

Dear conference attendees,

We are working on a book project that traces the agenda of the Constitutional Convention. One of the major purposes is to identify the key votes and moments of the Convention.

Which votes mattered most for shifting the agenda in one direction or another? Are there moments that look dramatic which, with the benefit of the model, might not be so consequential?

Here, we are presenting drafts of two central chapters of the book. Chapter four, “Committee of the Whole” traces the agenda from the opening of the Convention through June 19. Chapter five, “Action on the Floor” picks up the agenda at that point and carries it up to the end of the July sessions. Other chapters will deal with the final period and the related issue of what predicts the votes at the Convention.

We recognize at least some of the risks of bringing a portion of a book to a conference. Some of the argument is missing (located in other chapters). There are obviously questions (e.g., methods, coding decisions, etc.) that cannot be covered within the chapters we’re presenting today. We hope to alleviate some of these concerns with our presentation which will briefly discuss some of these issues. And, of course, we are happy to respond to questions.

One point that may need some clarification is methods. The two chapters we are presenting are based on a model of the Convention. Readers may be interested to know more about the model. Our published work is the best guide to some of this. See “Reconsidering the Great Compromise at the Federal Convention of 1787: Deliberation and Agenda Effects on the Senate and Slavery,” *AJPS* 55:289-306, and “Mapping the Dimensions of Conflict at the Federal Convention of 1787,” *LSQ* 37, 145-174. Interested readers may also want to consult our working paper: “Voting for a Founding: The Impact of Slavery and Trade on Voting at the Constitutional Convention.” See: http://people.virginia.edu/~sat4x/Pope_Treier_latest.pdf. All three of those works lay out the methods in more detail than we present in these chapters.

We hope there will be many questions and criticisms that will help us sharpen the arguments and presentation of the data laid out in these chapters.

Jeremy & Shawn

**Founding Politics:
Ideas and Interests at the U.S.
Constitutional Convention**

A draft in progress ...

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Chapter 4

Committee of the Whole

With delegates in attendance, some of the procedural matters out of the way, and a president selected, George Washington opened the Convention and began the business. The Convention had to start somewhere and Washington formally opened the agenda by turning to his colleague from Virginia: Governor Edmund Randolph. “Mr. Randolph [then] opened the main business” by introducing a series of resolutions that came to be known as the Virginia Plan (Farrand, 1966, vol. I, p. 18). Madison may have authored the ideas behind this plan, but the specific resolutions were the compromises of the Virginia and Pennsylvania delegations that had met earlier, waiting for other delegates to arrive in the city.

Historians have described this moment in different ways. Clinton Rossiter titles his chapter on the opening of the Convention “The Nationalist Assault.” One is left with the impression that the small state delegates, or opponents of a strong national government are the targets of this rhetorical assault. Jack Rakove similarly describes the introduction of these resolutions as an “ultimatum (p. 60)” implying that the opponents of the plan would be forced either to respond with their own terms or possibly face a breakdown of the Convention. Staying with the theme of conflict, Richard Beeman describes the introduction of the Randolph resolutions as a “high-stakes” gamble (p. 87), launched by the “co-conspirators” of Virginia and Pennsylvania.

No doubt even from a participant’s point of view the beginning of actual debate was a dramatic moment. No one could know the future or the final disposition of their discussions and voting. However, some of this drama may be overwrought when we consider the revealed pref-

erences of the delegates. With some exceptions, the voting was about to reveal a desire for change that would yield the U.S. Constitution. The Confederation Congress's authorization said that the Convention met for the "sole and express purpose of revising the Articles of Confederation (emphasis added)." Perhaps because of the limited nature of this mandate some delegates were surprised to hear the tenor and tone of Randolph's resolutions (Bowen estimates that he spoke between three and four hours introducing these plans, p. 39), but others must have realized this was the real business of the Convention.

Yates might be a perfect example of a delegate caught off guard. In journaling the day he says Randolph's resolutions "were not intended for a federal government—he means a strong *consolidated* union, in which the ideas of states would be nearly annihilated (emphasis in original)." Clearly not thinking in line with Randolph (or Madison, or many others as it would turn out) Yates is not impressed with the plan. However, as we can see in appendix figure seven,¹ Yates is not the most reliable barometer of Convention opinion. He was out of step with most of his colleagues—not least with his fellow New York delegate, Alexander Hamilton.

Randolph's opening resolution—following the authorization of the Congress—described itself as a plan to make sure the Articles of Confederation would be "corrected & enlarged (Farrand, 1966, Vol. 1, p. 20)." But that description obviously did not fool Yates (and probably others): "The house then resolved, that they would the next day form themselves into a committee of the whole, to take into consideration *the state of the union* (Farrand, 1966, vol. I, p. 18, emphasis in original)." Given that Yates may have already been learning just how out of step he was with his colleagues he may have been less than pleased that the Convention was taking up the Randolph resolutions, even in committee. This beginning allowed for doing much more than simply revising the Articles. Randolph's resolutions were a significant step.

Shortly, the average delegate would reveal a preference to make significant changes the national government. Yates's extreme caution and concern over significant revisions could not have been a widely held sentiment given the events that were about to unfold. Knowing that alone, is not saying that much. How would the agenda unfold and what specific changes were possible given the array of preferences at the Conven-

¹See the appendix of figures to see graphs that will be displayed in other chapters.

tion? The delegates may have preferred to make changes, but what specific changes would come was the real debate.

