

**Testing the «Veil of Ignorance» Hypothesis in Constitutional Choice:  
A «walk-talk» approach <sup>1</sup>**

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**Abstract:**

Looking at a constitutional document as a ‘discourse’ that implicitly speaks about the motivations of its drafters, it is argued that a test of the ‘Veil of Ignorance’ hypothesis is possible. The paper describes how such a test could be conducted. It first proposes a conceptual framework based on power analysis to distinguish three distributions of power that decision-makers want to maintain or to modify through their choices. This conceptual framework helps identify which power relations pertain to an area of uncertainty and which do not. Then, adopting a ‘walk-talk’ approach, the paper details a content analysis method that allows one to extract the power relations embedded in a constitutional document. The paper concludes by showing the kind of results that such an analysis can generate.

**Keywords:** Uncertainty, Power, Content analysis, Constitutional choice, Constitution, Interest, Knowledge, Wealth, Force, Coercion

**JEL codes:** K39 – Other substantive area: Constitutional Political Economy

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<sup>1</sup> This text is an outgrowth from IMBEAU – JACOB, 2010 and IMBEAU – JACOB, forthcoming.

## Introduction

The idea that constitutional choices are made under uncertainty and that this uncertainty determines the characteristics of such choices was first presented by James Buchanan and Gordon Tullock in their seminal work, *The Calculus of Consent*. They wrote:

«Recall that we try only to analyze the calculus of the utility-maximizing individual who is confronted with the constitutional problem. Essential to the analysis is the presumption that the individual is *uncertain* as to what his own precise role will be in any one of the whole chain of later collective choices that will actually have to be made. For this reason he is considered not to have a particular and distinguishable interest separate and apart from his fellows. This is not to suggest that he will act contrary to his own interest; but the individual will not find it advantageous to vote for rules that may promote sectional, class, or group interests because, by presupposition, he is unable to predict the role that he will be playing in the actual collective decision-making process at any particular time in the future. He cannot predict with any degree of certainty whether he is more likely to be in a winning or a losing coalition on any specific issue. Therefore he will assume that occasionally he will be in one group and occasionally in the other. His own self-interest will lead him to choose rules that will maximize the utility of an individual in a series of collective decisions with his own preferences on the separate issues being more or less randomly distributed» [BUCHANAN – TULLOCK, 1962, p. 78].

Buchanan and Tullock's perspective was positive as they wanted to describe how constitutional decisions were actually made. Following their lead, John Rawls [1971] then proposed his *maximin* criteria in a normative perspective. He saw a decision behind a «Veil of ignorance» (i.e., under uncertainty) as a thought experiment that could show how rational decision-makers should attend to the preferences of the least advantaged group in society when they are ignorant of their actual and future positions in society. Despite some «scholars recogniz[ing] that Rawls's 'veil of ignorance' played no role in the process of constitution-making that followed [the breakdown of the Soviet Empire in the early 1990s]» [ROWLEY, 2008, p. 24], it is my contention that it is worth returning to Buchanan and Tullock's original positive perspective and to consider that decision-making behind the veil of ignorance is a description of constitutional choice. The issue then is whether an empirical test of this theory is feasible. But first, let's see the tenets of this theory.

Constitutional political economy distinguishes between constitutional choice and 'in-period' choice, or equivalently between choice *among* constraints and choice *under* constraints. The first refers to the choice *of* rules, the second to choice *within* rules [BRENNAN – HAMLIN, 2001, p. 120-127]. Brennan and Hamlin argue that these two types of choice have important characteristics that differentiate them – motivational, informational, social-capital, and public-good characteristics. The theory of the Veil of ignorance focuses on motivational characteristics, i.e., on the degree decision-makers choose in their own private interest or in the general interest when making choices. In constitutional choice, on the one hand, rational decision-makers attend to the

interest of the many. Because they do not know what their future position in society will be, their «individual interests fade into the background and are replaced by the general interest of all agents» [*Ibid.*, p. 120]. Indeed, «the uncertainty introduced in any choice among rules or institutions serves the salutary function of making potential agreement more rather than less likely. Faced with genuine uncertainty about how his position will be affected by the operation of a particular rule, the individual is led by his self-interest calculus to concentrate on choice options that eliminate or minimize the prospects for potentially disastrous results» [BRENNAN – BUCHANAN, 1985, p. 30]. On the other hand, ‘in-period’ choices are devoid of this type of ignorance as they are to last for a shorter period of time or they are easier to change once adopted. In this context, decision-makers choose in their own interest.

Now, is it conceivable to make an empirical test of this theory? The work by Robert McGuire and Robert Ohsfeldt provides an example of such a test. McGuire and Ohsfeldt analyse the drafting and ratifying process of the American Constitution in a principal-agent conceptual framework. For them, the delegates to the federal Convention who participated in the drafting of the Constitution in 1787 and the delegates to the 13 state ratifying conventions in 1788 are conceived as agents representing their constituents electing and supporting them, the principals. According to the principal-agent model, there is a strong incentive on the part of agents to shirk from their principals’ ideology and interests and to attend their own ideology and interests. Using econometric techniques on a large dataset on individual delegates’ votes and characteristics, McGuire and Ohsfeldt estimated the effect of delegates’ and constituents’ ideology and interests on roll call votes. Their findings are quite interesting as they yield contradictory results at two different stages of the constitutional process. They show that at the *ratifying* stage, the support for the proposed Constitution is significantly related to the interests and ideology of the delegates [MCGUIRE – OHSFESLDT 1989b]. But McGuire [1988] shows that at the *drafting* stage (the Federal Convention of 1787), the constituents’ interests are a better predictor of a delegate’s choices than his private interests. He writes: «In many cases, the statistical results support the argument that the delegates were more responsive to their constituents' interests and ideologies than to their own interests and ideologies». And he concludes: «The empirical evidence, thus, offers support for Buchanan and Tullock's [1962] positive theory of constitutions» [MCGUIRE, 1988, p. 519].

