

Agency in compliance with institutions: The case of professional expert-organizations and politico-ethical agency

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Abstract

As contemporary organizational life is increasingly rule governed, organizational actors, most notably professionals, perform their work by complying with institutional rules, stemming from regulatory bodies external and internal to organizations. This begs a question of the role of agency in compliance with institutions that is largely ignored within organization theory. A weak form of agency in compliance is found in practice theory and practice-driven institutionalism, in terms of actors mindful enactments of institutions on the basis of mastering shared practices for applying institutional rules. These are characterized as first-order practices of compliance with institutions. Extending the Wittgensteinian-inspired philosophical foundation of practice theory, modes of compliance in so-called “hard cases,” where shared practices do not apply as a basis for agreement in following institutional rules, is conceptualized as second-order compliance practices, involving a strong mode of agency. In these cases, the aim is to reach agreement on how rules are to be applied beyond established first-order practices by engaging larger frameworks of shared forms of life and more open and explorative attitudes to move institutions forward for a common good. It is argued that second-order compliance can be understood as a politico-ethical mode of agency in the Kantian tradition, supplementing prevalent notions within organizational institutionalism of agency as primarily political.

Keywords

Agency, compliance, organizational institutionalism, practice theory, professional expertise, rule-following, Wittgenstein

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Introduction

Increasingly, contemporary organizations and their employees appear to reach their goals by following the rules of institutions that define their activities and ways of operating (Bromley and Powell, 2012; Reay et al., 2017; Scott, 2014). The sources of these regulatory bodies are manifold, spanning from governments and supra governmental organizations such as the EU (Jacobsson and Sahlin-Andersson, 2006; Majone, 1997), via meta organizations providing standards such as the International Standardization Organization (Brunsson et al., 2009) and occupational branches such as associations of medical doctors and lawyers (Busch, 2011; Sandholtz, 2012). This is supplemented and supported by an expansion of codified and abstract knowledge as a basis for organizational practices driven by higher education institutions in the so called knowledge economy, what is often characterized as professionalization (Abbot, 1988; Busch, 2011). This is most notably of course in the growing professional work and services sector (Gorman and Sandefur, 2011; Høiland and Klemsdal, 2020) where performance of work is based on professional expertise. In general, professionalism means complying with institutional rules and standards for adequate and legitimate work within a given field (Abbot, 1988; Freidson, 2001). In science, medicine, or accountancy, actors and their organizations come to be recognized as competent (and therefore legitimate) professionals primarily by operating in accordance with the institutions defining their respective areas of competence. Activities ranging from truth seeking to healthcare provision tend to become secondary products of compliance with institutional rules and procedures constituting what it means to perform these activities in sensible and appropriate ways (Currie et al., 2012; Fuchs, 1992; Timmermans and Oh, 2010; Timmermans and Berg, 2010).

This context of contemporary organizational life as increasingly rule-governed, begs a general question about the relation between organizational actors' compliance with institutional rules and their individual agency in this. Institutions of governments, bureaucracies and professions are often characterized as developed for the maintenance of the common good (cf. for instance Du Gay, 2000). Still, at least since Weber, concerns have been raised in theories of organization about institutions in the shape of rules and regulations, working as normative "iron cages" constraining actors autonomy and agency, conforming their judgments and performances at work (Alvesson and Willmott, 1992; DiMaggio and Powell, 1983; Power, 2021; Weber, 2019; Whyte, 2002), leading to conventionalism and insensitivity (Blau and Meyer, 1987; Merton, 1940), stupidity (Alvesson and Spicer, 2016), and even perverse and tragic consequences (Bauman, 1989). As institutions, whatever good they are intentionally designed for, always are potentially oppressive for individuals or particular groups of people due to political or ideological bias (Munir, 2015; Willmott, 2015), these problems cannot be handled fully by institutional design per se (Klemsdal, 2013). Rather, the possibility of creating and maintaining institutions for a common good must ultimately involve the actors enacting them; in their employment of *agency in compliance with institutions*. To fully grasp this, we then need to conceptualize appropriate notions of agency in compliance with institutions. In this paper our purpose is to develop a notion of agency in compliance with institutions with the capacity of advancing the institutions for a common good beyond established normative bounds. In this we coin an aspect of agency that is still underdeveloped within organization theory.

Generally, in organization theory compliance and agency has been juxtaposed. Within the frame of so called organizational institutionalism, the branch of organization theory especially dedicated to the study of organizations as internally and externally rule-governed social contexts, compliance has traditionally been associated by default with mindless rule following (Lawrence et al., 2009). Agency, on the other hand has been associated with forms and conditions that would allow actors to either escape institutional constraints, challenge or undermine them, or use them, in all cases for different kinds of political purposes. Within institutional theory forms of agency

