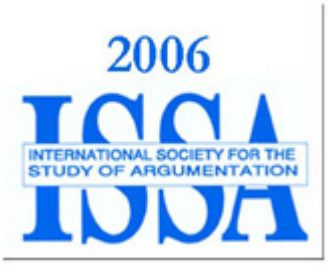
ISSA Proceedings 2006 -The Argument Of Print: State Sovereignty And The Publication Of U.S Congressional Debates



Deliberation has been associated with democratic theory, the promises and potential of collective self-government. Deliberation is hailed as the mechanism by which rule by consent, rather than force, can be enacted. It delivers the project of democracy, according to Darrin Hicks (2002), by holding certain promises. One such promise is the promise of inclusion, a procedural solution which shifts the burden of justification for the application of power from government to constituents. Another promise of deliberative democracy centers on the value of equality which distributes the time and resources of collective decision making equally among stakeholders. As with the promise of inclusion, the promise of equality is guaranteed internally and procedurally, rather than substantively by criteria of evaluation external to the process of deliberation. Even the last promise, the promise of reason, finds an internal solution as "the ideal of public reason does not refer to the heightened reasoning powers of the Leviathan. Public reason refers to the common – *koinoi* – reason, understood as a means of formulating plans, putting ends in order, and making decisions accordingly, of the public in its capacity as citizens constituting a polity . . . To be politically reasonable means citizens are willing to collaborate with others in proposing fair terms of social cooperation and have the commitment to act on these terms, even if doing so means that they must accept less than what was hoped for" (Hicks, 2002, pp. 241-242). Reason, then, is not transcendent, but embedded and internal to the workings of deliberation. This last promise, I would argue, turns deliberative democracy into a closed model of governance as the very commitment to participate and deliberate becomes itself an effect of deliberative reason. Paradoxically, all the while providing justification and legitimation for the application of power, and all the while relying on the enactment of procedural norms of communication, deliberative theories of government put forth a *telos* of their own. They are haunted by an ideal of a full

democracy, captured in the very notion of the promise. Consequently, theorizing deliberation becomes a project of correction, adjustment, and normative enforcement, as procedures stubbornly fail to deliver on their promises.

One way to break the closed loop of theorizing on deliberation would be to differentiate the public from the state spheres of deliberation. Public deliberation is not necessarily political, and the arguments exchanged in a public or social sphere need to be differentiated from those taking place in the circuits of the state. To not differentiate the state as a special terrain of deliberation is to become complicit with the enforcement of state power and the globalization of sphere-specific norms of communication. It is also to become interpellated in a narrative of legitimation which asserts the state as the proper embodiment of social cooperation. The point is not simply that the state hijacks and co-opts deliberation, but that it manages to put the cart before the horse. When deliberation is viewed first and foremost as an inherent capacity of people coming together to form state policy, that is as the future-oriented, creative means behind common decisions, we fail to engage deliberation as a means for justification (McKerrow, 1977, Bates, 2003). Better understood as a form of justification, rather than persuasion, deliberation is a conservative technology of legitimation that is primarily an effect of the state, rather than an expression of constituents. After all, citizenship does not precede the state, and neither does deliberation. To understand deliberation as a constructive mechanism of the state, then, requires an investigation into the alignment of deliberative discourse with the politics of representation as well as a careful description and analysis of the norms, constraints, and technologies that frame what does and doesn't count as deliberation within the institutions of the state.

