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# “Those states ... will hardly adopt them”: On a fallacy in political discourse in the summer of 1789

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“Those states ... will hardly adopt them”:  
On a fallacy in political discourse in the summer of 1789

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**ABSTRACT:** A type of *ad socordiam* is identified in its context, with data from debates on the Bill of Rights in 1789. The fallacy involves a hidden intention as a salient feature. The study examines the question of how inferences can be made about hidden intentions. Further, it examines the relation of the fallacy identified to another type of *ad socordiam*.

**KEYWORDS:** *ad socordiam*, deceptive communication, James Madison, second order intention

## 1. INTRODUCTION

Freedom of speech is probably the most outstanding feature of American culture and society today. It is not necessarily a static concept, but at its core it means that it is possible for citizens of a country to criticize those in power in the country without having to fear reprisals or criminal prosecution.

It is the First Amendment, more than any other single law or document, that serves to safeguard freedom of speech in the United States. Here is the text of that Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance. (Article 1 of the Federal Bill of Rights, as promulgated on December 15, 1791; Rutland 1983: 243)

The First Amendment makes possible the free discussion of political and other ideas in the United States today. But it also promotes the free flow of information elsewhere. Citizens of other countries may not be able to publish information that is unorthodox in some way or that is critical of those in power in their own countries, for fear of reprisals from their political masters, but information and opinions can be published in the United States, under the protection of the First Amendment. And those outside of the United States may have access to information by taking advantage of freedom of information in the United States. To illustrate, here is a comment made by Bernard Levin writing in the London *Times* in 1991:

... that splendid organization, the Campaign for Freedom of Information, has just revealed disturbing facts about the tests for pollution from pharmaceutical plants in Britain—a matter, surely, that potentially concerns us all. Not so; the Campaign’s revelation is prohibited on pain of two year’s imprisonment. But the Campaign’s leaders will not go to chokey; they got the information from the United States Freedom of Information Act, not from Britain. Americans, you see, are trusted by their government; we are not fit to know whether we are going to be poisoned.

The Campaign has revealed a wide range of such British information garnered from America; this month's broadsheet is devoted to the subject and readers will begin to think they are hallucinating, so ridiculous and so scandalous are the things Americans can tell us that we cannot be told by our own governors. (Levin 1991: 14)

Given the importance of the First Amendment at the heart of American politics and American society, it is of interest to inquire into the question of how it came to be enacted and whether there was opposition to it at the time when it was proposed.

There was indeed a considerable amount of opposition, and the opposition should be understood in the historical context. When the first Congress met in the spring of 1789, the two political 'parties' were the Federalists and the Antifederalists. The former tended to be cool towards amending the Constitution and including a Bill of Rights in it. After all, the Constitution had been in effect for a very short time only. There was also a deeper reason for Federalist opposition to amending the Constitution. A basic tenet of Federalists was a belief in a strong Federal or central government, and it was feared that Bill of Rights might have undermined some of the powers of the Federal Government. Most of the delegates to the Constitutional Convention in Philadelphia in the summer of 1787 were Federalists, and when there was an attempt to include a Bill of Rights in the new Constitution, it failed decisively at the Convention.

After the Constitutional Convention some Federalists moderated their opposition to amending the Constitution. Here it is important to make a distinction between two kinds of amendments, procedural and structural. Procedural amendments were amendments designed to safeguard the rights of individual human beings, and freedom of speech was a prototypical example of such a right. Structural amendments, by contrast, were amendments designed to change the newly created Constitution so as to diminish the power of the Federal government in favor of States' rights.

In the aftermath of the Constitutional Convention, Antifederalists generally supported both types of amendments. As for Federalists, structural amendments were anathema to them, but some of them were ready to support procedural amendments. Here is how Bowling has summed up the positions of the two parties at the time of the elections for the first House of Representatives in the winter of 1788/9:

... while some Federalists, when pressed, supported amendments, the Antifederalists promised to fight for them and constantly brought them up as an issue they knew the Federalists wished to avoid. (Bowling 1990: 128)

A crucial contest took place in District 5 of the State of Virginia. There James Madison, a Federalist at the time, ran against his friend James Monroe. In an appeal marked as "c. January 1789" in DenBoer et al. eds. (1984, 128), the latter expressed clear support for amendments. For his part, James Madison, who had not favored a Bill of Rights at the Constitutional Convention, now also endorsed provisions to safeguard essential rights:

The Constitution is established on the ratifications of eleven States and a very great majority of the people of America, and amendments, if pursued with a proper moderation and in a proper mode, will be not only safe, but may serve the double purpose of satisfying the minds of well meaning opponents, and of providing additional guards in favour of liberty. Under this change of circumstances, it is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it, ought to prepare and recommend to the States for ratification, the most satisfactory provisions for all essential rights, particularly the

