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<u>Institutional Change in the European Parliament: Balancing Legislative Ethics and Parliamentary Independence</u>

Abstract

Research on legislative ethics has shown how scandals often trigger ethics reform; yet, the content of the reform often differs from that of the scandal. Why is this the case? And if scandals don't explain legislative ethics reform outcomes, then what does? If not this kind of external shock, then what factor(s) shape legislative reform outcomes? These questions provide the point of departure for a case study of the European Parliament's 2011 ethics reform. Drawing from the legislative ethics literature and from recent theories of institutional change, the article examines the impact of the scandal that initiated the reform, the interests and strategies of reform agents who wanted a quick reform process that would not undermine the EP's independence; and the institutional order in which those actors were embedded. It argues that an institutional logics perspective offers a convincing and comprehensive account of EP ethics reform, and suggests a new analytical framework that might be used by researchers in future research on legislative ethics.

 Introduction

The second half of the twentieth-century witnessed diminishing levels of trust in public institutions and actors, alongside claims that representative democracy was in crisis. One of the consequences of this decline in trust was that parliaments became as much the *object* of scrutiny as an *instrument* thereof. Media and civil society organisations criticised unethical parliamentary conduct, and policy-makers responded by enhancing the transparency of and public control over the conduct of legislators (Leston-Bandeira 2012). Amongst other initiatives, they did this by setting up public ethics systems.

Public ethics systems are frameworks of rules, processes and instruments designed to compel and/or encourage public servants to adhere to high standards of conduct and to prevent and/or deter unethical behaviour. These systems may be regulatory and punitive (adopting a compliance approach), or based on softer mechanisms which emphasise social learning and individual reflection (an integrity approach). What these systems have in common is that they embody normative

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understandings of good governance; they set out expectations of how a public servant ought to behave; and they rest on the assumption that public actors should be held to a higher standard than ordinary citizens (Gutmann and Thompson 1985: 168). Even if some commentators question whether ethics systems have had any effect either on the conduct of public actors or on public trust, they allow organisational leaders to be seen to be doing something to address public concerns (though see Saint-Martin and Thompson 2006 for a dose of scepticism). There is however no one-size-fits-all approach. Ethics systems must be contingent, reflecting cultural and institutional differences. As well as acknowledging the distinctiveness of national and cultural contexts, this means that frameworks designed for administrators may for good reason differ from those for legislators.

Contemporary research on legislative ethics originated in the United States in the1970s with studies of the US Congress. Much less research has been conducted on legislative (or parliamentary) ethics systems than on executives however (though see, for example, Jennings and Callahan 1985; Mancuso 1995; Preston et al 1998; Gay 2004; Saint-Martin and Thompson 2006; and Allen, 2010). This may be because, in contrast to developments in other public and professional organisations, *legislative* ethics reforms have been relatively modest. Rosenson explains that this is because politicians 'are notoriously loath to enact ethics laws that constrain their own behavior' (Rosenson 2003: 42-43). It is often said that it is only when scandals expose unethical practices that parliaments are persuaded to reform (Saint-Martin 2014: 163).

Yet tracing the source of ethics reforms to scandals alone is reductive. It leaves no room for agency-based explanations. Moreover, where reform outcomes differ from the focus of the scandal, a puzzle emerges: what, if not (only) scandal explains ethics reform? This puzzle is a relevant starting-point for studying the case of the European Parliament. The Parliament engaged in its reform over the course of 2011 following a scandal in which several Members of the European Parliament (MEPs) were filmed agreeing to accept money in exchange for proposing legislative amendments. With great haste, by the end of 2011 an ethics reform had been approved, backed by an overwhelming majority of MEPs. W*hat explains the ethics system approved by the European Parliament in 2011?* This article argues that to understand fully how and why reform occurred it is necessary to account not only for the impact of external shocks (the scandal), but also the interests and strategies of reform

agents (in support of a quick reform and one defending the EP's independence), and the institutional order in which those actors are embedded.

Drawing from institutional theory, the EP's ethics system is conceptualised as an institution, and ethics reform as a form of institutional change. The empirical research uses a process tracing methodology (see Beach and Pedersen 2013) and draws on official documents and reports, including those produced in-house by the European Parliament and by civil society organisations. These reports are supplemented by contemporaneous media sources and research interviews.

The first of the sections that follow identifies three explanations of institutional change resting on: exogenous triggers; endogenous agency; and 'institutional logics'. The article then presents the EP case study and assesses which of these explanations best explain the case. It charts the process by which the new ethics system was approved; it summarises the reform outcome; and provides an evidence-based analysis of the case. The conclusion summarises the empirical and theoretical findings, states the primary argument, and draws out the wider implications of the research for the study of legislative ethics and institutional change.

Institutional Change and Legislative Ethics

Historical institutionalism has come a long way since the late 1980s (Hall and Taylor 1996). In the early phases of this research agenda, institutions were studied primarily as independent variables, and historical institutionalism was criticised for focusing on institutional continuities at the expense of explanations of institutional formation and adaptation. A great deal has since been written on how institutions are created and how they change.

