



Reason-Based Decision-Making

On Deliberation and the Problem of Indeterminacy

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Abstract

What is the explanatory potential of deliberative democracy? This paper analyses collective decision-making in a political context with reference to *warrants*, which explain the conversion from premises to conclusion and with reference to the *deontological powers of status functions*. The first posits actors' ability to comply with the force of the better argument through explication of the relevant rules of inference. The latter explains why actors may act out of duty. Since actors may dispel good arguments as well as duties, there is the problem of indeterminacy. However, by making use of mechanism-explanation one is able to account for the action coordinating properties of deliberation. A set of *micro-mechanisms* for the activation of institutional status functions are suggested underpinning the three sequences of deliberation identified: *claims-making*, *justification* and *learning*. Each contains different micro-mechanisms. *Learning* takes place when one or more actors realize mistake and change opinion. Learning is preceded by *claims-making* based on value consensus and appeal, and *justification*, revolving on corroborated factual statements and norms of fairness, which on their own can sway actors to concur. Decision-making is only deliberative when claims-making is succeeded by justification and learning.

Keywords

Arguing – Claims-Making – Deliberation – Deliberative Democracy – Discourse – Interest Intermediation – Joint Decision-Making – Justification – Learning

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Introduction

How to explain outcomes of policymaking is a question of how actors are able to reach agreements. Are they due to the convergence of self-interests and bargaining power or of good arguments and deliberation? Procedures are often mixed and it is not always easy to separate a good argument from one based on self-interests. However, while we know fairly well the structure and logic of bargaining due to rational choice and game theory, the real world deliberative procedure is underexplored.

Deliberation is minimally defined as the exchange of arguments.¹ In collective decision-making it entails reaching agreement on some joint course of action. Deliberation is more than discourse, discussion or dialogue. It refers to the coordinative function of communicative interaction. Reaching mutual understanding is thus an action-coordinative device. Deliberation can be seen as a decision-making procedure like bargaining and voting. However, deliberation faces the problem of indeterminacy (cp. Bohman 1991: 102ff). It has no conditioning cause. There is free will as well as weakness of will, and even rational argumentative processes will not necessarily result in consensus. Moreover, nobody is obliged to comply with consented action norms unless all the others involved comply.

The exchange of arguments can establish agreement, but how? Why is there deference? How can actors come to bow to the *forceless force* of the better argument² when doing so goes against their identity or self-interest? In order to clarify this I focus on the various processes and mechanisms of deliberative acceptance/compliance. Acceptance means the approval of a claim or a decision, whereas compliance refers to the observance of a binding decision. How can arguments cause acceptance; how can deliberation serve to coordinate action plans? Collective decision-making requires argumentative reasoning, but such is often poor. However, as Mercier and Sperber note (2011: 57), when the *context* is specified, 'people turn out to be skilled arguers.'³ I will

¹ This is a revised version of a paper read at the conference 'Epistemic Democracy in Practice' at Yale University, 20-22 October 2011 and at the conference '*Die Idee deliberativer Demokratie in der Bewährungsprobe*' in Hannover, 20-22 March 2013. I am grateful for comments from the participants. I am grateful for comments from the participants. In particular I am grateful for inputs from Anders Molander and André Bächtiger to an earlier version of this paper. A German variant of the paper will appear in Claudia Landwehr and Rainer Schmalz-Bruns (eds) '*Deliberative Demokratie in der Bewährungsprobe*', Baden-Baden: Nomos.

² On this wording, see Habermas 1981: 52.

³ See also Bächtiger et al. 2010, Fishkin 2009, Fung 2003, 2007, Harré 1999, Landwehr 2010, Neblo 2005, Sulkin and Simon 2001, Thompson 2008.

examine the explanatory potential of deliberation in a political context of collective decision-making.

My focus is on political decision-making as it takes place in a public setting within the parameters of the law.⁴ In public discourses impartial justification is forced upon the interlocutors as a condition *sine qua non* for agreement. A political context is always a context of justification – the discipline of reason at the collective level.⁵ Moreover, the fact that the exchange of reasons is bounded and legally regulated narrows the range of possible outcomes.⁶ Under circumstances of justification what are then the explanatory power of deliberation? How to explain the force of public reasons and their impact? Causality is a thorny matter in the social sciences as law-based – covering law – explanations are not suitable. I therefore suggest that reason-based explanations do not meet the requirement of a covering-law model of explanation, but they do fit the requirement of *mechanism-explanation*. Social mechanisms do not determine outcomes. Hence, reasons may explain action, but they cannot predict it.

In order to flesh out the explanatory potential of deliberation, I first suggest that arguments based on effective *warrants* – rules of inference – supported by pertinent *status functions* explain the conversion from premises to conclusion. However, since actors can dispel better arguments and oppose or overlook status functions, what entities are able to explain that the exchange of reasons is effective? In order to answer this, I analyze the forging of agreement and compliance with reference to social mechanism. This further implies a sequencing of the deliberative process. When collective decision-making is viewed from the vantage point of deliberation, the following sequences occur: *claims-making, justification and learning*. I identify their accompanying sets of explanatory mechanisms. Learning is at the core of deliberative decision-making. It entails the change of opinion in case of conflict on the basis of powerful arguments – out of insight. Learning has taken place when opinions change due to unveiled inconsistencies and mistakes. Prior to learning there are claims-making and justification, which on their own can sway actors to concur, or as I will argue, due to mechanisms like value consensus and norms of fairness. However, whereas mechanisms may account for the

⁴ There is disagreement among ‘deliberativists’ with regard to decision-making. Some would reserve deliberation for opinion- or preference formation only (e.g. Fishkin 2009). Talk is good as a *discovery procedure* but not as a decision-making procedure (Goodin 2008a). But deliberation is more than discourse and dialogue as it depicts the coordinative function of speech acts.

⁵ See Pettit 2001, Habermas 2003, Forst 2007.

⁶ Discretionary power is not unconstrained, as some outcomes may be deemed unconstitutional.

transformation of claims or initiatives into practical results, claims may also be subject to impartial and rational justification in higher order discourses.

The concept of *deliberation* in the present use refers to the exchange of reasons in order to reach an agreement. It concerns the ordinary process of reaching collective decisions by giving and taking reasons; through the binary coding of yes/no positions to propositional bids. *Arguing* or argumentation depicts a principled form of deliberation. It is a procedure for cashing in validity claims – for testing justice claims as well as truth claims in a rational discourse. I start by setting out some of the alleged values of deliberation and then turn to the question of how to reconstruct a deliberative process of decision-making. To illustrate this, the example of how the decision to construct a public road can be seen as the outcome of a reason-giving process, is used throughout the paper.