has been classified as varieties of “political agency” (DiMaggio, 1988), as in the protection of entrenched positions or vested interests (Micelotta and Washington, 2013) or the strategic use of institutions to promote and legitimize professional or personal interests and outcomes (Binder, 2007; Bjerregaard and Jonasson, 2014; David et al., 2017; Maguire and Hardy, 2006; McPherson and Sauder, 2013; Munir and Phillips, 2005; Riaz et al., 2011). Political agency has also been portrayed as institutional entrepreneurship, enacting institutional change (Battilana, 2006; Leca and Naccache, 2006; Maguire et al., 2004) or breaking with institutions to enact new ways of doing things (Lawrence et al., 2011) through “positive institutional work” (Nilsson, 2015), or by examining how institutions are contested and disrupted to advance suppressed positions or interests (Symon et al., 2008), “attacking or undermining mechanisms that lead members to comply” (Lawrence and Suddaby, 2006, p. 235). Taken together, these variants of political agency reflect as Munir (2015, 2020) and Willmott (2015) notes, how institutions become strategic political instruments for particular actors or groups, whether from entrenched or oppressed positions.

Recent developments within organization theory based on situated or so called process perspectives drawing on micro sociological (Garfinkel, 1964; Goffman, 1981; Rawls, 2008), structurationist (Giddens, 1984; Reed, 1997) and social psychological (Mead, 1934; Weick, 1995) approaches has, however, sensitized a space for agency in compliance through the concept of *enactment*. From these approaches institutional rules (for instance in terms of organizational or bureaucratic rules and routines, as well as in terms of wider societal structures and regulatory bodies) exists primarily as enacted by more or less mindful organizational actors in practice, adapted to local situational circumstances (Emirbayer and Mische, 1998; Feldman and Pentland, 2003; Nicolini, 2012; Tsoukas and Chia, 2002). This perspective on agentic enactment of institutions spans adaptations of general rules and routines in individual cases (Feldman and Pentland, 2003) and handling of organizational paradox (Miron-Spektor et al., 2018). While this can be said to overcome the juxtaposition of agency and compliance, as for instance is implicitly argued by Smets et al. (2017) in coining a “practice-driven” institutionalist account, we will show (below) that this only leaves us with a rather weak form of agency in compliance through mastering of shared practices. This way of framing agency in compliance hardly account for individual responsibility beyond the socially established normative bounds of institutions and can therefore be associated with modes of enacting “discretionary commitment” to established regimes of rules and regulations (Du Gay and Salaman, 1992). Further, such a notion of agency in compliance might just as much account for mechanisms of “institutional drift” (Mahoney and Thelen, 2010) than for deliberate enactments of institutions. Thus, what is lacking in the literature is the formulation of a theoretical basis for a strong form of agency in compliance with institutions, emphasizing the agents responsibility for advancing common good.

In this paper, our contribution is thus to explore a perspective on the relation between agency and institutions that tries to move beyond the dichotomy between on the one hand institutions and organizations as dominating taken for granted structures relieving the actors of individual responsible autonomy while enacting them, and on the other, strategic agents exploiting institutional structures for advancing partial interests. Here, we explore this form of agency in light of a problem addressed in Wittgenstein’s (2009) later philosophy concerning how we relate to rules in social interactions such as through communication in language, with implications for other modes of institutionally constituted interaction.

Taking institutional theory as our primary theoretical reference point, we start by elaborating how notions of agency in compliance in terms of actors adapting rules competently to their situation or circumstances has been tackled by a recently formulated practice-driven institutionalist account (Smets et al., 2017). On this view institutions are constituted by social practices securing agreement on how institutional rules are applied, to be mastered by competent actors. Our

discussion of rule-following then moves on to explore so-called “hard cases” (McDowell, 1998a; 1998b) of institutional compliance—interactions that are highly institutionally constrained, in which participants recognize that agreement on application of rules is difficult but possible. We argue that these cases invite a notion of agency that centers on responsibility for reaching agreement about what it means to perform according to the institution’s rules, with the potential to move the institution forward in new ways. In these cases, we contend that actors engage in second-order practices of agreeing about rule-following rather than first-order practices of simply enacting rules.

We further contend that hard cases are especially likely to arise in the expert professions, where the boundaries of work are defined by following abstract rules. These rules, which demarcate professional work and expertise from laymen’s efforts to achieve similar practical outcomes, are likely to appear vague and indefinite regarding their application in practice (Abbot, 1988). We illustrate these theoretical points through a reading of Lamont’s *How Professors Think* (2009), which discloses how cross-disciplinary grant committees reach agreement in assessing scientific and academic quality. We discuss how this form of agency accommodates and enhances a neglected aspect of Emirbayer and Mische’s (1998) influential account of agency as both ethical and political. This politico-ethical agency is understood as a collective and relational endeavor, pursuing agreement about what it means to enact an institution for some common good.