Historical institutionalists initially saw institutions as the product of exogenous factors, particularly shocks or crises (Pollack 1996; Pierson 2004). These events were transformative, with the periods between them characterised by stasis. This so-called 'punctuated equilibrium' approach resonates with the study of legislative ethics since scandals are often claimed to be the source of ethics reform. But institutional change may also be driven by actors, whether by collective actors such as legislatures and social movements (e.g. Rao et al 2000: 240; Colyvas and Powell 2006: 343) or by individual actors, i.e. reform leaders. Thus, recent research has shown how institutional change may

be an endogenous process, generated from within the institution and owing much to institutional entrepreneurship and leadership (e.g. Greif and Laitin 2004; Levy and Scully 2007; Capoccia 2016). As institutions distribute power and resources amongst political actors, political battles over the introduction of new institutional arrangements are frequently intense. These battles, and the strategies pursued by reform leaders to respond to them, are crucial in shaping reform outcomes (Mahoney and Thelen 2010).

This actor-centred approach resonates with the study of legislatures as political arenas. The interests of actors inside and outside parliaments are reflected in the politicisation of debates on legislative ethics (Gay and Rush 2004: 1). To avoid undermining the cohesion and credibility of the legislature, ethical issues may even be set to one side for political reasons. Alternatively, political actors may seek a consensus on ethics reform which involves watering-down maximalist initiatives. Gutmann and Thompson (1985) have shown, for example, how ethics have become politicised in the US Congress, with legislators going out of their way not to sit on ethics committees to avoid having to criticise their fellow legislators. In the UK, political parties are often responsible for sanctioning Members of Parliament (MPs) which suggests that the former have a major stake in any reform agenda. Ethics reforms can therefore become subject to inter-party bargaining and compromise or, alternatively, to conflict and political competition (Allen 2010: 117, 120).

A contrasting approach supplements the agency-focused approach with an institutional one. The institutional logics perspective places actors in their societal context, stressing the importance of culture and the symbolic in shaping institutional change. It is based on the premise that society is composed of institutional orders that operate according to logics which moderate or limit self-interest, leaving actors only partially autonomous in cases of institutional reform (Thornton et al 2012). The concept of an institutional order is in line with what Dimitrakopoulos similarly terms a 'normative order', that is, 'the prevailing ideological proscriptions and prescriptions, … the dominant norms, principles and ideas regarding appropriate behaviour, which hold a given institutional structure together and provide an abstract definition of standards of appropriate behaviour and "compass" for the assessment of attempts at change' (Dimitrakopoulos 2005: 677). It is internalised by actors and

within organisations, but can also be drawn upon in times of crisis or uncertainty to legitimise and guide political decision-making (Dimitrakopoulos 2005: 679).

The institutional logics perspective resonates with legislative ethics research because of the symbolic functions that parliaments perform. Parliaments in liberal democracies 'are symbols of popular representation in politics' (Hague and Harrop 2004: 247) and their independence is an important indicator of this symbolic role. In representative democracies parliamentarians represent their electorates who can remove governing parties at election-time. In the interim, parliaments are subject to limited external control. An expression of this parliamentary autonomy is the right of parliaments to draft and revise their own 'rules of procedure'. These rules normally include guidance on how parliamentarians are expected to behave. Parliaments will often resist attempts by outsiders to influence internal rules, including those establishing ethical standards, and will also oppose external influence over their implementation and enforcement (Saint-Martin 2014: 164).

Thus, the institutional change literature suggests three theoretical explanations of ethics reform. The first expects to find that reform is the product of an external shock (a scandal perhaps); the second explains reform to be shaped by the interests and strategies of reform agents, especially those in positions of organisational leadership; the third gives explanatory weight to the constraining and enabling effects of the institutional order(s) within which actors and their interests are embedded and in which actors' strategies are engendered (but at the same time acknowledges that those interests and strategies matter). Before testing these explanations against the evidence, the following sections introduce the case study in the form of a review of the process and content of the EP's 2011 ethics reform.

The Ethics Reform

In mid-2010 two journalists set up a 'sting' operation (*The Sunday Times*, 21 March 2011). The journalists claimed to work for a lobbying firm representing private clients who were opposed to proposed rules on banking regulation (Mittermaier 2011). Of the large number of MEPs initially contacted by the journalists, three were filmed accepting a payment of up to EUR 100,000 per year in

exchange for tabling legislative amendments; a fourth MEP was implicated to a lesser degree. The scandal was widely publicised, provoking the EP's Bureau to act swiftly to revise its internal rules on MEP conduct (European Parliament 2011a).[1]

The then EP President, Jerzy Buzek, immediately announced an internal investigation into the allegations. The accused MEPs' offices were sealed and Buzek contacted the relevant national anti-corruption agencies who might prosecute the individuals involved. The EU anti-corruption body, OLAF, announced that it too would investigate the case. OLAF involvement was initially resisted by the EP President on the advice of the Parliament's Legal Service, and four OLAF investigators were prevented from carrying out an initial inspection of the MEPs' offices on 22 March (Brand 2011a and b). Buzek argued that MEPs enjoyed full immunity under parliamentary rules (Brand 2011b; European Parliament 2011b: 25) and that OLAF did not have the right to investigate unless EU funds were implicated (Nielsen 2012). This provoked an outcry from Green and Far Left MEPs, as well as some negative press attention. It eventually led Buzek to concede that OLAF could enter the EP's premises under certain conditions (European Parliament 2011c Brand 2011b).

