From bargaining to arguing, from strategic to communicative action?

Theoretical perspectives, analytical distinctions and methodological problems in empirical studies of deliberative processes

Paper prepared for the ECPR Joint Sessions in Helsinki, 7-12 May, 2007

DRAFT – please do not cite without permission of the author, comments welcome!

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abstract:
This paper starts with the first question raised by the organizers of the workshop, André Bächtiger and Marco Steenbergen: “How much deliberation is there in the real world (and how can we better distinguish between true deliberative action and other, more strategic forms of communication)?” It focuses on two conceptual distinctions that play a prominent role when social scientists try to conceptualize and denote the difference between “true deliberative action” and “other, more strategic forms of communication”: the distinction between communicative and strategic action, on the one hand, and the distinction between arguing and bargaining, on the other hand. In the debates on deliberative democracy, these distinctions have often been interpreted and treated almost like synonyms. Understood as equivalent dichotomies projected on a one-dimensional scale, people taking the deliberative turn seemed to have only one way to go: from bargaining to arguing, from strategic to communicative action. Yet these two distinctions were introduced in the context of different theories and their connection is not as clear as it may seem. The paper discusses the interrelations between these different theoretical perspectives and methodological as well as empirical problems that play a role if researchers try to use the two distinctions in empirical studies of deliberation.
1. Introduction

The workshop „Advanced Empirical Study of Deliberation“, organized by André Bächtiger and Marco Steenbergen at the ECPR Joint Sessions of Workshops 2007 in Helsinki, is supposed to address four concrete sorts of questions. The question that brought me to this workshop is the first one. This question is related to the occurrence of deliberation and points to the difficulties of identifying the phenomenon and its distribution in empirical studies of deliberation. It reads as follows: “How much deliberation is there in the real world (and how can we better distinguish between true deliberative action and other, more strategic forms of communication?” The phrasing of the question presupposes that there is a difference between “true deliberative action“ and “other, more strategic forms of communication“, and that social scientists have difficulties in distinguishing one from the other. It does not tell us whether these difficulties have to do with weaknesses on the level of conceptual clarification or definition of categories, are caused by methodological problems or simply mirror the undifferentiated nature of communication and action “in the real world“.

Yet it is clear, at least in the context of a discussion among social scientists, that if we want to distinguish different types or forms of action or communication, we need at least some kind of definition that allows us to identify what we are looking for “in the real world“. Now the phrasing of the question by Bächtiger and Steenbergen suggests that we are looking for “true deliberative action“, and that the task is to distinguish this “true“ type from other forms of deliberative action. The use of the word “true“ indicates that we are also embarking on a project that is not only concerned with measuring, but that inevitably implies some kind of evaluation and critique in the first place. The language of “true” (and “untrue“) suggests that there are some forms of communication „in the real world“ that appear as “deliberation“ upon first glance, but do not really qualify to meet the standards of „true deliberative action“. Thus, we have to develop some kind of a critical understanding or method of critique which allows us to distinguish if a given action or communication is a “true” type of deliberative action or not.

As the title suggests, this paper will discuss not only one, but two conceptual distinctions that play a prominent role (at least in the German debate) when social scientists try to conceptualize and denote the difference between “true deliberative action” and “other, more strategic forms of communication“: the distinction between communicative and strategic action, on the one hand, and the distinction between arguing and bargaining, on the other hand. While the focus of the paper is on the second distinction, it will start with the first. In many contributions to the deliberative turn in democratic theory, policy analysis or
international relations, these distinctions have been used almost like synonyms. Understood as equivalent dichotomies on a one-dimensional scale, people taking the deliberative turn seemed to have only one way to go: from bargaining to arguing, from strategic to communicative action. Moreover, in some cases these two distinctions have been attributed to the same author or theoretical perspective. Yet the distinction of strategic vs. communicative stems from the theory of action of Jürgen Habermas (1981a), whereas the juxtaposition of arguing vs. bargaining was introduced ten years later by Jon Elster (1991) as a distinction of two modes of communication. While Habermas clearly stands in the tradition of critical theory, Elster is commonly regarded as a scholar representing the rational choice approach (Elster/Hylland 1986), albeit in a very self-reflective and self-critical form (Elster 1979, 1983, 1989a). These different theoretical backgrounds and perspectives notwithstanding, one finds converging references to both distinctions in the literature when authors tried to get a clue as to what it means to be “truly deliberative“. Is this an appropriate interpretation and an adequate treatment of these distinctions? Do the different theoretical backgrounds and perspectives matter when one tries to use them in empirical studies of deliberation? Do they imply different methodologies and hence lead to different methodological problems in the empirical study of deliberation?

Referring to the two distinctions that played a considerable role in the discussion in Germany, the question posed for our workshop by Bächtiger and Steenbergen can be translated into the following two questions: How much arguing is there in the real world – and how can we distinguish it from bargaining? If there is arguing in the real world, and if we can identify it, does this result imply that we also found communicative action and if not, how can we distinguish it from strategic action?

This paper will start with the distinction of communicative and strategic action that was introduced by Jürgen Habermas in 1981, recall some of his remarks concerning the difficulties he expected regarding the relation of his concepts to empirical research, and point to a differentiation in the distinction that he introduced in his more recent writings (2). I will than turn to the distinction of arguing and bargaining as introduced by Jon Elster in 1991 and will revisit the way in which Elster (and others like Claus Offe) understood and used this distinction in order to analyse and evaluate deliberative processes of constitution making (3). As the juxtaposition between arguing and bargaining gained prominence in the German debate and was supposed to serve as a conceptual tool for a whole working group on environmental policy in 1994, I tried to reformulate the distinction to be able to use it in empirical policy studies without buying the biases that I saw in Elster’s conceptualization (4).
This reformulated analytical framework became a reference point for a number of publications associated with the cognitive, reflexive or deliberative turn in the German debate in policy analysis, democratic theory and international relations. One of the most interesting cases is a project conducted by Harald Müller and Thomas Risse who acted as major champions of bringing Habermas into international relations theory in Germany. Müller and Risse started with the claim to demonstrate the empirical relevance of Habermas’ theory calling for a change “from strategic to communicative action” (Müller 2001: 175). In their empirical project they complemented their approach by references to the distinction on arguing and bargaining, expecting to see a change “from bargaining to arguing“ (Deitelhoff/Müller 2005: 170). Since the difficulties of using this distinction in empirical studies became a matter of interesting discussions when they completed their project on multilateral negotiations, I shall comment on the interpretation of their findings and remarkable conceptual turnarounds after their walk through the low lands of empirical studies (5). Finally, referring to the preceding analysis, I shall give a short answer to the fourth question of the workshop concerning the relation of empirical approaches, philosophical ideals and the role of deliberation in ‘attempts at a comprehensive democratic renewal” (Bächtiger and Steenbergen 2006) (6).

2. Communicative vs. strategic action: Jürgen Habermas

The distinction of communicative vs. strategic action is commonly ascribed to Jürgen Habermas. In the “Theory of Communicative Action” (TCA), Habermas gives a systematic account of how he understands this distinction. Communication and strategic action are introduced as two different types of action. The typological difference between the two types of action is created by distinguishing two types of action orientation.

As one can already see from the title of the two volumes (Habermas 1981a,b), the difference is anything but peripheral to his work. The TCA is a complex social theory that is driven by different concerns and questions. It addresses different levels of analysis from the metatheoretical to the methodological and empirical-theoretical level, pointing out, however, that these levels are internally connected. Thus, for Habermas (1981a: 7), the TCA is not supposed to be a metatheory, but „the beginning of a social theory concerned to validate its own critical standards“. The explication of these critical standards is the aim of a theory of rationality. In order to accomplish this task, the theory of rationality must refer to societal rationalization, the explication of the notion of „communicative rationality“, would not be possible. The internal connection with the theory of rationality is not without consequences, if one wants to refer to specific parts of the TCA (such as the concepts of communicative and strategic action) and use them in other contexts. On the metatheoretical level, the TCA is concerned with the question of „a framework for action conceived with a view to the rationalizable aspects of action“, on the methodological level the TCA is concerned with the question of „gaining access to the object domain of symbolic objects through „understanding“, whereby „understanding rational orientations of action became the reference for understanding all action orientation“ (Habermas 1981a: 22, translation by Thomas McCarthy, cf. Habermas 1984b: 6). This focus on rationality in Habermas’ theory of action has been criticized as too narrow, cf. for example the critique of Hans Joas (1988), who points to
is the point of reference in this distinction. To illustrate this distinction, Habermas constructs a matrix composed of two dimensions. On the one hand, Habermas sees a fundamental difference between situations that are social and those which are not social. In social situations, i.e. in social interactions, actors can follow two different orientations. They can be orientated toward success (“erfolgsorientiert”), in that case he speaks of „strategic action“.

Alternatively, actors can be orientated to reaching understanding (“verständigungsorientiert”). This type is called “communicative action” (Habermas 1981a: 384). It is usually this scheme and the accompanying explanations, when authors give some references to the distinction of communicative vs. strategic action in the literature.