Why deliberation?

Deliberative democracy is oriented to explicating how decisions can be made which all are bound by whether they agree with or not. The essential purpose of political deliberation in interdependent relationships is to reach binding decisions (Thompson 2008: 503; Fung 2007).⁷ Moreover, when collective decision-making is governed by impartial reasons, and decisions can be justified vis-à-vis affected parties, such decisions enjoy greater normative legitimacy than if they were brought about by group interests and power tactics. Social cooperation based on inequality requires the use of force - of threats. Without force, cooperation is not possible on unequal terms, hence the normativity of the moral ideal of equality. In non-coercive decision-making deliberation is indispensable. Only by the use of arguments can collective decisions be made without coercion.

Deliberation has various merits. Problems of bounded rationality, group-thinking, myopia etc., can be overcome by being exposed to the exacting conditions of argumentation (cp. Elster 1998: 11; Fearon 1998: 45). Deliberation can reduce the number of issue dimensions and structure individual preferences for collective choice (Dryzek and List 2003; Goodin 2008a; Fishkin 2009). Deliberative inquiry is held to enlighten the actors, shed new light on the issues at stake, and even change actors' attitudes or beliefs if they can be

⁷ The validity of democratic decisions depends on the quality of the preceding discussions among affected and competent parties. Acceptability hinges on the epistemics of rational reason, which, when applied to the democratic procedure, warrants the presumption of legitimate results. Thus the normativity of the democratic procedure – it is binding, whether or not the decisions are acceptable.

shown to have been mistaken about the 'facts' of the case or the 'principles' in question. The basic assumption is that deliberation can bring about some type of *learning* that alters the members' preferences over choices. In policy-making, deliberation is generally needed:

- to coordinate actions, because without deliberation interdependent actors may not be aware of problematic situations;
- to solve problems rationally, because without deliberation we cannot know the counter-arguments;
- to resolve conflicts over distributive shares legitimately, because without deliberation we cannot know whether all viewpoints have been expressed and duly considered;
- to reach collective decisions, because without deliberation actor preferences are not tested.

Interdependent actors who want to sort out common affairs and coordinate actions cooperatively face two kinds of tasks: First they have to identify the issue at hand and agree on what is at stake: what is the nature of the problem? Second, they have to agree whether the problem should be solved – and if so, by which means. The medium for achieving agreement is reason-giving. It compels actors to verbalize and justify their plans of action when there is doubt or ambiguity, when there are preferences as to outcomes, or conflicts of interests.

Reasons to agree

We assume, as point of departure, that reasonable actors are able to give and to evaluate reasons, and can also be swayed by these under certain circumstances (Scanlon 1998: 56). Sometimes actors manage to talk themselves into a rationally motivated consensus in which they concur with identical reasons. But deliberation as such is *epistemically indeterminate*. It does not yield determinate results in the form of one single correct decision. Actors may remain at odds with each other even after rational deliberation (Rawls 1993: 54ff). It may be that deliberation rarely brings about a rational consensus, but argumentation is internally linked to rationality. Argumentation involves standards of rationality; for deciding whether claims are true, correct or justified (cp. Searle 2001: 117). Arguing is linked to consensus as well as people will necessarily think that there are reasons as to why they disagree. Conflicts and disagreements trigger new questions and new explanations, with more justification and more deliberation.⁸ Moreover, why should we talk or argue unless we are interested in coming to a common understanding?

⁸ This is due to the basic operations of argumentation: to assert (*Behaupten*), to explain (*Begründen*), and to criticize (Wohlrapp 2009).

Rationality has to do with the systematic connection between actors' intentions and behavior, with being incapable of *not* evaluating.⁹ Intrinsic to this is the connection between the commitments an actor takes on when something is uttered, and the ability to act accordingly.

Robert Brandom has shown that even the most basic claims *oblige* people to commit themselves to their validity and to show they have a *right* or *entitlement* to them. (Brandom 2008: 115). Claims and commitments can be observed empirically through the act of reason-giving. We are rational beings as far as we respond well to reasons (Parfit 2011). The very idea of rational action builds on the assumption that appropriate reasons for choices can be given. Freedom of will involves the ability to base one's action on good reasons. A reason motivates because it speaks for something. According to Scanlon (1998), to act for a reason is to say that something counts in favor of something – be it an opinion, a belief, or a desire that requires evaluation and judgmental power open to the scrutiny of others. The capacity to jointly scrutinize, to collectively judge, is facilitated by language – a system of symbols through which we can represent¹⁰ and articulate reasons that can motivate as well as evaluate desires. Moreover, through language, perceptions of the world are given propositional content with logical relations. In speech acts, assertions about beliefs and states of affairs are expressed. Assertions are defeasible. When tested they can be rejected. For a given reason to prevail in a decision-making processes, from a deliberative perspective, certain requirements must be met. Among these are the inherent comprehensibility and epistemic quality of what is expressed, as well as a certain preparedness, competence or good will on the part of the addressees and/or the capacity of third parties to take an impartial stand. Assertions are in standard cases underpinned by normative orders. What normative forces or sources of normativity – the authority or binding effect of a claim – are conducive to acceptance/compliance?

A typology of the sources of the normativity of a claim – a demand, a law, a norm – has been suggested by Frank Nullmeier and Tanja Pritzlaff: '*Will, institution, world, reason and transcendence*'. *Will*, to the degree it takes the shape of a common want; *institutions, rules or laws* to the degree they give actors

⁹ The modern general self-understanding is that 'We are the makers and takers of reasons, seekers and speakers of truth' (Brandom 1994: 6). 'Actions, which alter what is going on around us in response to propositionally contentful intentions, differ from performances that are merely behavior [...] in that reasons can be given for them; they can appear as the conclusions of practical interferences' (ibid; 8).