Committee of the Whole could have been seen as a very important procedural step—though the notes treat it lightly, and few if any historians make much of this procedural strategy, beyond noting that it would allow them to discuss the matter without committing to any final votes. Catherine Drinker Bowen 1966 is an exception. She connects the Committee of the Whole to the ancient practice of removing the Mace from the table set before the speaker in the House of Commons (p. 40-41). This symbolized the absence of royal authority to compel or foreclose debate. While that ancient practice may have influenced the more modern practice the idea of using a committee to debate had important practical consequences.

Van Doren treated the Committee of the Whole as simply “a parliamentary device . . . for keeping discussions as informal as possible and for leaving certain decisions still subject to review by the Convention (Van Doren, 1948, p. 51-52).” The implication of this idea is that delegates would merely debate and consider ideas, finally taking up the *real* debate later outside of the Committee. And perhaps this is how the Committee began: to debate and learn about preferences and attitudes so that delegates could form judgments and test ideas in the crucible of debate at the Convention. It left open the possibility that a simple restart of the debates was possible if the Committee was unsuccessful in achieving any kind of unity. Implicitly this was a very important possibility, but it is not one that turned out to matter for a few reasons.

First, Madison’s preparations and specific proposals (discussed in an earlier chapter) set the agenda in a way that turned out to be remarkably successful on multiple dimensions. Even on representation—the dimension where Madison’s aspirations fell most short—his proposals did make a significant impact. Of course they could not have known that in advance. And it was possible that Madison’s proposal would fall flat.

That brings us to the second reason that the Committee of the Whole was successful: general delegate agreement that a change was necessary. As will be seen below, delegates may have disagreed about the specific ways in which the Articles needed to be changed, but there was general agreement that some kind of change was necessary. This made Madison’s job much easier. He had a willing audience ready to contemplate changes (though not everyone would listen). Increasing powers of the federal government was not a controversial stance. Representation would be much

more difficult, but increasing national power was very possible. As we will see below the Virginia and New Jersey plans were most distinct on the question of representation, not in other ways.

So when the Committee of the Whole concludes a couple of different outcomes were possible. The Committee could have debated several possible proposals and advanced all of them to the floor. It could have simply restarted debates on the floor without any proposals or it could have selected one particular proposal to serve as the working document of the Convention. Either of the first two possibilities would have meant that the Convention was closer to a debating society considering ideas about government in the abstract. The reality was that the Committee served as a relatively smooth transition to the debate on the floor. Instead of simply being a “parliamentary device” with all decisions “still subject to review by the Convention,” the Committee produced a clear plan based on Randolph’s motions, which are never discarded the way other plans are dismissed.

This fact is important to our modeling strategy. If the Committee was merely a debating society we ought to allow for significant preference change between periods—modeling delegates and delegations separately for each period. Elsewhere we have tested for the possibility that preferences changed and moved between periods of the Convention and have found little evidence that this is the case (Pope and Treier, 2011). This is because the key movement was the *agenda* and *not the preferences* of the delegates. The agenda shifts the status quo dramatically at the very beginning of the Convention. Indeed, as will be seen below, regarding movement of the agenda, the key moment of the entire Convention is the Committee of the Whole where they make the largest and most significant changes.

In this first pivotal period of the Committee of the Whole they essentially considered three broad issues (see chapter two for more on this point).²

- How would people and states be represented in this new government?
- How would power be balanced among the states and the national

²Pope and Treier (2012) discusses the rationale for using these dimensions for the Constitutional Convention. The logic is simple: a relatively small number of dimensions does the most parsimonious job of capturing the essence of the debates.

government?

- Would this new government have an executive and what would that office look like?

The final scene of this opening act would be to select the appropriate plan to take to the floor of the Convention. At that moment several would appear—the revised Virginia Plan, the New Jersey Plan, and even a wisp of a plan suggested by Alexander Hamilton—but given how they debated plans in Committee of the Whole only one plan could realistically go to the floor. These early days of the Convention were really a test of whether or not the ideas of Madison, made concrete in the Randolph resolutions, could go forward as the basis for a new government.

It is not a surprise that they were prepared to make significant changes. Pauline Maier notes in her discussion of the ratification period that even eventual dissenters like Edmund Randolph and George Mason were prepared for massive changes. She specifically describes Mason as a man who “did not question the need for fundamental change (Maier, 2010, p. 47).” While it is undoubtedly true that the delegates wanted to make changes, dissatisfaction with the status quo is far from the same thing as agreement about the direction of change. Delegates could have chosen many different paths of reform. As the Convention was opening for business no one could have been sure as to how far the changes would go. As we saw in the earlier chapters, Madison’s preferences—especially with respect to the nature of representation—went very far indeed. But could the delegates to the Convention deliberate down a path that would see Madison’s goals realized? This question highlights the importance of how they would debate these questions. The debates tested whether or not proposals were acceptable to the delegates at the Convention. Some proposals were considered moderate enough to pass muster, others disappeared along the way to a decision about what would go to the floor of the Convention.

4.1 The Early Fight Over Representation

The issue of Representation in the Congress can be traced to another meeting, thirteen years earlier, in that same city, when the first Continental

Congress met in September of 1774.³ The delegates from the separate states had assembled together to consider what course of action they could unitedly take in the face of the recent Intolerable Acts closing the port of Boston and imposing de facto military rule in the city. Though there had been much correspondence between the states in the years leading up to this meeting, an assembly of the thirteen colonies was unprecedented. Consequently, before anything could be done on that day they had to agree to the rules of the chamber. Though they might not have realized it at the time, the most important rule to fix was the question of voting. Historian, Jack Rakove, describes their problem, “[s]hould it be by colony, with each delegation casting a single vote; by ‘poll’ with each delegate voting as an individual; or by ‘interests,’ which meant proportioning the vote of each colony to its population, wealth or trade? (Rakove, 2010, p. 54)”