## ON A FALLACY IN POLITICAL DISCOURSE

rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants &c. (DenBoer et al. eds. 1984: 331)

Madison was elected, and, overall, Federalists won the elections, obtaining a clear majority in the House over Antifederalists. In the new Congress, Madison, still a Federalist, quickly became the chief protagonist for a Bill of Rights. On June 8, 1789 he moved that the House of Representatives go into a Committee of the Whole on the State of the Union in order to consider amendments. His motion led to an intense and protracted debate. In the course of the debate Madison outlined his proposals for amendments, but the substance of the debate did not concern the content of the amendments. Instead, it was focused on the procedural question of whether or not to consider amendments at all at that point in time or in a timely fashion. In the course of the debate the proposal was made to postpone any further discussion till the following spring. The subject was referred to a Committee of the Whole on the State of the Union.

Madison raised the subject again on July 21, 1789, and there was another procedural debate on the question of whether or not to consider amendments. The subject was referred to a select committee. On August 13, 1789, the House of Representatives finally decided, after a vote, to accede to Madison's motion and to consider amendments.

After the procedural hurdle had been cleared, the House worked expeditiously and drafted its proposals in a few days. With hindsight it is possible to say that the procedural discussions were crucial in that it was in those debates that the entire fate of the project hung in the balance.

In earlier work I have offered a detailed examination of one argument used in the procedural debates in the summer of 1789 (Rudanko 2005a, developed further in Rudanko 2009). This was the proposal made by Representative James Jackson, Federalist of Georgia, that the House of Representatives should postpone any discussion of amendments till March of the following year. The stated rationale of that proposal was that the Government should be put into operation, and that the Constitution, newly adopted, should be examined by experience before any attempt was made to alter it. The conclusion was that fallacy theory provides a suitable framework for investigating the argument and that the argument was an example of a type of informal fallacy.

The present study takes up another argument from the procedural debates of 1789, put forward by Roger Sherman. It is again argued that fallacy theory lends itself as a theoretical framework for examining the argument.

The interpretation of the concept of a fallacy adopted here proceeds from a normative notion:

It is customary in the study of logic to reserve the term "fallacy" for arguments that are *psychologically* persuasive but *logically* incorrect; that *do* as a matter of fact persuade but, given certain argumentative standards, *shouldn't*. We therefore define "fallacy" as a type of argument that *seems* to be correct but then proves, on examination, not to be so.

(Copi and Burgess-Jackson 1996: 97)

A more specific working definition is given in Rudanko (2005a: 725):

A fallacy is a tactic or an argument of a counter-constructive or deceptive nature used by a speaker in an attempt to prevail over an opponent in a dialogue.

This definition of an informal fallacy has two main features. One of these has to do with the perlocutionary effect of such an argument: the speaker puts it forward to prevail over his or her opponent. “Prevailing over an opponent” should be viewed in a broad sense, as including persuading the interlocutor to adopt the speaker’s point of view.

The other key part of the definition is the notion of counter-constructiveness. This may come about in two ways. First, an argument that “fails to establish the conclusion ... may still be used to cut off or impede the proper unfolding of a dialogue” (Rudanko 2001: 52). Second, the counter-constructiveness of an argument

... may also involve a deliberate attempt on the part of the speaker to follow a hidden agenda and to mislead his or her interlocutor about his or her true aims and motives. . . . The speaker may in this case be characterized as non-cooperative and deceptive, for a cooperative speaker can be expected to indicate the objectives that he or she has in mind when proposing a certain course of action. (Rudanko 2001: 52 f.)

Underlying the idea of counter-constructiveness is the normative notion that certain standards of adequacy can be expected to obtain in argumentative discourse in a legislative body. In particular, a “participant proposing a certain course of action should be candid about his or her motives, that is, about what he or she wishes to achieve with the proposal” (Rudanko 2005b: 56). It is this type of counter-constructiveness that was argued in Rudanko (2005a) to be relevant to the type of *ad socordiam* considered in that study. (In Rudanko (2009) the type in question was termed the “fair-trial” *ad socordiam*.) The same type of counter-constructiveness is also relevant to the type of *ad socordiam* considered here.

The fallacy of *ad socordiam* is conspicuously absent from many recent treatments of informal fallacies. A reason for this neglect may be traced to a position that has been spelled out by van Eemeren and Rob Grootendorst as follows:

Of course, a person may have all kinds of motives for adopting, questioning, rejecting, defending, or attacking a particular standpoint in a particular manner, but the only thing that person can really be held to is what he or she has, whether directly or indirectly, said or written [note omitted, JR]. That is why it is not the internal reasoning processes and inner convictions of those involved in resolving a difference of opinion that are of primary importance to argumentation theory, but the positions these people express or project in their speech acts. Instead of concentrating on the psychological dispositions of the language users involved in the resolution process, we concentrate primarily on their *commitments*, as they are externalized in, or can be externalized from, the discourse or text.

