Rationality, Democracy, and Justice

The Legacy of Jon Elster

This volume advances the research agenda of one of the most remarkable political thinkers of our time: Jon Elster. With an impressive list of contributors, it features studies in five topics in political and social theory: rationality and collective action, political and social norms, democracy and constitution making, transitional justice, and the explanation of social behavior. Additionally, this volume includes chapters on the development of Elster's thinking over the past decades. Like Elster's own writings, the essays in this collection are problem-driven, nonideal inquiries of practical relevance. This volume closes with lucid comments by Jon Elster.

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Preface

The following ideas are prominent buildings in the skyline of contemporary social and political theory:

To explain social facts and events we have to understand, in a nonfunctionalist way, the behavior of individuals, who are often irrational.

Preference-satisfaction (one of the hallmarks of modern utilitarianism) is a flawed ideal if desires are formed in a nonautonomous fashion, as is often the case.

The point of democratic politics is the transformation of individual preferences through deliberation, not the aggregation of preexisting preferences.

The study of justice comprises not only domestic and global distributive issues, but also narrower matters, such as those involved in problems of local and transitional justice.

Institutional design should aim at the establishment of rules to minimize poor decision making (e.g., biased, irrational, self-interested), rather than to attain specific goals.

These ideas evoke the name of one of the most exceptional thinkers of our time: Jon Elster. In the past half century, Elster has made seminal contributions in a number of disciplines, including philosophy, political science, psychology, law, and economics. The purpose of this volume is to celebrate Elster's career achievements and to advance his research agenda.

The essays in this collection are Elsterian in various ways. First, and most plainly, some of the chapters are about Elster's body of work. This is the case of the bookend contributions. Roberto Gargarella and Félix Ovejero (Chapter 1) provide an overview of the development of Elster's ideas and their impact in various fields of study. As the authors suggest, there have been significant turns in Elster's oeuvre, notwithstanding its continuities. The chapter discusses Elster's participation in the so-called September Group of analytical Marxists, his interest in the notion of rationality, his attention to the ubiquity of irrationality, and

his case for the articulation of mechanisms in the explanation of social phenomena. In addition, Gargarella and Ovejero discuss the connection between these topics and Elster's normative concerns, specifically his interest in the theory and practice of justice and democracy. The chapter explains how Elster has become more and more suspicious of grand theories, both normative and explanatory, distrusting excessively ambitious projects that seem detached from reality.

The other bookend chapter, Daniel Little's essay (Chapter 11), is also centered on Elster's body of work, specifically on his contribution to the theory of rationality, social welfare theory, philosophy of social science, and analytical Marxism. Little highlights the value of Elster's work for the development of a compelling account of the motivations and reasoning processes that lead people to behave as they do in real-life settings. Two features of Elster's work are particularly important, according to Little: the way in which it brings social science to bear on broader issues in political philosophy, and the way in which it deploys philosophical tools to examine and improve scientific inquiry in the study of human behavior.

The rest of the chapters, though not focused on Elster's writings (with the exception of Claus Offe's contribution) are nevertheless related to his work in two ways. On the one hand, they are studies in four Elsterian topics: rationality and social action, political and social norms, democracy and constitution making, and transitional justice. And on the other hand, the contributors share an Elsterian approach to political theorizing. Throughout his career – indeed, long before the beginning of current debates on the importance of "nonideal" theory – Elster has illustrated how normative claims can and should be better connected to reality. Insofar as the morality of social institutions depends on empirical factors, the limitations of the social sciences bear directly on the ambitions of normative theory. The essays in this volume are, like Elster's own writings, problem-driven, nonideal exercises on questions of practical relevance.