Figure 1: Theory of communicative action: Types of action

<table>
<thead>
<tr>
<th>Action orientation</th>
<th>Orientated to success</th>
<th>Orientated to reaching understanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action situation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-social</td>
<td>Instrumental action</td>
<td>–</td>
</tr>
<tr>
<td>Social</td>
<td>Strategic action</td>
<td>Communicative action</td>
</tr>
</tbody>
</table>


considerable blanks in Habermas' theory, yet suggests an alternative that is loaded with a number of new problems (Saretzki 1988).
In the TCA, Habermas (1981a: 385-386) argues explicitly that concrete actions can be classified with the help of the two types of action that he tries to grasp with this distinction. He wants to designate “strategic” or “communicative” not only two “analytical aspects” of action that can be used to describe the same action under two aspects, that is in this case: as a process of reciprocal influencing of rational opponents, on the one hand, and as a process of mutual understanding of actors sharing the same life-world, on the other hand. Rather, he claims that concrete actions can be distinguished according to the action orientations of the actors themselves, which can be either orientated towards success or orientated towards reaching understanding. Under suitable circumstances these orientations or attitudes of the actors should be identifiable on the basis of the intuitive knowledge of the participants. Yet it is worth noting that in the TCA, Habermas does not understand this identification as a psychological task. What he has in mind, when he speaks of an „attitude orientated to reaching understanding“, is not the same kind of category an external observer would use to describe the behaviour he sees from the outside. What he tries to grasp is the pre-theoretical knowledge of a competent speaker who can distinguish intuitively, if he tries to influence someone or if he is reaching an understanding with someone – and who also realizes when the effort to reach an understanding failed. Habermas’ objective in the TCA is not to present an empirical characterization of behavioural dispositions, but to grasp general structures of processes of mutual understanding that can be used to deduce formal characteristics of participation (Habermas 1981a: 386).²

As far as the differentiation between the two action orientations is concerned, Habermas (1981a: 388) points to difficulties that might arise as not all interactions mediated by language are examples of action orientated towards reaching an understanding. Yet in the TCA he claims that this difficulty could be overcome if it could be demonstrated that the use of language orientated to understanding is the original mode of communication, while other forms of communication where this orientation towards understanding is in doubt can only count as forms that are derived from the original mode. His attempt to demonstrate this with the help of Austin’s speech-act analysis was accompanied by a number of criticisms and

² In this context, Habermas points to a difference in theoretical perspective and methodology between his theory and conventional approaches to „positive“ social science that is not easy to overcome – and that has been overlooked by many who read his theory simply as a set of empirical propositions to be tested by empirical research (in psychology and other disciplines of the social sciences) or (to mention the other prominent misreading) as some kind of „philosophical ideal“ detached from the „real world“. If one takes his remarks seriously, it is quite clear that, in order to build an appropriate bridge over the gap, what is required in the first place is some kind of translation to get from his philosophical approach of clarifying concepts and categories and his action-theoretic analysis on the level of formal pragmatics, on the one hand, to the level of empirical studies usually performed by conventional social research.
comments. Replying to various questions and criticisms, Habermas defended and revised his theory of action in certain aspects and tried to explain the concept of formal pragmatics and the distinction of strategic and communicative action in a number of places (cf. Habermas 1984a: 540-555; 1988: 68-75, 123-135). From his perspective, understanding the status of formal pragmatics is most important to avoid misunderstandings of his action theoretic concepts and the kind of research he pursues on this level of analysis (cf. Habermas 2005a: 27-105).

Giving a more complex account of the relation between language, communicative rationality and types of action, Habermas (1999: 121-134) differentiated the concept of communicative action by introducing a further distinction between language use orientated to reaching understanding (“verständigungsorientiert”) and language use orientated to reaching consensus (“einverständnisorientiert”).

Figure 2: Types of action

<table>
<thead>
<tr>
<th>Use of language</th>
<th>Attitude of actors</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>objectivizing</td>
<td>performative</td>
</tr>
<tr>
<td>not communicative</td>
<td>goal-directed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>intervention</td>
<td></td>
</tr>
<tr>
<td>orientated to reaching</td>
<td>weak</td>
<td></td>
</tr>
<tr>
<td>understanding</td>
<td>communicative</td>
<td></td>
</tr>
<tr>
<td></td>
<td>action</td>
<td></td>
</tr>
<tr>
<td>orientated to reaching</td>
<td>strong</td>
<td></td>
</tr>
<tr>
<td>consensus</td>
<td>communicative</td>
<td></td>
</tr>
<tr>
<td></td>
<td>action</td>
<td></td>
</tr>
<tr>
<td>orientated to consequences</td>
<td>strategic interactions</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>non-social action</td>
<td></td>
</tr>
<tr>
<td></td>
<td>social interaction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>social interaction</td>
<td></td>
</tr>
</tbody>
</table>

(Source: Habermas 1999: 130, author's translation)

The actor attitudes were conceptualized as either objectivizing (“objektivierend”) or performative (“performativ”). The combination of these distinctions leads to a typology of action that is a more differentiated insofar as now his conceptualization leads to two types of

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communicative action which differ in the sense of being weak or strong. According to this new scheme, social interaction can be classified as strategic, if the use of language is orientated to consequences and the actor’s attitude is objectivizing, it is classified as weak communicative action, if the use of language is orientated to reaching an understanding and the actor’s attitude is performative, and it can be classified as strong communicative action, if the use of language is orientated to reaching a consensus and the actor’s attitude is performative (Habermas 1999: 130, author’s translation).

In spite of these reformulations, it is worth noting that Habermas’ distinction between strategic and (weak or strong) communicative action still relates to actor’s attitudes and orientations as the point of reference. Yet the reader interested in working with these categories is also reminded by Habermas that his distinctions are formulated on the level of a reconstructive theory, i.e. as part of a conceptual analysis that is interested in constitutive presuppositions of actual practices. Such presuppositions cannot be appropriately interpreted if one treats them as empirical hypothesis that can be directly tested and falsified in the same way other propositions of empirical sciences can. To avoid a systematic misunderstanding, i.e. an empiricist reading of a reconstructive theory, one has to bear in mind that efforts to apply such a reconstructive theory in the empirical realm inevitably raise questions of translation: how should concepts that are formulated on the level of formal pragmatics be translated into categories that are appropriate on the level of empirical analysis?

3. Arguing vs. bargaining: Jon Elster

The distinction between arguing vs. bargaining has been interpreted in some parts of the literature as if it would be more or less identical with the distinction between communicative vs. strategic action introduced by Habermas. Yet the juxtaposition of arguing vs. bargaining does not stem from Habermas. It was introduced by Jon Elster and quickly gained some prominence in the social sciences after Jon Elster (1991) used it in his studies on constitution making. The assumption that Elster’s juxtaposition has more or less the same meaning as the distinction of communicative and strategic action is somewhat preliminary, even though Habermas (1992: 408-415) worked on a sympathetic reading of Elster’s studies from the
perspective of his discourse theory. Following Elster’s writings and the way he explains and uses this distinction from his own theoretical perspective closely, it is hard to overlook that his concept of arguing and bargaining is not as congenial with Habermas’ theory of communicative action as it may seem. Hence the two distinctions, as introduced by the two prominent authors, cannot be interpreted and treated as identical or at least as converging as it seems in some parts of literature.

Before introducing the juxtaposition of arguing vs. bargaining, Elster (1986: 112-120) had raised some basic objections against Habermas’ theory of communicative action and his theory of democracy. In this critique, Elster presented his objections in the context of a distinction that framed the controversy as a conflict of two opposing models of order: the market vs. the forum. This dualism of two opposing models of order shows some correspondence with the distinction of the two modes of communication he later formulated. However, the distinction between arguing vs. bargaining introduces a different, more dynamic perspective. This perspective focuses on processes of communication, not on basic institutions per se. Yet there is a certain complementary relation of models of order and modes of communication: bargaining is the mode of communication primarily related to the idea of a market, while arguing represents the mode of communication we expect to encounter in a forum.

When Elster spells out his understanding of the distinction between arguing and bargaining, his explication is not without ambiguity. Elster explains his understanding of the two modes of communication one after the other by bringing in a number of defining elements that reflect diverse perspectives and illuminate different aspects of the terms to be defined. First of all, he starts his explanation of arguing and bargaining by referring to the *purpose* that the actors are trying to achieve:

„To argue is to engage in communication for the purpose of persuading an opponent, i.e. make the other change beliefs about factual or normative matters. ... To bargain is to engage in communication for the purpose of forcing or inducing the opponent to accept one’s claim.” (Elster 1991: 3, 1992: 15)

This first part of the definition focuses on the purpose of the communicating actors explaining what the difference between arguing and bargaining is about. When we think of the task to distinguish between arguing and bargaining, it suggests that we would have to identify the different purposes of the actors in the first place. When Elster refers to the purposes of the

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5 I shall refer to Elster’s „Arguing and Bargaining in the Federal Convention and the Assemblée Constituante“ citing the manuscript of his Storrs Lectures (Elster 1991) and the version that was published as a book chapter (Elster 1992). The two versions share relevant parts of the text.
actors as the first defining element, he puts both modes of communication into a consequentialistic perspective. Moreover, in denoting the addressee of arguing and bargaining as an “opponent” (rather than as partner or collaborator), Elster implies that he does not expect the communication process to be a cooperative endeavor. With these first sentences he spells out an understanding that views not only bargaining, but also arguing as a mode of communication that is, from the beginning, orientated to successfully achieving a certain purpose (which apparently is already there before the process of communication begins). In this perspective, arguing does not appear as an open process of communication where participants try to seek the truth, reach a mutual understanding or even a consensus in a rational discourse. Rather, in Elster’s consequentialist perspective arguing looks like a communication strategy intended to successfully change the beliefs or persuasions of another person who is portrayed as an “opponent”. The participants of such a communication process already seem to know that the others are opponents who will have to change their beliefs about what the world is or ought to be.