¹⁰ Many phenomena such as institutions, norms, churches, money simply do not exist without language (Searle 2010).

reasons for acceptance/compliance, 'objective facts or *state of affairs* that seem to lie outside the agents' will or attitudes', and *reason* that 'encompasses reference to logic, rules of argumentation, cognitive competences, judgment, sapience and rationality. A reference to sources of *transcendence* may imply a relation to God or to forms of the extramundane' (Nullmeier and Pritzlaff 2011: 52). But why would these sway actors agree in a public contestation over what to do? What makes them *public* reasons, and not merely private, particular or non-rational reasons? In this setup there is 'a missing link between the normative forces and the authority of the content of explicit norms' (Schmalz-Bruns 2011: 67). These sources of normativity cannot establish the validity of regulations or tell what amounts to a *decisive* cognitive reason in a decision-making process. A context transcending force – a higher-ranking principle – is needed to settle disagreements authoritatively. Conflicts between different normative sources must be solved and third parties must be convinced for collective decisions to be made non-coercively.

Sources of normativity

The concept of normativity refers to evaluations or prescriptions – *musts* – of different sorts. It comprises moral norms, values, laws, roles, institutions, logic, *coutume* which can compel action. Values refer to 'goods' that constitute commitments for ethical communities. Norms are general instructions – 'musts' – for action. Particular social situations and contexts of application give rise to different normative challenges concerning the right thing to do. Unless the context is specified many justified norms may apply and different values may be called upon. I will return to this problem later. First, I will address how to explain the conversion from normative claim to action, from 'is' to 'ought'.

Norms and values are *warrants*, as far as they contain rules of inference; that is rules for warranting a conclusion based on certain premises.¹¹ They then explain the conversion from premises to conclusion; from a description of a situation to action or acceptance. Warrants are operative in practical argumentation as argumentative rules, hence the term *deliberative warrants*. When it is about propositionally differentiated arguments, as to what should be undertaken, the claims are knowledge claims and the validating procedures are epistemic ones. By drawing on the different *faculties of practical reason* we may separate truth claims from normative claims, ethical values from social norms; separate cognitive-instrumental and utilitarian norms from moral

¹¹ See Molander and Grimen 2010. On the concept of warrants see Toulmin 2003. See also Habermas 1973/2009: 346ff.

norms as well as from legal norms – and their corresponding validating procedures – raised by an issue-complex.¹² Justificatory arguments range from the empirical veracity of a claim, its expected gains and benefits; via the values and common good(s) or collective goals it realizes; to justice and fairness or impartiality. I propose the following three set of warrants:

- *values*, entailing stipulations of (ethical or expressive) appeal and common good;
- *utility*, referring to cost-benefit analysis - the maximizing of a utility function;
- *norms*, entailing entrenched standards of right and wrong

But warrants need *backing*. Behind warrants 'there will normally be other assurances, without which the warrants themselves would possess neither authority nor currency' (Toulmin 2003: 96). However, backing is needed not only to underpin and safeguard warrants. They are also needed to solve conflicts between them. When norms collide with values or with other norms, one needs a means to resolve them. Pace Toulmin, I will use the term *backing demands* (BD) and see them as higher order discourses aimed at settling conflicts impartially and solving problems rationally. Warrants contain decision-making criteria – rules of inference – but need to be backed by *rightness* and *justice* arguments. The former refers to proper logic and analytical inference. The latter refers to what can be established as equally good for all.

BDs represent demands on action norms – they legitimize or criticize them, permit or constrain them – but do not themselves contain decision-making criteria. Justice provides a *context-transcending principle* according to which warrants have to harmonize in order to induce acceptance. It represents a neutral standard – a trump – for dealing with colliding values and norms. Justice or fairness relates to the principle of equal treatment; that all should receive their due – in other words, according to the formula that equal cases should be treated equally and unequal cases should be treated unequally.¹³ What can be established as equally good for all appears to be a higher-ranking principle in modern democracies, which claim to be acceptable to all. Among the rules that reign in 'the space of reasons'¹⁴, what could have higher normative authority than the 'all-affected principle'? Those who deny it are

¹² Points of reference in this regard are Kant's three critiques, Habermas' notion of validity claims (1973/2009), and the different dimensions of practical reasons (1996). Cp. Wingert 2012.

¹³ This is an interpretation of the Aristotle's famous dictum of justice, 'to each his own' (*suum cuique*).

¹⁴ To borrow a term from Sellars 1963.

committing a performative contradiction.¹⁵ The propensity to act impartially is, however, unequally distributed. Moral principles may constitute the core of the epistemics of rational reason, but are impotent unless they are connected to power and resources for their realization. How can they be realized when will-power is lacking? Can institutions help out here?

Institutions do matter: they prescribe actions and affect norms, values and beliefs.¹⁶ According to John Searle (2005), actor-independent arguments strong enough to trump self-interests stem, not merely from our moral capacity to act disinterestedly or from will power, but also from *deontological powers* afforded by institutional status functions.¹⁷ Institutional structures provide rights, obligations and duties; they invoke demands, permissions and authorizations, which give the actors reasons to act out of duty. They socialize, discipline and control actors; they establish standards for correct behavior, for distinguishing between social roles and their corresponding obligations. Deontological powers give the actors reasons to act against their identity or self-interest. They create a basis for impartial reasons, and the law has methods for converting agreements into commitments and binding decisions. In contestation over what to do, over which interests or goals to be realized, actors can justify their claims normatively not only by invoking backing demands but also by referring to entrenched institutions, rights and procedures. Warrants, backing demands supported by deontological powers, I would hold, make up a set of rules that reign in reason-based decision-making. When corroborated or at least not discarded in a deliberative process as mere cover-up strategies, pretense or manipulations, they bring about changes – they have behavioral consequences.

In order to exemplify, let us imagine a political decision regarding the construction of a new road. The conclusion (C), 'this road should be constructed' is explained by the reasons based on data (D) about traffic

¹⁵ Those wishing to argue against impartiality find themselves in a performative self-contradiction, since they have already accepted this principle at the start of the argument – recall the unavoidable preconditions for communicative action that Habermas sees as constituting the parity, the freedom and equality of discourse participants. On the other hand, everyone has a strong interest in not being treated unfairly (Stemmer 2008). However, our unconditional principles must be laws of autonomy (Korsgaard 1996; see Kant 1785).

¹⁶ See e.g., March and Olsen 1989; and Przeworski 2004. Here we need not concern ourselves with the problem raised by the latter concerning the fact the institutions are endogenous, that they themselves 'depend on the conditions under which they emerge and endure' (Przeworski 2004: 527).

