

“Argumentative Hypocrisy and Constituent Debates”

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Argumentative Hypocrisy and Constituent Debates

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The process of constitution-making can illuminate two types of speech acts: **arguing and bargaining**

- the matters that have to be decided are far removed from petty, self-interested, routine politics
- constituent assemblies are often more polarized than ordinary law-making bodies

[Elster 2000]

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«Rational argumentation on the one hand, threats and promises on the other, are the main vehicles by which the parties seek to reach agreement. The former is subject to criteria of *validity*, the latter to criteria of *credibility*»

[Elster 2000]

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The role of rational argument

- “Validity claims”
 - propositional truth
 - normative rightness
 - Sincerity
- “Types” of arguments
 - Consequentialist: “appeal to overall efficiency”
 - Deontological: “appeal to individual rights”.

[Elster 2000]

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- The two original Habermasian commitments to truth and impartiality can coexist with a *strategic* use of impartiality and sincerity: “a strategic uses of purportedly non-strategic argument”.
- Even he actors whose concerns are purely self-interested may be forced or induced to substitute the language of impartial argument for the language of self-interest;
 - *civilizing force of hypocrisy*

[Elster 2000]

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Threatbased bargaining

- Extra-parliamentary resources - money, manpower, and foreign allies ;
- Parliamentary resources: vote-trading or logrolling, strategic use of the institutional framework.

[Elster 2000]

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Strategic actors may also find useful to substitute truth claims for credibility claims.

“Instead of making a threat whose efficacy depends on its perceived credibility, they may utter a warning that serves the same purpose and avoids the difficulties associated with threats”.

Threats, “are statements about what the speaker will do”, while warnings are statements “about what will (or may) happen, independently of any actions taken by the speaker”.

[Elster 2000]

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Third type of “speech acts”:
rhetorical statements aiming at persuasion

[Elster 2000]

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- Arguing - “reason speaks to reason”
 - “rational argumentation”
 - strategic use of impartial arguments
- Bargaining - “interest to interest”
 - negotiations based on threats,
 - negotiations based on warnings.
- Persuading - “passion to passion”

[Elster 2000]

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- Assembleia Costituente (1946-1948)
 - constitutional compromise
 - tensions inherent in the antifascist parties: christian democrats, social-communists, liberals
 - political clash – 1948 general elections
 - civil war
 - foreing intervention

[Damele 2016]

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- Internal procedural rules - The following issues can arise
 - It may decide to create one or several subcommittees to prepare a draft of the constitution or to discuss special issues.
 - It must decide whether to proceed in closed sessions or open the debates to the public. If the sessions are closed, it must decide whether to inform the public about the proceedings or keep them secret.

[Elster 2000]

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- **Assemblea Costituente (1946-1948)**
 - Constitutional Commission divided into three sub-commissions:
 - ✦ Rights and Obligations of the Citizens, chaired by Umberto Tupini (DC)
 - ✦ Constitutional Organization of the State, chaired by Umberto Terracini (PCI)
 - ✦ Economical and Social Relationships, chaired by Gustavo Ghidini (PSI)
 - “Committee of the 18”: charged of writing the draft of the constitution in accordance with the work of the three sub-commissions.

[Damele 2016]

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- Subcommittees
 - make it possible to have preliminary votes that did not commit the delegates to premature decisions
 - the committees favor “cool reason and experience,” by detaching the members from everything that could stimulate their vanity and fear of disapproval (Mounier – Assemblée Constituante)

[Elster 2000]

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- Closed sessions (ex. Federal Convention)
 - There is little risk of being prematurely locked into one opinion – [at the Federal Convention] the fear was that the pride and vanity of the delegates, as well as pressure from their constituencies, might prevent them from backing down from an opinion once they had expressed it.
 - another effect of secrecy- that of pushing the debates away from argument and towards bargaining

[Elster 2000]

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- Public sessions (ex. Assemblée Constituante)
 - The norm against expression of self-interest are stronger.
 - A public setting encourages the use of precommitment through principle, with the larger audience serving as a resonance board for the claim and making It more difficult to back down.

[Elster 2000]

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«This difference between the two assemblies is reflected in the debates. Many of the debates at the Federal Convention were of high quality: remarkably free from cant and remarkably grounded in rational argument. By contrast, the discussions in the Assemblée Constituante were heavily tainted by rhetoric, demagoguery and overbidding. At the same time, the Convention was also a place where many hard bargains were driven, notably the deal between the slave holding and the commercial states.»

[Elster 2000]

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Political compromise. [Einaudi 1948]

- Article 7: “Lateran Treaties”
- (political) Independence of the Constitutional Court – a defeat for the Communists
- Christian Democratic retreat from a corporativist and regionalist model, which can be viewed as a victory of the liberals
- Christian Democratic defeats: the final constitutional text no longer proclaimed the indissolubility of marriage.

[Einaudi 1948]

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- Characteristics
 - bargain conducted resorting to internal and external resources.
 - ✦ Logrolling [internal resources].
 - Threats / warnings
 - ✦ Direct threat to withdraw from the commission or the warning to cause a secession in the commission.
 - Strategic use of the rules of the Assembly.
- Arguments
 - “impartial” arguments

[Elster 2000]

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- Art. 29 of the Italian Constitution

“The Republic recognizes the rights of the family as a natural society founded on matrimony”

“Matrimony is based on the moral and legal equality of the spouses within the limits established by law to guarantee the unity of the family ”

[Damele 2016]

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First Subcommission

- Giuseppe Dossetti: “for us, the issue we are debating [indissolubility of marriage] is the most fundamental issue of the Constitution”
- Philosophical, consequentialist (based on “the unity of family”), and “scientific” reasons for defending its indissolubility.

[Damele 2016]

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“the Communists called in the authority of George Washington and relied on Benjamin Franklin to weaken the argument for an upper chamber, while the Christian Democrats quoted at length the authority of Stalin to support the thesis that the two chambers had to be of equal power”

[Einaudi 1948]

Arguing, Bargaining and Persuading

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