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Erik Oddvar Eriksen is Professor at ARENA – Centre for European Studies, University of Oslo. E-mail: e.o.eriksen@arena.uio.no.

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Centre for European Studies
University of Oslo
P.O.Box 1143 Blindern | 0318 Oslo | Norway
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Abstract

Jon Elster has a clear view of the role of norms and impartiality in collective decision making processes, but does not ascribe to them the power to explain action. Hence, the paradox: If it is only public reasons that can justify outcomes, how can private desires be the causes of the same outcomes? Reasons and norms must be given explanatory force, but this requires methodological individualism expanded to *methodological interactionism*. Here promises appear not merely as bargaining chips, arguing more than an aggregation device and normative questions not as irrational. Because both arguing and strategic communication exist, and it is as hard to identify the former as the latter, one should not let one take precedence over the other on theoretical grounds. The problem is not theoretical, but methodological.

Keywords

Collective Bargaining - Common Interest - Deliberative Democracy - Discourse - Functionalism - Institutionalism - Legitimacy - Methodological Issues - Normative Political Theory

Introduction

This paper deals with Jon Elster's explanatory model of social action and the way he distinguishes between arguing and bargaining in his opus magnum *Explaining Social Behavior*, which synthesizes his previous work in the field.¹ The distinction between *arguing* and *bargaining* has been the source of many academic controversies and comprehensive research activity among political scientists. Are collective decisions made in a process of arguing, or are they rather the products of bargaining, in which the actors seek to maximize their self interests? Elster understands – in line with Thomas Schelling² – bargaining as threat-based. It is not the self interests that directly determine interaction, but the credibility of the threats and promises that can be put into effect outside the bargaining sites. What characterizes bargaining is thus the latent presence of force in the interaction. It is the power; the *resources* the parties are in possession of, and how these are employed, that determines the outcome. Arguing, on the other hand, designates a form of communication in which assertions are claimed to be valid. The normativity of arguing lies in the fact that only with the use of arguments can collective decisions be made without coercion.

Many have seen the value of this distinction in relation to deliberative democracy, in which arguing is seen as a way of clarifying what justice and the common good for a group are. Democracy is, in this perspective, understood as an arrangement for arriving at legitimate and reasonable decisions through the public use of reason. The validity of democratic decisions depends on the quality of the preceding discussion between affected and competent parties. To the extent that collective decision making is governed by impartial reasons, it can claim a higher degree of legitimacy than if it were guided by group interests and power. There is however a tendency to conflate arguing with democracy. A collective decision reached through deliberation is often perceived as democratically legitimate. The normative relevance of this distinction can be questioned, as bargaining is important in order to ensure legitimate group-interests, and because arguing and democracy not necessarily coincides. Not all the citizens can participate in the public debate.

That there is something to the distinction between strategic bargaining and a reason giving practice is well documented and recurs through the history of philosophy from Aristotle to John Rawls. Many have attempted to establish criteria for the distinction between arguing and bargaining that can be used in the study of legislative processes, as well as of collective decision making generally. How much arguing there is in the real world and how this can be distinguished from bargaining, is however unclear. Indicators have been hard to establish. The fact that it is difficult to distinguish between bargaining and arguing in practice does not make the distinction redundant. If – as Elster says – both modes of communication exist and criteria are hard to establish, then the question is why self-interest based bargaining should take precedence as explanation. It is as hard to identify bargaining as it is to identify

¹ J. Elster, *Explaining Social Behavior. More Nuts and Bolts for the Social Sciences*, Cambridge: Cambridge University Press, 2007. The numbers in the parentheses refer to page numbers in this book. I am grateful for comments to an earlier variant of this paper by Lars Blichner, Harald Grimen, Jarle Weigård and colleagues at Arena, in particular Cathrine Holst and Marianne Riddervold. A shorter version of this paper was published in R. Slagstad (red.) *Elster og sirenenes sang. Festskrift for Jon Elster*, Pax Forlag, 2010.

² T. C. Schelling, *The Strategy of Conflict*, Cambridge: Harvard University, 1960.

arguing. Nonetheless, it is self-interest based explanations that become the principal mode for Elster, even though he draws on Habermas' insight about the compelling force of the better argument. My claim is that Elster understands arguing as well as promises from the perspective of bargaining. And it has to be so given his model of social action. Behaviour is to be explained in relation to prior mental states – subjective desires. By implication, the space for arguing is reduced, as this is an *interactive* category. Arguing refers to what takes place *between* the actors. The aim of this paper is to contribute to conceptual clarification of the distinction between arguing and bargaining by scrutinizing Elster's latest work on this topic.

I will first discuss Elster's model of action, which is based on methodological individualism and instrumental rationality. Impartial reasons can not do as explanation because they lack motivational force. Acting on the basis of moral norms or justice is irrational. Whether it is self-interest or arguments that drive political processes is, however, an empirical question that ought not to be theoretically predetermined. How problematic Elster's model is, becomes apparent in his explanation of the struggle for universal suffrage, in which self-interests and prejudice are seen as explanans. This makes up the first part of the paper. Then I discuss the insight into *the civilizing force of hypocrisy*. Why is it a fundamental need to camouflage one's private interest by referring to norms, which it, according to Elster, is irrational to act on? Here, there are some unresolved questions. How can a reason that is merely instrumental command respect and how can impartial judgment at all come about? Next, I discuss the need for an expansion of the very framework of analysis. In order to give arguments and norms explanatory force, methodological individualism must be expanded to *methodological interactionism*. The question is further whether arguing can be seen as merely one of three steps in an idealized sequence of decision making, alongside bargaining and voting, or if it runs deeper, making up a precondition for the other procedures. Thereafter, I discuss whether *promises* constitute a resource that can be employed in the bargaining situation similarly to threats. Finally, some characteristics of the distinction between arguing and bargaining are spelled out.

Action and rationality

For Elster, the basic explanatory category in social sciences is *events*, and an event is to be explained by another event. What mediates between events – the causal pattern – is called mechanisms.³ Mechanisms can explain, but not predict. They represent an alternative to the covering-law model of explanation. They trigger actions under conditions of indeterminacy and do not determine outcomes. Proverbs are examples of mechanisms that Elster is fond of, and which often are triggered under unknown conditions, like: 'We believe easily what we hope and what we fear' (39), and 'Necessity is the mother of invention' (40). His model of social action is based on the belief-desire structure. Beliefs are what actors assume to be valid. Action is seen as intentional behaviour driven by the beliefs and desires (or preferences) of the actors. He is a proponent of strong *methodological individualism*. In order to understand action, we must understand how the mind operates.

³ 'Mechanisms are frequently occurring and easily recognizable patterns that are triggered under generally unknown conditions or with indeterminate consequences' (36).

Furthermore, rationality has a strong appeal because we are beings who want to give *reasons* for our actions. Reasons are understood as 'desires and beliefs in light of which the action appears as rational' (214). How can we explain behaviour with the help of mental conditions that are prior to the action? Referring to the behaviour itself, or its beneficial consequences, as evidence of motivation, falls prey to the fallacy of circularity. This is the case with utilitarian behavioral analyses, which infer from what serves one's interests to the motivations of the actors (61). The scientists must then necessarily take the actors' own statements about the motives as the starting point. Are the statements consistent, does deed follow word, and is nonverbal behaviour consistent (59)? Lies and deception, as well as strategic use of impartial arguments and dramaturgical self-representation in public fora, are well known phenomena. Thus, it is not easy to say what really motivates actors.

