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Managing Politics? Ethics regulation and conflicting conceptions of ‘good conduct’ in local government

Abstract

Concern to foster trust in public institutions has prompted many governments to invest in systems of ethics regulation, embracing various dimensions of good governance. This paper assesses the impact of ethics regulation on the conduct of local politicians, using Foucauldian perspectives on government, power and resistance. Our research, which focuses on English local government, found that ethics regulation encountered problems where politicians resisted the models of political identity and behaviour it was perceived to promote. Particular concentrations of misconduct complaints were identified where politicians believed that changes to political management structures, designed to make local governance more effective, caused a loss of voice for elected representatives. The paper concludes with reflections on how far we should expect political conduct to be managed by such regulatory practices.

Introduction

Across the globe, there has been growing interest in the promotion of good governance, including achieving high ethical standards of conduct in public institutions. This is reflected in the widespread rolling out of codes of conduct, statements of values, and processes for addressing misconduct allegations (Fording *et al.* 2003; West and Davis 2011). In many countries, this is driven by the urge to address serious cases of corruption and dishonesty. However, this enterprise often goes much wider, as governments seek to cultivate an array of ethical behaviours in the public sector motivated by broader desires to improve public trust.

While ethics regulation has become pervasive in western democracies and a growing focus of public administration research, analysis of the impacts of such practices is under-developed (Helin and Sandström 2010; van der Wal 2011a; West and Davis 2011) and existing studies have given more attention to public officials than elected politicians, which are the focus here. Three questions drive this paper. First, can different dimensions of good conduct for politicians - such as treating others with respect, not working for self-interest, or using institutional resources appropriately - be promoted effectively by ethics regulation? Second, how does ethics regulation and the principles of good conduct that it embodies, interact with other factors that shape how politicians behave? Finally, are there facets of political conduct, as an exercise in the representation of interests and mobilisation of power, that make it especially resistant to formal ethics regulation?

England is an interesting context for the analysis of efforts to promote positive public values in political conduct. The Labour governments of 1997-2010 can be characterised by their efforts to restructure modes of governance across the state, notably measures that

strengthened central control and expanded the use of managerial forms of coordination (Newman 2001). Local government was a particular target, through a programme of reforms badged as ‘local government modernisation’, which included an intensification and centralisation of efforts to regulate the conduct of local politicians (commonly known as ‘councillors’ or ‘elected members’). Major components of what became known as the ‘ethical framework’, which ran for ten years from 2000, were the introduction of a model code of conduct and processes for investigating and adjudicating on complaints of misconduct. However, resistance to the ethical framework by local politicians from across the political divide, and the election of a coalition government in May 2010 with policies to promote ‘Localism’ and reduce bureaucracy saw the almost complete abolition of the framework. The dynamics of resistance offer important opportunities for analysis and show how conflicts between conceptions of ‘good conduct’ are tied up with disputes surrounding the practices by which political conduct should be regulated.

A number of theoretical frameworks are available to examine how ethical governance arrangements are put to work, including perspectives based on actor-network theory and the ‘travel of ideas’ literatures (Jensen *et al.* 2009; Helin and Sandström 2010), and others which draw on ‘new pragmatist’ social theory (West and Davis 2011; Boltanski 2010). Ethics regulation can also be critiqued from meta-ethical perspectives (e.g. ‘disclosive ethics’: Brey 2000; Introna 2005) or in terms of central-local relations (Laffin 2009). We have taken our approach from the work of Foucault, whose intellectual tools for understanding government, power and resistance seem eminently appropriate for analysing the regulation of conduct. On the one hand, the introduction of practices for codifying and regulating acceptable conduct appear to exemplify the exercise of coercive state power. Yet, the practical reality of translating stated values into conduct is that this cannot be realized purely by regulatory

compliance. The (supposed) sharing of ethical values, through which individuals are meant to be self-regulating – governed by the ‘self-steering forces of honour and shame, of propriety, obligation, trust, fidelity, and commitment to others’ (Rose 2000, p. 324) – is what proponents of ethics regulation might have hoped to see unfolding among local politicians. However, the resistance to, and subversion of ethics regulation that we observed in practice suggests a need to examine the ‘strategic games which subjects the power relations they are supposed to guarantee to instability and reversal’ (Foucault 1976, cited in Rabinow 1984, p. 338). Foucault’s insights on resistance are useful here; supplemented with new pragmatist perspectives on the fundamental difficulties facing *ex ante* ethics codification in the field (West and Davis 2011).

The next section of the paper explains how Foucauldian ideas can be used to interpret the operation of ethics regulation then outlines the ethical framework in English local government. Turning to the empirical material, first we expand on the methodology used in our research, then set out our findings. Here we sketch briefly the generality of perceived impacts of the ethical framework, before tracing in more depth the forms and consequences of some of the resistance that we observed. In our concluding section, we reflect on the implications of our findings for future research on ethics regulation.

