

Public Service Ethics in the European Commission: towards a model of ethical decision-making

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Abstract

The focus of the research project presented in this paper is on understanding how ethical dilemmas are processed by civil servants in the European Commission. I take ethics to broadly refer to appropriate behaviour in public office (as such, it is connected to public roles and duties); an ethical dilemma represents a situation where judgment on what is ethical is usually perceived as difficult. To the extent that the European Union is a *sui generis* political entity, the ethical challenges of the supra-national environment are wholly singular. And since it is “at the heart of the Union” (Nugent 1997), it would be safe to assume that the European Commission showcases these challenges most visibly. There has been very little systematic academic investigation along these lines.

Research on the European Commission has largely left untouched the issue of public ethics. The few studies that have been written on this topic adopt a public management perspective and are primarily directed at benchmarking the reforms contained in the *White Paper on European Governance*. Other parts of the literature touch on the issues of socialization, identity and values, but without making explicit the implications for public service ethics. On the other hand, the burgeoning field of administrative ethics exhibits a clear tendency to deal with ethics in national contexts and to give marginal importance to environmental factors in explaining ethical decision-making.

In developing a model of ethical decision-making attuned to the peculiarities of the European Commission, the project takes a neo-institutionalist perspective. It assumes that “institutionalized contradictions” (Christiansen 1997) - such as the need to be accountable simultaneously to the Member States and to the citizens of Europe, and the Commission's dual function of providing executive government and public administration - affect role conceptions of civil-servants, which in turn shade into differentiated resolution of ethically ambiguous situations. This perspective will be explored using the comparative method, taking Directorates General as units of comparison.

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Introduction

During the past two decades the issue of public service ethics has taken on world-wide proportions. We are witnessing a “global movement toward the institutionalization and formalization of public service ethics” (Lewis and Gilman 2005:331), which has spurred a multitude of international anti-corruption and ethics regimes. Countries in both the developed and the developing world have initiated large scale reforms to build up integrity in their public institutions. International organizations make no exception (the UN, for example, has consistently updated its internal ethics policies in 2005).

This trend is also visible in the European Commission. Since 2001 the organization has been undergoing intense administrative reforms, where the concern for strengthening ethics and limiting opportunities for malfeasance is high on the agenda. The Commission, however, is dauntingly complex. In fact, it has become rather commonplace in the literature to label it as a *sui generis* institution, with no match among national or international administrations (Cram 1999, Nugent 1997, Shore 2000, Hooghe 2001, Stevens and Stevens 2001, Hooghe and Nugent 2006). The mere fact that its staff is recruited from 27 different Member States creates a striking linguistic and cultural variety. What is more, the Commission operates in an very complex political environment, which places extreme demands on its employees. As one insider eloquently explained, “the Commission needs to recruit intelligent people – by that I mean clever and mentally flexible people [...] You need to be irrational - a compromiser. The best compromises are the most irrational ones – look at the European Union, how do you think it has survived all these years?” (interview with Belgian official, cited in Shore 2000:200).

If this testimony is anything to go by, it would seem that the Commission is a place where ethical challenges are pronounced. Being “at the heart of the Union” (Nugent 1997), it showcases most visibly all the questions, contradictions and uncertainties of the supranational polity. The research project aims to capture these aspects by developing a model of ethical decision-making attuned to the peculiarities of this institution. As it will be argued later on, there has been very little systematic academic investigation along these lines. What is equally important, understanding how Commission officials decide on ethical issues has significant implications for policy design. If indeed the Commission has a *sui generis* quality, then one-size-fits-all solutions can easily fail. A more nuanced understanding of the institution can inform better targeted policy responses.

This paper proceeds as follows: in section 1 I briefly review relevant reforms implemented in the Commission since 2001 and locate the direction of future policy interventions. In section 2 I outline the basic premises and concepts on which this project builds. In section 3 I provide a review of two literatures where theoretical insights for my project can be located – the fields of administrative ethics and European studies respectively. In section 4 I present my core arguments, as well as the theoretical framework. Finally, section 5 deals with issues of methodology and research design.

1. Ethics reform in the European Commission

Before the late 1990s there seemed to be little interest in the Commission to regulate matters of public ethics beyond the provisions of the Treaties and EU Staff Regulations (Cini 2008). This has changed dramatically after March 15th 1999, when the Santer Commission resigned *en masse* following the publication of a scathing independent expert report exposing consistent evidence of fraud, mismanagement and nepotism in the Commission (CIE 1999a, CIE 1999b). The report – commissioned by the European Parliament - followed approximately six months of inquiries into the Commission's financial management procedures, and concluded rather dramatically that “it is becoming difficult to find anyone [in the European Commission] who has even the slightest sense of responsibility.” (CIE 1999a: 144). The entire affair dealt a significant blow to the public image of the Commission, reinforcing negative clichés of the organization as harbouring a caste of faceless Eurocrats, detached from Europe's citizens and unaccountable for their decisions. What is worse, this came at a time when the end of the so-called “permissive consensus” for EU integration was painfully visible. In retrospect, Michelle Cini (2007) labels the 1999 scandal as a “critical juncture” in the history of the organization.

It comes as no surprise then that the incoming Prodi Commission made it its business to clean up and reform the Commission root and branch. Commissioner Neil Kinnock was appointed to draft a reform program which was eventually fleshed out as the 2001 *White Paper on European Governance* (WPEG)¹. The concern with ethics and responsibility is visible in the document, although closely interwoven with a more prominent interest for efficiency and effectiveness. Acknowledging upfront the disenchantment of European publics with EU integration, the WPEG states that “reforming governance addresses the question of how the EU uses the powers given by its citizens. It is about how things could and *should* be done” (p. 8, my emphasis). The guiding principles of “good governance” laid out in the beginning of the document - openness, participation, accountability, effectiveness and coherence – support this statement.

