An Introduction to Quorum Issues at the Federal Convention

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AN INTRODUCTION TO QUORUM ISSUES
AT THE FEDERAL CONVENTION
2 OCL 105
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ABSTRACT.
The first Standing Order of the federal convention directed voting by states under a ‘one state, one vote’ formula, but without the fatal ‘one state, one veto’ formula which Rhode Island abused in the Confederation Congress. “A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may adjourn from day to day.” See A Survey of the Standing Orders of the Federal Convention and the Differences Between Jackson’s and Madison’s Text, 2 OCL 136_1, which calendars this Standing Order as 5.28.First. It is the first Standing Order adopted on the first full day of convention business. Quorum and action requirements are calendared for each one of the 89 days of business at the federal convention.

KEY WORDS: federal convention, quorum

A. INTRODUCTION. Delegates did not vote per capita at Philadelphia. Instead, they agreed, as the text of the first Standing Order declares, on the following procedures: “A House, to do business, shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may be adjourned from day to day.”

B. APPLICATION OF THIS RULE IN THE CONVENTION. This Standing Order literally does not require – or address – the minimum number of delegates per state which must be present for any one of twelve states (mediately) and eleven (finally) in attendance to answer present or to vote.

C. JOURNAL’S CREDENTIALS. The Journal only contains Jackson’s aide memoire, on this point: he reminds himself to insert the credentials of delegates, nevertheless his Journal omits these credentials.

For May 25 Jackson lists the delegates in attendance and states represented but does not include the text of the credentials which were (presumably) read out loud so
that everyone could hear the intra-state quorum requirements. 1 Farrand 1-2. The appearances of additional delegates – including those from Connecticut, Maryland and New Hampshire – were noted by Jackson’s Journal on May 28, May 31, and with New Hampshire’s delegation arriving on July 23rd.

Table 105A provides the sources (in Farrand) for the first mention of the state delegation/delegate/s appearance and the citation to the page in volume 3 with full text of the credentials.

The table breaks down delegate attendance for each day by state based on David Kimball’s best estimate on minimum attendance based on quorums and split votes. See Detailed Delegate Attendance Table Updating Farrand’s Table in Vol. 3 of his Records of The Federal Convention: May 25, 1787-September 17, 1787, 2 OCL 100.

Table 105A totals the minimum number of delegates for each date while Table 105B totals the number of states that could vote each day based on the number of quorums present.

Table 105B shows the minimum number of delegates who were in attendance for that state on that particular day.

Table 105C shows whether or not a quorum was (Q) or was not (~Q) present from that state that day and how many states were able to vote in total.

D. QUORUMS, MAJORITIES FOR ACTION, AND THE SUPREME COURT. In Craig v. State of Missouri, 29 U.S. 410, 422 (1830), Marshall, C.J., faced his last challenge from counsel who urged the Court to cite to Jackson’s Journals. Senator Thomas Hart Benton argued the case for the state of Missouri; and it may be only purely coincidental that senatorial advocacy figured in these four monuments to federal power as tested against states. (Daggett didn’t join the Senate senator until later in 1819 but the machinations were well underway.)

“An examination of the proceedings of the convention which formed the constitution of the United States,” Benton’s argument consumed two days of the court’s time, “will show that the prohibition which is now supposed to operate on the law of Missouri, was carried by a majority of one vote. Journal of the Convention, 302.”

The Supreme Court resisted the temptation to point out that Senator Benton was wrong. The Standing Orders adopted on May 28, 1787 fixed the quorum requirement at seven states and set the threshold for convention action at four states.

E. EVENTS OF JULY 6, 1787. This is a point which came out in the convention’s sidebar over the question which passed on July 6, 1787 by a vote of five in favor, three
opposed and three divided. See *The Events of July 6, 1787 and Why They Matter*, 2 OCL 180.