Buzek stressed that the EP had to learn from the scandal and show 'zero tolerance' to corruption (FoEE *et al* 2013: 5; see also European Parliament 2011a – comment by Diana Wallis). This meant strengthening the Parliament's ethics framework (Brand 2011c). The Conference of Presidents agreed in principle on 31 March in that a working group would be set up (European Parliament 2011d). The issue was discussed by the Bureau on 4 April, and possible reforms were identified. The plan was to reach an agreement on changes to the EP's Rules of Procedure (European Parliament 2010; Brand 2011d). A few days later, on 7 April, the Conference of Presidents gave its more formal blessing to the establishment of a cross-party Bureau working group to report back before the summer recess (European Parliament 2011e; European Parliament 2011d). Even though there was some expectation that the Vice-President with responsibility for transparency, Diana Wallis (ALDE, UK), would chair this group, Buzek himself took on the role, with Wallis and Stavros

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[1] The EP President is responsible for internal parliamentary business. The President is a member of the Bureau with the Vice-Presidents and Quaestors which deals with the EP's internal organisation. The latter works closely with the Conference of Presidents, the leaders of the political groups, which is also chaired by the President.

Lambrinidis (S&D, Greece) as Vice-Chairs (Interview #1). The working group of ten MEPs in total

met weekly over ten weeks for two-to-three hours a time from April 2011 to the end of June

(European Parliament 2011b; Brand 2011d; BBC 2011). The working group was composed of

Members from all political groups (European Parliament 2011e), with a good cross-section of

member states represented.[2] Each meeting was preceded by an agenda-setting pre-meeting comprising

the EP President and the two Vice-Chairs (European Parliament 2011d). The latter played an

important part in shaping the discussions within the working group (Interview #1). In addition, there

was an exchange of views with civil society at the end of May.

In its deliberations, the working group drew on a comparative table of relevant rules that had

been compiled as a report by the EP's Office for the Promotion of Parliamentary Democracy (OPPD)

(European Parliament 2011b; European Parliament 2011d; European Parliament 2011f; Interview #2).

The examples in the Report were chosen to provide the working group with a repertoire of ethics rules

from which they could pick the most appropriate. This exercise produced a 'conglomerate of what

existed in varied forms across Europe' (Wallis 2011). It was felt that there was no other way in which

the working group could operate given the short time-horizon (Interview #1).

The Constitutional Affairs Committee Chair and Rapporteur, Carlo Casini, acknowledged

later in the process that the emergence of a 'broad consensus' on the Code was 'also due to the work

done by all political forces at the highest level' (European Parliament 2011g). However, by the end of

June some members of the group were talking openly to journalists about the ongoing reform

discussions, expressing concern that the outcome would be watered down by the large political groups

(Brand 2011e). Claude Turmes, the Green MEP from Luxembourg said he was 'not optimistic' that

the Parliament would adopt tougher rules as the working group had failed to reach agreement on the

reforms. He expected opposition, particularly over whether MEPs should continue to be allowed to

hold second jobs, a particularly contentious issue (Brand 2011e). Cornelis (Dennis) de Jong, the

Dutch European United Left/European Green Left (UEL/NGA) MEP suggested that it was the centre-

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[2] As well as Buzek, Wallis and Lambrinidis, the working group comprised Jan Zaharil (ECR, CZ); Claude Turmes (Greens/EFA, LU), Alejo Vidal-Quadras (EPP, ES), Francesco Speroni (EFD, IT), Cornelius (Dennis) de Jong (GUE/NGL, NL), Manfred Weber (EPP, DE) and Maria Badia Cutchet (S&D, ES) (European Parliament 2011d).

right European People's Party (EPP) that was most hesitant to accept changes a claim the EPP subsequently rejected (Brand 2011f). A parliamentary official following the work of the group said that both the European People's Party (EPP) and S&D were split on how far the reforms should go (Brand 2011d). One activist noted in June that he believed that some early progressive suggestions had, by the end of the process, been thrown out (Hoederman 2011).

By the end of June, however, the working group was able to submit their recommendations to the Bureau and the Conference of Presidents (European Parliament 2011f; European Parliament 2011b: 23). Both bodies approved the recommendations very quickly in early July (European Parliament 2011f). The issue was picked up again after the summer recess and was discussed by the Constitutional Affairs Committee (AFCO). Committee members proposed amendments (European Parliament 2011h; 2011i) and a few technical revisions were agreed (Wallis 2011), after which the Code was unanimously approved (with one abstention) on 17 November. The proposals were then put to a plenary vote on 1 December. 619 MEPs voted in favour, two voted against and six abstained (Brand 2011e). The new arrangements came into force on 1 January 2012.

