

Institutions for argument: Cultivating the formation of collective intent
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An argument shows a proposition's goodness (e.g., its truth) by putting forward other propositions which support it.

From this idea, it is easy to slip to another: that when one person makes an argument to another, she is trying to persuade her interlocutor of, or at least help her interlocutor to understand, the proposition's goodness.

And from this idea, it is easy to slip to yet another: that the function of argument for society at large is to establish a shared commitment to or understanding of a proposition's goodness.

Thinking along these lines, it's possible to put forward a unified "epistemic" theory of argument, linking logical, transactional and social-institutional perspectives and justifying norms for each. A good argument is one in which the proposition's goodness is indeed adequately supported; a good transaction, one in which the goodness of the proposition can be thoroughly revealed; and good social-institutional arrangements—a good constitution—one in which people are enabled to engage in good transactions.

I have no doubt that this unified theory captures well some aspects of argument, its uses and environments. Still, perhaps we should be suspicious of the easy slippage. Argument is complex, and there is no reason to expect that various perspectives on it will turn out to be so neatly linked. In particular, in this paper I would like to add some complexity to our understanding of argument in a context central to both the rhetorical tradition and to contemporary "publics" theory: civic deliberation.

I will start by suggesting briefly some reasons to be unhappy with the idea that as a transaction, civic deliberation at its best achieves agreement on, or understanding of, a proposition's goodness. I will next propose and (in a preliminary way) defend an alternative model of the transaction, maintaining that at least some good deliberation achieves what can be called a collective intent. I will conclude by returning to the broader perspective on argument, and sketch if not a unified theory, at least a few desiderata or "norms" for the social-institutional arrangements that could promote deliberative transactions of the sort I have theorized.

Part of complexifying deliberation is to turn to actual practice. If, as I take it, argument is a practical art, the goal of theory should to articulate, systematize and critique the implicit practical knowledge skilled arguers already possess (Craig, 1996; Craig & Tracy, 1995). Claims about this practical knowledge can be based on many kinds of evidence; I will rely here on three. First, there is the evidence of practice: the ways discourse is shaped, both into arguments and also into all the sorts of talk which surround and support them (for this notion of "argument-

plus," see Goodwin, 2000). Second, there is the evidence of pragmatic reconstruction, which attempts to imagine what from the participant's point of view might be plausible reasons for producing precisely such discourse. And finally and I suspect most importantly, there is the evidence of the self-understandings of their practice that arguers make explicit, "metadiscursively," within the practice itself (Craig, 1999). Participants in any sort of transaction can clarify and defend their activities by explaining what they are doing, as they are doing it, and this is especially likely to occur when the participants are at odds, as they generally are when deploying arguments (Philipsen, 1992). These avowed self-understandings serve as the most direct evidence of the arguers' practical knowledge.

To even begin to make a case about the practical art of deliberation, I will therefore need some actual practice. I will continue here a case study of the 1991 debate in the U.S. Congress over initiating hostilities in what has now become the first Gulf War. In other work I have documented that this debate was taken as good by the participants themselves, by expert commentators, and by the public at large (Goodwin, 1999); this justifies a presumption that the argumentative practice we observe in it constitutes in fact good deliberation. The debate stretched over 100 hours and 800 pages of the *Congressional Record*. For the purposes of manageability, I limit myself to a somewhat randomly selected 25 page chunk containing about two hours of talk from 38 members of the House of Representatives, late in the afternoon on the penultimate day of the debate.

1. Bad deliberation?

Members of Congress were debating a resolution authorizing the president to use force to expel Iraq from Kuwait. Were their arguments aimed to persuade each other about the goodness (truth, justice, appropriateness, etc.) of this resolution? That hypothesis is neither pragmatically plausible nor empirically supported.

By the time Congress convened in January, 2001, all the various options—force, sanctions, diplomacy and combinations thereof—had been intensively discussed throughout the country since the Iraqi invasion five months before. The debate in Congress was unlikely to produce any new considerations. Nor was it likely that anyone's mind could be changed at this point. Indeed, predictions of the final vote count made before the debate began proved substantially accurate. Under these conditions, members would have little reason to try to persuade or enlighten each other.

Nevertheless, Congress proceeded to deliberate. But the shape of their talk reinforces the idea that it was not meant to influence views of the resolution. Consider the following typical intervention. The representative begins:

Mr. Speaker, shortly after Saddam Hussein launched his invasion of Kuwait, I visited Turkey to discuss issues relating to trade, health, and NATO. Naturally, my conversations with governmental leaders also focused on the crisis created by Hussein's ill-conceived aggression.