Interpreting the regulation of conduct

Struggles over the regulation of ethics can fruitfully be explored through Foucault’s methodological emphasis on tracing the genealogy of practices through which power operates in society, both through his discussions on ‘government’ (Gordon 1991), but also the way in which power acts on subjectivity (peoples’ sense of self). Government in a Foucauldian sense

can be seen as the ‘conduct of conduct: a form of activity aiming to shape, guide or affect the conduct of some person or persons’ (Gordon 1991, p. 2). Although widely used to examine the constitution of society as a governable realm, Foucault’s approach also has relevance for understanding relations within and across the fragmented domains of the state (Sharp *et al.* 2000): between executive and legislature, or between different levels of government. Indeed, tracing the practices by which the possible scope of action are codified and delimited helps us to interpret the shifting boundaries between the political and technical dimensions of government (Barry *et al.* 1996).

From this perspective, ethics regulation can be seen as a set of mechanisms by which governments have sought to establish a common goal of good conduct (Rose and Miller 1992), which is tied in with other legislative, regulatory and discursive practices to work upon ways of behaving. Thus, the various components of ethics regulation - codes, guidance, education, complaints procedures and possible sanction for infractions - could be said to entail a ‘relationship of power’ i.e. a ‘mode of action that does not act directly and immediately upon others [but] [i]nstead acts upon their actions...on possible or actual future or present actions’ (Foucault 1982, p. 342). Importantly, Foucauldian scholarship explains how the shaping of conduct is not merely a matter of domination, so for our research, it is not as simple as *telling* councillors how they should behave and securing compliance. Government is also performed by practices that effect a wider, more pervasive governance of the self, in which ‘the self’ is active (Rabinow 1984; Gordon 1991; Sharp *et al.* 2000) and expectations are internalized, characterised as the ‘manipulation of conscience’ (McNay 1994, p. 122). The coordinating mechanisms (regulations, discourses) by which these effects are pursued are often termed ‘technologies’, and ethics regulation can thus be conceived as embodying technologies of government and of the self.

Foucauldian perspectives on the limits of coercive state power find an echo in the dominant explanatory frameworks by which ethics regulation is deemed to ‘work’. Many analysts see problems arising when an *integrity* model, in which subjects are trusted to oversee their own behaviour, is supplanted by a *compliance* model of regulation (see Lawton 2005; OECD 1996), in which central government exercises greater surveillance and control. Such moves have been criticized as ineffective, because formal, regulatory mechanisms - in which misconduct is corrected *ex post* through the disciplining of transgressors – require a wider basis of support, in which a shared conception of what constitutes good conduct is actively embraced and pervasively reinforced through routine, informal interactions within a given organisational setting (Doig and Skelcher 2001; Greasley 2006). This requires organisational measures to foster active responsibility for ethical conduct rather than just passive compliance with rules (Bovens 1998; Greasley *et al.* 2006), such that subjects identify with and embrace responsibility for upholding the code of conduct.

However, Foucauldian perspectives on government and power would take us beyond this counterposition of integrity and compliance models. Firstly, the emphasis on practices reorientates analysis away from assessing the degree of alignment (or not) of behaviour with a set of principles, presumed to be agreed or neutral, to tracing the construction of practices which embody and mobilise particular principles. Examining such practices alerts us to more fundamental problems in the sphere of ethics regulation, in which governments regularly struggle to define ‘good conduct’ *a priori*, such that they can be used in regulatory activity. The issue has been addressed by a range of analysts, including those writing outside a Foucauldian perspective. To govern across territory, government seeks to codify and simplify its system of principles – defining the ambit of ethics regulation, specifying standardised

responses – but trying to apply these often abstract values across heterogeneous, concrete situations often fails to settle questions about action (West and Davis 2011). The result is complexity and, as the ethical principles undergo further reinterpretation, a blurring of meaning (Jensen *et al.* 2009). Complexities also arise because of the potential for principles of good governance to conflict with each other, such as the tensions between integrity, transparency and efficiency (De Vries 2002; van der Wal *et al.* 2011b). The tendency for the relationship of values to situations to be under-specified (West and Davis 2011) explains why the desire to create and reinforce norms of behaviour ‘tends to be accompanied by an astonishing proliferation of legislation’ (Ewald 1990, quoted in Rose and Valverde 1998, p. 542).

The second and often connected set of problems concerns the issue of resistance. Many analysts of ethics regulation (and practitioners) tend to overlook resistance, see it as aberrant or collapse such behaviour into simple ‘non-compliance’. However, Foucault’s observations about the mutually constitutive nature of domination and resistance lead us to take resistance more seriously. For Foucault, in any power relation ‘there is necessarily the possibility of resistance’ (1996, p. 441), as ‘the history of government as the “conduct of conduct” is interwoven with the history of dissenting “counter-conducts”’ (Gordon 1991, p. 5). Indeed, in acting on norms of subjects and their sense of self and identity (Burchell 1991), the power relations of the ethical framework offer myriad incentives and opportunities for resistance.

Foucault’s emphasis on resistance and identity may be pertinent in exploring why politicians are especially likely to resist aspects of ethics regulation. On an immediate level, there is the competitive nature of politics, and the incentives this creates for securing short-term advantage rather than upholding abstract principles of good governance (Mulgan 2006).

