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Taking Transparency Seriously

Daniel Naurin, PhD Candidate

Department of Political Science, Goteborg University
daniel.naurin@pol.gu.se

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Contents

I. Why transparency?

Reading the academic literature on the 'democratic deficit' of the European Union, as well as following the political debate, it seems that we all agree that increased transparency is important (Karlsson 2001, Hoskyns 2000, Weiler 1999, Abromeit 1998, Beetham & Lord 1998, Chryssochoou 1998, Majone 1996, Newman 1996), but that we are not really sure *why*.[1]

A common trait in proposals addressing the democratic headache of the EU is a passage pleading for more transparency, i.e. access to accurate and comprehensible information about the policy decisions and decision-making processes of the EU institutions. This plead is usually backed up by some version of one or more of the following arguments: 1) transparency is a fundamental right, 2) transparency enhances the possibility of democratic accountability, 3) transparency contributes to public legitimacy, 4) transparency promotes good behaviour among elite actors. I will argue that we know too little about to what extent any of these propositions are well-founded.

Firstly, should transparency be treated as a fundamental democratic (or liberal (Newman 2000) or human (Davis 1999)) right? Maybe it should, but one may also wonder how far that would get us. We would still be left with all the difficult questions of how to interpret and implement such a right. What exactly follows from establishing transparency as a fundamental right? Which guidelines for institutional reform? Would it be undemocratic (anti-liberal or inhuman) not to televise Council of Minister meetings or publicise the minutes of the European Central Bank?

And what if this fundamental "right to know" is found to collide with other values (such as effectiveness, problem-solving capacity, free and frank deliberations)? Should transparency always be prioritised? Would it not be preferable instead to conceive of transparency as an *instrument* for achieving other values such as participation, accountability, legitimacy and moral behaviour, which can be applied on those occasions when a cost-benefit analysis, taking into account other affected values, shows positive?

Secondly, does transparency contribute to public legitimacy? It certainly seems reasonable to imagine that transparency may demystify elite policy processes, make them easier to understand and control and therefore to accept. But in fact one can also make the complete opposite argument claiming that transparency in some circumstances may be destabilising and leading to lower system legitimacy. From the theories of corporatism and consociational democracy we have learned that insulated negotiations between elite representatives may be an effective means of securing legitimacy in the face of tensions between different groups in a society (Streek & Schmitter 1985, Williamson 1989, Lijphart 1977). Confidentiality in the negotiations produce compromise which afterwards can be defended and legitimised to the grass-roots via the internal channels of the organisations and parties involved. The risks

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[1] This paper consists of short cut-down versions of the three first chapters of my forthcoming (2003) dissertation. Parts of the paper (basically sections two and three) appears as "Does Publicity Purify Politics?" in Journal of Information Ethics, 12:1, 2003

involved with open conflict should be especially relevant for the EU considering its heterogeneity as a political entity.

And even if one would dismiss the argument that transparency may have a politicising and destabilising effect, one would still have to ask how important this factor *really* is for explaining public support for political institutions. The EU institutions are a lot more transparent today than in the early 1990s, when it comes to access to documents and availability of information (Deckmyn & Thomson 1998, EC 1049/2001). Nevertheless public support for EU membership has fallen by approximately ten percentage points between 1993, when the first rules of access to documents were introduced, and 2001 (Eurobarometer 55). One could very well argue, as Lodge does, that it is a rather naive idea to think that the public dissatisfaction with the EU stems from its intransparent procedures, rather than from the content of policy produced by those procedures (Lodge 1994:350).

Thirdly, would increased transparency enhance the possibilities for democratic accountability in the European Union? Generally, transparency is a necessary condition for accountability. Citizens must be able to get hold of independent information about the doings of their representatives in order to evaluate their actions and put sanctions on them (Manin, Przeworski and Stokes 1999:24). But transparency is not a *sufficient* condition for accountability. The essence of accountability is that bad performance is *sanctioned*, and it is the question of sanctions which is the essential problem for the European Union. The constitutional design of the EU makes it extremely difficult for the European citizens to 'throw the scoundrels out', in Weilers words (Weiler 1997:152), irrespective of the degree of transparency.

The primary focus for the transparency debate in the EU has been the Commission, but the Commission is an independent authority which is not supposed to be accountable to majority opinions among the European citizens (Majone 1996). The Commission cannot be thrown out of office unless serious malpractice is discovered. No matter how transparent the Commission is there will be no democratic accountability, in the sense that if the European citizens do not like the policy of the Prodi Commission they can choose another one. Neither can the Council of Ministers be held democratically accountable in any simple way, regardless of the degree of transparency. Each government is of course accountable to their respective electorate, but uncoordinated national elections (where EU policies are hardly discussed) is not a sufficient mechanism for sanctioning poor decisions in the Council (Karlsson 2001). The European Parliament is directly accountable to the citizens, but still has only limited power over EU policies. Thus, to what extent would increased transparency make the EU institutions more democratically accountable, when key decision-makers are not sanctioned for their EU-policy decisions anyway?

My purpose here, however, is not to argue that transparency is a weak factor for improving accountability or legitimacy or that transparency should not be considered a democratic right. That would take a much more elaborated argumentation than those few casts of doubt I have just given. My point is merely that there is uncertainty here and that these claims should not be taken for granted. Transparency may promote accountability and legitimacy in some circumstances, but we know little about how, when and why. It may be right to treat transparency as a fundamental right, but where are the arguments and how far should that right be stretched?

