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Can Historical Institutionalism Resolve the Limits of the “Many Hands” Dilemma?: Institutional Accountability through the EU’s and the IMF’s Codes of Conduct

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**Can Historical Institutionalism Resolve the Limits
of the “Many Hands” Dilemma?:**

**Institutional Accountability through the
EU’s and the IMF’s Codes of Conduct**

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Can Historical Institutionalism Resolve the Limits of Institutional Accountability?:

The ‘Many Hands’ Dilemma through the EU’s and the IMF’s Codes of Conduct

Abstract. This paper argues that because institutions are different from individuals, we need different ethics in order to address the unique ethical risks associated with them. In particular, institutions run into unique ethical problems when no one individual is clearly responsible for an institutional outcome, what many scholars have called the “many hands” dilemma. The traditional approach to resolving such dilemmas has nevertheless been to attribute responsibility to individuals, either as persons or as agents. Since the traditional approach sets limits on the kinds of institutional ethical dilemmas that can be resolved, I turn to historical institutionalism (HI) in order to focus instead on the level of the institution as a step towards the case for holding international institutions accountable as institutions. HI can draw attention away from the detailed actions of individuals inside an institution, instead focusing attention on the evolutionary nature of the institution, making it difficult to change institutional practices. Based on this claim, in the second part I discuss two examples of institutions’ accountability structures and guidelines, the EU Code of Good Administrative Behaviour and the IMF Code of Conduct for Staff. By considering three different factors (location of the Code within the governance structure of the institution, relations with a public according to the Codes and language in the Codes), my objective is to show how these Codes illustrate the limitations of the traditional approach to the “many hands” dilemma. I close with a discussion of how this argument makes space for further research on institutional accountability.

Introduction

Imagine these scenarios: a state allows violence against its own people to go unchecked; an international institution authors a policy which leads members of a community to complain that it led to environmental and economic destruction; an intergovernmental organization redefines the meaning of “humanitarian” – thus granting legitimacy to actions that were once considered illegal. While on the one hand, each one of these scenarios is very different from the next one, they all raise a shared question: how do we resolve ethical dilemmas that arise within, and because of, institutions?

Within the fields of ethics and international relations (IR), scholars recognize that dilemmas that occur within institutions raise distinct ethical questions. Ethics scholars refer to the “many hands” dilemma, which occurs when the number of individuals involved in debating and implementing policy makes it nearly impossible to identify who is responsible

for policy outcomes (Thompson 1987, 26, 510). Within IR, institutionalists interested in ethical questions seek to establish that institutions can lead to bureaucratic dysfunctionality—a counterargument to the mainstream view that institutions serve to reduce transaction costs (Barnett and Finnemore 1999). Despite this attention to the distinctiveness of ethical dilemmas within institutions, scholars in both of these groups have not yet addressed the question of institutions’ accountability as institutions; rather, they have sought to resolve ethical dilemmas within institutions by attributing responsibility to individuals within the institutional setting.

I begin with the question, is attributing responsibility to an individual or individuals in the context of an institutional act always the appropriate choice of action? For example, was the ordinary individual to blame for the Holocaust, simply because she/he continued to do his or her job? (Arendt 1963). Or, when the IMF administers a structural adjustment program which goes wrong, what criteria should we use to determine which individuals in the organization should be held accountable? On the other hand, should the IMF itself be held responsible? Being able to resolve dilemmas like those raised in these questions is a basic motivation of this research.

Given the limitations of attributing individual responsibility within institutions, I will be particularly concerned with *why* we should hold institutions accountable. In the first part of the paper, I will argue that because of institutions’ path dependent character, making institutional actions prone to different kinds of risks than individual actions, we need a set of distinct norms for addressing ethical questions that arise because of institutions. However, it is important to note that I do not address the question of *how* to hold institutions accountable. This is a different question which cannot be addressed until there is a sufficient

case for holding institutions accountable as institutions. Thus, the objective of this paper is to take the first step towards such a research agenda.

After providing my reasoning for why we should have ethical standards for holding institutions accountable, I turn to two cases in order to illustrate how institutions' own governance structures set limits on how and whether they can address ethical dilemmas. I discuss two examples of institutional accountability through the lens of their Codes of Conduct: the European Union and the International Monetary Fund. It is important to note that, for the sake of comparison, I consider both of these institutions supra-national institutions that author policies which affect populations beyond one nation-state. The issue of Europe as a "domestic" entity is therefore not something which I address here.

In order to compare the kind of governance structure which each institution has in place in order to address questions of accountability, as well as the limits of their governance structures, I focus on three factors: the place of the Code of Conduct within the overall governance structure of the institution; the institution's relations with public; the language of the two Codes. I will ask the question, are these governance structures sufficient to address the type of ethical dilemmas that are unique to institutions? Through this comparison, I illuminate some of the gaps in their governance structures which allow some ethical dilemmas to slip by. It is within these gaps that ethical standards of institutional accountability may have an important role to play. Further, as a second order concern, I focus on these institutions' governance structures in order to stress the importance of accountability within institutions' everyday policymaking. This is an important point because most of the everyday policymaking that goes on within institutions goes unnoticed.¹

¹ Most of the time, the cases of institutional accountability that we hear about are the extraordinary ones; for example, a current story on the problems American soldiers returning from Iraq are having with claiming their veterans' benefits emphasized the repulsive conditions of these veterans' treatment centres. However, General

Thinking Ethically About Institutions

Before we even begin a discussion of institutional accountability, it is important to acknowledge a critical challenge: we lack the legal means to hold institutions accountable at the level of the international system. Further, although domestic law (at least in some cases) can handle the rights and objections of collectives, Peter Drucker argues that “ethics is always a matter of the person,” which prompts him to ask, “is this adequate for a “society of organizations” such as ours?” (Drucker in Goodpaster and Matthews 1982, 134). This statement suggests that traditionally our ethics remain firmly based on individualism, a tradition which can become an obstacle when addressing ethical dilemmas inside institutions.

