The role of deliberation in collective decision-making
- on explanatory mechanisms and the epistemics of rational reason

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Abstract:

What is the explanatory potential of deliberation in a political context of collective decision-making? This paper posits actors’ ability to comply with the force of the better argument through explication of the relevant deliberative warrants and through mechanisms for the activation of institutional status functions. It establishes a conceptual scheme for analysing successful processes of deliberative decision-making, that is when actors despite divergent preferences manage to reach an agreement. Three sequences containing different sets of micro-mechanisms are identified: claims-making, justification and learning. 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 justification and learning.

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**Introduction**

At a minimum deliberation is about the exchange of arguments, and in collective decision-making it is about reaching agreement on some joint course of action. Deliberation is more than discourse, discussion or dialogue. It depicts the coordinative function of communicative interaction. Reaching mutual understanding is an action coordinative device. Deliberation is thus seen as a decision-making procedure on par with bargaining and voting. However, deliberation is faced with the problem of indeterminacy. Even rational argumentative processes do not necessarily result in consensus and nobody is obliged to comply with consented action norms unless all others also comply. On the other hand, deterministic explanations will not do in the social sciences.

The exchange of arguments can establish agreement, but how? Why deference, why can actors come to bow to the force of the better argument when this goes against their identity or self-interest? In order to clarify this I focus on deliberative acceptance/compliance mechanisms. Acceptance means the approval of a claim or a decision. Compliance means the observance of a binding decision. How can arguments cause acceptance; how can deliberation coordinate action plans? Causality is thorny as deliberation is cognitively indeterminate. Collective decision making requires argumentative reasoning but such is reported to be poor. However, when the context is specified, ‘people turn out to be skilled arguers’ (Mercier and Sperber 2011: 57).¹ What is the explanatory potential of deliberation in a political context of collective decision-making? The present paper is about political decision-making taking place in a public setting within the parameters of law. A political context is always a context of justification – the discipline or reason at the collective level.² In a public setting the norm of impartiality is forced upon the interlocutors, as a condition sine qua non for agreement. The fact that the exchange of reasons is bounded and legally regulated reduces the range of possible outcomes.³

How to explicate the motivational force of public reasons and their impact? I suggest that reason-based explanations do not meet the requirement of a covering-law model of explanation but fits the requirement of mechanism-explanation. Reason-based explanations are able to explain but not predict action.

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³ Discretionary power is not unconstrained, as some outcomes can be deemed unconstitutional.
I proceed in two steps. In order to flesh out the explanatory potential of deliberation, I first suggest that arguments based on effective warrants - rules of inference - supported by relevant backing demands and institutions explain the conversion from premises to conclusion. Secondly, I focus on the sequences of policy making – claims-making, justification and learning – and identify their accompanying sets of explanatory mechanisms. Learning, which is the last step in a deliberative process, takes place when one or more actors realize inconsistencies and mistakes. This is necessary for getting to yes with the help of arguments in case of conflict. Learning is preceded by claims-making and justification, which on their own can sway actors to concur, or so I shall argue, due to mechanisms such as value consensus and norms of fairness. However, while mechanisms can account for the transformation of initiatives into practical results, they are constrained by impartial and rational justification, which constitute the core of the epistemics of rational reason.

The concept of deliberation in the present use depicts the exchange of reasons. It portrays the ordinary process of reaching collective decisions by giving and taking reasons. Arguing or argumentation depicts a principled form of deliberation; a procedure for redeeming validity claims - for testing justice claims as well as of 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 agreement making. How can the decision of constructing a public road be seen as the outcome of a reason giving process?

Why deliberation?
Deliberative democracy is oriented to the task of 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). Moreover, when collective decision making is governed by impartial reasons, and decisions are justified towards affected parties, they can claim a higher degree of legitimacy than if they were brought about by group interests and power. When decisions have been justified towards those affected we have reasons to expect that they are right.

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4 The validity of democratic decisions is held to depend on the quality of the preceding discussion between affected and competent parties. Acceptability hinges on the epistemics of rational reason, which when applied to the democratic procedure warrant the presumption of legitimate results. Thus the normativitiy of the democratic procedure. It binds whether the actual decisions are acceptable or not.
Deliberation, which is a vital means for this, has different merits. Actors may overcome problems of bounded rationality, groupthink, myopia etc. by being exposed to the exacting conditions of argumentation. Deliberative inquiry is held to enlighten the actors, shed new light on the issues at stake, and may, if it is good, even change actors’ attitudes or beliefs when it is proven that they are mistaken about the ‘fact’ of the case or the ‘principle’ in question. In policy-making deliberation is generally needed
- to coordinate actions, as without deliberation interdependent actors will not be cognizant of problematic situations;
- to solve problems rationally because without arguing we do not know the counterarguments;
- to resolve conflicts over distributive shares legitimately, because without deliberation we do not know whether all viewpoints are heard and given due consideration;
- to reach collective decision, because without deliberation actors’ preferences are not tested.