When Elster goes on to spell out his understanding of the two modes of communication, however, his explanation of arguing sounds pretty much like Habermas‘ exposition of a rational discourse: “In such discussions” (i.e. those that represent the mode of arguing)

“the only thing that is supposed to count is ‘the power of the better argument’. The parties are not allowed to appeal to their superior material resource. The factual or normative statements asserted in a process of arguing are made with a claim to being valid. For factual statements, validity means the same as truth. For normative statements, the notion of validity is more controversial. For the present purposes, I shall focus on impartiality as a necessary condition for normative validity.” (Elster 1991: 3, 1992: 15)

In this second part of his explanation, Elster brings in other elements to characterize arguing as a mode of communication distinct from bargaining. He refers to claims raised in the process of communication (validity), points to criteria according to which these claims can be evaluated (consistency, impartiality), and to resources that matter in this mode of communication (better arguments).

Spelling out his understanding of “bargaining” as the other mode of communication, Elster clearly is inspired by Thomas Schelling. “To achieve” their ends in this mode (i.e. “forcing or inducing the opponent to accept one’s claim”),

“bargainers rely on threats and promises that will have to be executed outside the assembly itself. ... Bargaining power does not derive from the ‘power of the better argument’, but from material resources, manpower and the like. Statements asserted in a process of bargaining are made with a claim to being credible, in the sense that the bargainers must try to make their opponents believe that the threats or promises would actually be carried out.” (Elster 1991: 3, 1992: 15-16)

Following Schelling and his analysis of the “strategy of conflict” in international politics, Elster (1991: 3, 1992: 15) focuses on threats in his first explanation of the specific way of communicating in the bargaining mode. In other instances (analysing bargaining processes
between employers and unions) he includes promises as another way to bargain and discusses the similarities and differences between threats and promises with respect to the crucial claim of credibility (Elster 1989b: 272-287). If one adds “outside options” (Elster 1989b: 76) as a third way of communicating in the bargaining mode, the second part of Elster’s exposition of the difference between arguing and bargaining can be summarized in the following figure:

Figure 3: Arguing vs. Bargaining

<table>
<thead>
<tr>
<th></th>
<th>Arguing</th>
<th>Bargaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim</td>
<td>validity</td>
<td>Credibility</td>
</tr>
<tr>
<td></td>
<td>- empirical</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- normative</td>
<td></td>
</tr>
<tr>
<td>Criteria</td>
<td>consistency / empirical proof</td>
<td>promises</td>
</tr>
<tr>
<td></td>
<td>consistency / impartiality</td>
<td>threats</td>
</tr>
<tr>
<td></td>
<td></td>
<td>exit-options</td>
</tr>
<tr>
<td>Resources</td>
<td>argumentative power (based on convincing arguments)</td>
<td>bargaining power (based on material resources)</td>
</tr>
</tbody>
</table>

(Source: author’s figure, categories based on Elster 1991: 3, 1992: 15-16)

Like Habermas, Elster points to difficulties that arise when one wants to use his distinction in empirical studies. Yet his view of these difficulties is more familiar to conventional social science as he interprets his concepts of arguing and bargaining as “ideal-types” (while Habermas (2007: 424-426) has reason to remind us that in his reconstructive theory we are working with concepts that are not to be interpreted in this familiar way another status).

“In actual communicative situations one will usually find elements of both arguing and bargaining. And in some situations it may not be clear whether we are dealing with one or the other. These facts do not, however, destroy the distinctions. Arguing and bargaining have to be seen as two ideal-typical modes of communication, which are rarely instantiated in their pure form.” (Elster 1991: 5, 1992: 17)

When Elster reflects on difficulties of using his concepts in empirical studies, he stresses the possibility that actors may communicate opportunistically, i.e. may not be authentic in their statements, if such a misrepresentation of facts or preferences, causal relations or
responsibilities could be in their interest. His standard example to illustrate this behaviour is the disguising of threats as warnings by trade union leaders.

“Sometimes, it may be difficult to decide whether a given communication is part of an argument or a move in a bargaining process. In particular, it is not always clear whether a given statement is meant as a threat or as a warning. ... When a threat is disguised as a warning, we could also and equivalently say that a process of bargaining is disguised as a process of arguing or rational discussion.” (Elster 1991: 4-5, 1992: 17)

In spite of the clear reference to a Habermasian concept of discourse in this second part of the definition, Elster’s explanation and, even more telling, his use of the two concepts in interpreting political processes show that he cannot help but think and analyze „the real world“ in terms of instrumental rather than communicative rationality. As a result, his account is not balanced is the sense that he did not conceptualize arguing and bargaining as modes of communication in their own right with their own logic and rationality. Time and again, arguing is characterized from the perspective of bargaining, using or at least alluding to concepts that are well known in bargaining theory. For him, bargaining clearly is the original and at the same time primary mode of communication. As the orientation to self-interest is the attitude, that in his view actors always already have (Elster 1989a: 28-29), so bargaining is what actors always already do when they enter social interaction. Arguing, on the other hand, is something actors would not do unless they force themselves or they are forced to switch into that mode of communication by some outside conditions (such as publicity). In this view, engaging in a discourse can be interpreted like some kind of self-censorship, „rational discussion“ is characterized „bargaining in which strategic misrepresentation and other forms of jockeying for position are not allowed“ (Elster 1989a: 50). Consequently, he formulates his question concerning the style of debating in the constituent assemblies which he analyzed referring to different dimensions of communication. The first mode, bargaining, is introduced by referring to the orientation of the deliberating actors: „To what extent can the debates be described as a form of bargaining, oriented towards a compromise between different interest groups?” The second mode, however, is characterized by its relation to outside constraints: „And to what extent can were the participants engaged in argument and discussion, constrained by ideals of impartiality and consistency?” (Elster 1991: 1, 1992: 13)

The practical implications of looking at processes of arguing through the lens of bargaining (theory) come into view if one reconsiders the reasoning behind the recommendations and lessons of his case historical studies. Elster uses and understands the distinction of arguing vs. bargaining in a perspective that leads him to conclusions which are almost the opposite of what has been called for as a consequence of Habermas’ concepts of communicative action. His perspective does not lead “from bargaining to arguing”, but the other way round.
Elster (1991) introduced the distinction of arguing vs. bargaining in a study on two constituent assemblies, the Federal Convention in Philadelphia in 1787 and the Assemblée Constituante in Paris 1789-91. The historical importance of these two constituent assemblies is beyond doubt, since these are the two assemblies that framed the first constitutions of modern democracy. Yet Elster is not interested in giving a comprehensive historical account of the course and the results of these two assemblies that would consider all the many factors influencing process and outcome of these deliberations in the USA and in France. Rather, his comparative case studies are done with a systematic theoretical and practical intent. On the one hand, he is motivated by theoretical concerns. In that respect, he presents a kind of retrospective analysis and evaluation of the discussions in the two assemblies focused on the two modes of communication that he regards as central to the theory of communicative action (arguing) and the theory of rational choice (bargaining). Which mode of communication is producing the better outcome, i.e. a viable constitution? On the other hand, Elster is analyzing and evaluating the classical constitutional assemblies from the end of the 18th century in the early 1990s with an eye to some processes of constitution making that were arising after the fall of the iron curtain in Central and Eastern Europe. After the breakdown of communist regimes many countries faced the need and the chance to develop a new democratic constitution. Regarding that task, one of the first questions that had to be answered was related to the process of constitution making: how to structure the procedure of constitution making in such a way that the process of democratic constitutionalization as a whole would not be at risk and would lead to a respected result that could stand the test of time. As far as this practical task of structuring the process of communication during the period of constitution making is concerned, Elster’s (1991) retrospective comparative case studies of the two constitutional assemblies in the United States and France at the end of the 18th century entailed some clear messages which are hard to overlook. Stable and lasting constitutions come about if the deliberations do not take place in public, as publicity induces arguing with appeals to moral principles and to the common good which will have polarizing effects. Rather, one will get a less risky process of constitution making and a more stable result, if the following conditions are given: deliberations take place behind closed doors, only a limited number of delegates are allowed to take part, these delegates refrain from searching for an overall consensus and restrict themselves to bargain with the aim of reaching viable compromises, which do not force any party to deny or conceal their own self-interests.6

6 Reading his study closely, two things are worth noting. First of all, the lessons Elster ends up with are recommendations that do not only apply to processes of constitution making. These are lessons that in his view apply to institutional designs more generally and hence should be taken into account by all designers of political
Following Elster, Claus Offe picked up the distinction of arguing vs. bargaining using it not only in studies of parliamentary debates (cf. Bleses/Offe/Peter 1997), but also in his critique of an unreflecting euphoria about direct-democratic changes in the (short) German debate on constitutional reform after unification, turning it against anti-institutionalist politics of new social movements and other populist tendencies. Like Elster, Offe is clearly sceptical about models of a discursive public that count primarily on public arguing. In the public, arguments would be used strategically, aiming at the broadest possible resonance with the existing opinions and attitudes of the audience (Elster 1995, Offe 1991, 1993, 2004). Arguing in public would not contribute to learning and innovation capabilities. According to Offe, the round table talks in the former German Democratic Republic (GDR) have demonstrated that negotiations behind closed doors are better suited to enable learning processes among those who participate. Pointing to such observations, Offe turns the distinction of arguing and bargaining into a direction that is precisely the opposite of what others demanded when they called for a perspective that leads “from bargaining to arguing“ (Deitelhoff/Müller 2005: 170). To avoid a self-imposed overexertion by counting too much on public discourses, Offe argues, it would sometimes be necessary, in the interest of the normative content of „arguing“, to switch auto-paternalistically from the mode of arguing to bargaining (cf. Saretzki 1995: 284).