Gerry Mackie (Chapter 2) defends the possibility of rational voting. The so-called paradox of nonvoting claims that because one's vote is not pivotal, it is not instrumentally rational to vote. Mackie challenges the view that the act of voting is *necessarily* irrational. Instead, he argues that voting is *possibly* rational and that it is *hypothetically* rational for many individuals in many circumstances. Mackie outlines what we would observe of voting if his proposed account of motivation were to be largely correct. The paradox of nonvoting insists that redundant votes have no causal influence on the outcome. But this wrongly assumes that voters care only about whether an issue wins or loses, not about vote margins. If voters do care about margins, then each vote is pivotal toward that end. Smallness of benefit does not mean absence of benefit. Mackie points out that people often contribute imperceptibly, but rationally, to low-cost, continuous public goods. For these reasons, Mackie concludes that voting can be rational.

According to Elster, there are three ways of making collective decisions in modern societies: bargaining, arguing, and voting. These are often combined. Wage bargaining, for instance, is actually a combination of bargaining and

arguing over a number of issues, such as worker productivity. John E. Roemer (Chapter 3) contends that the solution to what is presumably the most important collective action problem facing humanity today, namely, the reduction of greenhouse gas emissions, also involves a combination of bargaining and arguing. Roemer suggests that there is a salient focal point in the bargaining process between China and the United States – the two largest emitters. The focal point is given by the dates in which, under the status quo or "business as usual," China would converge to the United States and other developed countries in GDP per capita. Thus, if China were to catch up with the United States in seventy-five years, for example, an agreement should force countries to reduce their emissions in ways that preserve the current date of convergence. Deviations from the focal point are likely to be portrayed as unfair. Roemer offers a simple model of this process.

Cass R. Sunstein (Chapter 4) examines the idea of irreversibility and its significance in the context of thinking about environmental protection. On one conception, irreversibility concerns the elimination of future options as a by-product of our present actions. Sunstein thinks that this is a sensible concern. In contexts of uncertainty, we should adopt strong precautionary measures while we become more knowledgeable about the effects of our decisions. But it is wrong to think, Sunstein argues, that there is nothing more to the idea of irreversibility. On a different conception, irreversibility refers to losses that are incommensurable in the sense of being qualitatively singular – losses, in other words, that are hard to compute in a cost-benefit calculation. Sunstein makes the case for taking seriously this alternative notion of irreversibility in considering the problem of climate change.

Pasquale Pasquino (Chapter 5) offers a new classification of constitutional systems. He challenges the standard typology in the literature, based on the distinction between *rigid* and *flexible* constitutions. He suggests that the critical variable in classifying constitutional systems is whether it is possible to carry out a quasi-legal suit against those who violate the constitution. Pasquino's typology is based on the following dichotomy. On the one hand, there are systems in which the violation of conventions or formal constitutional provisions has no other consequence than a possible popular or political sanction. These systems rest on political norms. On the other hand, there are constitutional systems in which violators can face a quasi-legal sanction. The sanction is not fully legal because, although the breach of the constitution must be declared by a specific agency, such as a constitutional court, we cannot rely on the executive power to enforce sanctions against itself. In these cases, we depend on other (political) agents to carry out the sanction. From the perspective of this framework, there is no difference between a "customary" and a "rigid" written constitution. Rigid constitutions do not establish in themselves an effective hierarchy of norms and effective limits to the power of majorities.

Diego Gambetta (Chapter 6) analyzes, in a somewhat Elsterian fashion, the practice of tipping. Whereas tips may be individually perceived as a marginal

disbursement of little consequence, collectively considered, in some countries and occupations, tips redistribute large amounts of money and form a sizable percentage of service workers' income. Most centrally, tipping is an interesting phenomenon per se, and it helps to test behavioral theories. Insofar as tips remain discretionary, they can reveal some of our fundamental behavioral dispositions in a natural setting without recourse to laboratory experiments. Why should we pay more when we can avoid it? Why should some of us refuse a tip? In what way does tipping become a social convention to which we adapt? Using a game-theoretic framework, Gambetta shows that the study of simple human practices can shed light on complex theories with the power to explain human conduct and human interaction in other realms.

