Six Things That Went Wrong with Delegate Descriptions of Their Behavior at the Federal Convention

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SIX THINGS THAT WENT WRONG WITH DELEGATE DESCRIPTIONS OF THEIR BEHAVIOR AT THE FEDERAL CONVENTION
2 OCL 264

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Abstract.
Our Constitutional Logic asks, ‘Can delegate participation at the federal convention be taken as one element in a framework (such as a citation hierarchy) which framework, by design, accounts for convention behavior both individual and collective?’ I answer this question by turning it back on the delegates themselves.’ ‘Could they have anticipated that the voices of one or two delegates would be preferred over all others?’ Six patterns of behavior should be taken into account. OCL surveys the possibilities.

Keywords: degrading delegate descriptions of their own behavior, failing to enhance delegate descriptions of their own behavior.

A. INTRODUCTION. The early republic was not able to triage the utility of reports which attributed the views of a few delegates to their colleagues (odd enough) or attributed the views of a few to be the acts of the delegates taken as in its corporate significance (really weird). Here is Chief Justice Salmon P. Chase offering (in 1871) an ill-considered attribution of the views of one and a third delegates’ worth of participation (as OCL will explain) to thirty-nine signers.

The papers of The Federalist, widely circulated in favor of the ratification of the Constitution, discuss briefly the power to coin money as a power to fabricate metallic money, without a hint that any power to fabricate money of any other description was given to Congress, and the views which it promulgated may be fairly regarded as the views of those who voted for adoption. [1]

B. CHASE’S ATTRACTION DOES NOT HOLD UP. John Jay, with five essays in The Federalist, did not attend the convention at all; his co-author Alexander Hamilton appeared on only 27 of 74 days; one day is
questionable. [2] Hamilton’s ‘drop in’ status as a delegate did not impede his ability to proffer his vision of the new government, which he draped on his 51 essays in 112,299 words. [3] Nevertheless, Chase (dissenting in *The Legal Tender Cases*) offers no rationale for what draping the the fractional participation of a single delegate earns him ascendancy with respect to the “views of those [thirty-nine] delegates who voted for adoption.”

C. **MARYLAND REPORTS.** At the opposite extreme, delegate Luther Martin offered the Marylander House of Delegates the *Genuine Information*, a toxic report on the convention accusing his fellow delegates of conspiring to destroy liberty in America. Justice Gray, in a follow on case to *The Legal Tender Cases*, assured his readers that the “philippic delivered before the Assembly of Maryland by Mr. Martin, one of the delegates from that state, who voted against the motion and who declined to sign the Constitution, can hardly be accepted as satisfactory evidence of the reasons or the motives of the majority of the convention.” [4]

Can a delegate’s participation at the convention, next to the content of his report, weigh in the balance when contemporaries or later generations evaluate a delegate’s report? Luther Martin served more days at Philadelphia than Hamilton, [5] but Martin’s views were widely discounted; Justice Gray assumes that invocation of his name will call to mind his poor showing in the reputational races. Does participation count for nothing? Veneration for Madison seems to make this a problematic position. Veneration for Washington should do the same for the process followed at the convention through 569 recorded votes.

In distinction to these two questions, ‘can participation be taken as one element in a framework, such as a citation hierarchy, which is designed to account for convention behavior?’

D. **SIX PATTERNS IN MISDESCRIBING PATTERNABLE BEHAVIOR.** I turn this question back on the delegates themselves. Could they have anticipated this outcome, by which the voices of one or two delegates are preferred over all others? Six patterns of behavior must be taken into account.

First, the race to credibility might have turned on note-taking. Eleven delegates took notes, but only Madison was diligent in attempting gavel-to-gavel coverage. [6]
Second, the fifty-five delegates registered a majority of no-shows. The probability space for delegate-days’ worth of appearance is the product of 55 delegates times 74 = 4070 = 1177 punched the clock, so to speak, for a no-show percentage of 71.09%. This must be taken into account.

Third, if delegate X on the job but not recording convention proceedings, he might have had his thoughts recorded by others if he spoke up. But most delegates were silent in most of debates on the 569 votes that the convention secretary recorded. [7]

Fourth, even if the balloting was by states, one state one vote, the convention could have preserved the approval or disapproval of delegates’ preferences for propositions moved to the floor. It did not.

Fifth, the convention could have, through daily oversight, ensured that he noted a decent record of proceedings. [8]

Sixth, the convention could have engaged a secretary who actually did the job of a secretary at a constitutional assembly.

“"It seems to me that your secretary of the Convention was a very stupid secretary," Jared Sparks lettered James Madison in 1831, “not to take care of those things better, and to make a better journal than the dry bones which now go by that name. [9]"

Additionally, after the convention adjourned, the convention delegates, holding significant political power at the launching of the new government which they organized, could have ordered Jackson’s journals published; this might have encouraged delegates to publicly divulge their recollections or at least begin to reconstruct what happened.

E. References.


[2] See Detailed Delegate Attendance Table Updating the Table Appearing in Farrand’s Records of The Federal Convention: May 25, 1787-September 17, 1787, 2 OCL 100
[3] See *Hamilton and Madison Deploy ‘Constitution’ In Four Selected Intervals from 1787 through 1836: Semantic Values Surveyed Through Quotations*, 2 OCL 610; see Table 610F.


[7] See Delegate Speaking Patterns At The Federal Convention Surveyed As To The Twenty-Five Votes That Made The Presidency, 2 OCL 693


sO.5.28. Second provides that: Immediately after the President shall have taken the Chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

and

sO.5.29. Sixth provides that: That members only be permitted to inspect the journal.

[9] Jared Sparks to James Madison. November 14, 1831. Item 386. “It seems to me that your secretary of the Convention was a very stupid secretary, not to take care of those things better, and to make a better journal than the dry bones which now go by that name. “

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

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J. **LAST REVISED.** This file was last revised on October 15, 2014; it is version 009.

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