In non-coercive decision-making deliberation is indispensible. Only with the use of force can social cooperation based on inequality come about. The normativity of reasons is due to the fact that only with the use of arguments can collective decisions be made without coercion. Interdependent actors who want to sort out common affairs and coordinate actions cooperatively faces two kinds of tasks: First they have to identify the issue at hand and agree upon what is at stake: what is the nature of the problem? Second, they have to agree upon whether the problem should be solved, and if so, how and by which means. The medium for this is reason-giving. It compels actors to verbalize and justify their plans of action when there is doubt or ambiguity; when there are preferences over outcomes or conflicts of interests. Deliberation is vital for democracy, but it is also decision-making device. In order to account for the putative behavioral bite of public deliberation, one need to locate processes of collective decision-making in democratic contexts of reason giving.

Sources of normativity
The point of departure is that reasonable actors are able to give and to evaluate reasons and also become moved by these under given circumstances (Scanlon 1998: 56). Sometimes actors manage to talk themselves into a consensus in which they concur with identical reasons. But

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3 See also Elster 1998, p. 11.
deliberation is epistemically indeterminate. It does not yield determinate results – one single correct decision. Actors may remain at odds with each other even after rational deliberation (Rawls 1993). Talk is good as a ‘discovery procedure’ but not as a decision procedure, according to Goodin (2003). Deliberation does not very often bring about a rational consensus. However, the idea of rationality and consensus is linked, as we necessarily think that there are reasons as to why we disagree. Hence, conflicts and disagreements trigger new questions, new explanations, more justifications - more deliberation.

Rationality has to do with the systematic connection between the actors’ intentions and behavior; with the incapacity not to evaluate. Intrinsic to this is the connection between those commitments an actor takes on when something is uttered, and the ability to act accordingly. The very idea of rational action builds on the presumption that appropriate reasons for choices can be given. Moreover, to act for a reason is to say that something counts in favour of something; of an opinion, a belief, a desire that requires evaluation and judgmental power open to others’ scrutiny. Collective judgment is facilitated by language – a system of symbols in which desire- or interest-independent reasons can be articulated: reasons that can motivate as well as evaluate desires. Through language, perceptions of the world are given propositional content with logical relations (Searle 2007). These can be expressed as assertions about beliefs and states of affairs. They can be tested - approved or rejected by the quality of the better counter argument. For reasons to excel in a decision-making processes, certain requirements must be met. Among these are the inherent comprehensibility and epistemic quality of what is uttered as well as a certain preparedness, competence or good will of addressees and/or the capacity of third parties to take an impartial stand. Hence the epistemics of rational reason. But what are the normative forces, or sources of normativity - the authority or binding effect of a claim - that makes acceptance/compliance likely?

The concept of normativity depicts evaluations or prescriptions of different sorts. It comprises moral norms, values, laws, roles, institutions, logic etc (see Estlund 2007). 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 Pritzlaf: Will, institution, world, reason and transcendence. Will, to the

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6 The modern general self-understanding is that “We are the makers and takers of reasons, seekers and speakers of truth” (Brandom 1998:6). “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” (Brandom 1998:8).
degree it take the shape of a common want; *institutions, rules or laws* to the degree they give actors reasons for acceptance/compliance; "‘objective facts ‘or *state of affairs* that seem to lie outside the agents’ will or attitudes’; *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” (Pritzlaff and Nullmeier, 2011:52). But why would these sway actors to 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). They can not establish the validity of regulations or tell what amounts to a *decisive* 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.

*The epistemics of practical reason*

Values are stipulations of appeal and importance. Norms are general instructions for action. But different social situations and contexts of application raise different normative challenges as to what is the right thing to do. Which of the many justified norms applies in this context? The conversion from normative claim to action, from is to ought is also complex. Norms and values can, however, be seen as *warrants*, as far as they contain rules of inference; i.e., for warranting a conclusion based on certain premises. In a process of practical argumentation they explain or justify the conversion from premises to conclusion; from a description of a situation to action or acceptance.7 Warrants are operative in communications as argumentative rules, hence the term *deliberative warrants*. When it is about propositionally differentiated arguments the claims for validation 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, separate cognitive-instrumental and utilitarian norms from ethical and moral norms as well as from legal norms - and their corresponding validating procedures - raised by an issue complex.8 Justificatory arguments range from the empirical