Language is, however, not merely a means of self-representation and of preference maximizing. It is a medium for understanding and constitutive for meaning. Actors coordinate their plans of action via speech acts, and thus via desire-independent reasons. The language is a system of symbols that provides us with the possibility of collective representations; it enables us to think on two levels simultaneously: A piece of paper can be a ballot or an euro bill. Without language, no political choices or monetary transactions. It is the existence of language that gives individuals the possibility to represent and to misrepresent, to submit what is the case and also what they would like to be the case. The language represents opportunities, but it also limits the actors' room for strategic maneuver, as intentions must be communicated through generally understandable, and thus desire-independent, categories. I will return to this below.

Elster's model of social action excludes desire-independent reasons as explanans. The concept of rationality is instrumental. Non-instrumental or non-consequential, norm-following behaviour can, according to Elster, not be classified as rational behaviour. Such is rather on par with magic (226f).⁴ Rationality only requires that the actor chooses the right means according to given preferences. 'Rationality only tells me to choose as a function of what will happen if I do A rather than B' (227). Elster distinguishes between *acting for a reason* and *acting according to reason*. Acting for a reason is to act according to one's self-interest. To act according to a reason is to act impartially or for the common good (78).⁵ Norm following behaviour is thus understandable, but not rational. For Elster, it is only actor-relative reasons that can count as explanations; impartial reasons lack the motivational force of the desires. Desires must however be legitimized. Impartial reasons work when there is concurrence between self- and common interests. Actor-relative reasons have only a limited ability to move others to support a proposal designed to solve a distributional problem. Why would my desire for a bigger piece of the cake motivate others to give up theirs? One therefore has to bargain.

There will always be elements of both arguing and bargaining in collective decision making, because the actors need to reason over suggested solutions and to make

⁴ See also E. Engelstad, E. Lange, H. Pharo and E. Rudeng (eds), 'Rasjonalitet og rettferdighet' in *Demokratisk konservatisme: Frihet, fremskritt, fred. Festskrift til Francis Sejersted*, Oslo: Universitetsforlaget, 2006, p. 62.

⁵ 'The person who chooses according to his or her self-interest acts for a reason, but not according to reason. Conversely, the person who acts on the categorical imperative acts according to reason, but not for a reason' (214; see also p. 82).

known how strongly they desire an outcome and what promises and commitments they are prepared to make. It will often be unclear what we are dealing with. Bargaining and arguing must according to Elster be seen as two ideal typical forms of communication, which are hard to observe in a pure form. Because the actors have the opportunity to behave strategically; to use arguments in a manipulating manner; to misrepresent facts or preferences, we are better advised to favour the bargaining perspective, in which threats and promises govern interaction.⁶ For Elster, self-interest becomes the central and most basic motive, as bargaining is the most primary form of communication. Or as he wrote in a previous work: 'It is more realistic to assume that political actors are motivated by self-interest, but that they are constrained by the desire-independent motives that exist among the population' (author's translation).⁷

We know, however, very little about whether political actors are guided by self-interest or not. We are barred from obtaining firm knowledge about the actors' real motives. Moreover, self-interest theories are accused of being self-defeating as it is often rational to act against one's own best interest.⁸ It is therefore unclear what the realism consists in. There may be two other reasons why Elster chooses to favour strategic action. The first pertains to the problem of apologetics – i.e. uncritically confirming the actors' own reasons. The danger of 'legitimatory science' can be avoided if we place the modes on an equal footing, and make it an empirical question whether we are dealing with arguing or bargaining.

The other argument pertains to the fact that this type of explanation concurs with the basic model of social action, which posits subjective perceptions and desires as causes. This would require an independent justification of the basic explanatory model of social action, something Elster does not provide. The model is merely postulated, not justified. I cannot see that these arguments, separately or taken together, give Elster good arguments in favour of self-interest based explanations. The problems with Elster's model come to the fore in his analysis of the struggle against universal suffrage.

Prejudice and cheap talk

Elster understands the argumentation against universal suffrage as cheap talk. In order to be able to explain restriction on suffrage throughout history, we must look to how impartial arguments have been used in a strategic manner. When Madison at the Federal Convention defended property qualifications for election to the Senate as a measure to protect the people against themselves, and not to favour the property owners, one should be on the alert. The same goes for the literacy requirement, the consequence of which was the exclusion of blacks and Catholics from politics. There are good reasons to be suspicious when interests and impartial arguments concur.

⁶ See J. Elster, 'Strategic Uses of Argument', in K. J. Arrow, R. H. Mnookin, L. Ross, A. Tversky and R. B. Wilson (eds), *Barriers to Conflict Resolution*, London: W.W. Norton, 1995, pp. 237-257; J. Elster, 'Arguing and Bargaining in the Federal Convention and the Assemblée Constituante', in R. Malnes and A. Underdal (eds), *Rationality and Institutions*, Oslo: Universitetsforlaget, 1992.

⁷ J. Elster, 'Argumenter og forhandlinger. Om strategisk bruk av kommunikativ atferd', (1992) *Tidsskrift for samfunnsforskning* 33: 115-132, p. 130. See also J. Elster, *The Cement of Society*, Cambridge: Cambridge University Press, 1989, pp. 28-29.

⁸ D. Parfit, *Reasons and Persons*, Oxford: Oxford University Press, 1984.

Obviously it is reasonable to assume that many of those who have argued in favour of subjecting suffrage to the criteria of property or literacy were motivated by group interests, but how can we be sure of that? It could be an example of cheap talk, but in my view it does not have to be. To determine this, more data is needed. From a logical point of view, the arguments could be based on *convictions*. When the property owners in the eighteenth and nineteenth century argued that one needed the independence granted by property ownership, many of them probably believed that this was right. Many believed in the argument that property and reading skills were connected to knowledge and enlightenment, and thus to the capacity of impartial reasoning and common good orientations. Education and enlightenment were (and in many places still are) connected to income and property; so when somebody wanted to delimit the right to vote to the 'enlightened' property owners, they surely had a point. If that is the case, is this argument not an explanans?

Elster, who concedes that there can be given impartial arguments in favour of awarding suffrage on the basis of a literacy criterion (406), still claims that: 'The real motivation of the advocates of literacy was, however, prejudice or group interest.' (407). One thing is to suspect the proprietors of strategic use of impartial arguments, but why characterize arguments in favour of the literacy criterion as a *prejudice*? The consequence of the criterion was the systematic exclusion of women from politics. If men were motivated by prejudice, then they were motivated by a pattern of thought that could be justified with reference to reasons that were acceptable according to prevailing perceptions and norms: 'women are not fit for politics', 'the woman's place is in the home', 'women are too emotional'. These are arguments that many found to be correct. There are more problems with Elster's attempt to avoid this explanation.

The first is that if we are dealing with a prejudice, then the actor cannot use it strategically. Actors are usually not aware of their prejudices. It is a contradiction in terms to say that prejudices can be used strategically. If prejudice was what motivated the actors, then the actors behaved non-strategically. Someone who speaks out of prejudice means what she says and does not behave strategically with her prejudice (unless she seeks to play upon popular prejudice).

The second relates to the question of whether prejudice can be a cause. To explain action as a result of prejudice is to give an *asymmetrical explanation* – one that does not harmonize with the actors' own motivations. If one does not explain with reference to the convictions and mental maps that were at work there and then, the explanation become an *anachronism* in a historical perspective.⁹ As Elster himself says, one cannot explain a phenomenon by something that does not yet exist.¹⁰ The perception that limiting the right to vote according to an income criterion is illegitimate, is of a newer date. Explaining with the help of a prejudice does not satisfy Elster's own requirement of event-event explanations. Here one can say that Elster emphasizes his own 'prejudice' and not the real explanation of a historical event.