Under the objective of creating a “service-oriented culture” in the Commission, the Kinnock reforms have brought about numerous integrity-boosting instruments: a code of conduct for Commissioners, as well as declarations and register of interests and gifts; the modification of the Staff Regulations to allow for whistleblower protection, a stricter disciplinary regime and clearer provisions on conflict of interests; improved public access to documents and comprehensive guidelines for consultation of stakeholders. Added to this, the human resources policies have been re-worked to emphasize merit above nationality, while the systems of financial control and internal audit have been strengthened, particularly at the level of Directorate Generals.

Administrative reform is high on the agenda of the Barosso Commission as well, having been taken up under the banner of the *European Transparency Initiative* (ETI) by Kinnock's successor,

1 Also referred to as “the Kinnock reforms”.

Commissioner Siim Kallas. The ETI consists of three sets of proposals relating to anti-fraud and financial management (i.e.: publishing information on the end beneficiaries of EU funds), interest group activity (i.e.: the creation of a lobby registration system inside the Commission, and adoption of a code of conduct for interest representatives) and, finally, rules and ethical standards for EU officials (i.e.: efforts to define common ethical standards for public office holders in European institutions²). More significant progress has been achieved in relation to the first two objectives³.

This very brief empirical overview makes it evident that the 1999 crisis has shocked the Commission into taking public ethics seriously, and has spurred considerable policy intervention. Such intervention, however, can only have a limited impact. As Steven and Stevens rightfully observed “the existence of disciplinary regulations does not in itself imply the existence of an internalized, agreed, if uncodified and even unspoken, but widely shared standard of conduct, and certainly not a uniform one” (2001:70). European civil servants need to exercise judgement on ethically difficult cases regularly, and it is precisely in this area that the reforms fall short. As the Commission itself admits in a recent communication to its staff, there is pressing need for discussion, clarification and ethics awareness raising: “Commission officials need to know and be aware of the basic principles and standards they are expected to apply and where the boundaries of acceptable behaviour lie”. (2008:3). Now that rules are in place, the long and cumbersome process of translation and interpretation in everyday working practices is underway. It is here that the complexities inherent in the hybrid nature of the Commission will pose a challenge. Research conducted in the framework of this project is expected to bring new insights which will hopefully help tackle these challenges better.

2. Premises and concepts

Before engaging in a review of the relevant literatures, I set out the guiding premises of this project and clarify some of the key concepts used.

As stated already, the project attempts to uncover how ethical dilemmas are processed by civil servants in the European Commission. In doing so, it builds on John Rohr's observation that the ethical problem of the civil servant is “the responsible use of administrative discretion” (1978:5). Rohr's point is closely related to a classical account of representative democracy: politicians are elected to rule and accountable to citizens through the ballot box. Therefore they are the only legitimate

2 To this end the Commission requested a comparative study on regulations in EU 27, plus European institutions, which came out in 2007 – Demmke et al. 2007. *Regulating Conflicts of Interest for Holders of Public Office in the European Union. A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions*, available online at http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf.

3 Revisions to EU's Financial Regulation introduced in December 2006 included a commitment to publish annually the beneficiaries of EU Structural Funds (as of 2008) and those of CAP funds (as of 2009) – for more on this see http://ec.europa.eu/commission_barroso/kallas/work/eu_transparency/recipients_en.htm. The voluntary register of interest representatives, as well as the code of conduct is available online at : <https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en#en>.

wielders of public power, and the only ones entitled to *make* policy. Public bureaucracies, which do not enjoy the same type of democratic legitimacy, should merely *execute* the policies set forth by their political bosses. In a nutshell, this is the so-called “politics-administration dichotomy”, which has its roots in Woodrow Wilson's (1886/1941:487) influential claim that “although politics sets the tasks for administration, it should not be suffered to manipulate its offices. [...] Public administration is the detailed and systematic execution of public law”. Administrative discretion is the channel through which bureaucrats overstep the boundaries of their democratically “safe” mandate and effectively govern (i.e. *make* public policy), being neither elected by nor directly answerable to the citizenry. This is where ethics comes into play.

Rohr is a good starting point in my project for several reasons. First, his assertion appears to be one of the few points of agreement in the administrative ethics literature (Rohr 1990). Second, it highlights the fact that ethics is about making choices - not simply about “staying out of trouble” and conforming to rules. Third, Rohr's definition pinpoints with some precision the areas where one might go looking for ethics and ethical dilemmas in public administration. Finally, it incorporates the concept of “responsibility”, which, as explained below, can be refined to overcome the author's initial bias to systems of representative democracy, which, in turn, makes his formulation usable in the supra-national context, characterized by an original (if not deficient) democratic settlement.

Secondly, my focus is on a particular category of officials in the Commission, namely the permanent civil servants. Notwithstanding the hybrid nature of administrative and political roles in the Commission (see Page 1997, Shore 2000, Stevens and Stevens 2001), it is this category that exercises primarily an administrative function and comes closest to Rohr's (1998:7) definition of public servants - “those tenured public officials who are neither elected, nor politically appointed”. Therefore, it is to this category that the ethical problem described above applies.