One of the reasons why traditions of international ethics are especially important is because, in the long run, ethical debates can lead to the creation of new norms and perhaps laws. Although it is not the objective of this research to discuss the relationship between ethics and the law, it is important to note that there is a relationship, since it provides a backdrop for a discussion of ethical standards. In the long term, opening up the question of ethical standards for institutional accountability is important because ethical standards can potentially lead to legal standards- or at least commonly recognized norms and/or regimes.²

Richard Cody, the Army’s Vice Chief of Staff, who was being interviewed said that it was just as important to know about the routine difficulty veterans have obtaining their benefits; the conditions of the treatment centres were just a symptom of a general problem. See Democracy Now, “Walter Reed, Ex-Patient, Wife Speak Out on Poor Conditions at Army’s Top Medical Facility, Feb. 22nd, 2007, accessed Feb. 23rd: <http://www.democracynow.org/article.pl?sid=07/02/22/1448218>.

² The relationship between ethical and legal frameworks is well established, and can be traced through the history of political thought. Aristotle writes at the end of *The Nicomachean Ethics*: “Now laws would seem to be the product of political science; how, then ... could one judge which laws are best from laws alone? ... let us study the collected political systems... For when we have studied these questions, we will perhaps grasp... how each political system should be organized so as to be best; and what habits and laws it should follow” [Book X, Chapter 9, secs. 20, 23]. More currently, Nardin’s and Mapel’s (1992) edited volume, *Traditions of International Ethics*, argues that ethical traditions inform conduct in international affairs, making knowledge of these traditions especially valuable for understanding international law and foreign policy, for example.

Traditionally, arguments in favour of establishing standards of institutional accountability emphasize the similarity between institutional behaviour and the behaviour of individuals. If institutions share characteristics with individuals, the argument runs, then they should be held accountable in a similar manner to individuals (Goodpaster and Matthews 1982, 133).³ Unlike this argument though, I argue that establishing standards for holding institutions accountable is a necessary action not because institutions are like individuals, but because they are different.

Among scholars, there is some consensus that institutions can often have enforcement problems as a result of their governance structures.⁴ While enforcement problems are not necessarily the same thing as ethical dilemmas, this consensus does acknowledge that complications arise because the often bureaucratic governance structure of institutions creates a unique set of problems, at least some of which may become ethical dilemmas. This consensus regarding institutions' tendency towards "bureaucratic dysfunctionality" is the foundation of my argument for holding institutions accountable separate from the individuals that work within them.

Scholars interested in "bureaucratic dysfunctionality" focus on institutions' structural problems, asking the question, do institutions really do what they were set up to do? They argue that often they do not achieve their intended outcomes because institutions themselves are driven towards dysfunctional behaviours as a result of their bureaucratic culture (Adams and Balfour 2004; Barnett and Finnemore 1999, 702). Such arguments are an important first step towards thinking about why institutions should be held accountable, separate from the

³ There is also a significant literature that focuses on "institutional rationality" as a basis for arguing that institutions themselves have responsibilities, not just those individuals who work within them. See for example, Toni Erskine, ed. (2003), *Can Institutions Have Responsibilities?: collective moral agency in international relations*. New York: Palgrave.

⁴ See, for example, Joseph F. Nye (2001). "Globalization's Democratic Deficit: How to Make Institutions More Accountable." *Foreign Affairs* 80(4): 1-6.

individuals who work within them. While some theorists of institutions would argue that institutions can be held accountable by those individuals who created and/or are served by the institution, Barnett and Finnemore instead argue that institutions, in particular international organizations, have “rational-legal authority”⁵ that “gives them power independent of the states that created them and channels that power in particular directions” (Barnett and Finnemore 1999, 699). Bureaucracies, they argue, “make rules” and, in doing so, they can become constrained by these rules, thus making them less responsive to their environments (Barnett and Finnemore 1999, 700).⁶

While the point that bureaucracies make rules is an important one, the argument is limited because of their conclusion that institutions have “rational-legal authority.” This conclusion draws our attention back to an institution’s individual-like characteristics, rather than the bureaucratic culture that is specifically a feature of an institution’s structure. And Barnett and Finnemore are not alone in this approach to understanding the authority of institutions; others have argued that on the basis of institutions’ “rationality,” we may expect institutions to also have responsibilities (Erskine 2003). Yet “rationality” and “responsibility”⁷ are concepts that are historically and conventionally associated with individuals—and institutions are different from individuals.

⁵ It is important to note that this “rational-legal” authority that Barnett and Finnemore refer to does not necessarily turn institutions into rational actors. While Barnett and Finnemore want to understand institutions as agents, thus challenging the mainstream view that institutions are passive, their argument rests on the propensity of bureaucratic culture to degenerate. They are therefore interested in how institutional behavior can lead to less than rational outcomes (Barnett and Finnemore: 700-701).

⁶ Barnett and Finnemore do admit that bureaucratic culture does not necessary lead to negative outcomes. It just has the potential to do so. In the introduction to their article, they give examples of rules that bureaucracies have created, including, example, human rights, the definition of “refugee,” and the agenda for international development. These are all examples of potentially “good” outcomes (699).