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8 cp Kant’s three critiques and Habermas’ notion of validity claims.
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. However, the claim of *rightness*, which refer to proper logic and analytical inference, and the claim of *justice* which refer to what can be established as equally good for all, should be seen as *backing demands* that apply to warrants in general. They do not themselves contain decision-making criteria. The following three set of warrants contain rules of inference:

- *utility* referring to expediency, feasibility – to the maximization of a preference
- *values* referring to common good perceptions and self-understandings
- *norms* depicting entrenched standards of right and wrong

Utility, values and norms contain decision-making criteria but need to be backed by rightness and justice arguments. The latter represent demands on action norms - they legitimize or criticize them, permit or constrain them. From a normative point of view, justice ranks higher. It provides a *context-transcending principle* according to which warrants have to harmonize in order to command acceptance. Justice has to do with fairness and impartiality - 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.

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. Those who denies it commit a performative contradiction. The normativity of the moral ideal of equality arises from the fact that human cooperation cannot be achieved on unequal terms without force. In public argumentation justice trumps claims stemming from particular interests, world views, groups’ norms and values. It establishes a neutral standard for dealing with colliding interests, values and norms. 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.

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9 Among the rules that reign in the space of reasons the all-affected principle constitute the one with the highest normative authority.

10 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. 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, every one has a strong interest in not being treated unfairly (Stemmer 2001). However, our unconditional principles must be laws of autonomy (Korsgaard 2007, cp Kant).
However, actor-independent arguments strong enough to trump self-interests stem, according to John Searle, not merely from our moral capacity to act dis-interestedly or from clout, but also from deontological powers afforded by institutional status functions. Institutional structures provide rights, obligations and duties; they invoke demands, permissions and authorizations which give the actors reasons to act out of duty. They establish standards for correct behavior, for distinguishing between social roles and their corresponding obligations. Deontological powers provide actors reasons to act against their identity or self interest. Institutions create desire-independent reasons, and the law possesses methods for converting agreements into commitments and binding decisions. In a contestation over what to do, over which interests or goals to be realized, actors can back their claims normatively by referring to entrenched institutions, rights and procedures. These deliberative warrants and deontological powers, I suggest, make up a set of rules that reign in the space of reasons. When corroborated or at least not discarded in a deliberative processes as mere covering up strategies, pretence or manipulations, they can bring about changes - have behavioral consequences.

To illustrate, let us imagine a political claim for the construction of a new road. The conclusion (C), ‘this road should be constructed’ is explained by the reasons based on data (D) about accidents and traffic estimates. See Figure 1. The warrant (W) ‘that a new road will maximize traffic safety’ is supported by backing demands (B) of rightness and justice: Similar circumstances have triggered constructions of other roads. To ensure agreement deontological powers (DP) with regard to institutional properties - the legality and the political feasibility of the claim – are called upon. However, contestants can accept or not accept (D), (W), (B), (DP) as well as (C). But, as I return to, certain social mechanisms work to ensure compliance.

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11 “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).
In deliberative theory, the explanans are whether the actor’s reasons are accepted/rejected by others. Deliberation is needed because simply stating the warrant, or simply mentioning status functions, do not prove that they are right or appropriate in the case at hand. To find out what is correct – including what is the appropriate application of a justified norm - it is requested that everyone can have a say. It is needed to avoid the pitfalls of false impartiality: judges may defy neutrality, existing laws may be biased or wrongly institutionalized. Deliberation among subjected parties is important and in collective decision making generalizable grounds are constitutive. But how to explain that warrants in fact can be effective, that they are brought to bear on actions?

**Mechanism-explanation**

When the ambition is not to predict the effect of an argument or norm the situation changes with regard to the explanatory power of arguing. Norms or reasons do not amount to a covering law principle of explanation in 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: the antecedent (x) defines a cause and (y) the consequences.

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12 “Actors who fail to come up with generalizable reasons appear to be breaking the rules of the game” (Landwehr 2010:105).
While in casual explanations the connection between cause and effect is arbitrary, in reason based explanations the cause and effect is internally related. A reason based explanation refers to the substantial reasons the actors actually give and their uptake, which depends on whether the reasons are good enough to motivate the approval of others. In the case of arguing we are thus not dealing with an event that is explained by another event but by reasons. Because of freedom of will, because people can accept or dispel better arguments, it is difficult to determine which reasons will cause what behavior also under known conditions. Hence it is difficult to predict outcomes. However, in the aftermath of an event the analyst can contextualize, interpret, and make sense of the reasons the actor acted on. Even re-description may be needed for explanatory purposes (Turner 2007). In this endeavor the analyst does not take the self-reported reasons at face value but examines how consistent they are and how sensible/likely it is that they - all factors considered - actually where the ones generating agreement. By identifying the actors’ reasons for the actions and their reception one can explain an event. But how to account for the fact that reasons enable the coordination of real life action? How to explain that the exchange of reasons have effect, that warrants are applied and that deontological powers are activated in policy making processes?

