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[The relationship between political parties and their regulators.](#)

Party Politics 2017, 23(6), 646-656.

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This is the author's accepted manuscript. The final definitive version of this paper has been published in *Party Politics* by SAGE Publications Ltd and is available on the journal website at:

<http://dx.doi.org/10.1177/1354068815616027>

Date deposited:

11/11/2015



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The Relationship between Political Parties and their Regulators

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The final definitive version of this paper has been published in *Party Politics* by SAGE Publications Ltd and is available on the journal website at: doi: 10.1177/1354068815616027.
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Biographical statement

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The Relationship between Political Parties and Their Regulators¹

Abstract

Political parties are in a unique situation, being able to change electoral rules and regulations to minimise any potential negative effects on their electoral prospects. Attempts to influence regulators, however, can be complex and include voicing concerns, public pressure and the regulatory capture of electoral regulators. Little is known about this relationship between parties and their regulators. This paper focuses on this crucial electoral relationship through a study of political parties' relations with the UK Electoral Commission. The first section addresses the background to the legal regulation of political parties. The second section proposes a framework through which parties' reactions to regulation may be understood. The third part introduces the British case, providing evidence to demonstrate the broad utility of the framework. The final section analyses the issues that parties have raised with their regulators.

Keywords

Party Regulation; Electoral Commissions; EMBs; Electoral Integrity; UK

The Relationship between Political Parties and Their Regulators

Political parties are in a unique situation, having the ability to directly make and change electoral rules and regulations while at the same time being subject to those regulations. The increasing levels of regulation that parties must comply with is a comparative phenomenon. Inroads have been made towards understanding these laws, their effects on party system fragmentation and public opinion. Much less is known about how parties themselves behave and react under legislative and regulatory regimes. Attempts to influence regulators may be more complex than simply changing the law, but also include voicing concerns about regulations, broader public pressure and, ultimately, the regulatory capture of electoral regulators. The nature of the issues that political parties raise with their regulators, and the manner in which they are raised are therefore important for both party competition and electoral integrity more broadly. Pressure on regulators can impact upon the rules of the electoral game, benefiting some parties to the detriment of others, potentially undermining the electoral process.

This paper's major contribution is to begin to examine this crucial relationship between political parties and their regulators. It proposes a framework through which party behaviour can be assessed, while also providing an empirical insight into the issues raised by parties with their regulators. It approaches this through a study of political parties' relations with the UK Electoral Commission. The UK is an excellent case study. Although an established democracy, it is relatively new to the regulation of political parties, with major legislation only introduced from 2000 onwards. This provides evidence of the various ways in which parties react to their regulators as they are becoming used to a new regulatory regime.

The article proceeds as follows. The first section provides a general overview of the legal regulation of political parties. The second section proposes a framework through which parties' reaction to such regulation may be understood. The third part introduces the British case and demonstrates the broad utility of the framework. The final section analyses the issues that parties in the UK have raised with regulators, and classifies these in relation to their impact upon electoral integrity. The conclusion brings out the implications.

Background

Political parties are increasingly subject to various laws and regulations. Three reasons can be traced to explain this: to set out specific roles for political parties; to bolster the legitimacy of parties when this has declined through various misdeeds; and to oversee the use of state subsidies (Katz and Mair, 1995; Rashkova and van Biezen, 2014; van Biezen, 2012). Parties are influenced by different types of laws. At the most fundamental level, these include constitutional provisions. Also affecting parties are specific party laws, laws that regulate electoral conduct, and laws relating to party financing, whether public or otherwise. Gauja (2010) also notes the impact of case law on party politics, particularly in Common Law democracies such as the USA, Australia and the UK.

The regulatory bodies that tend to oversee parties on a daily basis are Electoral Management Bodies (EMBs) or Electoral Commissions. Autonomous EMBs are generally held to improve the quality of elections. One prominent typology proposes three categories of EMB organisation: as part of a government office or agency; as part of a government agency but under supervisory authority; or a fundamentally independent organization (Birch, 2011: Ch.6; Elklit and Reynolds, 2001; International IDEA, 2006). Distinctions between *de jure* and *de facto* autonomy are crucial. Consequently, classification of political parties' formal role

vis-à-vis EMBs has also been of concern (Elmendorf, 2006; Hartlyn et al, 2008; Rosas, 2010). Birch (2011: 116) labels EMBs wholly independent of parties the ‘ombudsman model’, while those with some form of party involvement in the selection of commissioners, the ‘checks and balance’ or ‘party watchdog’ model. Hartlyn et al. (2008) identify four types of formal EMB-party models: single-party dominated; partisan mixed; independent/partisan mixed; independent of parties. Beyond these classifications, little is known about EMBs, their operations and regulatory activity over and interactions with political parties (Elmendorf, 2006; Norris, 2014: 12-14).

Laws and regulations can impact on various aspects of party activities, and different levels of parties’ organisations (van Biezen and Borz, 2012). Rules which target parties generally can have an impact upon the broader conduct of party competition. A number of authors highlight the importance of addressing how permissive or prohibitive laws affecting party competition are (Katz and Mair, 1995; Molenaar, 2014). The more open or permissive party laws are, the fewer impacts they have on party organisation, and the more open party competition will be. James (2010a) extends this notion of permissiveness beyond parties to electoral laws and reforms which seek to encourage, or restrict, voter turnout, arguing that such electoral laws can often be implemented by parties seeking partisan advantage (James, 2010b). Restrictions on who can register to vote, how those votes are cast, deposits for candidates, and laws on who can stand for office and the number of nominations they need can all impact on issues ranging from candidate selection through to campaign activity, and also impact upon electoral competition. Electoral law is therefore a crucial part of the picture in understanding how parties might attempt to ‘change the rules of the game’ through their interactions with the EMBs that regulate them.