This essay demonstrates that a closer look at the earliest debate over the printing and publication of Congressional deliberations can complicate common assumptions about the representative character of legislative deliberation, in particular the notion that Congressional deliberation is necessarily and directly responsive to public opinion (Levasseur, 2005). Rather, as Edmund Burke anticipated some fifteen years before the first session of the first U.S. Congress, the mandates of representation would exceed notions of public opinion and would be more oriented to the creation and legitimation of statehood as an institutional form distinct from the pressures of citizen participation. My argument is that this development cannot be explained without attention to the ways in which the print

medium interacted with modes of political representation as conceptions of sovereignty and legitimacy were predicated on the state's textual practices of governance. As Michael Warner testifies, "medium and political structure are identical with respect to the question of what it means to speak publicly, and a history of letters requires a history of the political conditions of utterance" (Warner, 1990, p. 35). In other words, a history of argument requires a history of political mediation as argumentative structures are predicated on media of communication. By examining the House debates of the first session of the first Congress over the printing and publication of the floor speeches, this essay sheds light on the role of the print medium in constituting the state as a distinct field of argumentation.

1. *The medium of deliberation*

Congress has been hailed as "the principle body of deliberation in American national government," although doubts have also been raised as to whether it has remained as such (Bessette, 1994, p. 3). At least in theory, the deliberative character of Congressional decision making is based on the application of formal rules of debate in crafting decisions to assure that government be "a matter of reason and judgment, and not of inclination" (Burke, 1949, p. 116). For Fraser (1992), the deliberative character of Congress qualifies it as "a strong public" given that "as a locus of public deliberation culminating in legally binding decisions (or laws), parliament was to be the site for the discursive authorization of the use of state power" (p. 134). Fraser interprets the development of parliamentary democracy as "a democratic advance over earlier political arrangements" for she believes that representational government blurs the line between civil society and the state as legislatures work to translate public opinion into authoritative decisions.

As social forms, however, neither what Fraser refers to as "associational civil society" nor the state can be understood without attention to the communicative mechanisms underwriting their collective existence. Attention to the medium of publicity is warranted in examining the distinct deliberative norms of the state and the sphere of civil society. Notably, not any type of publicity but the publicity allowed by print played an important role in the emergence of the public sphere. Under certain conditions, the story goes, mechanical duplication would amount to publishing by means of which the public sphere developed a specialized discourse that was by definition impersonal. At least in Habermas's (2000) narrative, the communicative technology of print played a constitutive role: the bourgeois public

sphere emerged from and through its ability to fashion itself, i.e. to imagine, articulate, and evaluate itself – be it in the plots of novels, in the prints in papers, in pamphlets or the editorials of journals. Printed publications also enabled the principle of supervision by which the public held the state in check. Thus, according to Warner (1990), the public's mobilization of print brought about a special feature to the political order, namely "the government can no longer remain indifferent to this independent public discourse, but must regard its relation to the public discourse as a criterion of its legitimacy" (pp. 38-39).

Warner, as much as Fraser, seems to attribute the state a somewhat reactionary role: it succumbs to pressures and demands exacted by a public sphere of disinterested persons, a public sphere which requires print to maintain its independence. I would argue, however, that print did for the state something different than what it did for the public and much of this difference is related to how print constituted modes of political representation. In contrast to the public sphere, to emerge, the post-revolutionary U.S. state required more than self-fashioning. It required legitimacy, which in the US context had to be derived from representational politics, and representative legitimacy depended on the abstraction of the people and their subsequent literalization in the body of law and government. For example, in Warner's narrative, writing, but not necessarily print, was the proper instrument in the constitution of the people within the terrain of the state: "A people recognizing itself as the people is like a king recognizing himself as the king; we do not have to indulge in a sentimental populism to see these groups as the realization of the people. The difficulty of doing so lies in that our society's representational polity rests precisely on a recognition of the abstract and definitionally nonempirical character of the people. It is the invention of the written constitution, itself now the original and literal embodiment of the people, that ensures that the people will henceforth be nonempirical by definition. . . The Americans who prevailed in the constitutional movement were those who regarded their task as not getting rid of representation, but of deriving representation in the first place. The presence of the people in oral assembly was for them not legitimate enough precisely because it was recognized as the *source* of legitimacy" (Warner, 1987, pp. 67-68).
Warner (1987) indicates that the mechanisms of representative legitimacy cannot be understood without attention to the medium permitting such metonymic substitutions between people and government. The written record of the constitution, and not an oral practice of deliberation or a founding oratorical

performance, was significant for legitimating the state, because writing allowed the speech act of the constitution to be distanced, that is, abstracted from, the private interests of those who signed it and to take on life through its subsequent readings. While the constitution initiated, embodied and literalized the state though its writtenness, the more dynamic processes of every-day governance would require a different mode of legitimation. It required a communicative mechanism by which agency could be transferred back and forth between the body of government and the people.