Patrick Henry, of Virginia, forcefully argued for the latter option and delivered one of his famous lines: “I am not a Virginian, but an American.”⁴ The problem with proportioning the vote on anything other than an equality of the states was information. The Congress lacked it and delegates pointed out the difficulty in getting it. Today we think of equality as being about individual citizens—one person receiving one vote. But in the absence of clear information about how to weight by population that conversation could not even really begin. In the midst of a revolutionary crisis they very quickly decided on a very different form of equality. Rather than apportioning votes by population or by letting each state delegation cast several different votes (one for each delegate), they decided that each state would have an equal vote in the deliberations. Rakove suggests that the need to make decisions of consensus may have been a consideration beyond the practicalities of arguing over how much more weight should Virginia receive than Delaware. Regardless of the reasons the decision was consequential because it established a precedent that became the status quo for the young nation. Equal-state voting would still be the status quo when Madison began planning for the Constitutional Convention, and it would become an issue on which the Convention could have plausibly foundered.

This key sticking point of the first six weeks—representation in the

³They originally met in the first floor of Carpenters’ Hall, rather than in what has come to be known as Independence Hall.

⁴This is an ironic line in light of his later career. He would not even attend the Constitutional Convention thirteen years later, supposedly because he “smelt a rat.”

new legislature—was something that delegates to the Convention considered contesting *in the rules of the Convention*. In Madison's papers he writes a note that includes this description of the early discussions between Pennsylvania and Virginia delegates before the convention opened.

Previous to the arrival of a majority of the States, the rule by which they ought to vote *in the Convention* had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small States and equal vote, as unreasonable, and as enabling the small States to negative every good system of Government The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large & small States, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves of the right & thereby throw themselves on the mercy of the large States, discountenanced & stifled the project (Farrand, 1966, Vol. 1, p. 11, emphasis added).

Madison is suggesting that it would be easier to persuade other delegates of his views on representation during the course of debate. He is planning to push on multiple dimensions: a correct rule of representation would obviously be a crucial part of the plan, but the delegates would need to simultaneously discuss other features of the plan to convince the delegates of the advantages of the Virginia plan. This outline matches, in many respects, what the delegates actually discussed. Much of the first few days of debate focused on other elements of the new government like separate branches, a new executive and national courts. All of these represented immediate significant changes from the status quo of the Articles of Confederation. Madison, and other like-minded delegates, seem to have taken the position that showing how different the national government would need to be on many different dimensions would help delegates see the need for major changes. All of the issues are considered simultaneously in the first few weeks. A narrative account has to treat them all at the same time. For clarity's sake, and because our model illustrates how different issues were on different dimensions, we take each dimension one at

a time and begin with Representation. Jack Rakove's description of Madison's strategy guides our decision here: "it was Madison's insistence on solving the problem of representation first that set the course of debate 1996, p. 60" and so we begin there.

The Virginia Resolutions, as introduced by Edmund Randolph, stated (in resolution 2):

Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases (Farrand, 1966, Vol. 1, p. 21)⁵

They did not actually spend much time debating that specific resolution in the first couple of days of real debate (see the next section). However, the question hung in the air and was clearly anticipated—as Dickinson's later behavior will show. Proportional representation would very quickly become the central issue of the first six weeks of the convention, stretching beyond the Committee of the Whole and well into the second stage of debates on the floor. It was not until this question was settled that anything else could really be decided. Figure 4.1 displays, using our model, how the agenda unfolded.

As each of the agenda figures we will use is similar we want to take a moment to remind the reader about them here. Each dot in the figure indicates the estimated position of the proposal for each vote. The bar around the point indicates a ninety-five percent highest posterior density. This gives us a sense of the location of each proposal in the space. When the error bar is solid it means the vote passed the Convention, therefore becoming the new status quo that the delegates worked from. When the bar is dashed it means that the proposal failed. In some instances, for purposes of identifying the model, we have fixed the location of certain proposals and there is no error bar. The figure should be read from the bottom to the top, as the agenda moves forward through the Convention. We do not attempt a full explication of every single vote at the Convention. In moments where the action does not lead to major status quo changes we

⁵This resolution is preceded only by the mild claim in resolution 1 that the Articles of Confederation should be "corrected" to better accomplish the objects of a national government.