¹⁷ 'Humans differ from other animals in that we have a large number of powers that derive from institutional structures, where the powers derive from the fact that the object or the person in question is assigned a certain status and with that status a function that can only be performed in virtue of the collective acceptance of that status' (Searle 2007: 34).

estimates and the frequency of accidents. (See Figure 1.) The warrant (W) 'that a new road will boost traffic safety' is supported by backing demands (BD): It is not fair to expose citizens to such high levels of risk. To ensure agreement, deontological powers (DP) with regard to institutional properties – such as the legal, moral, organizational and symbolic fit of the claim – are invoked. Similar circumstances have triggered the construction of other roads. However, contestants can decide to accept or not accept (D), (W), (B), (DP) as well as (C).

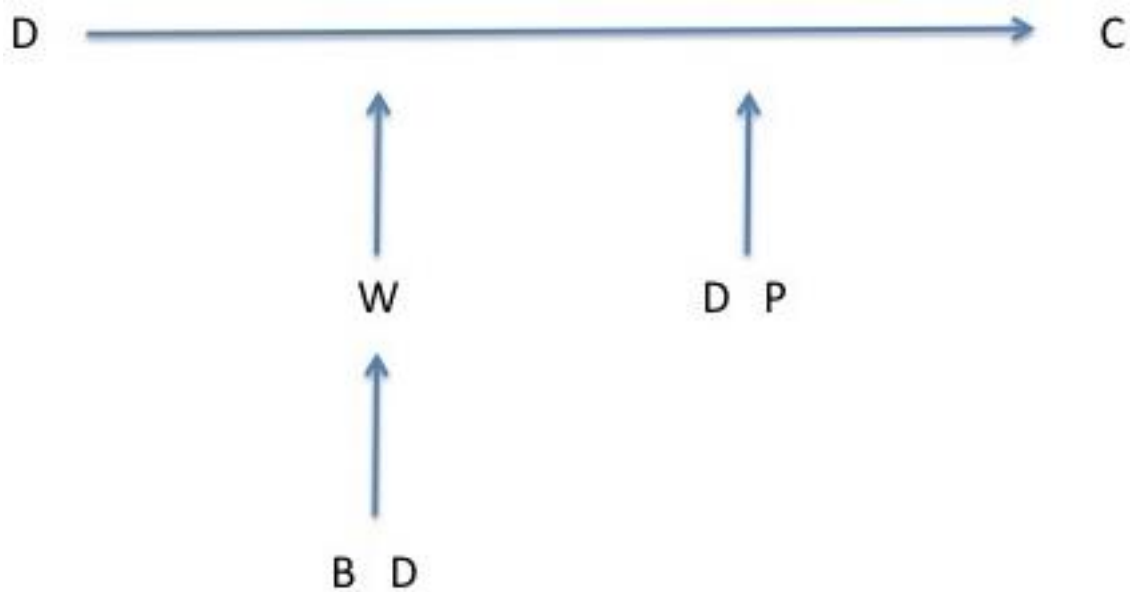


Figure 1: Model for warranting a conclusion based on data

In deliberative theory, the *explanans* is whether the actor's reasons are accepted or rejected by others (cp. Eriksen 2009). But how to explain that warrants can in fact be effective; that they are brought to bear on actions, when actors easily can dispel good reasons and normative commitments and oppose the established order?

Mechanism explanation

Reasons do not meet the requirement of a covering law explanation according to which explaining an event entails subsuming it under a general law and the conditions that make the law applicable in the specific case. Explaining action with the help of reasons differs from giving an ordinary causal, black-box explanation: if x, then y, where the antecedent (x) defines a cause and (y) the consequences. While in law-based explanations the connection between cause and effect is arbitrary, in reason-based explanations the cause and effect are internally related.¹⁸ A reason-based explanation refers to the substantial

¹⁸ See e.g., Taylor 1970, Davidson 1980.

reasons the actors actually give and their uptake, which will depend on whether the reasons motivate the approval of others. Because of freedom of will as well as weakness of will, because a good reason for me need not be a good reason for you, because actors can accept or dispel better arguments, it is difficult to determine which reasons will cause what behavior, also under known conditions.¹⁹ This makes it difficult to predict outcomes.

Post factum - in the aftermath of an event, the analyst can however make sense of the reasons the actor acted on by contextualizing and interpreting them. In this endeavor, the analyst does not take the self-reported reasons at face value but examines how much weight they carry, how consistent they are and how likely it is that they - all factors considered - actually were the ones that generated agreement. Even re-description may be needed for explanatory purposes (Turner 2007). By identifying the actors' reasons for the actions and their reception - their ability to sway others - we are able to explain an outcome. When the ambition is not to predict the effect of an argument or norm the situation changes with regard to the explanatory potential of deliberation.

But how can we theoretically explain that the exchange of reasons has effect, that warrants are applied and that deontological powers are activated in policy-making processes? The concept of social mechanisms spells out the action coordinating properties of deliberation. It helps conceiving of the role of arguments and their putative force in the process of getting to 'yes'.

Social mechanisms mediate between events and convert initiatives into practical results. Such mechanisms act as intermediaries between lower and higher levels and are hypothetical causal models of explanation. Some hold that under certain conditions mechanisms will make actors act in a particular way (Stinchcombe 1991: 367; Schelling 1998). However, the presupposition of a law-like causality is problematic, as mentioned. This type of explanation is deterministic, as only one effect is possible when the antecedents are given (Elster 2007: 8). Actions or collective decisions are not a caused movement - an event. An action may be motivated by norms as well as will and usually in combination. Moreover, there is a *double contingency* in social relations, viz. the expectations of A are oriented to the range of B's alternatives as well as to B's expectations of A. In the social sciences it is therefore difficult to establish

¹⁹ There can be many reasons for not complying with the better argument in collective decision-making. Not only self-interests and conflicts of interests but also emotions, cognitive dissonance, deception, hypocrisy etc., may prevail. The potential for manipulation is never trivial (Landa and Meirowitz 2009). On how like-minded actors tend to polarize in deliberation, see Sunstein (2002, 2009), on the law of group polarization.

under what conditions mechanisms will generate a certain type of outcome. A mechanism can have diverse effects under identical conditions.

The net upshot is that deterministic social laws do not generally apply and the deductive-nomological model cannot be the explanatory model for social sciences. Actors act on reasons and reasons are not causes. Rather, they establish the normative premises – *the musts* – for action. What is more, reasons motivate action only when certain presuppositions are in place. They depend, among other things, on the will and the capacity to act (Stemmer 2008: 94-95). I will therefore link explanatory mechanisms to the cogs and wheels of deliberative processes in the struggle for getting to agreement. Social mechanisms trigger actions under conditions of indeterminacy: they do not determine the outcomes. Also under known conditions outcomes may differ.²⁰ Nevertheless, mechanisms consist of properties which when triggered by other entities bring about an outcome.²¹ The assumption is that mechanisms ensure that initiatives are converted into practical results – an agreement, a binding decision – when relevant warrants apply and when DPs are successfully activated by practical argumentation.