Congress had to come to terms not only with the notion of publicity that print invoked, but also with the spatial and temporal effects of the medium. Edmund Burke had earlier taken heed of how print could transform oral deliberation into a technology of territoriality and sovereignty. "What sort of reason is that in which the determination precedes the discussion, in which one set of men deliberate and another decide, and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?. . . Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole" (Burke, 1949, pp. 116). The traversal of distance – geographic, conceptual, and political – would be a primary route for the establishment of state sovereignty.

2. *Debating print and the legitimation of state sovereignty*

From the onset, Congress understood that governmental records had peculiar powers. The United States Constitution, Article I, Section 5 required Congress to keep a journal of its proceedings. It states that "Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal." However, the journal, which only briefly notes the topics of discussions and votes cast from day to day, could hardly be seen as a public document because, though printed, therefore potentially reproducible, it wasn't necessarily circulated. Although drawn from the Puritan culture of New England in early 17th century, Warner's (1990) attention to the idea of the "authoritative stamp – as opposed to far-flung distribution" (p. 20) warrants attention here. The journal was the authoritative, official record of Congress, embodying its collective will and value. It carried an authoritative stamp as it was sanctioned by the representatives. Thus, by creating a record of Congressional

activities, the Journal could potentially expose blunders or missteps. What made the journal a safe, convenient and non-controversial written record of Congressional activity printed at the expense of Congress, though, was not its being required by the Constitution, but its brevity, which it could be argued, ensured limited readership. As a record, the journal served more or less the internal function of containing reminders about schedules, bill titles, and topics of debate. However, it did not create accountability as the distinct arguments presented during the debates, and therefore, the presumed motives behind legislative actions, were not included. In this form, the Journal did not reach out to constituents, and could hardly work as a deliberative, if even a communicative, instrument. Consequently, the legislature's own record keeping did not interrupt the natural, if virtual, connection between government and the population.

While occasionally printing the brief records of the Congressional Journal was worth the expenditure of public funds as they simultaneously worked as proof of Congressional activity and as a shield from public scrutiny, the recording and publication of the floor debates by independent printers offered a whole different set of dilemmas for Congress. On September 26, 1789, Rep. Burke introduced a resolution stating that "the several persons who have published the debates of this House, in the Congressional Register, and in the newspapers of this city, have misrepresented these debates in the most glaring deviations from the truth; often distorting the arguments of the members from the true meaning; imputing to some gentlemen arguments contradictory and foreign to the subject, and which were never advanced. . . thus throwing over the whole proceedings a thick veil of misrepresentation and error" (*Annals*, p. 952). Communication scholars interested in the history of Congressional debates have generally approached this complaint about the misrepresentations of the record from the perspective of journalists' and citizens' demands for publicity (Robinson, 1942) or in an effort to account for and make up for the gaps in reporting (McPherson, 1942). Historians, on the other hand, place the issue in the context of emergent partisan politics. These approaches, however, fail to address one significant element in this controversy, namely, why was it that such partisan politics would focus on the issue of print? It is necessary, therefore, to think about the tensions over the publication of the debate records as engendering, as opening up for scrutiny, some more significant questions.