Further issues arise from the way that ethics regulation – and the conceptions of good conduct that are mobilised – intersect with the social identities of councillors, and the different sets of norms that may be used to legitimise their action. In practice, politicians may draw authority for their behaviour from their personal judgement, their electoral mandate, the local community or the need to deliver on party policy – any of which may be more influential than complying with ethics regulation (Philp 2001; Maesschalck 2004). Politicians may see it as integral to their sense of self that elections should be the pre-eminent disciplinary process through which their behaviour is regulated by society. Ethics regulation may also be seen as less salient than the ties of community. Indeed, the connections between local councillors and local networks is widely seen as a positive quality (Councillors Commission 2007, p. 15), but sustaining those networks may mediate the propensity of councillors to enact the values codified in ethics regulation (such as principles of impartiality).

To summarize, Foucauldian perspectives alert us to a number of potential problems in the regulation of politicians' conduct. First, there is the difficulty of governing conduct across heterogeneous settings, multiple social relations and (often) contested facts, in which the growing complexity of regulations cannot remove interpretive flexibility, or dictate solutions for every situation. In politics, the insufficiency of codified norms is regularly exposed, and the judgements that they seek to stabilise is questioned (West and Davis 2011). Second, local politicians can draw upon an array of bases for legitimising their actions; highlighting that managerial, regulatory traditions like the ethical framework is just one mechanism for governing conduct within the state (Bevir and Rhodes 2010; Newman 2001). As a result, one should expect a variety of responses to ethics regulation, including resistance to the technologies of power and self through which it is enacted. Resistance may be focused on

specific misconduct allegations, to the sanctions imposed or to the entire authority of the ethical framework and the policies behind it. Narratives of resistance may be interlinked: for example, beliefs about the unworkability of rules may legitimise non-compliance (van der Wal *et al.* 2011). Entangled with delivery and resistance is also the possibility of subversion, as the ethical framework is used to exercise power in ways and directions beyond the straightforward promulgation of good conduct.

It should be recognised that Foucauldian concepts have their limits. The binary representation of normalisation/resistance may not fully capture the diversity of outcomes as devices like ethical codes travel through society and are enacted locally (Bevir and Rhodes 2010). Helin and Sandström (2010) adopt a translation-based conception of power, which allows them to examine how actors ‘consenting’ to ethics regulation may still reformulate its meaning, potentially devaluing its importance. Apparent compliance can thus be entangled with narratives that ‘resist’ ethics regulation by various strategies of ‘distancing’ its relevance to the subjects concerned (after Collinson 1994). We acknowledge this perspective, and note that resistance may be overt, developed and organized, or subtle, passive and relatively hidden (see also Scott 1985). In our analysis, however, we give primary attention to examining the explicit resistance that surfaced around ethics regulation in English local government, and to assess what might be learned from the contexts in which this emerged. Before we do this, we outline key features of the research context.

Ethics regulation in English local government

The ethical framework for local government in England has been the product of considerable contestation, as the preceding, comparatively informal approach to ethics (Doig and Skelcher 2001) was overlain by national arrangements, set out under the Local Government Act 2000 (Pt III). The Act required all local councils to introduce a model code of conduct, which all councillors had to sign, to establish a register of members' interests, and set up local standards committees. The new arrangements invested authority in 'independence' from local politics as local standards committees had independent chairs and two new central bodies were established - the Standards Board for England (in 2009 renamed Standards for England) and the Adjudication Panel for England.

These measures can thus be seen as creating a highly centralized system of surveillance and control of local government by central government. The factors driving these changes was that the government needed to respond to high profile examples of misconduct in councils controlled by the Labour party and therefore needed to be seen to be 'putting houses in order'. It also reflected its belief that only an 'independent' system could promote public confidence in local government (Macaulay and Lawton 2006a); a facet of more enduring mistrust that characterises relationships between local and central government (Newman 2001). The ethical framework could also be seen as exemplifying wider political and managerial judgements integral to Labour's overarching local government modernisation agenda: that 'transformational change is ... not only self-evidently necessary but also achievable' (Geddes and Martin 2000, p. 392), and that such change can be achieved from the centre, through the rational planning around universal values..

Such judgements were contested by those arguing that English local government has generally displayed relatively good conduct and low levels of corruption and should thus retain prime responsibility for regulating councillors' behaviour (CSPL 1997; 2005; EU 2007). Initially, the Standards Board took on the prime role in assessing and investigating complaints, but the backlog of complaints prompted some decentralisation of these arrangements. The 2008 Local Government and Public Involvement in Health Act passed the role of assessing, investigating and taking appropriate action on most complaints from the Standards Board to local standards committees. The Standards Board became a 'strategic regulator', monitoring and advising on the overall implementation of the framework, and only investigating the most serious cases.

Seeking to promote good conduct amongst local councillors through such regulatory practices was arguably made more difficult by the breadth of good governance principles brought within the ambit of the ethical framework (see table 1). The code embraces the very widely held view that councillors should not be corrupt (under the principles of Selflessness and Openness, for example) but it proved more difficult to specify and police the practices required to avoid a *suspicion* of corruption (which centre on the registration and declaration of interests). Moreover, the government sought to regulate broader categories of behaviour, such as treating others with respect and not bringing the local authority into disrepute, which require demarcation from legitimate political argument and tactics.

[Table 1 here]

One can begin to observe the tendency, noted above, of ethics regulation to expand and become more complex as government seeks to define and promote good conduct across the

multiplicity of contexts and situations in which councillors might find themselves (CSPL 1997; West and Davis 2011). Thus, abstract principles like ‘selflessness’ or ‘respect for others’ were decomposed into an ever-evolving and expanding suite of guidance.