In order to bring the compelling power to deliberation to the fore the concept of social mechanisms offers a solution. They mediate between events and convert initiatives into practical results. Mechanisms intermediate between lower and higher levels and are hypothetical causal models of explanation. Under certain conditions they make actors act in a particular way (Stinchcombe 1991: 367; Schelling 1998). Since it is difficult to establish under what conditions they apply, and since deterministic explanations are not what social science can or should provide, I will rather link mechanisms to the cogs and wheels of deliberative processes in the struggle for getting to yes within the context of law. Social mechanisms trigger actions under conditions of indeterminacy and do not determine outcomes. The assumption is that mechanisms ensure that initiatives are converted into practical results when relevant warrants apply and status functions are successfully activated by practical argumentation.

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13 There can 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 prevail.
14 This type of explanation is deterministic, as only one effect is possible when the antecedents are given (Elster 2007: 8).
15 For terminology here, see Elster 2007:36.
This approach represent an alternative to the standard use of mechanisms in the social sciences. Mechanisms such as framing, copying, isomorphic pressure, external shocks, path-dependency are frequently used to explain events – human choices and decision-making outcomes. But these mechanisms work only under the condition that actors in fact understand them and understand how to make use of them. The actors themselves have to define and get acceptance from companions on their meaning and importance in order for them to play a role in coordinating actions. This is so when we have to do with consciously made decisions, and not with mechanistic and unreflective behavior, which fall outside of the realm of social explanation.\textsuperscript{16} A collective decision is not a movement caused by a mental state of affairs, structural constraints, or pure necessity. The listed 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 agents’ deliberate, collective efforts. 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.

In order to explore the action coordinative power of deliberation we should look to its microfoundations. How can arguments in the shape of warrants, backing demands and deontological powers be brought to bear on actual behavior in a policy making process? The problem is to identify why, when and how warrants and deontological powers are activated and by which mechanisms. By sequencing the moments of deliberation in policy-making we will be able to specify when the different mechanisms are triggered. We will be able to better understand their role and putative force in the process of getting to yes. This helps to spell out the action coordinative devices of deliberative decision-making.\textsuperscript{17}

\textit{Sequencing deliberation}

Through speech acts, perceptions and intensions are employed in order to coordinate actions, and through reciprocal reason giving, arguments, bids and oughts are tested. Speech-acts have an action-coordinating effect when mutual understanding and agreement are reached; when an

\textsuperscript{16} The same applies for socialization as a explanatory mechanism as it does not imply consciousness or rational acceptability on part of the recipient.

\textsuperscript{17} See Goodin 2005 and Stie 2009 on sequencing deliberation.
hearer accepts an assertion made by a speaker. The proponents of deliberative democracy hold deliberation to be 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 with 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.

We may distinguish between three sequences each based on a set of micro-mechanisms. In principle each of them suffice on their own in bringing about agreement, but usually they work together as sequences of a deliberative decision-making process. In every collective decision-making process commence with a claim to something made by someone, addressed to somebody; a claim that is explained and justified in a public forum to third parties. In case of conflict someone must, prototypically, learn and change preferences if an agreement about what to do shall be achieved. Hence, I distinguish between claims-making, justification and learning. Taken together they clarify the role of reasons in every step of a policy-making process. A deliberative decision-making process unfolds prototypically in three steps:

\[ \text{Claims-making} \rightarrow \text{justification} \rightarrow \text{learning} \]

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. Closed door settings may be more conducive to qualitative deliberation, as is well known. However, publicity 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 not. A public sphere is a fora for public discourse, for practical argumentation and criticism; and it plays a role in defining and activating moral norms. But a public sphere does not act. It makes no decisions. It only talks. 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. Rights and duties are assigned and legal instruments for neutralizing power and for ensuring a free discussion before a decision is made, are, in principle, in place. It is reasoning within the

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18 As Joseph Heath would have it: “the binding and bonding energies of language itself -becomes effective for the coordination of action.” (Heath 2001:24).

context of law, which ensures that the discourse rules are approximated, and as I return to, this reduces the indeterminacy problem.

In cases where no agreement is reached, arguing leads to procedurally regulated bargaining in which resources or credible threats rather than good arguments are decisive, and which again terminates in voting where the principle of majority rule applies. Deliberation is then the first step in any decision making process which clarifies what the stakes are, what alternatives one is faced with, and whether deliberation will suffice in reaching a decision. Also in policymaking process in which voting is possible, agreement is necessary to bring about a supportive coalition of decision-makers.