Institutions, practices, and agency

Practice-driven institutionalism

So-called “practice-driven institutionalism” (Smets et al., 2017) offers a starting point for understanding the agency involved in complying with institutions by anchoring institutions *and* agency in social practices or shared practical understandings (Schatzki, 2002, 2006; Smets and Jarzabkowski, 2013; Smets et al., 2017). Central to this understanding of the relation between agency and institutions is a discussion of rule-following, referred to in Wittgenstein’s later writings (e.g. *Philosophical Investigations*, 2009). A key distinction is drawn between rules and their application—that is, how to follow a rule does not follow from the rule itself but depends on how we grasp the rule (Holt and Mueller, 2011; Malcolm, 1989). This causes a problem with regard to the normative force of a rule. The rule itself cannot tell the rule-follower how to go on because it can be interpreted in different ways. Moreover, an interpretation also stands in need of being interpreted. In other words, an interpretation requires another interpretation, which stands in need of further interpretation in an infinite regress, which seems to undermine the possibility of rule-following altogether. Responding to this problem, many commentators appeal to the community of rule-followers. David Bloor’s take on this issue provides an example of such a reading:

[I]n following a rule we move automatically from case to case, guided by our instinctive (but socially educated) sense of “sameness.” Such a sense does not itself suffice to create a standard for right and wrong. It is necessary to introduce a sociological element into the account to explain normativity. Normative standards come from the consensus generated by a number of interacting rule-followers, and it is maintained by collectively monitoring, controlling and sanctioning their individual tendencies. Consensus makes norms objective, that is, a source of external and impersonal constraint on the individual. (Bloor, 1997, p. 17)

This way of reading Wittgenstein rule-following considerations suggests that applications of a rule or expression *must* be embedded in social practices into which language users are socialized. The competent practitioner masters this shared practical understanding of how to apply the rules within a normative framework that determines whether an application is correct or not (Giddens, 1984;

Savigny, 1991; Schatzki, 2002, 2006). Moreover, the rule-follower generally knows how to proceed or apply a rule, which means that there is no threat of being faced with a regress of interpretations. As Smets et al. (2017) put it,

Wittgenstein's (2009) argument that, at some point, practitioners "know how to go on" is echoed by Giddens (1984: 43) and—through Schatzki (2002, 2006)—is formulated as the collective and "general understanding" which practice theorists accept as guiding the appropriateness of specific actions in any given context or situation. (p. 370)

From this practice perspective, institutions are understood as general rules of conduct, maintained during recurring interactions within shared and established practices for following the rules. On this view, actors' ability to comply with institutions is secured through mastery of the social practices that underpin those institutions. We then have a theory that explains the possibility of agreement in rule-following that again explains how general institutions such as language or more specific institutions such as medicine or law, work as generic resources for interaction and communication.

Agency to comply

This understanding of institutions as generic resources for interaction and communication has clear links to Emirbayer and Mische's (1998) conception of agency, which has become a central reference point for institutional theory's discussions of agency (Dorado, 2005; Lawrence et al., 2011). According to Emirbayer and Mische (1998), human agency can be conceptualized as

a temporally embedded process of social engagement, informed by the past (in its habitual aspect), but also oriented toward the future (as a capacity to imagine alternative possibilities) and toward the present (as a capacity to contextualize past habits and future projects within the contingencies of the moment). (p. 963)

These three temporal modes or elements of agency function as a dynamic whole whose interplay reflects variations in the structures of action, whether making new moves (*projective*), drawing on routinized action repertoires (*iterative*), or less institutionalized (*practical-evaluative*) action to accommodate unexpected contingencies.

All of these are modes of agency because they are exercised with *effort*, which Emirbayer and Mische (1998) define as "the force that achieves, in Kantian terminology, the interpenetration of means-end rationality and categorical obligation" (p. 965). This account of agency is both instrumentally goal-oriented and constrained by an obligation or responsibility to do the right thing. To that extent, agency becomes both a political matter of realizing goals and interests instrumentally and an ethical matter of doing the right thing as two aspects of the different temporal modes.

Applying these ideas to institutional theory, we can say that when actors engage with institutions in an institutional context, they always make an effort to comply with general rules for specific purposes in specific situations (Smets et al., 2015)—that is, they strive to achieve their instrumental ends by doing the right things. By mastering the practices that underpin the institutions, knowledgeable actors acquire the requisite agency to cope (iteratively) and improvise (projectively or practical evaluatively) with institutions and institutional contexts by adapting their improvisations to how others understand them. In this way, the practice perspective accounts for institutional maintenance and change as part of the same dynamic in situations where the application of the rules is not questioned because it is embedded and routinized in social practices that are taken for granted. At the same time, mastery of these social practices also equips actors to enact

institutional contexts in new ways that make sense for specific purposes and contingencies. For instance, Smets and Jarzabkowski (2013) noted the important role of agency in institutional compliance in their analysis of “effortful improvisational coping in their mundane work task accomplishment” as an important mode of agency among lawyers in a multinational law firm, where institutional work emerges as a by-product (Smets and Jarzabkowski, 2013: 1300). Smets et al. (2015) described how insurance agents at Lloyd’s of London use institutions or systems of institutions (characterized as institutional logics) to achieve their everyday working purposes.

This approach can also accommodate socialization of newcomers through legitimate peripheral participation (Lave and Wenger, 1991) guided by experienced practitioners. On this view, institutions are not “out there” or around us, demanding compliance; rather, institutions are perceived as intermediate measures, facilitating interactions brought to life by our compliance. In this way, the practice approach dissolves the so-called paradox of embedded agency (Battilana, 2006; Seo and Creed, 2002).