Three main paradoxes can be identified in the relationship between parties and their regulators. Firstly, parties are effectively in a dual role as both governors and governed. In

most democracies, and assuming the law in question is not constitutional, should they not like a particular law, they are often in a position to change the law in question (Gauja, 2010). While some EMBs have the power to make binding regulations, or have a consultative role in the legislative process, more normally it falls to parties in parliament to change electoral legislation. They can choose to support or ignore EMB recommendations (International IDEA, 2006: Ch. 3). Secondly, the increasing volume of regulation brings into question the extent to which political parties should be seen as private voluntary associations or as public bodies. This is particularly the case when related to state financing, but not exclusively so; rules on ballot access and candidate selection may also bring these issues into focus (e.g. Gauja, 2010; Morris, 2012; Rashkova and van Biezen, 2014; van Biezen, 2004). Political scientists have largely treated parties as voluntary organisations, something which often appears unjustified when the effects of party laws are taken into account (but see Orr, 2012). Thirdly, there is a tension between using party or electoral legislation to rectify imbalances and injustices in electoral politics, and the potentially entrenched interests of those in power who must legislate to resolve these imbalances (Gauja, 2010).

The constitutionalisation of party politics, party funding regulations and party links to the state are all well documented (van Biezen, 2012; van Biezen and Borz, 2012; van Biezen and Kopecky, 2007; 2014). The effects of these laws have also been examined, particularly in relation to party system effects and public opinion on party legitimacy (Gauja, 2010; Molenaar, 2014; Rashkova and Van Biezen, 2014; van Biezen, 2004; Whiteley, 2014).

Largely absent in most of these discussions is a framework for understanding how political parties react to and interact with their regulators. How might parties respond to regulations they dislike? What issues do they make representations to their regulators about? This is surprising given the otherwise generally robust theorisation of party behaviour. It is to developing such a framework that the next section now turns.

Parties, Regulatory Capture and Voice

EMB practitioners often view political parties as ‘stakeholders’ in their regulatory activity (International IDEA, 2006: Ch. 8). With party scholars, the predominant approach to understanding party behaviour is as actors aiming to maximise a range of interests, whether votes, policy or office (e.g. Strom, 1990). The electoral function is crucial; without votes, parties are unlikely to be able to influence policy or place candidates in office.

Given such rational choice underpinnings, adapting Hirschman’s (1970) ‘exit, voice and loyalty’ model may help conceptualise the relationship between political parties and their regulators. In party studies, this is often applied to the loyalty or otherwise of party members to changing party programmes. However, Hirschman’s model relates more generally to how organisations respond to deterioration in conditions affecting them. Introducing regulatory regimes has already been highlighted as a common response to systemic perceptions of deteriorating party legitimacy (Rashkova and van Biezen, 2014).

The key tension is whether regulation is implemented for the public good, or for the benefit of the parties which are regulated (Stigler, 1971: 3). A crucial question is how parties respond when they no longer feel that the regulatory regime or regulation on certain issues is suitable for their needs. This is a case of what Hirschman (1970: 98-105) calls the ‘difficult exit from public goods’. Given that systems of public regulation and oversight to govern parties have been set up, generally with the support of most if not all mainstream parties in a country, it is then extremely difficult for parties to exit from that regulatory regime without experiencing high costs, such as restrictions on their ability to nominate candidates, or a further deterioration in party legitimacy, for example. One form of exit may however be available to parties, and this is returned to below.

In theory, parties must seem to be loyal to the regulatory regime they have created. Difficulties and high costs involved in leaving such a regime mean that ‘voice’ becomes the main way that parties have to rectify any perceived deficiencies in the laws and regulations they are governed by.² Hirschman (1970: 33-34) refers to voice under such circumstances as the dominant reaction mode, noting that ‘with exit ... unavailable, voice must carry the entire burden of alerting management to its failings’. Voice therefore dominates in the interactions political parties have with their regulators. Hirschman (1970: 30) defines voice as:

[A]ny attempt to change, rather to escape from, an objectionable state of affairs, whether through individual or collective petition to the management directly in charge, through appeal to a higher authority with the intention of forcing a change in management, or through various types of actions and protests including those that are meant to mobilize public opinion.

A number of issues flow from this. Firstly, where there are few actors, voice is likely to be a powerful mechanism, as major players in a market can wield significant influence (Hirschman, 1970: 41 & 70). This is the case in regulation of political parties; normally the number of mainstream parliamentary parties is limited, giving them considerable weight in their dealings with regulators. Secondly, those with most to lose are likely to have most to say on the issues they feel important (Hirschman, 1970: 49). Evidence from party competition is readily available as parties seek to maximise their gains or limit their competitors’. For example, Republicans in the US are more vociferous on tightening registration and voter ID rules than Democrats, who are more outspoken on how such rules can be used as a form of voter suppression.

Thirdly, a balance needs to be struck between being too outspoken, thereby creating discontent and hostility within the regulatory regime, or minimising complaints so as to continue to work towards collective goals (Hirschman, 1970: 63, 70 & 103). For parties, there will be a 'tipping point' at which their electoral needs outweigh those of their competitors in the broader party system. Finally, there will usually be some form of expelling or disciplining members of a regime or market who become too outspoken (Hirschman, 1970: 76). In the electoral field this is likely to take the form of enforcement action against the wayward party or candidate to resolve the breach of regulations.