Voigt suggested an *ad hoc* hypothesis to explain the difference found by McGuire and Ohsfeldt: «An *ad hoc*-hypothesis for this difference could be that the Philadelphia-delegates were more

narrowly constrained in their voting behaviour than those in the 13 states because the constitution would not have turned into effect if not at least nine of the 13 states had ratified it» [VOIGT, 1997, p. 32]. I see an alternative explanation. Delegates faced greater uncertainty at the drafting stage as the content of the Constitution was still in the making. Things were quite different at the ratifying stage as the Constitution project had been known and discussed by delegates and their constituents for quite some time. In other words the delegates to the Philadelphia Convention voted behind a veil of ignorance that was more opaque than that behind which the delegates to the 13 state ratifying conventions stood. This greater uncertainty incited the first group to attend to their constituents' interests rather than their own. Consistent with this interpretation, the authors note «that the ratification process can hardly be claimed to have taken place behind a veil of uncertainty à la Buchanan and Tullock and that it seems therefore justified to assign its ratification to the operational as opposed to the constitutional level» [MCGUIRE – OHSFELDT, 1989a, p. 184, quoted in VOIGT, 1997, p. 32]. Thus McGuire and Ohsfeldt's results could be interpreted as a confirmation of the theory of the veil of ignorance, at least at the drafting stage.

But McGuire and Ohsfeldt's test required an enormous effort at data collection, so enormous indeed that a replication in several settings for comparison purposes is almost out of range. This is why I propose here an alternative route to testing the veil of ignorance hypothesis. Rather than looking at constitution drafters through a correlational study between interests and roll call like McGuire and Ohsfeldt did, I propose to focus instead on the outcome of constitution drafters' choices, i.e. the actual content of constitutional documents. Indeed, in constitutional choice decision-makers choose the decision rules that will preside over their future interactions. These rules are generally embedded in a text – a Constitution, a law, a decree, etc. – that provides more information in addition to the decision rule itself. The basic argument of the veil of ignorance hypothesis is that constitutional choices – and the content of the text in which they are expressed – are determined by decision-makers' motivations. Now, motivations are unobservable. They must be inferred from observable facts. Our approach consists in assuming that the content of a constitutional text may give information about these motivations. To uncover these motivations, the analyst must «read» the text in a way that allows inferring them. This «way of reading» is provided by a *conceptual framework* what defines the world as seen by the analyst and a *method* for extracting and coding the relevant parts of the text. From the information gathered through this analysis, it is possible to infer the motivations of the constitution drafters.

This inference process corresponds to the logic of abduction described by Charles Peirce<sup>2</sup>. For Peirce scientific inquiry follows three inference processes: deduction, induction, and abduction. Let *A* be the motivations of the drafters of a Constitution and *B* the actual content of the constitutional document. Going from a generalisation to particulars, a deduction allows us to infer *B* from *A* on the basis of the assumption that *B* depends on *A*. If the assumption is true, then the consequence is true and the inference is valid. The inductive process also allows us to infer *B* from *A*, but without the certainty provided by the assumption of the deductive process. *B* might not flow from *A* and therefore the inference might not be true. Thus induction follows the opposite path going from particulars to a generalisation. The abductive process allows us to infer *A* from *B* on the basis of a supposition that the observed circumstance is a case of a general rule. Krippendorf argues that «abductive inferences proceed across logically distinct domains, from particulars of one kind to particulars of another kind» [KRIPPENDORF, 2004, p. 36]. The difference between deduction and abduction is the direction of the inference. On the basis of the general rule stating that *A* yields *B*, deduction infers the consequence from the cause, abduction infers the cause from the consequence. In terms of the theory of the veil of ignorance, a deduction would allow us to predict the content of constitutional documents on the basis of the motivations of the drafters whereas an abduction would let us infer the motivations of the drafters from the content of the document. Peirce argues that abduction plays a fundamental role in scientific inquiry: «Abduction is the process of forming an explanatory hypothesis. It is the only logical operation which introduces any new idea; for induction does nothing but determine a value, and deduction merely evolves the necessary consequences of a pure hypothesis» [PEIRCE, 1934, p. 106, quoted in MIROWSKI, 1987, p. 1012].

In this context, a Constitution is more than a *social contract* defining a set of rules by which the governed agree to be governed and the governors agree to be restrained. It also is a *discourse* that implicitly speaks about the motivations its drafters. Therefore, the analysis of a constitutional document should help us uncover the motivations that drove its drafters in the constitution-making process. In particular, it should reveal the impact of uncertainty on constitutional choices. These motivations cannot be better exposed than by looking at the power relations described in the document itself: Do these relations support the private interests of the drafters or do they attend to the general interest?