Local reactions to ethics regulation may also have been shaped by its intersection with another centrally-driven component of New Labour’s local government reforms: the requirement that all councils ‘modernize’ their political management arrangements. Here the aim was to make local governance more effective by creating more accountable and streamlined forms of decision-making, with powers to be concentrated in either cabinets of executive members or directly elected mayors (Greasley and Stoker 2008). These new structures underpin moves to create a more professionalized, managerial ethos in the political governance of local councils (Entwistle *et al.* 2005; Newman 2001), but led to conflict where councillors’ traditional roles and identities were challenged. In some councils, those outside cabinet structures felt that these changes reduced the opportunity for political debate and their chance to influence decision-making. As executive members made the decisions, they felt ‘out of the loop’ (Davis and Geddes 2000; Fenwick *et al.* 2003). These frustrations and sense of voicelessness were to have consequences for ethics regulation, as our research shows.

Methodology

This paper draws from interviews conducted with 119 individuals across nine case studies of English councils between June and October 2008. The interviews were semi-structured and designed to elicit views on the practices of ethics regulation in each council. We conducted interviews with those that had formal roles in operationalising the ethical framework: local authority chief executives; monitoring officers (responsible for overseeing the operation of

the ethical framework), and members of local standards committees which included both elected and independent representatives. We also interviewed those who were subject to the ethical framework - council and party group leaders; other elected members; parish councils – as well as other individuals with informed views on how patterns of conduct may have changed - other senior officers, representatives from other local public bodies that worked with councils, and journalists with experience of covering local government. Finally, we examined the number of complaints in each case study and interviewed councillors who were ‘serial offenders’ under the ethical framework.

We selected case studies that met a range of criteria (see table 2). In particular, we chose councils experiencing many complaints under the code of conduct and those experiencing few. Political context was also a consideration (Fording *et al.* 2003) so we selected councils controlled by different parties, those which exemplified stability of political control and those which had experienced recent changes. In order to examine whether implementation of the ethical framework was affected by the quality of the management more widely, we included councils which had scored ‘excellent’ or ‘good’ in the Audit Commission’s Comprehensive Performance Assessment (CPA), as well as those which fared less well.

[Table 2 here]

In our interviews we encouraged respondents to talk about the nature of politics in their local authority, whether they felt there were issues with conduct, and what caused and perpetuated those behaviours, without imposing the prior assumption that ethics regulation may be a significant factor. Interviewees were invited to talk about misconduct incidents, their causes

and how they were dealt with, and the number of interviews per case study (fifteen on average) allowed for patterns to emerge. The analysis presented below draws heavily on these accounts. First, we outline in broad terms ways in which the ethical framework shapes the conduct of councillors in the direction intended by its proponents, before focusing more closely on ways in which the framework has been resisted or subverted.

The shaping of conduct

Our research supports previous studies in finding that the introduction of the ethical framework had improved the conduct of councillors. Cross-national surveys suggested that there has been a reduction in serious forms of misconduct, pertaining to corruption (BMG 2007; 2008), and we encountered similar perceptions. The causal mechanisms proffered echo Foucault's analysis in terms of the ways in which individuals' conduct is 'shaped' according to certain norms. For example, the leader of a well-performing council with few issues of misconduct (Case Study A), suggested that any effect of the ethical framework on the conduct of councillors was 'unconscious'. The framework was not something which members actually considered on a day to day basis but as the monitoring officer from the same council said, although 'they keep forgetting the rules ... that's not to say they don't apply them okay ... and they're aware of it [the ethical framework]'. Complaints against councillors were also low in Case Study B, an urban borough with a diverse population and pockets of deprivation. Here, efforts to shape conduct were much more pervasive, explicit and vigorous, with training in the ethical framework being mandatory and closely policed:

‘...we bang on about [the ethical framework] and keep the profile high all the time. So every year [the councillors] get their annual sheep-dip of the member code, whether they like it or not’ (Monitoring officer, Case Study B).

In such councils, good conduct as specified in the ethical framework is identified as part of the local ethos. This was exemplified in Case Study A, where the leader of the council described councillors in the following way:

I would say that the large majority of the members... are retired. They’ve come into it in my view for the right reasons. They’re not on the make any more. [...] I know it sounds a bit smug and I don’t mean it that way, but [they] are actually here to serve a purpose...As far as I’m aware they’re coming to make a difference, but not to make a difference to themselves.

Selflessness and impartiality is thus represented as intrinsic to councillors’ individual identity in this authority. In Case Study B, this identity was described as more shared and corporate with both officers and councillors explaining the council’s reputation of ‘doing good by doing right’ (Chief executive). A councillor suggested that he saw his role as essentially achieving the best outcome for the council as a whole, even to the extent of explaining tough, distributive decisions that could not benefit everybody (Councillor, Case Study B). As well as normalising conduct, the national authority of the ethical framework was deployed by key actors in Cases A and B in orchestrating the disqualification of councillors engaged in poor conduct (flouting planning regulations, social security fraud), but the fact that such councils were acknowledged to exemplify good conduct also made it clear to the accused that they had transgressed important norms. Thus, their resignation was secured without full investigation and adjudication.