Giving their analyses a practical-political turn, Elster and Offe at least implicitly presume that it is possible to substitute one mode of communication for the other. In their view, the mode of communication is nothing pre-given or fixed, but something that participants of communication processes can choose deliberately under certain circumstances. Such a choice may be direct, by opting for one or the other mode in an ongoing process of communication, or indirect, by choosing a specific institutional design for the process of communication (private or public) that (in the case of excluding the public) allows them to bargain, or (in the case of public deliberations) induces or even forces them to argue. The recommendation to auto-paternalistically switch from arguing to bargaining in certain circumstances makes sense only if we suppose that modes of communication can be chosen directly or indirectly. Moreover, if we follow this practical-political perspective and the recommendations by Elster...
and Offe, choice not only can, but should precede communication. In their view, this choice should be rational in the sense presupposed by rational choice theory. In his more or less implicit evaluation of arguing and bargaining, Elster does not focus on requirements or presumptions, but on (possible) consequences of the two modes of communication for stability, transparency and innovativeness of political processes. In this consequentialist perspective many questions are neglected that arise if we are interested not only in evaluating, but in explaining a given case in an empirical analysis. In many cases, it is not clear if the consequences of a mode of communication, whether these consequences are evaluated as good or bad according to some set of evaluative criteria, are to be explained by referring to the chosen mode of communication (arguing or bargaining) or by some other factor such as the action orientations of the actors involved, the topics of the communication processes, their procedural structure, institutional setting or broader societal context. In order to analyse these complex cause-and-effect relations between the various factors that can influence communication processes and their impacts, it seems necessary to develop a more differentiated analytical framework that brings all the relevant dimensions into view which

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7 This perspective on prior choices of communication modes has been taken one step further by rational choice theorists in the “frame-selection-model” developed by Hartmut Esser (2004) in the German debate to explain the occurrence of arguing and bargaining in international relations; cf. also Kotzian (2007) for an application of this model which conceptualizes arguing and bargaining as frames that are chosen in a reflective-calculating mode (RC mode). In this model, arguing and bargaining are conceptualized as encompassing frames that consist of fixed combinations of aims, norms, behavioral routines and symbols (cf. Kotzian 2007: 83-86). Once chosen, however, these internally fixed frames determine almost every aspect of communication in this „cristallized version“ of framing that has certain structural and deterministic features which are similar to the cultural theory of Douglas/Wildavsky (1982) and Thompson/Ellis/Wildavsky (1990). In the “frame-selection-model“ of Esser (2004: 54-56), the frames of arguing and bargaining are conceptualized as exclusive: “The frame can either be bargaining or arguing, but in the individual’s mind it cannot be both or a mixture thereof: ... Actors will choose the frame most attractive to them, that is, to some degree actors see the world as they want to see it and act accordingly. ... The actor will ... choose the frame which grants the highest subjective utility ... and behave accordingly” (Kotzian 2007: 84-85). What I formulated a decade ago, yet with a critical intent, to explain why some actors prefer to communicate in the mode of bargaining and try to avoid communicating in the mode of arguing (Saretzki 1996: 36), reappears in this model as “clear hypotheses on the occurrence of arguing and bargaining frames” that stresses the importance of material resources or lack thereof: „If an actor has no power resources to engage successfully in bargaining, bargaining will have little or no utility. Hence, he will see the situation as falling within the arguing frame and behave accordingly: he will rely on arguments and appeals to norms and the common good. Conversely, actors able to reach a favorable outcome by using their bargaining power will be more likely to see the situation as one of ‘bargaining’ and behave accordingly.” (Kotzian 2007: 85-86). According to this model, there is no such thing as “true deliberative action”, only actors that search for the highest subjective expected utility who start arguing when they find that they have a smaller set of material resources at their disposal than the others.

8 A critical reconsideration of Elster’s study of arguing and bargaining in the two constituent assemblies reveals, however, that Elster does not analyze and assess the two modes of communication and their possible consequences systematically and symmetrically. Rather, his comparative assessment of arguing and bargaining is incomplete and one-sided. Only on the basis of such a limited and biased comparison it is possible to suggest that negative effects of communication like alienation, instability and lack of transparency can be attributed primarily to arguing rather than bargaining (Saretzki 1995: 289-296). If the proposal to switch from arguing to bargaining is meant to serve as a general recommendation for political practice, then this option is loaded with basic problems of inclusion, legitimacy, problem definition, will formation, innovation and consistency that make this perspective more than questionable in a democracy (Saretzki 1995: 297-304).
may or may not determine the initiation, structure, course and functions of a communication process.

4. **Arguing vs. bargaining: an analytic framework**

With the growing interest in the role of knowledge, ideas, discourse and learning in processes of political change, the distinction between arguing and bargaining attracted some attention among German political scientists. When it was supposed to serve as a conceptual tool for a whole working group on environmental policy in 1994 (cf. Prittwitz 1996 for the results), I tried to reformulate the distinction to be able to use it in empirical policy studies without buying the biases that I had criticized in Elster’s original conceptualization (Saretzki 1995). This bias stems, according to my reading, largely from Elster’s interpretation of both modes of communication in the light of instrumental rationality. In this light, there are not only empirical instances where we find „strategic uses of argument“, as one of his frequently quoted titles says (Elster 1995). Rather, arguing appears to be as strategic as bargaining, that is, as a mode of communication that does not differ from concepts of rhetorical action.

Avoiding this bias towards instrumental rationality was one concern and trying to get the ambiguity out of his definition was another.

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9 Apart from these contextual incentives, the distinction of arguing and bargaining also had the potential to shed some light on aspects of power in deliberative processes that could easily be overlooked if the analysis focuses only on the arguments exchanged in the deliberation. In the early 1990s, a project on genetically modified herbicide-resistant plants organized and evaluated by the Social Science Center Berlin (WZB) gained some prominence as one of the first major discursive and participatory experiments in technology assessment in Germany (cf. van den Daele 1994). Studying this experiment as an early case for what was then called the “argumentative turn” in policy analysis and planning (Fischer/Forester 1993, Saretzki 2003), I realized that I would not be able to grasp and describe all the dimensions that played a role in determining the initiation, structure, process and outcome of this deliberative project if I had focussed only on analyzing the arguments that were exchanged among the participants. One of the most striking features of this experiment in need not only of an evaluation, but also of an explanation by social scientists was the controversial decision of those participants who had a critical attitude concerning gene technology or its application in agriculture to take the exit-option and stop participating in the deliberations short before the project was supposed to come to an end. The project team of the WZB explained their choice as a result of their argumentative “defeat” in the discourse. The critics could not, according to the evaluation of the project team (van den Daele/Pühler/Sukopp1996), demonstrate convincingly that herbicide-resistant crops imply risks that are not acceptable. Reconstructing the steps of the various communication processes that preceded this decision, however, I discovered that there were important sequences where communication clearly took place in the mode of bargaining rather than arguing. I came to the conclusion that the critics took the exit-option after their (secret) negotiations with the project leaders to get the right and some financial support for formulating a minority position in the final report of the project failed. Critics and project leaders stopped to cooperate after they could not reach an agreement in a process of bargaining over the distribution of resources. Conceptualizing and analyzing this social experiment as a „negotiated discourse“ (Saretzki 1996b), however, was fiercely criticized by some members of the Science Center who favored an explanation based on a displacement hypothesis drawn from social psychology (Döbert 1996). This psychological hypothesis suggests the following explanation: if actors lose in a process of some kind (e.g. a debate) and are unwilling to accept their defeat, they blame it on the procedure (rather than on their bad performance in the process).

10 cf. for example Schimmelfenning (1995) for such an approach to international politics.
My proposal was to take Elster’s starting point seriously and understand arguing and bargaining as *modes* of communication. Following that perspective, it would be appropriate to define these terms focussing on the mode, not on the purposes of communication. Such a conceptualization could be characterized as “modal” rather than “final”. It does not neglect or deny that there may be beliefs and preferences that are given prior to the process of deliberation. Not does it suggest that they do not matter or that they can be changed easily, if at all in a process of deliberation. But the modes of communication would not be defined by reference to given purposes, if we consider communication modes and their specific features as relevant dimensions of analysis and evaluation. It is not the “Wherefore”, but the “How” that creates the interesting difference in this regard. And the interesting question for empirical studies would not only be, if arguing or bargaining matter, i.e. if beliefs and preferences have changed at the end, but *how* such changes are brought about during a process of arguing or bargaining.