The notion of voice, with these associated qualifications, permits an exploratory model of party behaviour under regulatory regimes to be proposed. Given the lack of research on the topic, this is necessarily somewhat developmental. Party-regulator interactions are complex, and more than just a straightforward dichotomy between compliance and non-compliance. Instead, this reflects a range of behaviour which takes place in two broad settings, the institutional and the extra-institutional.

Most normal interaction is likely to be relatively mundane and institutionalised, whether through formalised meetings, or more informal contacts and representations. Such contacts are classic conditions for regulatory capture of EMBs by the political parties they regulate.³ Bo (2006: 203) suggests broad and narrow definitions for this. Broadly, this relates to the process through which special interests affect state regulation. More narrowly, this is the process through which regulated monopolies or oligopolies end up manipulating state agencies that oversee them. Given the limited number of relevant parties in most party systems, analogous to oligopoly, this narrower definition is most appropriate for assessing party-EMB interactions.

This is an institutionalised type of voice in which both sets of actors have influence. Regulated bodies have detailed information which regulators need to undertake their

activities. This information may not be complete, can be withheld, or only partially disclosed. Without this information, regulators are restricted in their ability to execute their functions. Regulators are ‘captured’ because they are dependent upon the organisations they regulate (Agrell and Gautier, 2012).⁴ Nonetheless, regulators can implement various approaches which make the activities of regulated bodies more, or less, costly (Agrell and Gautier, 2012; Bo, 2006; Leaver, 2009; Stigler, 1971). Mostly, interactions take place behind closed doors. On occasions, capture may be more obvious, for instance, where parties have personnel nominated to serve on Electoral Commissions and regulatory bodies.

Moving to the extra-institutional area, where such behind the scenes voice may not have had an effect, parties may make their views known through the media. They may also be more persistent in organising a more sustained public campaign on various issues, such as, for example, issues to do with candidate nomination or voter registration.

In both institutional and extra-institutional arenas, considerable dissatisfaction leads to pressures on the regulatory regime. Relatively rare events such as enforcement activity, legal challenges, fines and court cases ensue in the institutional arena. More problematically, attempts by parties to change laws reflect an attempt to move from one regime and set of electoral institutions or regulations to another. This is the sense in which parties have a limited form of exit available to them. To exit from one set of rules to another, they need to legislate for reforms, usually after other efforts to express their opinions may have failed or external circumstances force change upon them. Exit is therefore expressly and more narrowly related only to the party law and regulation causing disquiet in the first place, not to the broader idea that party conduct needs to be regulated.

Analytically, parties are most likely to exercise increasing levels of voice when costs of regulation and dissatisfaction with the regulatory regime increase. Two additional factors require consideration. Firstly, parties are more likely to speak out when an opportunity occurs

to pushback against regulation, or show their competitors in a bad light. Additionally, the probability of having success in attracting public attention for the case being made is also important. Some of these different factors will be more important at some points than others. To develop regulatory leeway, a party may respond to opportunities that emerge, even if regulation is not necessarily imposing excessive costs. Thus, what might be termed generically regulatory discontent with the legislative regime also involves the interaction of costs and opportunities.

(Figure 1 about here)

Figure 1 suggests how this is likely to work. Institutionalised regulatory capture is the default setting. As discontent rises for a party, the likelihood that they will use increasingly public forms of voice also rises. The various types of voice are not necessarily mutually exclusive and may overlap. For instance, institutionalised interaction is likely to continue, even as a party raises issues with the media or may even campaign around that particular issue. As the regulator takes the party's (or parties') concerns into account, general discontent will wane and relations revert back to a normal regulatory capture relationship.

This framework ought to be comparatively applicable. Fisher and Eisenstadt's (2004: 623) comparative discussion notes the 'inability or unwillingness of parties ... to comply with the spirit of legislation'. Nassmacher (2003) observes that resistance to regulation has been the norm across many different countries' regulatory regimes on party funding and competition, and various different types of democracy. Moreover, 'those being regulated will work to narrow the definitions (of legislation) in order to create some leeway' (Nassmacher, 2003: 153).

How does this affect the behaviour of regulators? The confidence of the parties being regulated in the regulatory regime is crucial (International IDEA, 2006: Ch. 8). To avoid extreme examples of voice, and to ensure the success of the regime and the interests and goals of their organisation, regulators will also have a graduated set of responses to issues raised by parties. In similar vein to the spectrum for party behaviour, this is likely to begin with institutionalised and responsive relations through the extensive provision of information, regular meetings and contacts. Both sides have more to gain from such an approach which seeks to minimise voice (Leaver, 2009).⁵ Only in the unlikely event of these failing are rarer measures such as exposure, enforcement activity and ultimately legal challenges likely to be initiated.

What issues are likely to make parties utilise voice in their relations with regulators? The key motivations of firms in regulatory environments are to achieve: money; control over entry by new rivals; policies affecting substitutes or complements; and price-fixing (Stigler, 1971: 4-6). Some of these are clearly applicable to political parties, who have been known to seek public financing, higher electoral thresholds and prohibitive rules on party regulation. Van Biezen and Kopecky (2014: 176) offer a range of areas where laws affect parties, mainly in relation to party organisation. However, the crucial vote-seeking function of parties means that issues focused upon the electorate and electoral laws must also be taken into account, not just laws which impact upon parties.