The ethical framework also seemed to be operationalized most effectively where the identities it fostered were already strongly reflected in political practices. Case Study B is one example: interviewees identified their council as a pro-active adopter of New Labour modernising policies. Another is Case Study G, where the council was a product of a relatively recent reorganisation (in 1996). This had replaced the former, smaller district councils, with their strong attachment to place-based communities and a reputation of bullying, with a larger council where politics was said to be more detached and professionalized. Key officers and councillors already felt themselves to be displaying good conduct consistent with a ‘modernising’ local authority. This council provided good services and produced low levels of misconduct.

Our findings suggest a culture of ethical behaviour consistent with the code was already, or was in the process of being developed within some local councils, and that the various activities – such as training – acted to reinforce a prevailing ethos rather than via coercion. However, this has not been the experience of ethics regulation everywhere. Evidence suggests that monitoring officers believe that the ethical framework has exerted a positive effect on conduct but others, notably councillors outside cabinet structures, felt that standards of conduct had remained the same or even deteriorated (BMG 2008). It appears that people ‘inside’ the ethical framework, with some capacity to influence its implementation, appreciate it more than those subject to it; and it is appreciated least by those who perceive themselves to have been marginalized by local government modernisation. Impacts also differed markedly between our case studies. In some councils, changing the prevailing norms of conduct proved difficult because of the institutionalisation of certain behaviours (Doig and Skelcher 2001). We found councillors resisting the ethical framework in a variety of ways, but also evidence of its deliberate subversion.

Resistance to identities

As discussed above, modern forms of discipline (in a Foucauldian sense) are not simply about domination but also about subjectification, yet it is this very ‘process [...] through which individuals are regulated [which] also provide[s] the basis from which resistance to such government can be articulated’ (McNay 1994, p. 123). Our research supports this suggestion. We found resistance to the identities being placed upon councillors, that they should be detached from their communities and primarily loyal to the council as a collective entity. However, some individuals sought not only to resist what they saw as the over-bearing imposition of norms but also, in some instances, to capitalise on this politically by asserting their own independence and individuality. Several councillors pointed out that they had been elected by their local communities as their representative and thus should act with this conception of the public interest in mind – even if this meant behaving in ways which would be classed as misconduct under the ethical framework. Some politicians resented the role of appointed independent members of Standards Committees making judgments about their behaviour. In Case Study C, a deprived former mining area, the member of the public chairing the Committee explained that 'at the first meeting, one of the councillors immediately said they couldn't stay long so all the rest did the same. They weren't really interested'. She concluded from this and other experiences that the councillors disliked having independents sitting on a council committee.

These identities and affiliations shaped the extent to which the ethical framework – as a series of normalising and disciplinary practices – actually exerted any influence. In Case Study C, traditional party alignments had been in decline. One interviewee explained that there are some councillors who have been reported to the Standards Board on a number of occasions

but ‘Their attitude to life, which is negative and aggressive, will not be changed by the code of conduct. They don’t respect it. The ethical framework has made no difference to them’ (Councillor, Case Study C). One of the ‘accused’ claimed that he was told that he was being suspended because he was damaging the public perception of the council, but he argued that the public were totally behind him. He pointed to people coming up to him in social situations to express their support as the evidence for this position and the fact that he continues to be re-elected: ‘I’m a man of honour. My standards are far higher than those in the council’. In Case Study D, a district council in an affluent part of rural southern England, the council lacks a significant urban focus or spatial identity. In this context, representing village interests takes pre-eminence, and some councillors give more weight to whether they keep getting elected than ethics regulation.

This resistance was observed in the face of disciplinary sanctions which included the provision of training on the code of conduct and suspensions for misconduct:

‘You’ve got people that are quite willing to take on advice and listen and take on the training. People that naturally just respond to it. And I suppose we’ve got other councillors who were more antagonistic towards it. So I think initially probably they didn’t take on board the training. It’s almost like they weren’t interested in listening’ (Deputy Monitoring Officer, Case Study C).

One sphere in which it proved difficult to translate ethical principles into consistent action has been processes for registering and declaring interests, especially at the parish level which is the lowest tier of local government (Macaulay and Lawton 2006b). Viewed from a governance perspective, this might be seen essentially as an issue of learning the new demarcations of acceptable conduct – of councillors registering their personal interests

correctly, then recognising when they may have a personal and/or prejudicial interest which would prevent them from taking part in a particular council decision. This is a sphere in which the Standards Board issued additional guidance, and the extent of the problem diminished over time. However, the difficulties arising from this part of the code were not simply attributable to a failure to learn, or to councillors deliberately using their position to promote a personal interest. Rather, some councillors have difficulty conforming to the idea that being a councillor means ‘abstracting’ oneself from interests that tie them to particular places, issues and social groups, when they see representing those interests as intrinsic to their identity as a councillor. One of our case studies, in particular, faced this situation where its reputation on ethical issues was affected by poor levels of conduct at the parish level. The monitoring officer reflected:

We’ve had difficulties with a particular parish, a particular councillor of [name of parish] who doesn’t seem to understand what declarations of interest mean. [It’s] like an ingrained sort of refusal to accept the code...they say “well you know we can’t possibly operate like that because everybody in this ... it’s such a small place everybody knows everybody else” ...They think that it’s almost optional for them (Case Study E).