This approach offers an alternative to the standard use of mechanisms in the social sciences. Mechanisms such as framing, copying, isomorphic pressure, external shocks and path-dependency are frequently used to explain human choices and decision-making outcomes. But these mechanisms work only under the condition that actors in fact understand, recognize and acknowledge them and know how to make use of them. The actors themselves have to define the mechanisms and gain acceptance from others on their meaning and importance in order for them to play a role in coordinating actions. A collective decision is not a movement caused by a mental state of affairs, structural constraints, or pure necessity. We are dealing with conscious action and not with automatic and unreflective behavior, which falls outside the realm of social explanation. The listed standard mechanisms are parasitic on deliberation. Put differently, in order to function as drivers for action, the mentioned mechanisms need to be interpreted, communicated, recognized and converted into action schemes by the deliberate, collective efforts on the part of agents. Hence the arguing perspective, which locates the coordination of actions in the ability of cognizant actors to reach understanding and agreement among themselves through speech acts on which justified norms,

²⁰ For terminology here, see Elster 2007: 36.

²¹ Compare Hedström's formulation: 'We explain an observed phenomenon by referring to the social mechanisms by which such phenomena are regularly brought about, and this entails a focus on the outcomes that interacting actors are likely to bring about' (Hedström 2005: 33).

warrants, apply in a specific context. Social mechanisms explain what entities or properties make reasons effective in coordinating actions. By sequencing the moments of deliberation in policy-making we get an intake to the underlying social mechanisms, the micro-foundations, of deliberation.

Sequencing deliberation

Through speech acts, perceptions and intentions are employed in order to coordinate actions; and through reciprocal reason-giving, arguments, offers and oughts are tested. Speech acts have an action-coordinating effect when mutual understanding and agreement are reached; when a hearer accepts an assertion made by a speaker.²² The proponents of deliberative democracy see deliberation as a procedure for establishing what is correct or just, as it compels actors to argue in terms of the common good or impartiality. But what exactly is it in a reason-giving process that can move contestants to agree? If it is a good theory, we should be able to show how it works; through which processes and mechanisms it makes a difference.

A deliberative decision-making process may be seen to consist of three sequences, each based on a set of micro-mechanisms. In principle each of the sets of mechanisms suffice on its own in bringing about agreement, but usually they work together as sequences in a deliberative decision-making process. Every collective decision-making process commences with a claim to something made by someone and addressed to somebody; a claim that is also explained and justified in a public forum to third parties. In case of conflict someone will have to learn and change preferences, if agreement on what to do is to be achieved. Hence, we can distinguish between claims-making, justification and learning. A deliberative decision-making process unfolds prototypically in three steps:

Claims-making → justification → learning

Taken together the sequences clarify the role of reasons in every step of a policy-making process. Decision-making is not deliberative unless claims-making is succeeded by processes of justification and learning. Deliberation takes place in institutionalized publics, which are legally regulated, as well as in non-regulated fora. As is well known, closed-door settings may be more conducive to qualitative deliberation.²³ However, publicity is intrinsic to

²² According to Joseph Heath (2001: 24), 'the binding and bonding energies of language itself [...] becomes effective for the coordination of action.'

²³ On trade-offs between publicity and discourse quality, see Elster 1998: 97ff, Chambers 2005.

deliberation: only when we know the conditions under which statements and standpoints have been made can we judge whether they are valid or not. A public sphere contains fora for public discourse, for practical argumentation and criticism; and it plays a role in defining and activating moral norms (Habermas 1996: 329ff). But a public sphere does not act. It makes no decisions. It only allows talk. When deliberation is geared to decision-making – in or prior to decision-making bodies such as committees, conventions, boards and councils – it is regulated by the legal medium in the democratic *Rechtsstaat*. Rights and duties are assigned; the legal instruments for neutralizing power and for ensuring a free discussion before a decision is made are, in principle, in place.

An ordinary policy-making process is institutionalized as the formal procedures, rights, and duties are entrenched harnessed by the legal discipline. Citizens are authorized and empowered to make claims and petition public authorities, and to take part in contestation and struggles for outcomes and influence as well as for getting a particular status recognized. The law establishes decision-making venues and regulates the relevant range of problems and solutions to be addressed in a policy-making process. The purpose, mandate and rules for membership as regards the election or selection of members for the composition of public bodies are made clear. There will often be complaint or appeal procedures, rules for balancing interests, for the representation of weak groups, for debate, for chairmanship etc., intended to ensure impartial reasoning and cogent decision-making. Reasoning within the context of law serves to ensure that the discourse rules are approximated.

If no agreement can be reached, arguing leads to procedurally regulated bargaining where the decisive factors are resources or credible threats rather than good arguments. This is brought to a close with voting where the principle of majority rule applies. Deliberation is thus the first step in any decision-making process: it clarifies what the stakes and the possible alternatives are, and whether deliberation will suffice for reaching a decision. Also in policy-making processes where voting is possible, agreement is necessary to amass a supportive coalition of decision-makers.

Claims-making

Every policy-making process starts with claims-making. One or more actors lay claim to something and call for a collective decision to solve problems, resolve conflicts or achieve a goal. Actors assert that it is a collective task to bring about a certain state of affairs in the world. (For example: 'I request a road be constructed in this place'.) In order to expect a response, the claims-maker must be authorized to make such a claim, and must also state it in such a manner that others understand it and become alerted to it. Claims-making takes place in public civic fora as well as in institutionalized decision-making bodies and results prototypically in collective decisions, which have distributional effects. They affect somebody's interest or preference, lay claim to public resources, (re)distribute resources. Including claims-making in the theory of deliberative decision-making ensures that deliberation is linked to real-life policy-making – to forms of interest intermediation. Self-interests are not excluded in this explanatory scheme: instead, they are subjected to justificatory processes. Sometimes they are legitimate from the perspective of justice, as when failure to satisfy them reveals an injustice. They may also be relevant for clarifying what justice and the common good entail. Their presence is held to intensify and heighten the quality of deliberations.²⁴

The assumption is that claims-making, when it successfully connects to values and norms equipped with decision-making rules – warrants – and establishes links to proper status functions, draws attention to a specific area of common interest, condenses it into an opinion, a will, and mobilizes resources for its realization. It then has an *agenda-setting effect*. Claims-making may even (re)constitute a demos or a constituency. Actors often claim not only to represent some fixed electorate or state of affairs but also new problems and states of affairs, hence representing some neglected or not-discovered interests. In this way claims-making is instrumental in forging an identity, in acknowledging a status that can be represented. Representative claims-making constitutes a citizenry.²⁵

²⁴ 'Including self-interest in deliberative democracy reduces the possibility of exploitation and obfuscation, introduces information that facilitates reasonable solutions and the identification of integrative outcomes, and also motives vigorous and creative deliberation' (Mansbridge et al. 2010: 72-73). See also Fung 2003. The same may be said of including testimony as a way to open for different perspectives (Sanders 1997).