Third, my project builds on the premise that there is a difference between an act of corruption and an ethical dilemma. This may seem obvious, but empirically the difference is not always clear. In the context of this project I take ethics to broadly refer to appropriate behaviour in public office (as such, it is connected to public roles and duties). An ethical dilemma is “a situation where people usually perceive it to be very difficult to judge what ethical behaviour is” (Maesschlack 2004b:474), in other words it is a situation where one cannot easily tell right from wrong. On the other hand, corruption is “the misuse of entrusted power for private gain” (Transparency International)⁴; it is reasonable to assume that in such cases the perpetrator knows he/she is doing the wrong thing (or that most people would reasonably judge it to be wrong), but does it regardless. Thus, corruption is but one instance of unethical behaviour - a broader category which covers deviance from appropriateness generally. My

4 See http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1. Transparency International (TI) initially used the term “public” power, but later switched to “entrusted” in order to cover corruption in the private sector as well. TI's definition is now widely accepted among academics and practitioners alike. However, anthropologists rightly claim that this allegedly *acultural* definition is not of much use outside Western societies, where the meanings of “public”, “private” and “misuse” can vary significantly (Haller and Shore 2005).

interest is specifically in ethical dilemmas, that is cases where multiple courses of action are possible, each with a potential to be labelled right or wrong.

To further clarify the concept of “ethical dilemma”, Bovens' (1998) analysis on “bureaucratic responsibility” as virtue is a good starting point. In this light, responsibility denotes “concrete interpretation of the various criteria [of responsibility], geared to the role of functionary in a complex organization” (Bovens 1998:143). Simply put, it is about an individual's consideration of his/her role obligations. Bovens distinguishes between distinct conceptions of individual bureaucratic responsibilities, each with a separate set of norms and loyalties attached. Hierarchical responsibility, for instance, is associated with loyalty to superiors and orders, social responsibility is associated to loyalty to peers and social norms, while personal responsibility goes hand-in-hand with personal conscience and ethics. Bovens believes that these conceptions are recognizable in everyday life: “they are the forces which work on an individual functionary in the case of a conflict of loyalties” (1998:165). Therefore, they are the substance of ethical dilemmas.

Of course, “ethics”, “unethical” and “corruption” are all value-laden terms, and the challenge of using them objectively should not be underestimated. In a culturally diverse environment such as the European Commission, where different conceptions of public ethics exist side-by-side, this challenge is perhaps even more daunting. However, it should be clear from the start that my intention is not to judge people, but to understand their ethical reasoning in the course of discharge of official duties.

3. Literature review

In what follows, I review two obvious sources where research insights on public service ethics in the Commission might be located: the field of administrative ethics and that of European studies. As it will be shown, none of these literatures has so far explored the issue consistently.

3.1. Administrative ethics

The field of administrative ethics is at once eclectic and underdeveloped. Originating in the US in the 1970s (Cooper 1994), administrative ethics is a literature that unites a host of disciplinary approaches, from philosophy to public management, largely disconnected from one another. Moreover, research appears to be still in its infancy – as Lawton and Doig wrote in a recent review, “much of the research on public sector ethics in general is in the form of concept clarification, mapping the terrain, or the application of frameworks borrowed either from previous research in the field or from a related field [...] However, there appears to be little in the way of theory building or testing based upon empirical research [...] research questions are still being formulated.” (2006:28). Despite these obstacles, several authors active in the field of administrative ethics offer accounts which approximate the elements of ethical decision-making models. It should be pointed out from the beginning that the

literature is somewhat US-biased and offers no account of European Union institutions.

One important strand draws heavily from developmental psychology and explains ethical decision-making largely in terms of individual characteristics. Much of this body of research draws on Lawrence Kohlberg's theory of cognitive moral development, which contends that ethical conduct for all people, irrespective of their profession, depends on their ability to conceptualize the dilemmas within a specific moral world-view. Kohlberg (1984) identified six distinct stages of moral development, each with a different basis for decision-making – (1) obedience, (2) instrumental egoism, (3) interpersonal concordance, (4) law and duty, (5) consensus building and (6) social cooperation. Building on the works of Kohlberg and subsequently James Rest⁵, Stewart and Sprinthall (1991) have developed a test (the “Stewart-Sprinthall Management Survey”/ SSMS) which uses dilemmas or situations adapted to the specificities of public service. It has been used repeatedly in research on US local governments.

Generally speaking, this body of theoretical work inspired by psychology has benefited from substantive empirical testing during the last decade (Wittmer 2005). Although individual cognitive processes are at the center stage, there have been authors who incorporated in their models the influence of environmental factors on ethical decision-making. For example, Linda Trevino's (1986, cited in Wittmer 2005) person-situation interactionist model, explains ethical decision-making as a function of individual variables (locus of control, ego strength, field dependence etc.) and environmental variables (e.g.: reinforcement contingencies, organizational culture). Ferrel, Fraedrich and Ferrel (2002, cited in Wittmer 2005) hold that ethical decision-making hinges on the intensity of an ethical issue, individual factors (e.g.: the level of moral development) and organizational culture. Wittmer (1994, 2005) proposes a model that largely synthesizes previous work, describing ethical decision-making as a function of the cognitive decision process itself, individual attributes and environmental factors.

The impact of organizational structures on ethical decision-making has been explored more in depth by another branch of the administrative ethics literature, heavily inspired by organizational sociology and public management. Probably the most influential contribution in this category is the literature on “ethics management”.

Consistent with the public choice school, the ethics management literature builds on the conviction that ethical behaviour can be promoted by means of incentive structures (broadly understood). Its hallmark is the use of the so-called *compliance-integrity continuum* (OECD 1996, 2000 and originally Rohr 1978) to describe policy approaches to administrative ethics. A compliance-based or “low road” regime reinforces adherence to administrative procedures and the policing bad behaviour, while an integrity-based or “high-road” one is concerned with the promotion of aspirational values and the encouragement of good behaviour. Typical compliance instruments are detailed legislation and

5 James Rest (1979) developed a widely-used measure of moral development – the Defining Issues Test (DIT), a multiple-choice instrument which consists of three to six story dilemmas, where the subjects identify what action should be taken and rank a number of issues raised by the stories according to their ethical importance (Swisher et al 2005).

procedural codes, as well as extensive control mechanisms (both internal and external to the organization), while the integrity-based style recommends the use of interactive ethics training sessions, ethics counselling and ambitious codes of values (Maesschalck 2004a). The distinction between the two reflects diverging conceptual approaches to administrative ethics in general – focusing on *what not to do* or on *what to do*⁶ – which have concrete implications for policy design. However, in practice the two approaches should be combined in a mutually-reinforcing manner.