Second order compliance with institutions

Agreeing application of the rules revisited

What, then, of institutional contexts where shared practices do not constitute a basis for rule-following because they are absent, weakly established, or contested, but where institutions still play a definitive role in meaningful and legitimate interaction? In such contexts, we do not just “know how to go on,” and competent actors do not share a practical understanding of what counts as agreed use of the rules. Before elaborating on the prevalence of such contexts in professional work, we will explore the philosophical grounds for agency in compliance with institutions beyond the explanation offered by institutional theory. In this, we return to Wittgenstein (2009) account of rule-following through an alternative reading to the community-oriented referred above.

How we should understand Wittgenstein’s view that rule-following presupposes a shared practice remains a matter of debate (Crary and Read, 2000; Holt, 1997; Wittusen, 2010). Another important issue is whether Wittgenstein provides a general theory or explanation of how rule-following is possible—or whether in fact he is warning us against such explanations (Wittgenstein, 2009, §§126-127). The latter position is often characterized as a therapeutic reading of the later Wittgenstein, emphasizing that his primary aim as a philosopher was to formulate reminders rather than to provide explanations (Crary and Read, 2000). For present purposes, rather than engaging with the detail of those debates, we will interpret and elaborate on some of the arguments advanced by two key contributors to the therapeutic reading of Wittgenstein: Cavell (1976, 1979) and McDowell (1996, 1998a; 1998a). The aim here is to draw attention to our capacity to reach agreement in cases where there is no guarantee that the desired agreement will be achieved. Thus, we are interested in cases in which what is to count as “doing the same” or “going on in the same way” is at stake. As we will argue, the notion of agency is important on this score.

Cavell is critical of the idea that we need a philosophical explanation of the fact “of agreement in the language human beings use together”, because, as he puts it, “for nothing is deeper than the fact, or the extent, of agreement itself” (Cavell, 1979: 32). As a matter of fact, as Cavell is suggesting on this score, we demonstrate the profundity of this agreement in language by appealing to our criteria and rules, and thus testing and confirming our agreement. As to our understanding of the process of reaching agreement, the following passage from Cavell (1976) is clearly instructive.

We learn and teach words in certain contexts, and then we are expected, and expect others, to be able to project them into further contexts. Nothing ensures that this projection will take place (in particular, not

the grasping of universals nor the grasping of books of rules), just as nothing ensures that we will make, and understand, the same projections. That on the whole we do is a matter of our sharing routes of interests and feeling, modes of response, senses of humor and of significance and of fulfilment, of what is outrageous, of what is similar to what else, what a rebuke, what forgiveness, of when an utterance is an assertion, when an appeal, when an explanation—all the whirl of organism Wittgenstein calls “form of life.” Human speech and activity, sanity and community, rest upon nothing more, but nothing less, than this. It is a vision as simple as it is difficult, and as difficult as it is (and because it is) terrifying. To attempt the work of showing its simplicity would be a real step in making available Wittgenstein’s later philosophy (p. 52).

Importantly, Cavell is here gesturing at our participation in larger frames of interaction such as “sharing routes of interest and feeling” that together amount to sharing what Wittgenstein calls “forms of life” as the basis for understanding and agreement. This suggests a view of rule-following in which our responsibility for reaching agreement in our projections of words can be considered both a precarious and a ceaseless piece of work.

McDowell (1998a) describes how this open-ended dynamic of agreement is explicitly at play in “hard cases.” Generally, understanding another person’s application of a word or concept depends on our familiarity with that word or concept, and any such application that seems to deviate from our own understanding can prove challenging. In such cases, our first inclination may be to view an unfamiliar application as violating the rules of established usage. However, as McDowell noted, we might equally treat these as “hard cases.”

Consider, for instance, a concept whose application gives rise to hard cases, in this sense: there are disagreements that resist solution by argument, as to whether or not the concept applies. Convinced that one is in the right on a hard case, one will find one self saying, as one’s argument tail of without securing assent, “You simply aren’t seeing it”, or “But don’t you see?” (p. 62)

For our purpose, hard cases can be interpreted, then, as a recognized disagreement in the use of words—or, more generically, rules—that cannot be resolved by deduction (for instance, from existing rules or established practices) (McDowell 1998a; 1998b). Such a new application of a rule may be valid but in need of further consideration; after further explanation and illustration, an unfamiliar usage may be accepted as a new way of making sense rather than being considered nonsensical. In another passage, McDowell (1996) describes the conditions for this mutual recognition in hard cases, along with their outcome.

If a bit of, say, vocal behavior is to constitute making a novel remark, as opposed to mere babble, it must be capable of being understood by people who would not have thought of saying that themselves. One kind of originality calls on those who understand it to alter their prior conception of the very topography of intelligibility. A remark with this kind of originality is not just a move hitherto unimagined but still within the possibilities as they were already comprehended, at least in general terms. (That is how it is with even the most radical innovation in chess.) Rather, the remark changes a hearer’s conception of the structure that determines the possibilities for making sense. (p. 186)

Importantly, this case is very different from our experience with rules in a game such as chess, which never make space for hard cases. It might be astonishing or inspiring to watch Magnus Carlsen make a brilliant move, but it does not change one’s conception of the rules or how pieces can be moved; in complying with those rules, pieces are still moved within the established practices. In contrast, a novel projection when using a word (or a rule) in a completely new context, for instance in a literary work, in the court room or in a scholarly debate, may alter (or be allowed to alter) one’s conception of what can be said while remaining intelligible.