In the literature on democracy and the European Union statements about the essentiality of transparency are made very easily. It does not take much to argue '… and increased transparency is also important'. Somehow it has become a routine procedure to do that. Challenging light statements of this sort, not backed up by a thorough argumentation based on research, is not making the case for secrecy and elitism - it is taking transparency seriously.

The same goes for the fourth proposition above - that putting decision-makers under the light of transparency will make them behave better. Promoting good behaviour has been one of the driving forces behind transparency reforms in the EU (Peterson 1995). The idea that exposure to publicity has a positive moral effect on political actions has a long history in political philosophy (going back at least to J.S. Mill, J. Bentham and I. Kant).[2] It has been argued that, in the words of the American president Woodrow Wilson, *"publicity is one of the purifying elements of politics"* (quoted from Gutmann & Thompson 1996:95).

Basically the idea is that the public demands public-regardingness. Publicity therefore has the power to 'launder' 'dirty' – selfish and immoral – political behaviour, and promote considerations of the common good. In the 1990s this idea had something of a come-back in political theory thanks to the increased interest in deliberative democracy (Eriksen & Fossum 2000, Elster 1998, Bohman & Rehg 1997, Gutmann & Thompson 1996, Knight & Johnson 1994, Mansbridge 1992, Manin 1987). The basic normative statement in this literature is that *arguing*, rather than bargaining or voting, is the heart of democracy. One of the *empirical* assumptions on which this theory is based is that publicity purifies politics.

It does so in two ways, according to deliberative theory (although this distinction is seldom clearly made in the literature). First, publicity affects the "mode of decision-making" used to solve political conflicts, by forcing actors to substitute bargaining for arguing. Arguing not only includes giving reasons for one's positions, but also actually trying to convince the other participants that they should change their minds. Bargaining implies efforts to reach an agreement on the basis of fixed preferences. Second, publicity improves the moral quality of the justifications given by censoring selfishness, prejudice and immoral arguments. It is assumed that public justifications generally are of a higher moral standard than private motives. Together these two effects make publicity a purifying force in politics. *"Public discussion tends to promote the common good"*, according to Jon Elster (Elster 1986:113).

But even though publicity is a cornerstone in the theory of deliberative democracy its effect on political behaviour is theoretically underdeveloped and empirically untested. And again counter arguments must be faced. Negotiation theorists, for instance, seem to have reached the complete opposite conclusion – negotiations must be held behind closed doors otherwise compromise will be blocked by self-interest (Fisher, Ury & Patton 1999, Walton & McKersie 1965). Opening up the delicate negotiation system of the EU may drain it of trust and problem-solving capacity (Elgström & Jönsson 2000).

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[2] The relationship between transparency and publicity is explained in section II.1 Basically publicity means 'someone is watching you' and transparency increases the chances for that to happen.

Here, when it comes to this paradox of conflicting views over the effects of transparency and publicity on the behaviour of elite actors, my ambition is not only to point to the uncertainty, but also to do something about it.

In this paper, therefore, I will leave out the issues of legitimacy and accountability and the question of transparency as a fundamental right, to concentrate on the question of purifying effects of transparency on elite behaviour. There is a proposed causal chain from publicity to "laundered" policy decisions more in line with common European interests – via the choice of "mode of decision-making" and type of justification. But which are the causal mechanisms in this chain and how do they work? Furthermore, a theory of publicity's purifying effect needs to account for the fact that publicity may have adverse effects on political behaviour as well.

Basically the question is this: If we inject some fresh air of publicity into the EU decision-making machinery, will we or will we not, be able to air out some bad smell of factional self-interest?

II. The purifying forces of publicity

The aim of this section and the following is to develop, on the basis of deliberative theory and especially the work of Elster, the best possible theory so far for explaining why publicity may have this morally purifying effect on policy-making. This theory builds on, but also structures and on certain aspects questions, Elster's arguments laid out in different articles and chapters (Elster 1986, 1995, 1998, 1999).

Publicity confronts political actors with two social norms, according to Elster. These norms put pressure on the actors to argue instead of bargain and to refrain from using self-regarding and immoral arguments.

There are certain arguments that simply cannot be stated publicly. In a political debate it is pragmatically impossible to argue that a given solution should be chosen just because it is good for oneself. By the very act of engaging in a public debate – arguing rather than bargaining - one has ruled out the possibility of invoking such reasons (Elster1986:112-3).

According to the first norm – the-force-of-the-better-argument norm – political opinions and positions must be backed up by rational arguments. The second norm – the unselfishness norm – says that since politics is 'public in nature', a collective endeavour, one should not behave selfishly when participating in politics. Therefore, in order to *"avoid the opprobrium associated with the overt appeal to private interest in public debates"* (Elster 1998:102), political positions are publicly justified with other-regarding or ideal-regarding arguments.

Furthermore, Elsters argues, this effect, which first affects the rhetoric, is forwarded via policy positions to actual decisions. Publicity has the power to make a political actor argue and act for A instead of B. Thus, if one agrees with the normative assumption of deliberative theory that politics *should* focus on common interests and ideals (and that the common good is not the same as the aggregation of individual

preferences) - then publicity purifies politics. Let us look at each link in this causal chain in turn.

II.1 Defining transparency and publicity

Publicity in this context refers to situations where political actions are viewed by a broad audience. Whether publicity is at hand is essentially a matter of degree, varying with the broadness of the audience.