The Reform Outcome

The reform introduced in early 2012 led to the introduction of a Code of Conduct which included a revamped Declaration of Financial Interests and the establishment of an Advisory Committee on the Conduct of Members. The Code focused primarily on conflicts of interest and set out core ethical principles: disinterest, integrity, openness, diligence, honesty, accountability, and respect for the European Parliament's reputation (European Parliament 2012; art. 2(1)). It instructed MEPs to (a) take steps to address any conflict of interest; (b) report any conflict to the EP President; or (c) ask the Advisory Committee for advice. MEPs were to acknowledge any conflict of interest before speaking or voting in the Parliament and when serving as a *rapporteur* on a particular file, assuming they had not already identified the conflict of interest in their Declaration.

In addition, MEPs were to complete a Declaration of Financial Interests, listing, amongst other information, their prior occupation, secondary employment and investment interests. The form would then be sent to the EP President early in the parliamentary term and any change of

circumstance thereafter was to be reported within 30 days. The Code limited the acceptance of gifts to those valued below EUR 150 (European Parliament 2012: art. 5) and introduced new rules on the reimbursement of travel, accommodation and subsistence and on the direct payment of expenses by third parties.

The Advisory Committee was to be composed of five MEPs appointed by the EP President from amongst members of the Bureau and the Constitutional and Legal Affairs Committees. Political experience and balance was to be reflected in the appointment process and each member of the Committee was to hold the chair in rotation for a period of six months. The Committee was to meet roughly every month to offer guidance to MEPs on request. The EP President could ask the Advisory Committee for advice on a possible breach of the Code, and all breaches were to be notified to the Advisory Committee which could hear from the MEP concerned. The Committee would then make a recommendation to the President. The President would hear from the Member concerned and would then adopt a reasoned decision laying down, if necessary, a penalty. Penalties ranged from 'a simple reprimand, to a fine, to a proposal to deprive the Member of one or more official roles' (European Parliament 2011b: 25-26). Sanctions were to be notified to the Member and announced in a plenary session of Parliament, appearing on the EP website for the remainder of the parliamentary term.

While the reform was welcomed as a step in the right direction, it was also criticised on a number of grounds. The new system did not include any post-employment restrictions in response to the so-called 'revolving doors' issue. This was highlighted by the critical NGO umbrella group, ALTER-EU, who called for a two-year cooling off period after MEPs leave the Parliament and before they were able to take on a lobbying position linked to their previous role (de Clerck 2011). Moreover, there was no restriction in the ethics rules on MEPs taking second jobs (Brand 2011a; Roovers 2012); and no independent advice or expertise was to be sought by the Advisory Committee (FoEE *et al* 2013: 26). Critics argued that self-regulation was 'not an adequate response to the risks of overlap between the public and private interests of officials acting and legislating on behalf of the public interest' (FoEE *et al* 2013: 7). The same critics also pointed to the inadequacy of the sanctions available to those in breach of the Code, suggesting that a breach ought to provoke an exclusion period and a suspension of the MEP's right to vote. The ethics system provided very little assistance

to MEPs on what constituted a conflict of interest (FoEE *et al* 2013: 3, 8, 25-26), leaving it to Members to interpret the rules as they saw fit; declarations could only be submitted in handwritten form and could be submitted in any language (FoEE 2012); and there was no system of supervision over the declarations, or automatic 'flagging' for updates made by MEPs (FoEE *et al* 2013: 4). It was also unclear who would be responsible for judging a case involving the EP President.

The core criticism, therefore, was that the new ethics system proposed transparency as a cure for ethical misconduct (de Clerck 2011; European Parliament 2011j). The new system combined some innovations – the Code and the Advisory Committee – with revisions to earlier requirements, such as the completion of the Declaration. It gave MEPs responsibility for their own conduct and guidance over reporting requirements, and in so doing it also created a clearer, more transparent ethics system. Yet it was criticised by activist NGOs for not going far enough: '[i]f the code is to be meaningful, it should not only be used to highlight conflicts of interest, but also to address them' (FoEE *et al* 2013: 8). The critics argued that the enforcement mechanisms in the Code were 'insufficient' (FoEE *et al* 2013: 25) and amounted to little more than a 'paper exercise' (Regner 2013). The EP, by contrast, saw the new system as a great leap forward and as an appropriate response to earlier criticism that the Parliament, prior to 2011, had had no effective system of ethics management.

Interests, Strategies and Norms: The Institutional Logic of EP Ethics Reform

What explains this reform outcome? More specifically, to what extent are external shocks, the interests and strategies of internal reform agents and the wider institutional order important in accounting for the reform outcome?

The cash-for-amendments scandal of March 2011 acted as a trigger for reform, demanding an urgent response from the European Parliament. While there was guidance on ethical conduct in place before 2011, that guidance was weak and poorly implemented and enforced; calls for reform had gone unanswered. It took a crisis to provoke action by the EP. This is very much in line with the expectations of the punctuated equilibrium model of institutional change as the latter assumes transformative change to be the product of an external shock. Yet the explanatory force of an argument based on this approach is weak, as the substance of the reform only loosely engaged with

the issues raised by the scandal. While the latter involved MEPs accepting payment for proposing legislative amendments, the reform did not explicitly address the relationship between MEPs and lobbyists. Indications in the early working group deliberations that this issue would form part of the reform agenda were dropped. While the scandal clearly triggered the reform, it does not therefore explain its content.