Sometimes, however, our projections fail, and we must provide further examples to explain how they are “doing the same” or how they differ from (or resemble) other uses. Sometimes, we simply realize that a projection does not convey the intended meaning. Cavell and McDowell stress that, in such cases, there is no guarantee that we will succeed, and that further work may be needed in order to reach agreement. As McDowell (1998b, p. 211) puts it, “We should accept that sometimes there may be nothing better to do than to appeal explicitly to a hoped-for community of human response.” Like Cavell, McDowell seems to emphasize our effort and urge to come to terms with each other as human beings as the basis for agreement. This requires patience, openness, curiosity, and a willingness to postpone preconceived judgments, knowledge, or interests and depends ultimately on mutual recognition of each other’s competence as participants. At the bottom line, both Cavell and McDowell stress our responsibility for maintaining intelligibility in language.

Professional work: Space for hard cases

McDowell’s (1998a; 1998b) conception of hard cases was developed in a different context and for other purposes. Nevertheless, his account is instructive as a sensitizing concept that discloses a particular form of agency in compliance typically found in contexts that are both highly institutionalized and highly irregular. In the work situations of professional experts, performance are perceived as competent and qualified according to a particular logic (Freidson, 2001) stemming from the institutionalization of the workforce as a profession (Greenwood et al., 2007). According to Abbot’s (1988) influential account, professions develop and become institutionalized by pursuing jurisdiction over problem areas in competition with other professions. In this process, the main asset is the power of the profession’s knowledge system, which is a function of “their abstracting ability to define old problems in new ways” (Abbot, 1988, p. 30). Abstraction constitutes the basis for professional autonomy, and increased abstraction signals increased professional autonomy and institutionalization (Abbot, 1988).

Abstract knowledge systems then consist of general institutionalized rules for framing and solving problems, and case-by-case application (and revision) of abstract rules and principles is central to professional work. However, as Abbot (1988, p. 53) also noted, abstraction separates professional knowledge from its use. For individual professionals operating within their profession’s frames, this poses an application problem that relates to the philosophical problem of rule-following discussed above. As abstract rules and procedures are by definition vague and indeterminate, the question of how to follow a rule cannot be directly inferred from the rule itself but depends on how we grasp it (Holt and Mueller, 2011). Adequate or correct application of the rules depends on judgment and inference based on experiential knowledge as the core of professional reasoning (Gorman and Sandefur, 2011). In the context of professions, his ability is developed through higher education in the formal body of abstract knowledge, as well as extensive case-based practical training.

The practical challenge of applying abstract rules entails the more general challenge of reaching *agreement* about applying those rules—that is, institutional compliance. Practice theory provides an explanation for how such compliance is ensured and enacted through shared practices, secured through experience and socialization. In Emirbayer and Mische’s (1998) terms, competent compliance depends on the development of iterative and practical-evaluative professional agency through training and extensive experience of general rules and their application in practice. The professional affirms and maintains her professional status by mastering shared practices for applying its abstract rules and principles.

At the same time, the application problem also creates a potential space for hard cases of institutional compliance in professional contexts. Recalling McDowell (1998a; 1998b), hard cases could be said to arise when agreement on the application of general rules seems unattainable while those involved continue to acknowledge other members of the profession as sensible institutional agents. Examples range from cases of rare or complex symptoms in medical settings to groundbreaking work in the arts and sciences; similarly, hard cases arise in the courtroom when participants challenge the premises of established practices and changes our understanding of justice. More generally, we can say that variations in the parameters and mechanisms of social and cognitive integration give rise to hard cases in professional fields, including academic disciplines (cf. Becher, 1989; Christensen and Klemsdal, 2019; Fuchs, 1992; Klemsdal, 2002; Reymert, 2020; Whitley, 1984) as will be discussed below. In a much cited contribution to institutional theory, Dorado (2005) referred to organizational fields that accommodate hard cases as “opportunity hazy” because of the complexity, instability, and consequent unpredictability of the institutional context: “In these fields opportunities are likely to be out of grasp for agents hard pressed to make sense (Weick, 1995) and/or bring order (Swidler, 1986) to a problematic environment” (Dorado, 2005, p. 294).