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<sup>2</sup> For a discussion of Peirce's contribution in the context of economic institutionalism, see Mirowski 1987.

In the rest of this note, I will describe how such an empirical test could be conducted. I will first propose a conceptual framework based on power analysis to distinguish three distributions of power that decision-makers want to maintain or modify through their choices. This conceptual framework will allow us to identify which power relations pertain to an area of uncertainty and which do not. Then, adopting a walk-talk approach, I will detail a content analysis method systematically to extract the power relations embedded in Constitutional documents. I will conclude by showing the kind of results that such an analysis can generate.

### **Power and Constitutional Choice: A conceptual framework**

In this section I propose a conceptual framework based on the concept of power within a rational choice perspective<sup>3</sup>. Then I look at the interaction of power and decision-making behind the veil of ignorance assuming that maximising rational individuals want to maintain or to improve their relative position in the distribution of power in society for all the benefits that power brings.

#### *Power and rational choice*

The concept of power «has implicitly been analysed away» from economics [DOWDING, 2009, p. 40]. Indeed, «economists have treated power as the concern of other disciplines and extraneous to economic explanation» [BOWLES – GINTIS, 2008, p. 1]. But, as Bowles and Gintis argued, «the fact that the exercise of power is ubiquitous in private exchange shows that it is mistaken to think of society as composed of a political sphere, meaning governments and other bodies with formal powers of coercion, and a private economic sphere in which the exercise of power is absent» [*Ibid.*]. Indeed, the economy has traditionally been seen as a voluntary process of exchange between individuals. But the conditions of exchange dramatically vary from one context to another. The price of a good is usually considered in absolute terms: a kilogram of potatoes is worth \$2.00 on the market because buyers and sellers are willing to exchange it at that price. But things change if we consider prices relative to income or relative to wealth. I might be willing to trade my gold ring for \$100 in normal times, but if I were in a situation of starvation, I might accept to trade it for a meal. The situation has changed my bargaining power. The concept of power in a rational choice perspective allows one to analyse the interactions among individuals not only in terms of exchange – which is one form of power relation as I will argue shortly – but also in terms of coercion and of persuasion: in all three cases, the outcome of the interaction depends on the relative bargaining power of each actor, i.e., on the resources that she controls.

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<sup>3</sup> For a general discussion of the concept of power in policy analysis, see Imbeau and Couture, forthcoming.

Power is the ability to produce intended effects [RUSSELL, 1962]. Two dimensions of power are to be distinguished, instrumental power or «power to», and social power or «power over». Instrumental power is «the ability of an actor [to act on events or things] to bring about or help bring about outcomes» [DOWDING, 1991, p. 48]. Voting power indices, for example, measure instrumental power. They focus on the voting power of committee members, i.e., their capacity to influence, through their votes, the decision reached by a voting body<sup>4</sup>. Social power is «the ability of an actor deliberately to change the incentive structure of another actor or actors to bring about, or help bring about outcomes» [*Ibid.*]. Or, borrowing Dahl's words: «A influences B to the extent that he gets B to do something [or to refrain from doing something] that B would not otherwise do [or would do]» [DAHL, 1963, p. 40]. Social power implies instrumental power but the reverse is not true. One may have the ability to make a gift to a charitable organisation (instrumental power), thus modifying the distribution of wealth in society (*ceteris paribus*, the giver has less wealth, the organisation has more), without having any social power over that organization. But consider this other example. In order to change the incentive structure of a fast driver through the threat of punishment, a policeman must have the instrumental power to implement his threat in case the driver does not comply, or at least he must so convince the driver.

These definitions are dispositional in the sense that they focus on a dispositional property of an agent, that is, on the ability to do certain things. From this point of view, saying that A has the capacity to influence B does not imply that A actually influences B. A might decide not to use her power in which case social power remains potential. Furthermore, A does not have to act in order to exercise her social power. For example, the silence of the Pope vis-à-vis Nazis' exactions was sufficient for him to exercise power over German Catholics. Bachrach and Baratz [1963] coined the phrase «nondecision» to refer to this possibility in the policy process.

Power as a capacity is based on the control over resources. In the context of public policy processes, the three most important power resources are: force or authority, wealth or things of value, and knowledge or information combined with rhetoric. Each power resource may be associated with a method and a main impact on incentive structures. Thus we identify three forms of social power: Political, economic, and preceptoral (see table 1).

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<sup>4</sup> For a survey, see FELSENTHAL – MACHOVER, 1998. For a collection of recent analyses, see BRAHAM – STEFFEN, 2008.

*Political power* refers to the use of force or authority to increase the cost of the recalcitrant through the use of threat or punishment. The policeman exercises political power when he threatens one of a fine – and of prison in case of non compliance – if one does not slow down on the expressway. This threat increases the cost one would incur if caught and may change one's behaviour if the probability to be arrested is high enough and the benefits one draws from fast driving low enough. Political power may also be exercised through *heresthetic*, i.e., through the use of one's authority position «to structure the world so you can win» [RIKER, 1986, p. ix]. As Riker wrote: «[R]hetoric involves converting others by persuasive argument, whereas heresthetic involves structuring the situation so that others accept it willingly» [*Ibid.*].