Turkey borders Iraq, of course. And the Turkish Government has a very informed and realistic view of Iraq and the Hussein regime. Based on our talks, I became convinced that Hussein had no intention of stopping with Kuwait. If the United States had not responded quickly and dramatically, there is little doubt in my mind that Hussein would have continued to try to militarily expand his influence and control over the region and, in fact, over much of the world.

Fortunately, President Bush moved quickly. His containment policy was the correct policy. Few of us would disagree with that. It was certainly consistent with the Carter doctrine, which has been reaffirmed by Presidents Reagan and Bush.

Unless Hussein is evicted from Kuwait, I believe he will resume his policy of aggression. Hussein now controls 21 percent of the world's oil reserves. If he gained control over other neighboring countries, he could control up to 62 percent of the reserves. He could then control the economic lifeline of much of the world and cripple the military capability of our own country and other countries of the free world. The issue is not just oil. The issue is Hussein's potential for creating economic and military destruction throughout the world.

It is therefore imperative for the allied forces to prove that aggression in the Middle East will not be allowed to stand.

Several features of this discourse seem at odds with the idea that the speaker was attempting to persuade his colleagues. The speech is explicitly framed not as an attempt to address others but as a story of the process through which the speaker made up his mind. It articulates what "I believe," and why. Moreover, the reasons given for the beliefs are conspicuously "thin." The speaker relies on the expertise of unnamed sources within the "Turkish Government," ignoring their likely bias. The evidence is also irrelevant to issue at hand; as the speaker correctly notes, "few . . . would disagree" with the need to prevent Iraq from invading yet more neighbors, much less "much of the world". But since a half million allied troops were already massed at Iraq's borders, further invasions were unlikely. The question was not whether Iraq should be prevented from global domination, but whether force should be used to expel it from Kuwait. As a teacher of argument, I'd send this speech back to the student with a request for substantial revisions!

Of course, a transaction is more than one speech. But the overall organization of the deliberation did not improve its quality, if it was aimed to persuade or enlighten. Speaking turns were brief, and only once did members engage each other directly (H261-62). The same arguments were recycled over and over again; Iraq's expansionist tendencies, for example, were mentioned by twelve other proponents of force. The participants themselves found the proceedings tedious. One noted that "I believe all the arguments . . . have been heard" (H258), and another described himself "a little tired as well of the parade of speeches" (H261).

There were a few speeches which were openly oriented towards persuasion and which put forward arguments of a quality that might be expected to accomplish this goal. One

representative, for example, closed by "urg[ing] my colleagues to support" the resolution (H267), and had preceded this call with a detailed review of the expert testimony supporting the conclusion that economic sanctions would not work to drive Iraq from Kuwait. But such efforts were the exception. Only eleven speakers explicitly sought ("urged, asked, encouraged" and once even "implored") their interlocutors' votes. By contrast, 30 included often lengthy explanations of their personal views, the importance of these views, and how they had formed them.

If deliberative transactions are supposed to promote mutual understanding or agreement by a thorough exploration of the reasons for a position, then we probably have to say that this Congressional deliberation was bad. And we *could* say that: the deliberation is only presumptively good, after all. But I want to propose instead that we first attempt to save the phenomena, and try changing the theory instead.

2. Good deliberation and collective intent.

Taking deliberative transactions as primarily oriented to establishing a proposition's goodness views them in "epistemic" terms—or, to adopt Aristotelian vocabulary, as exercises in collective "theoretical rationality." The avowed aim of the Gulf War deliberations, however, was not to determine whether the resolution was *good*, but rather whether *to resolve* it. This suggests that instead we might view deliberation as an exercise in collective "practical rationality." The object would not be to form a collective acceptance of a proposition, but rather a collective resolve—what I will be calling a collective intent.

Before arraying the evidence for this hypothesis, it will be useful to explain it. That laws have an "intention" behind them is an old notion, already thematized by the rhetorical tradition in classical times. At the same time, it is a conspicuously strained one, especially if this "intent" is taken as some sort of shared or joint mental state. As law professors have enjoyed pointing out, it is implausible that a diverse, disagreeable and not entirely attentive bunch of legislators in fact share any intention, and even if they do, it is unlikely we will be able to figure out what it is from the fragmentary evidence they leave (see e.g., Radin, 1930 for a classic statement of these problems).