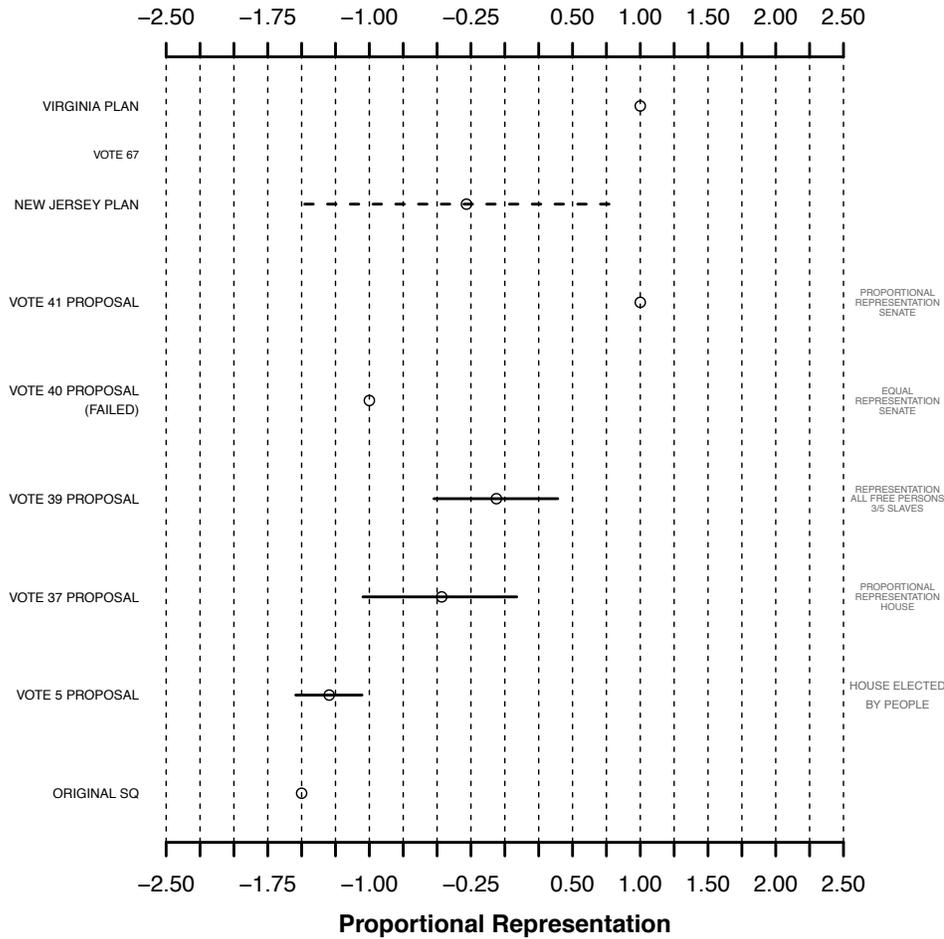


Figure 4.1: Selected votes in the early portion of the Convention’s Committee of the Whole. Left-hand labels correspond to Farrand’s notes. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

skip over points that others might consider important. However, our focus is on illustrating which votes really changed outcomes at the Convention.

For the sake of clarity we label each of the votes on either side of the figure. On the left-hand side of the figure are labels that correspond to the vote number in Farrand's notes. Anyone may therefore seek out more particular information about the vote in that vital resource. On the right-hand side of the figure we place a short description to help the reader understand the substance of each vote.

The earliest point—on the bottom line of figure 4.1—actually displays the position from before the Convention even began: the Articles of Confederation representation rules. For convenience of fixing the estimates we have placed that at a value of -1.5 on the scale (which is why it has no error bar around it), meaning moves in the direction of proportional representation are to the right, in a positive direction.

There is one very early vote at the Convention, on May 31, regarding representation. The proposal was to elect “the first branch of the national Legislature, by the people (Farrand, 1966, p. 50).” As the figure shows, this was hardly controversial and did not do much to move away from the status quo. Technically, the vote merely established that the House would be elected by the people rather than by the states. This is a good moment to point out that some changes that might seem like an important change from the status quo. Bowen, for instance, described the passage of this proposal as “surprising (p. 48).” The model suggests it might not be perceived that way by delegates. Note that this was a clear change from the procedure under the Articles of Confederation where legislatures sent representatives—who were sometimes referred to as ambassadors to the national legislature. So it was a change, but, given the preferences of the delegates, it was not a key change from the Articles. Perhaps this is because the specific mode of election and the apportionment across states was left untouched.⁶

Discussion of representation continued, but it was not until June 11 that they really began voting on the subject again (Vote 37 in the figure). King (of Massachusetts) and Wilson (of Pennsylvania) introduced a proposal that “the right of suffrage in the first branch of the National

⁶Later that day the delegates rejected the proposal to elect the Senate by a ballot in the first branch—a peculiarly 18th century idea that speaks to the difficulty of creating a second branch similar to the House of Lords in England (Wirls and Wirls, 2004, discuss this problem in greater detail).

Legislature ought not to be according to the rule established in the confederation; but according to some equitable ratio of representation (Farrand, 1966, p. 192).” Presumably delegates understood that they were not necessarily endorsing the entire Madisonian plan, but this vote really opened the serious voting on representation. New York, New Jersey and Delaware vote against this proposal (with Maryland divided). The vote passes without too much trouble and foreshadows the unified small state coalition. The graph illustrates how things were moving in a direction of greater proportional representation, away from the Articles. Movement along these lines must have been encouraging to Madison, though to match his plans they had far to go.

Almost immediately there was another proposal—vote 39—pushing slightly more in the direction of proportional representation. It did not do so directly. Wilson (of Pennsylvania) and Charles Pinckney (of South Carolina) moved to add the following words to the clause about representation.

in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State (Farrand, 1966, Vol. 1, p. 201).

This moved the proposed rule slightly closer to the position of the Southern states that believed they would be the more populous in the future. It was done without explicitly mentioning slavery, known to be a difficult subject. On this vote only Delaware and New Jersey can be found in dissent. New York and Maryland were apparently comfortable with the language that would become the basis for the three-fifths compromise, but obviously some delegates disagreed. Elbridge Gerry argues that property should not enter into the rule of representation. “Why then shd. the blacks, who were property in the South, be in the rule of representation more than the cattle & horses of the North.” Despite this provocative question (which would come up again) no one responds to this discordant note. Though we cannot know exactly why, it is instructive that this vote came immediately before two crucial votes on representation: votes 40 and 41, which proposed equal representation in the upper chamber and propor-

tional representation in the upper chamber, respectively.⁷ These two key votes defined the central question: would states have equal representation in the legislature or not? Even before they settled those questions the desires of the Southern states were being considered carefully.

Until this moment, the delegates had voted on questions that united a fairly broad cross-section of delegates. The agenda had moved substantially in the direction of Madison, Morris and others who wished to see representation change. But so far the Convention had only danced around the key question about representation of the states. As early as May 30 Madison had been arguing for representation based on population and the next day Roger Sherman (of Connecticut) had suggested what would become the Great Compromise by arguing that in the second branch of the legislature there should be a single representative from each state selected by the legislature. The convention readily approved the principle of selection via the state legislature on that day (see the next section on federalism) but put off real discussion of the principle of equality of representation until the 11 of June.