This problematising of the ability of councillors to act on behalf of what they see as their interests is one way in which resistance to the ethical framework reflects conflicting interpretations of good conduct for politicians. We now turn to ways in which resistance was connected to the reorganization of local politics by central government. In line with Philp’s (2001) observations, this can entail not just explicit rejection of the rules, but their tactical deployment.

Subversion and the exercise of power

The potential for the code of conduct to be subverted by councillors - to use it for their own ends rather than ensuring compliance with a set of standards - materialized in some of our case studies (see also Macaulay and Lawton 2006a). In some councils, it was widely perceived that councillors made misconduct allegations about political opponents which were often viewed dismissively as little more than a playing out of 'tit-for-tat' personal or political animosities. Thus, for example, a councillor told us that 'the code of conduct offers people the ideal way of levelling scores' (Case Study D). In Case Study F, a northern urban council with a record of good management, the leader of the council complained that the ethical framework has 'given weapons to people to cause mischief where mischief shouldn't really be made'.

Rather than dismissing such behaviour as simply aberrant, if we view the complaints system from a Foucauldian perspective as a 'relationship of power' (Foucault 1982) – as a mode of action that acts upon the present or possible future actions of others – we can begin to see how some complainants have sought to influence the potential future actions of those they have complained about. According to some interviewees, ethics regulation was perceived as being used by those in power to curtail the political activities of others; not just between local councillors but also practiced by senior officers:

The monitoring officer is not averse to threatening...people that they could be in breach of the code of conduct if they aren't very careful. And you think ... well I refuse to be cowed by all this, but it's very bad. And again of course it does nothing whatever to enhance the reputation

of the code of conduct ... because you think it's just there as a big stick to be used against anyone who dares ask tough questions (Councillor, Case Study D).

What might be presented by one person as a helpful reminder of the rules is interpreted by another as a 'threat'. Councillors from other case studies, too, expressed concern at the ethical framework being used to provide a system of control, curtailing their freedom to question or challenge officers by categorising such conduct as 'bullying', or 'bringing the council into disrepute'.

An unexpected finding of the research was that so many interviewees would relate the incidence of misconduct problems or complaints to wider changes to the political management arrangements, and to the resulting reallocation of power. Case study D had a long tradition of independent councillors (i.e. of councillors that were not members of political parties), but this shifted through the 1980s and 1990s to a situation where independents were just one part of a multi-party government. What brought issues of conduct to a head was the ending of the long tradition of political parties and independents being represented proportionately on committees. This was replaced by a 'modernised' cabinet system which was constituted solely by members of the dominant party. It is in this context that misconduct complaints proliferated, and it was suggested that the ethical framework provided a further means by which the majority group could curtail the influence of minority groups and individuals: 'that group is now starting to use the code of conduct...to keep people in line if they displease it' (Councillor, Case Study D).

This was not the only dynamic at work. In some of our cases, we encountered the suggestion that using the code to make complaints provided a way of ensuring that the voices of those

members who believed themselves to be disempowered were heard by the ruling group (see also Smulian 2009). Sometimes this was characterized in dismissive terms, *viz*: ‘I think they use the code of conduct occasionally as an opportunity to flex their muscles and to cause some disruption’ (Chair of Standards Committee, Case Study H). But others, and not just the perpetrators, recognize the rationale:

...They [independent members] have realised that the way to shall we say force co-operation from people who don't have any other control is to challenge them through the standards. And they're using standards as a weapon ... Nobody likes having to explain themselves in great detail and depth, which is what the standards committee is looking at; ‘why did you do that?’, ‘what’s happened here?’ So they use it as an alternative means of debate, if you want to put it that way. And good luck to them. It’s very clever (Councillor, Standards Committee Member, Case Study C).

As Levi (1997) suggests, it is entirely possible for individual acts of noncompliance or subversion of the rules to result in changes in both policy and institutional arrangements. Not only are the powerful forced to account for themselves, as in the quote above, but the ‘misuse’ of the ethical framework complained about in Case Study C, above, resulted in the constitution being changed to allow more debate in council.

In some instances, the subversion of ethics regulation also appears designed to attract and channel public attention. For those without conventional means of exercising influence, some form of denunciation of those in power offers a simple device for attracting attention and undermining authority (Dibben and Bartlett 2001): in Scott’s terms, it might be seen as a ‘weapon of the weak’ (Scott 1985). The existence of the ethical framework has allowed its deployment as a ‘scandal weapon’ (Belzak 2008) – a means of discrediting opponents

through recourse to the moral authority of a code of conduct, and triggering assessment and investigation processes, all of which are likely to attract media attention. For example, in Case Study H, a small district council in an affluent area but with a long history of member-to-member complaints, we were told by the leader of the opposition that he carefully examined the register of members' interests in council meetings, to identify scope for making complaints. This is a pointed illustration of how the practices of ethics regulation, in problematising categories of conduct and making them actionable, can then be used for unintended purposes.