To say that an actor was motivated by a prejudice is to say implicitly that this is blameworthy. 'Prejudice' is a negatively charged normative characterization which

⁹ See H. Grimen, 'How Conditions of Adequacy for Text-Interpretations Depend on Practices for Explaining Actions', in K. S. Johannessen and T. Nordenstam (eds) *Wittgenstein and the Philosophy of Culture: Proceedings of the 18th International Wittgenstein Symposium, 13th to 20th August 1995, Kirchberg Am Wechsel (Austria)*, Hölder-Pichler-Tempsky, 1996, p. 125.

¹⁰ See p. 8 and p. 462.

implies that the person concerned ought to have acted in a different manner. But this presupposes that the actor could have acted differently. Whilst an alternative basis on which to act is available to us, it might not have been so to the historical actor. If one is to characterize the motives of historical actors as based on prejudice, then a normative framework is needed that was not accessible to these actors. One can of course criticize arguments and convictions for being flawed or narrow-minded but we can not rule out that it nevertheless was these arguments that explain why actors behaved as they did. What were prejudices is easy to see with the benefit of hindsight, but explaining a historical event in this way is problematic. It implies not taking into account the prevailing mental maps and intellectual states of affairs of the time. To say that John Stuart Mill's argument for limitations to universal suffrage was based on a prejudice amounts to *hyper-intellectualism*.

What is furthermore the problem with characterizing opponents of universal suffrage as prejudiced, is that one fails to convey that there is after all some sense in the reasons that were given in support of denying the poor the right to vote, especially the fact that they were illiterates. At the point when this connection could no longer be sustained empirically, or when it was set aside by weighty moral reasons, the basis for the standpoint withered away.

In this analysis, Elster does not make use of what he is usually very conscious of, namely the existence of *wishful thinking and self-delusion*. What about the possibility of the actors being unaware of the consequences of their actions, or of them being guided by faulty beliefs? Often, the actors are not fooling only others, but also themselves, into believing in flawed beliefs. Actions which others often see as manipulative, is not perceived so by the actor herself. The actor does not see through her own manipulative behaviour. Here, terms such as *false consciousness* and *systematically distorted communication* are still in place. However, it is important to reflect the analyst into the analysis. Prejudices are normative characterizations of forms of self-delusion, rationalization or false consciousness, and it is the analyst herself who retrospectively, from an analytical distance, with the benefit of hindsight, gives this characterization. This cannot constitute the real cause, hence it can not do as an explanation.

Fallacies

There is something about Elster's favouring the instrumental perspective that moves him close to conspiracy theories which he has been the sternest critic of. In the case discussed above, Elster himself makes inferences from objective consequences to interest-based motives. To infer from the concurrence of arguments in favour of the common good and the self-interests of those who speak on their behalf is not permissible. Self interests need not be the explanation as to why they are presented. Such inference is as impermissible as inferring from the consequences of behaviour to its causes. Elster commits a fallacy similar to the functionalist one,¹¹ or what he now calls 'rational-choice functionalism', where one tries to explain choices by their beneficial consequences (54). We must realize that although actors' self-interests are promoted by a common good argument, we cannot know for sure that this is the reason why the argument is put forward. To surmise about the motives and the

¹¹ See also E. O. Eriksen and J. Weigård 'Conceptualizing Politics: Strategic or Communicative Action?', (1997) *Scandinavian Political Studies* 20(3): 219-241, p. 233.

sincerity of actors by referring to their objective interests is not, on pains of circularity, permitted. *Hyper-rationality* is widespread in the rational choice literature, and as Elster self-critically writes, it is unlikely that actors 'act on calculations that make up many pages of mathematical appendixes in leading journals' (5).

The question is if not this incessant searching for motives leads social scientists off track. It leads to suspiciousness and to a debate about 'the man and not the ball'. Taking the quality of the arguments and the articulated intention as the starting point, and looking at the processes of reason-giving and justification that play out, one gets a better intake to understand the generation and breakdown of social patterns, because these are only upheld as long as the actors' interaction reproduces them. Political phenomena such as suffrage, elections and rights are *observer-dependant* in that they exist only by virtue of the actors' perceptions, of social practices and language games. They claim to be supported by reasons and they can be criticized.

Explaining action with the help of reasons differs from giving an ordinary causal explanation. We are not dealing with an event that is explained by another event: A causes B under certain conditions. In the former case it is rather about giving or interpreting the reason the actor acts on.¹² How robust is it and can it explain why the actors act as they do? An argumentative explanation refers to the substantial reasons the actors actually give, and the question is whether or not the reasons are good enough to motivate the approval of others. We are here dealing with the weight of the argument. Is it generalizable or universalizable; is it acceptable to the affected parties? An example: When governments require language skills in order to grant citizenship to immigrants, should we understand this as a restrictive immigration policy (based on national interests, or possibly prejudice), or as a legitimate demand on immigrants, viz, that they are to be able to understand the language that the law is written in? In such a debate several motives are probably at work at the same time, but in a public exchange of arguments the question becomes whether this is a *correct or legitimate measure*. Is it based on good reasons; are all immigrant communities treated alike; would existing citizens be able to pass the test, is the measure really needed in order to integrate immigrants? The question is whether the proposition can withstand an argumentative testing, also when it meets (national) self-interests.

The civilizing force of hypocrisy

Action is for Elster intentional behaviour driven by what the actor believes and desires. If it is so that it is only mental conditions prior to decision making that enable us to explain actions as optimal from the actor's point of view and not from an external perspective,¹³ then one must seek to understand the actors' reasons even if they were not to fit into the utilitarian rationality scheme. Elster warns against absolutizing the instrumental perspective. Arguing cannot always be reduced to more or less refined ways of realizing self-interests; if this was the case, there would be no room for manipulation. Some things must be fixed, such as binding norms, or else there would be nothing to deceive with – in the same way not all signals of animal

¹² And when the analyst thinks that the reasons do not suffice, inferences are often made to the actors' self-interests or prejudice.

¹³ Which is Elster's requirement, p. 209.

behaviour can be trickery, because then there would be nothing to trick with. The existence norms must be assumed – they have reality as well as autonomy.¹⁴

As it now stands with Elster, norms are conceptually necessary, but not explained. Norms exist, as do perceptions of common interests; and actors who seek to maximize their preferences better take them into consideration. One consequence of this is that one cannot explain that actors relate to norms out of a notion of them being right or wrong, but out of considerations of whether norm-breach would harm ones reputation or self-perception. Thus, norms are understood from a strategic perspective. This amounts to a theoretical foundation for branding or ‘reputation theory’ – better adapt to the norms if one is to build a good reputation. But what is really the mechanism that can explain that there is a fundamental need for camouflaging one’s self-interest by referring to norms, which it, according to Elster, is irrational to act on?

Elster’s point is not only how good arguments can be misused in order to camouflage self-interest. He distinguishes between misrepresentation of preferences guided by interests and hypocrisy guided by the actors’ desire for self *esteem*. In the first case, it is the actors’ self-interests that make them camouflage their standpoints as an impartial reason; in the latter case, it is their self-esteem that makes the actors appeal to valid norms without in the first instance believing in them. Hypocrisy is the vice’s tribute to the virtue. *Mimicking altruism* can then lead to transmutation, to change in preferences, i.e. to the actors coming to understand that there is something to non-consequential arguments. Thus, the actors can start believing in the norms and making them their own. One can add that this civilizing force of hypocrisy also consists of the actors, through the active use of norms, at the same time confirming their validity and strengthening their grip on the minds.