In the professions, then, the application problem means there will also be space for agreement beyond those established by shared practices. Hard cases are enacted through agency—that is, by how the actors involved relate to them. Potential hard cases can be overruled by established practices, as for example when rare or complex problems are reduced to more familiar or simpler ones or dismissed as misunderstandings. According to Cavell and McDowell, hard cases are enacted to explore new interpretations of the rules beyond established frames of understanding or partisan interests. This involves a mode of agency in which all participants recognize and acknowledge the possibility of using rules or projection of rules in unfamiliar ways. For instance, in the absence of shared reference points, science sometimes borrows rules from one context and projects them into another. Rather than solid arguments based on established practices, participants appeal in these cases to curiosity, openness, and shared interest in advancing understanding of the professional field, in good faith and appealing explicitly to “a hoped-for community of human response” (McDowell, 1998b, p. 211). These situations activate the ethical aspects of agency as articulated by Emirbyer and Mische—an urgent desire to do justice to the hard case by determining how best to advance the institution in a more inclusive way.

This form of responsible agency to comply is enacted through mastery of what we can characterize as shared *second-order* practices for reaching agreement on the use of institutional rules (as distinct from the mastery of shared first-order practices for following rules). These second-order practices entail an acceptance that while agreement may not always be reached, the attempt to do so is ongoing and requires patience, good faith, and mutual recognition.

Example: Agreeing about academic excellence

The following example of a hard case within the academic sciences illustrates how these second-order processes of institutional compliance might unfold. As professionals engaged in expert knowledge production based on a body of abstract knowledge, academic scientists maintain certain jurisdictional boundaries (Lamont and Molnar, 2002). In *How Professors Think*, Michele Lamont (2009) explore how professional experts evaluating grant applications across the humanities and social sciences reach agreement about what constitutes high-quality academic and scientific work (p. 246).¹ As discussed above, this field presents particular application challenges because it deploys abstract rules, principles, and knowledge, and variations in social and cognitive integration

generate a diverse and diffuse sense of how to apply those rules (cf. Becher, 1989; Christensen and Klemsdal, 2019; Fuchs, 1992; Reymert, 2020; Whitley, 1984).

Lamont describe how a temporary organization of representatives from different disciplines interacted on the basis of common institutional rules for defining high-quality professional work (e.g. originality, sound methodology, use of theory) (Lamont, 2009: 167, 176). However, these shared criteria for evaluating project quality were abstractly formulated and inadequately underpinned by general agreement about their application in practice. Lamont (2009) demonstrated how the understanding and use of these criteria varied within and across disciplines, not only in terms of how much weight they were given in the overall assessment but also in terms of what they referred to or meant:

The panelists I interviewed identify and comment on many of the same aspects of their discipline's internal debates—over standards, the practical meaning and reality of excellence, the merits of theory, the importance of disciplinary boundaries, but they do not necessarily interpret the effects of this lack of consensus in the same way. (p. 76)

In such situations, the lack of shared practices could of course prompt battles, negotiations, and a consequent unfolding of political agency. For instance, in Bourdieu's (1988) study of the academic field, representatives from the different disciplines sought to protect entrenched positions or interests by promoting "their" applicants, insisting on their own discipline's understanding of quality criteria. In another example, Symon et al. (2008) explore how political agency was enacted by qualitative researchers to contest and disrupt the institutional structure of the diverse professional field of management studies in order to advance their economic and social status relative to more acclaimed and dominant quantitative researchers.

Although Lamont (2009) finds signs of such processes, she emphasizes another tendency, manifesting a general belief in the possibility of distinguishing good work within and across disciplines and a sense of responsibility to reach agreement:

This belief resonates with their broader investment in a "culture of academic excellence" that precludes panelists from framing the outcome of the deliberations as an expression of cronyism. In fact a tradition of not indulging in expressions of self-interests is one of the reasons that panelists say they enjoy serving on panels ("officiating as priest" as one of them puts it). "I'm really impressed," a historian says, referring to his experience on a panel, "when people can step outside of their own interests and out of their own interest groups and look at something from another perspective." A somewhat frequent outcome of group deliberation is a feeling of satisfaction that the group has shared an appreciation of good work and has come to a consensus regarding the evaluations. (pp. 108–109)

Lamont's study captures the power plays and positioning in the multifaceted and difficult process of reaching agreement about the ranking of cross-disciplinary proposals. Nevertheless, she detects a commitment to fairness in evaluating quality according to the institutional standards and rules of academic work, even where that means adopting a different perspective beyond any discipline-based understanding of what it means to follow the rules. The participating professors did not use institutions to advance their views, positions, or interests; instead, they strove to comply with the institution—in practical terms, to reach agreement sometimes on novel grounds.

Where committees lack a shared understanding of what "following the rules" means in practice, they engage in the broader second-order practice of agreeing what it means to follow those rules. In Wittgenstein's (2002) terms, this practice is based on a form of life: being part of academic culture and life and sharing interests, attitudes, and emotions as well as rules for fair deliberations.

These inform efforts to reach agreement about evaluation where there is no guaranteed outcome. As Lamont puts it, evaluation in these cases “is a process that is deeply emotional and interactional. [. . .] Consensus formation is fragile and requires considerable emotional work” (p. 8).

In the absence of agreement about what the rules of excellent academic work mean in practice, the process of reaching such agreement in concrete cases rests on a strongly established practice of how to participate in such deliberative processes. That means coming to terms with each other—not only as professionals but as human beings, which requires emotional and cognitive openness and engagement. In the course of such deliberations, participants may even change their conception of academic excellence as suggested above by the historian in the quota (Lamont, 2009: 109). Given that scientific research by nature is expected to involve original contributions and sometimes, hopefully even groundbreaking contributions changing “the very topography of intelligibility”, the committees ability to recognize and establish hard cases through second order practices of reaching agreement is crucial to advance the institutions of science.