There are links here to our earlier discussion of political identities, concerning the importance of councillors being *public* figures. There is very little public knowledge or understanding of the role of councillors in England (Councillors Commission 2007), which might explain why some councillors are prone to making more of a noise, in order to raise their own profiles and make their work more obvious to the public. For example, one councillor explained that: 'there was a time when I felt that unless you'd had three or four complaints made against you, you could hardly call yourself a local politician of any standing' (Councillor, Case Study H). In one council (Case Study C) we found comparatively little media coverage of standards issues, yet there was a history of contentious behaviour that violated the rules of the ethical framework. Respondents suggested there was almost an escalation of poor behaviour (inappropriate language in this case) in a bid to be complained about. Again we see that for some councillors, placing themselves outside the code of conduct became an element of their political identity: 'There is no shame in being taken to the Standards Board anymore – it is like a badge of honour' (Councillor, Case Study C).

Conclusions

Our findings provide a vivid illustration of the diversity of effects that ethics regulation can exert when applied to politicians, and of the merits of using ideas from Foucault to interpret them. The ethical framework for local government in England brought together an array of technologies of government and the self to encourage the alignment of behaviour with particular norms. While there is evidence that ethics regulation served to promote and reinforce good governance in some councils, our analysis also shows the considerable scope for resistance, both to the political identity of a councillor embodied in the code, and through the use of ethics regulation practices to achieve political goals. Three sets of findings follow from these patterns of resistance.

Firstly, our research encountered very little overt resistance among councillors or officers to the basic principles of good governance (honesty, accountability, selflessness, etc). Even those who subverted the ethical framework for political ends tacitly drew on the social power of its misconduct categories in their denunciation of others. Moreover, the councillors that were subject to complaints rarely saw themselves as unethical; often they simply appealed to other legitimating processes. However, a Foucauldian perspective alerts us to the ways in which the governmental *practices* designed to align behaviour with these values can still be subject to intense dispute, even if the broad moral code is relatively unchallenged (Rabinow, 1984), with the difficulty of specifying the operational meaning of these values being both a cause and effect of conflict.

Our second set of findings is that the appropriation of the ethical framework to influence the actions of others was not, as its proponents might have been hoped, confined to those seeking

to maintain good conduct. We also found that dominant individuals or groups were using the ethical framework to preserve their positions, suppress dissenting voices and damage challengers. An important pattern is that (mis)use of the ethical framework was often linked to wider tensions with New Labour's political modernisation of local government, designed to achieve clear lines of accountability and executive power. Those perceiving themselves marginalised by this concentration of power would deliberately use the standards system to exercise voice. This is a clear illustration of the potentially contradictory dimensions of 'good governance', not all of which are contained within ethical governance frameworks, and a reminder to researchers and practitioners to be alert to the side effects of ethical governance reforms and what they might reveal.

These patterns inform our third finding, which is that the challenges and repercussions of seeking to change political conduct using codified conceptions of good conduct can render ethics regulation rather unstable. Indeed, mounting resentment reflecting the types of problems we observed in our research – around perceived restrictions to members' representative roles, the usurping of the electoral mandate, and the 'encouragement of vexatious complaints' – combined with wider dissatisfaction about the complexity and bureaucracy of the ethical framework, to create a wider network of opposition within local government and beyond. This culminated in the Conservatives and Liberal Democrats going into the May 2010 general election with a promise to abolish the ethical framework; the 'central imposition' of the ethical framework was just one discourse of opposition (axing unnecessary agencies to cut public expenditure was another), but abolition has led to a scalar rebalancing of the different formal practices by which good conduct in local politics is to be determined and achieved. National prescription, codes and procedures have become minimal,

as more faith is placed in electoral accountability and the fail-safe of the criminal justice system.

Our findings have wider implications for the project of ethics regulation, especially for regulating the conduct of *politics* and our expectations of what such enterprises could achieve. As we have seen, politicians routinely rationalize their actions through a number of relationships – to party, constituency, local communities or the council as an organisation – and not just through formalized codes of conduct. It is this array of legitimating norms at work that affects the power of ethics regulation as a driver of good conduct, as the priority between different orders of worth is never fully settled (West and Davis 2011). Debates about political conduct (and political structures) are invariably caught in ‘the agonistic relation between liberty and government’ (Rose 1996, p. 62), in which the tools and practices of ethics regulation – rather than being seen as morally neutral - can themselves be subjected to ethical examination in terms of democracy, freedom and privacy (Brey 2000). Overall, there is merit in seeing ethics regulation as *constitutive of* struggles to define the values of civilised political conduct, and good governance more widely; in which practitioners and researchers should be interested in the learning going on rather than simply linear, deterministic effects. Our research also highlights the contextually-embedded nature of these processes, as the centralised, codified practices of ethics regulation encountered ‘contrasting sets of political values and priorities at local level’, including ‘different approaches to dealing with the tensions’ (Geddes and Martin 2000, p. 386). While our research did not seek to provide a statistical analysis of the contextual determinants of conduct problems – this could be the subject of further research – the cases do feature a number of highly recurring themes: a poor corporate capacity for delivering services, along with antagonisms arising from concerns

about shifting political representation and control, are both associated with councillor misconduct issues.