Maesschalck (2004a) rightfully points out that the compliance-integrity dichotomy can serve only as a useful starting point for conceptualizing approaches to ethics management. He proposes expanding the continuum by integrating insights from anthropology – grid-group theory, more specifically. *Grid* refers to “the degree to which an individual's life is circumscribed by internally imposed prescriptions” - the higher the grid, the less space for personal discretion in decisions; *group* refers to “the extent to which an individual is incorporated into bounded units” - the tighter the incorporation, the more individual choice is subject to group determination (Thompson et al 1990:5, cited in Maesschalck 2004a). Thus, compared to the conventional ethics management literature, which tends to focus solely on the intensity of regulation (i.e.: the grid dimension), Maesschalck's approach opens up more spaces for nuanced managerial strategies.

In a different article (Maesschalck 2004b) the author uses the insights of grid-group theory to specify a theory – or, at least, a coherent conceptual framework - which links organizational structure to ethical decision-making. He posits that “when a particular interaction type⁷ is dominant [within an organization], then the concomitant ethical standard will be dominant in ethical decision-making and thus the chance will increase that the standard will be excessively applied (that is, unethical behaviour)” (Maesschalck 2004b:457). The model is summarized below:

6 Pope (2008) traces this difference to the diverging traditions of US and Europe. While in the US ethics is conceived of as “drawing a line and then getting as close to it as possible” (p. 79) (i.e.: compliance-oriented), in Western Europe ethics is not a simple case of lawful conduct, but also implies the ability to judge competently for oneself what is right and what is wrong (i.e.: integrity-oriented).

7 An interaction type is understood as a particular combination on the grid-group scale – see Figure 1.

		GROUP	
		<i>High</i>	<i>Low</i>
GRID	<i>High</i>	Fatalist style (individual discretion is reduced by a large body of rules and formal constraints; little social cohesion in the organization); Although it may exist empirically, this is not a deliberate design in public administration.	Hierarchist style (strong emphasis on rules and procedures; nature of discretion of individuals varies with formal position in the organization)
			<i>Dominant standard in ethical decision-making:</i> Organizational rules/ laws and public interest <i>Dominant type of unethical behaviour:</i> Rule-fetishism/ law and principle-fetishism
	<i>Low</i>	Individualist style (individuals in the organization are engaged in constant competition with each other, given considerable degree of discretion and expected to use it as they see fit)	Egalitarian style (equality of power relations in the group; individuals have considerable discretion and are expected to use it for negotiating with their peers about decisions they make)
		<i>Dominant standard in ethical decision-making:</i> Self-interest/ organizational interest/ efficiency <i>Dominant type of unethical behaviour:</i> Selfishness/ organization-fetishism/ efficiency-fetishism	<i>Dominant standard in ethical decision-making:</i> Friendship/ team interest/ stakeholder orientation <i>Dominant type of unethical behaviour:</i> Nepotism/ team fetishism/ preferential treatment of stakeholders

Figure 1: Organizational processes and ethical decision-making
(adapted from Maesschalck 2004a and 2004b)

Thus, with the individualist style, the following ethical decision-making standards are dominant: self interest, organizational interest and efficiency. The typical ethical failures will be selfishness, organization-fetishism and efficiency-fetishism. With egalitarianism, the dominant standards are friendship, team interest and stakeholder orientation, while unethical behaviour tends to take the form of nepotism, team fetishism and preferential treatment of stakeholders. Finally, in a hierarchy the dominant standard of ethical decision-making is organizational rules and public interest, while rule- and principle-fetishism are the typical ethical failures⁸.

Maesschalck's proposed theory is of significant importance, since it builds a bridge between the body of work inspired by developmental psychology and the field of public management. It specifies how particular individual moral types relate to organizational structure to produce (un)ethical decisions. However, the theory is quite recent and could benefit from further refinement and particularly from empirical testing.

Finally, there are some authors touching on the relationship between an organization's external environment and ethical decision-making. Linda deLeon (2003) conceptualizes external environmental

⁸ The theory's propositions come out of a combination between grid-group theory (which specifies organizational structure) and a typology of ethical decision-making developed by Victor and Cullen (1987, 1988), which is largely inspired by moral psychology. For reasons of space, Victor and Cullen's ideas are not presented here.

pressures as a combination of goals (i.e.: preferences regarding possible outcomes) and means (i.e.: knowledge of cause-effect relations). In this way, her model applies not only to public bureaucracies (here assimilated to one particular organizational type – hierarchies), but also to political parties, network organizations, or collegial bodies. Key is that the clarity over organizational goals and means will determine particular decision-making styles, to which different ethical rules become attached.

For example, in a hierarchy goals are clear and means are certain, and the ethical response which is encouraged is discipline and obedience to rules. By contrast, in a competitive system, means are well-known, but goals are ambiguous (for example, political arenas, where goals must be chosen either in a winner-take-all approach or through negotiation and bargaining). In these situations the ethical expectation is to play by the rules - but whatever is not explicitly forbidden is permitted. In communities means are uncertain, but the goal is clear. This category usually incorporates professional associations, faculties, small cooperative organizations, and the ethical rule is “one for all, and all for one” (deLeon 2003:573), i.e. adherence to group values. Finally, anarchies are characterized by uncertainty in both means and goals – these decision processes are the well-known “garbage cans” theorized by Cohen, March and Olsen (1972)⁹. Structurally, deLeon explains, anarchies take the form of network organizations, with no umbrella authority over participants. The ethical principle promoted here is “live and let live” (deLeon 2003:574): people are expected to exercise self-control and follow their personal standards, without enforcing these onto others.