By this point Sherman was clearly agitated. The Convention was only a few days away from closing Committee of the Whole and moving to the floor. Sherman, no doubt, wanted some resolution of this issue and so

Mr. Sh[e]rman moved that a question be taken whether each State shall have {one} vote in the 2d. branch. Everything he said depended on this. The smaller States would never agree to the plan on any other principle (Farrand, 1966, Vol. 1, p. 201)

The brackets in the quotation are of particular interest. According to Farrand, Madison originally recorded the statement by saying that each state shall have “an equal vote” but at some later point revised it to the word “one.” Apparently, such was his hostility to the plan that Madison went back to this page of notes and revised it to remove the word “equal” from the discussion.

Sherman got his wish as there was no other speech (at least as Madison’s record of speeches records) before there was a vote on equal state representation in the upper chamber. Sherman’s motion—Vote 40 in the

⁷Note that we have identified this dimension with those key votes and so they are fixed in the model.

figure—fails by a vote of 5 - 6. Massachusetts, Pennsylvania, Virginia, North and South Carolina, and Georgia defeat Connecticut, New York, New Jersey, Delaware and Maryland (see vote 40 in figure 4.1). Had Sherman's proposal prevailed the Convention would have only been changing representation slightly. As can be seen in the figure, Sherman's proposal was *very* near the status quo of the Convention and not far from the Articles of Confederation. However, his proposal failed and was immediately followed by a motion from James Wilson (Pennsylvania) and Alexander Hamilton (New York) "that the right of suffrage in the 2d. branch be according to the same rule as in the 1st. branch (Farrand, 1966, vol. 1, p. 202)." And the exact opposite coalition passed the motion (see vote 41 in figure 4.1).

This completed the movement of the Virginia Plan in a very new direction. With the motions leading up to this point they had danced around the question of representation. The Convention had begun by establishing that things would be slightly different in the new chamber. Vote 37—at the beginning of that day—had clarified that a chamber of the new government would be apportioned according to population, but the new vote took things much further. With the victory in vote 41 the delegates had clearly (in the space of a few minutes, or, at most, a couple of hours) dramatically altered the character of representation in the government. It was now clear that the new proposed government would not represent states as states, but be much closer to representing the people. This would have pleased those states and delegates favoring proportional representation (see figure 2 in the appendix), but could hardly have gone down well with the small state coalition.

They voted on a few other matters that day but the delegates had already concluded the most important business of the day. There is no other recorded discussion of dissent or unhappiness with the vote on that day—though Sherman's words suggest he could not have been remotely satisfied with the outcome. However, he and other small state delegates must have understood that this defeat was not final. Though by now, it seems likely to us, they realized that the Committee of the Whole would be reporting some kind of resolutions to the floor, rather than beginning anew, this vote was not permanent. Indeed the only sure thing at this point was that the Convention floor would have to reconsider at least some of these of the points settled in Committee of the Whole. So they knew that there would come another day.

From the viewpoint of the large states, which had hoped to persuade the delegates of the importance of unification in a sufficiently powerful government, this result was probably more than satisfactory—just look at how far the terms of the debate shift between the original status quo and vote 41 (see figure 4.1). A victory of this magnitude—moving the projected plan so far on the representation dimension—had to generate a reaction. Small state delegates began meeting to prepare an alternative to the Virginia Plan. The eventual plan they would settle on—The New Jersey Plan—would have several features that clearly moved away from the Articles of Confederation. However, the key point was that the New Jersey Plan served as an alternative *on proportional representation*. Note that in figure 4.1 the position of the New Jersey Plan and the position of vote 39 are nearly identical. At least with respect to representation, the New Jersey Plan was prepared to accept what would become the 3/5 compromise, but go no further than that. The Virginia Plan (because there was no voting on representation between vote 41 and the reporting of the Virginia Plan out of the Committee of the Whole) takes the relatively polarized position of no compromise on representation.

Representation was only one element of the agenda. Before we can shift to the fight over which plan would emerge—the Virginia Plan or the New Jersey Plan—it is crucial to understand the other dimensions of the debate. We turn first to federalism, then to the emerging presidency and finally return to the contest between plans that would be reported out of Committee of the Whole.

4.2 State Power vs. National Government

Some accounts of the convention (Rossiter’s description of an assault of the nationalists, for instance) slightly elide two issues that, though obviously related, should be treated distinctly: representation and federalism. Certainly many delegates favored or opposed both positions, but to greatly varying degrees (see appendix figure 2). There is a difference between a delegate like John Dickinson and one like Luther Martin.

Before the Convention John Dickinson had gained instructions from the Delaware legislature to prevent him from voting for any changes in Delaware’s representation. Some authors have portrayed this stance as part of a small state intransigence on creating larger powers for the cen-

tral government. The problem with this interpretation is that from the absolute beginning it was clear that the delegates wanted to significantly alter the balance of power between the states and the national government. Their problem was not considering how much to revise the Articles, but how far to go with those revisions in the new system. Dickinson's instructions may have held him back on proportional representation, but they gave him wide latitude in other ways. Look back at the estimates of delegate ideal points in figure 2 (see the appendix). The figure plots ideal points of delegates and delegations against one another on the representation and federalism dimensions. The center of the delegates is clearly far removed from the location of the Confederation status quo which would be in the far lower left of the figure. Federalism—the question of how much power the states would have relative to the power of the national government—was the other key issue at the beginning of this debate. Again, most of the delegates were ready to make significant changes. In fact, they were probably ready to make even more changes on this dimension than they were on representation.