The broadness of the audience is a qualitative rather than a quantitative criteria. A broad audience is composed of many different viewpoints, perspectives and opinions. The more variety in the characteristics of the audience the more publicity. Political actors who are exposed to a high degree of publicity are being watched by an audience who evaluates their doings from different perspectives, who are informed from a variety of sources, who have different ideas, values and opinions about the issue and the actions and who care about the issue for different reasons. A speech by an organisation representative to a thousand homogenous members is therefore less public than a speech to an audience of fifty people, including not only members but also opponents, potential allies, independent experts, friends, Mom and Dad etc.

Defining publicity in this way implies that it is not a legal concept. In any democratic polity there are numerous examples of political documents which are formally secret but leaked by insiders to the press, which in turn makes them known to a mass public. On the other hand, there are probably even more political acts documented on paper and made legally public, which no one reads except a very closed circuit of specially-interested actors. The later types of documents although publicly available are only potentially public, according to this definition, until they actually reach a broader audience.

Publicity, according to deliberative theory, has the power to bring about good behaviour among elite actors. Transparency, on the other hand, increases the chances of publicity. While publicity is a phenomenon which political actions is exposed to, transparency is a characteristic of the political process and, on an aggregate level, of political systems.

Transparency implies that citizens have easy access to accurate and comprehensible information about the policy decisions and decision-making processes. Definitions of transparency usually includes both comprehensibility and access to documents.[3] A transparent political process is easy to follow for anyone who wants to. There is freedom of information, easy access to decision-makers for the media, the decision-making procedures are comprehensible, the language used is understandable, anyone interested can easily get the information he or she needs to form an opinion about an issue on the agenda (Hoskyns 2000, Larsson 1998, Gronbech-Jensen 1998, Peterson 1995, Lodge 1994).

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[3] A third component which is often mentioned in the discussions on transparency in the European Union is easy *access* to decision-makers *for interest groups*. In my view this is a less obvious component of the concept, unless minutes from lobbying meetings are made legally public (which they are not).

Transparency promotes publicity, but the correlation is not perfect. There is no publicity of political actions, no matter how transparent the policy-making process, if people are not interested and simply do not look in that direction. But transparency makes publicity possible. The more transparency the greater the chance that the public will be watching. Important to note is that the risk of publicity may be enough to bring about the effects of publicity discussed in this paper.

II.2 Activating the unselfishness norm

Does there exist an 'unselfishness norm' in politics, and if so where does it come from? For an unselfishness norm to be possible, politics must to some extent be 'public in nature', in the sense that all political actors cannot be motivated only by self-interest. Where would this norm come from if everyone agreed that the sole purpose of political engagement was to get as much as possible for oneself? Why the theatre if no one believed in it?

Elster assumes that there are at least *"some genuinely non-self-interested actors in the system"* (Elster 1995:249). Furthermore, these non-self-interested actors manage to set the norm for the public, forcing a majority to adhere to it. Even *"a small group of impartially minded individuals might induce many others to mimic their impartiality out of self-interest"* (Elster 1995:250). Thanks to these unselfish minds (the number of which Elster does not specify, apart from concluding that it only takes a relatively small proportion to produce the norm), there exists a 'public' demanding public-regardingness. Publicity's purifying effect thus applies to self-regarding individual actors, but is dependent upon the existence of a public-regarding public.

But why does the unselfishness norm need publicity? The norm does not say 'you shall not act selfishly in public', it says 'you shall not act selfishly *at all*'. The theory assumes that if self-interested actors can get away with acting self-regardingly they will indeed do so. Violating the norm is not a problem as long as it is not discovered. Breaking the norm publicly, however, is something one would try to avoid. Publicity thus does not *create* the unselfishness norm, the norm is inherent to democratic politics, but it *activates* it (it is an interaction variable).

II.3 Shifting from bargaining to arguing?

The unselfishness norm potentially affects the type of justifications that can be used by ruling out self-regardingness. Arguments are 'laundered' because political actors do not want to loose face in the short term and their reputation in the long term. This is the primary mechanism linking the norm to behaviour – actors are exposed to an audience which they believe demands from them that they act public-regardingly. In principle it is enough that there is a *risk* that one's actions may become known to a wider public for there to be an effect on behaviour.

It is easy to see why publicity would force actors to think about how they justify their positions, but how does it affect the mode of decision-making? Elster argues that publicity tends to lead to a substitution of arguing for bargaining. Assuming a strict definition of arguing, including efforts to persuade other participants, this argument is

simply wrong, which is also shown by Elsters' own analysis. What publicity may introduce is a requirement to use *the form* of arguing; one may have to *pretend* that one is arguing. Publicity also makes it more difficult to bargain, but that does not necessarily mean that there will be more arguing in absolute terms.

Let us look at these questions in reverse order, starting with why it is difficult to bargain in public. According to Elster publicity rules out the classic bargaining methods of threatening and log-rolling. 'If you do not agree to Y, I will punish you by doing X' is a way of reasoning which does not go well in public. The same goes for 'if you support us on issue Y, we will help you out with issue X'. These are arguments which have nothing to do with the merits of the position and therefore violate the force-of-the-better-argument norm.