Discussion

How, then, does this notion of agency in second-order compliance extend existing accounts of agency in this context? As detailed above, organizational institutionalism has tended to discuss agency in terms of what can be called *political agency*—how actors exploit institutions to protect and advance partisan interests as incumbent or challenger, dominant or subordinate (DiMaggio, 1988; Dorado, 2005; Symon et al., 2008). This includes approaches that draw explicitly on Emirbayer and Mische’s (1998) broader conceptualization combining ethical and political aspects of agency. For instance, Dorado’s (2005) nuanced analyses of agency include cases that border on the so-called “hard case” as “opportunity hazy,” alluding to how political action seeks to advance partisan interests.

Practice-driven institutionalism (Smets et al., 2017) extends the notion of agency in this more nuanced way—realizing goals instrumentally while ethically oriented to doing the right thing. However, this approach can be problematized for its narrow, and thus weak, conception of agency in both respects. This problem is highlighted by recent debate and critique of the conservationist traits of organizational institutionalism and its limited treatment of the role and mechanism of power. According to Munir (2015):

Institutions are all about power in one sense, as are “logics” or “structures.” They influence or guide our actions by shaping our beliefs. They are not external to us of course. Through our actions, we enact institutions in everyday life. It is in the same process that institutional change, often leading to a shift in a given power differential, may also occur (p. 90).

This view of the relationship between actors and institutions—as interactions embedded in social practices enacted with continuous situational adjustments that may finally produce significant institutional change—clearly resonates with practice-driven institutionalism. However, as Munir (2015) goes on to say, as mediums of interaction institutions are also and necessarily potential mediums of domination and oppression. When actors enact institutions through shared first-order practices for partisan purposes, they potentially engage in forms of domination over other actors. When actors engage in political agency and influence or change institutions for their own or group purposes, they change power relations in favor of partisan interests and positions.

Secondly, in this “agency-centric” account of power (Munir, 2015, 2020), we tend to lose sight of the role of institutions as potential mechanisms of oppression. Following Munir, Willmott (2015) cited Marti and Fernandez (2013) as a rare but telling example illustrating how

enactment of political agency can be all about oppression, framing the study of actors in the holocaust death camps as engaged in institutional work to “maintain domination and acquiescence to oppression” (Willmott, 2015, p. 109). This significant limitation of the institutional theory account of political agency presents an even bigger challenge in attempting to conceptualize agency in compliance as ethical. Specifically, doing the right thing in compliance with the institutions must be considered deeply unethical if the agency of Hitler’s willing executioners can be described as competent mastery of shared first-order practices. If compliance with institutions is about preserving institutions that are potentially oppressive, how can we then defend compliance as an ethical form of agency?

We contend that the key lies in the difference between first-order and second-order compliance practices. As Lamont’s (2009) study suggests, what we call second-order compliance is about reaching agreement on the application of institutional rules beyond the narrow confines of shared practices for following those rules—in other words, beyond first-order compliance. Second-order compliance entails a more fundamental openness to what it means to follow rules, grounded in broader normative frameworks and a commitment to advancing the institution in a way that advances a common good constituted by values and norms beyond the narrow bounds of particular institutions.

This suggests a concept of strong agency that resonates with the less cited component of Emirbayer and Mische’s (1998) account of practical evaluative agency. In tracing the intellectual history of this aspect of agency, they emphasize the influence of Kant’s idea of “common sense or the capacity for enlarged mentality.” They further refer to post-Kantians like Dewey, for whom judgment or application “gain intersubjective validity from assuming the standpoint of a *sensus communis*, “a whole of common interests and purposes” (Dewey, 1978: 286),” and to Arendt, who described this enlarged mentality as “the ability to see things from the perspective of others, “an anticipated communication with others with whom I know I must finally come to some agreement” (Arendt, 1977: 220)” (Emirbayer and Mische, 1998, p. 996).

The strong notion of responsible agency of a “larger mentality” oriented to a common interests and purposes can be characterized as ethical in that it involves deliberate reflection in pursuit of an agreed understanding of institutions. However, we contend that beyond its practical-evaluative dimension, this ethical agency is also projective or future-oriented, seeking to advance the institution by projecting uses of the rules that appear new or unfamiliar and responding openly to those projections. In this way, making a hard case by exploring rules in a way that breaks with shared institutional practices can be considered a political act. However, this *agency to comply* is neither a pursuit of narrow political purposes nor a clever use of the rules to achieve legitimacy. Rather, this immanent critical use of the rules marks an attempt to change the institution by reframing the topography of what it means to follow the rules. Treating such hard cases seriously by accepting the further possibilities of meaning is a thoroughly ethical act, moving the application of rules beyond shared practices in pursuit of a greater common good. This strong form of agency can then be characterized as both ethical and political in that it is based on frames of judgement beyond the bounds of existing institutions, which it can problematize and influence.