The content of the reform is more convincingly explained by the interests of actors within the European Parliament: interest in the process of the reform – that is, that the reform should be quick and uncontroversial; and interest in the reform content, that the outcome of the reform should not undermine the independence of MEPs. These interests shaped the Parliament's reform strategy in that it led to: (i) an absence of external influence over the reform process and its outcome; (ii) caution over the selection of reform leaders; (iii) the depoliticisation of the ethics issue during the reform; and (iv) a reliance on administrative practices to focus (or limit) the scope of the reform.

First, efforts to keep other EU actors out of the parliamentary reform process were evident in the EP's reluctance to allow OLAF to investigate the scandal (European Parliament 2011b: 25). Moreover, while there was a small number of meetings with outside organisations during the process, the EP's working group dropped a public consultation that had been flagged at the start of the reform; and there was no evidence that they sought advice from independent advisors or ethics experts beyond their own officials (Interview #2). It is therefore not surprising that at the end of the reform process the ethics committee also eschewed a role for external members or advisors, and that no consideration was given to a Commission proposal, mooted earlier, to set up an inter-institutional ethics committee.

Second, the need for consensus also meant that the EP leadership was keen to avoid the involvement of reform leaders who might not have widespread support. Diana Wallis, a Vice-President with responsibility for transparency, would have been the obvious choice to lead the working group, but there was opposition from other political group leaders to her appointment (Interview #1). A more palatable decision for the EP leadership, a compromise, was to appoint the EP President to chair the working group, with Wallis and Stelios Lambrinidis (S&D) actively involved as joint Vice-Chairs.

Third, de-politicisation became an important a way of facilitating compromise. The politics of ethics reform has a cultural dimension within the multi-national environment of the EU institutions. There are very different views on ethics across the EU. While it is difficult to identify explicit cultural biases in the case evidence as cultural differences were not politicised in an overt manner, such biases can easily hide behind party politics. Party political contestation, reflecting the power dynamics that characterise the day-to-day work of the EP is evident in this case (Interview #1), with the key cleavage dividing the two larger political groups who pushed for a modest reform, from the smaller groups, particularly those to the left of the Socialists (S&D), but also including some (but not all) Liberals (ALDE), who wanted a more comprehensive and enforcement-oriented approach. Even with the larger groups, however, there were disagreements over the line to take. To minimise the effects of politicisation, political balance in the decision-making process (i.e. in the composition of the working group and of its leadership) was important, as were the terms of reference of the group. The strategy worked. There were certainly disagreements over the content of the reform, but because the working group met in camera, with the hard bargaining done behind-the-scenes, there was relatively little public expression of disagreement. So even though the Code of Conduct was approved after 'concentrated political discussions' (Wallis 2011) in which it became clear that the focus of the reform would be transparency, the outcome could be agreed on 'whatever our political family' (Interview #1).

Fourth, the EP's own internally generated analysis helped to shape the reform outcome (European Parliament 2011d). Even if this was a routine administrative practice, the reliance on a report from the EP administration which selected pre-existing ethics models as sample cases, reinforced the EP leadership's control over the content of the reform. The models identified in the Report were not ideal-types in any abstract sense, but were real-world examples. The limitations of this approach were recognised. Mittelmaier (as reported in EUD 2011), then head of the Brussels office of Transparency International, suggested that some of the cases, especially the German one, were not good models; and in the EP's Constitutional Affairs Committee on 24 May, Andrew Duff, the ALDE shadow rapporteur on the dossier, expressed concerns over the methodology used by the working group, namely that '…we should not simply aggregate the procedures of national parliaments

to build up a sort of fortress… I think that we must do something that is qualitatively better (EUD 2011). Adopting this kind of approach presented options for reform, therefore, but also closed off other, more controversial, outcomes. There was no time or inclination for 'blue skies' thinking in designing the EP's ethics reform.

Thus, together, external shocks and the interests and strategies of internal reform agents explain convincingly the timing and the content of the reform; and as such the analysis might conclude at this point. Yet, one question remains: why did the reform agents see it in their interests to pursue a tightly controlled reform which ensured the independence of MEPs? To answer this question, it is necessary to look beyond the specific case to the wider institutional context within which it sits: that of the EP within the European Union (EU).

The European Parliament is a 'transnational body operating in a system of multilevel governance' (Judge and Earnshaw 2008: 24). This, together with its tendency to work towards consensual outcomes, makes the institution highly distinctive. Yet the EP also performs functions generally associated with parliaments, such as policy-making, representation and legitimisation. It is a political arena characterised by political competition and conflict. It fashions itself as the mouthpiece of European citizens, with Members of the European Parliament (MEPs) performing a representative function on the basis of their independence from outside influence and control. The EP has over time evolved to become a co-legislator (with the Council of the EU) within the EU legislative process. Even if there are still doubts as to whether the EU can be viewed as a parliamentary democracy, this normalisation, which has gone hand-in-glove with a politicisation of the EP has meant that even if it remains distinctive there are now fewer grounds on which to judge the EP as anything but a 'real' parliament.