Elster uses the term bargaining to denote all types of bargaining situations. If one makes the distinction, which is common in negotiation theory (Walton & McKersie 1965), between integrative and distributive bargaining it is possible to see more clearly the consequences of introducing publicity into bargaining games. Distributive bargaining implies that the actors perceive the situation as zero-sum and therefore try to pressure their opponents to make as big concessions as possible. Integrative bargaining, on the other hand, is a co-operative game in which the parties work together to find solutions which everyone can be satisfied with (at least everyone around the negotiating table).

Distributive bargaining is characterised by mistrust. The only thing you know for sure is that the opponent will manipulate the information you receive from him. If the actors involved in such a game have to face the public, their actions are constrained by the unselfishness norm and the force-of-the-better-argument norm, but the basic relationship remains the same. The main tactic will still be to use manipulated information in order to advance one's positions.

Integrative bargaining, on the other hand, is more fundamentally disturbed by publicity. The integrative bargaining process is dependent upon actors trusting each other and being willing to share non-manipulated private information. Participants need to understand each other's real preferences and motives in order to find mutually advantageous solutions (Fisher, Ury and Patton 1999). For discussions to be 'free and frank' the participants must feel safe about giving away that information. They need to know that it will not *"somehow be used against them"* (Walton & McKersie 1965:159). Publicity not only forces the actors to hide any self-interested motives, but also makes actors much more careful in revealing private information.

An additional reason why publicity makes integrative bargaining more difficult is that hesitancy is seen as a sign of weakness in politics. Political actors are expected to appear principled and assured of themselves. But integrative bargaining is dependent upon an agreement among the parties that they do not already know all the answers. The process of searching, thinking out loud, putting different options on the table and throwing them out again if they are found no good is blocked if you are not allowed to be unsure or to change your mind.

The unselfishness norm and the force-of-the-better-argument norm come from the same notion of politics as enlightened rational discussion about common goods. The

non-hesitancy norm is probably from a more authoritarian origin. But they are all inherent to political life and the role of publicity is to activate them and force them upon self-regarding, bargaining and problem-solving actors.

So publicity obviously makes bargaining difficult, but does that mean that the actors instead choose to solve their conflicts by arguing if they are forced out in the public light? Elster claims that publicity leads to more arguing:

The absence or presence of an audience is [an] *important determinant of the location of communication on the arguing – bargaining continuum. ...* [One] *effect of secrecy* [is] *that of shifting the mode of the proceedings toward the bargaining end of the continuum* (Elster 1998:109,110).

But less bargaining does not necessarily mean more arguing. Elster can only reach that conclusion by (temporarily) narrowing his concept of arguing to equating it with using unselfish justifications. By doing that he is able to conclude that the unselfishness norm promotes arguing *at the same time* as it forces the actors to use other-regarding and ideal-regarding justifications. Censoring self-interested justifications then conceptually makes actors argue (Elster 1986:112-3).

But this is a conceptual move which only confuses the analysis of the causal effects of publicity. Neither is it supported by Elster's own definition of arguing. That definition also includes efforts to *convince* the other parties to change their minds:

In trying to reach agreement people can interact in two main ways. On the one hand, they can try to persuade each other by rational argument [arguing]. *On the other hand, they can try to induce agreement by threats and promises* [bargaining] (Elster 1995:237).

For publicity to promote arguing it has to affect not only *what* the actors say, but also *why* they say it. Probably there is such an effect, but one which goes in the complete opposite direction toward *less* arguing. I can see no reason why a political actor would be *more* interested in convincing the other parties just because there is an audience following the discussions. On the contrary, the effect of an audience will more likely be to diminish the parties' interest in each other and to make them focus more on their appearances in the views of the audience. Publicity may promote other and ideal-regarding justifications, but at the same time it probably leads to less arguing (meaning using the justifications to convince the other parties).

Nevertheless, when publicity is introduced into a decision-making process characterised by a lot of bargaining, behaviour changes into something that on the surface *looks* more like arguing. The methods change from threats and promises to arguments and self-regarding justifications are censored. 'If you agree to Y, I'll give you X' is substituted for 'Y is a good policy decision, because of reason Z'. The actors use arguments to justify their positions, because that is what they believe that the audience expects from them, but they are not arguing.

But if political actors neither bargain nor argue when debating in public - then what are they doing? Publicity seems to bring about a derailment from the arguing-bargaining continuum into something else, an altogether different type of behaviour.

This something is probably best called 'public relations'. It is making *statements* rather than taking decisions and solving conflicts.

Elster is well aware of the limitations of publicity discussed here. He does not argue that publicity makes the actors more devoted to sincere deliberation (at least not in the short run). He is also just as worried as negotiation theorists about the negative effects of publicity on the flexibility of the actors and their willingness to open themselves to the arguments of others (Elster 1998:111). His claim that publicity induces arguing, I believe, is merely a terminological mistake. *Arguing* is temporarily mixed up with *using arguments*.

To conclude this section, it seems that the force-of the-better-argument norm and the unselfishness norm, both inherent in politics and activated by publicity, in combination have the power to purify political discussions *on the surface*. But why would we want publicity if it produces hypocrisy rather than deliberation and sincere public-regardingness? The next step in the causal chain is to establish whether the rhetoric affects policy, bringing it closer to the common good.

II.4 Rhetoric is not just rhetoric

The reason why rhetoric is not *just* rhetoric, according to Elster, is that there are limits to how much hypocrisy political actors can manage. First, the hypocrites themselves may find that too big a gap between what they say and what they think can become difficult to bear, at least in the long run. Most people want to be able to look themselves in the mirror. The effect may be that in the end, in order to close the gap, they start to genuinely believe what they first only pretended to believe (Elster 1986:113), so that not only the rhetoric but also the actual preferences are laundered.