Thus, my proposal suggested a definition of arguing and bargaining that neglects the first part of Elster’s explanation (and his interpretation in the light of instrumental rationality when it comes to work with the distinction in concrete studies) and concentrates on the second part (cf. Elster 1991: 3, 1992:15). Thus, according to this proposal, arguing can be defined as a mode of communication in which empirical and normative assertions are made with the claim to being valid. In case of doubt, the validity of empirical-theoretical assertions is to be examined according to criteria of consistency and empirical proof. The validity of normative contentions can be questioned and justified according to criteria of consistency and impartiality. In the arguing mode, processes of communication are structured by argumentative power, based on convincing arguments. Bargaining can be defined as a mode of communication in which bargainers raise pragmatic demands are made, underpinned by promises, threats and hints to exit-options. Bargainers make and underpin their demands with a claim to being credible. In case of conflict, the credibility of bargainers will be tested with regard to their willingness and ability to realize their promises, threats and exit-options. In the bargaining mode, processes of communication are steered by differences in bargaining power based on material resources.11

To get the ambiguity out of Elster’s concept of arguing and bargaining, I suggested that we should not base our definition of modes of communication on actor’s orientations, but conceptualize modes of communication and orientations of actors as dimensions of analysis.

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11 Thus, my proposal to define the two modes basically followed the second part of Elster’s explanation, see figure 3, cf. Saretzki (1996a: 33)
that can vary independently of one another. Differentiating between modes of communication and action orientations is a move that is not only motivated by conceptual concerns (reduce the ambiguity of the distinction). The reason to clarify concepts in this direction emerged also out of the experience of being a participant observer in participatory projects in the field of biotechnology. In processes of bargaining and arguing participants could de facto be guided not just by one, but by different interaction orientations. They could argue in a cooperative mood and show all signs of trying to reach an understanding, the arguments could be presented with a competitive attitude or sometimes they seemed to strive for some kind of confrontation. On the other hand, actors involved in bargaining were not necessarily always “oriented towards a compromise” as Elster (1991: 1, 1992: 13) suggests, but seemed to strive for a confrontation. In such interactions “winning or the defeat of the other side, has become the paramount goal” (Scharpf 1989: 159). In other words: Recognizing and describing these different interaction orientations in processes of arguing and bargaining in the empirical realm should not be hindered by a conceptual framework that allows only specific combinations of interaction orientations and modes of communication. Thus, reference to interaction orientations (or purposes) should not be a defining element of communication modes. Rather, I suggested that we should not include actions orientations in our definition of modes of communication. Not all processes of arguing we can observe in the empirical realm are guided by a cooperative intent, and there are bargainers that are not oriented toward a compromise in their interactions, even if, in acting this way, they may not live up to the expectations and theoretical concepts of argumentation or bargaining theory.

What orientations do we have to take into account? As a start, I suggested that we pick up the three types of interaction orientations introduced by Fritz Scharpf (1997: 84-89). If we combine them with the two modes of communication, we get three different types of arguing and three different types bargaining. This typology was primarily intended to remind political scientists who wanted to do empirical studies using the concepts of arguing and bargaining that they should be aware of the fact that modes of communication and interaction orientations of actors involved could vary independently of one another.12

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12 Note that “discourse” in this typology does not have the same meaning or status as it has in the theory of communicative action by Jürgen Habermas (1981a, 1981b). This typology was constructed on a much simpler basis and its primary purpose was to serve as a heuristic scheme for empirical studies. It combines just two dimensions (communication mode and interaction orientation), whereas Habermas developed his concept of a rational discourse on a different basis, cf. chap. 2 for some very short remarks the reconstructive character of his theory, cf. Habermas (2007: 414) for a recent comment on specific pragmatic conditions (publicity, inclusion, equal rights of participation, absence of deceit or force) required if a process of arguing can be described as “argumentation” according to his standards.
My proposal included a characterization of arguing and bargaining on an abstract level with regard to functional references, basis structure and process. According to this approach, arguing and bargaining are conceptualized as functionally differentiated and specialized forms of communication in modern societies. In this perspective, they can be analyzed with regard to their primary function. Arguing evolved as a differentiated mode of communication with regard to the task of solving cognitive problems. Bargaining can be characterized with reference to distributive problems. The reference to these primary functions corresponds with the development of different basic structures: arguing requires a triadic structure, which allows actors to relate to some intelligible system of reference, while bargaining problems can be treated in a dyadic structure. Arguing and bargaining exhibit differences with regard to the process-dimension: a typical bargaining process proceeds in sequences, while processes of arguing are characterized by a reflexivity that exceeds even a bargaining over the conditions of bargaining.
This approach to the analysis of arguing and bargaining is does not have the status of a theory. What it was supposed to provide is an analytical framework for empirical studies that involve processes of communication and deliberative interaction. These empirical studies dealt with the question: how can we explain the process and result of discursive and participatory experiments in complex policy fields? Yet this analytical framework became in point of reference in other sub-disciplines of political science, too.

5. Arguing and bargaining in international negotiations
Since the 1990s, the distinction of arguing vs. bargaining has been used in a number of studies on deliberation in different fields of political science. As the deliberative turn had reached policy analysis and planning, deliberative concepts were included in its practices. European integration was another field where the distinction of arguing vs. bargaining was adopted in a number of studies. While some of these studies focussed on specific processes of policy making in the EU, others thematized the role of deliberation in the informal processes of constitutionalization. Since the turn of the century the institutionalized process of constitution

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13 Whether these deliberative practices were inspired by conceptual innovations in policy analysis (Fischer 2003, Hajer/Wagenaar 2003) or not, there was and in some fields still is a trend towards including participatory and discursive practises in policy analysis and planning, which then became cases for empirical studies on deliberative processes. Some of these studies used the distinction of arguing vs. bargaining, see for example Lauer-Kirschbaum (1996); Holzinger (2001, 2004, 2005) presented a number of studies related to policy
making and especially the European Convention became an object of studies working with
the distinction of arguing and bargaining.\textsuperscript{14} Finally, the field of international relations (IR)
saw a number of studies focusing on the role of discourse and argument, some of which were
inspired by the work of Habermas.\textsuperscript{15}
Concerning the interrelation of theoretical perspectives, analytical distinctions and
methodological problems in empirical studies on deliberation, a project conducted by Harald
Müller and Thomas Risse (2001) is one of the most interesting cases.\textsuperscript{16} It is illuminating
especially since it has been planned as a first major attempt to implement a research program
that focused on the role of discourse and argument in the field of international politics which
was previously considered to be the domain of power and interest.\textsuperscript{17} After 1989, this
perception changed. Ideas, discourses and arguments seemed to matter more than before. How
to conceptualize and study their role? In the theoretical debate on the analysis of international
relations in Germany, Müller (1994, 1995) and Risse (Risse-Kappen 1995) acted as major
advocates of bringing a new theoretical approach into the discussion. Their approach was
based on Habermas’ theory of communicative action. In fact, Müller (1994) started the whole
debate in Germany by publishing an article in the first issue of a new journal that explained
the new approach and gave a sketch of the research program that was to follow. The title of
this article already characterized the program: “International Relations as communicative
action”.\textsuperscript{18} Risse (2000) argued for such an approach by inviting the international community
of IR-scholars with the short slogan: “Let’s argue!”
In the debate, it soon become clear that the “the missing empirical record on ‘communicative
action’ in international politics” (Deitelhoff/Müller 2005: 170) was as a major weakness of
the research program Müller and Risse had been advocating. To get rid of this deficit, Müller

\textsuperscript{14} For a study on European policy making in special field cf. Gehring (2004), for studies on the informal
processes of constitutionalization in the end of the 1990s see Joerges/Neyer (1997), for studies on the European
\textsuperscript{15} Cf. for example Crawford (2002), Steffek (2003), Nanz/Steffek (2004) or the study of Johnstone (2003) on
security council deliberations
\textsuperscript{16} cf. Saretzki (2007: 116-146) for the following discussion of this empirical study and its controversial
contceptual consequences
\textsuperscript{17} for other studies related to problems of international relations that refer to the distinction of arguing vs.
bargaining cf. for example Gehring (1996), Steffek (2005), Klinke (2006)
\textsuperscript{18} For the extended English version cf. Müller (2001); since the whole debate took place mainly in the new
German journal “Zeitschrift für internationale Beziehungen” (ZIB), it was soon called „ZIB debate“. Advocates
of the rational choice approach did not want to follow on the way „from strategic to communicative action“
(Müller 2001: 175) and criticized the conceptual turn suggested by Müller (Keck 1995, 1997, Schneider 1995).
This led to a long debate with a lot of statements pro and con. Some contributions tried to mediate or build
bridges between rational choice and other approaches (cf. Zangl/Zürn 1996) or suggested to reconsider the
relation between social theory and their action-theoretic foundation (Schmalzl-Bruns 1995).
and Risse (2001) embarked on a cooperative empirical research project with the claim to
demonstrate the empirical relevance of Habermas’ theory. The project was supposed to
discourage the suspicion that communicative action would merely be “cheap talk” (Risse-
Kappen 1995), but would not really matter in the “anarchy” that realists saw “in the real
world” of international politics. In their empirical project on multilateral international
negotiations, Müller and Risse (2001) complemented their approach based on Habermas’
theory of communicative action by references to the distinction between arguing and
bargaining. In light of this distinction, the project concentrated on the question “whether
arguing occurs in international relations” (Ulbert/Risse/Müller 2004: 3) in the first place.
What they were expecting to see, was a change “from bargaining to arguing”
(Deitelhoff/Müller 2005: 170).19