⁷ For example, Richard McKeon, in his essay, “The Development and Significance of the Concept of Responsibility,” demonstrates how the term “responsibility” was first used to refer to individual obligations after the French Revolution (1990).

Even scholars who traditionally have sought to resolve ethical dilemmas within institutions by attributing responsibility to individuals have recognized that institutions are different. For example, Thompson observes that organizations can have structural problems, which may themselves be the cause of morally questionable outcomes. However, he uses this observation to argue that this does not exempt individuals from personal responsibility, especially if they become aware of a structural problem, but fail to do anything about it (Thompson 1987, 46). Yet, according to own criteria for resolving the “many hands dilemma,” individuals cannot be held responsible unless their actions are directly causal of the outcome and they took their actions voluntarily and knowingly (Thompson 1987, 47). In the former case, the individual’s lack of action in response to the structural problem is the source of the ethical dilemma. Thompson does not want to “exempt” individuals of their responsibilities in such cases – but nor can he reasonably expect any given individual to blow the whistle.

Thus, the typical resolution to the “many hands” dilemma – to find an individual or individuals who are definitively responsible – runs into a snag here. What if the individuals did not take their actions voluntarily and knowingly? How are we to respond when an institution has a structural problem that cannot be attributed to a specific individual? One response is the principal-agent approach to understanding ethics in institutional settings, a response that is particularly typical in corporate governance scenarios. Friedman, for example, argues that corporate executives, as agents whose job it is to act in the interests of their principals, can be held accountable (Friedman 1970, 122). Further, moral and ethical accountability –or “social responsibility” as he terms it—has no place within corporations. He argues that, to the extent that the corporate executive acts in a “socially responsible”

manner, he/she is doing so as a person and not as a corporate executive (Friedman 1970, 32).

However, the principal-agent approach is applied in other contexts in addition to corporations. For example, Thompson discusses how Kennedy took on the role of agent in the Bay of Pigs crisis. He argues that the role of Kennedy's office (which made him the "agent") demanded he accept sole responsibility for the outcome of the crisis. Yet, Kennedy's choice to accept responsibility effectively closed debate on the issue, preventing any further investigation into the CIA's role (Thompson 1987, 44).⁸ Given circumstances like this, Thompson is dissatisfied with the consequences of the principal-agent approach. Instead, he argues that ethical dilemmas arising because of institutional contexts like this one demonstrate the need to hold individuals accountable as persons, rather than as simply agents (Thompson 1987, 47). He implicitly rejects the principal-agent approach to accountability because it limits the accountability of the individuals involved in an institutional action. Rather, by arguing for "personal responsibility," Thompson implies that when an individual takes a morally reprehensible action within an institution that serves the public, he or she should be held responsible to the public, not just to the institution and those whom it serves directly.

Both Friedman's and Thompson's arguments can help resolve ethical dilemmas within institutional settings some of the time. The principal-agent approach forces individuals who work within an institution and those who are served by it to follow the rules that their roles as principals and/or agents demand. This allows for a certain amount of

⁸ Would Friedman, and others who argue for the principal-agent approach in corporate governance scenarios, have been satisfied with this particular outcome in the Bay of Pigs crisis? It is difficult to say, since Friedman's argument that "social responsibility" has no place within corporations is based on an argument that corporations serve their stakeholders and not the public. On the other hand, the achievement of social objectives does belong in the realm of politics; he argues clearly that we ought to set up democratic processes "in order to determine the objectives to be served" (Friedman, 122).

transparency of the institution's process. In other words, the organization is clear about its rules, including the roles which different members take on, and this can lead to greater transparency because it creates orderly, expected behaviour. But on the other hand, Thompson's focus on establishing personal responsibility reminds us that, ultimately, only individuals can feel remorse or guilt because of their actions. Establishing personal responsibility forces individuals to accept the consequences for their own actions; they cannot simply leave the office they hold and no longer have the responsibilities associated with it.

Despite the value of each of these approaches in different kinds of institutional circumstances, they still leave some significant gaps. Each of these approaches is suited to addressing ethical dilemmas in which responsibility can be attributed to an individual, either as a person or as an agent. Yet, problems arise, first, when there are constraints on individuals' actions within institutions and second, in defining the population to which an institution should be accountable. In the former case ("information problems"), as my previous discussion has highlighted, attributing responsibility to individuals within an institution can only occur when the individuals acted voluntarily and with adequate information to recognize the consequences of their actions. And in the latter case ("population problems"), with the principal-agent approach's emphasis on an institution's relationship with its stakeholders, institutions that use this approach will only be equipped to deal with ethical dilemmas that arise between principals and agents. If an ethical dilemma arises in which a population that is not clearly a stakeholder in the institution is affected, such an institution will not be able to address the dilemma. I therefore suggest using a historical institutionalist approach to help resolve these gaps (information and population

problems) left by the typical approaches to the resolution of ethical dilemmas in institutional settings.

To respond to these gaps, a historical institutionalist (HI) would first emphasise that institutions are a “context” in which actors make decisions. Calling an institution a “context” is significant here because it emphasises that the institution is comprised of a set of cultural expectations associated with a specific time and space (Thelen et al. 1992). Thus, an institutional setting consists of more than just a set of constraints on actors’ behaviour. To understand this point, consider that a rational choice theorist would respond to the problem of ethical dilemmas inside institution by focusing on how individuals diverge from rational behaviour because they are constrained by the institution. Yet, an HI theorist would argue that most people follow the rules most of the time, not because they are rational (or irrational), but because the rules are “sticky.” In other words, because of institutions’ evolutionary, path-dependent character, the rules can become locked in place, making it very difficult to change an institution over time (Pierson 2004, 7-9).