(van Eemeren and Grootendorst 2004: 54; *emphasis in original*)

The position expressed in the paragraph is certainly a coherent one and may be used for certain purposes. However, in this paper I am arguing that it is also possible to adopt a broader perspective and to hold that the inner convictions and motivations of speakers are of significance to the study of informal fallacies. It would be hard to study deception if one were not to go deeper than what is expressed on the surface in the context of a particular debate.

The fallacy of *ad socordiam* is certainly very prominent in Jeremy Bentham’s work on political fallacies. In fact, he identifies two types of *ad socordiam*. Here is what he writes about one type of *ad socordiam*:

## ON A FALLACY IN POLITICAL DISCOURSE

This is the sort of argument which we so often see employed by those who, being actually hostile to a measure, are afraid or ashamed of being seen to be so. They pretend, perhaps, to approve of the measure; they only differ as to the proper time to bring it forward. But only too often their real wish is to see it defeated forever. (Bentham, [1824/1952] 1962: 129)

Here is Bentham's take on another type of *ad socordiam*:

Suppose that there are half a dozen abuses which equally and with equal promptitude stand in need of reform. This fallacy requires, that without any assignable reason save that which is contained in the pronouncing or writing of the word "gradual," all but one or two of them shall remain untouched. Or suppose that six operations must be performed in order that some one of the abuses should be effectually corrected. To save the reform from the reproach of being violent and intemperate, and to secure for it the praise of graduality, moderation and temperance, you insist that, of these half-a-dozen necessary operations, some one or two only shall be talked of and proposed to be done. One of them is to be embodied in a bill to be introduced at this session if it be not too late (which you contrive that it shall be), and another at the next session, which time being come, nothing more will be said about the matter, and there it will end. (Bentham [1824/1852] 1962: 131 f.)

Bentham's treatment would have been even more helpful if he had considered concrete illustrations, but he deserves credit for having drawn attention to the importance of *ad socordiam* as a central fallacy, especially in political rhetoric and for having made the point that there are different types of *ad socordiam*. The present study aims to shed fresh light on *ad socordiam* by presenting an example of it.

### 2. ON AN ARGUMENT AGAINST CONSIDERING A BILL OF RIGHTS

Among the speakers responding to Madison's call for the consideration of amendments in the debate of June 8, 1789 was Roger Sherman. Here is part of what he said:

... amidst all the members from the twelve States present at the Federal Convention, there were only three who did not sign the instrument to attest their opinion of its goodness. Of the eleven States who have received it, the majority have ratified it without proposing a single amendment. This circumstance leads me to suppose that we shall not be able to propose any alterations that are likely to be adopted by nine States; and gentlemen know, before the alterations take effect, they must be agreed to by the Legislatures of three-fourths of the States in the Union. Those States which have not recommended alterations, will hardly adopt them, unless it is clear that they tend to make the Constitution better. Now, how this can be made out to their satisfaction I am yet to learn; they know of no defect from experience. (Gales 1834: 448)

The same point was repeated by Roger Sherman in the second procedural debate of July 21, 1789:

Mr. Sherman.—The provision for amendments made in the fifth article of the Constitution was intended to facilitate the adoption of those which experience should point out to be necessary. This Constitution has been adopted by eleven States; a majority of those eleven have received it without expressing a wish for amendments; now, is it probable that three-fourths of the eleven States will agree to amendments offered on mere speculative points, when the Constitution has had no kind of trial whatever? It is hardly to be expected that they will. Consequently we shall lose our labor, and had better decline having anything further to do with it for the present. (Gales 1834: 661)

The argument was called the fallacy of "wasted effort" in Rudanko (2004: 42):

... while he [Roger Sherman, J.R.] did not make the consideration of amendments dependent on the prior agreement of some other body, he was saying that the chances of amendments being ratified were so slim that they would have been wasting their time if they had decided to debate amendments. The argument was not addressed to the content of the proposed measure, and if the rhetorical maneuver had been successful, the true sentiments of the House of Representatives regarding the content of the measure would never have been tested. Nor of course would it ever have been determined whether the requisite number of States might have ratified amendments. It is thus reasonable to regard his maneuver as a fallacy. (Rudanko 2004: 42)

What is proposed here is that the “wasted effort” type of *ad socordiam* is amenable to analysis on the basis of two sets of conceptual distinctions, in the same spirit as the type of *ad socordiam* analyzed in Rudanko (2005a).

The first distinction is between a first-order and a second-order intention. These concepts, as used here, are easy to define: a first order intention is an intention about the world, and a second order intention is an intention about a first order intention.