Second, and quite differently, since political actors must be careful not to be publically discovered as hypocrites, policy *positions* (and eventually decisions) may be laundered as well, as a result of laundered justifications. Elster recognises two components of this non-hypocrisy constraint. First, since justifications are supposed to support positions, there must be some reasonable connection between the two. If it is too obvious that other-regarding or ideal-regarding justifications are just cover-ups for self-interested positions, the actor in question will not only be discovered breaking the unselfishness norm but will also be revealed as a hypocrite. Therefore, if justifications must change, positions may have to change as well.

This "imperfection constraint", as Elster calls it (Elster 1998:104), basically says that the public is not stupid and will not tolerate being treated as stupid. To what extent political actors will have to change their positions in order to meet the imperfection constraint obviously varies depending on who they are and on the political context. Sometimes an actor may get away with not changing position at all by just stating something like 'What is good for General Motors is good for America'. In other cases it may be very difficult to find any other-regarding or ideal-regarding argument to back up self-interested positions in a reasonably credible way.

Nevertheless, Elster is probably right to assume that the imperfection constraint does make a difference in many cases. Public image is too important in modern politics for

any political actor to afford to be repeatedly marked as selfish or as a hypocrite. Therefore the effect of publicity is not just to substitute 'Policy option Y should be chosen, because it is good for us' with 'Y should be chosen, because it is good for the environment'. Instead in most cases we will hear 'Z should be chosen, because it is good for the environment', Z being a position at least a bit more in line with common interests (the environment in this case) than was Y.

The second component of the hypocrisy constraint is the requirement to be *consistent*. *"Once a speaker has adopted an impartial argument because it corresponds to his interest or prejudice, he will be seen as opportunistic if he deviates from it when it ceases to serve his needs"* (Elster 1998:104). Hence, there is pressure on the actors to hold on to positions and justifications once expressed in public through the whole decision-making process. Actors will be punished if they first support Z publicly, 'because it is good for the environment', and then in the end vote for Y (provided that the political process is transparent all the way through to the actual decision-making so that the hypocrisy is discovered).[4]
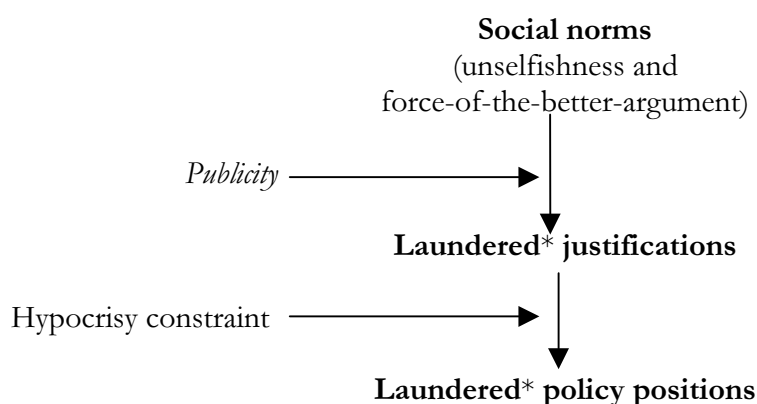
Elster concludes that there exists a *"civilizing force of hypocrisy"*, which tends to *"on the average ... yield more equitable outcomes"* (Elster 1995:251). This phrase, which has been frequently used in subsequent deliberative works (for example Eriksen & Fossum 2000:13) is a bit misleading since it gives the impression that the positive effect on behaviour stems from hypocrisy itself. In fact, as has been shown above, the effect is a product of the social norms activated by publicity (unselfishness and force-of-the-better-argument) and the hypocrisy constraints of consistency and the requirement to have a reasonable fit between justifications and positions.

II.5 The ideal model

What we have now is a more developed *ideal* model of publicity's purifying effect. Publicity increases the costs of violating the unselfishness norm and the force-of-the-better-argument norm. Political actors therefore avoid using threats, log-rolling and self-regarding justifications in public. Instead other- and ideal-regarding arguments are used, which is not necessarily the same as saying that the actors are arguing in order to reach agreements by convincing each other of the merits of their proposals. The hypocrisy constraint passes on the purifying effect on justifications to the positions of the actors.

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[4] The 'consistency norm' is close to but not the same as the 'non-hesitancy' norm mentioned earlier. The latter forces an actor to pick a position fast and appear sure about it, the former requires the actor to stick to this position until the end.

Figure 1. Publicity's purifying effect – ideal model

Social norms
(unselfishness and
force-of-the-better-argument)

Publicity ⟶

Laundered* justifications

Hypocrisy constraint ⟶

Laundered* policy positions

* Laundered meaning less self-regarding, more other- and ideal-regarding.

If you agree with the normative assumption of deliberative theory that political actors should not use politics to further their own ends (which by all means can be disputed), this model provides a strong statement in favour of transparency and publicity. If we open up the decision-making processes by making them more comprehensible and visible, we will see positive effects on elite behaviour. It also seems reasonable to assume that laundered policy positions of individual elite actors in a democracy eventually will result in laundered policy decisions (although that link of course has theories of its own and is beyond the scope of this article). Therefore, both the political discourse and the actual policy decisions will be closer to common interests, less imbued by regional and sectional self-interests.