Recent work in the philosophy of action has taken up the problem of how intention can be collective (Bratman, 1999; Searle, 1990; Tuomela, 1995) and I must defer to them to resolve this puzzle. Meanwhile, I propose to avoid the problem entirely by adopting an approach to collective intent that does not require reference to joint or shared mental states. I borrow here from the functionalist accounts of individual intention, which have made some progress on individual intent by not attempting to explain how it might be constituted out of more "basic" mental states. Philosophers working along these lines have argued that we should identify as an intent any mental state that satisfies certain conditions, since those conditions are the ones in which the functions intent plays in our cognitive life will reliably be achieved (Bratman, 1987; Mele, 1992). Functionalist accounts of intent vary in detail, but we need no more than the big picture here. A leading function of intent is to allow for the coordination of action. Michael Bratman comments:

We have pressing needs for coordination. To achieve complex goals I must coordinate my present and future activities. And I need also to coordinate my activities with yours. Anyone who has managed to write a lecture, pick up a book at the library, attend a committee meeting, and then pick up a child at school will be familiar with the former type of *intrapersonal* coordination. And anyone who has managed to arrange and participate in a committee meeting with several colleagues will be familiar with the latter sort of *interpersonal* coordination. Of course, as the examples make clear, we are typically in need of both sorts of coordination; for we are both temporally extended and social agents. And as we all learn to our chagrin, neither sort of coordination happens effortlessly (1999, pp. 2-3).

How can such coordination needs be met? When a person has settled on a certain course of action, that commitment helps guide her reasoning about what to do: she will have to figure out how to achieve her plan, and will have to take care not to settle on other plans that would make it impossible to carry out. Further, her settling on a course of action can justify others in expecting her to carry it out, and thus allow them to plan their own actions around hers. So in the functionalist account a person has an intent, when she has committed herself to act.

I propose to extend this account by analogy to the concept of the intent of an entire group. The difficulty of coordinating a *group's* activities are at least as severe as those with coordinating an individual's, especially when that group is as complex as, say, the United States. Consider just a few: Carrying out the policy may be a large-scale and enduring enterprise, requiring many specific activities to be fit together in order to implement it. There may be multiple and perhaps competing policies on a subject that need to be reconciled. The legislative intent must be carried out by agents in the executive and judicial branches, who need to understand what they are supposed to be doing. In international affairs, the policies of the U.S. and other nations need to be brought into line. One way for these and other coordinations to be achieved would be for everyone involved to know what "we" are doing. This can be accomplished by (undoubtedly among other things) members of the "we" openly committing themselves to the same, determinate plan. Thus when the members of a group have done so, it is reasonable to *ascribe* to the group a collective intent.

To establish the conditions for ascribing a collective intent, therefore, a deliberative transaction might proceed to produce (a) an open commitment to (b) a determinate plan. Let me now gather some of the evidence to show that this perspective on deliberation is pragmatically plausible and empirically well supported, and furthermore is avowed by participants.

2.1 Pragmatic reconstruction and the evidence of practice.

When the Congressional deliberations on the Gulf War began, their end was known. Two groups of participants can be distinguished by on their happiness with this outcome: the future losers, who would be in the minority, and the majority, the winners.

Pragmatically speaking, the majority had no reason to expend effort on speaking. The deliberative talk therefore must have been the outcome of minority efforts. What incentive did the minority have? Although they knew that they would lose the vote, they could look beyond this immediate loss to the possibility of gaining advantages in the longer term. After all, convinced that the decision to go to war was wrong, they would expect for the decision to *go* wrong: for events to show that it was an unwise choice, for its outcome to be unsuccessful, for its true costs to become apparent to all. Once the plan had failed, the minority would want the majority to be held to account for their disastrous misjudgment, their policy reversed and a new course established.

Indeed, a whiff of the future "blame game" is evident within the deliberations themselves. Two members spent a chunk of their speeches not on considering future but on denouncing the Republican (majority's) long-standing "shameful" policies in the region (H257). Had the majority not done things like support Iraq in the Iran-Iraq war and condone by its silence the use of chemical weapons against Kurdish villages, these members argue, "American lives would not now be at risk. We would not be undertaking this momentous debate" (H256). But instead, "because of the failure of our foreign policy vis-à-vis Iraq and because of the failure of diplomacy of which our country shares some blame, we are now faced with the ultimate failure, war and its deadly consequences" (H257). As one of the two members noted at length, these accusatorial remarks were strictly speaking irrelevant to the question of whether war, now, was the best course:

We cannot turn the clock back. We cannot start again. We cannot base our vote on this issue on recriminations, on anger over these half-baked, ill-founded policies. Policy must proceed from its past mistakes. We cannot make this judgment on the fact that the American people in the last three Presidential elections have elected administrations that have had no interest in aggressively pursuing alternative energy sources and creating an energy-independent America. We cannot vote on the basis of our anger at those failures.