Elster explains the transformation of the actors’ original motivation – from interests to reason – as resulting from the desire for self-respect or self-esteem, which again rests on the regard for reason. This blends out the intersubjective dimension. Certain actions are reprehensible because they have negative consequences for the interests of others, and because they conflict with common values or moral prescriptions. When one violates moral dictates, then one behaves in a criticizable manner and questions are raised about personal character. This shows itself in feelings of shame and self-loathing, and in bodily manifestations such as blushing and hot flushes. ‘The emotions of anger, guilt, contempt, and shame have close relations to moral and social norms. Norm violators may suffer guilt or shame, whereas those who observe the violation feel anger or contempt’ (153).

Self-esteem is thus conditional upon other’s recognition. One would believe this would lead Elster to embrace the idea of normative rationality, but he sticks to Hume: ‘reason is and ought only be the slave of the passions’.¹⁵ Why are some attitudes the object of admiration and contempt? What is the basis for self-esteem?

¹⁴ Cp. Elster, *The Cement of Society*, Cambridge: Cambridge University Press, 1989, p. 100.

¹⁵ L. A. Selby-Bigge (ed.), *David Hume. A Treatise of Human Nature (1739-40)*, Oxford: Oxford University Press, 1975, p. 415.

Esteem and rationality

Actors will, as also Elster says, be able to give impartial reasons for acting in accordance with norms. There are however so many perceptions of justice and of the common good that one should have little difficulty finding a reason that suits one's private interest, hence the notion of *self-serving concepts of justice*. But even though impartial reasons can be misused, they offer normative standards for judging behaviour. Actions are criticized or applauded, they are respected or loathed, admired or detested; characterizations that can be backed by reasons. The idea of normative rationality is based on the fact that self-respect is inter-subjectively constituted and that there are ways to settle normative controversial issues in a valid manner.

Norm-breaches have consequences for self-esteem, but only when one recognizes the norms as valid in the first place. There can be good reasons for breaching norms in certain situations and, in practice, norm-collisions will occur and must be dealt with; and normative change occurs as a result of *learning*. Thus, norm-conforming behavior and self-esteem cannot be connected straightforwardly. The regard for reason must excel. When, however, rationality is only perceived as instrumental and a slave of the passions, it becomes difficult to explain on what basis one can act in opposition to, or test, prevailing norms. This requires *autonomy* and the capacity for impartial judgment. Autonomy is as incompatible with being a slave of one's mental inclinations, feelings, cravings, passions as it is, as Elster says (40), with conformism (or non-conformism). Autonomy implies that the will must be self-determined. To speak with Kant; to desire an end is to decide oneself to be the cause of the end. The end cannot be determined by something else; that would be heteronomy. Autonomy requires a certain degree of rationality as we would require an autonomous actor to give comprehensible reasons for her actions; will know what it means to follow a rule, to give a promise, to let herself be bound by a norm, and also ideally to justify or criticize the norm.¹⁶ To account for the ability of choosing as well as of impartial reasoning, we need the concept of an *irreducible self*, as well as that of desire-independent reasons and free will. These abilities distinguish, as is well-known, human beings from other higher-ranking primates.¹⁷

Rationality has to do with systematic connections between the actors' intentions and behavior, and to these belongs also the connection between those commitments an actor takes on when something is uttered, and the ability to convert such into practical results. Rationality is conditioned by language – a system of symbols which establish desire-independent reasons: reasons that can motivate as well as evaluate desires. The question is if the norms are not intervening deeper into the motivational structures, which both the fact that norm-breaching begets bodily reactions and that norms raise validity claims underscores. When some one act wrongly people react with resentment and indignation, and moral shame arise in the norm violator. The feeling of self-contempt is not merely due to inner sanctions but to others' (possible)

¹⁶ Earlier, Elster did hold that being rational is to act on desires and conceptions that are themselves rational, see J. Elster, *Sour Grapes. Studies in the Subversion of Rationality*, Cambridge: Cambridge University Press, 1983, p 15,

¹⁷ J. R. Searle, *Freedom & Neurobiology: Reflections on Free Will, Language, and Political Power*, New York: Columbia University Press, 2007, pp. 53 and 101.

reactions.¹⁸ And such feelings can be articulated and assessed cognitively – are they apt (or not) all things taken into consideration.

A more complete explanation to norm following behaviour than the fear of sanctions or consideration for self-esteem could be the norms' constitutive character. Now, there are, as Elster says, different types of norms (social, moral, legal), but when it comes to moral norms that raise imperative demands – You Shall! – then they do not merely regulate interest based actions. They constitute and enable practices, such as lying, stealing and discriminating, and they refer to internalized reason-giving structures. Here, it is not only relevant to talk about emotional foundation of moral which manifests itself in bodily reactions – and which shows that it is *good to do right*, as Emile Durkheim said; but also about morality's cognitive foundation. Such imperatives refer to presumably inter-subjectively valid rules of action. They claim to be of universal validity, protecting the dignity of vulnerable human beings. The one who contests such takes on an argumentative burden. The one who, for instance, wants to defend limitations to universal suffrage will have problems showing how this harmonizes with the idea of a just political order, or political equality. Reasons must be given for all deviations from the principle of equality. Discriminating treatment must be justified with regard to morally relevant differences. The one who wants to argue against impartiality finds herself in a *performative self-contradiction* as she has already accepted this principle at the start of the argument. To be sure, performative self-contradictions are part of the order of everyday life, as it is not easy to live up to the demand of self-referential consistency, but they form the basis of many types of critical activity. Elster's Humean starting point about reason being the slave of the passions and desires being what constitutes causes, is problematic, because neither is it clear why such rationality is admirable nor how impartial judgement can come about. As mentioned, for Elster, justice, as well as the categorical imperative, is magical thinking.

Action-coordinating reasons

Elster thinks that the existence of a social norm makes it difficult for actors to use arguments based on self-interests. However, the explanation is that reference to self-interest does not constitute a valid or legitimate argument in the public debate. My self-interest can only motivate me. Referring to ones self-interest is not something that engenders the support of others. On the contrary; it often counts negatively. Subjective preferences cannot play any role in the explanation and justification of action; as reasons for opinions and standpoints. They do not count, to speak with Scanlon, as reasons for a certain belief with a certain weight.¹⁹

Because reasons are reduced to desires, Elster's model of social action becomes too narrow to register the action-motivating force of justified standpoints. Reasons are not only about subjective intentions and emotions like indignation and resentment, but also arguments with regard to right and justice, that is questions that can be settled with regard to impartiality. Deliberation is a way to correct false or biased impartiality. Even though many reasons have subjective conditions, it is misleading to describe them as desires. This cover up for the fact that our ends must be public and have a certain quality if they are to enable the coordination of actions. As speech-

¹⁸ See E. Tugendhat, *Vorlesungen über Ethik*, Frankfurt a. M.: Suhrkamp, 1993, p. 57

¹⁹ T. M. Scanlon, *What We Owe to Each Other*, Cambridge: Harvard University Press, 1998, p. 52.

acting actors, we give reasons that we perceive as presumptively understandable and acceptable to others. The very idea of rational action builds on the assumption that it cannot be caused directly by desires, but in the assessment that the desire or want constitutes an appropriate reason for action.²⁰ We explain our actions by giving reasons. These can always be reduced to intra-psychological conditions and physical-chemical processes in the last instance, but this hardly improves our ability to explain the actors' situated rationale for acting. To give a reason for action is for example to recognize something as a right, a duty, a demand; something that only becomes intelligible in a social context of legitimate expectations.²¹ One does not get an intake to this through intra-psychological processes. To act for a reason is to say that something counts in favour of something; of a conception that requires evaluation or judgmental power. Reasonable actors are able to give and to evaluate reasons and also become moved by these under given circumstances.²² The reasons are internal; they refer to themselves, to their rational and convincing force. When they can be reduced to mental states – to subjective desires – they lose their meaning and their force to coordinate action, to compel compliance.