Literature on electoral integrity helps identify crucial electoral law issues which may form the basis of interactions between parties and regulators. Numerous frameworks for judging this have been offered (e.g. Bland et al, 2013; Pastor, 1999; Mozzafar and Schedler, 2002; Norris et al., 2013). All cover similar indicators throughout the electoral cycle. Elklit and Reynolds (2005) highlight eleven broad areas. Unlike comparable frameworks, they weight them in regard to their importance to electoral integrity. Areas covered include: the

legal framework; the performance of the EMB; polling district demarcation; voter education; voter registration; ballot paper access and design; campaign regulation; polling processes; vote counting and tabulation; resolving post-election disputes; and post-election procedures.

The British Case

Britain is interesting for examining the relationship between political parties and their regulators. Until 1998 political parties were not constitutionally recognised. Aside from specific electoral laws, mainly imposing obligations on candidates, party conduct was largely unregulated. The period from 1998 onwards has seen increasing legislation and regulation affecting political parties. How parties, and regulators, in an advanced democracy such as Britain react to the extension of new restrictions and regulations on their activities is therefore a matter of some interest.

The most significant law was the Political Parties, Elections and Referendums (2000) Act (PPERA) (Fisher, 2001; 2002). This established an Electoral Commission responsible for registration and regulation of parties and party finance. Its remit included oversight of electoral laws, regulation of party accounts, donations and funding, and oversight of election spending limits. This was supplemented by subsequent legislation in the Electoral Administration Act (2006) and the Political Parties and Elections Act (PPEA) 2009 which strengthened the Electoral Commission's enforcement powers. Article 28 of PERA privileges the electoral function by indicating that contesting elections is a crucial expectation of registering as a political party. Prospective parties must submit their constitution or rule-book as part of their application, leading to suggestions that this represents 'statutory incorporation' of party organisational processes such as candidate selection (Morris, 2012: 122).

Passing PPERA was possible because legislative proposals had all-party support, and were seen as a way of restoring confidence in the aftermath of a range of funding scandals in the 1990s. The Electoral Commission was to report to parliament, but to act independently. The model initially chosen was the non-partisan ‘ombudsman’ model with Electoral Commissioners barred from having undertaken recent partisan activity. The Commission was to have enforcement powers to compel information on donations, expenditure and party accounts with it being the Commission’s responsibility to initiate proceedings. Ewing (2001: 13) indicated that the Commission’s challenge was:

to operate in a manner which simultaneously maintains the goodwill of the regulated community and satisfies the legitimate expectations of the public and press that it will be an effective watchdog prepared to bare its teeth and if necessary bite hard.

Challenges to parties were threefold. Firstly, with regulations on party accounts impacting not just upon party headquarters but also party ‘accounting units’, PPERA was thought to have ‘potentially onerous obligations on political parties which will require sophisticated reporting mechanisms in place’ (Ewing, 2001: 5). Secondly, consequently, PPERA was likely to lead to party professionalization and centralisation to comply with legislative obligations. Thirdly, there was a danger that the non-partisan nature of Commissioners might lead to a body ill-informed about the challenges faced by parties, open to influence by government and essentially ineffective (Ewing, 2001; Fisher, 2001).

The Committee on Standards in Public Life (CSPL) (2007; Ghaleigh, 2012) reviewed the operation of the Electoral Commission after the 2005 general election. CSPL made a number of criticisms, and recommended a narrower focus on two issues: free and fair

elections through electoral administration; and promoting healthy and competitive political parties.

Five issues concern the discussion to hand. Firstly, CSPL implied that there had been pressure on the Electoral Commission. As CSPL argued, the Commission ‘must accept it will not always be popular with the parties and that pressure, overt and covert, will always be applied in attempts to influence its approach’ (CSPL, 2007: 2). Secondly, CSPL noted a degree of timidity on the part of the Electoral Commission in acting upon issues in party funding, particularly in relation to the ‘cash for honours’ scandal, discussed below. Thirdly, it suggested that the decline in confidence was not solely the fault of the Electoral Commission, but in part due to government and political parties ignoring the Commission’s advice. Somewhat contradictorily, it also suggested that the parties themselves were losing confidence in the Commission.⁶ Fourth, it accepted an often-made party argument that much of the work necessary to comply with regulatory demands is the responsibility of voluntary treasurers and personnel, to which the Commission ‘must be sensitive and proportionate’ (CSPL, 2007: 2). Finally, CSPL indicated that the non-partisan ‘ombudsman model’ of Electoral Commission meant that the regulator had been deprived of recent party political experience to help it implement its remit.

It is possible to suggest from this and from other evidence that parties have attempted to exploit loopholes in legislation or otherwise push back against it in the manner set out above. Some examples make the point, and affect most parties. Firstly, against the backdrop of a generally ‘toxic relationship between the Labour Party and Electoral Commission’ (Ghaleigh, 2012: 160), the 2006 ‘cash for honours’ case suggested that Labour had received sizeable loans from individuals who were subsequently nominated for peerages in the House of Lords. According to the party’s former General Secretary, ‘often we forgot that the measures the government passed [PPERA] actually applied to us as well’, (Watt, 2010: 37).

While a police investigation did not press charges, and their nominations were rejected, Labour were not the only party that had exploited loopholes by using loans as a method of funding (Fisher, 2009). The importance of information in the relationship between parties and regulators is highlighted by this case. The Electoral Commission could clearly not execute its functions properly without appropriate information. Yet Watt (2010: 38) makes the remarkable admission that Labour's 2005 election return to the Commission 'was the first accurate one we'd ever filed', explaining this through administrative inertia and oversights within the party.

