy 21, the Center for Responsive Politics, the Campaign Legal Center, the League of Women Voters, Citizens for Responsibility and Ethics in Washington (CREW), Judicial Watch, Public Campaign and U.S. PIRG. The Coalition's first move was to mount a public campaign urging the House ethics committee to investigate alleged ethics violations by Tom DeLay. In 2004, the Coalition helped put an end to the seven-year ethics truce by assisting Rep. Chris Bell

(D-Texas) in drafting an ethics complaint against majority leader Tom Delay. The pressures grew stronger in 2005 after the ethics committee chairman Joel Hefley (R-Colo.) was removed from his position, reportedly because of his aggressive posture toward DeLay on ethics matters (Stolberg, 2004). The independence of the ethics process became a major campaign issue in preparation for the 2006 midterm election, and as details of what was to become the Abramoff scandal unfolded. Following the election, a task force on ethics enforcement was created to study the creation of a new Office of Congressional Ethics. Members of the Congressional Ethics Coalition played a key role in this process. The U.S. PIRG produced a detailed study of state ethics commissions and agencies entitled *Honest Enforcement: What Congress Can Learn from Independent State Ethics Commissions*. The study argued that,

> states are far ahead of Congress in understanding the inherent conflict of interest of colleagues overseeing colleagues. In fact, as of January 2007, at least 23 states had established independent commissions… Congress is almost alone in choosing to self-police. If members are serious about honest and open government, they should follow the lead of almost half of the states and establish an independent ethics enforcement commission (pp.2-3).

Other groups appearing before the 2007 task force, such as the Campaign Legal Centre, recommended that lawmakers "create an outside entity, based on examples in state legislatures". State ethics commissions sent letters to Speaker Pelosi and the chair of the ethics task force to "share our experience and to encourage you to establish an independent ethics oversight body for Congress… As you consider how best to handle ethics enforcement, we urge you to look to the success of the state ethics commissions and to adopt the time-tested best practices of each".

4. CONCLUSION

In March 2008, the House voted to create the Office of Congressional Ethics. The vote was 229 to 182. The majority of GOP lawmakers voted against the office's creation. They argued it would add an unnecessary layer of bureaucracy, and that it represented an abdication of Constitutional responsibility. With the Republican takeover of the House after the 2010 elections, speculation was rampant that they would terminate the new office (Crabtree, 2010). This is exactly what Schickler's theory of disjointed pluralism would predict: that successful reforms in Congress generate reactions rather than self-reinforcement. Members of Congress who lost in one round of institutional reform can always hope to take their revenge later on. This means that most reforms only have weak prospects for political survival. They should produce modest path dependent effects. In other words, actors are just not forced to adjust to institutions: they can always defeat them.

But so far, the Republicans have left the OCE largely intact (Nixon, 2011). And despite being elected on a platform to slash government spending, they even voted against a plan that called for a 40 per cent cut in the OCE's budget (Lipton, 2011). This suggests that institutions are not as "plastic" as generally assumed in rational actor models. Republicans faced strong pressures to adapt to the new

OCE. Rather than actors remaking institutions that are not in line with their preferences, the process works the other way around.

Self- enforcement based on political discretion is what made the ethics process "plastic". But over time that very plasticity eroded the legitimacy of the ethics process. The more ethics became institutionalized, the more Congress' power of self-discipline created inconsistencies with the norm of independence and beliefs in due process. Disjointed pluralism suggests that such inconsistencies form a basic feature of Congressional development. Because members have multiple and irreconcilable interests, institutional development in Congress is disjointed, going in different and contradictory directions rather than following a common path.

The OCE case hardly fits that description, however. The Office is only three years old but the independence or quasi-independence that it brings to the ethics enforcement process is not wholly new. It is something that various scandal-led reforms have incrementally made stronger over time, as the growing use of outside counsels, the bifurcation approach and the right of outside groups to lodge complaints indicate. This does not mean that the reform process leading to the OCE has not been disjointed. Institutional development is almost always disjointed, leading to sub-optimal outcomes. The idea that pluralistic politics can produce institutions designed with a clear and consistent set of objectives in mind is a rational fallacy. The OCE may well not provide an optimal solution to the type of institutional friction analysed in this paper. But attempts at improving the legitimacy of the ethics process have been highly path-dependent, with each layer of reform moving over time toward a relatively coherent organizational model, such as the one first set out by Senator Fulbright in the 1950s.