**Claims-making**

Every decision making process starts with claims-making. One or more actors lay claim to something and push for a collective decision for solving a problem or achieving a goal. Actors assert that it is a collective task to bring about a certain state of affairs in the world. (For example: 'I propose that a road is constructed in this place.') In order to expect a response, the claims-maker must be authorized to make a claim, and must also state it in such a manner that others understand it and become alerted to it. Claims-making takes place both in public civic fora and in institutionalized decision-making bodies. This category links in with two vital circumstances of collective decision-making, namely

a) that the decisions affect somebody's interest or preference, and,
b) that they lay claim to public resources; they have distributional effects.

Claims-making takes place among actors equipped with values, self-interests, conceptions of the good, with the aim of reaching a collective decision. Including claims-making in the theory of deliberative decision-making ensures that deliberation is linked to real life policymaking, and, hence represents a solution to the alleged motivation problem of deliberation. Self-interests are not excluded in this explanatory scheme, rather they are subjected to justificatory processes. Sometimes they are legitimate from the point of view of justice, as is the case when their non-satisfaction 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.\textsuperscript{20}

It is assumed 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 has an agenda setting effect. It may even (re)constitute a demos or a constituency. Representatives often claim not only to represent some a fixed electorate and state of affairs but also new problems and states of affairs, hence constituting a citizenry.\textsuperscript{21}

Not all reasons for action require justification. Claims making is enough when respondents, only due to the information entailed in the claim become aware of a problem, which according to established standards and endorsed norms should be solved. (For example, ‘It’s a shame that there is no road here!’) People concur so to say just out of declaration or by pedigree. But can this really be the case in democratic states where the right to oppose exists? In fact this is the case with so-called “Claro” cultures. (Gambetta 1998). They get away with assertions.

\text quotationmark{}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\textquoteright{} (Hirschman 1986: 42).

No justification is needed for people to concur and no learning is in sight. Rather, in case of conflict the most likely outcome is strategic action succeeded by threat based bargaining and voting. It is better to vote than to deliberate when arguments are poor. When there is a chance to start bargaining or go for a vote, actors with claims hard to justify may opt out of deliberation.

\textsuperscript{20}“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 2010: 72-73). See also Fung 2003. The same may said of including testimony as a way to open for different perspectives (Sanders 1997).

\textsuperscript{21}Michael Saward launches 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).
In general, for declaration and affective language to fulfill coordinative functions without critical argument, reasoning and reflection, depend on a pre-existing value-consensus among like-minded agents.\(^{22}\) The existence of *appeal* (in whatever sense) and *consensus* are the mechanisms that sway actors to concur without reason-giving. However, in normal cases when public resources are to be spent, questions are asked, explanations are required. This requirement increases with size and pluralism, with contestation and the opening up of societies. With the waning of value consensus, 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, general and rational manner.

**Justification**

Prototypically for a claim to be agreed upon is has to be explained and justified to compatriots. Only justification engenders support.\(^{23}\) Also declarations of power or will have no effect if not verbalized and asserted publicly. In order to be able to choose whether or not to support a claim actors need to be given reasons. In a deliberative process claims-makers defend their assertions by referring to intersubjectively valid warrants. Non-coercive policy-making is not merely based on propositional contentful intentions, but also on an convergence of wills, which require that the reasons are public and purportedly rational. A claim must be explained with regard to its veracity and utility - (‘Will it reduce the numbers of accidents? Is it needed, is it at all possible to construct this road, and is affordable?’) - and prioritized with regard to other claims and interests (‘What about others’ lack of road, what about building a school or a hospital instead?’). The presumption is that if nobody is able to argue sensibly for the feasibility, rationality and fairness of the claim it will not engender support from desinterested parties. 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 hypothesis or collateral premises. To give a reason for action is for example to

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\(^{22}\) This could be analyzed as conventions conditioned by a whole set of emotional dispositions such as resent and indignation as well as by entrenched regimes of justice, of fairness and of solidarity and trustworthiness (Verbeek 2011).

\(^{23}\) “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).
recognize something as a right, a duty, a demand; something that only becomes intelligible in a social context of legitimate expectations, and, one in which status functions are operative. Hence the assumption that successful justification depends on the activation of the relevant deontological powers as well as on the establishment of a wider frame of reference – the backing demands.

In this process of justification many issues must be brought together in establishing some shared definition of the situation and clarification of alternatives. If actors are to be able to reach agreement they 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 of what regime of justice that applies. A regime of justification required for dispute settlements and problem-solving entails, in customary cases collective conventions of equivalence, such as objectified rules and references to “standardization of time and schedules” (ibid. 362). However, in not so customary cases, the regime of justification may take a more principled form.