Linda deLeon's work is valuable, because it theorizes links between an organization external environment (expressed through different configurations of means-ends clarity) and dominant ethical standards on group level.

In conclusion, research in administrative ethics has only just begun to scratch the surface. In terms of ethical decision-making, three levels of analysis are visible: (1) the individual, (2) the organizational, and (3) the environmental. The models that have been developed so far fail to account for all of these consistently. The impact of levels (2) and (3) is not heavily theorized, and the work that does exist is in much need of empirical testing.

3.2. European studies

The field of EU studies has surprisingly little to offer for a research project on ethics in the European public administration. For example, studies of the European civil service are not very numerous. One oft-cited classic is Coombes' *Politics and Bureaucracy of the European Union* (1970). Another two significant pieces are Edward Page's *People Who Run Europe* (1997) and Stevens and Steven's *Brussels Bureaucrats? The Administration of the European Union* (2001). These works take the form

⁹ The garbage can model of decision-making applies to organizational settings characterized by problematic preferences, unclear technology and fluid participation. Under these conditions, problems and solutions will be paired rather randomly (Cohen, March and Olsen 1972).

of extensive monographs of the EU civil service, but treat questions of ethics and accountability only marginally. Nonetheless, they all elaborate on several themes which are relevant for my research interest.

First, there seems to be a shared agreement that EU civil servants make up a coherent body of employees. Page (1997) argues that the common pay system, career structure and conditions of work, plus the shared enthusiasm for building the institutions of Europe point to the existence of just one EU civil service – and not many. Stevens and Stevens (2001) add to the list the common work location and lifestyle as expatriates. This does not mean, however, that the “parallel universe” of EU staff is marked by uniformity – divisions are often cited along the lines of language and nationality.

This brings us to a second point of agreement in the literature: the distinctiveness of the European civil service. This distinctiveness is frequently located in its multi-national and multi-lingual character, and the challenges of striking a compromise between respecting national identities/ interests and building a truly European administration. The recruitment policy for permanent EU staff reflects this very well: on the one hand, merit is the sole criterion for selection; on the other hand, staff should be picked out from the “broadest possible geographical basis”¹⁰, which by default means that nationality is given consideration *alongside* merit (Gravier 2008). From this dualism follows a range of themes usually associated by the literature with Member States' influence on staffing policies, and on the Commission's administrative services generally: the informal system of “national quotas”; the national “flagging of posts”; the *cabinets* as national bastions; the circumvention of official recruitment procedures by way of *parachutage*, *piston*, *sousmarin* etc. (see Spence 1994, Page 1997, Stevens and Stevens 2001). The spread and controversy surrounding these practices is so pervasive that the topic has found its way to classical handbooks of EU studies as well (for example, Cini 2003, Peterson and Shackelton 2006).

The descriptive, monographic accounts of the European civil service cited above are complemented very well by a small but very interesting body of anthropological research, which sheds light on the organizational culture of the Commission, and on processes of identity formation among European elites generally (Abélès, Bellier and McDonald 1993; Shore 2000, 2005; McDonald 1997, 2000; Bellier 2000, Cini 1997). Most of this literature uses an interpretative methodology, and provides very detailed accounts on the Commission's cultural landscape and life in the European administration.

A common research theme is the Europeanization of the EU civil service (i.e.: the degree to which employees have acquired a distinctive European identity or ethos). Shore (2000), for example, finds that the European civil service espouses a strong *esprit de corps* and loyalty to their employer institution. Also, the manner in which the Commission defines itself as the motor of integration and an “honest broker” between national and sectoral interests is strongly reflected in the identity of EU bureaucrats: “the notion of a *fonction publique européenne* and the idea of being positioned 'above' national

¹⁰ As established in Article 27 of the *Staff Regulations*.

politics have [...] become key themes in structuring the identity and self-image of Commission officials” (Shore 2000:178). However, it is not clear to what extent the national identities of EU civil servants have been superseded by the European one. On this issue, Bellier (2000) finds that what is actually taking place in the Commission is a kind of cultural compromise, which permits the co-existence and hybridization of multiple national traditions, without clearly fashioning a new, distinctive European identity: “without as yet allowing one to see the totality of positive attributes of a common European culture, there are clear signs of difference relative to national attributes” (Bellier 2000:149).

Crucially, these anthropological accounts touch specifically on the issue of public ethics. McDonald (1997, 2000) documents a persistent North/South division in what regards conceptualizing the frontiers between administration and politics, public and private, ethical and not ethical. For those in the South, patronage and personal connections “operate as an important, if not the only moral system [...] Honour and manliness are the rewards of knowing how to work this system, and shame, naivety and stupidity are among the sanctions on ignorance.” (McDonald 1997:66-67) For those in the North, imbued with ideals of rationality and impartiality of the administrative system, the Southern practices may be easily characterized as corrupt or at least unethical. It would be safe to assume that, with the advent of new personnel from Central and Eastern Europe (following the enlargement waves of 2004 and 2007), the Commission is even more strained by divergent (culturally-determined) notions of public ethics.