For example, according to the traditional rules of war, soldiers must obey orders or they can be discharged from service. But what if obeying orders results in a morally questionable outcome? In most cases, even if the soldier has adequate information to know that his or her action may lead to a morally problematic outcome, he or she will not be held responsible because he or she is only accountable to the military organization he or she works for (the stakeholders). On the other hand, it is entirely possible that the soldier would not have adequate information to know the possible consequences- and therefore whether his or her action was “voluntary” could become questionable (Walzer 1977, 297-8). Here is an example where both of the gaps left by the traditional approaches to institutional accountability are present. Historical institutionalism can understand this circumstance

differently, by focusing first on the fact that sometimes no one individual, or even a group of individuals, is clearly responsible for an institutional outcome. While there is no obvious solution that HI can offer in circumstances like this one, it can draw our attention to the characteristics of the institutions involved. At the very least, this provides some analytical separation from the ethical questions that arise because of individuals.

To understand how HI can draw our attention away from the role of individuals in ethical dilemmas, consider North's argument that states sometimes end up with inefficient property rights regimes because institutional behaviours can become self-reinforcing, making it difficult to choose policies that would lead to more efficient regimes (North 1981, 7).

Although individuals can and do bargain in order to achieve institutional outcomes, this behaviour, rational as it may be, does not ensure that individuals will have complete control over institutions (Olsen 2003, 49). Further, individuals do not always have the power or the knowledge to bargain. Policymakers have limited time to make decisions and most decisions are made without consulting their constituencies (Barnett and Finnemore 1999, 708; Pierson 1996, 135-6). Thus, undesirable outcomes are not necessarily the policymakers' fault for simply doing his or her job, nor are they necessarily the fault of the stakeholders' for not bargaining effectively at the critical moment.

North's argument regarding property rights regimes also echoes Barnett and Finnemore's argument focused on "bureaucratic dysfunctionality." Both are examples of the historical institutionalist view that institutions embody "shared cultural understandings," such that "specific organizations come and go, but emergent institutional forms will be "isomorphic" with existing ones" (Thelen 1999, 386). Thus, policymakers cannot easily redesign institutions because of the tendency of even new institutional forms to recreate

themselves in the image of previous ones – thus making it difficult for institutions to do the job they are expected to do.

In addition to focusing on how institutions embody “shared cultural understandings,” HI can also expose patterns in institutional structures. For example, North’s and Thelen’s arguments are not incompatible with Thompson’s admission that institutions can have structural problems. I deliberately say they are “not incompatible” with each other because, while Thompson argues that there is something about an institution’s structure that creates a tendency towards dysfunctional outcomes, North and Thelen would not extend their arguments this far. They would emphasize the institution’s tendency towards inefficiency, but leave the reader to consider the implications of inefficient outcomes. Thus, the problem becomes not whether an institution has structural problems, but how to diagnose those problems.⁹ In the discussions of my cases that follow, I attempt to use HI to shift the focus to the level of the institution.

One final point is necessary before moving on to the cases of the EU and the IMF. Historical institutionalism is not a theory that has typically had a set of ethics associated with it, and it has not been my objective to force such an association upon it. Rather, I have focused on HI’s analytical value in institutional settings in which particular ethical dilemmas occur. By shifting our focus from the individuals involved in the day-to-day activities of the institution to focus on the institution’s behaviour in its own right, we will obtain more information about the long-term effects of institutions on their environments, both internal and external to the institution, and the individuals who work within them. In the next section, I will show how the EU’s and the IMF’s Codes of Conduct set limits on the kinds of

⁹ Historical institutionalists have identified several kinds of structural problems that arise (“layering,” “locking in,” etc.). However, at the preliminary stage of this research, I have not included these; first it is necessary to shift our focus to the level of the institution. Once this is done, various classifications of institutions’ structural problems will be useful as comparative tools.

ethical dilemmas they can handle. I will conclude by considering the question in my title: can HI help resolve some of the limits created by such Codes of Conduct?

Comparing Standards of Accountability: Inside the EU and the IMF

One compelling reason to compare the Codes of Conduct of the EU and the IMF is because both of these institutions have been singled out as examples of institutions with a “democratic deficit.” In the case of EU institutions, scholars focus on the speed at which integration is proceeding, leaving the populations of member-states far behind.¹⁰ Similarly, the Bretton Woods institutions have been criticized for being outdated because they are an artefact of an earlier economic order.¹¹ Both institutions have therefore both been called upon to increase the transparency of their governance structures in response.

Further, the academic discussion on the “democratic deficit” is associated with these institutions’ governance structures and not to specific, extraordinary policies or decisions. The EU and the IMF therefore make good cases of accountability issues in everyday policymaking within institutions. Yet everyday policymaking has just as much—if not more—of an effect on populations as policies like these that are more extraordinary. Because organizations’ codes of conduct are used as a means of governing everyday policymaking, in this section I will compare these two institutions’ codes of conduct as a means of understanding their own standards of accountability.

A code of conduct is also an expression of how an institution sees itself in its policymaking; this is important because there is a great deal of criticism of these two institutions’ governance practices: somehow their Codes are not necessarily an accurate

¹⁰ See, for example, Giandomenico Majone (1998). “Europe’s ‘Democratic Deficit’: The Question of Standards.” *European Law Journal* 4(1): 5-28.