Madison, for instance, is, by our estimates, one of the most strongly opposed to state power. Madison certainly favored proportional representation as well. Southern delegations—especially delegates members from Georgia and the Carolinas—are clearly in favor of proportional representation, but they are somewhat less nationalist on the issue of federalism than are delegates like Madison, Hamilton, Gorham and Wilson (see appendix figure 2). Among the small state coalition we can also see a disconnect between preferences over state power and representation. Small state delegates certainly all questioned how far power should be moved toward the national government, but there is definite variation across that group of delegates. We must analyze these dimensions separately and not assume that any simple one-dimensional model can do a nice job of representing the voting. Any discussion of the debates that elides the distinction between questions of representation and questions of representation is flawed given the voting patterns we observe.

Figure 4.2—similar to the earlier figure—displays the key votes on federalism that came in this early part of the Convention and lays out a story that is fairly straightforward: the Committee immediately takes steps to move away from the Articles of Confederation and then has to find the moderate position between all of the delegate positions that would permit compromise. When proposals are put forward to either limit that

move away from a stronger national government or make it a *very* strong national government both extremes are defeated in favor of more moderate positions.

Note carefully the jump at the very beginning of the chain of votes in figure 4.2. The proposal, as recorded by Madison was that a “national Govern^t. ought to be established consisting of a supreme Legislative Executive & Judiciary (Farrand, 1966, Vol. I, p. 35).” Two states dissent. Connecticut votes against this proposal and New York is divided.⁸ The remaining states—Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina and South Carolina all support the proposal. Without very much debate, the delegates had agreed to move away from a relationship where the national government was subordinate to the states. The terms of the debate had shifted since an earlier decade of revolution when the states had agreed upon the Articles of Confederation (drafted by John Dickinson) that was far more limited than this proposal could have implied.

It should be noted that this vote is not simply about rhetoric. When the Constitution would later be debated in the Virginia ratification debates Patrick Henry would implicitly attack this vote (though, to our knowledge, he had never seen a record of it or the debate) when he argues strenuously against a “consolidated” government (Jensen and Kaminski, 1976 -, vol 9, see pp. 1010 - 1028). By Henry’s lights—and many other anti-federalists of the time—this initial vote is cause for alarm. Though Henry’s alarm was still in the future, this vote could have also caught several delegates off guard (Yates for instance). The terms of the debate had already shifted almost before they had begun.

Three days later on June 2, the Convention beginning the business of balancing state and national power. The day had opened with a discussion of the presidency. James Wilson of Pennsylvania had motioned that the executive be elected by the people (for more on this see the next section). The argument quickly moved into a debate about how much states could intervene in the election (see p. 80). Dickinson and Bedford move that to suggest that after a president is in office he should be “removable by the national legislature upon request by a majority of the legislatures of the individual States (Farrand, 1966, vol. 1, p. 78). This move would establish the precedent of state control over the executive and would hardly

⁸Madison records that the division was Hamilton favoring the proposal with Yates in opposition.

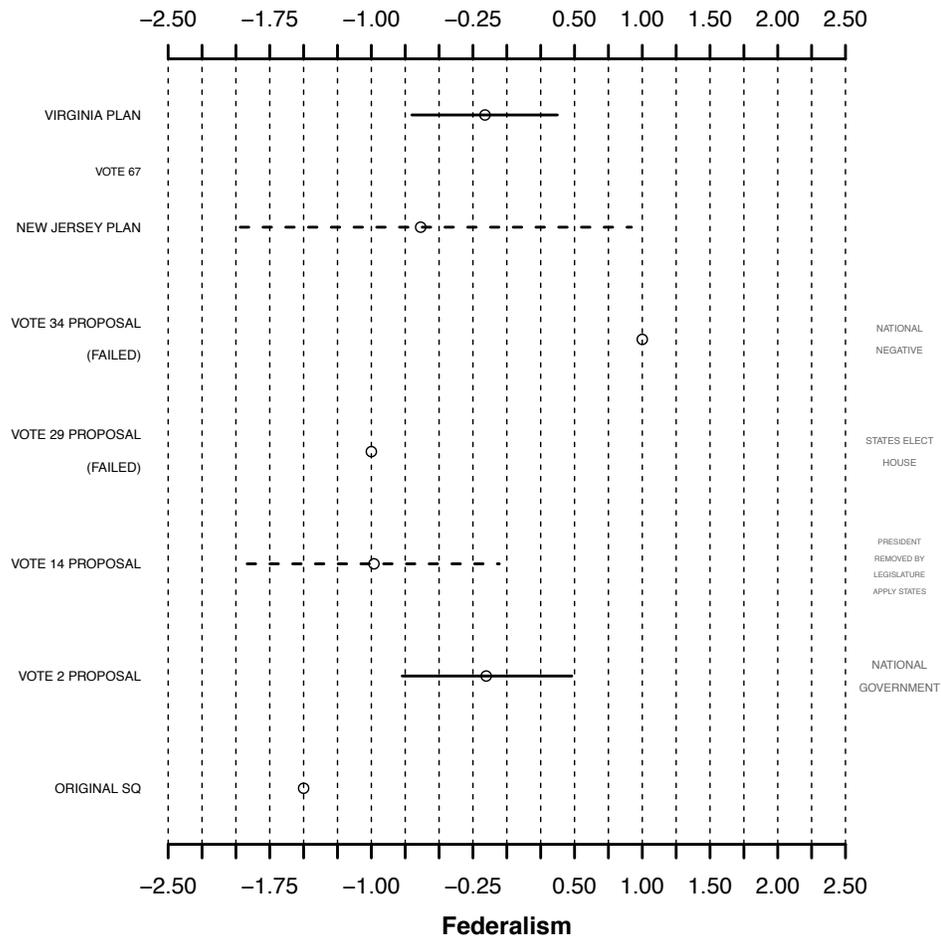


Figure 4.2: Key votes on federalism that came during Committee of the Whole period on the issue of federalism and national power. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