While the growth of the EP's decision-making capacity has been justified as a response to the EU's democratic deficit, there is no easy correlation between the EP's legislative power and its legitimacy. The legitimacy deficit, of which the democratic deficit is a part, cannot be attributed to one EU institution but is a feature of the EU in its inter-institutional form. However, declining turnout in EP elections, a relative lack of trust in and knowledge of the EP, and – in some quarters - media hostility to the Parliament and its Members, suggests that the EP is often perceived as a cause of

rather than as a solution to the EU's legitimacy deficit. One of the main difficulties for the EP has been the performance of an effective linkage function connecting the EU to its citizens (Hix and Høyland 2011: 54).

The EP is therefore characterised by a certain tension between its normalcy, reflected in its now substantial legislative powers, and its exceptionalism, expressed through its contribution to the EU's legitimacy deficit. This makes parliamentarians defensive of the EP's powers and protective of their independence but at the same time attentive to the criticism that the Parliament needs to be more responsive to its publics. This may not be internalised by all actors – political and administrative - within the Parliament, but it is embedded institutionally, influencing the responses of the EP leadership – the President, Bureau and Conference of Presidents– when difficult decisions are to be taken.

This EP/EU context makes sense of the interests pursued by EP reform agents during the ethics reform process. Moreover, there is some evidence, albeit rather modest, that the strategy pursued by EP leaders entailed efforts to legitimise the reform within the Parliament in order to gain for it as much support as possible. This involved EP leaders drawing instrumentally on normative arguments (that is, referring explicitly to the EP's normative order) as a way of demonstrating support for the reform. At this stage, at the end of the process, the emphasis was on the democratic deficit dimension of the EP's normative order rather than on its desire for independence which had already been dealt with at an earlier stage. An illustrative example can be found when an MEP, Guiseppe Gargani, proposed oral amendments to the reform before the final plenary vote. The rapporteur on the file, Carlo Casini, replied:

> I believe that we need a very broad consensus to demonstrate that this Parliament is a transparent parliament, that it is concerned only with the common good, and that each one of us is personally honouring the commitment […] to serve only the common good and European integration. Hence, I believe that there should be a very broad consensus… (European Parliament 2011j).

A similar language was used in a later press release when Casini said that '[t]he wide consensus expressed by MEPs … has a symbolic meaning that cannot be ignored (European Parliament 2011k)

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Following this speech, proposed amendments were rejected and over 99 per cent of MEPs voted in favour of the reform. Approval had taken only 10 weeks (European Parliament 2011j) This was extremely impressive given how controversial ethics reforms can be, not least in a multi-national, multi-cultural organisation as is the EP. Although the influence of the political groups over their members at this point in the process should not be ignored, the EP leadership was able to make a clear case for reform based on a general fit with the EP's institutional order, helping to produce an unequivocally consensual outcome.

Thus, while the external context explains why reform took place in 2011, and the interests and strategies of reform agents account for reform content, the response (interests and strategies) of EP leaders to the scandal and the success of the reform can only be fully understood in the light of the EP's institutional order which conditioned an appropriate response to the scandal from EP leaders and MEPs.

Conclusion

This article began with a puzzle: that while legislative ethics reforms tend to be driven by ethics scandals, the content of the reform at the end of the process does not always reflect the content of the scandal. If not the scandal, then, what shapes legislative ethics reforms? One recent contribution to the legislative ethics literature (Saint-Martin 2014) highlighted the importance of actors' interests. A similar argument is found within the broader institutional change literature. A rather different institutionalist literature points to the relevance of normative factors, suggesting that institutional logics (Thornton et al. 2012) might have some relevance to legislative ethics reforms in that they shape the interests of key actors as well as the strategies they pursue to serve those interests.

To investigate this puzzle, the research presented above focused on a single case, that of the European Parliament's 2011 ethics reform. It used this case to judge the relative merits of three explanations of the EP ethics reform outcome. The first, that the scandal triggering the reform shaped the content of the reform, was easily dismissed, even though the scandal clearly determined the timing of the reform. The second, that the interests and strategies of key actors (within the EP) shaped the

reform outcome, produced a highly convincing explanation in that the desire for a speedy and uncontroversial reform which did not impinge on the independence of Parliament shaped the reform outcome. The third, investigating the relevance of the institutional logics at play within the EP (and the wider EU) showed how the normative environment in which actors' interests and strategies were developed, and explained how those interests came to be deemed appropriate. As such, this latter approach offers the most comprehensive and convincing account of the EP's 2011 ethics reform, incorporating within in it the second explanation, but offering a richer account than the latter alone could do.