¹¹ See, for example, Ariel Buira, ed. (2005). *Reforming the Governance of the IMF and the World Bank*. London: Anthem Press.

representation of what goes on in practice. My question here is, are their codes preventing them from being able to address some ethical dilemmas? I will draw attention to three factors that affect each institution's capacity to address ethical dilemmas: the location of the code within the overall governance structure of the institution, their relationship with a public and the language of the code itself (meaning both whether it is in language X or Y, as well as the stylistic use of language).

I will first discuss the codes of the EU and the IMF, respectively, and then consider the kinds of ethical dilemmas which these institutions own standards of accountability can and cannot address, paying particular attention to the three factors (location of each code in the institution's governance structure, relations with the public and language) mentioned above. As in the preceding theoretical section, I will identify the "gaps" left by these institutions' standards of accountability. I will consider to what extent the historical institutionalist understanding developed previously can fill some of the gaps, but also acknowledge the limits of this understanding; some ethical dilemmas may be specific to the particular empirical circumstances of the institution.

The European Code of Good Administrative Behaviour was adopted by the European Parliament in September 2001. The idea was first proposed in 1998, after which the European Ombudsman wrote a draft of the text, which became the basis of the resolution which the Parliament approved (European Communities 2005, 6).¹² The Code is built upon European Court of Justice law, in particular the Charter of Fundamental Rights of the EU, and it "draws inspiration from domestic laws" (European Communities 2005, 6-

¹² The idea for the Code was first proposed by Roy Perry, MEP. This is stated in the introduction to the Code.

7). The Code's ultimate goal is to explain what a right to good administration amounts to in practice; this is justified by the Charter's explicit statement of European citizens' "right to good administration," as well as their right to complain to the European Ombudsman in the case of "maladministration" (European Communities 2005, 7).

However, there are some unresolved questions regarding the implementation of the Code. While the legal basis for the role of the Ombudsman is firmly in place, creating a route for individual citizens to have their complaints addressed, at the moment different institutions within the EU apply and interpret the Code in different ways. This means that conflicts can arise regarding which institution ultimately has the authority in any given context, despite the fact the European citizens can complain directly to the Ombudsman. Because of this problem, the European Parliament requested that the European Commission propose a European-wide regulation containing the Code. In this way, all European institutions would be required to apply the same principles in their relations with the public (European Communities 2005, 9).

Nonetheless, such an administrative law has not yet been adopted. In fact, the introduction to the Code reads, "Article III-398 of the Constitution could provide the legal basis for such a law" (European Communities 2005, 9). The Ombudsman also looks towards the guidance of the potential Constitution for his own work. He states in his foreword to the Code: "The Code tells citizens what this right [a right to good administration by EU institutions] means in practice and what, concretely, they can expect from the European administration. With the Charter making up Part II of the Treaty establishing a Constitution for Europe, we can be sure that this right will become increasingly meaningful in the coming years" (European Communities 2005, 5). While one can certainly argue that the EU already has a constitution, at least in the sense that it has a body of constitutional law, there is also

no doubt that the Ombudsman is looking towards a future Europe with the Constitution passed. This is significant because it suggests that the Ombudsman, as well as the Commission, given that it authored the proposal for a European administrative law, have incorporated the Constitution into their everyday thinking about how EU institutions should be held accountable. And the Commission and the Ombudsman have done this knowing that the Constitution cannot yet help them in the day-to-day implementation of the Code.

The content of the Code itself sets out standards for European civil servants' conduct with the public, understood as "natural and legal persons" of member states, whether or not they reside in a member state. It states clearly that the Code is meant to apply only to relations between European civil servants and citizens, and not to relations among civil servants. These are governed by the Staff Regulations (European Communities 2005, 10-1).¹³ The Code therefore explicitly distinguishes between two kinds of ethical situations that European civil servants may find themselves in: one with the public and the other with their colleagues.

After specifying who the Code applies to, it elaborates upon the specific principles which govern behaviour when dealing directly with the public and/or making decisions that affect individuals. These include lawfulness (Article 4), an absence of discrimination (Article 5), proportionality (Article 6), absence of abuse of power (Article 7), impartiality and independence (Article 8), objectivity (Article 9), legitimate expectations, consistency and advice (Article 10), fairness (Article 11) and courtesy (Article 12) (European Communities

¹³ Article 2 of the Code states that it will apply to all European civil servants to whom the Staff Regulations of the EU apply. Based on a search for "staff regulations" in the Eur-lex database (an electronic resource providing direct access to European law), the staff regulations precede the EU, dating back to at least 1963. They may date back to an earlier date, but sources that could show this are not readily available. See <http://eur-lex.europa.eu/en/index.htm>. Further, the Staff Regulations are a much longer and more detailed document than the Code is. See the *Staff Regulations of Officials of the European Communities*, prepared by the "Legal Issues and Questions Relating to the Staff" Unit of the European Commission, available at http://ec.europa.eu/reform/refdoc/index_en.htm.

2005, 11-4). I will return to some of these later when I discuss the language differences between the EU's and IMF's codes. Finally, the last part of the Code specifies procedures European civil servants must follow when dealing with requests and/or complaints from the public (for example, time limits for making decisions, proper means of notification, etc) (European Communities 2005, 13-20).

Unlike the EU, the IMF does not have a code of conduct that distinguishes explicitly between relations with the public versus relations among staff. The Fund has a code of conduct meant to establish guidelines for the resolution of staff disputes; a similar code of conduct for relations with members of a public (however a "public" might be understood in the case of the IMF) does not exist. The IMF's Code of Conduct for Staff was introduced in 1998, following a series of evaluative reports on discrimination inside the Fund; the link between the Code of Conduct and discrimination issues was particularly emphasised in an external review of the Fund's dispute resolution system, held just a few years after the Code was introduced. For example, the authors cite the Fund's attention to issues of discrimination by pointing out their addition of both an Ethics Officer and a Diversity Adviser (Zack et al. 2001, 30, 42).