We must add some caveats to our findings. Although we have focused on relatively overt patterns of resistance and subversion of ethics regulation, one cannot necessarily infer that councils experiencing few complaints under the ethical framework are expressing deep support for it. As Helin and Sändstrom (2010) note, apparent compliance can coexist with downplaying the significance of ethics regulation. In this light, as national prescriptions are rolled back across England, it would be revealing to examine what practices local councils have chosen to retain from their experiences with the ethical framework (e.g. local standards committees). Although we have examined a diversity of councils through our case studies, and interviewed individuals operating the ethical framework and those subjected to it, we acknowledge that we focused only on one part of the wider set of social relations that constitute local governance. Subsequent researchers may do more to understand the position of ex-councillors, those dissuaded from standing as councillors, and the practices of citizen-activists.

Finally, we do not wish to imply that all misconduct and misuse of the ethical framework represents some kind of ‘moral heroism’, based on positive, public-spirited intentions. Even allowing for subjective interpretation, many cases hinge simply on mistakes or errors of judgement; or real instances of bullying and the promotion of personal interests. The language is not entirely neutral here. There is a tendency to romanticise ‘resistance’, and equate it with responses to oppressive, myopic modes of government (Scott 1985), yet it does not inherently serve the ends of democracy or fairness (Sharp *et al.* 2000). Foucault himself was, of course, more ethically neutral about his analytical approach, but using his approach to

trace how government is practised may better inform debates about ethics regulation than further, abstract refinement of the ideals of good governance.

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Table 1: Categories of misconduct under the Local Government Act 2000

| 10 Principles of Public Life (local government) | Categories of Misconduct (Part of the Code) |
|--|--|
| Selflessness | <ul style="list-style-type: none"> • You must not use your position to improperly confer an advantage or disadvantage for yourself or any other person (Part 1 6(a)) • Prejudicial interest – seeking to improperly influence (Part 2 12(1)(c)) • Prejudicial interest – attended meeting for purposes not available to the public (Part 2 12(2)) |
| Honesty and integrity | <ul style="list-style-type: none"> • You must not conduct yourself in a manner which could bring your authority into disrepute (Part 1 5) |
| Objectivity | |
| Accountability | |
| Openness | <ul style="list-style-type: none"> • Personal interest – failure to declare (Part 2 9(1)) • Prejudicial interest – failure to withdraw (Part 2 12(1)(a)) • Failure to register interests (Part 3 13(1)) |
| Personal judgement | |
| Respect for others | <ul style="list-style-type: none"> • You must treat others with respect (Part 1 3(1)) • You must not bully any person (Part 1 3(2)(b)) • You must not do anything which could cause |

| | |
|------------------------|--|
| | <p>your authority to breach equality laws (Part 1 3(2)(a))</p> <ul style="list-style-type: none"> • You must not intimidate or threaten to intimidate any person who is likely to be involved in a complaint (Part 1 3(2)(c)) • You must not compromise or attempt to compromise the impartiality of anyone who works for the authority (Part 1 3(2)(d)) |
| Duty to uphold the law | <ul style="list-style-type: none"> • You must not disclose confidential information (Part 1 4(a)) |
| Stewardship | <ul style="list-style-type: none"> • You must only use the authority's resources in accordance with its requirements and must not use the authority's resources for political purposes (Part 1 6(b)) |
| Leadership | |

Source: Table draws upon Standards Board for England (2007) and categories of misconduct applying at that time.

Table 2: Contextual information on the nine case study councils

| Case study | Thumbnail sketch |
|-------------------|---|
| A | A relatively affluent district in southern England, with most residents enjoying a high quality of life. The council has achieved ‘excellent’ CPA scores, and has been pro-active in helping parishes implement the ethical framework. The district itself has experienced very few cases under the code of conduct; a few have arisen at parish level. |
| B | A London borough in a socially diverse part of the capital, with pockets of affluence and deprivation. The council has experienced ‘excellent’ CPA scores, and has been pro-active in its approach to ethical governance. The borough has experienced very few cases under the code of conduct. |
| C | A small district in the Midlands in a relatively deprived area where traditional industries have declined. The council is improving its CPA score over time (to ‘good’ most recently). There have been a large number of complaints under the code of conduct, most of them amongst members and between officers and members. |
| D | A relatively affluent and fast-expanding district in southern England, with a largely rural area. The council has received ‘fair’ CPA scores but has experienced problems with its corporate governance, including a large number of complaints under the code of conduct, most of them amongst members and between officers and members. |
| E | A unitary council in the north of England which covers a largely rural area with an affluent population. The council has achieved ‘excellent’ scores in the |

| | |
|---|--|
| | CPA and few complaints under the Code. The large majority of complaints come from the parish councils in the area. |
| F | A largely urban unitary authority in the north of England, serving a population that is economically and ethnically diverse. The council has achieved a four star performance score in the CPA, and has generated a moderate number of complaints under the code of conduct. |
| G | A unitary council in southern England with a mostly affluent population. The Council has recorded 'good' CPA scores, and has generated a moderate number of complaints under the code of conduct, though more so from among its parishes. |
| H | A small district council in the Midlands, with an affluent population. The Council has recorded 'poor' CPA scores, and generated a large number of complaints about misconduct under the Code, most of them by members against other members. |
| I | A socially diverse and in places very deprived metropolitan area in the north of England. The Council has achieved 'poor'/'fair' CPA scores, but neither a large number nor a consistent pattern of complaints under the ethical framework. A few of these cases did involve unlawful behaviour. |