Shore (2000, 2005, 2007) is another important reference for a cultural account of ethics and corruption in the Commission. Although he too acknowledges the role of nationality in confounding ethical issues, the main thrust of the argument is elsewhere. Conducted in the wake of the corruption scandal leading up to the resignation of the Santer Commission in 1999, his study recounts the presence of a “vibrant, anti-Weberian 'informal' system of administration, based on private interests, personal networks and 'pragmatic' codes of conduct” (Shore 2005:138), which has invited fraud, nepotism and irregularities. Informality is a direct result of the Commission's excessive legalism and bureaucratisation, which leads staff to bend the rules in order to “get things done”. On the other hand, the lack of a well-established personnel policy encourages employees to behave opportunistically, calculating their own career paths and personal networks (Shore 2000).

If research on the European civil service is not abundant, studies of the European Commission from an organizational perspective are also relatively few. It is only recently that academics have opened the “black box” and started studying the Commission as an organization. Trondal (2007a) for example, speaks of a “public administration turn” in integration research, which has brought theories, concepts and hypothesis from the discipline of public administration into EU studies and has favoured (perhaps not surprisingly) significant research on the Commission.

Out of this mounting research, several pieces are well worth considering, as they deal with processes of socialization of personnel, role interpretation and related patterns of decision-making.

Although findings are diverging, the overarching message is clear: Commission employees hold widely different views and preferences on the basic principles of political authority in the EU. The commonplace assumption that the Commission is a unitary actor striving for further integration so as to increase its own competences is far from accurate. As documented by Lisbet Hooghe in her seminal study *The European Commission and the Integration of Europe: Images of Governance* (2001), only a minority of top officials take positions which actually coincide with Commission self-interest. In a follow-up article in 2005 she revisits the same issues, asking to what extent the European Commission has been able to socialize its employees into supranational norms. Taking a crucial test group career civil servants in senior positions, the study finds that, although there is strong support for supranational norms within this group, this is due more to national rather than international socialization. Generally speaking, however, the jury seems to be out on the transformative clout of the Commission. Trondal (2007b) finds that seconded national experts – traditionally considered to owe their loyalties to national governments – are more supranationally than intergovernmentally oriented.

Finally, it should be noted that there are a few works dealing particularly with the issue of ethics in the European Commission. Out of these, none is dedicated to investigating decision-making processes marked by ethically ambiguous elements. Probably the most valuable contribution is Michelle Cini's recent book *From Integration to Integrity: administrative ethics and reform in the European Commission*, which investigates the Commission's response to the corruption scandal of 1999. In assessing the complex reform packages introduced with the *White Paper on European Governance* and the more recent *European Transparency Initiative*, Cini borrows from the “ethics management” literature (discussed above) the concept of “ethics infrastructure” - loosely defined as an ensemble of institutions, procedures and policies that act as incentives for good behaviour and disincentives for corruption and unethical conduct. Crucially, the components of the ethics infrastructure “serve as criteria against which a qualitative assessment of the Commission's approach [...] can be judged” (Cini 2007b:120). She finds that the Commission's approach to ethics has not been systematic; moreover, there are two parallel systems in operation – one for Commissioners and one for permanent officials – which are almost diametrically opposed. While instruments targeting Commissioners are very much based on norm-induction and socialization (i.e.: the so-called “integrity approach”), for civil servants a strict control strategy seems to be dominant (i.e.: the “compliance approach”).

There are at least two other articles dealing with the ethical dimension present in the WPEG (Derks 2001, Hine and McMahon 2003), both of which use the language of the “ethics management” literature as well. Their findings are similar to Cini's. Moreover, there seems to be a suggestion in all of these works that – formally speaking – the Commission's approach is by-and-large in line with best practices observable internationally. Rules are in place. However, the elusive cultural level poses a challenge, in several ways.

First – and most important – there is a concern that reform efforts may not be able to penetrate the organizational culture and align it with the new standards. Derks explains that “an effective ethics

management program [...] must be based on an understanding of the values and loyalties in the existing culture and on how and why employees and management think the way they do” (2001:346). After reviewing the WPEG she concludes: “without culture change, the White Paper's process improvements can do little to prevent a recurrence of the events that led to the 1999 resignation of the European Commission” (Derks 2001:357). Much in the same line, Hine and McMahon conclude their analysis of the WPEG with the observation that the ethics program as a whole has a marked rule-based orientation (a direct function of the rule-based legalistic culture of the Commission), which means that “the reform will struggle to reach the level of underlying values” (2003:31).

Secondly, the culture of the Commission is in no way homogeneous, as already indicated by the anthropological studies cited above. Divergent conceptions of ethical / unethical are a challenge – as Cini observes, “ethical issues are contested issues and there are often very different understandings across cultures, even within the EU [...] For the Commission the problem is that these different cultural perspectives exist side-by-side within one organization” (2007b:134).

In conclusion, research on the European Commission has largely left untouched the issue of public ethics. The few studies that have been written on this topic adopt a public management perspective and are primarily directed at benchmarking the WPEG reforms. To my knowledge, there is however no comprehensive assessment of their impact as yet. Other parts of the literature touch on the issues of socialization, roles and identities, which are important for ethical decision-making, because they give rise to conflicting loyalties and understandings of what is permissible and what not. Here the dominant theme in the literature is represented by the tension between the national and the supranational.