5.1 Conceptual framework
Looking for arguing “in the real world” of international politics, they first had to define what
they were looking for. In their answer to the question “What is arguing?”, Müller and Risse
(2001: 11-12) did not only refer to Jon Elster (1991), but also to my proposal for an analytic
framework to study processes of arguing and bargaining (Saretzki 1996a). On the basis of
these references, Müller and Risse (2001: 12) formulated their own approach summarized in a
figure with different “characteristics” of “Arguing and Bargaining as Modes of
Communication”, which served a conceptual basis of their empirical project.20
At first sight, this overview looks very much like my proposal, especially since the structure
of the figure looks similar and the wording in some fields is almost identical. Yet a second
look reveals that there are some differences in the conceptual framing. These differences are
not without consequences for the empirical study of arguing and bargaining.

19 The project intended to study the following eight cases: the Nuclear Non-Proliferation Treaty Review
Ottawa Convention on Banning the Use, the Stockpiling, the Production and the Export of Anti-Personnel Mines
(1999), negotiations on the founding of an International Criminal Court (ICC), EU Negotiations on the Internal
Differentiation of Externally Agreed Greenhouse Gas Emission Limits (1998), Negotiations on the Generalized
System of Trade Preferences within UNCTAD and UN Negotiations on an International Climate Change
20 This figure describing their view of the distinction between arguing vs. bargaining can also be found in the
report on the project (Ulbert/Risse/Müller 2004: 6) and in a number of publications that present the results of the
recently.
According to the explanation of Müller and Risse (2001: 11), arguing and bargaining are “defined as ideal types representing the end points of a continuum”. This conceptualization raises a number of questions. First of all, Müller and Risse present my proposal for a narrow “modal” definition of the two modes of communication as one of four “characteristics” in their figure. This creates the impression that all four “characteristics” must be identified to classify a given process of communication as belonging either to the mode of arguing or to the mode of bargaining. Such a multidimensional set of characteristics clearly causes more problems for the identification and classification of communication processes. In contrast to such a four-dimensional conceptualization of the two modes of communication I had suggested that we should differentiate between a narrow “modal” definition of arguing and bargaining, on the one hand, and the analytic framework which was supposed to serve as a heuristic scheme for a comparative analysis of the two modes with respect to their function, structure and process.
Secondly, a fundamental difference arises if arguing and bargaining are defined as “end points of a continuum” (Müller/Risse 2001: 11) rather than as distinct modes of communication. Considering the model of a continuum between two poles we have to ask ourselves according to which criteria we should determine the turning point between the two poles. This point would then (by definition) serve as a reference to decide whether we speak of arguing or bargaining. Moreover, if we have to conceptualize arguing and bargaining with reference to the four characteristics presented in the figure, the question arises whether we end up handling one continuum or four. It is hard to see how a concept defined by four “characteristics” as described in the figure can be reconciled with the idea of a continuous scale. In any case, while the model of a continuum between two poles seems to make measurement easier at first glance, we have reason to believe that it does not correspond with our intuitive notion of arguing or bargaining. I would argue that this intuition would not be grasped adequately in a model of a continuum with two end points.

Thirdly, Müller and Risse (2001: 12) introduce “possible observable outcome” as a defining characteristic of arguing and bargaining. This characteristic is not to be found in my definition or in my analytic framework. Introducing specific characteristics related to the “possible observable outcome” as a dimension that defines modes of communication is problematic for at least two reasons. Speaking of a “possible” outcome, Müller and Risse already indicate what the first problem is: there is no guarantee that processes of arguing or bargaining will lead to a specific outcome that we can previously determine. “In the real world”, processes of communication can simply end somewhere or go on and on with no result or conclusion. Or they can lead to other outcomes than we would expect, e.g. an escalation of conflict or a complete victory of one side over the other. If a given process of communication does not lead to a “reasoned consensus” or a “compromise” in the end, does that imply that the preceding processes cannot be understood and classified as either “arguing” or “bargaining”? Thus, introducing an outcome which may or may not be realized causes problems for empirical studies as communication processes cannot be classified unless these outcomes are there. Müller and Risse also point to the second problem that we are confronted with in empirical studies if we try to identify outcomes. These outcomes should not only be possible, they should also be “observable”. According to the concept of Müller and Risse, outcomes of arguing and bargaining differ insofar as actors are supposed to submit to the better argument and change their interests or preferences accordingly in the mode of arguing, while such a change of interests and preferences is not supposed to take place in the mode of bargaining. As this change of interests and preferences is supposed to be caused by submitting to the
better argument in order to classify the preceding process of communication as “arguing”, the observation of this causal link is itself a precondition of classifying a given communication process as arguing. On the other hand, processes of bargaining could only be classified as such, if we can observe that no change of interests and preferences has taken place. Thus, anyone following this concept in empirical studies is confronted with a problematic coupling of definition and observation of certain consequences and causes for these consequences. One would have to identify the consequences (change of interest and preference) and their causes (submitting to the better argument) before one could classify a given process of communication properly as arguing. In the case of bargaining, one would have to be able to exclude a change of interest and preferences.

Fourthly, Müller and Risse (2001: 12) did not only introduce a problematic characteristic (“possible observable outcome”), they also neglected a dimension that was included in my analytic framework, namely the functional reference (with no reason given). Yet one would like to see some explanation, especially since their project addressed the question of effectiveness of the two modes of communication. Analyzing the effectiveness of a specific mode of communication requires a prior answer to question, what kind of function we are looking at. Clarifying the functional reference is necessary if we want to measure how effectively this function is fulfilled by communication in a certain mode rather than in another. According to my framework, the effectiveness of communication in the mode of arguing would be analyzed with regard to its primary function; that is, solving cognitive problems. If we take problem solving as a task that this mode of communication is related to in the political realm, then arguing would be effective to the degree that actors are successful to solve those cognitive problems connected with a political issue that are in need of clarification. The effectiveness of arguing would be measured and evaluated with regard to the degree that it has been possible for the actors involved in the communication to work on the “problem of problem definition”. Solving this cognitive problem is a necessary requirement for a rational process of problem solving as a whole. This requirement is not achieved, if the process of communication is still in a condition where we have to speak of ill defined problems and unclear problem solving strategies. In other words, arguing is effective to the extent, that participants are reaching descriptions and evaluations of problems and problem solving strategies in the process of communication that are intersubjectively shared. Effectively solving cognitive problems connected with a political issue includes a transparent intersubjectively shared coping with uncertain and contested knowledge and with normative implications of problems and policies to solve these problems. However, it does not include
that these policies are already decided upon or implemented. The effectiveness of procedures for binding collective decision making and the effectiveness of measures to implement these decisions would have to be measured and evaluated in a different way. ²¹

A fifth and more fundamental difference between the approach of Müller and Risse (2001) to the study of arguing and bargaining and my proposal is not visible in this figure or in the other parts of their concept for this project. I had suggested that we should make a clear distinction between interaction orientations, on the one hand, and modes of communication, on the other hand, in order to have an analytical framework that allows us to grasp and analyze the various possible combinations and interactions between the two dimensions of communication in empirical studies. Although Müller and Risse (2001) referred to my analytic framework in other aspects, they did not adopt my proposal to make this distinction nor did they reject the idea or criticized my arguments in favor of making this distinction. In the course of their empirical study, however, this question reappeared on their research agenda. In dealing with this question, they came to conclusions that imply a conceptual turnaround which is overdrawn from my perspective.

5.2 Empirical findings and their interpretation

The original intent of the project on arguing and bargaining in multilateral negotiations is clearly related to the theoretical debate in international relations: “we started off to determine the empirical value of ‘arguing’ as the communicative mode of the TCA for the study of international relations” (Deitelhoff/Müller 2005: 170). In the beginning, arguing is clearly interpreted with reference to the type of action Habermas conceptualized in his theory of communicative action. In their most remarkable and highly instructive self-critical account of their experience in this project, Deitelhoff and Müller (2005: 177) do not leave the reader in doubt as to what their “original aims” were: “to discover instances of authentic persuasion (rationally motivated agreement)“. This aim is related to the characteristic “possible observable outcome” which Müller and Risse (2001: 12) had described as “reasoned consensus, actors submitting to the better argument and changing interests/preferences accordingly”. Yet the idea of discovering “authentic persuasion” goes one step further.

