Secrecy Broken: Reports of the Delegates Following the Federal Convention

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ABSTRACT.
Despite the measures taken to ensure the secrecy of the proceedings during the federal convention, many delegates made reports to their states and explained the choices underlying various clauses. However, no delegate had access to the official journal of the constitutional convention.

KEY WORDS. federal convention, secrecy, delegates

A. INTRODUCTION. In the “Introduction” to his volumes, Farrand writes: “Although the sessions of the Convention were secret, and it was understood that the delegates would regard the proceedings as confidential, when the question of the adoption of the Constitution was before the country, and in later years when the interpretation of the Constitution was discussed, many of the delegates referred to and explained the action or the intention of the Convention on particular subjects.”

The purpose of this analysis is to show how this agreed-upon secrecy was broken, in what measure it was broken, where, and when. Farrand also notes that he did conduct an “extensive” search because it would require “covering practically all of the material, printed and unprinted, on American history since 1787.”

In 1937 Farrand published a fourth volume with more material. Because this volume was no longer in print and because more information had been uncovered, Hutson published his Supplement in 1987. These works likely do not possess all documented instances of breaches of secrecy; however, they are the most complete works in their subject and so are used as the sole resources here.

B. THE TABLE. Table 164A annexed to this article extracts from the Farrand-Hutson survey entries based on the following parameters.

The F-H entry must occur between May 29, 1787 and March 27, 1818; on the former date, the standing orders were modified to require convention secrecy. On the latter date, Congress directed that the President edit and publish the Journals. . The “journal of the convention which formed the present constitution of the United States,” Congress decided on March 27, 1818, “now remaining in the office of the Secretary of State, and all acts and proceedings of that convention, which are in the possession of the government of the United States, [shall] be published under the direction of the President of the United States.” 4 Stat. 495, Resolution of March 2, 1831.

For the sake of deciding level of secrecy, all information presented is assumed to be true. (All personal diaries were excluded from consideration in this survey.)

The “Number” column refers to the item numbers in Farrand’s Volume III. Hutson does not use these numbers and so this column is blank for entries from his supplement.

C. LEVELS OF VIOLATION. Severity of the violation was scored as follows:

Very Minor = 1
Minor = 2
Moderate = 3
Major = 4
Blatant = 5
Severe = 6

The scoring accounts for what was said, as well as taking into consideration how much of the information was new and the size of the audience informed of the convention’s proceedings.

D. SEVERE VIOLATIONS. There were only 2 ‘Severe’ cases where secrecy was broken: “CLVIII. Luther Martin: Genuine Information” and “CCCX. Extracts from Yates’ Secret Proceedings.” In the first, Luther Martin does his best to recall every detail from the convention for the legislature of Maryland. To make matters worse, someone
transcribed his speech and it was printed in the *Maryland Gazette and Baltimore Advertiser*, informing the entire state at the very least.

Luther Martin reads the printed report from the convention and is happy to use the exact wording used at various times in the convention when he can. It is the most detailed overview of the entire convention and by far the worst of the cases where secrecy was broken.

To give an idea of the severity, James McHenry’s report takes up roughly 6.5 pages in Farrand and Luther Martin’s about 8.66 pages – see entries under ‘Blatant’ below.’ This report by Luther Martin takes up 60 full pages. It is, by far, the longest entry in Farrand.

The second entry, “CCCX. Extracts from Yates’ Secret Proceedings,” was part of a letter from Genet that was printed in 1808 and in 1813. According to Farrand, the extract “consisted almost entirely of an abstract or extracts from the notes of Yates, mainly direct quotations” that were arranged in a way to make Madison look like he wanted to abolish state governments. This extract is the most detailed look at a period of time in the convention, containing dates, names, and summaries of speeches and motions. As such, this is the second most severe case of secrecy broken.

E. BLATANT VIOLATIONS. There are four ‘Blatant’ violations. Like Severe cases a great deal of detailed information was given, flaunting the breach, but the amount given is not quite enough to equal the two severe cases above.

The cases are “CXLVIa. James McHenry before the Maryland House of Delegates,” “CXLVIb. Luther Martin before the Maryland House of Representatives,” “CLXXXI. Elbridge Gerry to the Vice President of the Convention of Massachusetts,” and “[Luther Martin?], Observations.”

The first two entries are the reports by James McHenry and Luther Martin to the Maryland Legislature where they reported on all they remembered of the convention.

The third, by Elbridge Gerry, is similar except that his remarks focused on the debate on equal representation in the Senate; he spoke to the Massachusetts ratifying convention.

The last is an entry attributed to Luther Martin and was printed with his Genuine Information. He goes through the Constitution article by article, showing what changes were made and then commenting on them.

F. MAJOR VIOLATIONS. There are 13 ‘Major’ cases where secrecy was broken:

1. CXXXVII. James Madison to Thomas Jefferson.
3. CLI. The Landholder [Oliver Ellsworth], VI.
4. CLVI. Ezra Stiles: Diary.
5. CLVII. The Landholder [Oliver Ellsworth], VIII.
6. CLXX. Debate in the South Carolina Legislature.
7. CLXXI. C. C. Pinckney: Speech in South Carolina House of Representatives.
8. CXCII. Luther Martin’s Reply to the Landholder.
9. CCX. Debate in the Virginia Convention.
10. CCXII. Debate in the Virginia Convention.
12. CCLXIX. George Mason’s Account of certain Proceedings in Convention.

As for the first entry: it is likely that William Short read the letter as well as Jefferson. In this letter Madison speaks about the debates and views at the convention.

These entries may have been in the Blatant category if not for the fact it concerned a letter, not a speech or publication; the letter reached a very narrow audience. Entries 3, 4, and 7 on the list concern the Landholder.

These entries have less information, though more specific, than Madison’s letter, but were printed and therefore had a very large audience. Entry 4 on the list is unique in that it is a diary. It is included here because Ezra Stiles was not a founder and therefore had to learn this information from one: Abraham Baldwin. While not a long entry, it is
packed with details and it is difficult to know who else was in on the conversation. The rest of the entries were speeches in front of a legislature or convention and are included here for their amount of information and their audience size.

G. MODERATE VIOLATIONS. There are 26 ‘Moderate’ cases. Whereas Major cases can be measured in paragraphs of information and Blatant and Severe in pages, Moderate cases are around one paragraph, or in the case of conventions or legislatures, different founders saying roughly the same thing. Usually Moderate cases are focused on one topic but give a good amount of detail on that topic.

H. MINOR AND VERY MINOR VIOLATIONS. There are 44 ‘Minor’ and 28 ‘Very Minor’ cases. These are usually appear as sentences. Minor cases are scored as shorter communications; Very Minor are ranked based on the broad/vague information imparted.

I. LINK TO TABLE. On Selected Works, the table appears as a separate file. For on-line access to Peter Aschenbrenner’s articles, tables and charts see purdue.academia.edu/PeterAschenbrenner or works.bepress.com/peter_aschenbrenner/

J. NOTES TO TABLE.
   1. This is the date Luther’s report was transmitted to the Maryland legislature. It first appeared in print in the interval December 28, 1787 to February 8, 1788.

K. LINKS. There are no known on-line sources sorting comparable information.

L. STATUS. Complete.

M. PREFERRED CITATION FORMAT. 2 Our Constitution Logic 164 or 2 OCL 164.

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

O. LAST REVISED. This file was last revised on November 8, 2013; it is version 007.

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