REFERENCES

Amer, Mildred (2006). *History of Congressional Ethics Enforcement*. Washington: Congressional Research Service. Report RL30764.

Anechiarico, Frank and James B. Jacobs. (1996). *The Pursuit of Absolute Integrity*. Chicago: The University of Chicago Press.

Atkinson, Michael and Maureen Mancuso. (1992). "Edicts and Etiquette: Regulating Conflict of Interest in Congress and the House of Commons", *Corruption and Reform*, (7), pp.1-18.

Atkinson, Michael M., Bierling, Gerald (2005). "Politicians, the Public and Political Ethics: Worlds Apart", *Canadian Journal of Political Science* (38): 4, pp.1003-1028.

Baker, Richard A. (1985). "The History of Congressional Ethics", In Jennings, B. and D. Calaghan (eds). *Representation and Responsibility. Exploring Legislative Ethics*. New York: Plenum Press, pp.3-27.

Baumgartner, Frank R., De Boef, S. L. and A. B. Boydstun (2008). *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press.

Behnke, Nathalie (2007-2008). "Public Trust, Path Dependence, and Powerful Interests: A Model for the Emergence of Ethics Measures", *Public Integrity* (10): 1, pp.11-36.

Bendor, Jonathan, Glazer, Ami and T. Hammond (2001). "Theories of Delegation,"*Annual Review of Political Science* (4), pp.235-269.

Berry, Jeffrey M. (1977). *Lobbying for the People: The Political Behavior of Public Interest Groups*. Princeton University Press.

Bowler, Shaun, Karp, Jeffrey A. (2004). "Politicians, Scandals, and Trust in Government", *Political Behavior* (2): 3, pp.271-287.

Branigin, William (2006). "Democrats Take Majority in House; Pelosi Poised to Become Speaker". *The Washington Post*. November 8.

Carpenter, Daniel (2001). *The Forging of Bureaucratic Autonomy*. Princeton, NJ: Princeton University Press.

Casal Moore, N. and P. Kerns (2006). "State Ethics Commissions", *LegisBrief* (14): 23. Denver, Colo.: National Conference of State Legislatures, April/May.

Chaddock, Gail R. (2006). "First Steps Toward Ethics Reform in Congress", *The Christian Science Monitor*. December 15.

Chaftez, Josh (2007). "Cleaning House: Congressional Commissioners for Standards"' Yale Law Journal (117), pp.165-173.

Chanley, Virginia A, Rudolph, Thomas J. and Wendy M. Rahn (2000). "The Origins and Consequences of Public Trust in Government", *Public Opinion Quarterly* (64), pp.239-256.

Clemens, Elizabeth S. (1997). *The People's Lobby.* Chicago: The University of Chicago Press.

Common Cause (2005). "An Outside Counsel is Needed for the DeLay Investigation", Press release, June.

Congressional Quarterly Almanac (1977). Washington DC.

Congressional Quarterly Almanac (1989). Washington DC.

Congressional Quarterly Almanac (1991). Washington DC.

Congressional Quarterly Almanac (1995). Washington DC.

Congressional Quarterly Almanac (1997). Washington DC.

Congressional Quarterly Almanac (1998). Washington DC.

Crabtree, Susan (2010). "House GOP Leaders Dodge Questions on the Future of Ethics Office" *The Hill*, August 9.

Davis, Lanny (2007). *How 'Gotcha' Politics is Destroying America*. Palgrave Macmillan.

DiMaggio, P. J. and Powell, W. (1983). "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", *American Sociological Review*, (48): 2, pp.147-60.

Dimock, Michael A., Jacobson, Gary C. (2004). "Checks and Choices: The House Bank Scandal's Impact on Voters in 1992", *The Journal of Politics* (57): 4, pp.1143-1159.

Doss, Marion T., Roberts, Robert N. (1997). *From Watergate to Whitewater: The Public Integrity Wars*. Westport, Conn.: Praeger.

