Calling All Senators: Can a Few States Overthrow the Government?

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CALLING ALL SENATORS:  
CAN A FEW STATES OVERTHROW THE GOVERNMENT?  
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ABSTRACT.

Our Constitutional Logic analyzes the mathematical logic of quorum requirements for the United States Senate in the early American republic. Constitutions I and II provided quorum minimums as counts and proportions; Constitution II set forth a proportional quorum ("majority of members") requirement for legislative action but its action requirement must be teased out, at least for the Senate. Threats arising from any would-be tyranny of the minority are addressed as an introduction to The Vice-President’s Two Votes: Introducing the Mathematical Logic of TOM-TOM, 17 OCL 185, in which the Tyranny of the Majority and Tyranny of the Minority receive attention.

KEY WORDS: federal convention, quorum.

A. INTRODUCTION. Take a 100 seat senate. A majority of members is 51; a vote on a bill would – and the federal constitution is silent here – seem to require 51 votes, which can be spread, for the bill to pass, 26-25. Isn’t that the end of the matter?

But, since any two opposing senators could walk out and destroy the quorum, then, any one state could defeat the government’s ability to legislate.

Before the logic of the quorum requirement is deployed, let’s look at the rules of the Senate.

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

C. RELEVANT CONSTITUTIONAL TEXT. Art. I, §5, cl. 1 (CTU 18) provides (in part): A “Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.” Art. I, §5, cl. 2 (CTU 19) provides: “Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.” Article V (CTU 87) provides (in part): No “State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”
D. **What Is It That Constitutions Do?** Written – locatable in one place – constitutions do not reliably provide (from the moment of crafting) an apparatus to be employed when text is applied (in the future). If text could always be complete and consistent (or completable and correctable with more text), Achilles would be out of a job. *4 Mind* 278 (1895) provides the citation, Hofstatder the humour, if there is any to be found in the warrior’s discomfiture.

But the effort of crafting constitutions does provide an opportunity to reflect on how logic exposes possibility, impossibility, indeterminacy, and un龍ilities at the time the constitution is perused. In the future. In short, today’s venue is tomorrow’s management tool. And vice versa.

What do the three provisions of Constitution II (quoted above) do? The question of quorum is first a matter that is subject to ‘either/or.’ Senators Omicron and Omega are either present in the chamber or they are not at any given point in time. This is a matter of spatial logic, in which the horizon of the chamber either includes the ‘points’ represented by these senators, or it does not.

Now we turn to the options for shaping rules in inventory, that is, an apparatus presented in constitutional text. The rules may provide a means by which the chamber may move forward to do its business (mostly an intellectual progress) or the rules may provide for physical capture of the missing senators, a more kinetic enterprise.

E. **Sample Math.** Assume a 100 seat senate. 24 states absent themselves. Technically, given ‘one senator, one vote’ it is more a question of the senators absenting themselves with the states as actors dropping out of the analysis.

Is the quorum requirement for a chamber of 52 now 27? Or is the quorum requirement still based on a 100-senator-body count even if 48 absent themselves.

The answer is yes.

The following result can’t occur: first a walk-out by 48 senators and then, this walk-out confers power to overthrow the government on any two other senators. This is the result that would flow from maintaining the quorum at 52 senators.

Now we have a performance standard for our rules in inventory. However the constitutional rules work out in practice, these rules must provide logical possibilities by which the majority can manage (that is, is empowered now) the situation presented (in the future) by the two waves of senators walking out.

F. **Intellectual vs. Kinetic.** The rule choices tell the story. First the senate begins with a management strategy heavily weighted towards physical effort. Track down and capture senators and grill them as to their motives.

In the middle of the Civil War, it occurs to the Senate that this (projected) kinesis is more than is required. Senators who have refused to appear and be sworn – the required oath [c. 1, First Federal Congress] being inconsistent with rebellion – are subtracted from membership. Their conduct does supply the consent that Article V requires for reducing the membership of the Senate.
Hence a walk-out of 48 senators would reduce the size of the chamber to 52; a quorum would be 27. Twenty-six senators must now agree on a ‘walk-out’ to threaten a body of 52 senators from doing business by bringing the count down to 26 which is not a majority of 52.

G. CONCLUSION. As a program, Our Constitutional Logic exposes logics anterior to the crafting of constitutional text. In other words, before any proposals are laid before the convention, and we know this to be May 29, 1787, the date of Randolph’s speech, what were the logical possibilities, impossibilities, unreliabilities, and indeterminacies which impinged, shaped or molded the effort involved in crafting the eighty-seven sentences we call the original constitution?

When the two waves of legislators’ walking-out are considered, the remaining legislators must have the power to avoid being trapped by the first wave, which does not disable the chamber from acting, but which, instead, sets the stage for the second walk-out, which in potential can bring everything to a halt.

The second wave will know its power and exploit its leverage, which was conferred on it by a tiny minority (here = 2% of the body), and this delegation of power coming from the first recalcitrant wave.

H. FOUR MANAGEMENT CRISSES TRANSLATED INTO CONSTITUTIONAL TEXT. In other articles OCL addresses itself to constituent expulsion and constituent withdrawal. These are dramatic events and appropriately focus our attention: the Civil War was triggered by constituent withdrawal (or the attempt to do so); lesser attention is paid to the successful expulsion of Rhode Island from the union in 1787.

All four of these situations can be identified in advance. That is constituent and senatorial entrances and exits from the whole; the choices for management of constituent and senatorial comings and goings can be exposed via constitutional logic. Text crafting is merely lesser effort given this exposure.

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