*Economic power* refers to the use of wealth or things of value in order to change the benefits of the other party in an exchange. For example, when the minister of Finance issues a government bond at a given interest rate, he uses the economic power of the government to act on the incentive structure of potential investors so as to make them willingly transfer part of their wealth to the public treasury. Thus the minister of Finance exercises economic power over the investor<sup>5</sup>.

*Preceptoral power* is based on «knowledge», i.e., information and rhetoric. Its exercise consists in the influencer using her knowledge in order to change the beliefs of the influenced concerning his costs and his benefits through persuasion. An expert might use her knowledge to persuade a politician that he would be better off adopting one policy line rather than another. Preceptoral power pervades all societies. It is recognizable under many forms including commercial advertising, religious proselytism, capture relationships, expert consultation, agency relationships, political propaganda, etc.<sup>6</sup>

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<sup>5</sup> For an empirical analysis of the relationship between the ministers of Finance, taxpayers and investors in the Canadian provinces, see Imbeau 2009.

<sup>6</sup> For a discussion, see IMBEAU, 2007, pp. 177-181.

**Table 1: The forms of social power**

<b>Forms of Social Power</b>			
	<b>Political</b>	<b>Économic</b>	<b>Preceptoral</b>
<b>Ressource</b>	Force Authority	Wealth Things of value	Knowledge (Information and rhetoric)
<b>Method</b>	Threat/Coercion Heresthetic	Exchange	Persuasion
<b>Impact on incentive structure</b>	Costs	Benefits	Beliefs about costs or benefits

Not only does a power perspective allow one to characterise power relations among agents but it also gives us an indication as to the broad types of outcomes that rational actors want to bring about. The events or things that are the object of instrumental power and, ultimately, of social power are conceived as the maintaining or the modification of the distributions of political, economic, or preceptoral powers. Indeed, power is unequally distributed. Some have more, others have less. Some individuals have more political power in the sense that they control the resources necessary to influence a larger number of people through the use of threat, coercion and heresthetic, thus maintaining or changing the distribution of political power – for example, by defrauding one of his political power – or the distribution of economic power – for example, by depriving one of his property rights over part of his wealth – or the distribution of preceptoral power – for example, by unilaterally imposing a theory or a belief as the truth thus making the defenders of this theory or belief more persuasive.

The same logic applies to the holders of economic power or of preceptoral power. They can use the resources they control to maintain or modify the distributions of political, economic, or preceptoral powers. Wealth may be *exchanged* for a political appointment thus modifying the distribution of political power, or for a gold ring thus modifying the distribution of wealth, or for a university position thus modifying the distribution of knowledge. Knowledge may be used to *persuade* a politician to make a specific appointment thus modifying the distribution of political power. It may also be used to make one buy something that he would not buy otherwise thus modifying the distribution of economic power, or to persuade an audience that one's argument is stronger than that of one's opponent, thus modifying the distribution of knowledge in society. In a nutshell, depending on the resources she controls, a power holder can *force* one to do something that he would not do otherwise, or she can *bribe* one into doing something that he would not do

otherwise, or she can *persuade* one that doing something that he would not do otherwise is what he actually wants. These are all exercises of power.

### *Power relations behind the veil of ignorance*

The theory of the veil of ignorance tells us that the informational characteristics of the decision-making context determine the choice made by decision-makers. When she is relatively certain about her future position, the decision-maker chooses according to her own preferences so as to maximize her utility. But when she is uncertain about her future position – she stands behind a veil of ignorance – the decision-maker moves away from her own preferences to attend to the preferences of another individual. The identity of this individual is a matter of contention. For Buchanan and Tullock, the uncertain decision-maker would «support constitutional provisions that are generally advantageous to *all* individuals and to *all* groups» [1962: 78; emphasis added] hence their focus on unanimity rule. Rawls rather proposed a maximin criteria according to which decision-makers under uncertainty should attend to the preferences of the least-advantaged group in society. A median-voter theoretic interpretation [CONGLETON, 2003] would suggest that median preferences should be attended to whereas a probabilistic voting theory would target the preferences of the mean voter [LAFAY, 1992]. These divergent views may be reconciled in the following principle: in constitutional choice, uncertainty makes decision-makers move away from their own preferences toward the preferences of a less privileged individual. A spatial illustration may be useful here. Power, like income, is asymmetrically distributed in any society and decision-makers typically are located in the positive tail of the distribution. Attending to the preferences of a less privileged individual implies a movement toward the opposite tail: toward the mean, the median, or the least privileged. For our purposes, it is not necessary to decide where precisely the target individual stands on the distribution. Suffice it to say that he stands on the lower end of the decision-maker's position on the relevant distribution of power.

In a power perspective, the preferences of agents are evaluated in terms of their power position in society. They use their power to maintain or improve their position, somewhat like the entrepreneur uses his wealth to produce more wealth (or to avoid losing too much). Therefore uncertainty refers to the future power position of an agent: will she be higher or lower in the future distribution of power. If she is uncertain about her future position, she will choose according to the preferences of a less privileged individual. If her co-deciders make the same evaluation concerning their future positions, the decision-making body will more easily arrive at a decision. However, under relative certainty, the opposite will prevail. Constitution drafters will

follow their own private interest and no constitutional decision will be made, the issue being postponed to the in-period process.

