Initial Federal Offices Created/Contemplated by the Philadelphia Constitution

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INITIAL FEDERAL OFFICES CREATED/CONTEMPLATED
BY THE PHILADELPHIA CONSTITUTION

2 OCL 168

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ABSTRACT.
Compared to the Articles of Confederation (3,453 words) the Philadelphia Constitution (4,321 words) presented relatively dense prose, if only the number of titles and offices is considered. The 107 offices created or contemplated by the Philadelphia Constitution are surveyed and the significance of the number of intersections (between and among titles and offices) is introduced.

KEY WORDS: offices created or contemplated; constitutional density.

A. INTRODUCTION. The Articles of Confederation, Constitution I, lacked a judicial branch of government; it also featured a plural executive, which worked as a legislative council of revision and, as a committee of the legislature, these worthies stood by to take action in the absence of a Congressional quorum. This stop-gap measure did not supply executive power not otherwise vested in the unicameral legislature.

In fine, notions of separation of powers and checks and balances (and the notion of tri-partite government) were truncated in its 3,453 words.

B. OTHER ARTICLES/TABLES. The reader might, with advantage, peruse Naming the Constitutions and Constitutional Text in the Early American Republic, 2 OCL 378, which introduces nomenclature and word counts for our national charters; this essay is based, in part, on Resources Available to Constitution Drafters, Current to 1787, 2 OCL 308. In addition, the reader may profit by How Many Unique Words Did It Take to Write Our First Constitution? 2 OCL 180, and How Many Unique Words Were Required to Write Our Second Constitution? 2 OCL 649.

C. RESOURCES. For on-line access to Peter Aschenbrenner’s articles, tables and charts see purdue.academia.edu/PeterAschenbrenner or works.bepress.com/peter_aschenbrenner/

D. THE 107 OFFICES. Constitution II addresses 107 public officials, which came into existence by the time the first federal Congress closed up shop. That should strike the reader as a significant payroll for a nation of four millions, when three states (New York, North Carolina, and Rhode Island) failed to dispatch Senators to the first session of said Congress.

OCL does not count lesser officials such as judges and clerks in the judicial branch or the secretaries and clerks crowding the water-coolers in the executive branch, not to mention the military establishment.
These 107 need responsibilities to justify their pay: Constitution II sets forth 37 passages which command or permit fulfillment of these responsibilities. The count is currently fleshed out in Our Aesthetic Constitutions: A New View, 2 OCL 258.

E. A Little Night Maths. There is another way to see these intersections: reduce the number of actors and bodies. Doing so, OCL shortlists seven: the President, Vice President, House and Senate in their majoritarian and supermajoritarian flavours and, for good measure, throw in a Supreme Court.

If we search for intersections between any two, in any order, from a pile/heap of seven things, the formula \( _nC_r \), in which n is all of the ‘things’ that can be manipulated and r is the count of what we want at the end of the day: two dice or five cards in a poker hand. Here \( _7C_2 = \frac{N!}{[R!*(N-R)!]} \) yields 21 possible combinations; for any three the formula \( _7C_3 \) will return 35 combinations. The combinations by threes, for example will account for the typical legislative path by which the House, Senate and President approve legislation. The President and Senate, taken together, are an instance of intersection by two.

These total 54.

A good deal of the convention’s attention must be paid to titling and officeing, with intersections supplementing the mini-list of candidacies and qualifications. Working backwards, how many words must be devoted to types of text grouped as titles, offices and intersections?

It’s April, 1787. Imagine that you serve on a committee preparing briefing papers for the Philadelphians. You know that 3,453 words were spent on Constitution I. Getting it right (or more right) you and your colleagues guess, should cost upwards of 4,000 words. There were 775 unique words in Constitution I. 831 words in Constitution II. Wouldn’t you expect to recycle 99% of these used words into your next constitution-in-a-row?

F. Recycling Constitutional Text. Another way to see this: the Philadelphia convention (1787) sat down to redo the work of the constitutional assemblies employed at Philadelphia, Baltimore and Lancaster (1776-1777) with a second tour at Philadelphia sandwiched in between Baltimore and Philadelphia. When the 1787 Philadelphians looked at the 1,183 words of responsibilities they said, ‘Nope, we need more.’ That’s 1,407 words in Constitution II.

When it came time to write titles, offices and intersections, cumulated in Constitution I at 1,084 words, the Philadelphians of 1787 devoted 1,950 words to this subject. This should come as no surprise. If you write a constitution and you don’t have a Supreme Court and you slag off a cobbled-up plural executive – a camel by committee – to title fifteen presidents you will be obliged to raid your word bank to beef up coverage of titles, offices and intersections.

On the other hand, Constitution I relied almost entirely on a government to government relationships, burning up 810 words. That tranche shrank to 480 words in Constitution II.

The attention to these three tranches (listed above) is brought into focus by the remarkable match-up of text other than aspirational, .96 to .98 in Constitution I to
"Constitution II" and .91 to .93, which figures are obtained by measuring text other than that devoted to aspirations and disabilities.

Apparati do not vary by that much, to round out our cumulation of these six categories, moving from .02 to .04 in "Constitution I" to "Constitution II".

When it comes to responsibilities, 1,407 words might be expended (and were) to direct Congressional attention to 37 subject matter areas, words spent at forty to one, more or less per subject matter area.

"Constitution II" now starts to make sense, costing each word. OCL will cost non-words in other essays devoted to the null-case.