²⁵ Michael Saward has launched the notion of 'the Representative Claim' – 'seeing representation in terms of claims to be representative by a variety of political actors, rather than [...] seeing it as an achieved, or potentially achievable, state of affairs as a result of election. We need to move away from the idea that representation is first and foremost a given, factual product of elections, rather than a precarious and curious sort of claim about a dynamic relationship' (Saward 2006: 298).

Not all reasons for action require justification. Claims-making suffices for decision-making when respondents, solely on the basis of the information entailed in the claim, become aware of a problem which, according to established standards and endorsed norms, should be solved. (For example, 'there should be a road here'!) People concur so to say just out of declaration or pedigree. But can this really be so in democratic states where the right to oppose exists? Yes, this is actually the case with 'claro cultures' (Gambetta 1998). Here actors get away with assertions.

Many cultures – including Latin American ones I know – place considerable value on having strong opinions on virtually everything from the outset, and on winning an argument rather than on listening and finding that something can occasionally be learnt from others

(Hirschman 1986: 42).

No justification is needed for people to concur, and no learning is in sight. In case of conflict, the most likely outcome is strategic action, followed by threat-based bargaining and voting. Faced with the choice between arguing and bargaining/vote, actors with claims that are hard to justify may opt out of deliberation. When arguments are poor, it is better to vote than to deliberate.

In general, for declaration and affective language to fulfill coordinative functions without critical argument, reasoning and reflection, a pre-existing value-consensus among like-minded agents must exist. The existence of ethical or expressive *appeal* and *value-consensus* are the mechanisms that sway actors to concur without justification. However, in normal cases when public resources are to be spent, questions will be asked, explanations and justifications will be required. This requirement increases with size and pluralism, with politization, contestation and the opening up of societies. With the waning of value consensus and of strong codes of honor in a community, with the emergence of different conceptions of 'the good', with no incontestable appealing order, the reasons put forward must be addressed to relevant others in a comprehensible, i.e., a general and rational manner.

Justification

Prototypically for a claim to be agreed upon, it must be explained and justified to others. Only justification can engender support when there is ambiguity or

disagreement.²⁶ Also declarations of power or will have no effect unless they are verbalized and asserted publicly.

There is the requirement of yes/no, whether a claim should be accepted or not; whether one should go further or whether the process should be stopped.

In order to be able to choose whether or not to support a claim, those concerned need to be given reasons. In a deliberative process, claims-makers defend their assertions by referring to intersubjectively valid norms and values. Non-coercive policy-making is based not merely on propositional contentful intentions, but also on a convergence of wills, which requires that the reasons be public, fair and purportedly rational. A claim must be explained with regard to its veracity and utility – ('Will a new road reduce the number of accidents? Is it needed, is it at all possible to construct this road, and is it affordable?') – and prioritized with regard to other publicly articulated demands and interests. ('What about other places that need a road? What about building a school or a hospital instead? Will the expenses lead to a tax increase?') The assumption is that if nobody is able to argue convincingly for the feasibility, rationality, and fairness of the claim, it will not engender support from disinterested parties, and contestants will take it down. *Corroborated facts* and *norms of fairness* are the action-coordinating mechanisms of justification.

What is evidence for or against a claim depends on what other claims are available as supporting hypotheses or collateral premises. To give a reason for action is for example to recognize something as a right, a duty, and a demand; something that becomes intelligible only in the social context of legitimate expectations, and where status functions are operative. Hence the assumption that successful justification depends on the establishment of a wider backing frame of reference as well as on the activation of the relevant DPs.

In this process of justification, many issues must be brought together to establish some shared definition of the situation and clarification of alternatives.²⁷ In order to reach agreement, the actors will have to 'focus on a convention of equivalence external to themselves', they must 'converge towards a common definition of the relevant objects in the situations', including on which *regime of justice* applies (Boltanski and Thévenot 1999: 362). A regime of justification required for dispute settlements and problem-solving

²⁶ 'Assertions of power and expressions of will, though obviously a key part of democratic politics, still need to be justified by reason' (Gutmann and Thompson 2004: 4).

²⁷ 'The operation of bringing together different items or different facts must be justified with reference to a principle of equivalence which clarifies what they have in common' (Boltanski and Thévenot 1999: 361). See also Boltanski and Thévenot (2006: 65ff).

will customarily entail collective conventions of equivalence, such as objectified rules and references to 'standardization of time and schedules' (ibid.). One may, with Brandom (1994: 221ff), maintain the claims normally do not have to be defended 'all the way down', but are accepted when defended by doxastic commitments or practical experience. However, justification may also take a more principled form when the premises are challenged.

Justification entails the weighing of arguments, often according to established equivalencies or regimes of justice, but sometimes arguments are subjected to moral reflection and principled argumentation because of norm or regime collisions.²⁸ Equally valid norms may apply. Public justificatory discourses revolve on whether a claim is *right* or not. Justification aims at settling conflicts impartially. In such discourses, actors draw on experience, facts and principles, which they believe will command acceptance. Claims must meet some epistemic standards - they must meet some validation criteria - if they are to be understood and acknowledged. Does the claim for a new road stand the critical test of being exposed to counter arguments and all other competing claims?