Secondly, the Electoral Commission have been on the receiving end of heavy criticism and pressure from political parties. Electoral Commission Chair, Jenny Watson, was widely reported as having been 'smeared' by the Conservative-led Department of Communities and Local Government when she was not re-appointed to a post with a separate body, the Audit Commission, in September 2010 (Curtis, 2011; Singleton, 2011). This had the potential to undermine the Electoral Commission in the aftermath of widely-publicised polling station difficulties in the 2010 general election, something which the Commission had no actual power of direction over, but which clearly provided an opportunity for criticism. More directly, in 2015, former Scottish National Party leader and First Minister Alex Salmond explicitly claimed the Commission was 'not fit for purpose' after controversial changes to electoral registration procedures and that, in Scotland, its powers should be transferred to the Scottish parliament (Salmond, 2015).

Thirdly, parties have pushed back against proposals to regulate their conduct. For example, Northern Irish parties have resisted attempts to put the regulation of their donations on the same transparency footing as parties in Britain, citing security fears as the reason. Similarly, PPEA 2009 allowed candidates across the UK to withhold their addresses from publication. Such moves had been resisted previously, even at a time of higher terrorist

threat. In 2009, the majority of party politicians responding to the consultation on the issue were in favour of withholding information, while electoral administrators and the majority of responses from the public had been in favour of retaining disclosure (White, 2009). Similarly, despite several proposals to reform party financing further, the major parties have also failed to agree over issues of limits to donations and controlling party spending. This has halted any reform of party funding (Fisher, 2009), and underlines the difficulty of the Electoral Commission pushing for significant reforms in the regulatory regime without the agreement of the parties..

Fourth, parties can also influence regulation through institutionalised discussions, which are classic conditions for regulatory capture. Johnston (2014) highlights how parties have attempted to influence the work of another key electoral regulator, the Boundary Commission, to their advantage. They have done so by a process he labels ‘gerrymandering by consultation’, which involves providing detailed proposals and information to local redistricting enquiries. The suggestion is that this has been done for partisan advantage, and that parties have had success at different times; Labour in the mid-1990s, the Conservatives more recently.

Fifth, under post-1997 Labour governments, numerous ‘electoral modernisation’ measures meant that the electoral process in the UK came under increasing pressure (James (2010b). In addition to PPERA, these included the Representation of the People Act 2000, permitting universal postal voting on demand, and the European, Parliamentary and Local Elections (Pilots) Act 2004 which extended pilot schemes to European parliament elections. The stated intention behind changing these electoral laws had been to increase participation. James (2010b) suggests that this was less motivated by altruistic motives than by narrow party interest, Labour standing to benefit most from rising turnout.

Finally, following recommendations made by CSPL, PPEA 2009 also permitted political parties to nominate four electoral commissioners. Although they sit on a non-partisan basis, this is bound to have changed the dynamics around the regulation of parties and caused concern when proposed (Elmendorf, 2006: 427). This may not be a bad thing however. As Birch (2011: 116) observes more generally, ‘most scholars recognise that electoral commissioners selected on a partisan basis are capable of performing their duties in a professional, non-partisan manner’.

This evidence shows parties attempting to pushback against regulation, and using voice to influence regulators. The trend has been to mix attempts at pushback through voice, with steps towards often seemingly reluctant compliance. All mainstream parties now have a senior official responsible for compliance with legislation. In the Electoral Commission’s party risk profiles, reported since 2010 as a result of PPEA 2009, all mainstream parties, including the Scottish and Welsh nationalists have been classified as having high levels of compliance.⁷ Smaller parties are less compliant. Both UKIP and the Green Party have moderate levels of compliance, while the British National Party consistently demonstrates low levels of compliance.

Party – Regulator Discussions

What issues form the basis of formal discussions between parties and the Commission? In accord with best practice for EMB-stakeholder relations (International IDEA, 2006: Ch. 8), since its inception, the Electoral Commission established formal political parties’ panels for each of the four key UK institutions –Westminster and Scottish parliaments, and the Northern Irish and Welsh Assemblies. Their remit is to discuss matters of importance to the parties. Minutes of these meetings are publicly available.⁸ These represent a public version of

discussions and, naturally, cannot capture any informal discussions which may take place outside these meetings. They are nevertheless an important public record agreed between parties and the Commission and therefore a key primary source when trying to establish the nature of interactions between UK parties and their chief regulator.

Panels normally meet 3-4 times per year. Attendance varies. The Electoral Commission is always well represented, with an average of 4-5 personnel per meeting. These are normally high level participants, such as the local Head of Office and Electoral Commissioner, the Chief Executive and those with particular responsibilities such as electoral administration or party funding.

Some parties are better attenders than others. The worst attended meeting was a Welsh panel in October 2007, when only two party representatives attended, one each for Plaid Cymru and the Conservatives, but were outnumbered by four Commission representatives. The worst attending parties between 2007 and early 2014 were: the Democratic Unionist Party (DUP) who missed over a quarter of meetings; Alliance Party who missed around two fifths of meetings, both from Northern Ireland; the Scottish Conservatives who missed almost a third of meetings; and Plaid Cymru, who missed more than half of the Westminster panel meetings. None of the Northern Irish parties attend the Westminster panel, despite being represented in the UK parliament. Some parties have perfect attendance records: the SNP with the Scottish panel, Conservatives at Westminster and Wales, and the Liberal Democrats at Westminster. With the exception of Wales, the other three panels also had consistent participation from the Green Party.

Table 1 provides an assessment of how regularly various topics were brought up in these meetings. Following a close reading of the meeting minutes, topics discussed in each separate numbered paragraph in the minutes were coded in line with each of the eleven areas set out in Elkit and Reynolds' (2005) framework for election quality. These were coded in

order of presentation in the framework outlined above. Thus, discussion of the legal framework, the first category, was coded 1, through to post-election procedures, which were coded 11. For example, lengthy discussion of registration procedures (NI Panel, January 2007) was coded 5 under voter registration.