Despite this apparent relationship between the introduction of the Code of Conduct and the need to address issues of discrimination, discrimination issues are not the only kind of ethical dilemmas that the Code is equipped to deal with. The introduction to the Code explains that it covers three areas, including "the obligations of staff as international civil servants" both at work and elsewhere, the use and disclosure of information (in order to provide "clear and practical guidance to staff"), and financial disclosure (which "strengthens the safeguards needed to ensure that both the International Monetary Fund and its staff are free of any conflict of interest and beyond reproach") (Fund 1998).

It is important to note that the Fund's Code is a set of guidelines for staff behaviour and not a set of rules. The Preamble states "this code can help you decide what to do in many, but not all, situations." To help you decide, it continues, "ask yourself these questions: Is it legal? Does it feel right? Will it reflect negatively or positively on me or the IMF?" etc. (Fund 1998). Further, in the external review cited above, the authors acknowledge that the Code is "law" and that this does leave a number of questions unanswered. In particular, the authors note the following: "It is not clearly understood ... whether the Code of Conduct in itself constitutes a "law of the Fund" or it only draws together and explains laws that are established elsewhere ... There ... appears to be some confusion whether a staff member can be charged with misconduct for violating the Code of Conduct or only for violating the underlying rules described in Code" (IMF Executive Board 1992; Zack et al. 2001, 24).

However, the Fund's Code of Conduct is not the last step in the accountability structure of the institution. There is also an external Ombudsperson, as well as an Administrative Tribunal, both of which may be invoked when all internal processes of dispute resolution have been exhausted. I will address the particulars of this structure in the next section, which compares the location of each Code within the governance structures of both institutions.

The place of the Codes within governance structure

As I discussed briefly in the preceding section, because there is no over-arching European administrative law requiring each institution to apply the Code of Conduct in the same way, questions of which institution's authority prevails can arise. In contrast, the IMF has one established procedure in place for using the code of conduct in staff disputes. If a staff member of the IMF has a complaint, or sees a violation of the Code in the workplace

(or even beyond the workplace, as the Fund sets some limitations on staff behaviour outside of work), there is a clear step-by-step process which he or she must follow.

A Fund staff member must first go to the Ethics Officer who is assigned to his or her department. The Ethics Officer then investigates the allegations, reporting his/her findings to the Oversight Committee. At this stage, the investigation can end; if the Oversight Committee decides that the matter can be handled internally, they would refer the matter to the Human Resources Department (HRD). If, however, they believe that further investigation is needed, a formal investigation would follow. The process would include a series of interviews and collecting of the appropriate documentation, all done by the Ethics Officer (IMF 2000).

However, complications can arise if the Ethics Officer does not have access to all the information he or she needs to conduct the investigation; in some cases, an individual staff member may have reported misconduct in the first instance to the Ombudsperson rather than the Ethics Officer. An individual might choose to use the Ombudsperson because any information provided to the Ombudsperson is completely confidential, while the Ethics Officer must report to the Oversight Committee, the Managing Director and the HRD (IMF 1999; 2000).

Finally, in cases in which the internal investigation outlined above does not resolve the dispute, an individual can take the allegations to the Administrative Tribunal. Decisions of the Administrative Tribunal are binding; no oversight for the Tribunal exists. In the Executive Board's report on the Tribunal, they specify that further recourse to the ICJ would not be available. They seem to be basing this decision on the fact that the World Bank Administrative Tribunal does not allow recourse to the ICJ, though the United Nations

Administrative Tribunal and the International Labour Organization Administrative Tribunal do allow such recourse in limited circumstances (IMF Executive Board 1992).

The EU, on the other hand, does not have one clear hierarchical procedure for addressing allegations of misconduct, or rather, “maladministration,” as they describe it themselves. The role of the EU Ombudsman exists to resolve disputes between EU institutional practices and individuals, yet the Ombudsman’s office is attached to the European Parliament. This is bound to set some limits on when the Ombudsman’s office is used and when it is not used, if only because the European Parliament is not involved in every institutional context. Rather, the institutional hierarchy varies from one policy area to another (Wallace and Wallace 2000, 26, 510)¹⁴ Attaching the Ombudsman’s office to the Parliament seems to suggest that the EP can or should play a central role in the EU’s accountability structure. Yet, the complexity of the institutional system has led some scholars to argue that the EU needs new forms of political control and “complementary modes of political accountability” (Magnette 2003, 677).

Further, the Ombudsman’s office is set up to address violations of the Code of Good Administrative Behaviour *as they relate to individuals*. This is critical to point out, since neither the Code nor the Ombudsman is equipped to address violations that affect larger populations, for example. Because of the way the appeals procedure is set up, individuals can take allegations to the EU level – but only if they are individually affected. If an entire population of a city, or a member-state, a group of member-states, or perhaps an ethnic or political minority noted a violation against themselves, the current structure for dealing with

¹⁴ For example, Wallace and Wallace provide detailed diagrams of a variety of policy-making areas, including, but not limited to the following: anti-dumping measures, trade agreements, association agreements and foreign and security policy-making. In each of these areas, the relationships between one institution and another vary. However, it is interesting to note that the Commission is almost always the starting point in the policy-making hierarchy – except in security issues (Wallace and Wallace, 476).

maladministration would not be easily able to address such an allegation. In this respect, the EU's and IMF's Codes are similar; they are both structured to address complaints by individuals about individuals within the institution. Yet, this limitation is somewhat contradictory of the two Codes' objectives; both Codes make it clear that they are concerned with maintaining the good reputations of each institution, an objective that cannot always be achieved by dealing with disputes individually. To understand this point, it makes sense to move on to a discussion of each institution's relations with the public.