When there are conflicts of interest, preferences over outcomes, especially when redistributive decisions are to be made, the prospects for agreement are held to be bleak. Instead of threat-based bargaining, in which actors do not aim at redeeming validity claims but to strike a good deal for themselves, Habermas (1996: 97) suggests a moral discourse. For such cases as well as for norm-collisions, discourse theory proposes a shift to a higher order discourse - principled argumentation - in which the actors' actual interests and wishes are bracketed and put into perspective. Hence a moral point of view is adopted according to which only impartial and reciprocally acceptable resolutions will pass. In such a discourse for testing validity claims, the backing demands of rightness - of proper logic and analytical inference - and of justice come into play. Moral discourses about what to do - what to choose when respecting the ideal of equality, when the interests of all are given due consideration - aim at a rational consensus on a dignity protecting norm that trump other norms and values. They aim at resolutions based on what is equally good for all, which ideally should be able to regulate interests and settle distributive issues. In practice, however, actors are prone to act against resolutions that will be detrimental to their interests or identity, even when the arguments are

²⁸ This can take place in conventions, in constitutional courts, in (expert and ethics) committees, in citizen juries, in consensus conferences, and the like.

shallow. They may prefer disagreement and hope to strike a better deal by opting out of deliberation.²⁹

Can corroborated facts and norms of fairness provide a self-sufficient explanation of outcomes in a decision-making process? There can be justification without prior claims-making, and without ensuing learning processes – for example, if injustices, malpractice, corruption, and abuse are revealed (as through critical journalism or scientific research) which are deemed morally intolerable, and trigger rectifying measures. Due to the *world-disclosing effect* of deliberation, mental maps and normative outlooks may change without much further ado. Collective deliberation both ‘tracks and generates reasons’ (Laden 2005: 329).

As said, even rational justification may not in itself suffice to change actors’ opinions, particularly if justified claims have (re)distributive effects. The hard case for deliberative theory concerns cases that are resolved consensually despite ‘a sharp conflict of interests and/or opinion’ (Harré 1999: 250).

Learning

In case of disagreement, one or more of the dissenting actors must change their opinions concerning the right thing to do, if agreement is to be reached through deliberation. Mistakes or falsely grounded beliefs must be acknowledged, opinions must be changed. Learning generally involves overcoming obstacles intelligently. It entails realizing that hindrances can be overcome by making a collective decision; by changing modes of problem-solving and conflict resolution. In collective decision-making, learning is about how to make successful justification for goal attainment effective. That means turning justified claims into a type of acceptance that can lead to binding decisions, which in turn prompt compliance. When actors have learned and agreement has been achieved, justified claims are adopted. (For example, ‘I endorse the demand for a new road because my initial objections do not hold to closer scrutiny’.) Learning may, however, be of various kinds.

If actors change their opinions or preferences because of social pressure or because of advantage, there is a case for what can be termed *empirical learning*. Actors then for example change preferences because of strategic reasons, viz., because of outlooks for success or because of avoidance of failure. Another example of empirical learning is when actors change preferences because of ‘tit for tat’ (‘If I support you now, I’ll expect you to support me later’). Actors may

²⁹ Note that due to the procedural agreement of the democratic *Rechtsstaat* this do not mean acting against deontological powers, as both ‘egoistic market freedoms’ as well as bargaining and voting procedures exist, which allow for non-consensual action

also change preferences because they become aware of norms or common values that must be heeded in order to reach agreement. ('It is not fair to build this road when all other needs and demands are taken into consideration, but strong feelings or a sense of community – belonging – make me support this demand anyway'.) Another type of empirical learning is when actors consent because they lack alternative information or are *persuaded* (seduced) by dramaturgical claims-making and by the appeal of affective regimes of justification. In all these cases no real change – or real learning – has taken place. The actors have not realized the validity of the supporting reasons and changed their conviction; they decide to comply for tactical or strategic reasons. In such cases, the actors concur – but not for 'valid' and mutually acceptable reasons. Consenting because one receives a benefit or because of ignorance does not count as qualified acceptance (Estlund 2008: 9). It results in binding decisions and compliance, but not in real learning.

Normative learning, which is the core attribute of deliberation, entails agreeing on justified principles for dealing with claims-making in problematic situations on the basis of recognized mistakes or misconceptions in prevailing beliefs. It may mean a substantive solution to a distributive problem in collective decision-making. In case of continual conflict, it may mean agreement on how to proceed. In the latter case, learning means establishing procedural directives for 'appropriate and justified conflict resolution in concrete situations' (Günter 1988: 148).³⁰ A reason-giving practice with reference to collective decision-making makes clear what justice entails and establishes the standard by which processes for criticizing non-compliers can unfold. Hence the mechanisms of learning – corrections of beliefs and inconsistencies – do not merely posit that actors obey the inner voice of their conscience, but that they obey by the force of public reasons when contradictions and mistakes are unveiled. Due to the discomfort of performative contradiction, of incoherencies and contradictions in terms, and possibly also of public blaming and shaming, mistaken actors find themselves compelled to change their opinions.³¹ This is so for the simple reason that the actors' public standing is undermined and support shrinks. Unless mistaken actors change their preferences, their reputations may be jeopardized. Henceforth, there is prototypically a consensus with reciprocally acceptable reasons. Analysts may never get to know the real motivations and real reasons

³⁰ On stages in moral learning, see further Kohlberg 1981.

³¹ There is, however, an internal link between these two, as public discourse and criticism will change opinions or mental maps only if they correspond to recognized reasons: reasons that the actors deem valid. The forceless force of the better argument gets its authorization from public discourse, but works to change opinions only when autonomously accepted by the actors.

of the actors, whether they change preferences for empirical or normative reasons, but as far as the publicly stated reasons are the ones that are agreed upon, these are what explain the outcome – agreement on a binding decision (Eriksen 2009).

Deliberative theory assumes that a consensus-conducive norm can be established through enlightening discourse. In higher order, practical discourses in which the actors reason on the basis of impartiality and neutrality, the assumption is that it becomes clear which of the various justified norms should be applied to the case at hand.³² In such a discourse, the trump is justice. Reasons must be given for any deviations from the principle of equality, and discriminatory treatment must be justified with regard to morally relevant differences. Moreover, the constitutional state is there to ensure that laws, regulations and policy programs observe the impartiality requirement – equality before the law shall prevail! This is not a mere fiction as political regulations may be deemed unconstitutional.

Compelling compliance

The legal procedure itself helps to reduce the indeterminacy problem, as it excludes legally irrelevant arguments, and decreases the number of premises. Law drastically reduces the number of indeterminate cases.³³ The legal procedure, as indicated, reduces the radical uncertainty of deliberation by restricting the scope of premises in decision-making, specifying the context for adjudication, and selecting the relevant norms of application so as to ensure that only relevant facts and considerations are on the table before decision-making. Thus within a legal framework, which after all is the framework of collective decision-making to a lesser or greater extent, deliberation may not be a farfetched explanatory category.

