

In a legislative body the agenda is controlled, for the most part, by the official leaders. But ordinary members do have defenses against leaders' domination. One defense is the introduction of divisive amendments, really a kind of agenda control by back-benchers, as practiced, for example, by Chauncey DePew. Another defense is strategic voting, which is voting contrary to one's immediate tastes in order to obtain an advantage in the long run. Sometimes, as in the story I am about to relate, leaders and ordinary members compete, the one manipulating the agenda, the other countering with strategic voting. In this instance, the ordinary members neutralized the leader, although against less acute opposition the leader might have come out ahead.

This story is particularly impressive to me because it shows that heresthetics is an ancient art, practiced skillfully in the Roman Senate about 100 A.D., probably during the reign of the Emperor Trajan. Heresthetical maneuvers were rarely described by ancient writers, except for Thucydides. But we do have at least one other detailed account in the letters of the younger Pliny. A tale such as this is a valuable reminder that the art of heresthetics is not just a feature of the complications of modern civil life, but is, rather, a universal practice of mankind. Wherever people make decisions in groups, it is possible to practice heresthetics. If we had inherited enough historical detail, I suspect we would find tales similar to this one in the annals of the advisers of the Pharaohs and the Incas.

The younger Pliny was a Roman barrister who made a career of the practice of chancery law and of various prosecutorial, judicial, and fiscal magistracies. At the end of his life, he

was a troubleshooter in Asia Minor for the Emperor Trajan. On the civilian side of things, this was a fairly typical career for the several hundred senators who, at any one time, managed the Roman Empire. But Pliny differed from most others because he also had literary ambitions. This was perhaps a family trait: his uncle, the elder Pliny, though by profession a soldier and a governor, also wrote voluminously as an avocation. But the elder Pliny is now remembered mainly for his natural history, while the younger Pliny invented a new art form, the familiar letter. Since he himself collected his letters for publication, they never delve far beneath the public surface, either psychologically or socially. Still they give us, with his permission and in the way he wished it, a glimpse into the family, literary, and professional life of a genial, humane, and somewhat self-satisfied Roman gentleman.

The letters deal with many topics: his writings, houses, and farms; his family, colleagues, friends, sponsors, and protégés; and gossip, prodigies, and so on. One topic that often recurs comprises cases from his professional life. He used the letters, so it seems, to justify actions that others had perhaps criticized—a surefire way to have the last word. Thanks to this literary style, we have a wealth of concrete details about a few of his actions, one of which occurred in the course of his parliamentary manipulation.

As presiding officer, he ruled—unsuccessfully—that the Senate use a procedure that would lead to an outcome he desired; but his ruling must have seemed unfair to many senators. So his letter (book 8, letter 14) about this event is in fact an elaborate justification of his ruling, although it is couched in the form of a request for advice on precedents from Titius Aristo, whom he addresses as his friend and as an authority on parliamentary law. In several generations of imperial rule, senators had forgotten customary procedure, so Pliny said, and the letter is thus a request for precedent. Actually, however, it is his argument for the procedure he used, regardless of what may or may not have been the customary rule. Indeed, Pliny tells Titius that, although the case is now closed, he is going to explain his arguments in his own

way without the interruptions he had to put up with in the Senate.

The case arose when the consul Afranius Dexter was found dead. He might have been a suicide or he might have been killed by his servants; and if he was killed by his servants, they might have done so either with criminal intent or at his request. Consequently, his freedmen were on trial before the Senate. (Pliny tells us nothing about the household slaves beyond implying that their fate had been decided previously. The commentators tell us that, in such cases, typically the slaves were executed wholesale, and Pliny perhaps implies that that happened in this case. Roman aristocrats took no chances with slave revolts.)

Concerning the fate of the freedmen, there were three opinions or, in a sense, three parties:

1. For acquittal, A. (Presumably these people believed Afranius was a coward who was unable to commit suicide and who had therefore instructed his servants to kill him. Incidentally, Pliny describes braver men who killed themselves when old and sick, a reasonable action in an era without painkillers. Unlike the cowardly Afranius, these other suicides, including, perhaps, Titius Aristo himself, thoughtfully and decently avoided involving their households in the act. The most politically self-conscious of the suicides was one Cornelius Rufus, gouty in all limbs, who nevertheless waited to starve himself to death until he had outlived the tyrant Domitian.)
2. For banishment, B. (Perhaps these people believed that Afranius had indeed ordered his own murder but nevertheless wished to impose some punishment because then, as now, it was against the law to assist a suicide.)
3. For condemnation to death, C. (Doubtless these people suffered from the "we'll-all-be-murdered-in-our-beds" syndrome.)