The second distinction is between an overt intention and a covert intention. An overt intention is an intention that a speaker wants to communicate or to highlight by saying what he or she says. A covert intention is an intention that a speaker wants to hide or one that he or she does not wish to highlight or draw attention to by saying what he or she says.

Using these concepts, it is possible to formulate the informal fallacy in the following terms:

- *Sherman’s first order intention, overt*: Sherman wanted to save time by ensuring that a sufficient number of States will ratify the amendments approved by the Congress before agreeing to consider amendments.
- *Sherman’s second order intention about the first order intention just formulated*: Sherman wanted to highlight the first order intention.
- *Sherman’s rationale for his proposal*: Sherman wanted to expedite the working of Congress.
- *Sherman’s proposal*: Let the consideration of amendments wait till it is clear that three-fourths of the States will ratify the proposed amendments.

However, taking into account Sherman’s implacable opposition to amending the Constitution, it is possible to claim that he in fact had a different agenda and a different first-order intention when he put forward his argument. Here is a representation of the second first-order intention:

- *Sherman’s first order intention, covert*: Sherman wanted to prevent amendments from being considered by claiming that the requisite number of the States would not ratify the amendments.
- *Sherman’s second order intention about the first order intention*: Sherman did not want to draw attention to this first order intention.
- *Reason or rationale on which the first-order intention is based*: Attitude of opposition to amendments.
- *Sherman’s proposal*: Let the consideration of amendments wait till it is clear that three-fourths of the States will ratify the proposed amendments.

It is thus claimed here that Sherman made his argument about saving time and effort not because he truly wanted to save time, but because he wanted to prevent amendments from being enacted. His argument, it is claimed here, was thus a way of attempting to persuade Madison that the whole business of amendments was a no-hoper, and that he was therefore only wasting his time, and the argument was put forward with the purpose of thwarting the project of amendments. As far as Bentham's categories of *ad socordiam* are concerned, the fallacy is of the first type.

There are at least three words in ordinary English that may potentially be used to describe the nature of Sherman's argument. These are *excuse*, *pretext* and *subterfuge*. The relevant senses of these are defined in the *OED* as follows:

*excuse*, That which is offered as a reason for being excused; sometimes in bad sense, a (mere) pretext, a subterfuge (*OED*, sense 2)  
*pretext*, That which is put forward to cover the real purpose or object; the ostensible reason or motive of action; an excuse, pretence, specious plea (*OED*)  
*subterfuge*, An artifice or device to which a person resorts in order to escape the force of an argument, to avoid condemnation or censure, or to justify his conduct; an evasion or shift. Chiefly of discourse, argument, debate, but also of action in general (*OED*, sense 1)

The senses are partly related, with one word defined on the basis of another. Of the three definitions, the first part of the definition of *pretext* captures best the nature of Sherman's argument as a fallacy, as interpreted here.

The question of the basis on which to make inferences about the intentions of a speaker, be it Roger Sherman over two centuries ago, or some more contemporary speaker, is methodologically important. Here it is worth quoting Allen Grimshaw's comments on a number of studies that have a focus on the "interactional agendas" of participants in interaction:

This [interest in interactional agendas, JR] leads to a focus on what I have called "disambiguation" [note omitted, JR] of participants' own interpretive and inferential practices and attribution, to participants, of goals (purposes, intentions). This last, i.e., attribution of purposiveness to participant behaviors, will be sharply criticized by those students of talk (e.g., conversation analysts) who argue that this implies the ability to "get into people's heads" and requires unwarranted inferences and claims. The researchers whose work is reported here do not contest the position that what is in people's heads is accessible neither to analysts nor to interlocutors (nor even, ultimately, fully accessible to those whose behavior is under investigation). I believe that most of them will also argue, however, that the availability of ethnographic context *and* of an optimally complete behavior record permits analysts to make such inferences and attributions which are "for-most-practical-purposes" (paraphrasing Garfinkel) no less plausible than those of actual participants. [note omitted, JR] This claim is subject to qualification but the disambiguation process is that which we ourselves employ in interaction – where, it must be conceded, we sometimes err. (Grimshaw 1990: 281)

Some scholars may want to deny participants in interaction have goals and purposes, or they may want to claim that such purposes are not worth investigating. However, such a stance flies in the face of common sense, and it would restrict the domain of investigation in an unwarranted way. On the contrary, it is important to recognize that speakers engaging in interaction are engaging in purposive behavior and that the attribution of purposes, goals, and intentions to participants is a legitimate object of investigation. Once the attribution of purposes to speakers is admitted as a legitimate object of investigation, it should also be recognized that speakers do not always want their purposes and motives to



be recognized by their interlocutors. That is, speakers may have purposes and agendas that they try to hide in the context of a particular debate. The study of such secret agendas and of the inner convictions of speakers that underlie secret agendas is also a legitimate object of investigation, and the examination of the speaker's behavior record is an avenue to making inferences about secret agendas. The presence of a secret agenda may often be linked to deception and to an informal fallacy.