Now it goes without saying that constitution drafters stand in the higher part of the three main power distributions in society. They have more authority, more wealth, and more knowledge than the average individual in each of these distributions not to mention the least-privileged one. Unless they are uncertain about their future position, they will work hard to protect or to improve their position. But if they think that they might drop toward a lower position, then they will be careful to adopt rules that would protect them in the future.

The volatility of power positions is not equal from one distribution to the next. We can safely say that volatility is higher in the distribution of political power, especially in democratic regimes where majorities often shift with electoral results. When this occurs, a whole class of decision-makers changes position on the distribution of political power; some leave, others enter government circles. Therefore constitutional drafters are quite uncertain about their future political position. But they are less uncertain about their economic power position. They expect to keep it in the future and even to bequeath their wealth to their children. The distribution of wealth is much more stable than the distribution of authority but still relatively less stable than the distribution of knowledge. Indeed, those who are considered as knowing – clergy persons in some societies, intellectuals in others, etc. – occupy a preceptoral-power position that is quite stable. Indeed it takes a long time for a society to change its criteria of truth and goodness. Consequently there is less uncertainty in preceptoral power than in economic power and less in economic power than in political power. Therefore constitutional drafters should be more concerned to protect their own positions on the distribution of preceptoral power and economic power than on the distribution of political power. It follows that constitutional documents should be more concerned with political power than with economic or preceptoral power. It also follows that by adopting the preference of a less privileged individual in the distribution of political power, constitution drafters tend to *limit* political power rather than to *ascribe* political power. These should be our main hypotheses.

### **Testing the Veil of ignorance hypothesis: A walk-talk approach**

Now, how could we test these hypotheses? I propose here to adopt a «walk-talk» approach to analysing political economic issues. This approach suggests taking speech («talk») into account in a way that allows the creation of new variables to be included into the explanation of policy

choices («walk»), raising the question : «Do they walk like they talk?» [IMBEAU, 2009]. The analysis of policy makers' speech has been the *enfant pauvre* of political economy research despite the fact that policy makers devote most of their time and energy discoursing (giving speeches, writing down notes and memos, sending messages through publicity and «events», etc.). Indeed the political economy literature has traditionally focused on government fiscal, regulatory, and administrative activity. This is understandable given our proclivity to assume completely informed rational actors in our theories. In such a context, speech is only noise and it is irrelevant to understanding policy making. However, once this assumption is relaxed to consider incomplete information and bounded rationality, then speech appears to be at the center of political economic explanations. Preferences are no more objectively given – or exogenous – but they are related to beliefs and values – they are endogenous – and we may want to grasp these beliefs and values through the systematic analysis of the content of constitutional documents.

### *Content analysis techniques*

Content analysis is «a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use» [KRIPPENDORF, 2004, p. 18]. Krippendorff identifies six epistemological implications of his definitions [*op. cit.*: 22]: 1- *Texts have no objective – that is, no reader-independent – qualities.* Only the reader can generate the meaning of a text. Constitutional texts, as any other text, are targeted to readers – often to judges but also to other individuals – who give them their meaning; 2- *Texts do not have single meanings.* This is particularly true of Constitutional texts which are interpreted differently by different courts and even by different judges within a court. This is no less true of social scientists who may want to read constitutional texts from their own perspectives; 3- *The meaning invoked by texts need not be shared.* Content analysts read texts in ways that are different from each other, depending on the research question they want to answer; 4- *Meanings (contents) speak to something other than the given texts.* Texts can provide information about events at distant locations, about objects that no longer exist, about ideas in people's minds, about available actions, etc. Constitutional texts, for example, may provide information about the intents, the interests, or the ideology of their drafters; 5- *Texts have meanings relative to particular contexts, discourses, or purposes.* Content analysis requires a conceptual framework to generate meanings. Without such a framework, there is no interpretation possible. This is the reason why I suggested a conceptual framework based on power relations in the previous section; 6- *The nature of text demands that content analysts draw specific inferences from a body of texts to their chosen*

*context.* The type of inference content analysts do is abductive inference, as mentioned above. Making these epistemological implications explicit helps us realise the methodological challenge that a walk-talk approach entails. It is not surprising then that content analysis has generated a large number of techniques.

For content analytic techniques are numerous. They could be classified in four categories, from the most objective to the less objective technique: 1- quasi-fully automated techniques; 2- semi-automated techniques; 3- dictionary techniques; 4- classical content analysis<sup>7</sup>. The aim of these methods is systematically to categorise the content of a text in order to make it amenable to statistical analysis. It may be useful here to give an example of each of these techniques so as to see their potential.

Godbout and Yu [2009], for example, used a quasi-fully automated technique to assess whether there is a relationship between the quantity of speech used on the floor (number of words) and the individual level of legislative productivity by the senators of the 101<sup>st</sup> to the 108<sup>th</sup> US Congress. Using a computer software, they measured that senators spoke an average of 202 238 words per Congress, with a range going from 719 623 words (senator Harry Reid, D-Nevada) to 415 words (senator Hank Brown, R-Colorado). Through a regression analysis, they show that this variable is significantly related to several measures of legislative activity and party association, but not related to the proximity of elections or gender.