The first group, which, it is important to note, included Pliny himself, was the largest, but no group was a majority in itself. Any two groups together could have won. This suggests a ratio

something like 45:35:20, where the party for acquittal has 45 percent and the party for banishment 35.

It is easy to reconstruct the full preference orderings for two of the groups. Pliny tells us that banishment is closer to acquittal than to death. Hence the group for acquittal must have ordered thus:

- (1) A (acquittal), B (banishment), C (condemnation to death).

Pliny also tells us that those who voted for execution and banishment ultimately sat together on the initiative of the mover of the motion for death. Hence the group for condemnation to death must have ordered:

- (3) C (condemnation to death), B (banishment), A (acquittal).

The ordering for the group for banishment is not quite so clear. Certainly, banishment is in the first place; but does death or acquittal come second? Pliny's judgments confuse us: if banishment is closer to acquittal than to death, then acquittal should be second. But if those for banishment and execution sat together, then execution should be second. However, if, as Pliny hints, the decision to sit together was made unilaterally by the leader of the party for execution, then the seating arrangements imply nothing about the second choice. So, given Pliny's other remark that banishment is closer to acquittal than to death, the group for banishment must have ordered:

- (2) B (banishment), A (acquittal), C (condemnation to death).

And, to summarize, the groups were:

1. Acquitters: ABC—45%
2. Banishers: BAC—35%
3. Executioners: CBA—20%

As presiding officer, Pliny was uncertain, or professed to be, about how to put the question. We can compare his choice of

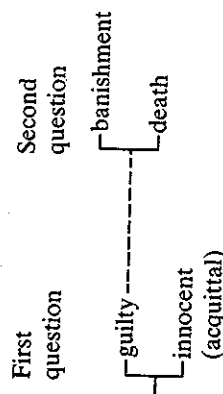
procedure with modern criminal procedure, even though it may be no better or worse than his. Today a court would first decide whether the accused was guilty or innocent. If innocent, acquittal would end the matter. If guilty, the court would then decide on the punishment, banishment or death. Using this modern procedure, at the first question those for death and banishment would join in voting guilty, which would thus win with 55 percent of the ballots. Then, on the choice between banishment and death, those for acquittal and banishment would join in voting for banishment, which would win with 75 percent.

This modern procedure is "binary" in the sense that it pits a pair of alternatives against each other, with the survivor either being the ultimate winner or being pitted against another alternative. Given the distribution of tastes in Pliny's Senate, any binary procedure would lead to banishment as the outcome. This is owing to the fact that banishment is a "Condorcet winner"—that is, it has a clear majority over each of the other alternatives. Of course, a Condorcet winner need not exist (A might beat B, B beat C, and C beat A), but if a Condorcet winner does exist, a binary procedure will reveal it.

This feature is what renders binary procedures morally attractive to moderns. Morally speaking, one wants to have confidence that voting truly and fairly amalgamates the variety of voters' tastes into a unique social choice. Surely one has the most such confidence when an absolute majority places one alternative first in their orders of preference. Unfortunately,

FIGURE 1

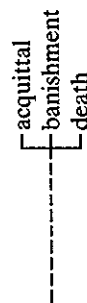
Modern Procedure



when, as in the case of Afranius Dexter's freedmen, there are more than two alternatives, often no alternative has a majority of first places. So one needs a definition of winning that is both easier to satisfy and yet still fair. And a good second best is the Condorcet criterion: the winner is that alternative which has a majority over each of the others. The moral justification of binary procedures is, then, that they satisfy the second-best or Condorcet criterion, if it can be satisfied at all.

I emphasize our modern preference for binary procedures because Pliny self-interestedly and self-righteously rejected a binary procedure in this case. He chose instead to put the question in what might be called a ternary form (see figure 2). That is, he required that each of the three senators who had moved a motion sit in separate places, intending to choose as the winner that alternative whose mover had the most voters sitting near him. This procedure, of course, utilizes the plurality criterion which is quite different from the Condorcet criterion. The plurality winner is that alternative which has the most first-place votes, and need not be the same as the Condorcet winner. Indeed, in this case, the plurality winner is A, acquittal, with perhaps 45 percent of the votes, but A loses to the Condorcet winner, B, or banishment, in a head-to-head contest, 45 percent for acquittal and 55 percent for banishment.

It is easy enough to see why Pliny wanted to use a ternary procedure. He himself favored acquittal, which would lose by any binary procedure and, presumably, win by his ternary procedure. So he exercised his power as presiding officer to force the adoption of his own first choice. As he tells us, however, his explanation of his ruling was interrupted—one can imagine a scene of considerable tumult and shouting—and

FIGURE 2
Pliny's Procedure

this suggests that the senators knew very well what he was doing and that his ruling violated their sense of fair play.