Desire or self-interest understood as a functional disposition to act in a certain way, lacks the force to make reasons understandable and acceptable. Particular desires do not make up good reasons for behaviour just like that. My desires cannot be used to convince others to follow my proposal or my recommendations. Thus, one cannot use as proof of manipulation the fact that actors refrain from referring to their interest over certain outcomes of a political debate. Only actor-neutral, impartial reasons will have the authority needed to motivate others to support a proposed solution to a collective problem. Sometimes, the self-interest and the common interest coincide, but this, in itself, says nothing about the validity or weight of the argument. Thus, if only emotions, or passions, can be motives for action, it is their quality – their worthiness of recognition, to speak with Adam Smith – that gives them action coordination force.

The concept of arguing

The concept of arguing is adapted from Habermas' discourse theory. It designates that the actors thematize controversial validity claims and criticize or defend them with arguments. In line with this, a deliberative setting, in which the actors argue under conditions of consistency and impartiality, they will be able to create outcomes that are independent of the actors' motives. With Elster, however, the concept of arguing is unclear. On the one hand, arguing is defined as the ability to *persuade* through reason giving: to argue is to engage in communication with the intent of persuading an opponent. On the other hand, Elster claims that ' (...) arguing intrinsically aims at unanimity, in the sense that it is based on reasons that are supposed to be valid for all' (405).

The latter determination indicates that arguing is a form of communication in which empirical and normative assertions claim validity. However, if the point is to find

²⁰ C. M. Korsgaard, 'Morality and the Logic of Caring: A Comment on Harry Frankfurt', in H. G. Frankfurt (ed.), *Taking Ourselves Seriously and Getting it Right*, Stanford: Stanford University Press, 2006, p. 68.

²¹ Elster is onto this when he says that '[f]or an act to be rational (...) it has to be optimal in light of the totality of reasons, not just one of them.' (54).

²² Cp. Scanlon, *supra* note 19, p. 56.

reasons on which a consensus can be reached; then the actors cannot participate with the aim of persuading others in order to be able to realize their preferences. A fundamental precondition for arguing is that the speaker succeeds in establishing mutual understanding with his co-actors that one is really debating what is the case or what should be the case, and does not joke, ironize, lie, or withhold information. Further, for the actor to be able to submit something about an issue or an intention in such a manner that others can understand and possibly accept it, the arguments must be capable of speaking for themselves. In good arguing processes, it is not the speakers' motives for saying what they actually say, that is up for debate, but whether or not what is said is valid or not; true or false, right or wrong. When the actors participate with the intention of finding out what are valid reasons, what is actually the case or what is right, they must see themselves as *fallible*; i.e. they must be open for the possibility that they are themselves mistaken. The discussion partners are invited to come up with expostulations, and the actors often are cautious; 'as far as I know', 'to my knowledge'.

Therefore, Elster's conflation of persuasion and deliberation is misleading. Deliberation is about finding reasons that are convincing and valid to all. As so often remarked, the biggest difference between being persuaded and being convinced, i.e. where one can give arguments in favour of a standpoint in first person singular. Although it may be difficult to empirically identify the distinction, it is very much operative in verbal communication, in our pre-theoretical know-how.

Elster's concept of arguing is instrumental. To be sure, arguing has an instrumental dimension in that it solves information problems and reduces transaction costs. It increases problem solving as more heads are better than one. It also contributes to conflict resolution; opponents argue instead of resorting to violence or force in order to solve disputes.²³ It does, however, have a broader epistemic dimension in that the actors, through a communicative practice, ensure themselves and each other of their common life-world, of who we are, of what are the facts of the world and what should be done. In such a practice, the other is not to be understood as an opponent – even if she were to have different desires or beliefs – but as a partner in the common effort of reaching a mutual understanding of what is, was, or should be the case. On a fundamental level, there is no option but to argue because thinking is internalized speech. One must argue because one cannot be sure that one has understood, has good enough knowledge – has a correct understanding of the situation or of norms – or that one has an adequate self-understanding, without the objection or approval of others. To be rational is to place oneself under the *authority of reasons*, to speak with Brandom.²⁴ Arguing is simply necessary in order to be able to say yes or no to a belief, an assertion; to be able to coordinate plans of action. This epistemic dimension of arguing is lost when one focuses only on its instrumental function. We need each other in order to cognitively come to grips with objective as well as social and subjective circumstances, to ensure ourselves of our own and of the world's existence.

²³ See also the list of merits of deliberation in J. Elster, 'Introduction', in J. Elster (ed.) *Deliberative Democracy*, Cambridge University Press, 1998.

²⁴ R. B. Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment*, Cambridge: Harvard University Press, 1994, p. 5.

Methodological interactionism

For Elster, authentic arguing has to do with motives and values. In a deliberative setting, the actors impose on themselves a kind of self-censorship, and behave according to norms of politeness. Communicative rationality, for Elster has to do with a kind of 'everyday Kantianism' or virtues. For instance, he characterizes the '*ideal speech situation*' as a situation '(...) in which speakers are motivated only by the common good and are willing to listen to argument' (411). This is not how we should understand what can be called idealized preconditions for communication. It is not about motivations or virtues, but about the conditions for the possibility of establishing mutual understanding and what the actors are committed to in this regard. In other words, what speech act competent actors must presume with regard to each other's attitude, orientation and competence – about identical understanding of concepts and meaning, about being serious about what they say, about everyone being free and competent to partake in rational conversation, including being able to admit mistakes and change opinion – if they are to reach common understanding and mutual agreement. To be sure, these conditions require a certain motivational dosage, as the actors must actually be interested in engaging in discussion, as well as a certain dosage of trust, as the actors must dare to let themselves be bound by 'the force of the better argument.' This can be perceived as a minimal, 'non-contractual' basis that socialized and speech competent individuals command, analogous to the competences market actors need in order to enter into contracts. It is not the pre-existence of a common good, or the motivation to listen to arguments, that characterizes the ideal speech situation, but the ability to comply with the language requirements, i.e. the demanding preconditions for rational communication. Arguing is thus more a question of rationality than of motivation.

The explanation, as to why arguing works and has behavioral consequences, must be sought in what takes place between individuals. It is the characteristic force of speech acts, their ability to generate approval, which explains action coordination. Speech often becomes action, as John L. Austin said, when the actors adopt the performative attitude – give promises and commit themselves – and thereby motivate both themselves and others to comply.²⁵ Here, it is the quality of the interaction or arguing – not the actors' motives and desires – that explains behaviour and the outcome of collective decision making. But where can desire-independent reasons originate from? Social institutions and *status functions* indicates one answer. Institutional structures provide rights, obligations and duties; they involve demands, permissions and authorizations which give the actors reasons to act out of duty. According to John Searl such *deontological powers* are afforded by status functions. They establish standards for appropriate behavior²⁶ and give actors reasons to act against their self interest.

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

²⁵ J. L. Austin, *How To Do Things With Words*, Cambridge: Harvard University Press, 1962.

²⁶ Cp. March, J.G. and J.P. Olsen, *Rediscovering Institutions. The Organizational Basis of Politics*, New York: The Free Press, 1989.

that status a function that can only be performed in virtue of the collective acceptance of that status.²⁷

It is not the objective features of the euro bill that gives it purchasing power, nor is it the physical fitness of the police commissioner that gives him commanding power and his subordinates reasons to act against their own best interests. Social institutions create desire-independent reasons, and also have mechanisms for converting agreements into commitments and actual behavior. The law, on its part, by sanctioning norm violations not only minimizes the risk of free-riding and exploitation by strategists but also makes it possible to act morally without the risk of being in a sucker position.