Allowance was made for British circumstances under these generic headings. Although Elklit and Reynolds (2005) do not include enforcement policy, for the purposes of this analysis it is included under the legal framework as this is the most appropriate category to situate it. Similarly, following Norris's (2014: 12-14) discussion which broadens this category, electoral management is broadened from concerns solely about the national EMB to other bodies involved in regulating and implementing electoral law. Under the category of access to and design of the ballot paper, issues regarding candidate nomination, central to ballot access, have been included even if not explicitly outlined in the original election quality framework.

(Table 1 about here)

Elklit and Reynolds (2005: 155) separate these issues into three categories for established democracies: essential; important; and desirable. Issues classed as 'essential' are discussed overall perhaps slightly less often than might be expected, suggesting that they may not be quite as important to parties in their regular dealings with Commission officials as the term 'essential' implies from an electoral integrity perspective. Thus, the most regularly discussed 'essential' issue is polling processes at 85% of meetings, while ballot access and the legal framework were discussed at around four-fifths of all meetings. Vote counting processes were discussed in only just over half of all meetings, but were clearly more important in Scotland where they were discussed on almost every occasion.

Of issues classed as ‘important’, the predominant concern among parties was voter registration, discussed in 86% of all meetings, although evidently more an issue in Northern Ireland and Wales than in Scotland. Electoral management was also regularly discussed, in around four-fifths of all meetings. The other ‘important’ issues were of less concern: constituency demarcation on only 36% of occasions, although clearly of much more relevance to issues in Scotland; and resolving disputes seldom discussed in any of the panels. Predominant among issues classed as ‘desirable’ were issues of campaign and funding regulation, discussed in 90% of meetings. Both voter education and post-election procedures and reports were discussed in around three fifths of meetings overall, but were clearly discussed more regularly in Scotland and Wales.

A qualitative reading provides a clearer sense of these discussions. A number of points are evident. Firstly, and unsurprisingly, the bulk of discussion has the appearance of routine and often very technical business. Often information is related to technical issues about parties’ reporting requirements and Commission systems for doing so. Some issues are briefly passed over, while others are dwelt upon for longer. Parties at Westminster often appear to discuss some issues in greater depth than the other panels. For example, the September 2012 Westminster meeting was dominated by three subjects: the legal framework; campaign and funding regulation; and polling processes. Timing also matters, with certain issues more prominent in the run-up to or immediate aftermath of elections, or boundary demarcation when a boundary review is imminent. For example, both registration issues and public information are regularly addressed in the run-up to elections (e.g. Scottish Panel, March 2007; Westminster Panel, Sept. 2013)

Secondly, often meetings have the flavour of being information passing sessions from the Electoral Commission to the parties. This is particularly the case in Northern Ireland, where minutes regularly commence by stating that ‘no issues had been raised by the parties in

advance of the meeting' (e.g. April 2012). In other cases, the Commission is clearly reiterating its organisation and responsibilities to parties (e.g. Welsh Panel, February 2007).

Thirdly, parties appear to appreciate the opportunity to discuss matters of interest in these panels, a viewpoint expressed particularly by the Scottish panel in December 2007. There is nevertheless on occasion some evidence of party competition in the discussions. For instance, discussion of regulating party and accounting units' statement of accounts (Westminster panel, September 2012) has the Conservative representative, supported by Labour and Liberal Democrats, suggesting that such regulation is not necessary, while the SNP, following strong CSPL recommendations, was 'not opposed to regulation in this area'. The SNP's support of regulation contrary to its competitors' opposition reflects an area of long-term competition between it and other parties; complaints from an SNP MP led to police investigations in the 'cash for honours' case. This also highlights the importance of opportunity versus costs in utilising voice, on both sides of the issue, thereby underlining that different issues can motivate different parties. Thus, the SNP took the opportunity to challenge its competitors, while the three statewide parties opposed further regulation for fear of additional costs. There is also occasionally explicit recognition from the Commission that representations to regulators can be an extension of party competition, as per the statement that 'allegations of fraud can be an extension of the election campaign and are often made by candidates and supporters' (Westminster panel, June 2012).

Fourth, it is possible to detect attempts from parties to pushback against the impact of some regulation and legislation. A point often made in each of the panels is that reporting and compliance requirements are potentially difficult for volunteer treasurers in party accounting units to comply with. In the October 2009 Wales panel meeting, a discussion on enforcement policy made this point at length, highlighting the difficulty regulation posed for recruiting individuals to take up such roles. Similar points were made in the January 2009 Westminster

panel meeting in relation to new provisions in PPEA 2009. Green Party representatives have also argued that compliance is even more onerous on small parties (e.g. NI Panels, January 2008 & April 2013). Similarly, on several occasions the view that the Commission has been requiring more information than statutorily necessary has been expressed (e.g. Westminster panel, Sept. 07, Welsh panel, January 08). All four panels raised concerns at the time about legislation permitting the appointment of Electoral Commissioners nominated by the parties.

What are the implications? Discussions often demonstrate the paradoxical position of parties. Thus, in arguments against provisions in PPEA 2009, the introduction of ‘political’ commissioners and various other provisions, parties are paradoxically arguing, via the Commission, against various requirements that they themselves have the key influence in legislating for in parliament, where they could also introduce amendments and seek to change the legislation before it was enacted. This is demonstrated by discussion on PPEA 2009 in the Westminster panel in January 2009, where the Commission agreed to send parliament, where the parties were in the process of consulting on the Act’s provisions, a letter and report setting out the parties’ concerns, but which, curiously, ‘would not give the impression that the PPP had been consulted in detail’ (Item 3.11).