4. Argument and theoretical framework

The central claim guiding this research project is that the ethical challenges marking life in the European Commission are peculiar. This peculiarity is primarily due to the hybrid character of this institution and the environment in which it carries out its activities. Perhaps one of the best accounts of the Commission's incongruent organizational logics is given by Christiansen (1997), who identifies two lines of internal conflict: one marked by the need to be accountable simultaneously to the Member States and to the citizens of Europe (“multiple accountability”) and the other illustrating the Commission's dual function of providing executive government and public administration (“politicized bureaucracy”). Starting from this observation, the author builds the following typology, noting that “the very fact that there is no perspective for the resolution of these conflicts is what makes the European Union so distinctive” (Christiansen 1997:76):

Organizational logics within the European Commission		Institutional accountability	
		“Diplomacy”	“Democracy”
Decisional rigidity	“Bureaucracy”	<i>International secretariat</i>	<i>Public administration</i>
	“Politics”	<i>Independent agency</i>	<i>Cabinet</i>

**Figure 2: Organizational logics within the European Commission
(cf. Christiansen 1997)**

Christiansen illustrates his point by a comparison between DG IV (Competition) and DG XVI (Regional Policy). He argues that the two units have found different resolutions to the bureaucracy-politics tension, defined as a “clash between pervasive political interests and the rigidities on the *acquis communautaire*” (Christiansen 1997:77). While DG IV has developed a more “political” conception of its role, opening up the decision-making process to bargaining and accommodation of national and sectoral interests, DG XVI became more “bureaucratic”, by developing new rules, imposing strict procedures, and closing the decision-making process to political considerations.

Christiansen is not alone in pointing out either conflicting organizational logics within the Commission, or sharp differences between DGs.

Students of the EU frequently discuss evidence of bureaucratic fragmentation across DG lines. Michelle Cini, for example, argues that “DGs within the Commission have their own approach to policy, their own ways of working and their own organizational objectives” (1997:74). She documents such differences at the level of administrative culture by contrasting DG IV (Competition) to DG XI (Environment) – while the first seems unabashedly neo-liberal in supporting market competition, the second was equally committed to a rather different vision of sustainable development and ecological awareness. In labelling the Commission a “multi-organization” Laura Cram (1994) also underlines differences between DGs - “different Directorates-General within the Commission have developed very different working practices and have, on occasion, established quite opposite relations with important sectoral actors ” (p. 201). More recent scholarship supports this conclusion – Schön-Quinlivan (2008) presents evidence that the Kinnock administrative reforms have hit differently DG Transport and Energy (TREN) and DG Regional Policy (REGIO). The author underlines the importance of leadership at the meso-level for the internalization and local ownership of the reform.

Apart from this, the tensions between the political and administrative functions of the Commission, as well as the multiple sites of accountability have been explored by other authors. To give just an example, Hooghe (2001), following closely Neunreither (1995), identifies two axes which by-and-large delineate the dynamics of European governance -arguably – the future of the European polity. These are: the principles of decision-making (technocratic vs. democratic) and the role of the international body¹¹ (principal vs. agent). This argument obviously has much in common with

¹¹ Defined in relation to the European citizens.

Christiansen's account.

The Commission is a contradictory place, hosting a variety of bureaucratic traditions and conceptions on what the essence of the EU polity is – and should be. As Hooghe rightfully observes, “there are palpable tensions among these traditions, and these impose contradictory and, from time to time, incompatible demands on to officials.” (2001:40).

Taking cues from the literature presented above, I hypothesize that resolution of ethics dilemmas by Commission officials will tend to follow the politics-bureaucracy tension, on the one hand, and the pressure of dual accountability to Member States and European citizens, on the other. The ethical “golden rules” which might apply to these distinct “faces” of the Commission would be a combination between how to do the job and what interests to serve. Following this logic, it could be possible that Commission officials show their “supranational” side when they are in the “democracy” mode and their “national” inclinations when they are in the “diplomacy” mode. Similarly, they would be more inclined to exercise discretion in the “politics” mode and will withhold when behaving like a bureaucracy. What is considered acceptable behaviour in one instance may not be tolerated in another.

What is more, I believe that these differences will be visible at the level of DGs. If indeed - as documented by previous research - these units have different *modus operandi*, different ways of doing things, then interpretations of ethical standards should also vary accordingly.

On a more general note, my project takes a neo-institutionalist perspective. I work on the widely-cited assumption that “institutions matter” - in this case for structuring reaction to ethical dilemmas. I draw on work done in the tradition of sociological institutionalism and particularly on March and Olsen's concept of “logic of appropriateness” (March and Olsen 1989, 2004). According to this view, individual behaviour is governed by “internalized prescriptions of what is socially defined as normal, true, right or good” (March and Olsen 2004:3). The “logic of appropriateness” holds that people decide on a course of action by investigating the type of situation they confront, the role they embody and the norms governing that particular situation and role: “What kind of situation is this? What kind of a person am I? What does a person such as I do in a situation such as this?” (March and Olsen 1989:23). In this view, people will do what is most appropriate. Thus, individual behaviour cannot be understood in separation from the larger societal or organizational contexts, and the historical processes which have shaped social learning, and determined the validation or rejection of norms of behaviour. In the cultural-sociological approach, institutions provide the cognitive templates for interpretation and action, and shape the identities, self-images and preferences of individuals (Hall and Taylor 1996).

What is more, institutions engender multiple roles, sometimes ambiguous, inconsistent and competing, and it is precisely these role clashes which can highlight ethical dilemmas. Trondal, for example, takes an institutional perspective in his study on seconded national experts in the Commission, arguing that “an institutional perspective alludes to the notion of 'ambiguous

representation', where civil servants act upon multiple, and sometimes, poorly understood roles" (2006:2).

There are several reasons supporting the choice of this particular theoretical stance. First of all, administrative ethics is essentially about interpreting one's role as a public official, and the standards of appropriate behaviour that go with it. As it has been suggested by the theoretical work reviewed in section 3.1 (particularly Maesschalck (2004b) and deLeon (2003)¹²), ethical decision-making follows internalized rules and prescriptions which respond to March and Olsen's question of "What does a person such as I do in a situation such as this?". Added to that, empirical research has proven that roles and role interpretations are crucial for deciding on ethical issues – Morgan and Kaas (1993), for example, have documented an "ethical crisis of role reversal" among senior US public servants working in local government, as their careers went from subordination of administration to politics towards considerable administrative control over the political process.