To begin with, the complaint was significant as it threatened dominant

conceptions of republican representation. Print drew a wedge in the organic connection between representatives and the represented. The union of sentiment between the people and their representatives was to be expressed at the point of election. Then voters communicated and entrusted the representatives with their sentiments; once in Congress, the delegates would be the voice of those sentiments (Bailyn, 1973, pp. 170-175). Yet, print seemed to reverse this process. As Representative White observed, "the publications gave much satisfaction to those citizens who cannot attend in the gallery, to *hear* the sentiments of those who represent them" (*Annals*, 1789, p. 955). The record *spoke* to constituents, in this view. One way in which the acoustic frame disrupted channels of representation was that print would displace Congress in representing the white, male community to itself. Following Warner, it should be acknowledged that black and female illiteracy were "the condition of a positive character of written discourse for whites" and specifically, white males; to read and write was, in a sense, to be white and male (Warner, 1990, p. 12). From the state's perspective, the trouble with materializing Congressional reasoning in the medium of print was that the presumed unity and identification between Congress and white males could be disrupted as the representatives would lose their principle of negativity and logic of abstraction.

Print particularized members of Congress, draining them of their impersonal authority as representatives. The "veil of misrepresentation" invoked by Representative Burke interrupted the metonymic relation between the people and their representatives, threatening the virtual modes of representative legitimacy. Would the people identify with a disreputable House? The misrepresentations also endangered the clarity of the representatives' reasoning and what, in the absence of records, was supposed to be a transparency of pure, selfless motives. Once singled out in public discourse, once dressed in human passions, fallacies and missteps, a congressman became more a man, but less a representative. He could no longer stand for the higher principles and ideals that the people had projected onto the system of government. That is, while print allowed for the impersonality of public discourse in the public sphere, it simultaneously could disrupt the mechanisms of abstraction that legitimated representative government. In a broader sense, though, the real mischief of print was that it seemed to *mediate* governance, thus radically transforming the foundational logics of representation as an immediate and organic mechanism of sovereignty.

The written records could not fully capture the expressive and emotive nuances or

motives of oral debate. Congress was attentive to the important differences between oral and written discourse. Representative Stone presumed that, "changing the mode of expression or emphasis of language . . . were unavoidable, or necessary, when gentlemen delivered their sentiments on the floor without system or grammatical precision" (*Annals*, 1789, p. 955). Writing and speech had different grammars of emotion. Furthermore, Representative Stone complained that "he had the misfortune, he believed, not to be understood by some of those who attempted to detail what he said, because they had put into his mouths sentiments which his heart never felt, nor his head comprehended" (*Annals,* 1789, p. 952-953). The danger of print for Representative Stone lied in its capacity, through its two-dimensional and linear recreation of live speech, to transform an individual into a character, thus mimicking and co-opting representation's logics of abstraction. The virtual characters created by print were by no means bound to the qualities of sentiment that had been the point of a representative's election. And Representative Burke worried that "Congress was sacrificing the honor and dignity of the House, by putting it into the power of the printers, as it were, by their sanction" (*Annals*, 1789, p. 954). From the point of view of the state, by the public exposure of the legislative process, print mediated and reversed the flow of representative legitimacy. Representation would lose its character of political representation as proxy and, instead, would be rooted in aesthetic identification – be it with characters or caricatures. The publicity caused by print also made legislative consensus more difficult as the capacity of representatives to exceed the mandates of their direct constituents diminished.

Herein, perhaps, lies a key distinction between the discursive norms of the state and the public – in contrast to the potentially unlimited topics and time-frames for discussion in a public sphere, the state's deliberations, culminating in the production of laws and the authoritative hermeneutics of judicial reviews, were bound by the need for consent and consensus. From the state's perspective, the print medium interfered with the republican theory of law and legitimacy.The consent of the people was necessary as US republicanism was founded on a sense of the law as an expression of the people's interests, and thus, on their voluntary, consensual subjection (Bailyn, 1973). So when printers publicized the legislature's debates in a way that the representatives could not endorse, Congress feared for the integrity of the overall state's system of legitimacy in a global context. Captured in the preface to the initial resolution on the matter by Representative Burke, the short-hand recording of the debate "being done within