The explanans is not the actor's desires, but the *reasons* they give and the fact that these are accepted/rejected by others. Put differently, even if the actors were to have private motives for what is said and done, it is the mutually or publically acceptable arguments – that others accept – that explain outcomes of collective interaction processes. Reasons can be given for action, and reasons are, as mentioned, something that counts in favour of some judgment sensitive mind-set; something that others can accept or reject. Irreducible macro-variables, in the sense that institutions or structures determine behaviour, as Elster is wary of, are thus not included in this type of explanation. The explanation is rather to be found in the force inherent in compliance with, alternatively breach of, validity claims raised by or asserted against actors. We may then talk about *methodological interactionism*. Behaviour is coordinated through speech acts raising claims that others can say yes or no to.

This explanatory principle alludes to the language as a basic institution or a constitutive medium. I do not perceive this as a concession to methodological holism, because it is only through language that we can have other, observer-neutral, institutions and deontic powers. Linguistic phenomena are self-identifiable as linguistic; they can only be described in linguistic categories. Actor- or observer-neutral phenomena are conditioned by language. Conventions, norms, as well as nations, churches, families and classes, are conditioned by the fact that somebody create them, identify with them and reproduce them through action. They have no objective world reference, but 'exist' in virtue of being common intentional, significant representations.²⁸ Seen in this way, the language not only describes certain phenomena; it constitutes them as well. It gives us the opportunity to represent. Through language, perceptions of the world are given propositional content with logical relations. These can be expressed as assertions, which can be tested and then approved or rejected. Through speech acts, perceptions and intensions are employed in order to coordinate actions, and through arguing, reasons, bids and oughts are tested. Arguing is the procedure for redeeming validity claims.

It is only through language that we can obtain rationality, free will (and thus desire-independent reasons) and self-awareness that are needed in order to be able to choose and assess choices. Representation through abstract symbols opens up the opportunity for inter-subjective evaluation of the reasonability of preferences and action plans. Human societies have a logical and thus inter-subjectively accessible structure. Elster also presupposes this with his example of compulsive and phobic

²⁷ Searle, *supra* note 17, p. 34.

²⁸ *Ibid.*, p. 83.

behaviour being unintelligible, while taking medication in order to alleviate problems is fully rational (55).

The ideal sequence

One should distinguish between deliberation as a horizon-creating, norm-giving and opinion-forming language game; or a discourse which delimits or provides frames and premises for collective decision making, and deliberation or arguing as a mode of decision making. There is a lot of documentation of, and experience with, arguing as a decision making method – agreement can be reached through deliberation, not only on professional or moral issues at a seminar, but also on a political decision at assemblies or in committees. Argumentative processes do not always degenerate into games and horse-trading. Once in a while, it is so – as also Elster remarks – that actors *change opinion* as a result of arguing. Neither is it always possible or desirable to vote on contentious issues: as a rule one does not bargain over values and principles. A striking example of this is the recent proposal (winter 2009) by the Norwegian government – following pressure by one of the junior coalition-partners – of a legal protection of religions, which was withdrawn following a short, hotheaded debate. Representatives are often free to decide such questions; the party whip is laid to rest. Some issues are too important to be subjected to bargaining, and on some issues it is either irrational or unethical to bargain. There is a broad range of bodies in a modern welfare state set up to handle issues that one wants to treat in a deliberative way, rather than bargain over or subject to majority voting; such as councils, boards, panels, ethics-committees and consensus-conferences.

Elster presents arguing, bargaining and voting as three steps in an idealized *aggregation-sequence*; first arguing in order to clarify what are the stakes and what alternatives one is faced with. He quotes Pericles to support this view of arguing as an '(...) indispensable preliminary to any wise action at all' (406). In cases where no agreement is reached, arguing leads to bargaining in which resources or credible threats rather than good arguments are decisive, and which again can lead to voting where the majority decides. Voting is seen as the threat point of bargaining. The conception of a sequence is, however, not neutral. The actors who know about the sequence can orient themselves according to it from the start; they do not need to argue in order to convince everyone, but can calculate whose support they need in the final round, i.e., when a vote is called.

Neither is the term *aggregation*, which Elster also uses about deliberation, neutral. It designates the technical summation of preferences, and takes place when one registers standpoints or votes through formal systems of decision making. The distinctive feature of arguing as a process is not that it registers preferences, but rather that it serves to test preferences in the light of general interests or norms. Moreover, in a deliberative perspective, conceptions of the common good and of justice are not a function of values and convictions that exist prior to democratic processes, but something that is created through these processes. We are here talking about the integration of viewpoints and the creation of a common purpose and a common will. Bargaining may lead to arguing, because negotiators encounter problems that can only be solved by the use of norms. Elster touches upon this when he sees that parties in collective wage negotiations frame their demands in terms of principle (423). He sees this as giving them a strategic advantage. It may however also be so that the reference to the common good and to justice leads to a debate about whether profits,

wages and prices are the only expressions of common interests. With time, for instance environmental considerations have entered the debate.

Elster refrains from the debate of whether arguing is more fundamental or not, but the question is if not his model of social action favours the bargaining mode. There are, however, good reasons for holding that arguing reach deeper than bargaining and voting.²⁹ This is so not only because the actors must argumentatively come to terms with what is the problem and which options exist, or because threats and promises need the human language in order to be understood and brought to bear, but also because in the case of a conflict, reasons must be given for the choice of problem-solving procedure. One must argue in favour of calling a vote, but one cannot bargain about whether one is to argue or not. One cannot bargain about arguing without ending up in a performative self-contradiction. One has already entered into a process of arguing when one tries to counter this. In a decision making situation, one is faced with the choice between continuing to argue or to call a vote; a choice that can be backed by arguments.

Elster says that each of these modes of social decision making gives the actors incentives to misrepresent their preferences (424). But arguing is more than a mode of decision making and can disclose attempts at misrepresentation, also when this takes place in the arguing mode it can be applied to itself. We can be wrong with regard to what are the preconditions for communication as well as with regard to the anticipated consequences of action choices.³⁰ Mistakes and deficiencies can only be remedied with the help of better or extended arguing where new participants are brought in. It is when all arguments are included, evaluated and weighted, that one can correct mistakes and make reasonable and legitimate choices. No stable agreements without all cards on the table! When not all have been heard, when the reasons given and the information supplied can be questioned, when there is no consensus, there will be grounds for justified discontent. In the same way, an equilibrium in the form of a bargained outcome based on power or an agreement based on the convergence of interests will be unstable, because the actors have no impartial reasons to uphold it. Nothing indicates that the result is right or correct.

Furthermore, arguing is needed in order to identify equilibriums (and disequilibriums), the point where the participants accept a bargained outcome. Thomas Schelling says that in bargaining situations, '(E)ach party's strategy is guided mainly by what he expects the other to accept or insist on; yet each knows that the other is guided by reciprocal thoughts. The final outcome must be a point from which neither expects the other to retreat; yet the main ingredient of this expectation is what one thinks the other expects the first to expect, and so on. (...) These infinitely reflective expectations must somehow converge on a single point, at which each expects the other not to expect to be expected to retreat.'³¹ Here, the solution then comes in the form of what Schelling calls 'salient' or *focal points* which points to certain psychological associations of the actors. But this psychological solution is also normative as it refers to cognitive expectations as well as to what is advisable or

²⁹ Cp. 'Adding is not reasoning' [...] 'Merely counting votes is a poor substitute for deliberating together', R. E. Goodin, *Reflective Democracy*, Oxford University Press, 2003, p 12.