A qualification should be inserted at this point. There are certain types of discourse where the inner convictions of speakers engaged in argumentative interaction do seem only of secondary significance:

For instance, at a trial in a court of law it is entirely appropriate in many cultures for a defense counsel to argue to the jury that the defendant is innocent, even when the counsel may be privately convinced that the defendant is guilty as charged. [...] There is no fallacy involved here, even though the defense counsel does not mention his or her "real" intention at all, which is to get the defendant acquitted, regardless of whether or not he or she is guilty or innocent. (Rudanko 2005a: 730)

It is important to make a distinction between cooperative and non-co-operative discourse. In the latter, as in the trial scenario sketched, expectations of co-operative behavior do not apply, and secret agendas and inner convictions of speakers are of little importance and do not give rise to fallacies. By contrast, a political debate where the participants are supposed to be promoting the common good of the community, they can be expected to reveal their motives and purposes when proposing a certain course of action.

The question of how to attribute covert intentions and purposes to speakers is not easy to resolve. Grimshaw's (1990: 281) point about an "optimally complete behavior record" is helpful, and at the root, the basis for inferences about covert intentions and purposes "involves the available record of the totality" of the person's behavior and the "situational and political context in which the behavior occurred" (Rudanko 2005a: 733). The task is then to make an assessment, in as fair and balanced fashion as possible, regarding what the weight of the evidence available suggests.

In the present case, the main reason for thinking that Sherman had a hidden first-order intention when he presented his argument and for thinking that his argument was a fallacy is his well-known and firmly held attitude of opposition to amendments. Sherman had been a member of the Constitutional Convention, where he vehemently attacked the proposal for a Bill of Rights, and he was one of the Federalists who had not wavered in the opposition to amendments. It is not for nothing that he has been called an arch foe of amendments.

It is worth adding that Sherman's biographer notes that Sherman composed an article against constitutional amendments in the spring of 1789 and in the course of the procedural debates in the House of Representatives in the summer of 1789 Sherman took steps to have the article published in selected newspapers in New England (Collier 1971: 297), that is, in the part of the country where support for a Bill of Rights was relatively weak. The article was published in *The Salem Mercury* in two parts, the first part on June 30, 1789, and the second part on July 7, 1789. The article contains praise for the new Constitution as it then stood without amendments, and it also contains this crucial passage, where Sherman comments on a Bill of Rights:

## ON A FALLACY IN POLITICAL DISCOURSE

Restraints in a Constitution upon the Legislature of a free State, are but an abridgment of the liberties of the people to make, alter and repeal laws, when the publick good may require it. Bills of rights, and charters of liberties, in England, were made to limit the prerogatives of Princes, and not the powers of the Legislature. (Sherman 1789)

Sherman's statement shows that he had understood the nature of the Federal Bill of Rights quite correctly, for it was, and what it is: a limitation on the power of the Federal Legislature. Sherman's reasoning that this is "an abridgment of the liberties of the people to make, alter and repeal laws" expresses a coherent intellectual and philosophical position that underlies European-style Parliaments today that have no constitutional limitations on their powers. The position is diametrically opposed to the Madisonian principle that even a legislature needs to have checks on its powers, and is thus antithetical to a Bill of Rights.

Sherman's pronouncement on the nature of a Bill of Rights in the newspaper article gives warrant to the claim that he was indeed an arch foe of amendments. In the procedural debates of June 8, 1789 and July 21, 1789 he argued for the postponement of any discussion of amendments ostensibly because there was no guarantee that a sufficient number of States would approve amendments. However, his pronouncement against the desirability of a Bill of Rights in the newspaper article published in New England gives warrant to the claim that on June 8 and July 21, 1789 he was engaging in a fallacy, the fallacy of *ad socordiam*. The fallacy arises because of a discrepancy between his overt and covert objectives in the procedural debates of 1789. His overt objective was to postpone the consideration of amendments "for the present" in order first to secure the agreement of a sufficient number of States to the project. However, it is suggested here on the basis of the newspaper article that he had the covert objective of killing the whole project by means of securing a postponement of its consideration.