This research makes an original contribution to the study of legislative ethics, both empirically and theoretically. First, it offers the first case-study of the European Parliament's ethics system. As such it contributed to the burgeoning literature on the governance of public ethics and integrity in the EU institutions. While further empirical research is needed on the EP's ethics regime, and on other EU institutions, this article is the first to shed light on why the reform took place as well as offering a commentary on the nature of that reform.

Second, this article also has broader theoretical implications for the study of legislative ethics. In showing how theories of institutional change might be relevant to such studies, it suggests a new analytical framework. More specifically, it shows that while scandals may be an important trigger for legislative ethics reform, they may not explain the ethics system that emerges from reform process that ensues. The interests of reform leaders, *shaped by the institutional order within which the parliament sits*, offer a more comprehensive guide to direction that the reform process will take. The context will differ, but certain characteristics of this case-study may also be relevant to other parliaments. It would not be unlikely, for example, to find that parliamentary independence holds symbolic significance in other cases. Likewise, concerns about the democratic deficit, though distinctive in the European case, will also have resonance in other parliamentary contexts. It is therefore possible to account for why parliaments push for reforms when the media spotlight falls on them, but are at the same time reluctant to relinquish control over the reform outcomes. As such, viewing legislative ethics reforms as a matter of balancing ethics and independence could provide a

useful starting-point for further case-study and comparative research within the field of legislative ethics.

References

Allen, N. (2010), 'Keeping MPs Honest? Ethics Reforms in the British House of Commons', *Public Integrity*, 12 (2): 105-23.

BBC (2011), 'European Parliament Agrees on Code of Conduct, *BBC News*, 7 July.

Beach, D. and R. B. Pedersen (2013), *Process-Tracing Methods* (University of Michigan Press: Ann Arbor, MI).

Brand, C. (2011a), 'Inquiries into Scandal of "Influence-for-Cash"', *European Voice* [online], 24 March.

Brand, C (2011b), 'Buzek says OLAF can Investigate "Cash for Influence" MEPs', *European Voice* [online], 31 March.

Brand, C. (2011c), 'Lobbying Scandal Triggers Rule-Changes for MEPs', *European Voice* [online], 31 March.

Brand, C. (2011d), 'Concern over Revised Code of Conduct', *European Voice* [online], 23 June.

Brand, C. (2011e), 'MEPs Approve Stricter Ethics Rules', *European Voice* [online], 1 December.

Capoccia, G. (2016), 'When Do Institutions "Bite"?', *Comparative Political Studies*, 49(8): 1095-1127.

Colyvas, J. A. and W. W. Powell (2006), 'Roads to Institutionalization' in B. Straw (ed) *Research in Organizational Behavior: An Annual Series of Analytical Essays and Critical Reviews*, 27: 305-53.

De Clerck, (2011), 'Rules of Conduct for MEPs Must Be Strict', *European Voice* [online], 14 April

Dimitrakopoulos, D. G. (2005), 'Norms, Interests and Institutional Change', *Political Studies* 53(4): 676-693.

EUD (2011), 'Buzek defends Parliament's Efforts to Tighten Internal Rules', *News Archives*, www.eudemocrats.org/end/news.php?uid=367, 24 May, (accessed 17 July 2014).

European Parliament (2010) 'Rules of Procedures', 7th Parliamentary Term, July.

European Parliament (2011a), 'Corruption: Resignation', *EuroparlTV,* 21 March, accessed at:

http://www.europarltv.europa.eu/en/player?pid=6171a41d-656f-43fe-9fb1-9ead013fa920

European Parliament (2011b), 'Parliamentary Ethics: A Question of Trust', Office for the Promotion

of Parliamentary Democracy (OPPD), DG EXPO, Brussels.

European Parliament (2011c) 'Buzek Provides Digital Data to OLAF and Declares the EP is Open to

Administrative Investigation', Press Release, Brussels, 31 March.

European Parliament (2011d), 'Parliament Working Group on Code of Conduct for MEPs and

Lobbyists', Press Service, Background, Ref: 20110523BKG20013, 23 May: 1-4.

European Parliament (2011e), 'EP Leaders Agree to Develop New Rules for Lobbyists and Stronger

Code for MEPs', Press Release, Ref: 20110331IPR16697, 31 March.

European Parliament (2011f), 'Parliament Group Leaders endorse new Code of Conduct for MEPs',

Press Release, 7 July.

European Parliament (2011g), 'New Code of Conduct for MEPs Unanimously Endorsed by

Constitutional Affairs Committee', Press Release, Ref: 20111114IPR31468, 17 November.

European Parliament (2011h), 'Draft Report on Amendments to the Rules of Procedure Relating to a

Code of Conduct for Members of the European Parliament with Respect to Financial Interests and

Conflicts of Interest (2011/2174(REG))', Committee on Constitutional Affairs (AFCO), 6 October.

European Parliament (2011i), 'Amendments to the Rules of Procedure Relating to a Code of Conduct

for Members of the European Parliament with Respect to Financial Interests and Conflicts of Interest

(2011/2174(REG))', Committee on Constitutional Affairs (AFCO), 1 November.