³⁰ Cp. J. Habermas, 'Rightness versus Truth: On the Sense of Normative Validity in Moral Judgments and Norms', in J. Habermas, *Truth and Justification*, Cambridge: MIT Press, 2003, p. 258.

³¹ Schelling, *supra* note 2, p 70.

acceptable, and which extends beyond the mutual expectation-structure of the participants.³² Opinions about when enough is enough, refers to normative judgments for which reasons are given.

As decision making method, arguing takes precedence. It is the *gold standard of conflict resolution*, for which there is no substitution or functional equivalent.³³ Rational communication constitutes a resource that cannot break down in the same way as other practices can. We can appeal a stricken bargain, we can criticize the partiality of the judge and the reliability of the oracle, and we can question the results of a vote. Rational arguing is the higher-order procedure that the actors must, time and again, return to in order to resolve conflicts and repair institutions when they break down. It is the resource that bargaining and voting implicitly and explicitly draw on. Arguing precedes and constitutes procedures and electoral institutions. It is needed to establish a conception of fair conditions for bargaining. Bargaining is regulated by procedures and will prototypically be perceived to be fair when certain conditions are met, such as a level playing field – equal, free and open competition – the impossibility of free-riding and that a result is better than no result. The bargaining institution is parasitic upon arguing, as the actors must first come to agreement on the rules of the game as well as on what exactly it is that they are going to bargain over; the prize to be won.

Promises as bargaining chips

‘Bargaining is the process of reaching agreement through credible threats and promises’, Elster contends (419). Obviously threats and warnings (which are threats in disguise) can be used by the actors to obtain their preferred outcomes, as they refer to the potential resources – both objective and subjective – that the actors can bring to bear. But can also promises be perceived in the same way? Are they not on a different level?

With Elster, promises have a *conditional form*: if you give me A, then I promise to give you B. ‘The seller of a house may promise not to begin renegotiating if a buyer meets his asking price.’ (ibid). A promise is credible if the agent can be expected to keep it if the other person complies. Here promises are seen from a bargaining perspective; as something that can be disposed of under given circumstances. ‘Give me a better offer and I will break the promise’. But to give a promise is a speech act that raises the validity claim that promises should always be kept, almost regardless of the costs this may incur. One gives a promise of something that it is in the interest of the other to get, and the promise gives the recipient an expectation that it is to be kept. Promises are therefore better described from an argumentative perspective as they raise unconditional normative claims. A promise raises a categorical normative claim³⁴ that can only legitimately be broken when it has been made under duress.

But is it promises and not threats in disguise that Elster is talking about? When for instance a state promises not to invade another state as long as certain territorial

³² See also J. Heath, *Communicative Action and Rational Choice*, Cambridge: The MIT Press, 2001, p 135.

³³ Ibid., p. 307.

³⁴ Promises SHOULD be kept; *pacta sunt servanda*. Elster sees that pledges are sometimes broken (422). But sometimes they are not.

demands are complied with (p. 419), this is not really a promise but a disguised threat. When the kidnapper promises to release the hostage if a ransom is paid, rather than keeping the victim and demanding more money, this can also be described as a warning. The analysis of what is credible in such 'promises' includes the interpretation of whether they can be considered as promises at all, or if they are not rather disguised threats. In case of a promise it raises questions of a different caliber than the subjective and objective factors that Elster discusses. When one is to consider if also a conditional promise is credible, it is not only whether or not the actor can be expected to comply in pure cognitive-instrumental terms that is decisive, but whether the 'promise' really meets the requirements of being a promise in the first place.

Logically, promises belong to the arguing-side of the conceptual scheme, as situations must be *interpreted* in order to clarify whether promises are promises or disguised threats, and, should the latter be the case, whether any normative commitments are incurred at all. Promises should be kept, but should also threats be kept? He, who bows to a threat, does it because of sanction not out of duty. To interpret is to give arguments in favour of something. What commitments promises raise refers to normative reasons that the actor must take a stand on. Here, as is generally the case when we are dealing with *reasons*, we need an extended concept of rationality that goes beyond Elster's narrow means-ends scheme. Also statements that refer to normative commitment are within the scope of what can be discussed rationally, and to give a promise is to make a commitment, something only linguistically competent and sane people can do.

Promises raise commitments; they have to do with trust, with not disappointing others' expectations, with not undermining the possibility of communication and of coming to agreement. From Hume to Rawls it has been an established truism that breaking a promise is wrong because this undermines the possibility of reaching settlements or coming to agreements. Thus, there are not only moral reasons as to why promises should be kept – out of duty, Kant's maxim says. Promises, as well as the compelling character of moral norms, can, as far as I can see, only be satisfactorily accounted for through an analysis of the commitments raised by actors adopting a performative stance, i.e. of the validity claims that are raised by a speech act. Speech acts are also relevant in the context of bargaining, but here they are limited to communicating the threat-potential in a credible way. How then to distinguish between arguing and bargaining?

Arguing or bargaining

Because both arguing and strategic communication prevail, and it is as hard to identify the former as the latter, one should not let one take precedence over the other on theoretical grounds. Neither should one conflate persuasion with arguing.³⁵ It is

³⁵ Which is the case with Deitelhoff's study of the successful creation of the International Criminal Court, which, she claims, can be attributed to the effectiveness of persuasion. N. Deitelhoff, 'The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case', (2009) *International Organization* 63: 33-65, p. 33. For this use of arguing/bargaining in International Relations see H. Müller, 'Arguing, Bargaining and All That: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations', (2004) *European Journal of International Relations*, 10(3): 395-435; T. Risse, 'International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area', (1999) *Politics and Society*, 27(4): 529-559, T. Risse, 'Let's Argue! Communicative Action in World Politics', (2000) *International Organization*, 54(1): 1-39; N. Deitelhoff and H. Müller, 'Theoretical Paradise – Empirically Lost? Arguing with Habermas', (2005) *Review of International Studies*,

important to distinguish for normative reasons, because we need to know whether an outcome is the result of power, indoctrination or of reasonable reasons, and because it is empirically unsubstantiated to rule out convincing arguments as explanans. Both modes can be supported by logical premises, and should therefore be made subject to empirical testing. Even if one considers arguing as the most fundamental, as I do, it is not a problem to account for strategic behaviour. On the contrary, the deliberative approach provides the foundation for more precise hypotheses about the basis, scope and limits of strategic behaviour. The problem is not theoretical, but methodological. Because both ideal and material factors are at work, one cannot but, as emphasized by Max Weber, give an interpretative account of social action based on the actors' subjective intentions.³⁶ How does one go about finding out what has really been the case in a decision making processes? Elster, who seems to have historical works in mind, suggests looking for sources that do not have any incentives to misrepresent their motives (61). For social scientists working with living sources, participant-observation (in meetings), in-depth interviews (before and after meetings) and similar methods, preferably in combination, provide a sound basis for qualified inferences.