Influence on regulators is notoriously hard to measure, even more so in the public version of minutes deployed here. Any observation that influence has resulted must be somewhat tentative. Such influence may not mean direct manipulation, but also the more nebulous, but legitimate, idea of taking the concerns of the regulated parties into account to ensure that regulation does not impose unreasonable costs. There is evidence of such influence in the panels’ minutes, often when enforcement policy is being discussed, with the Commission consulting parties about implementation. Thus, the Commission ‘recognised the reservations amongst the group’ when PPEA 2009 was being discussed (Westminster panel, January 2009), something which led to the report and letter mentioned above. Concern about

undue advantage gained by third party election material in the aftermath of local elections led parties on the Scottish panel (May 2012) to raise the issue of penalties for not having imprints on campaign material, which identify the agent legally responsible for the content, gaining the concession that there ‘needs to be some leeway in practice’. Most explicitly, in the Welsh panel meeting in October 2009, it was suggested that ‘sanctions ... would only be used in extreme circumstances and the Commission would take into account any likely adverse impact on, for example, a party’s ability to campaign at an election’ (Item 5.4). This could be argued to put the interests of the regulated party above that of implementing legislation. It might however be argued that the democratic function is best served by such a permissive approach (Orr, 2012).

High levels of compliance since 2010 have already been noted for mainstream parties. In terms of enforcement measures for breaches, parties were told that there would be ‘an informal response to low-level non-compliance and investigation for more serious cases’ and ‘essentially ... no civil penalty for statements of account submitted with formal defects’ (Westminster panels, November 2007 and March 2008). This is consistent with regulatory practice elsewhere. Nassmacher (2003: 147-153) notes a light sanctions regime in Canada and a similar approach with other EMBs. The UK Electoral Commission’s enforcement policy, updated after PPEA 2009 which extended the sanctions available to it, states that it prefers to use ‘advice and guidance’ to achieve compliance, and that:

The Commission will take enforcement action where it is necessary and proportionate to do so. Many of the individuals responsible for complying with the law at local level are volunteers. It is therefore particularly important that the Commission’s objectives are pursued in a proportionate way, taking the facts of each case into account and only

taking action when it is necessary in order to achieve its objectives (Electoral Commission, 2010: 3).

Mitigating circumstances and ‘reasonable excuses’ are generally permitted, acknowledged and accepted. Few sanctions appear to be imposed. Of 141 reviews into non-compliance between December 2010 and March 2012, 63 were found to be offences but no sanctions were imposed. Sanctions were imposed in only four cases, notably all relating to small parties (Electoral Commission, 2012).⁹

This is not necessarily all one way traffic in favour of parties. There is evidence in the minutes of parties being put under pressure by the Commission to comply with regulations, to respond to consultations and to make suggestions for improvements to electoral practice. For example, there are suggestions that parties write to all candidates to ensure they attend pre-election meetings with returning officers to be aware of issues around fraud (Westminster panel, June 2012), the Commission feeling the need to write to all parties in Northern Ireland to remind them of legal requirements (NI panel, April 2008), and discussion of a review of code of conduct for campaigners which indicates that ‘intimidation at polling stations is generated from a party base and therefore needs the involvement of parties to help set out what is acceptable behaviour’ (Westminster panel, Sept 2012, item 3.7).

Conclusion

The relationship between the political parties and the regulators who oversee them is crucial to the fairness of the electoral process. By examining the British case, this article’s major contribution has been to put this relationship centre stage to set out a framework for understanding how parties interact with their regulators. While the lack of recent

developments in the British party funding regime may suggest questions of party regulation have gone off the agenda, instead the argument presented here highlights limitations in the regulatory regime and the difficulties the regulator may face in pushing reform not supported on a cross-party basis. More generally, Ghaleigh (2012: 167) suggests that Britain has seen an ‘ongoing contest between the regulator ... and the regulated community, with the latter tirelessly probing the limits of the law’. Evidence here underlines this. However, it is more accurate to suggest that reaction varies from compliance, through various degrees of voice and regulatory capture, to parties trying to exploit loopholes, to, more rarely, an explicit rejection of various aspects of regulation. Such reaction takes place in both the institutional and extra-institutional environments and as a reaction to discontent with the regulatory regime and the costs it imposes. The little known about party-EMB relations suggests this is an important spectrum of behaviour which also needs to be applied and tested in comparative situations (Elmendorf, 2006; Nassmacher, 2003). Even if much discussion deals with quite technical electoral issues, the potential for influence is evident. Above all regulators need to be aware of the potential for undue influence. While this evidence comes from an advanced democracy, where regulators are relatively well resourced but essentially developing a new regime as they went, the potential for regulatory capture and for parties to argue against various provisions is evident. The danger in democratising regimes where EMBs are less well-resourced is that parties will dominate their regulator, thereby compromising electoral integrity and fair competition.