And well it might. Pliny tells us enough about Roman parliamentary forms to indicate that the then ancient formula for taking a division was binary. It began with "All who agree go to this side," which is clearly binary. It continued, so he said, in what appears to be an n -ary form: "all who support any other proposal go to the side you support." Pliny interprets this as implying n sides (or, in this case, three), which supports his case. But n sides seems wholly implausible and, given the binary tone of the first part of the formula, one suspects that the intention of the latter part was binary also. Clearly, from the described interruptions, many senators thought so too. Pliny's ruling must have seemed quite arbitrary and unfair, especially since the commentators tell us that it was customary to vote on banishment and death separately and in succession, and this is substantially a binary procedure, which in this case would, of course, have resulted in banishment (see figure 3).

Pliny had his way, however, about the form of the question. So long as the motions for death and banishment were both before the Senate, he forced the supporters of each to sit apart. He was about to win.

But the mover of the motion for the death sentence and the leader of executioners was just as acute a parliamentarian as Pliny. Putting the best face on his defeat, Pliny tells us that the mover of the motion for death was "convinced" by Pliny's arguments. So he (i.e., the mover) dropped his motion and crossed the floor to sit with the supporters of banishment. His

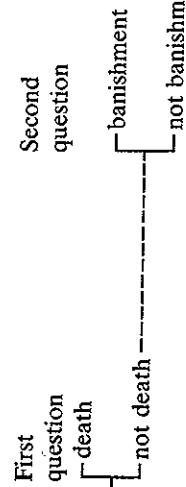


FIGURE 3
Traditional Roman Procedure

supporters followed him and so banishment won. Pliny lost, despite his (perhaps too clever) parliamentary maneuver.

Pliny's maneuver depended for its success on each senator voting myopically—that is, voting for the first alternative in his preference order, regardless of consequences. If the senators had acted as he expected, the supporters of banishment and of death would not have combined forces, thus assuring victory for acquittal. But the laws of nature do not require that men behave foolishly. We can consider the consequences of alternative actions and choose the one that seems likely to turn out best. In the case of voting, this means to vote strategically, that is, to vote to obtain the best possible outcome, not merely to express an opinion. Strategic voting in this situation required the supporters of the death sentence to vote for their second-place alternative in order to prevent the victory of their third-place alternative, which is, of course, precisely what the senators did. They may have been illiberal, but they were not stupid.

In general, parliamentary situations are like this. Leaders have the kind of procedural power that Pliny exercised, but back-benchers can counter with strategic voting. So the fox can be outfoxed. And thus a balance can be maintained, often resulting, as here, in the selection of the Condorcet winner, which is a socially better outcome, I believe, than the plurality winner that would have been selected by Pliny's procedure.

In reflecting upon Pliny's letter, perhaps the most remarkable feature is not the story itself, but Pliny's defense of his action. He claimed that everybody on the same side ought to have the same structure of preferences—so, for example, three structures should represent three sides. Some modern commentators (as well, presumably, as the opposing senators) have interpreted his argument as simply an unsuccessful attempt to pull the wool over the senators' eyes. But an alternative explanation is just as feasible, namely, that Pliny genuinely misunderstood the nature of voting. In the first explanation, Pliny is not only a conscious schemer trying to push the Senate where a majority will not go, but also a conscious

dissembler whose justification of his ruling is merely ideological dressing for what he recognized, otherwise, as his naked self-interest. In the second explanation, which I must say appeals to me, Pliny is assumed to speak ignorantly but innocently. Of course, his ruling did blatantly express his own preference. But he may very well have been confused about the meaning of voting and majorities. If so, then his self-defense was at least honest. He remains a schemer, of course, just like most other men, but he is not omniscient. That he took a wrong position because it was to his advantage is clear, and this renders him culpable on a practical level. But he seems not to have had the slightest suspicion of how wrong his position was, which absolves him of culpability on an intellectual level.

The reason I am inclined to take this second, more lenient view of Pliny's letter is that still today a similar confusion echoes in classrooms and forums. If, after centuries of practice, we still, often innocently, make the same mistakes as Pliny, then we can hardly call him a liar and an ideologist. But we can learn from his mistake.

Pliny's fundamental error was his belief that everyone on the same side has (or ought to have) the same opinions. This was historically untrue in the very case he analyzed. The ultimate senatorial majority was composed of banishers (with BAC) and executioners (with CBA). Of the three pairs of alternatives (A against B, B against C, A against C), the two groups in the majority agree only in preferring B to A. Otherwise, the banishers like A better than C while the executioners like C better than A. Similarly, the banishers like B better than C, while the executioners are opposite. The actual winning majority thus disagreed on the ordering of two out of the three pairs. Clearly, majorities do not in fact always share the same opinions.