Finally, emphasizing the agency of complying with institutions discloses a potential space for resistance or transgression through compliance. From this perspective, institutions do not appear as given or taken-for-granted structures, or as rules to be mastered and exploited. Instead, the rules are unstable and sometimes hard to comply with. This also discloses an additional oppressive mechanism embedded in the ambiguity of abstract institutional rules, again making compliance difficult. This becomes apparent when we consider the position of the silent actors in Lamont’s study—the academics applying for grants, who are often in temporary employment. This reminds

us that the autonomy of second-order compliance is not necessarily experienced as freedom to perform according to one's own judgment but also always as a challenge to be recognized as a competent and adequate—not to speak of original in this case—contributor to the profession.

Conclusion

In an increasingly institutionalized and rule governed organizational world, it is important to develop notions of agency in compliance with institutions that can sensitize us to a space for individual actors to comply with institutions in ways that maintains responsibility for advancing common good, beyond socially established normative bonds. While there is sometimes appropriate for agents to change or disrupt institutions in order to advance their own and suppressed groups interests, we also need a notion of agency to maintain institutions, that moves beyond maintaining them in favor of the partial interests established practices of institutions have come to serve. Present notions prevalent in organization theory of agency in compliance through practice based situational adapted enactments of rules, regulations, routines, as well as other forms of institutions (Feldman and Pentland, 2003; Nicolini, 2012; Schatzki, 2002, 2006; Smets et al., 2017; Tsoukas and Chia, 2002), are not well able to account for a strong notion of agency, capable of accommodating responsibility for advancing a common good.

In this paper we have tried to develop a notion of a strong notion of agency in compliance by advancing a view of the agency of second-order processes of compliance with institutions that suggests a rethinking of both agency and compliance. Following Cavell's and McDowell's readings of the the later Wittgensteins discussions of the problem of rule following as the constitution of institutional interaction and communication, we highlight hard cases as situations constituted on the one hand by abstract institutional frameworks, where shared practices for extending these frameworks do not serve as a basis for application of the rules. On the other hand, we highlight that when actors are treating these as hard cases it means that they try to reach agreement on the application of rules through second-order processes of compliance with institutions rather than on the basis of established first order practices of rule-following. Adopting the so-called therapeutic interpretation of rule-following in the later Wittgenstein, we contend that this must be treated as an open-ended process, in which actors try to come to terms with each other on the basis of larger frameworks of shared forms of life. We characterize this as a politico-ethical form of agency, involving an openness to making and addressing hard cases of institutional enactment through openness and immanent critique, trying to change the institutions by reordering the topography of what it means to follow the rules of the institution(s) in question.

In this sense, hard cases represent a borderline category that sensitizes us to situations where actors struggle to determine what constitutes sensible action in accordance with institutional rules. The professions afford space for such hard cases by virtue of their structure of action and organization, based on institutionalized bodies of abstract knowledge, rules, and principles (Abbot, 1988). Lamont's (2009) study of cross-disciplinary academic committees illustrates how these second-order practices contribute to agreement in the absence of shared practices in the work of professional expert organizations. Mastery of these second-order practices affords the necessary agency to participate in the requisite process of compliance, driven by a sense of responsibility for maintaining the institution for a common good rather than to promote partisan perspectives or interests. To that end, the professionals must abandon their own horizon of interests to "look at something from another perspective" (Lamont, 2009: 109). This can equally be characterized as stepping out of the normative bounds of institutions to seek agreement about applying the rules within a larger framework of forms of life. However, as a borderline category of organizational actors, professional

experts demonstrates aspects of agency that also will have significance and implications more generally in the domain of organizational theory. The making of a hard case is an agentic endeavor, that is more obvious in some situations than others, but that still is dependent on the actors approach to the situation. The concept of a political-ethico agency through the making of hard cases can thus serve as a remainder sensitizing us to an important general aspect of agency in an increasingly rule governed contemporary working life.

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Note

1. Lamont analyzed interviews with scholars serving on funding panels that evaluate grants or fellowship proposals submitted by faculty members and graduate students. The scholars were involved in five national funding competitions and twelve panels over a two-year period. Lamont interviewed 49 panelists, panel chairs, and program officers in 81 interviews, each lasting approximately two hours. In addition, she observed three panel meetings (Lamont, 2009, pp. 12–13, 252–253), focusing on “the arguments that panelists made for and against specific proposals, their views about the outcomes of the competition, and the thinking behind the ranking of proposals both prior to and after the panel meeting” (Lamont, 2009: 13). Other issues included how panelists interpreted the selection process and its outcome; how they compared their evaluations to those of other panelists; and how they identified excellence in their graduate students, among their colleagues and in their own work. Lamont focuses on how the evaluation criteria inform professional judgment and reconstructs the classification system used. The study reveals that panelists also worked to reach agreement on the application of abstract institutional rules and principles in making professional judgments about quality. In this special form of professional judgment, abstract rules and principles are applied in contexts characterized by diverse perceptions and evaluations of what counts as significant.

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