A good example of a semi-automated technique is the application made by Galli, Grembi and Padovano [2009]. In their paper, they evaluate the erosion of electoral accountability of the ‘Governors’ of the Italian Regions in three subsequent political moments: 1- the election, 2- the inaugural speech of the Governor, and 3- the Governor’s first important policy decision, the long-term regional budget. They use the Wordscores method [LAVIER *et al.*, 2003] to assess the position of each Governor on a left-right distribution in inaugural speeches and in budget speeches. They explain: «This methodology is based on a comparison of two sets of political texts: (1) the so-called ‘reference texts’, constituted by texts whose policy positions on well-defined, a priori policy dimensions are known to and chosen by the analyst and (2) the so-called ‘virgin texts’, composed of texts whose policy positions must instead be found out. Specifically, this methodology uses the relative frequency for each of the different words in each of the reference texts to calculate the probability of reading a particular reference text given that a

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<sup>7</sup> I use here the typology proposed by Crête and Diallo [2009].

particular word is found in the virgin text. [...] This procedure can be thought of as a type of Bayesian reading of the virgin text with the estimates of the policy position of any given virgin text being updated each time one reads a word that is also found in one of the reference texts. The more scored words are read, the more confident one becomes with the estimates» [GALLI *et al.*, 2009, pp. 113-4]. The authors find some erosion of accountability from the elections to the inaugural speeches, and a more serious one from the inaugural speech to the budget speech. Through ANOVA tests they show that the Region's economic position partly explains the loss of accountability.

An application of a dictionary technique is provided by Foucault and François [2009] who propose an econometric analysis confronting fiscal choices with the priorities expressed by French Prime ministers. Thus they compare the budgetary allocations of French governments over the period 1958-2005 to the content of Prime ministers' inaugural addresses. To assess the content of the speeches, they developed a 323 word dictionary including all the words dealing with one single public policy budget category (2.4 to 4.7 percent of the words included in the analysed speeches). Through a time series analysis predicting the yearly level of public spending, they show that, after controlling for economic and political variables, the general policy inauguration speech has no significant influence over annual budgetary variations except for two public policy areas: transport/public works and agriculture. In these two areas, a higher discursive priority is significantly related to a *lower* budgetary allocation. In other words, «the action of the French government is more discursive than budgetary» [p. 149].

Finally, the classical content analysis consists in coding a text while reading it, according to a codebook in which the relevant coding categories are defined. The codes thus generated are then included into a quantitative analysis. This is the method applied by Francesc Pujol [2009] in his analysis of the «State of the Union Addresses» delivered by the American presidents from 1920 to 2008. In his paper, Pujol measures the presidents' fiscal attitudes concerning deficits and debts. To do so he first elaborates a sophisticated framework of fifteen *arguments* about public debts and deficits, five normative, ten positive. Pujol then looks for these arguments in a presidential address, extracting every argument he finds and coding it in terms of its fiscal conservativeness or fiscal non-conservativeness. He finds 2409 such statements. He finally computes two indices of the difference between the number of fiscally conservative and non-fiscally conservative statements. His analysis of these results shows that presidential fiscal stance does not follow a

partisan line or economic conditions. Presidents often change the tenure of their discourse one year from another and they differently react to economic slowdowns and recessions.

### *Content analysing constitutional documents*

The research design I propose here falls into the fourth category, classical content analysis or human coding content analysis. The method views the treatment of a text in two steps: 1- the extraction of the units of analysis<sup>8</sup>; 2- the coding of the extracted units.

Identifying the units of analysis implies to cut the texts into relevant or meaningful sections. It could be words or sentences or paragraphs. But it could also be «themes», i.e. a unit of meaning comprising several words or sentences. For our purposes, a thematic analysis is the best way to go. To do it the constitutional document is carefully read so as to identify all instances of power relation defined as *the description of the relationship between two agents – social power – or between an agent and an object (thing, event, or result) – instrumental power – such that an agent has the capacity to act, or is prevented from acting, upon another agent or upon an object.* Thus, reading through the sections of a constitutional document, one «extracts» each occurrence corresponding to this definition, i.e. each time an agent is identified as having the capacity to act – or as being prevented from acting – upon another agent or upon something. There can be as many units as there are combinations of agents, objects, and types of power in a power relation.

Let's take an example drawn from one of the Canadian constitutional documents, the Canada Act 1982<sup>9</sup>. Section 38(1) of this act says:

*An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by*  
*(a) resolutions of the Senate and House of Commons; and*  
*(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.*

This clause gives the Governor General the instrumental power of issuing a proclamation amending the constitution. It further gives the Senate, the House of Commons, and a certain number of provincial legislatures the instrumental power to authorize such proclamation and therefore the social power over the Governor General to prevent him or her from proclaiming an