represent a move away from the Confederation status quo, so the opponents offered an amendment to Dickinson's proposal that would strike out everything after "the national legislature" effectively keeping the states out of it. That amendment to Dickinson's proposal is voted upon first and fails (in vote 13), but then Dickinson and Bedford's proposal is defeated as well effectively maintaining the status quo of a clear move away from the states. Imagine the alternative: states would have the power to request the removal of a president. In the absence of Vote 14 (see figure 4.2) there would be no independent executive. Presidents would have been dependent upon the good will of state governments. The defeat of this idea foreshadowed more moves in the direction of national power.

Randolph's fourth proposal read that "Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several states." This provision would be the crucial link between the people and the national government. Thus far the central government had merely been the agent of the state governments. This crucial change would imply that the national government derived its powers from the people—and not from the states. Vote 29 (see Figure 4.2) would have been a major change to that idea. On June 6 Charles Pinckney and Rutledge moved to change the resolution so that it would read that the first branch of the national legislature would be elected by the "*Legislatures* of the several states (p. 130 emphasis added)." The magnitude of this change should not be understated. It would have given state institutions much more control over the national government. It is a testament to just how committed the Convention was to changing the system that only South Carolina, New Jersey and Connecticut vote for the proposal.

The final vote depicted in Figure 4.2 is Vote 34, which came on June 8. Charles Pinckney, though favorably disposed to giving state legislatures a stronger say in the national government (back on Vote 29) now moved—no doubt with Madison's support—to change the words in the sixth resolution from "to negative all laws passed by the several States contravening, in the opinion of the national legislature, the articles of union; or any treaties subsisting under the authority of the union" to "to negative all laws which to them shall appear improper (p. 162)." This proposal would have clearly moved the Convention's plan in a *much* more nationalist direction. James Madison would have favored this outcome. Madison actually argued that "an indefinite power to negative legislative acts of the States [is] absolutely necessary to a perfect system (p. 164)" But most

delegates did not agree and the proposal in vote 34 went down to defeat quickly with only Massachusetts, Pennsylvania and Virginia voting for it.⁹ While it was the case that the many, though not all, delegates wanted to alter the balance of power between the states and the national government there were clearly limits on how far delegates were willing to go.

Thus the first few days of discussing federalism produced two clear results. First, the Convention collectively voted for more national power (Vote 2), but the Convention rejected proposals that moved the plan too far from the moderate position. For instance, votes 14—a vote to permit the national legislature to remove the executive only upon request of a majority of state legislatures went—and 29—state legislative election of the lower chamber of the national legislature—fail because not enough delegates and delegations support these proposals. In both of those cases the proposals probably did not go far enough. Vote 34 is another point of contrast: it went too far. Most delegates were not willing to accept national negative over state laws.

There were other proposal offered on this dimension, some that moved the proposed plan in a nationalist direction like taking national oaths or ratification by state conventions, but in general the Committee of the Whole had agreed upon a clear middle ground and was not yet ready to make major changes to that. The key vote comes very early: it is the initial vote to establish a new national government. When the Virginia Plan is reported out of Committee it is close to this vote's position.

The problem was that deciding one would have this new national government—even deciding the general direction of representation and federalism in the new government was not sufficient. If the new government was going to accomplish the ends set for it by the delegates it would have to be constructed appropriately. As Madison would later say, it had “to govern itself.” The first two dimensions of debate discussed so far saw delegates with clearly staked out positions driven largely by constituency considerations. On average, opulous states—or those that believed they would become such—had clearly thrown in their lot with the idea that the national government should be independent, both in representation and in powers. Though the Convention had toyed with the idea of making the national government supreme, they had avoided giving it total power over the states. The final dimension to consider was national institutional

⁹Delaware was divided.

design. What would the division of power *within* the national government look like? It was, in some respects, the most difficult piece of debate. The perceived advantages for large and small states were less clear. Delegates could not have known how constituents would feel about presidential vetoes or appointment powers or checks and balances. But the stakes were enormous. What would this national government look like?

4.3 Early Decisions about Presidents

The third, and final, dimension for consideration is about the design of national institutions. A delegate might agree that the power in government should move from the states to a national, centralized authority. That is not the same thing as agreeing with the design of that authority. How much power should be delegated to Congress (the branch of the national government that already existed). How much should flow to an executive or to the courts? For that matter neither of those branches had yet been created, so what would they look like? Figure 4.3 plots the key votes of the first few weeks on this dimension of national institutional design. Movement to the right is away from a Congress-centric design and toward increased presidential power.

The key issue on this dimension is the American presidency. Richard Beeman describes it best. As he puts it, from the moment they began discussing the issue “until the very end of the summer, the form, powers, and mode of selection of the national executive would be a constant source of dispute.” Beeman goes on to note that this really needs to be considered a separate dimension, writing that “the debate over the executive did not cause sharply defined divisions between whole groups of state delegations . . . there was a greater range of individual opinion among the delegates on the character of the executive branch than on any other issue in the Convention (Beeman, 2010, pp. 124-125).” Perhaps this was because the nature of this new government was still very much undecided. The design of a new national government was much less clear territory than dissatisfaction over representation or discussion of the failings of the existing federal system.