Can there be learning without justification? As James March (1994: 80) notes, 'rules are modified on the basis of direct experience'. There is also *rational imitation*, 'a situation where an actor acts rationally on the basis of beliefs that

³² 'Learning in the moral domain is assessed in terms of how inclusive such a consensus reached through reason-giving is' (Habermas 2003: 257).

³³ It reduces the discretionary space for decision-makers – the hole in the doughnut shrinks (Dworkin 1977). However, the law does not eliminate the problem. Also legal norms are too unclear to give unambiguous, correct answers to normative problems. They are faced with indeterminacy, as positive law also has an open texture. Moreover, legal language may be vague, full of rationality gaps and norm collisions (Hart 1961: 128; Alexy 1998: 215). On the other hand, practical argumentation may compensate for some limitations of legal reasoning, as it is in principle open and unlimited with regard to time, social space, and substance.

have been influenced by observing the past choices of others' (Hedström 1998: 307). We may learn by looking to others or to past experiences, and make decisions with no prior process of explanation or justification. An example of such normative learning without deliberation is what Jon Elster (2007) terms *transmutation*. Mimicking altruism can lead to transmutation, to a change of opinions. Actors come to understand that there is something to non-consequential arguments. They may start believing in the norms, making them their own. Even principles can be learned without public justification. Deliberation also takes place in *foro interno*. There is *democratic deliberation within*, as Robert E. Goodin (2008b) terms it, conducive to learning. Thinking is internalized deliberation. Actors can imagine themselves in the position of others and anticipate counter-arguments.

Table 1 shows the analytical model of deliberative policy-making in which claims-making trigger justification when appeal and consensus are not sufficient for getting to yes, and learning when factual statements and norms of fairness do not lead to agreement.

Table 1: Sequences and mechanisms of deliberative decision-making

Sequences of policy-making	Explanatory mechanisms
Claims-making	Appeal Value consensus
Justification	Corroborated factual statements Social norms
Learning	Unveiled inconsistencies Corrected beliefs

Normative learning hinges on mutual understanding, conviction and compliance based on insight. When successful, deliberation converts vindicated claims into binding consensual decisions in authorized bodies. In case of continued conflict, claims may be overtaken by procedures for bargaining or voting. Hence the following sequence of collective decision-making:

Claims-making → justification → learning = agreement and binding decision;
or conflict/procedural agreement → bargaining and voting terminating in binding decision.

Voting is the threat point of bargaining, but is also a learning-inhibiting mechanism. When voting is possible, people need not enter the deliberative process of convincing others; they can calculate the outcome given the actual distribution of preferences and power, and try to mobilize the requisite

support solely in order to form a winning coalition. Arguing is more likely under conditions of unanimity. However, as far as policy-making takes place within a legal context, it disciplines the force of reason in collective deliberations. This is so because the legal procedure seeks to ensure *rightful interaction* among actors and a sound reasoning process. A few more words on this subject.

Like institutions, norms or rules, deliberation does not dictate behavior;³⁴ but the problem of indeterminacy decreases when the status functions of law are invoked. Law domesticates social relations and removes certain incentives for self-help and strategic action. Tit-for-tat, reprisals, reciprocal measures, or counter-measures are ruled out in legally pacified relations. By reacting unilaterally to norm violations the law not only minimizes the risk of free-riding and exploitation by strategic actors, but also makes it possible to act out of duty without the risk of being in a 'sucker' position (see Axelrod 1984; Apel 1998). Moreover, the law does more than merely forbid things: it provides information about the weight of reasons and concerns, about proper reasoning and procedure, as well as about possible sanctions and consequences of non-agreement. Formal law possesses a kind of epistemic authority, rather like an encyclopedia (Raz 1986). Legal procedures discipline the participants with regard to temporal, social and epistemic constraints. The stipulations of legal procedures ensure that counter-arguments are presented; they encourage impartial reasoning and ensure a decision within a time limit. The legal procedure compensates for the fallibility of deliberative processes and improves their incomplete procedural fairness (Alexy 1989: 179; Habermas 1996: 221).

Conclusion

The point about deliberative decision-making is not merely that arguing can lead to changes of preferences because the actors become epistemically enlightened: it is that inconsistencies and mistakes are revealed in a public reason-giving process, and that there exist devices to ensure that rational and impartial arguments can win through. In this paper I have focused on the normativity of reasons – only with the use of arguments can collective decisions be made without coercion – and their action-coordinating force. In order to demonstrate the putative behavioral effect of deliberation I have proceeded in two steps: First, arguments based on effective warrants – rules of inference – supported by backing demands and bolstered by institutional

³⁴ Institutions yield indeterminate results, and rules do not predict behavior. In his account of linguistic meaning, Wittgenstein 1953 found that grammatical rules underdetermine meaning owing to multiple contributions of context and usage.

status functions account for the conversion from premises to conclusion. Secondly, micro-mechanisms operative in the sequences of policy-making – in claims-making, justification and learning – can explain the transformation of initiatives into practical results.

The sanctioning force of the sequence related mechanisms vary from those deriving from social pressure/feelings of compassion and solidarity stemming from social belonging; via the inner sanctions of conscience and integrity – a rational person obeys by facts and justified norms; to the external sanctions involved in public exposure and critique – shaming and blaming. The normativity of deontological powers and of the mentioned micro-mechanisms consists in their ability to ensure a definite result within a timespan without the use of force. They thus contribute to the understanding of the social and political grounding of reasons – how a single correct decision might occur as the result of a reason giving process.

A caveat applies: Increased deliberative quality conducive to collective decision-making may not always go together with increased democratic authorization. Representatives that obey by the force of the better argument may well betray the mandate of their constituencies. We should distinguish between the two levels of analysis: one that belongs to the sphere of public reasoning among all those affected, conducive to democratic legitimacy; and one which entails collective decision-making and the manner in which arguing may sway actors to adopt a common position. Deliberative decision-making may be rational – but it need not be democratic. This could explain why MPs respect deliberations in the caucus room more than those on the floor of the parliament (Goodin 2008a: 197; Manin 1997). However, only by viewing collective decision-making within the normative context of deliberative democracy founded on the epistemics of rational reason can we account for the putative force of public reasons in the process of getting to yes.

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