Julia Maskivker (Chapter 7) addresses the motivations of terrorists. Although all suicide missions have much in common, Maskivker suggests that women may become suicide bombers for gender-specific reasons. Her main claim is that, within certain cultural environments, notions of gender can supply the psychological incentives for women to become suicide bombers. Focusing on the microfoundations of violent activity, Maskivker offers an explanation of female suicide bombings based on the idea of self-redemption. She argues that female suicide killings can be associated with certain deeply rooted emotions that are triggered by the violation of gender norms. This violation produces a desire in the woman to remedy the fault in order to redeem her image and that of her family (especially of her male relatives). The chapter fleshes out the shape and nature of this sociopsychological mechanism, which, according to Maskivker, camouflages personal motives as nationalist liberation or religious fervor. This account contributes to the understanding of an unexplored question in the social sciences, namely, whether there are any gender-based differences in the motivation to act violently.

Claus Offe (Chapter 8) analyzes the ideas of precommitment and constitutionalism, especially as they appear in Elster's work. Offe suggests that the founding of a new constitutional order produces the presumed blessing of collective self-binding in only a very limited way, and explains why. Adopting a macro-social approach, Offe tests the limits of the Elsterian approach to the study of constitutions based on mechanisms. What effects and consequences (intended or unintended, positive or negative) does a newly created constitution have? Can the effects of a constitution be connected to the particular processes that brought it into existence? Offe concludes that Elster's work has been directed, somewhat one-sidedly, toward the process through which constitutions are created, thus neglecting the *functional* side, namely, the accomplishments, consequences, and failures of the new order in the "constitutional reality" of new democracies.

Claudio López-Guerra (Chapter 9) examines a practical problem that constitution makers have often had to confront, namely, that of determining the composition of the electorate that ought to vote on the composition of the electorate. Simply put: Who should vote on who should vote? The Nebraska Constitutional Convention of 1919–20, for instance, unanimously proposed to amend the state constitution to give women the right to vote. But whether

women had to be considered part of "the people" for purposes of ratifying the new document was a matter of great controversy at the convention. In this essay, López-Guerra (i) offers a typology of the problem of second-order enfranchisement, providing examples from several constitution-making processes at the state level in the United States, and (ii) argues for a normative approach for addressing the problem that is different from the one that prevails in the scant literature on the subject.

Pablo Kalmanovitz (Chapter 10) examines the duty of states to compensate victims of rights violations in postwar cases. Although it is often argued in transitional justice discourse that states have a duty to compensate for serious violations of human rights and humanitarian law, in war contexts there are several public imperatives that compete for resources with the duty to compensate, including providing basic socioeconomic rights to those in need and reconstructing public goods. Kalmanovitz focuses on three standard accounts of compensation – compensation as preservation of individual autonomy, as protection of individual property rights, and as a necessary component of market institutions – and examines what they may tell us about the balance among compensation, need, and efficiency in circumstances of war and its aftermath. Kalmanovitz argues that the three accounts point to giving far more salience to forward-looking considerations of need and economic growth than is usually done. Methodologically, he challenges the postulation of binding universal standards aimed at controlling policies of postwar reconstruction and favors instead contextualism, emphasizing the significance of variations in the levels of material destructiveness and impoverishment caused by war.

The last piece in the volume is a response by Jon Elster (Chapter 12), which we will not try to summarize here.

We want to acknowledge the help of all those who contributed in bringing this book to completion. Lewis Bateman, our editor at Cambridge University Press, and Shaun Vigil, Senior Editorial Assistant, provided critical support for the project since the beginning. Two anonymous referees for the Press gave us very generous and useful comments. Finally, without the disposition and patience of all the contributors, none of this would have been possible.

To conclude, let us highlight one last sense in which this volume is Elsterian: the list of authors is composed of some of Elster's friends, colleagues, and former students. We are all indebted to him in various ways. It is possible, and perhaps likely, that the expression of true gratitude is essentially a by-product of actions that do not aim at the expression of gratitude.[1] If so, our effort will be in vain. We hope not.

Claudio López-Guerra
Julia Maskivker

[1] See J. Elster, *Sour Grapes* (Cambridge: Cambridge University Press, 1985), chapter II.