III. Counteracting forces

I see no reason to doubt the viability of the causal chain from publicity to policy positions and decisions more in line with common interests and ideals. To me the different links described above make perfect sense. The question from now on, therefore, should not be *whether* it works but rather *under what circumstances* it works, *how strong* the effect is and what *other,* perhaps disturbing, effects publicity may have. I have no room in this article for addressing the first two of these questions, but I will very shortly say something about the third. Already in the analysis above there were several hints at unwanted consequences of publicity, such as inefficiency and politicisation. A third counteracting force is the temptation publicity creates to use emotional rhetoric.

III.1 Inefficiency

Two reasons for why publicity may be an obstacle to efficient decision-making have already been mentioned. First, hesitancy and inconsistency are hardly any sought after values in and of themselves, but too little of them may impede effectiveness. The

demands for non-hesitancy and consistency tend to tie actors to positions making them less flexible and agreement more difficult.

Second, efficiency may suffer not only because the actors refuse to back down from their positions, but also because they stop talking to each other. Arguing, integrative bargaining and distributive bargaining all involve speech acts intended to bring the other participants closer to an agreement. But, as discussed earlier publicity tends to distract the actors' focus. Instead of searching for an agreement with each other they start addressing the new third person – the audience. When communication between the parties stops, decision-making stops.

An additional problem, although it is not an effect of publicity *per ser*, is that attempts to increase publicity by opening up policy processes, may bring about decision-making leakage. Increased *formal* publicity may lead to less *actual* publicity if the real decision-making sneaks out the back door. This is an argument often used by sceptics of 'too much' transparency in the European Union. Giving the public access to detailed minutes of the negotiations in the Council of Ministers, for example, would not, it is argued, have any positive effect on behaviour since the decisions would be taken in the corridors before the meeting instead (Mather 1997). A misguided transparency reform could in fact have the unwanted effect of shrinking the number of participants having access to the core decision-making. Some actors, probably the less powerful, may be lost between the public decision-making arena and the corridor.

At a general level it seems reasonable to assume that there may be a risk for a decision-making leakage of this kind. Both integrative and distributive bargaining, for different reasons, require at least some degree of secrecy to produce agreement. If the actors *want* to bargain they will have to find that privacy, and if they do not find it at the formal meeting they will have to look somewhere else.

III.2 Passionate rhetoric

Arguing and bargaining both fail to capture another important way in which divergent preferences can be merged into a common position, namely the use of emotive persuasion. Both arguing and bargaining are, in theory, strictly rational processes leaving no room for passions and emotions. Collective agreements are sought through the giving and taking of rational propositions about the effects of different policy options on interests (be they self-regarding or other-regarding) and ideals.

"Rhetoric" is sometimes used in a pejorative way, implying high-sounding words with little substance. Elster argues that there is a risk that publicity gives rise to more rhetoric in this negative interpretation (Elster 1995:244). Passionate speeches need a soundboard to function and therefore prefer public audiences to closed conferencerooms. People can be induced by emotional rhetoric. Publicity increases the incentives for political actors to exploit that fact.

III.3 Politicisation

The most crucial mechanism of the theory of publicity's purifying effect is the process by which self-regarding justifications are substituted for other-regarding or ideal-regarding ones. This change is achieved as publicity activates the unselfishness norm. The purifying effect may be lost if the other-regarding and ideal-regarding justifications are overcome by passionate rhetoric. Even worse, however, there is a risk that publicity may actually *increase* the degree of self-regardingness in the decision-making process, turning the purifying effect into its complete opposite.

The risk for politicisation comes from the fact that 'the public' is a much more complex set of audiences than deliberative theorists, including Elster, tend to assume. Political representatives of parties and groups are not only standing before an abstract general public which demands justifications in line with the common good. They are facing different audiences who want to hear different types of arguments.