Secondly, sociological institutionalism provides the necessary analytical toolbox for capturing the complex and sometimes contradictory nature of the EU political settlement. More specifically, it can capture the multiplicity of roles engendered by the conflicting logics of the Commission, split between administrative and political functions, as well as accountability claims from Member States and Europe's citizens.

"Institutions matter", but there are other factors to take into consideration as well. One is the diversity of nationally-defined conceptions of public ethics, which co-exist in the organizational culture of the Commission - as anthropological studies have shown, what is acceptable behaviour in the South is not tolerated in the North. However, the socialization clout of the Commission as a whole (to the extent that it exists) may lead to a dislocation of nationally-driven conceptions, and their replacement by new visions. Thus, the amount of time spent in the EU administration (the length of service) may be a crucial factor in shaping ethical decision-making. The ethical sensitivity of a policy issue is also important. As deLeon suggests, the clarity of means and goals matters – in a "garbage can" situation, where goals and technologies are ambiguous, ethical standards are also volatile (each does as his/ her conscience dictates). By contrast, a routine operation would involve less appeal to one's personal convictions and more rule-following. Other variables, such as public opinion, lobby pressure and visibility, Member States pressure, would have a bearing on ethical decision-making. Because of the multitude of independent and intervening variables outlined above (and the list is probably not exhaustive), an inductive approach seems to be the most appropriate for this project. The framework just outlined should be understood as an initial map to guide empirical research.

12 To be clear, these authors do not discuss the influence of institutions on ethical decision-making, but rather seem to assume that these decisions are governed by some sort of norms shared within the organization/ group.

5. Methodology and research design

The first step is to clarify better the specificity of the supranational environment its impact on ethical decision-making. Secondary literature, particularly coming from the field of anthropology, is valuable, as its goal (sometimes clearly stated) is to give an account of reality as seen through the participants' eyes. Memoirs of Commission officials can also be a valuable source¹³. Press coverage of Commission contested decisions, particularly including interviews with officials, would also be helpful. Moreover, archival research, particularly of internal minutes of meetings in the Commission (to the extent that they are publicly available) can shed some light on possible patterns of ethical decision-making and the circumstances in which they might be activated. The study of all sources mentioned above would ideally be complemented by insights gained through participant observation.

If all goes well, this first phase should produce a theoretical model, or a set of propositions which are to be tested empirically. Most probably, this testing will be done through the comparative method, taking Directorate Generals as units of comparison. Because research is confined within a single institution, a number of factors can be held constant, for example organizational structure, since all DGs have the same hierarchical make-up, or the national mix among employees. Furthermore, specific classes of civil servants can be selected within the DGs, thus controlling for length of service (and associated socialization effects), or level of authority (and the amount of discretion afforded in decision-making).

In order to illustrate the “multiple accountability” dimension, I assume that policy areas under the First Pillar are representative of the “democracy” mode, while those under the Second and Third Pillar would fall more on the side of “diplomacy”. And since DGs are by-and-large structured along policy portfolios, we would have potentially “democratic” DGs and “diplomatic” ones. The “politicized bureaucracy” dimension will also be illustrated by policy areas, but taking into consideration the extent to which the field is subject to “hard” or “soft” modes of regulation. For example, in the area of competition regulation is quite dense and comes in the form of the *acquis communautaire* (this would fall on the “bureaucracy” cell), in contrast to social policy, where the so-called Open Method of Coordination is in place (this would fall on the “politics” cell).

The case selection will therefore be guided by the operationalization above. Ideally, I will have four DGs (case studies) which would correspond to the “international secretariat”, “independent agency”, “public administration” and “cabinet” types respectively. One (or several) control case would also be needed, in the form of a DG which does not fit in any of these four categories.

The method by which the theoretical model will be tested is semi-structured interviews, conducted preferably with middle management and senior EU civil servants working in the DGs

13 For example, Paul van Buitenen, the whistleblower who has revealed to the European Parliament a number of corrupt practices in the EC (eventually leading up to the resignation of the entire Commission in March 1999), offers an account of these events in his book *Blowing the Whistle: One man's fight against fraud in the European Commission* (Politicos Pub, 2000).

selected as case studies. These interviews will include hypothetical ethical dilemmas (the so-called “vignettes”), most probably not in the multiple-choice format that is characteristic, but as open-ended questions. The vignettes will be developed in two stages. First, I will conduct an analysis of Commission regulations pertaining to conduct of staff, in order to uncover areas which are under-specified, in other words “pockets of discretion”. In a second step I complete and adjust my analysis in accordance to observations gathered in the field, through participant observation (the first phase of the research project). The vignettes will be pre-tested before using them during interviews¹⁴.

Conclusion

Despite the extraordinary development of EU scholarship during the last decades, we still know too little about the nature of public service ethics in the supranational administration of Europe. In trying to shed light on this issue, the project adopts a neo-institutionalist perspective, which brings to the forefront the conflicting organizational logics of the European Commission. It is my expectation that conceptualization and resolution of ethical dilemmas will vary in accordance with these institutional contradictions, thus revealing multifaceted role interpretations in the European civil service.

This project can offer concrete and important policy lessons. If indeed ethical interpretations vary inside the institution, then policy action should target the sources of this variation and promote homogeneity. Viewing the centrality, visibility and power of the European Commission, the importance of such intervention cannot be denied, and becomes intertwined with the broader pressing questions of democracy and legitimacy in the European polity.

¹⁴ By consulting with external experts or key actors in the Commission (the Commission has recently established an internal advisory board on ethical issues), or both.

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