Comparing the two objectives, it seems clear that the overt goal is the more positive and more creditable goal in the context of 1789, when there was considerable support for a Bill of Rights in the country. The overt goal was more positive because it allowed Sherman to be seen as not opposing a Bill of Rights but instead as asking for a postponement in order to secure the passage of a Bill of Rights at a later point in time. On the other hand, the objective of rejecting the very idea of a Bill of Rights was a negative stance, and ran counter to the sentiment in favor of a Bill of Rights in the country at large. Given the discrepancy between the two objectives and intentions ascribed to Sherman, it may be possible to invoke Galasinski's concept of "metadiscursive deception" in order to characterize the nature of Sherman's speeches in the debate. This concept refers to "attempts of the speaker/deceiver to make the addressee believe that the utterance the speaker is issuing is cooperative, whereas in fact it is not" (Galasinski 2000: 71).

At the same time two caveats should be inserted. When proposing a certain course of action in practical reasoning, a speaker may be motivated by more than one goal, and the precise mix of motives and the question of the relative strengths of the different motives in his or her mind are not easy to resolve. It should also be recognized that the interpretation proposed of Sherman's speeches and their underlying objectives is provisional and subject to change if additional historical evidence should come to light. It is most unlikely that such evidence, perhaps in the form of a long lost letter, might come to light, but it is theoretically possible that it might, and it is necessary to allow for that possibility.

### 3. CONCLUSION

This study has a two-pronged objective. On the one hand it has sought to shed additional light on a political debate that was of importance from the point of view of subsequent American history. On the other, it has sought to contribute to the further development of fallacy theory.

Regarding the procedural debates as an event in American political history, the perspective of fallacy theory, it is argued here, entails recognizing the role that hidden intentions may play in motivating speakers arguing for the adoption of a certain course of action. The analyst thus cannot rest content with surface level statements, but needs to be sensitive to any potential hidden agendas that speakers may have. It seems safe to regard Sherman's argument that "we shall lose our labor" as a ploy to kill the project, rather than as a genuine contribution to a reasonable debate. It is the presence of a second and covert first-order intention underlying Sherman's argument that makes it fallacious.

Another conclusion to emerge from this study is to highlight the need to recognize *ad socordiam* as an important fallacy in political discourse. As for the "wasted effort" type of *ad socordiam*, it is a fallacy of the counter-constructive type. The broader theoretical claim of this study is that the notions of first-order and second-order intentions are not limited to the type of *ad socordiam* considered in Rudanko (2005a), but offer an innovative basis for analyzing counter-constructive and deceptive fallacies more generally. The question of whether a similar approach might be applied to other types of counter-constructive fallacies is left for future research.

**ACKNOWLEDGEMENTS:** The author is grateful to Ian Gurney and to Kristiina Tolvanen, both of the University of Tampere, for their help with this article.

## ON A FALLACY IN POLITICAL DISCOURSE

### REFERENCES

- Bentham, J. ([1824, 1952] 1962). In: Larrabee, Harold A. (rev. ed.). *The Handbook of Political Fallacies*. New York: Harper Torchbooks.
- Bowling, K. (1990). *Politics in the First Congress 1789-1791*. New York: Garland Publishing.
- Collier, C. (1971). *Roger Sherman's Connecticut. Yankee Politics and the American Revolution*. Middletown, Conn.: Wesleyan University Press.
- Copi, I., and Burgess-Jackson, K. (1996). *Informal Logic*. 3<sup>rd</sup> ed. Upper Saddle River: Prentice Hall.
- DenBoer, G. (ed.) (1984). *The Documentary History of the First Federal Elections 1788-1789*. Volume II. Madison, Wisconsin: The University of Wisconsin Press.
- Eemeren, F.H. van, and Grootendorst, R. (2004). *A Systematic Theory of Argumentation*. Cambridge: Cambridge University Press.
- Galasinski, D. (2000). *The Language of Deception. A Discourse Analytical Study*. Thousand Oaks, CA: Sage.
- Gales, J. (1834). *The Debates and Proceedings in the Congress of the United States; with an Appendix, Containing Important State Papers and Public Documents and All the Laws of a Public Nature; with a Copious Index. Vol. 1: Comprising (with Vol. 2) the Period from March 3, 1789, to March 3, 1791, Inclusive*. Washington: Gales and Seaton.
- Grimshaw, A. (1990). Research on Conflict Talk: Antecedents, Resources, Findings, Directions. In: Allen Grimshaw (ed.). *Conflict Talk: Sociolinguistic Investigations of Arguments in Conversations* (pp. 280-324). Cambridge: Cambridge University Press.
- Levin, B. (1991). Even about the dead they lie. *The Times*, August 1, 1991, 14.
- OED = The Oxford English Dictionary*. Second edition (1989). Prepared by J. Simpson and E. Weiner. Oxford: Clarendon Press.
- Rudanko, J. (2001). *Case Studies in Linguistic Pragmatics*. Lanham, MD: University Press of America.
- Rudanko, J. (2004). *James Madison and Freedom of Speech*. Lanham, MD: University Press of America.
- Rudanko, J. (2005a). The fallacy of *ad socordiam* and two types of speaker intentions: a case study from the first Congressional debate on the Bill of Rights in 1789. *Journal of Pragmatics* 37, 723-736.
- Rudanko, J. (2005b). Freedom of speech at stake: fallacies in some political discourses in the Early Republic. In: Skaffari, J. et al. (eds). *Opening Windows in Texts and Discourses of the Past* (pp. 53-63). Amsterdam: John Benjamins.
- Rudanko, J. (2009). Reinstating and defining *ad socordiam* as an informal fallacy. In: Ritola, J. (ed.). *Argument Cultures: Proceedings of OSSA 09*. Windsor, ON: OSSA.
- Rutland, R. (1983). *The Birth of the Bill of Rights, 1776-1791*. Boston: Northeastern University Press.
- Sherman, R. (1789). Observations on the new Federal Constitution, and the alterations that have been proposed as amendments. *The Salem Mercury*, June 30, 1789.