Feldheim, Mary Ann, Wang, XiaoHu (2003). "Ethics and Public Trust: Results From a National Survey." *Public Integrity*, (4): 6, pp. 63-75.

Gabaldon, Thereas A. (1996). "The Self-Regulation of Congressional Ethics", *Administrative Law Review* (48), pp.39-68.

Getz, Robert S. (1966). *Congressional Ethics: The Conflict of Interest Issue*. Princeton, New Jersey: D. Van Nostrand Company, Inc.

Ginsberg, Benjamin and Shefter, Martin (1990). *Politics by Other Means. The Declining Importance of Elections in America*. New York: Basic Books.

Ginsberg, Benjamin, Shefter, Martin (1995). "The Politics of Ethics Probes." *Journal of Law & Politics* (11), p.433-444.

Haas, Peter M. (1992). "Epistemic Communities and International Policy Coordination." *International Organization* (46): 1, pp. 1-35.

Hall, Peter A. (2007). "The Dilemmas of Contemporary Social Science". *boundary 2*, (34): 3, pp.121-141.

Hannan, Michael T. and Freedman, John (1989). *Organizational Ecology*. Cambridge, Mass.: Harvard University Press.

Harriger, Katy J. (2000). *The Special Prosecutor in American Politics*. 2nd ed. Kansas: University Press of Kansas.

Hayden, W. G. (1998). "Politics, Public Responsibility and the Ethical Imperative", In Preston, N. and C. Sampford (eds). *Ethics and Political Practice: Perspectives on Legislative Ethics*. Leichhardt, Australia: The Federation Press/Routledge, pp.52-61.

Hefley, Joel and Mollohan, Alan B. (2004). *Letter to House Colleagues from Chair and Co-Chair of the House Ethics Committee.* March 11.

Herrick, Rebecca (2000). "Who Will Survive? An Exploration of Factors Contributing to the Removal of Unethical House Members", *American Politics Quarterly* (28), pp.96-109.

Herrick, Rebekah (2003). *Fashioning the More Ethical Representative: The Impact of Ethics Reforms in the US House of Representatives*. Westport, Conn.: Praeger Publishers.

Herrmann, Frederick M. (1997). "Bricks Without Straw: The Plight of Governmental Ethics Agencies in the United States", *Public Integrity Annual* (2), pp. 13-22.

Hibbing, John R., Theiss-Morse, Elizabeth (1995). *Congress as Public Enemy*. Cambridge: Cambridge University Press.

Hoffman, David (1988). "Bush, Queried on Meese, Urges Probe of Wright"' *The Washington Post*, May 26.
Jennings, Bruce (1981). *The Institutionalization of Ethics in the U.S. Senate*. The Hastings Center Report. February.

Katz, Allan (1981). "The Politics of Congressional Ethics", In Cooper, Joseph and G. Calvin McKenzie (eds). *The House at Work*. Austin: University of Texas Press, pp.97-117.

Kimball, D. C., Patterson, S. C. (1997). "Living Up to Expectations: Public Attitudes Toward Congress", *Journal of Politics* (59), pp.701-729.

Krauss, Clifford (1992). "The House Bank: Gingrich Takes No Prisoners in the House's Sea of Gentility", *The New York Times,* March 17.

Lipton, Eric (2011). "Plan to Cut Budget of Ethics Office Fails House Vote", *The New York Times*, July 22.

Mackenzie, Calvin G. (2002). *Scandal Proof: Do Ethics Law Make Government Ethical?* Washington: Brookings.

Mahoney, James (2000). "Path Dependency in Historical Sociology," *Theory and Society* (29), pp.507-48.

Malbin, Michael J. (1994). "Legislative Ethics", In Silbey, Joel H. (ed). *Encyclopedia of the American Legislative System*. Vol. II, New York: Charles Scribner's Sons, pp.1155-1170.

Mann, Thomas E. (2007). *Testimony, Task Force on Ethics Enforcement*. U.S. House of Representatives, April 19.
http://www.house.gov/capuano/news/2007/121907ethics/Statement%20For%20Record%20-%20Thomas%20Mann.pdf

Mann, Thomas E. and Ornstein, Norman (2006). *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track*. New York: Oxford University Press.