This extended *paralepsis*, stating in such detail what was not relevant to the immediate decision, only reinforces the idea that the minority had eventual accountability in mind.

So let us assume that the minority would want to continue blaming the majority for the consequences of its policies. The minority would thus have an incentive to create the conditions, now, that would help them hold the majority to account, later. To some extent, this could be achieved through an institutional mechanism: the roll-call vote, during which each member of the majority would have to openly commit himself to the resolution. If they could rely on this mechanism, the minority, too, would have little incentive to waste time on talk. Still, looking forward the minority could reasonably expect certain difficulties to arise when they would try to hold the majority accountable. In particular, it was likely that members of the majority would try to wiggle out of responsibility by making an excuse, claiming something like "I couldn't have known." The course of a war is of course difficult to predict. So a member of the majority might say that he could not reasonably have foreseen the casualties or costs involved.

It was up to the minority, therefore, to adopt strategies which would limit in advance the future "deniability"—or, better "excusability"—of the majority's decision. One such strategy would be to demonstrate that certain events were reasonably foreseeable, by openly reasonably-foreseeing them. Along these lines, several members produced evidence supporting the prediction that the costs of war and its aftermath would be high:

We do not have perfect foresight and we do face uncertainty . . . but I think we are facing at least, count them, eight certainties or near certainties. No. 1, if we go to war a minimum of 18,000 U.S. casualties, 3,000 dead if fighting does include a ground war, which many say we will have to and it could go far higher. One credible estimate capped it at 45,000 American casualties, and about a fifth of those would be deaths. If we vote yes tomorrow, thousands of young Americans will spend the rest of their lives in hospital beds and wheelchairs with shattered hopes and shattered dreams. That is cost No. 1 and certainty No. 1 (H252).

For those who do not have the patience for peaceful resolution of conflict, I again ask, what if we win? We were told that we must go to war to insure the stability of the region. Can anyone who supports Solarz-Michel guarantee that war will insure stability, or will it lead to further chaos in that region? (H258)

Notice that for the minority's strategy to work, it was unnecessary to make a *case* for such predictions, demonstrating, say, that the preponderance of the evidence supported the claim that casualties would be high. Instead, the minority only had to show that there was *some* reason to expect casualties—or even just to legitimately *ask* about casualties—and thus that the majority could have expected them; this accounts for the "thinness" of the argument, noted in section 1 above. These and similar "thinly" reason-based predictions would be enough to lay the groundwork for the minority to say eventually, "I told you so."

The minority could reinforce these predictions with sharp criticisms of the majority's decision-making process. In general, many excuses arise because we are willing to forgive difficulties that arise because of the ineliminable weakness of our deliberations: our innocent mistakes of fact, our inevitable ignorance of some relevant circumstances. The minority could limit such excuses by showing that specific weaknesses in the majority's reasoning were quite "eliminable." And if they were able to do this repeatedly, it would begin to suggest that the majority's reasoning was defective in general. The majority, the minority suggested, was not deliberating but engaging in a "race" (H273), "rush" (H257) or "headlong rush" (H263) to war. The reasons being given were (mere) "hours of rhetoric" (H263), issued "like so much buckshot" (H257). They were even "irrational statements" and "illogical rantings and ravings" (H274). By contrast, the minority's preferred policy, sanctions, was the "wiser and better" (H251), "more intelligent, rational decision" (H252).

So much for the minority's strategies. These strategies, or the expectation of strategies like them, created for the majority a strong incentive to begin to speak. The majority needed to articulate its reasons, both to turn aside present criticisms of their decision-making and to lay the groundwork for their future defense of it, should the war in fact go wrong.

The narratives of personal judgment already noted in section 1 of this paper would be one obvious line of defense. Many majority members detailed the process through which they had made up their minds, lending support to the idea that this process had been sound and even exemplary. Speakers acknowledged that the decision for war was the most "difficult" (H268), the most "important" (H256, H259, H263, H266), the most "significant" (H255), the "hardest and most painful and significant" (H251) of the speaker's career. It was therefore one that the speaker did "not face . . . lightly" (H264), but rather gave "the most serious possible consideration" (H268), even "anguishing over which side" to take (H267). In making up their minds, they affirmed that they had drawn from their own experiences: as parents who had lost children (H267), as soldiers in previous wars (H271), as victims of totalitarian regimes (H268), as children of the cold war period (H260), as representatives to the UN (H251), as visitors in the Middle East (H253, H260, H266). They also described the process through which they had sought information. Typical sources included constituents, especially those serving in the military (H269, H270, H271, H274), people who had escaped from Iraq or Kuwait (H254, H258, H271), foreign leaders (H254), the testimony before Congressional committees (H267), the present debate (H252), and in general "a number of informed sources available to Congress" (H254). As one member put it, "I have studied the issue closely; I have traveled to the Persian Gulf; sat through hours of Congressional Hearings and read widely on this issue. I have visited with the troops, with families of the troops, and with hundreds of other constituents" (H266). In some cases, the speaker portrayed himself as forced by the evidence to reach a decision for war almost against his will:

Mr. Speaker, this is not why I came here, to vote for war. Yet over the last several weeks, I have found myself at war with my own conscience. All my life I have decried violence and all who commit it. All my life I have been and I am a peacemonger. I opposed Vietnam and even Grenada. I oppose the death penalty. I do not think boxing is a sport. I am even against killing animals without purpose. Toy guns and war games have always been banned from my house.

I am a father who wants his children to grow up in a world at peace. The last thing that I came here to do was to participate in something that would injure someone or take the life of even one human being. But what am I supposed to do? (H271)

Such narratives of decision would serve to relieve the majority of blame for rushed or conspicuously faulty decision-making.

The majority also needed to respond to the minority by dealing with their predictions about the reasonably foreseeable negative consequences of the decision. Occasionally, majority members proceeded by claiming that no reliable predictions could be made; "we cannot know anything in the future for a certainty," one explained, "but leadership is about making hard decisions when the facts are not all clear, when the outcomes are uncertain" (H267). Most commonly, however, the majority responded by specifying and offering reasons for the consequences they *did* foresee, and offering their reasons why. In particular, all but five of the 29 members of the majority maintained that the resolution would allow the President to make a credible threat of war, which, in combination with other factors, would likely, or at least

hopefully, be sufficient to induce Iraq to withdraw from Kuwait. Several members presented this prediction specifically as an interpretation of what the resolution or decision itself "was" or "was about"—i.e., as what was intended by it. For example:

Mr. Speaker, contrary to much of the rhetoric we've been hearing during this debate, this is really not a decision about war. What we are debating, and what we will be voting on tomorrow, is whether or not this House is going to allow President Bush and the international coalition he has lined up against Iraq, to credibly threaten the use of military force if necessary (H256; see also H250, H251, H254).

Members went on to give reasons why the threat of force was necessary and likely to be effective. Many narrated the events of the preceding months, during which sanctions and diplomatic efforts had produced few results. Given his peculiar psychology, others suggested, Saddam Hussein would be persuaded only by a show of force:

At this point in our dealings with Saddam Hussein, we have learned one thing about him—he is unpredictable. World opinion lined up against him doesn't seem to affect him. Economic sanctions don't seem to affect him. Talking with him doesn't seem to sway his opinion. The only thing that seems to affect him is threat of the use of force. By voting against the Solarz-Michel resolution, we are cutting off the one weapon that we have that seems to scare this man. The threat of the use of force seems to be our last best hope to remove Iraqi forces from Kuwait without the actual use of military force. Perhaps ironic but true, the threat of immediate war is our last chance to avoid war (H265; see similarly H269, H272).

And similar "lessons" were drawn from history (H253), for example:

It is not new either in history or in recent times that the threat of force was used to keep the peace. The most obvious example is the creation of NATO following World War II. Through the use of this organized threat of force, Europe has now enjoyed the longest period of peace in history. Second, the decision by this Congress and the Reagan administration to upgrade the quality and size of our nuclear forces during the 1980's has resulted in the most comprehensive and dramatic series of arms control treaties ever, resulting for the first time in actual reduction of nuclear weapons on both sides (H270)

Where the minority had stressed the foreseeable costs of going to war, the majority thus laid out a specific vision of the future in which peace would be obtained by backing diplomatic efforts with a threat of force. Presumably, if Iraq did not withdraw from Kuwait as predicted, the responsibility for the ensuing war would be its responsibility—or so the majority could argue.

To sum up: According to my reconstruction, the minority hoped to limit the majority's ability to evade responsibility for the negative consequences of their decision by showing those consequences to be reasonably foreseeable in advance. Indeed, according to the minority, the

majority's apparent failure to take these and other factors into account suggested deep flaws in their decision-making process. The majority members responded to these threats with explicit defenses of their decision-making, and by laying out and demonstrating reasonable the consequences they indeed foresaw.