Justification entails the weighing of arguments, often according to established equivalencies or regimes of justice, but sometimes they must be subjected to moral reflection and principled argumentation because of norm- or regime collisions. What could be the source of such a context transcending competence? First of all, an actual regime of justification entail some presuppositions that forces actors to rephrase what ‘I want’, to ‘what I am entitled to’, which may open up or change validating regimes. Secondly, justification aims at settling conflicts impartially. This grounds the assumption that a ‘we perspective’ comes into play when processes of justification catches on, when actors have to employ more general reasons in order to justify their claims. Are the claims generalizable or universalizable; would their satisfaction also be wanted by others in the claims-maker’s shoes? Are the self-interests involved legitimate or do they breach with the principle of *reciprocity*, namely that they lay claim to something denied to others.

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24 “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 1991(2006):65ff).
Public justificatory discourses revolve on whether a claim is *right* or not. Actors draw on experience, facts and principles which they hold to (or hope will) command acceptance. Claims must meet some epistemic standards and they must meet some validation criteria if they are to mobilize support. When there are conflicts of interest, and in particular when distributive decisions are to be made, the prospects for agreement is held to be bleak. When actions affect others’ interests or values, deliberative theory proposes a shift to an higher level discourse – principled argumentation - in which actors’ actual interests and wishes are bracketed and put into perspective so that a moral point of view is adopted. In such a discourse for testing validity claims the backing demands of *rightness* – of proper logic and analytical inference - and of justice kick in. Practical argumentation aims at resolutions based on what is equally good for all. Rational and impartial reason giving makes up the core of the epistemics of rational reason. However, even rational justification may not in itself change actors’ opinions, as mentioned, and even more so when justified claims have distributive effects. The hard case for deliberative theory is cases which are resolved consensually even though there is “a sharp conflict of interests and/or opinion” (Harré 1999: 250).

Can corroborated facts and norms of fairness amount to a self-sufficient explanation of outcomes in a decision-making process? There can be justification without prior claims-making, and without ensuing learning, when for example injustices, malpractice, corruption, abuse are being revealed (through critical journalism or scientific research), which from the moral point are intolerable and trigger rectifying measures. Due to the *world disclosing effect* of deliberation mental maps and normative outlooks may change without much further ado.

*Learning*

In case of disagreement one or more of the dissenting actors must change opinion with regard to what is the right thing to do for an agreement to be reached though deliberation. One or more actors must admit mistakes or falsely grounded beliefs and change opinion. Learning generally means to overcome obstacles intelligently, i.e., to change opinion or modes of problem-solving and conflict resolution when met with new information and better arguments. In collective decision-making learning is about how to make successful justification effective. That is, to turn justified claims into a type of acceptance that terminates in binding decisions,

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25 This can take place in conventions, in constitutional courts, in (expert and ethics) committees, in citizens juries, in consensus conferences and the like.
which prompt compliance. When actors have learnt and agreement is achieved, justified claims are adopted. (For example, ‘I endorse the claim for a new road because my initial objections do not hold upon closer scrutiny’). Learning may however be of different kinds.

If actors change opinions or preferences because of social pressure or because of advantage, there is a case for what can be termed pragmatic or empirical learning. Actors change preferences because they become aware of norms or common values that must be paid tribute to in order to reach agreement. (‘It is not fair to build this road when all other needs and claims are taken into consideration, but strong feelings of patriotism or a sense of community make me support this claim’). Another example of empirical learning is when actors change preferences because of ‘tit for tat’ (‘If I support this claim, I can expect your support later’). In this case no real change – or real learning - has taken place. Actors have not realized the validity of the supporting reasons and changed conviction. Actors comply for tactical or strategic reasons. Another type of empirical learning is that they consent because they are enforced, lack alternative information or are persuaded (seduced) by dramaturgical claims-making and by the appeal of affective regimes of justification. In all cases 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 2007:9). It results in compliance and binding decisions but not in real learning.

Normative learning entails agreeing on justified principles for how to deal 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). A reason giving practice with reference to collective decision-making makes clear what justice entails and establishes the standard according to which processes of critique of non-compliers can unfold. Hence the deliberative mechanisms of learning – corrections of beliefs and inconsistencies - does not merely posit that actors obey by the inner sanctions of their conscience, but rather by the public force of reasons when they reveal inconsistencies and mistakes. Due to the pain of

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26 See Habermas 1981…..
27 On stages in moral learning, see further Kohlberg (1981).
performative contradiction, of incoherence and contradictions in terms, of ‘blaming and shaming’, mistaken actors are compelled to change opinion. They can not prevail, for the simple reason that the public standing is undermined and support shrinks. Henceforth, there is prototypically a consensus with reciprocally acceptable reasons. Analysts may never get to know the real motivations, the real reasons of the actors, but as far as the publicly stated reasons are the ones agreed upon, these are the ones that explain an outcome – agreement on a binding decision.