the House, at the very foot of the Speaker's chair, gives a sanction and authenticity to those publications, that reflects upon the House a ridicule and absurdity highly injurious to its privileges and dignity" (*Annals*, p. 952). Ridicule and absurdity were, indeed, an assault on the very foundation of government if male voters granted their adherence to the law based on *identification* with its common sense. The legislature's resistance to the publication of their debates was motivated by the need to defend the abstract, dispersed nature of the political authority of Congress. The latter was predicated on and was supposed to be judged by its product – the laws, not by its process – the actual production and exchange of arguments. Arguments were interest based, generated from the representational responsibilities of elected delegates. Laws, in contrast, were supposed to speak to the interests of all citizens. Print's tendency to particularize the representatives away from the impersonal nature of their office through the publication of their arguments threatened the legitimacy of laws. Therefore, as Representative Gerry emphasized, the publication of discrete arguments "on principles of party, might be one of the most dangerous engines in the hands of a faction and have a malignant and mischievous effect upon the public voice of America" (*Annals*, p. 953).

Finally, print threatened the autonomy and authority of Congress as the collective and representative voice of the state. Mischievous misrepresentations were dangerous, Rep. Gerry noted, not only because Congress was the "public voice of America" in its domestic context, but also because "some regard ought to be paid to the reputation of the speakers, as it might influence that quality abroad; for he believed the debates of the House were neither confined to this city nor the United States" (*Annals*, 1789, p. 953). In the context of early U.S. political theory, "the people were present through their representatives, and were themselves, step by step, and point by point, acting in the conduct of public affairs. No longer merely an ultimate check on government, they *were* in some sense the government" (Bailyn, 1970, p. 173). The dignity of the speakers, in this sense, was conflated with the dignity of the people they represented. Misrepresenting the sentiments of Congress, then, could constitute a distortion and misrepresentation of the people of the United States as well. In the precarious international context in the aftermath of the Revolutionary war, ultimately at stake was the sovereignty of the new nation as well, and Congress seized on its authority as the proper embodiment of the new nation's character.

The transcendent nature of government was closely related to the state's need to

manage foreign affairs. This new global concern over state legitimacy and sovereignty underwrote the political theories of the new republic. Hence, the disagreement between the "public voice" and its record was not a matter of truth, but of legitimacy and sovereignty. Congress asserted that it was the most public voice of the nation, and by extension, that there was unity in the nation that could be expressed in one voice. When printers recorded and published the floor debates, they seemed to fracture this sense of unity and sovereign representation: arguments for and against, the very substance of deliberation, undermined the *expressive* quality of the legislature's public voice. The publication of discreet arguments seemed to undermine the representatives' capacity to embody collective, rather than faction-based, interests; thus, it threatened a key dimension of the political agency of Congress. Representative Gerry, for example, complained that "printers had it in their power, by misrepresentation, to make whom they pleased ridiculous in the eyes of the world, or to exalt those whose sentiments they favored" (*Annals,* 1789, p. 955). The "eyes of the world" put particular pressure on Congress to embody a distinct, coherent, and sovereign character. Given its capacity to quickly produce multiple and diverse (mis)representations of the congressmen's sentiments, print seemed to undermine the presumed unity of the nation's voice and its claim to sovereignty in an international arena.

3. *The autonomy of state deliberation*

Still, most congressmen conceded that the published proceedings disseminated "useful information" (*Annals,* 1789, p. 953) even if they felt that the abstracted, representative legitimacy of government had to be defended. Consequently, the debate focused on finding a way to allow for the dissemination of the Congressional proceedings without giving them "the stamp of authority" or any level of sanction. Rep. Madison found it necessary to assert the House's good will in the matter: He thought it "improper to throw impediments in the way of such information as the House had hitherto permitted from purest motives; but he believed it equally improper to give the publication of their debates a legislative sanction, because it would be making the speakers, in some instances where they were misunderstood, answerable for the sentiments they never entertained" (*Annals,* 1789, p. 955).