F. **Notes to Table.**

1. New Hampshire elected five delegates; however, only two attended the convention.

2. Massachusetts elected five delegates; four attended the convention.

The oddities certainly may be named at this time. New Hampshire required three delegates of five to cast its vote; only two delegates appeared and New Hampshire’s vote was counted despite the below-minimum balloting. “Left in limbo by [fellow New York delegates] Yates and Lansing, Hamilton drifted back and forth between New York and Philadelphia that summer.” Ron Chernow, *Alexander Hamilton* (New York: Penguin, 2004) at 236. Forrest McDonald, more precisely, assigns Hamilton’s “awkward position” to his inability to ballot New York’s vote since he alone could not satisfy the intra-delegation quorum requirement. *Alexander Hamilton: A Biography* (New York: W.W. Norton 1982) at 106.

2 Farrand 643 then relates the lovely anecdote – another novelistic touch from the pen of James Madison – whereby Gouverneur Morris crafted an elocution which would allow Hamilton to sign (without any more power to sign than Gilmore and Langdon from New Hampshire) who had been regularly casting ballots and their state’s vote without objection from the convention). Hamilton then gushed that he would sign, but only reluctantly. You can’t say that delegates didn’t know how to put on a good show:

> [Franklin] then moved that the Constitution be signed by the members and offered the following as a convenient form viz. “Done in Convention, by the unanimous consent of the States present the 17th. of Sepr. &c — In Witness whereof we have hereunto subscribed our names.”

Breaking the proscenium ‘wall’ Madison then continues to show how this ambiguous elocution came to pass. ‘Pay attention,’ one might paraphrase the Wizard’s near-ultimate speech, if only in the negative, ‘the man with those gears and levers.

This ambiguous form had been drawn up by Mr. G. M. in order to gain the dissenting members, and put into the hands of Docr. Franklin that it might have the better chance of success.

What would a work of art – and the federal constitution is the transcendental instance of the Biedermeier’s not-too-overawing masterpiece in this genre and before the nineteenth century, mind you without an appreciative audience?

AH minds JM’s cue.
“Mr Hamilton expressed his anxiety that every member should sign,” as JM phrases this bit of theater for us, his audience, at 2 Farrand 645.

A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man’s ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other.”

Good guys, bad buys, sort-of-in-between guys: a crisis, an opportunity, a break in the clouds, and there you have it: 4,321 words of GM’s prosology, reduced from 89 days of 569 canonical votes, transforming the provisional Constitution I of the Year One and its 3,453 words and 775 unique words into the said 4,321 words and 831 words which now rest in helium on Constitution Avenue.

It was not the last time that AH and JM tried their hand at a public performance of this sort, with the crisis of 1791 offering one of their more celebrated logic vs. text slams, in which the deed and the word went about their business.

In the beginning was the deed

or

Kinesis is genesis.

NT, OT your choice.

There is no prize for guessing who won.

Exit the National Portrait Gallery, south side, and enjoy the view of the National Archives: turn right and there is the ten dollar bill’s avatar, the Treasury Department, exhibiting its face east to your view west on F Street.

The Madison Building is sited poorly: stuck off to the side of the Jefferson building with a badly lit side-lobby offering a clumsy entombment of quotations.

No façade for the constitutional novelist. It is a lesson for all of us, scholar and scribbler alike.

You can be sure that JM is considering Le Terme di Madison for his next appearance. Diocletian is watching developments with great interest.

G. RESOURCES. For the Table Annexed hereto and for on-line access to Peter J. Aschenbrenner’s articles, tables and charts see
purdue.academia.edu/PeterAschenbrenner or works.bepress.com/peter_aschenbrenner/

H. Citation Format. Cite as 2 Our Constitutional Logic 105 or 2 OCL 105. See http://works.bepress.com/peter_aschenbrenner

I. Status. Complete.

J. Series. This appears in a series of articles based on tables where the data has been sorted/mined from the Farrandian / USSC databases.

K. Server Location. This file is maintained on the I/D server.

L. Last Revised. This file was last revised on January 19, 2015; it is version 017.

M. File Format. The format of this file is MS Word 2010; the format of the associated table is also MS Word 2010.