²¹ That is, measuring and evaluating the effectiveness of a mode of communication should not be confused with measuring and evaluating the effectiveness of decision making or the effectiveness of implementation. To make this distinction between communication, decision and implementation is also important with respect to bargaining that is often tacitly interpreted as a mode of communication and as a procedure of making and implementing decisions at the same time. Such an extended interpretation, however, is not only inconsistent with the concepts discussed so far. It also runs the risk of misattributing credits or blame for good or bad performance to modes of communications or decision making procedures and implementation measures.
Presenting their preliminary results, the members of the research group emphasized three important findings (Ulbert/Risse/Müller 2004: 1). Two of these findings were then interpreted by the authors of the reports as indicating that a major reconfiguration of their research design and a new definition of their conceptual basis would be necessary.22

The first important finding was summarized under the heading “ubiquity of arguing” (Ulbert/Risse/Müller 2004: 2, Risse 2005: 299, Ulbert/Risse 2005: 352, Deitelhoff/Müller 2005: 171, 172): “Arguing and reason-giving are all-pervasive during all phases of international negotiations“ (Ulbert/Risse/Müller 2004: 1). Along with this generalized empirical finding the authors point to methodological problems that surfaced in their study. These problems are also stated in the form of a general contention. It states that the two modes of communication are inseparable “in the real world”. Like the empirical finding, this methodological contention is not seen as being limited to the project: “While we can distinguish analytically between the communicative modes of arguing and bargaining, in reality they usually go together. Pure arguing in terms of deliberative and truth-seeking behavior occurs only rarely as pure bargaining in terms of the exchange of demands, threats, and promises, and the like. Rather, pure arguing and pure bargaining represent opposite ends of a continuum whereby most of the actual communicative processes take place somewhere in between.” (Ulbert/Risse/Müller 2004: 1)

The interpretation of this first important finding is problematic for at least two reasons. First of all, a question of consistency emerges. If we take the strong case on the methodological level seriously, it is hard to see how the study could still go on and say anything at all regarding the distribution of the two modes of communication on the empirical level. If it is true that in this project “arguing could not be isolated empirically from bargaining” (Deitelhoff/Müller 2005: 171), how could the same project then claim as a result of their research that this very mode of communication is “all-pervasive during all phases of international negotiations” (Ulbert/Risse/Müller 2004: 1) if it has not even been isolated in the first place?

Secondly, the generalizing diagnosis regarding the empirical distribution rests on a negative result.23 In the context of this research project, it has not been possible to identify certain

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22 The third finding is related to the criticism that the theory of communicative action could not be applied to international relations since there would be a lack of a common lifeworld among diplomats and foreign policy makers. This criticism, Ulbert, Risse and Müller (2004: 3) claim, is not really substantiated by the results of their study as diplomats found a substitute for the common lifeworld by creating a lifeworld of their own (Ulbert/Risse/Müller 2004: 3).

23 This finding is related to a hypothesis to be tested in the project. According to this hypothesis one should expect to see a phase-specific dominance of the two modes of communication, i.e. arguing (and bargaining) were supposed to be the dominant mode of communication in certain phases of the negotiations.
phases of the negotiations under investigation in which arguing could be clearly classified as the dominant mode of communication: “a clear sequence in different phases of the negotiations was not discernible” (Deitelhoff/Müller 2005: 171). This fact, however, does not directly lead to the general conclusion that arguing therefore has to be seen as a mode of communication that is “all-pervasive” in the same way anytime and anywhere in international negotiations. Before jumping to overall generalizations on this basis it would be necessary to investigate if there may be other patterns of distribution or sequences or specific types, forms or features of this mode of communication even in the cases of this study. These sorts of questions cannot be answered on the basis of a finding that can be interpreted as a falsification of the hypothesis according to which we should expect to see a clear dominance of one or the other mode of communication in certain phases of the negotiations. Yet the authors still draw practical-political conclusions on the basis of the proclaimed “ubiquity of arguing”, e.g. in questioning the advice of Fritz Scharpf that regulatory and distributive aspects of policy problems should be treated in different phases of the policy process.24

The second important finding is related to the identification of interaction orientations. In light of the debate in international relations theory the authors originally conceptualized modes of communication and actor orientations as being related. “In our project, we were screening diplomatic negotiations in order to confirm or disaffirm the presence of sequences of communicative action with the related actor orientation” (Deitelhoff/Müller 2005: 178). Like the hypothesis concerning a phase-specific distribution of the modes of communication, the expectation inherent in this screening could not be verified in this project: “our assumption that arguing as a mode of communication involved a truth-seeking actor-orientation was not confirmed” (Deitelhoff/Müller 2005: 170). To explain this result, the authors pointed to problems of data collection with regard to the negotiations under investigation: “the problem is that the sequence of speech acts is almost never directly available as a source” (Deitelhoff/Müller 2005: 171). Yet beyond these problems related to data, the authors saw fundamental methodological problems that throw the very idea of analyzing processes of communication in the context of negotiations into doubt if one assumes that specific modes of communication necessarily involve specific actor orientations: “for methodological as well as practical reasons it proved impossible to infer from the use of arguments the interaction orientations of actors: the mind is not accessible, and the orientation

24 Moreover, the generalization of the negative finding is relativized by the remark of Ulbert and Risse (2005: 364) that arguing and bargaining can play a specific and even dominant role in certain phases of the proceedings: „It is true that bargaining dominates when it comes to the actual process of deciding who gets what (or has to give something, i.e., when a previously defined ‘cake’ has to be divided up)“. 
behind the speech acts remains private information” (Deitelhoff/Müller 2005: 171; cf. also Müller 2007: 214). Again, in their report these doubts concerning the identification of actor orientations were formulated in the form of a rather general statement: “it is empirically impossible to ascertain with any certainty the interaction orientations of our negotiators” (Ulbert/Risse/Müller 2004: 2). These statements sound almost like a “theorem of impossibility”, hence more like laws of physics than like problems of empirical research in the social sciences. Thus it comes as no surprise that at least one of the authors refers to an indirect and “relatively reliable method of authenticity testing” (Müller 2004: 417) that make the analysis of interaction orientations and attitudes of actors look less like a “mission impossible”. Moreover, the question of consistency arises again. If action orientations and attitudes of actors in processes of communication and negotiations are really not identifiable at all, then it is hard to see how one could know whether preferences of actors are as fixed as the concept of bargaining presented by Müller and Risse (2001: 12) suggests? Thus, these formulations about the empirical findings are far too generalizing, excluding domains of mind and action from the realm of empirical research that may not be as inaccessible as these claims suggest. Contrary to Müller and Risse, I would argue that it does not make sense to refrain from the question of interaction orientations and attitudes of actors, if one wants to conceptualize the empirical study of processes of arguing and bargaining in an action-theoretic framework.

5.3 Reconceptualizing research designs and theoretic perspectives
Considering the problems they encountered in their empirical study of arguing and bargaining in multilateral negotiations, the authors reformulated the goals of their project and reconceptualized their research design. The focus of the project was supposed to shift from the process of communication to the context of the negotiations. The new intent was to identify the elements of the context that could make arguing (more) effective and influence the process and result of negotiations (Ulbert/Risse 2005). Yet this changing of the approach from the level of action and communication to the level of context is not without consequences for the original research questions. While the previous research design conceptualized arguing as an independent variable that was supposed to explain at least part of the changes in international negotiations, arguing was now perceived as an “ubiquitous” factor. In the new design, “arguing is less a variable but more a constant in negotiations” (Deitelhoff/Müller 2005: 172). Yet a ubiquitous “constant” can hardly be interpreted as a
determining factor that really plays a significant role when it comes to explain the process and the outcome of negotiations.

Moreover, the reconfiguration of the research design was accompanied by a redefinition of arguing and communicative action. The shift “from purely action theoretical terms to more structural elements”, as Deitelhoff and Müller (2005: 177) admit, “was accompanied by a relaxation of certain characteristics of communication action.” The concept of arguing was decoupled from actor’s orientations:

“We hence also meant that we reduced arguing – with the focus on its effectiveness – to the formal characteristics of the approximation of an ideal discourse situation and hence relaxed the conditions of rationality. We analysed arguments regardless of the strategic or communicative orientations of actors. Arguing, then, is simply reason-giving, which gains its influence from its triadic nature: actors need either a third party – an audience – or a shared reference point as an instrument for adjudicating between claims” (Deitelhoff/Müller 2005: 176-177)

The concept of arguing is now interpreted as a mode of communication that is not longer associated with specific rational presumptions or related to specific interaction orientations. In the context of a new research design, arguing turns into a mode of communication that is shaped primarily by certain contextual factors. Within these contexts, arguing as reason-giving could also be interpreted as an instrumental activity.25

After their walks through the lowlands of empirical study (Risse 2003: 122), Müller and Risse drew further conclusions with regard to their theoretical perspectives. In his frequently quoted article “Let’s argue” Risse (2000) had visualized the theoretical landscape in international relations theory in the form of a triangle. In this triangle, Risse started with the bottom line marked by the well known distinction of a “logic of consequentialism” and a “logic of appropriateness” (March/Olsen 1989, 1998) in each corner and added a third “logic of arguing” in the third upper corner of the triangle. While they acted as advocates of this third logic of arguing in the theoretical debate of the 1990s, both Müller and Risse seem to have left the upper third corner after their empirical project going down to the bottom line again. Yet it looks like they are heading towards different corners. Risse is more orientated (2004: 288) towards the logic of consequentialism as he conceptualizes “arguing and communicative action as significant tools for non-hierarchical steering modes in global governance”. Müller,

25 Considering this modified research design and its implications for the reconceptualization of arguing, one could get the impression that Müller and Risse finally reached an understanding that is more like the one I suggested in 1996. Looking more closely, however, one can see that in their revisions Müller and Risse go beyond my framework since they ended up with the diagnosis that interaction orientations of actors are not identifiable at all. In contrast to their radical position, I had only proposed that we should be open to the possibility that modes of communication and actors orientations could vary independently of one another.
on the other hand, is apparently determined to march in the direction of the “logic of appropriateness”.

