The Foreigners Among Us: Constituent Expulsion in the Early American Republic

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ABSTRACT.
OCL surveys constituent expulsion through the impost laws passed in the first session of the First Federal Congress. The purpose of the laws was to make clear to North Carolina and Rhode Island that Constitution II was a ‘take it or leave it’ affair. North Carolina, never truculent, merely slow to ratify, got the message, post-haste. Rhode Island’s struggle with political reality enjoyed a near year-long sideshow before it finally bowed the neck Providential to the inevitable. Pay up or join up.

KEY WORDS: constituent expulsion, secession by majority.

A. INTRODUCTION. The reader is referred to a previous article in this series The Few, The Happy Few: How Many Delegates Would be Required To Organize the United States of America? 2 OCL 108. Walkouts from the Senate chambers (venue’s counterpart to expulsion/withdrawal at the macro level) are developed in Calling All Senators: Can a Few States Overthow the Government? 2 OCL 172.

OCL addresses itself to constituent expulsion and (by inference) constituent withdrawal. These (two) are dramatic events and appropriately focus our attention: the Civil War was triggered by constituent withdrawal (or the attempt to do so); here attention is paid to the successful expulsion of Rhode Island from the union in 1787.

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.

B. BIG STATE LOGISTICS. However, another dynamic presents itself once a tipping point is achieved and the states, by numbers, accept that secession from Rhode Island will become a reality, as the move towards a new government finds concrete expression in text being crafted.

Any nine states can secede from the other three (=4-1). This formula is enabled/required by the non-participation of Rhode Island. Thus, in computing how many states can be frozen out, one must keep in mind that Rhode Island is the state most likely to be ‘voted off the island.’

Put another way. Once it becomes clear that Constitution II will be crafted without the participation/input of Rhode Island (saving the notion that anything sure to cheese off that state will be attractive to the other twelve) then the threat to freeze-out one or two states becomes a real threat.

With Rhode Island counted, permanently, as one of the ‘superfluous’ or ‘excess’ states, those wishing to secede from such an excess states need worry about, at most, another three: self-selected or driven-out, three is the magic number. This point is also discussed in Were Early Arrivers in Philadelphia More Likely to Support the Constitution? 2 OCL 101.

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 THREAT. Rhode Island and North Carolina suffered the indignity of losing out on crafting the major achievements of the First Federal Congress in New York: the Bill of Rights, the pass-through taxation on imports (of which c. 5 is a lynch-pin) and the Judiciary Act of 1789.

They were treated like foreigners, as the material in Table 188 shows. First off, there is the exception for “own growth or manufacture.” If a state actually exported any raw or finished goods, the tariff regime did not apply. But it could not, in effect, act as a depot for impost avoidance by trans- shipping British or Caribbean goods into the ‘real’ United States. “That all goods, wares and merchandise not of their own growth or manufacture, which shall be imported from either of
the said two States of Rhode Island and Providence Plantations, or North Carolina, into any other port or place within the limits of the United States, as settled by the late treaty of peace, shall be subject to the like duties, seizures and forfeitures, as goods, wares or merchandise imported from any State or country without the said limits.”

E. AND A GOOD SWIFT KICK IN THE ARSE. So what was the status of Rhode Island, from 1788 to 1791? The Confederation Congress was the beneficiary of the Treaty of Paris. No successorship language, such as, ‘this treaty is binding on all successors and assigns of the undersigned.’

But it wasn’t functioning as a government from 1788 on, but rather as a cheerleader and dogsbbody to the new government. If Rhode Island and North Carolina were the only ones left in the Confederation, did that mean that they and they alone succeeded to the rights and duties of the (former) United States? Did Rhode Island and North Carolina ‘own’ the old Northwest, to the Great Lakes or the old Southwest, to the Mississippi River? Did they have to pay the public debt c. $40MM) of the out-going government? The Confederation Congress had done a particularly lousy job of paying its bills. Could Rogue Island do worse?

In c. 5 Congress made sure that the two late-comers were aware that the new federal government claimed the benefit of a treaty it didn’t negotiate. Which Congress did by referencing the “limits of the United States, as settled by the late treaty of peace.”

All of which raises the question, ‘did the Confederation ever go out of business?’ Constituents, be they eager (Delaware and Pennsylvania) or late (North Carolina) or surly (Rhode Island) stopped participating in the Confederation Congress. The minutes reconstructed in the XXth century show that the Confederation Congress barely gasped its way into March (the 2nd, to be exact), 1789.

But if the union is ‘perpetual’ as Constitution I states, how does it get dissolved? Surely not by the action of another government and surely not through the threats and bullying of a new government with a very tenuous claim to the rights, powers and prerogatives of the first regime.

True, under Constitution II, Article IV, the new promises to pay the debts of the old. If I promise to pay your bills, can I move into your house?

F. SOFTENING THE BLOW. Articles VII and V deserve a (first) look in this light. Article VII says that any nine states can expel any four. (Or any eleven the remaining two, and so forth through these four mathematical possibilities.)

But once nine ratify, it takes only four states to block organic change. So any gang of four could not block the new government from coming into existence (Article VII) but if all thirteen join, then any gang of four can block organic change.

At the midpoint of the convention, the centrifugal power of Article V takes over. Would-be ‘walk out’ states are obliged to reconsider their options to let the majority organize a new government. If only nine organize a new government, then three states can block organic change. But what state would go into a new regime on such terms? Eyes wide-open is the motto of Philadelphia, while Lancaster, Pennsylvania (site of the final drafting of Constitution I) is ‘a deal, any deal.’ Or, as Richard might have said, ‘my horse, my horse, take my horse for any constitution.’

Consider it the revenge of King George.

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