Deliberative theory assumes that a consensus-conducive norm can be established through enlightening discourse. In a practical discourse in which the actors reason on the basis of impartiality and neutrality it will become clear which one of the range of justified norms should be applied to the case at hand. In such a discourse the trump is justice, that is what can be established as equally good for all. Reasons must be given for all deviations from the principle of equality. Discriminating 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 should prevail!

Can there be learning without justification? Experimental learning denoting that “rules are modified on the basis of direct experience” (March 1994: 80) is well known. There is also rational imitation referring to ”a situation where an actor acts rationally on the basis of beliefs that have been influenced by observing the past choices of others” (Hedström 1998: 307). One learns by looking to others’ or to past experiences and makes decisions with no prior process of explanation and justification. An example of normative learning without deliberation is what 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. Thus, the actors can start believing in the norms and make them their own. Even principles can be learnt without public justification. Deliberation also takes place in foro interno. There is ‘democratic deliberation within’, as Goodin (2003) terms it, conducive to

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28 There is however an internal link between these two, as public discourse and criticism will only change opinions or mental maps when they correspond to recognized reasons: reasons that the actors deem valid. The force of the better argument gets its authorization from public discourse, but only works to change opinions when autonomously accepted by the actors (see Eriksen 2009b).

29 “Learning in the moral domain is assessed in terms of how inclusive such a consensus reached through reason-giving is.” (Habermas 2003: 257)
learning. Thinking is internalized deliberation, and actors can imagine themselves in others’ position and anticipate counter arguments.

Table 1 illustrates the analytical model of deliberative policy-making in which claims-making trigger justification and learning when appeal and consensus do not suffice to get to yes, or when factual statements and norms of fairness do not lead to agreement.

Table 1 Model of deliberative policy-making

<table>
<thead>
<tr>
<th>Sequences of policy making</th>
<th>Explanatory mechanisms</th>
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<tbody>
<tr>
<td>Claims-making</td>
<td>Appeal</td>
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<td></td>
<td>Value consensus</td>
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<tr>
<td>Justification</td>
<td>Corroborated factual statements</td>
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<td></td>
<td>Norms of fairness</td>
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<tr>
<td>Learning</td>
<td>Revealing of inconsistencies</td>
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<td></td>
<td>Correction of false beliefs</td>
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</tbody>
</table>

Normative learning hinges on mutual understanding, conviction and compliance out of 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 it is also a learning inhibiting mechanism. When it is possible to vote, people need not enter the deliberative process of convincing others: they can calculate the outcome given the actual distribution of preferences power, and only try to mobilize requisite support in order to form a winning coalition. Arguing is more likely under

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30 In bargaining actors do not aim at redeeming validity claims. See further here Riddervold 2011, Eriksen 2009a.
conditions of unanimity. As mentioned, policy-making to a large extent takes place within a legal context, which disciplines the force of reason in collective deliberations. How come?

Reducing indeterminacy
Like institutions, norms or rules, deliberation do not dictate behavior.\(^{31}\) In collective decision-making deliberation converts agreements into practical results only under certain constellations of power. The political process is however regulated by law, which through organizational and procedural means, aims at establishing legitimate power relations and the legitimacy of power instruments. It seeks to neutralize power-relations and exclude undue concerns. The stated problem of indeterminacy decreases when the status functions of law are invoked, first of all because it domesticates social relations. Law removes the certain incentives for ‘self-help’ and strategic action. In a constitutional state, in contrast to international law in which relationships are multi- or bi-lateral, in which non-compliance of one or more parties allow for ‘self-help’ action by others to enforce compliance. ‘Tit-for-tat’, ‘reprisals’, ‘reciprocal measures’, or ‘countermeasures’ are ruled out in legally domesticated relations. By sanctioning norm violations unilaterally the law not only minimizes the risk of free-riding and exploitation by strategic actors but also makes it possible to act morally without the risk of being in a sucker position (cp Axelrod 1984; Apel 1998).

Secondly, the legal procedure itself helps reduce the indeterminacy problem as it excludes legally irrelevant arguments, and decreases the number of premises. Law drastically reduces the number of indeterminate cases. It reduces the hole in the doughnut.\(^{32}\) The legal procedure reduces the radical uncertainty of deliberation as it restricts the scope of premises in decision-making, it specifies the context for adjudication, and selects the relevant norms of application in the sense that it ensure that only relevant facts and considerations are on the table before decision-making.

\(^{31}\) Institutions yield indeterminate results and rules do no predict behavior. Institutions are themselves shaped by the actors in the context in which they operate (Prezeworkski). In his account of linguistic meaning Wittgenstein (1978) found grammatical rules underdetermine meaning owing to multiple contributions of context and usage.