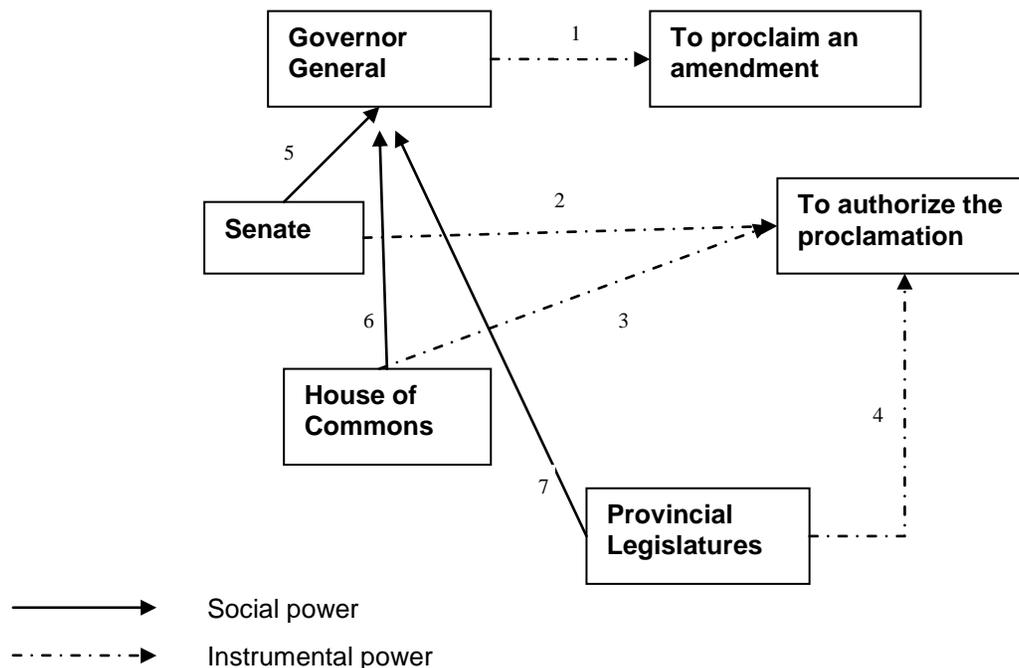
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<sup>8</sup> Krippendorff calls this step «unitizing» [2004 : 83].

<sup>9</sup> 1982, c. 11 (U.K.).

amendment. The network of power relations contained in this section may be displayed as in figure 1. It comprises seven power relations. Therefore one would «extract» seven units of analysis from this section.

**Figure 1 : Power relations in section 38(1) of the 1982 Act**



Once the units of analysis have been extracted from the constitutional text, they need to be coded, i.e. we want to characterise them on a number of dimensions, sufficient to test our two hypotheses. Here we need five dimensions: Type of power (1- instrumental or 2- social); direction of power (1- positive or 2- negative – increasing or restraining the power of an agent); resource of the influencing party (1- authority, 2- wealth, or 3- knowledge); object of influence of instrumental power (1- distributions of authority, 2- wealth, 3- knowledge, or 4- not applicable); resource of the influenced party in a social power relation (1- authority, 2- wealth, 3- knowledge, or 4- not applicable). If we were to code the seven power relations depicted in figure 1, we would get the following matrix (note that I added a sequential number by which it will be possible to refer to a particular unit<sup>10</sup> as well as two columns to locate the unit in the text: «1982», refers to the constitutional text, «38(1)» refers to the section):

1	1982	38(1)	1	1	1	1	4
2	1982	38(1)	1	1	1	1	4
3	1982	38(1)	1	1	1	1	4

<sup>10</sup> For convenience, the sequential numbers given here correspond to the numbers of the power relations displayed in figure 1.

4	1982	38(1)	1	1	1	1	4
5	1982	38(1)	2	1	1	4	1
6	1982	38(1)	2	1	1	4	1
7	1982	38(1)	2	1	1	4	1

The same process is repeated throughout the text. A first empirical exploration of the 1982 Act yielded a total of 73 power relations, an average of 1.24 power relations per section [IMBEAU – JACOB, 2010].

Using the data thus generated, one could test the two hypotheses formulated above. The first hypothesis predicts that the number of text units related to political power (the distribution of authority) is higher than those concerned with economic or preceptoral power (wealth or knowledge). The second hypothesis predicts that there are more negative than positive power relations in constitutional documents. Thus the hypotheses can be tested on one Constitution or on several constitutional texts in a given country. For example, in their application of this method to the Canadian Constitution, Imbeau and Jacob [IMBEAU – JACOB, 2010; Forthcoming] confirm the first hypothesis and contradict the second one. A cross-country analysis is also possible as several Constitutions may be exposed to the same treatment thus generating a cross-country data matrix from which it would be possible to generate a variable measuring the impact of uncertainty in the constitutional decision-making process of each country. Then, provided a large enough sample, a statistical analysis could give us clues as to the possible factors that explain the variation in this variable. Through the systematic analysis of the content of constitutional texts in several countries, we could generate new knowledge about the decision-making process at the constitutional level.

## **Conclusion**

The veil of ignorance hypothesis is central to constitutional political economy. Yet attempts at systematically testing it are rare instances. A «walk-talk» approach treating constitutional documents as discourses about power relations in society may contribute to develop such a test. In this note, I proposed a conceptual framework and an extracting and coding technique that make possible a cross-country statistical test of this hypothesis. The systematic use of this method, coupled with inter-coder reliability tests within each country, gives some guarantee as to the comparability of the data generated and to the validity of the conclusions to be drawn from them. All is needed then is an international team devoted to materializing the promises to this approach.