Just what would constitute a "sanction," though, remained unclear. Representative White, for instance, disapproved of the idea of "giving sanction to

the publications by any vote whatever" (*Annals,* 1789, p. 955). In his view any attention to the note-takers, any recognition of their presence would reverse the gaze from government to the governed. Representative Madison, worried that any interference or engagement with the printers would give sanction to any publication and then members would be "individually, at the trouble of correcting and revising their speeches" (*Annals*, 1789, p. 955). In Warner's narrative, some state legislatures had earlier responded to similar pressures for publication by expressing a rhetorical appeal to the people for instructions. By orienting themselves to the public with this offer to be supervised, Warner (1990) argues, the legislature took the position of "the defender of the people's liberties" (p. 60). The difficulty with this line of argument is that Congress had imagined itself in this role independently from the pressures of the public's supervision.

Conceding Warner's observation that Congress took pains to represent itself as a benevolent power, in its earliest debates, however, it did so not so much with attention to the reading public, but because of its reservations about the medium itself. Many of the negative consequences of print that the representatives imagined were not attributed to malicious printers aiming to disrupt the work of government. The initial resolution against sanctioning the printing of the debates could only speculate about the reasons behind the distortions. It did not matter to Representative Burke, the sponsor of the resolution, whether the misrepresentations arose from "incapacity, inattention of partiality" (*Annals,* 1789, p. 952). In his speech introducing the resolution, he emphasized that "he would exercise charity . . . and suppose [the inaccuracies] arose from inability or inadvertency in the reporters" (*Annals*, 1789, p. 953). Other congressmen similarly attributed the distortions primarily to the incapacity of short-hand writers and note-takers to keep up with the speed of speech. That is, the technologies of print were its major flaw, not the political motives behind its operation. To battle the undesirable side effects of print, then, Congress would focus on its production and how the production process made up for its cultural significance.

Rather than take over the production of the record, the early impulse of Congress was to distance itself from the cultures of print. The immediate solution was to move the reporters from their previous location "at the foot of the Speaker's chair into the gallery" (*Annals*, 1789, p. 954). Representatives argued that the journalists' old location somehow gave them credibility in representing the working of government, as they were writing literally from the seat of government. Moving them to the galleries would break that association, as they

would now be joining the ranks and social location of all other citizens granted access to the building; hence, their records of and response to the floor debates would be more akin to the lively, though unauthoritative, discussions of an unrepresentative public. It warrants mentioning also that the representatives were aware that hearing the speeches from that location was more difficult. Thus, in a sense, the "errors" could be attributed even more firmly to the printers as they were no more equipped to capture the legislature's actions than anyone else. By refraining from any action which could be interpreted as sanctioning the content of the printed reports, Congressmen gave themselves the opportunity to particularize the printers too – if any concerns would be raised by readers and constituents, the printer and not the representative could be singled out and made accountable. This solution reveals that the tensions over the proper medium of debate and argumentation indexed a more significant emergent relationship between the state and the male public.

At stake in the battles over the publication of its records, was the legislature's capacity to embody a sense of sovereign unity for the new nation. Such unity was deemed necessary as Congress underscored its representative function as the public voice of the nation in an international context. More important, though, is to extract from this debate some evolving tensions within the very idea of republican representation. The key effect of the early battles over the publication of the legislative records, I believe, was the promotion of a hierarchy of deliberative action, with Congress claiming for itself pure motives and immunity to partial interests while constructing the reading public as victims of print's fallacies, which included partiality, inaccuracy, illegitimacy, and a lack of representative authority. The legislature's moral rectitude and legislative authority, then, emerged through this very contrast with the diversity of the public cultures of print, public cultures, which would soon be "polluted" by the writing of women. Against the principle of negativity defining participation in the public sphere, men would have to look to the state to find themselves represented and impersonated as *a* people.

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