G. **Semantic Unevenness.** At the most distant perspective, OCL has surveyed the intersections between two and three offices (with some variants thrown in). These are presented in Table 168C. The citations refer the reader back to *Introducing Constitutional Text Units*, 2 OCL 126, in which ‘CTUs’ were explained and all 5,224 words assigned to permanent numbers. It’s not important that the count of intersections be perfect; the tabled information serves this purpose: Every responsibility or title/office/intersection may be traced to constitutional text and this ends the search for a semantic pedigree.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

No further action is required by Congress; none is contemplated; one might even say that none is permitted. When Presidents Johnson and Clinton were impeached by the House and tried in the Senate, Chief Justices Chase and Rehnquist knew they were obliged to appear and did so.

One might say that these texts are self-executing; it is not the best of elocutions. Self-contained is preferable. Now turn to the famous laundry list of Article I, Section 8, or CTUs 28 through 43, inclusive. I omit the troublesome CTUs 27 and 44, the former calling on Congress to “provide for the common Defence and general Welfare of the United States ...” and the latter calling for laws “necessary and proper ...”

2 OCL 258 at Table 258F supplies the survey of responsibilities in a 37-fold presentation with 26 instances in which Congress will be obliged to act against 11 instances in which constitutional text is self-contained.

Let’s start with the first instance:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.
Here it’s pretty obvious that Congress must take action; the text is not self-contained. Now:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

It’s obvious that Congress need not take any action; the text is self-contained.

H. Table 168B Explained. The query is posed: How did the featured actor/body intersect with any other one actor/body or any other two actors/bodies? The results are counted in this survey which survey covers the following seven: President, Vice President, House, Senate, House by supermajority action, Senate by supermajority action, and Supreme Court. A few four-way intersections are included in three-way results.

I. References. [1] The Constitution’s deputation of the Chief Justice to preside when the President is tried in the Senate, following impeachment, does not precisely map the intersection of the President and the Court itself. But this highlights that it was a mistake for Richard Nixon to have appointed Warren Burger. No Burger, no trial.

J. Counting Intersections in Table 168C. The President appears at the most intersections (12) with the House (in its majoritarian flavour) second with 10. And it is the House and President that interact at least once with everyone. Altho’ one can argue that creating inferior federal courts is a slim means of involving oneself with the highest court, the Judiciary Act of 1801 which abolished circuit riding for a matter of minutes before it was repealed is a case to the contrary: lower federal courts do count as an intersection.

K. Laying It All Off. Imagine that you’re a delegate at the Philadelphia convention. You recognize that there are two very different risks in play.

Risk One. You write text that is self-contained. It is immediately bobbled. The government isn’t reading the text as you would. Something has to be done. With any luck, you’re around to voice your opinion as to corrective text.

Risk Two. You write text that Congress must fulfill. Congress may bobble the chance offered it. Or it may not. It could take years or generations before the convention’s – that’s your – miscrafting of text comes to light. You’ll need a lot of luck to stay alive through the one or two or three Jefferson generations that will elapse before the supermajoritarian potential comes into play.

The reader may read, with advantage, Sorting Constitutional Text by Dividing ‘Self-Contained’ From ‘Congressional Fulfillment Required,’ 2 OCL 892 and especially Table 892D for the ‘Square of Determinacy Embracing the Circle of Indeterminacy.’ These serve as the follow-on to this article.
The scope of this project of Our Constitutional Logics is titled, *Our Semantic Vistas: A RoadMap*, which roadmap will appear at 2 OCL 837 and walk the reader through the various articles and tables collected under this rubric.

L. **CONCLUSION.** There are commitments text-crafters make when they must devote thousands of words to titling, officing and intersecting over a hundred officials and their offices.

This is a commitment which flows from the density of the text being written. Some unevenness is bound to happen. The consequences of that unevenness will come to light as the text is ranked, as sliced and tranched by OCL. See *Sorting Constitutional Text by Dividing ‘Self-Contained’ From ‘Congressional Fulfillment Required,’* 2 OCL 892 which will be followed by *Ranking Semantic Unevenness in the Early Constitution,* 2 OCL 718.

The reader has already been apprised that in David Currie’s survey wildly varying statutory levels of semantic engagement were displayed by Congressional text-writers in the early republic. *David Currie Surveys Semantic Indeterminancy,* 2 OCL 259. It is not difficult to surmise that constitutional unevenness is responsible for statutory indeterminancy, a question that Currie explicitly poses without making this assertion flat-out in the form of a conclusion.

OCL will reveal its own assessment: The 1787 convention was, if nothing else, accountable for the text crafted and submitted for ratification.

It is worth noting that there are many semantic issues that arise when statutory text is crafted which issues have only a modest connection with the density of the text. *Surveying Semantic Stupidity in the Early Republic,* 2 OCL 891, identifies a line of inquiry arising from the ‘stupidity’ of Jackson’s Journals. *Writing a Constitution on the Eve of the Industrial Revolution: An Experiment in Semantic Exhaustion,* 2 OCL 884, explores neologisms and their arrival in our language’s speech events; the challenges posed by these newcomers would have crowned Hamiltonianism triumphant, without Hamilton lifting a finger. If not in the Nineteenth Century, then as soon as Einstein suggested to Roosevelt that atomic weapons be developed.

M. **CITATION FORMAT.** Please cite as 2 Our Constitutional Logic 168 or 2 OCL 168.

N. **SERVER LOCATION.** This file is maintained on the I/D server.

O. **LAST REVISED.** This file was last revised on August 24, 2014; it is version 011.

P. **FILE FORMAT.** The format of this file is MS Word 2010; the format of the associated table is also MS Word 2010.