Relationship with the public

The EU's Code specifies clearly that it is designed to create space for individuals to report cases of maladministration. The Code states a relationship with the public early on in the document. Article 3 states clearly: "This Code contains the general principles of good administrative behaviour which apply to all relations of the Institutions and their administrations with the public" (European Communities 2005, 10). On the other hand, the IMF does not define a clear relationship with any public, although one is implied when the Fund's Code addresses "conflicts of interest." Its Code includes the following statement: "You should avoid any situation involving a conflict, or the appearance of a conflict, between your personal interests and performance of your official duties. In dealings with member country authorities, suppliers and other parties, you should act in the best interest of the IMF to the exclusion of any personal advantage" (Fund 1998, V.24).

The Fund's discussion of conflicts of interest in its Code emphasizes the need to maintain the IMF's public reputation. The section providing guidance to staff in circumstances that could involve conflicts, or ones that could be seen as conflicts, suggests the kinds of actions that Fund staff people should avoid when working in member countries.

While this section of the Code does not specify an explicit relationship with the public, the IMF's work in member countries is arguably the most transparent work of the organization. While the written work of staff people is confidential until stated otherwise, some actions taken by staff people in member countries might be witnessed by others.¹⁵ For this reason, the section on conflicts of interest gives some specific examples of conflicts to avoid: nationals should not work on policy issues related to their home country; staff members "are prohibited" from short-term trading in currency for speculative purposes while working in a member country; staff members are "prohibited" from using or providing confidential information for the purpose of carrying out personal financial transactions (Fund 1998, V.25).¹⁶

By restricting the kinds of actions that staff people can take with public individuals in member countries, the IMF's code suggests that its staff should do everything they can to avoid conflicts in the public domain, particularly conflicts that would draw attention to the confidential work of the Fund and/or conflicts that would place the Fund in a negative light. One could reasonably argue that, in aiming to avoid conflicts of interest, the Fund is seeking to protect itself – at the very least, to protect itself in order to maintain its institutional status. Section II of the Code, on basis standards of Conduct, opens in this way: "As a staff member, you are expected to observe the highest standards of ethical conduct, consistent with the values of integrity, impartiality and discretion. You should strive to avoid even the appearance of impropriety in your conduct ... you have a duty of exclusive loyalty to the

¹⁵ Although the Fund does the best it can to avoid the consequences of such situations by limiting what its staff people can say to the media. The Code of Conduct states, "You should not, without authorization, provide to the news media, publish, or make public statements relating to the policies or activities of the IMF or to any national political question. You are free to publish and speak about other subjects, but you should avoid any public communication not in keeping with your position as an international civil servant, which calls for reserve and tact" (IV.21).

¹⁶ The Code then explains that "confidential information" means market-sensitive information "relating to pending IMF or government actions" (Code V. 26).

IMF... [and you should seek to] avoid[ing] any behaviour that would reflect badly on you or the IMF” (Fund 1998, II.6-7).

The EU protects itself from conflicts in the public domain with the principle of “proportionality.” The Code defines proportionality in Article 6:

1. When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.
2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest (European Communities 2005, 12).

This article on proportionality is clearly designed to protect citizens in the process of a complaint or appeal procedure. But it also leaves open the possibility that an individual citizen or citizens might take their appeal too far, to the detriment of the public interest. It would then be the EU official’s duty to maintain a balance between the interests of the broader public and the interests of the individual(s) affected by an institutional action at the European level. When an official considers whether an individual citizen’s actions are “proportional to the aim pursued,” he or she would have to consider the individual’s action in relation to the institution’s, thus balancing the interests of citizens, institutions, and public and private interests.¹⁷ The article above certainly does not make it clear whether or not citizens or institutions are necessarily expressions of public or private interests; rather, this ambiguity seems to suggest that the principle of proportionality requires careful deliberation about the balance between all of these elements in any given situation.

¹⁷ This article may be aiming at achieving a balance between the “Community method” and the “general interest,” which refers to the tension between institutions aiming to achieve their interests and the protection of a broader “European” interest. See, for example, Carol Harlow and Richard Rawlings, eds. (2002) *Taking Governance Seriously: Response to the Commission White Paper on European Governance by the LSE Study Group on European Administrative Law*. London: LSE.

Language of the Codes

Some of the differences in the language of the two institutions' Codes have already come up in the preceding sections. For example, I quoted from the articles in each Code that defined who it applied to, as well as the introductions to each Code, which set out the objectives of each Code. Also, in the last section, I referred to the language that the EU and the IMF used to describe proportionality and conflicts of interest, respectively. Due to limitations of space and time, I will only discuss these aspects of the two Codes which I have already referred to. In the future, a more detailed comparison of the two Codes would be necessary. However, given the fact that I have focused on the governance structures of the two institutions, as well as their relations with the public, focusing on only those aspects here makes practical sense.