First, as emphasised in classical pluralist theory, politics involves conflicts of interests between social groups. *"If a fight starts, watch the crowd"*, Schattschneider wrote. Parties involved in political conflicts must make allies in the audience (Schattschneider 1960:3). Potential allies may be won by specifically emphasising how *they* are affected by a particular policy option. 'Policy Y should be chosen, because it is good for *you*' is nevertheless still an other-regarding justification, even though it has nothing to do with the public interest.
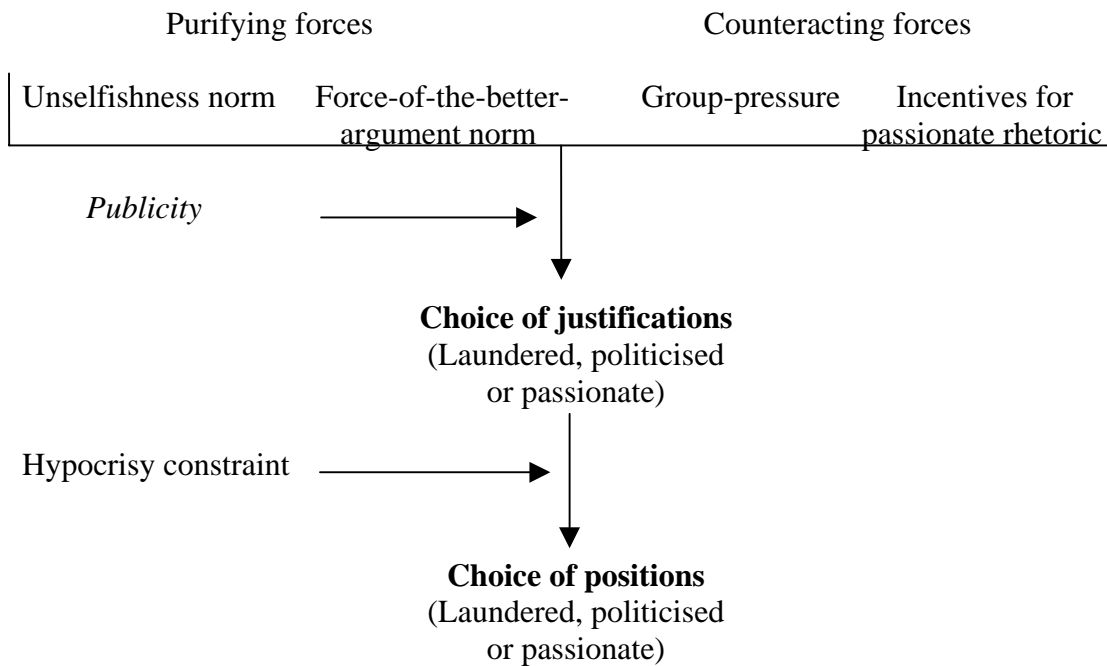
Second, and more problematic for the theory of the purifying effect is the fact that representatives have home constituencies watching them. Often this domestic audience is hoping and expecting to hear something very different than the 'general public' (if there exists such a thing). They want to hear that their representative is on *their* side, fighting for *their* interests. When taking into account that representatives are involved in 'nested games' (Tsebelis 1990), both external and internal games, the idea of hearing someone in a public debate saying 'Policy Y should be chosen because it is good for us' suddenly does not seem that odd. It may not persuade anyone not a member of this particular representative's constituency, but that would not be the purpose anyway. The purpose would be to rally support in that part of the audience which determines whether this representative will be re-elected or not.

Both in negotiation theory and in corporatist theory it is feared that publicity increases pressure from members and home constituencies, which disrupts the representatives search for common solutions. If this kind of group pressure puts a stop to compromise and instead leads to flirting with members and more focus on 'our interests', the civilising force of hypocrisy may turn into a politicising force.

III.4 A more realistic model

The straight line between publicity and a policy in line with the common good does not seem to be that straight after all. The purifying forces of the unselfishness norm and the force-of-the-better-argument norm have to compete with the contradictory forces of group-pressure and passionate rhetoric.

Figure 2. Publicity's purifying effect – a more realistic model

Purifying forces		Counteracting forces	
Unselfishness norm	Force-of-the-better-argument norm	Group-pressure	Incentives for passionate rhetoric

Publicity ⟶

Choice of justifications
(Laundered, politicised
or passionate)

Hypocrisy constraint ⟶

Choice of positions
(Laundered, politicised
or passionate)

The most immediate effect of publicity is cross-pressure on the actors. The unselfishness norm clashes with group pressures, the force-of-the-better-argument norm is challenged by increased temptations to use passionate rhetoric. The result may be laundered, politicised or passionate justifications, which will subsequently be forwarded to positions and decisions, *unless* the process comes to a standstill and no decision is taken. The latter would be the case if the actors stop communicating with each other and instead involve themselves in public relations with the audience.

III.5 Conclusions

We cannot trust transparency and publicity to generally be a purifying force in politics. The outcome of this clash between purifying norms and counteracting forces is decided by contextual situation-specific factors, such as the type of actor (politicians, civil servants, individual citizens, representatives of organisations, companies, ethnic minorities etc), its power position (economic power, voting power, public image etc) and the political situation (type of issue, policy area, polity).

Instead of having a strong general theory of how to promote the common good, we end up with a pile of *it-depends* questions. Specific hypotheses need to be formulated and tested in different contexts in order for us to come any further with the effects of publicity. How strong is the unselfishness norm compared to group-pressure for different types of actors? In which situations is there a risk that the force-of-the-better-argument norm may have to give in to passionate rhetoric? How can political institutions be designed in order to achieve the positive purifying effects of publicity, while at the same time avoiding inefficiency, politicisation and fluffy rhetoric?

What we have, it seems to me, is a good idea – making political institutions more transparent, thereby increasing the chances for publicity, probably promotes good behaviour on the part of elite actors in some circumstances - but we do not know how far it goes and when it might backfire. To say that we need more research is an old slogan, of course – we always need more research on everything. But considering the centrality of transparency in the debate on the future of the European Union, it is difficult not to consider this an under-researched area.

One thing is clear, however. Transparency and publicity does not promote deliberation on the elite level. Deliberation implies arguing with the sincere purpose of convincing the other parties, as well as respectfully taking their arguments into account. Publicity, on the contrary, makes elite actors less interested altogether in having a dialogue with their counterparts. The audience gets in the way. Furthermore, if deliberation is about transforming preferences, and publicity forces you to know what you want and stand by your position, then 'public deliberation', it seems to me, is something of a contradiction in terms.

In my empirical study, described in the next section, I will address what I consider to be the key question for the theory of publicity's purifying effect: Given the cross-pressures of the unselfishness norm and group-pressure – what is the effect of publicity on the arguments and justifications used? I will apply this question to a type of political communication which is usually assumed to be loaded with self-interest – the lobbying activities of interest groups. How do lobbyists argue depending on the degree of publicity in their political environment?