## References

- BACHRACH, P. – M.S. BARATZ, 1963, «Decisions and Nondecisions: An Analytical Framework», *The American Political Science Review*, 57, p. 632-642.
- BOWLES, S. – H. GINTIS, 2008, «Power», in DURLAUF, S.N., and L.E. BLUME, (eds), *The New Palgrave Dictionary of Economics*, Palgrave Macmillan.
- BRAHAM, M. – F. STEFFEN, (eds), 2008, *Power, Freedom, and Voting*, Berlin, Springer.
- BRENNAN, G. – A. HAMLIN, 2001, «Constitutional Choice», in SHUGHART II, W.F. – L. RAZZOLINI, (eds), *The Elgar Companion to Public Choice*, Cheltenham, UK, Edward Elgar.
- BRENNAN, H.G. – J.M. BUCHANAN, 1985, *The Reason of Rules*, Cambridge, Cambridge University Press.
- BUCHANAN, J.M. – G. TULLUCK, 1962, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Ann Arbor, The University of Michigan Press.
- CONGLETON, R.D., 2003, «The Median Voter Model», in ROWLEY, C.K. – F. SCHNEIDER, (eds), *Encyclopedia of Public Choice*, New York, Springer.
- CRÊTE, J. – N. DIALLO, 2009, «Do Parties Matter? A Qualitative Answer with Numbers», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- DAHL, R.A., 1963, *Modern Political Analysis*, Englewood Cliffs, NJ, Prentice-Hall Inc.
- DOWDING, K., 2009, «Rational Choice Approaches», in CLEGG, S.R. – M. HAUGAARD, (eds), *The Sage Handbook of Power*, Los Angeles, Sage.
- DOWDING, K.M., 1991, *Rational Choice and Political Power*, Aldershot, Edward Elgar.
- FELSENTHAL, D.S. – M. MACHOVER, 1998, *The Measurement of Voting Power*, Cheltenham, UK, Edward Elgar.
- FOUCAULT, M. – A. FRANÇOIS, 2009, «General Policy Speech of Prime Ministers and Fiscal Choices in France: «Preach Water and Drink Wine!», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- GALLI, E., *et al.*, 2009, «Would You Trust an Italian Politician? Evidence from Italian Regional Politics», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- GODBOUT, J.-F. – B. YU, 2009, «Speeches and Legislative Extremism in the U.S. Senate», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- IMBEAU, L.M., 2007, «Leviathan or Geryon? Safeguards against Power Abuse in Democratic Societies», in MARCIANO, A., and J.-M. JOSSELIN, (eds), *Democracy, Freedom, and Coercion: A Law and Economics Approach*, Cheltenham, UK, Edward Elgar.
- IMBEAU, L.M., 2009, «Dissonance in Fiscal Policy: A Power Approach», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- IMBEAU, L.M. – J. COUTURE, À paraître, «Pouvoir Et Politiques Publiques», in PAQUIN, S., and G. LACHAPPELLE, (eds), *L'analyse Des Politiques Publiques*, Montréal, Presses de l'Université de Montréal.
- IMBEAU, L.M. – S. JACOB, Forthcoming, «Is The "Veil of Ignorance" In Constitutional Choice a Myth? An Empirical Exploration Informed by a Theory of Power», in MARCIANO, A., (ed.), *Constitutional Mythologies*, Dordrecht, Springer.

- IMBEAU, L.M. – S. JACOB, 2010, «Is The "Veil of Ignorance" In Constitutional Choice a Myth? An Empirical Test», Annual conference of the European Public Choice Society, Izmir, Turkey.
- KRIPPENDORF, K., 2004, *Content Analysis: An Introduction to Its Methodology*, Thousand Oaks, CA, Sage Publications.
- LAFAY, J.-D., 1992, «La Théorie Probabiliste Du Vote», *Revue d'économie politique*, 102, p. 487-518.
- MCGUIRE, R.A., 1988, «Constitution Making: A Rational Choice Model of the Federal Convention of 1787», *American Journal of Political Science*, 32, p. 483.
- MCGUIRE, R.A. – R.L. OHSFELDT, 1989, «Public Choice Analysis and the Ratification of the Constitution», in GROFMAN, B., and D. WITTMAN, (eds), *The Federalist Papers and the New Institutionalism*, New York, Agathon Press.
- MCGUIRE, R.A. – R.L. OHSFELDT, 1989, «Self-Interest, Agency Theory, and Political Voting Behavior: The Ratification of the United States Constitution», *American Economic Review*, 79, p. 219.
- MIROWSKI, P., 1987, «The Philosophical Bases of Institutional Economics», *Journal of Economic Issues (Association for Evolutionary Economics)*, 21, p. 1001.
- PEIRCE, C.S., 1934, *Collected Papers*, Cambridge, Harvard University Press.
- PUJOL, F., 2009, «Measuring Us Presidents' Political Commitment for Fiscal Discipline between 1920 and 2008», in IMBEAU, L.M., (ed.), *Do They Walk Like They Talk? Speech and Action in Policy Processes*, Dordrecht, Springer.
- RAWLS, J., 1971, *A Theory of Justice*, Cambridge, Ms, Harvard University Press.
- RIKER, W.H., 1986, *The Art of Manipulation*, New Haven and London, Yale University Press.
- ROWLEY, C.K., 2008, «Public Choice and Constitutional Political Economy», in ROWLEY, C.K. – F.G. SCHNEIDER, (eds), *Readings in Public Choice and Constitutional Political Economy*, New York, Springer.
- RUSSELL, B., 1962, *Power: A New Social Analysis*, London, Allen & Unwin.
- VOIGT, S., 1997, «Positive Constitutional Economics: A Survey», *Public Choice*, 90, p. 11-53.