Notice, now, that in carrying out its strategies, the majority members were induced to put on display the strength and depth of their commitment to the decision, a decision whose precise contours they also made more explicit. But these two—commitment and determinate plan—are just the conditions which allow us to ascribe an intent to the majority, collectively.

The fact that the deliberations are organized to allow every member an opportunity to speak, and the fact (noted already in section 1) that many of the statements are quite repetitious, only makes the ascription more secure.

Further, since Congress is authorized to adopt laws for the nation by (in general) a majority vote, the majority's collective intent can be taken also as the legislative intent, and indeed "our" intent—the intent of the United States.

That the minority's strategy should force the conditions for ascribing a collective intent is perhaps not surprising. The minority wants to be able to hold the majority responsible for the consequences of what they deem a bad decision. The majority wants to be able to evade such responsibility. Paradigmatically, a person is responsible for what he intends. The majority can thus try to manage their potential responsibility by focusing their evident intent: narrowing its manifest range, while intensifying their conspicuous commitment to it.*

I have tried to show, or at least suggest, that collective intent is both the empirically supported and pragmatically plausible outcome of the Congressional deliberations over starting the first Gulf War. Is this, however, what the participants in the transaction thought they were doing? I turn now to consider the evidence of the metadiscourse.

2.2 The participants' own understanding.

There are some concepts taken up in argumentation theory that are also deployed by skilled arguers to explain and defend their own activities. The concept of "issue" is a good example of this (e.g., Goodwin, 2002), as is the concept of "argument" itself. The concept of "collective intent" is not. Nevertheless, as I will show here, when participants in the deliberative transaction talked explicitly about what they were doing, they did adopt two vocabularies closely related to the themes developed above: vocabularies of responsibility and of communicated resolve.

I have argued that the ascription of collective intent is a product of the interaction of strategies for managing responsibility. The participants themselves appear to have accepted this

* In fact, something like this account might be psychologically plausible for the formation individual intents as well. We perhaps form our intents most carefully and even most cunningly, when we are most likely to be held responsible for their outcomes.

characterization, with members on both sides speaking of the deliberative process as one which would make them responsible for the consequences. As one member put it,

In casting our votes, we are making ourselves accountable for the lives and well-being of hundreds of thousands of young American men and women in uniform (H250).

Another acknowledged that all members needed to be "ready to bear the burden for such decisions. . . . [to] vote our conscience today and live with the results of our action" (H270). More poetically, the same thought could be expressed by imagining the presence of those to whom the members would have to account:

I weigh my words not alone by how they will be viewed by my constituents today, but also by how they will be viewed by my grandchildren tomorrow (H252).

Mr. Speaker, I will not cast this vote with any sense of joy. I tremble at the thought of playing God and having to cast it. The only thing I fear more would be sitting on the rocker on the porch, if God grants me the years to reach retirement, and having some little girl who hopefully would look a little like her grandmother, look at me and ask, "Grandpa, why didn't anyone stop him?" (H272)

Adopting an even longer view, two other members inverted Lincoln's famous phrase and accepted that "the world will long remember what we are about to do" (H263, H271; see similarly H253).

These members were displaying some awareness of the role of deliberation in producing responsibility. Other comments indicated an even more pronounced awareness of the role of deliberation in producing a commitment to action that would be manifest to others and allow them to coordinate their actions appropriately. Several members expressed this idea through the amusing notion that Saddam Hussein was watching the Congressional deliberations on CNN (H260, H261, H262, H267). It was therefore necessary to "send a clear and unmistakable message" (H252; see also H255, H267, H268, H270) or "a very clear signal" (H263; see also H255, H258, H269, H270) that would communicate to Saddam "our resolve" (H260; see also H259), "our seriousness" (H252), "our collective strength" (H260), "unity" (H255), "commitment" (H255; see also H263), "will to resist" (H267) or ability "to act forcefully" (H255). This communication, the members thought, could influence his thinking. If Congress failed to manifest resolve, Saddam would feel secure:

I believe the best chance of peace is by being strong, and if we send a message to Saddam Hussein that we do not know what we want to do, that maybe sometime in the future the United States Congress will reach out and give a resolution to the President authorizing him to use force, he will never leave Kuwait. He is resolved that we do not have the resolve to resist his aggression, and that he watches CNN as has been stated, and he hears the discussion and he does not believe that this

Congress or the American people have the will to resist aggression after Vietnam.
(H267)

By contrast, passage of the resolution "should open his eyes to our seriousness and provide the last best chance for a peaceful Iraqi withdrawal from Kuwait" (H252).