# Commentary on ““THOSE STATES ... WILL HARDLY ADOPT THEM’: ON A FALLACY IN POLITICAL DISCOURSE IN THE SUMMER OF 1789” by Juhani Rudanko

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Twenty first century exceptionalism is expressly political.<sup>1</sup> The tensions between free speech, the rule of law, and arbitrary power, between licit governance and dictatorship, between liberty and security: all areas of inquiry, discipline, and practice in which the exception threatens, sometimes becomes, the rule, in which neither law nor the public sphere constrains national assertion or self-interest, and in which feeling and action supercede politics, so that politics becomes, not the expression of will adjusted to a given facticity (Giorgio Agamben’s ‘bare life,’ *zoe*), but irrelevant to expression itself. The quintessential American reflex, present even in these early articulations of nationhood, exceptionalism denotes a quietist functionality, as it seeks to replace jaundiced political gestures and responses with the urgency of decision, usually figured as pressingly moral and often made an exceptional power for a putative public good—at least in Carl Schmitt’s highly suspect but influential formulation. Little wonder, then, that exceptions, crucial to the history of individualism and of free speech, ring liberal alarm bells.<sup>2</sup> So too does deception, especially in political arenas, where, as Rudanko somewhat idealistically argues, agents “can be expected to reveal their motives and purposes when proposing a certain course of action” (8). In some sense, deception might be said to organise various economies of commitment in deliberative fora: as we heard, in these early American debates, several actors, Roger Sherman in particular, defer and demur, offering *ad socordiam* arguments in lieu of forthright disagreement. How, then, do engines of delay, laziness, sloth, deferral drive discursive exchange? How does the goddess of indolence, Socordia (Aergia, ‘inactivity,’ in Greek) assert her presence in the thickness of things? Is passivity an articulate political position? What about the fillibuster?

To be sure, delay, sloth, and indolence are cousins to deception, at least in the etiologies of the Greeks and Romans; and, like Socordia, the goddess of deception, Apate, keeps bad company: she is the grandchild of Nyx, night, daughter to envy, and

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<sup>1</sup> The literature is expansive, but see Andrew W. Neal, *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security, and the War on Terror* (New York: Routledge, 2010).

<sup>2</sup> Fleur Johns, “Guantanamo Bay and the Annihilation of the Exception,” *The European Journal of International Law* 16 (2005): 613-35. For Schmitt, see, for example, his *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab (Chicago: University of Chicago Press, 2005 [1922]), and for *zoe*, see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998 [1995]).

sister to old age.<sup>3</sup> In the 1490s, Botticelli paints her in flowing robes, adjusting the hair of Calumny, perhaps offering counsel, in his *Diabole of Apelles*. Like these other deities, she is a custodian of intentionality: dissimulation, deception, and delay are consanguine. Thus, if we consider these debates, perhaps any debate, rhetorically there is no place for deception, for the ends of rhetoric rubbish moral aims—precisely the root of deception, from *decipere*, ‘to take in,’ ensnare, cheat, mislead. Deception and exception are always already components of moral deliberation, it seems, for the intentionality of agents is distributed, rarefied, hidden, or unavailable, which is why the term ‘fallacy,’ governing arguments that are “*psychologically* persuasive but *logically* incorrect” captures this dynamic so well (Copi and Burgess-Jackson 1996, 97, quoted in Rudanko). Yet, in perhaps the most robust claim in the paper, Rudanko argues that “the inner convictions and motivations of speakers are of significance to the study of informal fallacies” (4), that the “attribution of purposes to speakers” should be admitted as a legitimate object of investigation” (8). Inferring motives and pretexts, however, is conspicuously difficult. For assistance, Rudanko turns to Allen Grimshaw, who argues that ‘getting into people’s heads’ is possible via ethnographic contexts and “optimally complete behaviour record[s]” attributed to rhetorical agents (quoted in Rudanko, 7). Just as the speaker attempts to “guess [*stochazesthai*]” the motives and opinions of his listeners (Aristotle, *Rhetoric* 1359b10-11), so the analyst endeavours to capture the character, disposition, and individual history and behaviour of the discussants. But, of course, we should remember that “someone’s character determines what he says and does and the way he lives, if he is not acting for an ulterior purpose,” if the goddess Apate does not intervene (*Nicomachean Ethics* 1127a26-27). And character is determined in several ways, including the manner in which ‘things appear’ to us, the ways in which we manage images. All “men aim at the apparent good,” Aristotle writes, “but [some suggest that they] have no control over how things appear to [them]; but the end appears to each man in a form answering to his character.” “We reply,” he continues, “that if each man is somehow responsible for the state he is in, he will also be himself somehow responsible for how things appear [*phantasias*]” (*NE*, 1114a31-1114b3). Character is borne of activities and habits (*NE*, 1103b17ff.), so clearly managing images (‘how things appear’) is crucial. Addressing the variegated, uncertain nature of character, Aquinas summarises the Aristotelian view as follows:

future effects ... do not exist so determinately in their causes that something else might not happen; their causes are merely disposed more to one effect than another; and these effects are contingent events, which happen more or less often as the case may be. As a consequence, effects of this type cannot be known in their causes with certainty, but only with conjectural certitude. ... Yet, if we consider these causes ... together with those things that incline them more to one effect than to another, we can get some conjectural certitude about their effects. For example, we can conjecture about future effects depending on free choice by considering men’s habits and temperaments, which incline them toward one course of action. (*Summa theologica*, I q. 57 art. 3 and II-II q. 60 art. 3)

In some respects, then, individual history and character inference are the problems, not the solutions: what is more frequently termed ‘moral certainty’ is itself susceptible to inclination.

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<sup>3</sup> Hesiod, *Homeric Hymns, Epic Cycle, Homerica*, trans. H. G. Evelyn-White (London: Heinemann, 1914), lines 21 ff.

In fact, the revelation of intention is striated with frangible impressions, variations, and adjustments, all of which might be misunderstood, as the ground shifts, as dissimulation, deception, raw passivity. To solve this potential difficulty—the difficulties of excuse, pretext, and subterfuge—Rudanko shrewdly offers an inquiry into first-order and second-order intentions, the former directed toward the world, the latter directed toward intention itself (p. 6). We can then examine a debate, for example, by situating the practice of an agent in history, as Rudanko does for Sherman, and parsing the relationships between first- and second-order intentions. But this process, too, admits exception, depends on the construal of previous behaviours, and is underwritten by a kind of tact. This is, as Rudanko insists, “methodologically important” but “not easy to resolve” (p. 7 f.). Here, however, we reach an intentional *cul-de-sac*: the speaker may be motivated by more than one goal, or those goals might change over the course of a debate. What are the guiding principles here? As the Federalist James Madison avers, arguing in favour of a bill of rights, amendments to the constitution should be “pursued with a proper moderation and in a proper mode” (quoted in Rudanko: 2). In one sense, Sherman conforms to Madison’s canons for, as Aristotle suggests, the “sincere man will diverge from the truth, if at all, in the direction of understatement rather than exaggeration, since this appears in better taste, as all excess is offensive” (*NE* 1127b8-9). Intentions might then be seen to conform to a *mode*, in which, for example, demurring or delaying fits more snugly than outright objection or disagreement. In other words, to fathom intention, one must not only capture the habits, character, and history of an agent, but discern the ways in which they are constrained by the rhetorical situation itself and its conventions. I wonder if ‘free speech’ is one such concern.

Rudanko’s opening paean to American conception of free speech might be seen as somewhat deceptive itself: early constitutional amendments underwrite a peculiarly American conception of free speech, he argues, constitutive of historical and contemporary public spheres, which funds unimpeded access to information nationally and, he implies, internationally (p. 1 f.). Here and elsewhere in his work, Rudanko emphasises a kind of sincere, cadastral commitment to exploring not only the issues at hand but to uncovering one’s intentions, largely because of the accepted but rarely upheld criteria of debate in the public sphere: agents should be honest, especially when, in Rudanko’s terms, “the common good of the community” is at stake. But these debates—perhaps all debates public or private—are rather less than ingenuous; even when the stakes are high, agents find room for lowly deception. Still, Rudanko’s marvelous paper proposes a number of methodological innovations that I find spurring: how might argumentation account for hidden motives and pretexts? is it simply a matter of contextualising, of returning any given figure to its ground, to an agent’s own history, recognising that one swallow does not a summer make? As he offers, the task is to make a fair and balanced assessment regarding the weight of available evidence, including, exception, deception, guile—and including, one might say, obeisance to the goddess Apatē.