March, James G., Olsen, Johann, P. (1989). *Rediscovering Institutions: The Organizational Basis of Politics.* New York: The Free Press.

Maskell, Jack (2005). *Expulsion, Censure, Reprimand and Fine: Legislative Discipline in the House of Representatives*. Washington: Congressional Research Service, RL31382.

Maskell, Jack and Petersen, Eric R. (2008). *"Independent" Legislative Commission or Office for Ethics and/or Lobbying*. Washington: Congressional Research Service. Report RL33790.

Matthews, Donald H. (1960). *Senators and Their World*. Chapel Hill: University of North Carolina Press.

McCann, Michael W. (1986) *Taking Reform Seriously. Prespectives on Public Interest Liberalism*. Ithaca: Cornell University Press.

McCubbins, Mathew D., Schwartz, Thomas (1984). "Congressional Oversight Overlooked: Police Patrols v. Fire Alarms", *American Journal of Political Science* (28): 1, pp.165-179.

McFarland, Andrew S. (1984). *Common Cause: Lobbying in the Public Interest*. Chatham, NJ: Chatham House Publishers, Inc.

McGehee, Meredith (2007). *Testimony Before the Special Ethics Task Force*. The Campaign Legal Center. April 19.

Mettler, Suzanne B. (2002). "Bringing the State Back In to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans," *American Political Science Review* (96): 2, pp.351-65.

Mettler, Suzanne, and Joe Soss (2004). "The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics", *Perspectives on Politics* 2 (March): pp.55–73.

Mitchell, Allison (1997). "New Ethics Rules Are Approved, Including a Ban on Outsiders' Complaints"' *The New York Times*, September 19.

Moe, Terry (1984). "The New Economics of Organization," *American Journal of Political Science* (28): 4, pp. 739-777.

Moe, Terry (1990). "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy", In Williamson, O. E. (ed). *Organization Theory: From Chester Barnard to the Present and Beyond*. Oxford University Press, pp.116-53.

Nixon, Ron (2011). "G.O.P. Grants Reprieve to House Ethics Office", *The New York Times*, January 21.

North, Douglass C. (1990). *Institutions, Institutional Change and Economic Performance*. New York: Cambridge University Press.

North, Douglass C. (1993). "Institutions and Credible Commitment", *Journal of Institutional and Theoretical Economics* (149): 1, pp.11-23.

Orren, Gary (1997). "Fall from Grace: The Public's Loss of Faith in Government." In Nye, Joseph S. Jr., Zelikow, Philip D. and David C. King (eds). *Why People Don't Trust Government*. Cambridge, MA: Harvard University Press.

Ostrom, Elinor (1990). *Governing the Commons*. New York: Cambridge University Press.

Ouchi, W.G. (1980). "Markets, Bureaucracies, and Clans". *Administrative Science Quarterly* (25): 1, pp. 129-141

Pelosi, Nancy (2008)*. Pelosi Statement on House Passage of Major Ethics Reform*. Press Releases, March 11.

Pierson, Paul. (2004). *Politics in Time*. Princeton, New Jersey: Princeton University Press.

Polsby, Nelson. (1968). "The Institutionalization of the U.S. House of Representatives", *American Political Science Review* (62): 1, pp.144-168.

Pontusson, Jonas (1995). "From Comparative Public Policy to Political Economy: Putting Political Institutions in their Place and Taking Interests Seriously," *Comparative Political Studies* (28): 1, pp.117-147.

Rhodes, Robert M. (1973). "Enforcement of Legislative Ethics: Conflict Within the Conflict of Interest Laws," *Harvard Journal on Legislation* (10), pp.373-406.

Roberts, Robert (2007). "History of the Legalization of Executive Branch Ethics Regulation", *Public Integrity* (9): 4, pp.313-332.

Rosenthal, Alan (2005). "The Effects of Legislative Ethics Law", In Saint-Martin, Denis and Thompson, Fred (eds). *Public Ethics and Governance: Standards and Practices in Comparative Perspective.* Oxford: Elsevier, pp.155-178.

Rosenson, Beth A. (2005). *In the Shadowland of Conduct: Ethics and State Politics*. Georgetown University Press.