Müller (2004) suggested that the action-theoretic framework of international relations should again be reconstructed. He called for a new research program for the empirical study of international negotiations that includes speech-acts of arguing and bargaining and is centered on norms. According to this new framework, both arguing and bargaining are conceptualized as behavior regulated by norms. His idea is “that the logic of communication and the logic of consequences can be integrated if we assume a superior logic of appropriateness” (Müller 2004: 411). This assumption of a superior logic of appropriateness encompassing both modes of communication is primarily directed towards a new understanding of the role of bargaining. According to Müller the concept of bargaining as an expression of norm-free strategic action should be abandoned. “Bargaining is itself a norm-regulated, fully legitimate and sanctioned mode of behavior under the right circumstances” (Müller 2004: 411). Like arguing, bargaining should be conceived of as a type of behavior regulated by norms under the superior logic of appropriateness. “Either is better understood to be subject to a logic of appropriateness that defines the different circumstances which legitimate the respective behaviors.” (Müller 2004: 414)

Introducing a simple hierarchy in favor of a “logic of appropriateness” is not only intended to invent a new research program for the empirical study of international negotiations that includes speech-acts of arguing and bargaining (Müller 2004: 425). Müller’s reconceptualizing of “strategic action as appropriate behavior” also has a normative thrust. His attempt to redefine the relation of strategic and communicative action is presented under the formula “eliminating the normative dichotomy” (Müller 2004: 414). His reference to a “logic of appropriateness” is intended to gain a superior conceptual frame. From the perspective of this frame, the “normative denigration of ‘bargaining’” is no longer justified. Such a denigration of bargaining, that rational choice advocates like Otto Keck (1995) had criticized in Habermas, can (as Müller now claims) actually be found in the theory of communicative action. From his perspective, it is one of the tasks of the new comprehensive action theory he calls for to conceptualize arguing and bargaining as “equally legitimate” (Müller 2004: 411).

Considering the fact that it was Müller (1994) who started the whole debate on the action-theoretic framework of international relations theory calling for a perspective “from strategic to communication action”, this change really is a remarkable conceptual turnaround of someone who engaged in the empirical study of deliberations in international negotiations to
“determine the empirical value of ‘arguing’ as the communicative mode” of the theory of communicative action (Deitelhoff/Müller 2005: 170). After this empirical study, he is suggesting another conceptual turn that apparently leads “from communicative to norm-regulated action”. This would be a turn that remains within the triangle outlined by Risse (2000: 4). It would imply turning the triangle around once, putting the logic of appropriateness in the upper corner and designating it to be “superior”. Such a simple turn within the two familiar logics, however, also implies a return to the well known conceptual problems of the theoretical approaches that follow these logics. Thus, bringing the model of norm-regulated action back in and conceptualizing it as comprehensive, is a conceptual turn that leads back to old and familiar questions about the limits and problems of the action-theoretical foundation of sociological institutionalism.26 It is hard to see why the model of norm-regulated action, rather than the theory of communicative action” could better serve as a conceptual basis to provide the “comprehensive theory of action” Müller (2004: 411) is still calling for.

In any case, the conceptual turn suggested by Müller (2004) cannot convincingly be justified with references to the problems of empirical studies of arguing and bargaining. As I tried to indicate in my critical comments above, the interpretation of the empirical findings and methodological problems are overgeneralized, the conceptual conclusions are overdrawn. More generally, I would argue that the restructuring of a research design that shifts the focus of attention to the structural and institutional context of communication does not provide an answer to the question how we are to conceptualize, describe and explain the deliberations that go on within these contexts. Thus this contextual turn in empirical studies of deliberation runs the risk of throwing out the baby with the bathwater. It implicitly substitutes one question by another. What goes on in processes of communication becomes something like a black box again, if we focus our analysis primarily on the topics and contexts of deliberation.

6. Conclusion

How can we distinguish between “true deliberative action” and other, more strategic forms of communication? This paper discussed two concepts that count as candidates for helping us to distinguish between “true deliberative action” and other forms of communication: the distinction between communicative and strategic action and the distinction between arguing

26 Cf. the critique of Risse (2000: 6) that interpreting and implementing norms and regulations is associated with problems of ambiguity that cannot adequately be grasped and analyzed within the logic of appropriateness. According to Risse, solving these problems requires a shift to the „logic of truth-seeking or arguing”; cf. Habermas (1981a: 126-151) for a broader conceptual analysis and critique concerning the limits of the model of norm-regulated action.
and bargaining. While these distinctions are sometimes attributed to the same theory, they were actually introduced by different authors: the distinction of communicative and strategic action stems from Jürgen Habermas, the distinction of arguing and bargaining gained currency from studies by Jon Elster. Although these distinctions are often treated as more or less equivalent in the literature, I argued that such a converging interpretation is not appropriate. The distinction of communicative and strategic action, as invented by Habermas, is related to actors orientations or attitudes as a point reference, while Elster’s juxtaposition of arguing and bargaining refers to different defining elements (purposes, claims, resources etc.), and is not without ambiguities. In order to avoid some of these ambiguities, I proposed a narrow interpretation of the distinction that tries to avoid a bias towards instrumental rationality, and an analytical framework that is open for the analysis of different combinations of interaction orientations and modes of communication in the empirical study of deliberation. Both Habermas and Elster point to conceptual and methodological problems that may arise if one wants to use their concepts and categories to distinguish given processes of deliberation “in the real world”. These problems differ as the authors interpret the status of their theories and concepts in a different way. Habermas’ theory follows the logic of rational reconstruction. His analysis on the level of formal pragmatics leads to rational reconstructions of constitutive presumptions of actual practices that may or may not be met by a given sample of participants. Elster represents an approach of rational choice theory that is self-critical, but still committed to a concept of instrumental rationality. Within this perspective, he characterized his two modes of communication as „idealtypes“, which are rarely instantiated in their pure form. Mixing these two theoretical approaches in a framework for empirical studies may cause conceptual misunderstandings and methodological problems on the level of empirical analysis and interpretation of data. This has been illustrated by a critical review of a research project of Müller and Risse on arguing and bargaining in international negotiations. Trying to circumvent these conceptual and methodological problems related to the use of arguing and bargaining in the empirical study of deliberations by switching the focus from communication to the context of deliberation, however, does not answer the original question of how to distinguish between different types of action and modes of communication. In some cases this redesign of empirical research strategies with a focus on context goes along with an explicit or implicit reconceptualizing of communicative and strategic action or arguing and bargaining as variants of “norm-regulated” behavior. Such a shortcut from methodological problems of empirical study to theoretical revisions is, as I argued in the paper with respect to
Müller’s reconceptualization, not a convincing strategy to develop a more differentiated framework for the empirical analysis and evaluation of deliberative processes. Finally, I would like to come back to the fourth question of the workshop that Bächtiger and Steenbergen (2006) formulated as follows: “Can empirical approaches be reconciled with philosophical ideals (e.g., political deliberation which is also responsive to marginalized votes) or are there irresolvable trade-offs and unintended effects in the real world that stifle any attempts at a comprehensive democratic renewal via deliberation alone?” Based on the preceding analysis, my first reaction to this question should come as no surprise: empirical approaches to deliberation that are not only data-driven but use some kind of analytical distinctions based on theoretical concepts are already loaded with theoretical perspectives that point to ideals or counter-ideals of (deliberative) democracy. “In the real world” of political science we do not find a clearly demarcated border between empirical approaches and philosophical ideas. Thus, working on this borderline, what we have to do in the first place is to reflect on and discuss the theoretical presumptions of empirical approaches, on the one hand, and the empirical assumptions of philosophical concepts of deliberative democracy, on the other hand. Secondly, reconciliation is nothing we can achieve in political science nor should we strive for it in this domain of our live. What we can and should try to achieve is critical reflection and cooperative conceptualization of empirical and normative aspects of deliberative democracy. Thirdly, yes there are trade-offs and unintended effects in the real world that may stifle attempts for democratic renewal, but they are neither irresolvable nor do they necessarily turn any attempts for a comprehensive democratic renewal into a “mission impossible”. However, any program for (comprehensive) democratic renewals should not count on deliberation alone. (More) Deliberation doesn’t necessarily mean (more) democracy and vice versa. There can be tensions and conflicts between deliberation and democracy. It takes more than more and better deliberation to create comprehensive democratic renewals. What is required in a practical-political perspective, is a reflexive approach to democratization conscious of the many problems and conflicts that can arise on the way. Thus, for citizens who are educated as political scientists, being an advocate of deliberative democracy is not enough. Rather, I would argue for a reflexive democracy taking the interrelations of deliberation, decision making, implementation, institutional setting and societal context into account.
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