\(^{32}\) It reduces the discretionary space for decision-makers - the hole in the doughnut shrinks (Dworkin 1977). However, the law does not abolish the problem. Also legal norms are too unclear to give unambiguous, correct answers to normative problems. They are faced with indeterminacy as positive law as well has an open texture. Also the legal language is vague, full of rationality gaps and norm collisions (Hart 1961: 128; Alexy 1998: 215). Practical argumentation may, on the other hand, be seen to compensate for some limitations of legal reasoning as it in principle is open and limitless with regard to time, social space and substance.
Third, the legal procedure seeks to ensure a sound reasoning process. The law does not merely forbid, but contains 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 like an encyclopedia (Raz 1986). In court proceedings the law determine which issues should be linked, and which should not, what arguments are relevant and legal and which are not. In general, the legal procedures discipline the participants with regard to temporal, social and epistemic constraints. The stipulations of legal procedures ensure that counter arguments are on the table, encourage impartial reasoning and ensure a decision within a time limit. The legal procedure compensates for the fallibility of deliberative processes and improve their incomplete procedural fairness (Alexy 1989: 179; Habermas 1996: 221).

In addition to these general structural features of the law, there are also particular legal procedures specialized with regard to substance or content to ensure that only certain types of arguments are included. Thus within a legal framework, which after all is the framework of collective decision-making to a lesser or larger degree, deliberation may not be a farfetched explanatory category. An ordinary policy-making process is institutionalized; formal procedures, rights and duties are entrenched. Citizens are authorized and empowered to make claims and to petition public authorities, to participate in contestation and struggles over outcomes and influence as well as for recognition for particular status. To a certain degree they also can expect response, and sometimes impact. 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, the mandate, the rules for membership, for the election or selection of members for the composition of public bodies, are stated. Often there are complaint or appeal procedures, rules for balancing interests, for representing weak groups, for debate, for chairmanship etc, which seek to ensure impartial reasoning and cogent deliberation.

The formal procedures of opinion and will formation authorize and situate deliberation and decision-making in time and space. They establish who should decide when and how. Political institutions provide resources for the system in place and for the implementation of action schemes. Openness and public scrutiny as well as courts, from time to time act as effective
watchdogs of the procedure, barring group think, flaws, lies, conspiracies and ignorance. Guarding actors, institutions and procedures, which reprove and sanction defection, warrant the presumption of reasonably acceptable results. Under benign circumstances these see to it that justified claims – due to the force of the better argument - terminate in actual learning, in agreement and compliance.

The radical indeterminacy that prevails when practical argumentation takes place in institutionally unbounded settings – in a public sphere rooted in civil society in which the law itself may be up for grabs – is drastically reduced when it is transferred to institutional domains governed by legal procedures and subjected to the discipline of impartial reason giving. However, when it comes to reaching a collective decision with distributive consequences also in regulated contexts, the outlook for deliberative decision-making is rather bleak. Actors are prone to act against decisions that are detrimental to their interests or identity even when their arguments are shallow. They may prefer disagreement and hope to strike a better deal by opting out of deliberation. Still they would remain within the political game. After all there is a legitimate sphere for self-interest in modern society that is legally protected (Hegel 1821), and the political procedures consists not only of deliberative ones, but also aggregative ones like procedurally regulated bargaining and voting.

Conclusion
The point about deliberative decision-making is not merely that arguing lead to transformation of preferences because the actors are epistemically enlightened. Rather the point is that inconsistencies and mistakes are revealed in a public reason giving process, and that there are devices to ensure that rational and impartial arguments win through. In this paper I have dealt with the normativitity of reasons - only with the use of arguments can collective decisions be made without coercion – and their action coordinate 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 status functions explain the conversion from premises to conclusion. Secondly, mechanisms operative in the sequences of policy making – in claims-making, justification and learning - explain the transformation of initiatives into practical results.

33 Which nevertheless seem to prevail, see Elster 2007; Sunstein 2002.
One caveat is in place: Increased deliberative quality conducive to collective decision-making need not go together with increased democratic authorization. Representatives that obey by the force of the better argument may well betray the mandate of their constituencies. Hence, we should carefully separate the two levels of analysis; one that belongs to the sphere of public reasoning among all 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. The success of the latter depends on its legal institutionalisation.

Deliberative decision-making may be rational but need not be democratic. This may explain why MPs respect more the ‘deliberation’ in the caucus room than in the floor of the Parliament (Goodin 2008: 197, Manin 1997). However only by seeing collective decision-making in the normative context of deliberative democracy founded on the epistemics of rational reason, can one account for the putative force of public reasons in the process of getting to yes.

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