Rothenberg, Lawrence S. (1992). *Linking Citizens to Government: Interest Group Politics at Common Cause.* Cambridge University Press.

Saint-Martin, Denis (2008). "The Watergate Effect: Or Why is the Ethics Bar Constantly Rising?", In Trost, Christine and Alison L. Gash (eds). *Conflict of Interest and Public Life*. Cambridge: Cambridge University Press, pp.35-55.

Sasser, Jim (1977). "Learning from the Past: The Senate Code of Conduct in Historical Perspective," *Cumberland Law Review*, Vol.8, pp.357-384.

Schickler, Eric (2001). *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton, NJ: Princeton University Press.

Seeley, Katharine Q. (1997). "After Months Without Ethics Committee, House May Resurrect it this Week"' *The New York Times*, September 7.

Shepsle, Kenneth A. (1991). "Discretion, Institutions, and the Problem of Government Commitment', in Bourdieu, Pierre and James S. Coleman (eds.), *Social Theory for a Changing Society*, Boulder CO: Westview Press, pp. 245-65.

Sinclair, Thomas and Charles Wise (1995). "Substantive and Procedural Dilemmas in Congressional Ethics", *The Annals of the American Academy of Political and Social Science* (537): 1, pp.37-57.

Skowronek, Stephen (1982). *Building the New American State*. New York: Cambridge University Press.

Soss, Joe, Schram, Sanford F. (2007). "A Public Transformed? Welfare Reform as Policy Feedback", *American Political Science Review* (101): 1, pp.111-127.

Stark, Andrew (2000). *Conflict of Interest in American Public Life*. Cambridge, MA: Harvard University Press.

Stolberg, Sheryl G. (2004). "Job of Ethics Panel Head Is Even More Thankless Than Usual These Days", *The New York Times*, October 7.

Straus, Jacob R. (2011). *House Committee on Ethics: A Brief History of its Evolution and Jurisdiction*. Washington: Congressional Research Service, 7-5700.

Streeck, Wolfgang and Thelen, Kathleen (2005). *Beyond Continuity. Institutional Change in Advanced Political Economies*. Oxford: Oxford University Press.

Thompson, Dennis. (1987). *Political Ethics and Public Office*. Cambridge, Mass.: Harvard University Press.

Thompson, Dennis F. (1995). *Ethics in Congress*. Washington: Brookings.

Tolchin, Martin and Tolchin, Susan (2003). *Glass Houses. Congressional Ethics and the Politics of Venom.* Boulder, Col: Westview Press.

United States Congress (1989). *Report of the Bipartisan Task Force on Ethics on H.R. 3660 to Amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to Provide for Government-Wide Ethics Reform, and for Other Purposes*. Washington.

United States Congress (1993). *Hearing Before the Joint Committee on the Organization of Congress. The Ethics Process*. February 25, 103rd Congress. Washington. http://www.archive.org/stream/ethicsprocesstes1993unit#page/n1/mode/2up

United States Congress (1993a). *Hearing Before the Joint Committee on the Organization of Congress. Open Days for Members and Outside Groups*. June 16 and 29. 103rd Congress. Washington.

http://www.archive.org/stream/opendaysformembe00unit#page/n1/mode/2up

United States Congress (1993b). *Final Report of the House Members of the Joint Committee on the Organization of Congress*. Washington.
http://democrats.rules.house.gov/archives/jcoc1h.htm

United States Congress (1997). *Report of the Ethics Reform Task Force on H. Res. 168 Recommending Revisions to the Rules of the House and the Rules of the Committee on Standards of Official Conduct*. Washington.

Yang, John E. and Dewar, Helen (1997). "Ethics Panel Supports Reprimand of Gingrich". *The Washington Post*, January 18, Page A01.

Williams, Robert (1998). *Political Scandals in the USA*. London: Routledge.

Williams, Robert. (2002). "Conduct Unbecoming: The Regulation of Legislative Ethics in Britain and the United States", *Parliamentary Affairs* (55) pp.611-625.

Zelizer, Julian E. (2004). *On Capitol Hill*. Cambridge, MA: Cambridge University Press.