In addition to Saddam, the coalition allies were another audience hypothesized by the members; for example:

Mr. Speaker, I wonder what our allies around the world would think; I wonder what our credibility would be? I wonder what we could expect from our allies in the future if after the United States implores them, to go on record in support of a particular position the Congress turns its back and votes to the contrary. Where would our leadership be? Where would our credibility be? The possibilities boggle the mind (H256; see also H264, H266).

Indeed, several thought the entire world was looking on:

Mr. Speaker, events across the globe cause us to gather here today to literally determine the course of human history. For what Congress does today serves as a message to not only Saddam Hussein, but to the world: A message that demonstrates our concern as Americans, our commitment as individuals, and our resolve as a people (H254; see also H252, H264).

And one combined all these various views:

So now why, today at the 11th hour, when the successful resolution of this grave world disorder is at hand, are we here at all? How satisfied and gleeful must Saddam Hussein be as he observes these proceedings, which are, with variations, mouldy rehashes of two centuries of the same endless debate. What must our coalition comrades think as they observe us possibly voting to wait and not wait, authorize and deny, fight and not fight, all at the same time! And what must the American people think of this possible paradox? (H267)

All these invocations of audiences to the deliberation suggest the participants' consciousness that their deliberations would display, or fail to display, a commitment to a plan in a way that other actors would take into account in deciding their own actions. Or to re-frame this in technical terms, the participants were demonstrably aware that their deliberations were supposed to achieve a key function of an intent: coordination.

3. Towards norms for deliberative institutions.

I have tried to show that deliberative transactions of at least one sort may reliably create the conditions under which a collective intent can be ascribed to the majority adopting a policy, and through them, to the nation as a whole. I've sketched how this model provides a plausible

reconstruction of the first Gulf War debate, and put forward some evidence that it was a model that the participants themselves were using to understand their activity. I now want to step back and ask whether this model of deliberative transactions might help us say anything interesting about the social-institutional environments for deliberation. So taking up the perspective of a designer of social-institutional frames, i.e., constitutions, let me ask first why we might want to make sure that the conditions for ascribing a collective intent regularly occur. There are at least four reasons why such ascription might be useful:

First, as already noted, those executing a policy find it useful to know the legislative intent so as to be able to follow it.

Second, as recognized by the participants in the deliberations, other actors' understanding of our collective intent will allow for better coordination of policies.

Third, the deliberative transaction through which the conditions for ascribing the intent is formed may have an effect---albeit indirect---on the quality of the decision being taken. In the sort of transaction I have sketched, the majority is free to vote in any policy they wish, for whatever personal reasons. The determinate plan they openly commit to in the course of the debate could be just a rationalization whipped up to put on a good show. But to borrow an argument Isocrates once made, in the long run the best way to look good, is to be good. The easiest policy to defend in the future will be the one that in fact produces the best outcome. If the eventual costs of being blamed are high enough, the majority will be under some pressure to take responsibility only for a plan that will work.

Finally, I want to suggest that the possibility of ascribing something like an intent to collective actions is a necessary condition for securing and maintaining the loyalty of citizens to them. Anscombe (1957) pointed out that an intention is a special sort of knowledge of our own actions. Given the diversity of perspectives among citizens and the complexity of civic affairs, this sort of collective self-knowledge may be difficult to attain. For example, to know *that* we are going to war is not yet to know *what* kind of war we expect it to be. But it is only if we know *what* we are doing that we can maintain our resolve to do it, or figure out (say) whether we've won. Indeed, it is only if we know *what* we are doing that we can even consider giving it our allegiance. If this is the case, then any legitimate constitutional arrangements must provide some mechanisms for creating the conditions in which citizens are able to ascribe collective intent to the actions of the "us" in which they take part.

Assuming then that as designer of constitutions we want to promote the conditions in which a collective intent can be ascribed, what should we do?

The majority is induced to openly commit themselves to a determinate plan when faced with the minority's attempts to restrict their future excuses. The minority adopts that strategy because they expect it to help them hold the majority responsible, once the policy fails. If we want to make transactions of this sort possible, therefore, what we constitutional designers need to do is to make sure the minority's expectation of future accountability is a reasonable one. Unless there is a realistic possibility of holding the majority responsible, the minority will have no incentive to try to limit the majority's wiggle room, nor the majority to reply. To promote

deliberative transactions of the sort I have sketched in section 2 we therefore need to ensure that the majority making a decision can in fact be held accountable if it goes wrong.