The difficulty of distinguishing between arguing and bargaining does not make the distinction redundant. It is crucial for analytical as well as for critical and conceptual purposes. The concept of authentic communication is (contra-factually) necessary in order to identify deception and manipulation. The latter is manifested as breaches of the rules of arguing, which in fact testify to reasons empirical force. In verbal statements, empirical and normative aspects intersect. Ideals – or counter factuals – also count as real causes. The presence of deceitful motives, of egoistic self-interests, hypocrisy and manipulation on the one hand, and the appeal to common interests and the common good on the other, play a crucial role in processes of opinion formation and decision making. Ideas are realized through the idealized premises involved in everyday practices, also the political and judicial ones. In a way, they acquire the status of robust evidence, of 'stubborn facts', in a public debate.³⁷

Rationality is internally related to knowledge, and our knowledge has a propositional structure; it can be formulated as assertions. In verbal statements, knowledge is expressed explicitly, and in purposeful actions it is expressed implicitly. Language-users have a pre-theoretical competence to intuitively distinguish between when seeking influence and when seeking understanding, between situations in which there is strategic action and use of power, and situations in which mutual understanding and arguing prevail. The normativity of rational discourse stems from the fact that only with the use of force or indoctrination can social cooperation based on inequality come about.³⁸ The distinction between arguing and bargaining revolves

31(1): 167-179, N. Deitelhoff, *Überzeugung in der Politik. Grundzüge einer Diskurstheorie internationalen Regierens*, Frankfurt: Suhrkamp, 2006. For a critique, see T. Saretzki, 'Argumentieren, Verhandeln und Strategie. Theoretische Referenzen, begriffliche Unterscheidungen und empirische Studien zu arguing und bargaining in der internationalen Politik', in P. Niesen and B. Herborth (eds) *Anarchie der kommunikativen Freiheit. Jürgen Habermas und die Theorie der internationalen Politik*, Frankfurt a. M.: Suhrkamp, 2007, pp. 111-146.

³⁶ See M. Weber, *Economy and Society 1*, Berkeley: The University of California Press, 1978 [1922].

³⁷ J. Habermas, 'Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research', (2006) *Communication Theory*, 16(4): 411-26, p. 413.

³⁸ This distinction between power and morality reappears, in different ways, throughout the history of social thought; from the distinction between poiesis og praxis (Aristotles); between pragmatic and moral acts (Kant); between 'herstellen' and 'handeln' (Hegel); purposive- and value-oriented rationality

on the orientations and reasons of the actors, not merely on motives and purposes. In order to illuminate the distinctive characteristics of bargaining and arguing, of relations and proceedings, of what problems and issues they are fit for, the following provisos hold.

Bargaining depicts communicative orientations in which actors are directed towards maximizing their preferences, and it is the reference to resources (power) expressed through threats and warnings, which determines the outcome. Given the absence of monopoly of power, one actor's possibilities depend on the power of others. The outcome will therefore be a *compromise*, and will in one sense be *suboptimal* from the perspective of the individual, as the actors must make do with what they get, given the others' power. Further, the actors will give their support on the basis of *different arguments*.³⁹ Because the actors have different preferences with regard to the outcome, they will have different reasons for supporting the result; the compromise.⁴⁰ Type of agreement is an indicator for the distinction between bargaining and deliberation when linked to the type of reasons that go with them: Bargaining has to do with the communicative uses of resources and power and the reasons for supporting agreements – compromises – refer to utility and material interests.

Bargaining is characterized by a *dyadic relation* where two stakeholders are facing each other. Bargaining processes typically proceed through *sequences*, where one isolates certain questions and settles these before taking up others. Bargaining is best suited to situations in which the preferences are clear and ranked, where it is about questions on which there are no prospects for agreement – e.g. where there are clashes of interests such as over the distributive goods – and where the distribution can be measured according to a metrical standard. In other words, it is about questions of a more quantifiable character – money and welfare – that can be disposed of, split, dispersed, balanced and measured. We are talking about questions void of moral content, i.e. questions that the actors either do not define as moral or that they cannot reach a moral consensus on.

Arguing, on its part, is needed in order to rank preferences, and is called for when contentious issues raise cognitive queries and pertains to values and principles. Arguing is a mode of communication in which the actors, who are faced with a problem, try to reach an agreement on how it should be understood and solved. To the extent that they succeed, they will have *identical reasons* for their support of a collective decision – on the basis of a decisive normative argument (or at least similar normative arguments), which has contributed to establishing an authoritative definition of the situation and on the norms for conflict resolution. Under non-ideal

(Weber); instrumental and dialectic reason (Horkheimer); labour and interaction (Arendt); to the distinction between strategic and communicative action (Apel, Habermas); rationality and reasonableness (Rawls); calculation and appropriateness (March and Olsen) and between bargaining and arguing (Elster).

³⁹ 'Whereas a rationally motivated consensus rests on reasons that convince all the parties *in the same way*, a compromise can be accepted by the different parties each for its own *different reasons*', J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law*, Cambridge: MIT Press, 1996, p. 166.

⁴⁰ It goes without saying that compromises also can be reached through arguing. Especially, when it comes to ethical, value questions or strong evaluations, actors may, due to public reasoning, renounce on rational consensus in respect for others' values. Moreover reasons for accepting a compromise are in fact that the 'alternatives will be unacceptable *to the other parties...*' and that it is '*.. reasonable*' 'The interests are what make the compromise reasonable; they are not what make it reasonable to accept the compromise', Heath, *supra* note 32, p. 252.

conditions deliberation could result in a *working agreement* resting on mutually acceptable, reasonable reasons.⁴¹ When deliberation is good, the outcome would be a Pareto improvement and a solution to the prisoner's dilemma situation. Hence deliberation is tailored to explain or suggest a solution to the problem of collective action.

It is a mode that is most relevant when the challenge is to solve moral questions with a cognitive core; and as part of this, questions of justice that can be settled according to impartiality. Further, arguing requires openness, reciprocal reason giving, the absence of coercion and a *triadic relation* between a speaker, an addressee, and a listener. The latter can be a public forum or the impartial judge. Closed door settings may be more conducive to deliberation, as is well known, but public accountability is intrinsic to deliberation: only when we know the conditions under which utterances and standpoints have been made, can we know whether they are valid or legitimate. Finally, arguing is characterized by a *reflexive attitude*, in which one does not treat questions sequentially, but goes back and forth. Agreements on one level can throw light on, and change perceptions about, what was the shared understanding on another level.

Table 1. Characteristics of arguing and bargaining

Dimensions	Arguing	Bargaining
Attitude	Cognitively oriented	Result-oriented
Structure of interaction	Triadic	Dyadic
Type of agreement	Consensus, working agreement	Compromise
Reasons to agree	Identical (similar) referring to impartiality, justice	Different referring to utility, interests, material gain
Typical questions/issues	Cognitive, moral, ethical	Pragmatic, quantifiable
Outcomes	Pareto improvement	Suboptimal/pareto-optimal

Conclusion

Elster's explanatory scheme favours the instrumental uses of argument. He analyzes arguing as well as promises from a bargaining perspective. It is telling that he also characterizes deliberation as an aggregative process. By this, opinion- or preference formation is excluded from the study of collective decision making processes, and consensus-formation through processes of reasoning and justification are lost as analytical phenomenon. Elster has a clear view for the role played by norms and of impartiality in collective decision making process, but does not ascribe to them the power to explain action. The explanatory problem consists in the following paradox: If it is only public reasons that can justify outcomes, how can then private desires be the cause of the same outcomes? This becomes a 'behind the actors' back'-explanation, that can be criticized for falling victim of the same rational choice functionalism that Elster himself now has become the staunchest critic of.

⁴¹ See E. O. Eriksen, 'Democratic Legitimacy - Working Agreement or Rational Consensus?', in N. Gilje and H. Grimen (eds), *Discursive Modernity*, Oslo: Universitetsforlaget, 2007, E. O. Eriksen, 'Deliberation und demokratische Legitimität in der EU - Zwischen Konsens und Kompromiss', in P. Niesen and B. Herborth (eds) *Anarchie der kommunikativen Freiheit. Jürgen Habermas und die Theorie der internationalen Politik*, Frankfurt: Suhrkamp, 2007.

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