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Figure 1: A Model of Party-Regulator Interaction

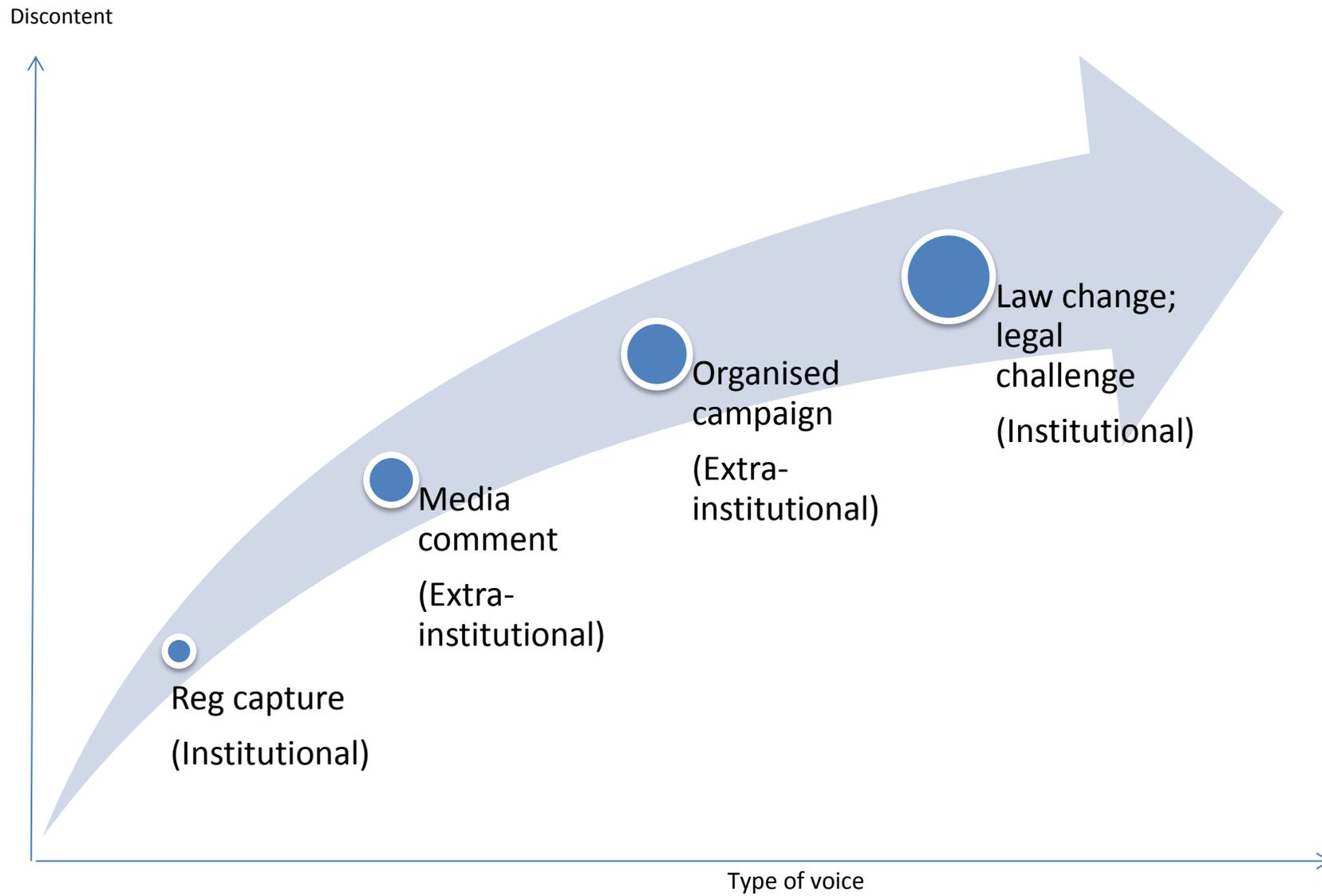


Table 1: Issues discussed at Electoral Commission political parties panels (% meetings)

	All	NI	Scotland	Wales	W/minster
Legal Framework (E)	79	85	80	73	77
Electoral Management (I)	79	82	72	77	85
Constituency demarcation (I)	36	19	84	27	15
Voter education (D)	60	52	76	77	39
Voter registration (I)	86	96	64	96	89
Ballot paper access & design (E)	80	74	84	100	65
Campaign & funding regulation (D)	90	96	80	100	85
Polling processes (E)	85	85	92	86	77
Counting processes (E)	54	37	92	59	31
Resolving disputes (I)	15	22	8	18	12
Post-election procedures & reports (D)	58	56	72	64	42
Misc	45	44	24	82	35
N of meetings	100	27	25	22	26

Key: E: Essential; I: Important; D: Desirable.

¹ I am grateful to participants at the Australian PSA Conference workshop on 'The Legal Regulation of Political Parties' in Sept. 2014 and at PSA Annual Conference 2015 for their comments on an earlier version. I am also grateful to the referees for their insightful and helpful reviews. The usual disclaimer applies.

² The regulatory capture literature refers to this as 'squawk' (Bo, 2006; Leaver, 2009). I stick with the better known term 'voice' throughout this paper, using it in an analogous way to 'squawk'.

³ I am grateful to Dr Arianna Andreangeli for suggesting this. This point is not well recognised. Whiteley (2014) uses the undefined term 'capture of the state' and van Biezen and Kopecky (2014) use the term 'capture' to signify the use of patronage networks to place party loyalists in state bureaucracies.

⁴ Agrell and Gautier (2012) call this 'soft' capture.

⁵ Leaver (2009) refers to this as 'minimal squawk behaviour'.

⁶ A confidence they clearly never had.

⁷ Risk profiles are available at: <http://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances/risk-profiles> [29/8/14].

⁸ Minutes can be accessed at: <http://www.electoralcommission.org.uk/our-work/who-we-are/governance-and-decision-making> [26/8/14].

⁹ Respectively the English Democrats, People Before Profit Alliance, Christian Party 'Proclaiming Christ's Lordship', and Veritas. I am not including here the more dramatic instances where police investigations have ensued. Often this is not because of referral by the Commission, but because other politicians have brought a complaint to the police as in the 'cash for honours' case. See Ghaleigh (2012) for discussion.