The introductions to each Code set out its objectives in general terms, outlining the kind of ethical dilemmas that it could address. As I have already noted, the EU Ombudsman looked towards a future in which there would be an explicit EU administrative law. With this in mind, the introduction to the EU's Code explains that it aims to address ethical dilemmas resulting because of institutional maladministration. Thus, the first few articles of the Code state what EU officials "shall" and "must" do in order to achieve good administration. For example, in Article 4, on lawfulness, the Code states: "The official shall act according to law and apply the rules and procedures laid down in the Community legislation" (European Communities 2005, 11). In the case of the IMF, the Code "provides guidance on how to exercise judgment in ethical matters, and it includes practical examples to illustrate how the rules can be applied" (Fund 1998, Introduction).

In previous sections, I pointed to the differences in content between the introductions to the two Codes, but here I want to focus on how the language of the two Codes differs significantly. The bulk of the IMF's Code is written in persuasive language, rather than the more decisive language used in the EU Code. The Fund's Code is full of references to what IMF staff "should" and "should not" do, while the EU's Code clearly specifies the kind of behaviour that EU officials must engage in. This matters because each Code provides a different amount of space for interpretation. For example, writing that one should behave with "integrity" leaves room for interpreting what this means. A statement stating what one "should" do is not the same kind of obligation implied by stating what one "must" do. In contrast, the EU's articles state decisive obligations; for example, in Article 7 on "absence of abuse of power" the Code states: "Powers shall be exercised solely for the purposes which they have been conferred by the relevant provisions" (European Communities 2005, 12)

However, regarding relations with the public, the pattern to use persuasive or decisive language reverses. The Fund's discussion of "conflicts of interest" is written in some of the most decisive language in the entire document. It includes specific actions which staff members are prohibited from taking, such as investing in member countries in which the Fund is operating. On the contrary, the EU's article on proportionality is one of the vaguest articles in the whole document. As I discussed in the last section, the goal of "proportionality" seems to be to maintain a delicate equilibrium between public, private and institutional interests. In each case, the way the Code is written raises questions about who the institution is accountable to; is it more accountable to itself or to those who are affected by its work?

The language each Code uses in its sections on relations with a public demonstrates the danger of reading too much into the document itself, since these documents can only tell us so much about how well each institution might or might not address ethical dilemmas. As I stated when I introduced the cases, both the EU and the IMF have been criticized for having a “democratic deficit.” Analyzing the language of the Codes might lead us to incorrectly conclude that the EU is somehow more accountable than the IMF. Yet, language may not be the most important factor. While the EU’s code is published in multiple languages and the language of the Code is that of positive obligations, it might be that multi-level governance structure of the EU makes it overall much more difficult to hold EU institutions accountable. Also, one could argue that the IMF is much more transparent about its dispute resolution system; the documents associated with its dispute resolution system are all in one centralized place. Further, the Fund has one Code of Conduct for staff, which also applies in public situations, whereas the EU has separate Staff Regulations in addition to the Code of Good Administrative Behaviour, which is only designed for relations with the public. Based on this, one might argue that the EU is more bureaucratic, making ethical dilemmas that are the consequence of the institutional structure itself more likely.

By focusing on language, relations with the public and the governance structure associated with accountability in these two examples, I have attempted to focus on the institutional level. This shift in focus gives us a different understanding of ethical dilemmas inside institutions. In particular examples, such as the EU and IMF discussed here, focusing on the institutional level shows how some ethical dilemmas simply cannot be addressed because the accountability structures are only designed for certain purposes. Examples that came up in this section include the challenge of raising group complaints in both the EU and the IMF because each institution’s governance structure is designed to address complaints by

individuals; the question raised about who each institution was accountable to, given the way each institution defined its relations with a public; and the question regarding the nature of (legal) obligations inside each institution, based on how each Code was written.

Can historical institutionalism resolve some of the ethical dilemmas that Codes of Conduct like the ones discussed cannot address? HI probably cannot address specific, short-term ethical dilemmas. Rather, what it can do is take note of when an institution is in need of reform. This might occur if and when individuals are held accountable in circumstances in which it is unclear whether they are responsible. When it is unclear who is to blame for an institutional outcome, it could be an appropriate time to look beyond the immediate context of the outcome.

Conclusion

I have argued that the most compelling reason for holding institutions accountable is because they are different from individuals. To the extent that others have argued for institutional accountability, they have done so by comparing institutions to individuals, so that the reasons for holding individuals accountable can be utilized for holding institutions accountable as well. However, my contention is that this kind of institutional accountability does not address the different kinds of ethical questions that arise within institutions, precisely because they are characterized by different behaviour from individuals. If we use the same criteria to assess ethical questions within institutions as we use with individuals, then we will miss out on many possible solutions. And further, we might continue to assign blame to individuals who are not really at fault. Neither of these outcomes is particularly desirable.

The historical institutionalist literature is only a starting point from which to consider why we should hold institutions accountable. It is one of the few approaches in IR which has an account of institutions separate from the individuals who work within them. Specifically, their account of institutions as evolutionary and path dependent does give some explanation of why institutional behaviour is different from individuals. However, the historical institutionalist literature is not a literature specifically about ethics, so I have had to consider what their account suggests about why we should hold institutions accountable. At the very least, it may be a good analytical tool to use when questions of individual responsibility within an institution remain unresolved.

Yet, even when and if there were a consensus that there should be ethics for addressing institutional accountability, still many questions remain about *how* to hold institutions accountable. More research would be needed in order to understand the differences between different kinds of institutions (international, domestic, corporate, as well as differences based on policy area) and who institutions are accountable to and why. Should different kinds of institutions have different ethical standards applied to them? And who would hold institutions accountable and what would be the criteria for doing so? These are questions that future studies will need to address.

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