What do we need to do to ensure that the majority can be held accountable? I will propose three "norms" or desiderata for constitutions: a principle of free speech, some institutions for accountability, and an education for citizens.

No democratic theory has much trouble in endorsing freedom of speech. The difficulties come in when trying to specify the central or paradigmatic case that deserves protection. If we want to allow for accountability, one form of speech we will want to protect is that which starts accountability happening: criticism of those with the power to make decisions. There is a long tradition of taking affronts to the rulers as the central case of free expression. When Cicero took an aside in one defense oration to speak of the vaunted Roman *libertas*, he told stories of lower-class citizens who questioned, challenged, and even made fun of their superiors (*Planc.* 33-35). Likewise, the United States learned its first lesson about free speech through repenting of the Alien and Sedition Acts, which had jailed Matthew Lyon (among others) for charging that "under President Adams, 'every consideration of public welfare' was 'swallowed up in a continual grasp for power, an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice'" (Stone, 2004, p. 20). To ensure that the majority can be held accountable, we will want to secure protection for accusations, complaints, criticisms and grumblings like these. As noted first amendment theorist Harry Kalven put it, "the absence of seditious libel as a crime is the true pragmatic test of freedom of speech" (1965, p. 16).

Free speech can start the process of accountability off; a second desideratum would be the presence of institutions which could bring it to completion. When policies go wrong, there must be mechanisms for assigning responsibility and imposing punishments. The constitution of Athens actually allowed criminal lawsuits to be brought against politicians who had initiated bad laws. The complexity of contemporary decision-making and the need to encourage independence and initiative have probably rendered that option unavailable; legislators now are recognized to have exceptional immunities against prosecution. As a substitute, we might want to reconceive elections as mechanisms not so much to select who will rule, but to punish by unselecting those rulers who are responsible for ill consequences. We will need, further, some method for ensuring that those responsible for a policy maintain an "identity" through time, so that there is an entity around to be punished if it goes wrong. The party system is one way to accomplish this. While individual legislators come and go, the party endures.

But even the best institutional mechanisms will work only if people care to use them. A final constitutional desideratum is thus a system of education that will form citizens of a certain sort, namely irascible. For the system to work, people have to get mad when things go wrong and go on to blame those responsible. They have to be litigious. To ensure this, citizens will have to be brought up to have a sense of self-worth, knowing that they don't deserve such treatment; a sense of hope, believing that policies are not inevitably bad; and a sense of trust, expecting legislators to do better. If by contrast they take themselves to be of no account, collective decisions to be always perverse, and those in power always corrupt, they will likely just lump it when things go wrong. How a constitutional designer is to train up irascible citizens I can't say, although I doubt it will be through the promotion of choral singing.

A special protection for speaking bad things to power, mechanisms for throwing the bastards out, and a citizenry ready to sue; undoubtedly this brief list misses other constitutional desiderata which would help maintain an environment in which the minority can reasonably look forward to holding the majority to account. Philip Pettit's work on *Republicanism* (1997) might suggest more. He proposes a "contestatory" theory of democracy, in which laws are legitimate not because they are consented to by all, but because they can be challenged—a posture which resonates well with the themes here. Still, even this short list may cast an interesting light on contemporary institutions. For one thing, this perspective might change some of our common perceptions about the health of our deliberative process. Negative campaigning, for example, is often taken as an unfortunate departure from what should purportedly be the norm: a public-spirited debate over the community's future. On the view I have developed here, by contrast, this sort of obsessive focus on past wrongs plays a necessary part in making deliberation work.

Let me close with another contrast: between the "practical rationality" view I have developed here and the "epistemic" or "theoretical rationality" view of argument with which I began this paper. That "unified theory" offers social-institutional, transactional and logical perspectives on argument that make central the way argument (ideally) forms a common knowledge, or at least mutual understanding, of a proposition's goodness. Here I have sketched (partial) social-institutional, (more complete) transactional and (quite fragmentary) logical perspectives that make central the way deliberative argument (ideally) forms a collective intent to act. From this point of view, the consensus the "epistemic" view wants to achieve would be unfortunate, since in the absence of open and enduring disagreement, deliberators will have little incentive to openly commit themselves to determinate plans. Indeed, there would seem to be a trade-off between common agreement and collective intent. I have suggested that a "we" can be said to *mean* something, in part because we don't agree about it; and perhaps we can only agree on something, if we don't really mean it. I suspect we want both, intention and knowledge—and I wish us luck. Meanwhile, at a minimum, I would propose that theorizing of argument should proceed by recognizing the importance of managing both truth and responsibility.

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