European Parliament (2011j), 'New Code of Conduct for MEPs Approved' Press Release, Ref:

20111201IPR32972, 1 December.

European Parliament (2011k), 'Debates', point 6.21, A7-0386/2011, Brussels, 1 December.

European Parliament (2012), 'Code of Conduct', 1 January. EP website [online]

FoEE [Friends of the Earth Europe] (2012), 'Transparency in the European Parliament. Analysis of

the Declarations of Interest of Members of the European Parliament', Brussels, July.

FoEE [Friends of the Earth Europe], Access Info, HAI, AITEC, Environmental Law Service, Spinwatch, AK Europa (FoEE et al) (2013), 'European Citizens Opinion Poll on Transparency, Ethics, and Lobbying in the EU' Briefing Paper, February.

Gay, O. (with P. Leopold) (2004) (eds), *Conduct Unbecoming* (London: Politico's).

Gay, O. and M. Rush (2004), 'Introduction' in O. Gay (with P. Leopold) (eds.) *Conduct Unbecoming* (London: Politico's): 1-27.

Greif, A. and D. D. Laitin (2004), 'A Theory of Endogenous Institutional Change', *American Political Science Review*, 98(4): 633-52.

Guttman, A. and D. F. Thompson (1985), 'The Theory of Legislative Ethics', in B. Jennings and D. Callahan (eds), *Representation and Responsibility* (New York: Plenum Press).

Hague, R. and M. Harrop (2004), *Comparative Government and Politics* (Basingstoke: Palgrave Macmillan).

Hall, P. and R. Taylor (1996), 'Political Science and the Three New Institutionalisms', *Political Studies*, 44: 936-57.

Hix, S. and B. Høyland (2011), *The Political System of the European Union,* 3rd edn, (Basingstoke: Palgrave Macmillan).

Hoerderman, O. (2011), 'Time to Act: A Strong Code of MEP Ethics is Needed', at www.social-

Jennings, B. and C. Callahan (1985), *Representation and Responsibility* (Philadelphia: Springer).

Judge, D. and D. Earnshaw (2008), *The European Parliament*, 2nd ed. (Basingstoke: Palgrave Macmillan).

Leston-Bandeira, C. (2012), 'Parliaments' Endless Pursuit of Trust: Re-focusing on Symbolic Representation', *Journal of Legislative Studies*, 18(3-4): 514-26.

Levy, D. and M. Scully (2007), 'The Institutional Entrepreneur as Modern Prince' *Organization Studies*, 28(7): 971-90.

Mahoney, J. and K. Thelen (2010) (eds.), *Explaining Institutional Change* (Cambridge: Cambridge University Press).

Mancuso, M. (1995), *The Ethical World of British MPs* (Montreal & Kingston: McGill-Queen's University Press).

Mittelmaier J. (2011), 'Ways to Close the Open Palm', *European Voice* [online], 24 March.

Nielsen, N. (2012), 'EU Parliament Reconsiders Code of Conduct Loophole', *EUobserver* [online], 29 June.

Pierson, P. (2004), *Politics in Time. History, Institutions and Social Analysis* (Princeton, N.J: Princeton University Press).

Pollack, M. A. (1996), '*The New Institutionalism and EC Governance'*, Governance, 9(4): 429-58.

Preston, N, C. J. G. Sampford and C.-A. Bois (eds), (1998) *Ethics and Political Practice: Perspectives on Legislative Ethics* (London: Routledge).

Rao, H., C. Morrill and M. N. Zald (2000) 'Power plays: How social movements and collective action create new organizational forms', in B.M. Staw and R. I. Sutton (eds.), *Research in Organizational Behavior* 22, 239-82.

Regner, E. (2013), 'Follow Austria's Tough Stance on Corruption', *European Voice* [online], 24 January.

Roovers, K. (2012), 'A Champion of Transparency?', *European Voice* [online], 12 January.

Rosenson, B. A. (2003), 'Legislative Voting on Ethics Reform in Two States: The Influence of Economic Self-Interest, Ideology, and Institutional Power' *Public Integrity*, 5: 205-222.

Saint-Martin, D., with F. Thompson (eds) (2006), *Public Ethics and Governance: Standards and Practices in Comparative Perspective* (New York: Oxford-Elsevier Press).

Saint-Martin, D. (2014), 'Gradual Institutional Change in Congressional Ethics: Endogenous Pressures toward Third Party Enforcment', *Studies in American Political Development*, 28: 161-74.

The Sunday Times (2011). 'Insight: Euro MPs Exposed in "Cash-for-Laws" Scandal', 21 March.

Thornton, P. H., W. Ocasio and M. Lounsbury (2012), *The Institutional Logics Perspective. A New Approach to Culture, Structure and Process* (Oxford: Oxford University Press).

Wallis, D. (2011), 'Diana on the European Parliament's Transparency Register and the new Code of Conduct', at Dianawallis.org, (accessed 16 July 2014).

Interviews:

Interview #1 – Member of European Parliament Working Group

Interview #2 – Senior official within the EP Administration

Interview #3 – EP Officials (joint interview) within the EP Administration's Ethics Unit.