IV. Research design

How study effects of publicity in an EU context? One reason why no one has done that before is because it is difficult. The problem is getting a credible empirical material which both has a good documentation on the dependent variable (justifications in my case) and, most difficult, has variation on the independent variable (publicity). The key is to study the same type of political behaviour with only the degree of publicity varying. This can be done in experiments, but the external validity problems then will be enormous if one wants to say something about elite policy processes.

I will conclude this paper by sketching out very briefly the research design of my forthcoming dissertation. I am doing a comparative study between the notoriously in-transparent European Union and its uniquely transparent member state Sweden. There is a lot of variation in publicity between the Brussels and the Stockholm contexts, and I have designed my fieldwork to make it possible to control for as many disturbing factors as possible.

If transparency and publicity really purifies politics Sweden must have among the worlds most moral and unselfish political actors! The Swedish freedom of information acts are extremely far-reaching. Almost everything that is put on paper within the government administration is publicly available. Even secret information can legally be leaked to the press by government officials. The Swedish 'publicity principle' is protected by the constitution and has been an integral part of Swedish politics since the 18th century.

The EU on the other hand, is often accused of lacking transparency. Even though the Commission is considered accessible to interest groups it is less exposed to media and public scrutiny than the ministries in Stockholm, not least because Brussels-politics is distant from the general public. The EU has only recently (2001) acquired a freedom of information act, which is still in the process of being implemented. Although confidential documents are regularly leaked from the institutions, that is a completely arbitrary practice benefiting some but not others. If a Commission or a Council official is found leaking without his or her superiors' liking he or she will probably get sacked.

The research question I focus on is this: What difference does the degree of publicity do for the communication between interest groups and civil servants? My study will be a comparison of interest group 'pressure' (positions and justifications) towards a relatively transparent (the Swedish ministries) and a relatively in-transparent (The European Commission) bureaucracy. In similar policy issues and similar situations will the arguments put forward be different? Less self-regarding towards a bureaucracy where transparency since long is institutionalised?[5]

Two types of empirical material are used. First, I do interviews with public affairs-consultants. These professional lobbyists-for-hire have as their job to make an inventory of their clients arguments and demands and bring forward only those which works politically. By giving consultants in Brussels and Stockholm a similar, fictitious, case to work on (an organisation within road transport having problems with an environmental policy proposal, asking for advice on how to lobby the Commission (in the Brussels interviews) and the Swedish ministries (in the Stockholm interviews), controlling for as many variables as possible, differences between the two contexts can be studied.

I have done 18 such controlled scenario interviews with consultancy firms in Brussels and in Stockholm. The interviewees are given details about the case, which is essentially the same in Stockholm and Brussels only adapted to fit with national and European political conditions respectively, and are then being asked how they would advice the organisation to argue in order to stop or modify the proposal.

The case is designed to control for as many disturbing variables as possible (such as size of actor, policy network, type of issue, media attention etc). Environmental policy is chosen for two reasons: 1) It is a policy area where it is possible for the sake of

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[5] The advantage with studying interest groups is that the distinction between private and public interests is sharp and clear, which makes it relatively easy to operationalise and study their arguments as self-regarding, other- and ideal-regarding. But does the purification theory apply to lobbyists in the first place, someone may object? Do these people really care about anything else than getting their *demands* across? As noted before the generalising power of the purification theory, in terms of which types of actors and policy issues it applies to, is unclear. However, there is clearly nothing in the theory implying that the purification effect should *not* also apply to interest groups. The purifying effect does not require actors to be open for the arguments of others. It applies to every political actor who does not want to loose face and public image by violating the unselfishness norm, the force-of-the-better-argument norm and the consistency norm. Interest groups and companies are definitely among those actors. They do not have to care about general elections, but they want to influence policy and that becomes a lot more difficult if you are handicapped by a bad public reputation. It is easier for a decision-maker to defend regulations towards a profit-hungry polluter than towards a responsible welfare-generator. Companies and business associations spend big money on public relations staff and consultants for precisely that reason.

comparison to design a similar case for the national and the European level. 2) It is a policy area where there is a clear line between common- (environmental, macro-economic) and self- (profit) interests.

The second type of empirical work I do is analysing letters sent off from companies and organisations to officials in the Swedish ministries (where these letters immediately become publicly available) and to Commission officials (where they until recently have been classified as confidential). Thanks to the new regulation on access to documents (EC No1049/2001) I have been able to collect about seventy lobbying-letters to Commission officials from companies and business associations sent off under the provision that they would remain confidential.[6]

These letters are compared with lobbying-letters from the same types of business interests (chemicals industry, transport industry, electronic equipment industry - again I have chosen environmental policy issues for the same reasons as above) to officials in the Swedish ministries. The latter were sent off with the knowledge of the sender that they would be publicly available.

In this way I will be able to study effects on arguments used by lobbyists under secrecy and publicity. If self-regarding justifications - "Policy Y should be chosen, because it is good for us" - are more common in the corridors of Brussels than in Stockholm publicity seems to have a purifying effect on these delibertions. If there are no differences found between Stockholm and Brussels institutionalising transparency does not seem to be a method to mitigate pressures from factional interests. If the opposite effect is supported by the results – more transparency tends to make interest group representatives more focused on their members' interests – the politicising force of publicity has overruled the unselfishness norm. The dissertation will be finished in 2003.

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[6] I was happily surprised to find that the Commission interprets the new regulation to apply retroactively to letters sent off long before the regulation was even proposed.

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