This fact disturbed Pliny, and his main argument in favor of his ternary procedure was that it forced the supporters of each motion to have homogeneous opinions. Should Pliny have been disturbed, as he said he was, by the fact that banishers and executioners might vote together on one issue (guilty or

innocent) and then oppose each other on another issue (punishment)? To most modern parliamentarians, Pliny's uneasiness betrays a misunderstanding of what we—I mean both we professional parliamentarians and we professional students of social choice—now believe to be the essence of voting. We recognize that opinions are as various as fingerprints and so we expect majorities on one motion to consist of opponents on an immediately previous motion. We agree with the aphorism that politics, or in this case voting, makes strange bedfellows. What Pliny found disturbing, we believe to be normal.

But, of course, our difference in belief does not make either him or us right. Perhaps we can understand the deeper moral implications of the difference if we examine what it generally implies about moral standards for voting. Pliny clearly placed great emphasis on coherence. A majority either ought to make sense philosophically, he argued, or it ought not to be brought into existence by a head count. We, on the other hand, ask less of a majority. We recognize that its coherence can be obtained only at the cost of concentrating power in an autocrat or in oligarchs to police the views of its members. (This proposition is indeed the essence of Arrow's Theorem, though as a practical point it was understood by James Madison two hundred years ago.) We therefore reject the idea of a boss and opt for the autonomy of the individual voter. Furthermore, we interpret majorities as no more than artifacts of the head count, and we specifically deny that they make sense independently of the arithmetic. We see in Pliny's emphasis on coherence the roots of majority tyranny against which we have erected constitutional barriers such as the separation of powers. So there really is something at stake morally in this dispute. What started as an apparently simple matter of parliamentary law turns out to involve contrasting views about individual autonomy and, even more, about the appropriate instruments to preserve political liberty.

I think it likely that, with deeper thought, Pliny would have joined our side. He was, as his position on the issue in this case reveals, a liberal and humane man. Had he recognized that his action and his argument placed coherence above au-

tonomy and justified demagoguery, I suspect that he would have reversed himself. I do not mean that he would not have tried to manipulate the Senate. As a reasonable man, he might very well—perhaps should—have done that. But at least he would not have tried to clothe his manipulation in a morally dubious theory.

Sources: Pliny's letter was brought to the attention of social choice theorists by Robin Farquharson, who used it as the running example in his *Theory of Voting* (New Haven: Yale University Press, 1969; accepted as a dissertation at Oxford in 1957). Unfortunately, Farquharson had available to him only an eighteenth-century translation by a translator who did not seem to understand the parliamentary issues involved and therefore did not see what happened at the end of the event. In 1963, however, Betty Radice published *The Letters of the Younger Pliny* (Harmondsworth: Penguin Books, 1963), which contains a sensitive and perceptive translation of letter 14 of book 8. I was much helped in understanding Pliny's letter and Radice's translation by my late colleague and superb Latinist, Maurice C. Cunningham. An exhaustive recent commentary, A. N. Sherwin-White, *The Letters of Pliny: A Historical and Social Commentary* (Oxford: Clarendon Press, 1966) exists, but it does not shed much light on this letter because, unlike Farquharson and Radice, Sherwin-White does not seem to understand the parliamentary situation in which Pliny found himself.

8 TRADING VOTES AT THE CONSTITUTIONAL CONVENTION

In the public imagination legislators are constantly trading votes. Just as in the case of describing other popular but slightly disreputable activities like drinking alcohol, we have coined a variety of synonyms for vote-trading, such as "log-rolling," "back-scratching," or "going along," as in the practical cynicism of Sam Rayburn's remark "To get along, go along." The proliferation of synonyms reveals our (possibly naive) belief in the universality as well as the mild vulgarity of trading votes. It is even possible, as it happens, to date our sensitivity to the practice. In the latter quarter of the nineteenth century, at least seven states prohibited vote-trading by constitution or statute. No one, so far as I know, was ever prosecuted, and surely the practice has not abated since then.

Vote-trading is indeed an important heresthetic device. In manipulating political situations to one's advantage, it is not always possible to engage in grand maneuvers like increasing or fixing dimensionality. But one can always advantageously manage parliamentary situations, either by exploiting the rules, which is what presiding officers and agenda committees can do, or by casting one's own vote strategically, which is what ordinary members can do. Pliny's opponents cast their votes strategically for banishment instead of condemnation to death, an action they could undertake entirely on their own. Sometimes, however, strategic voting requires the cooperation of an erstwhile opponent with whom one trades votes for mutual advantage.

Widespread as vote-trading is thought to be, it is difficult to find well-documented and admitted instances of it. For one reason, politicians do not like to talk about it. When they do