Figure 4.3 begins with Vote 2 on the national government, because the substance of the vote, as described above, was all about the forming of three separate branches and clearly a new form for the new national

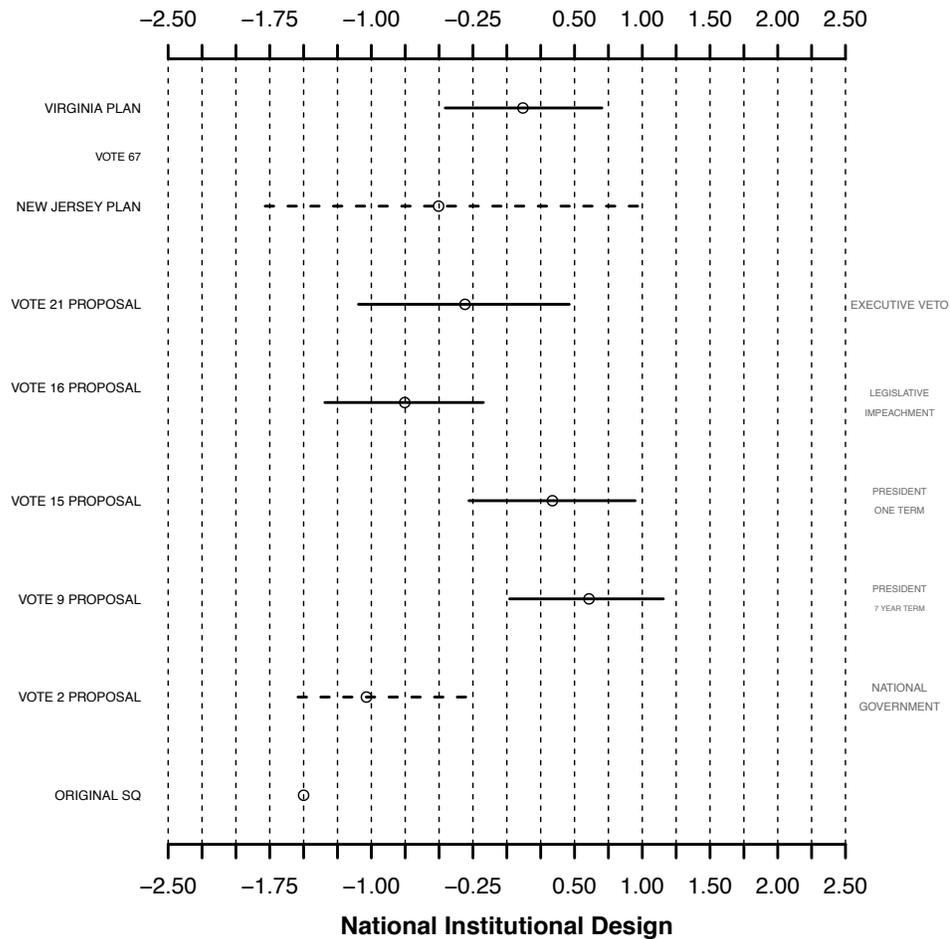


Figure 4.3: Votes on national institutional design—the powers of the presidency vs. the powers of the Congress—in the early portion of the Convention. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

government. As seen in the figure though, this vote may have moved away from the Articles and away from congressional control, but it did not move terribly far. Would there be a clear executive? What would courts look like? Without resolving any of these key issues it was impossible to know how much a move simply creating three branches would be.

The first really clear decision to rebalance power within the national government came on June first with the ninth vote of the convention (see Vote 9 in figure 4.3). New York, New Jersey, Pennsylvania, Delaware and Virginia all supported a term of seven years for an executive, in opposition to the Carolinas and Georgia (Massachusetts was divided). To this point the Randolph Plan had merely suggested that a president would exist for some unspecified term. Vote 9 implied the possibility of much greater authority within this new national government. Since the office did not exist under the Articles this was a revolutionary change.¹⁰

With a seven year term it was necessary to consider the question of term limits. This issue would return and crop up again in the Convention. As we see in Vote 15, taken the very next day on June 2, a long presidential term was best paired (at least at this moment) with a term limit: a single term. This was not a dramatic change from the proposal in Vote 9. The coalition pushing for a stronger presidency with greater national authority was apparently mostly content to limit terms as long as the ten was long. By June 2, the executive was clearly becoming powerful, but the coalition fighting too much executive power won a victory in the very next vote. Massachusetts, Connecticut and New York, voted with North Carolina, South Carolina and Georgia to defeat the remaining middle-states on the question of impeachment.

The main question of the day had really been about whether or not the president could be removed by the application of a majority of the states. Dickinson, Bedford and Sherman essentially argue that the legislature should have the power to remove the executive either at will or upon signal from the states. Wilson, Madison and Mason oppose them so as to keep the president a vigorous power and not the “mere creature of the legislature (Farrand, 1966, vol. I, p. 86).” On the surface, Dickinson, Bedford and Sherman lose the argument—see the discussion of this vote

¹⁰It was arguably too revolutionary because the Convention decided only one day later (see vote 12 in Farrand) to make the national legislature the body that elected the president—to have, what we would call in modern terms, a Parliamentary form of government.

above regarding federalism—but they gain a significant change with respect to national institutional design. Immediately after losing the vote on state legislative removal power, Williamson and Davie move that the president “be removable on impeachment & conviction of mal-practice or neglect of duty (Farrand, 1966, vol. I, p. 88).” This is Vote 16 and it clearly swung the pendulum back toward congressional power. A president (remember, at this point, a president who never faces the electorate again) cannot simply ignore the wishes of the people’s representatives or he will face impeachment. The model shows that simply perusing the notes can lead one astray. Williamson and Davie’s motions receives essentially no discussion in the notes, but the patterns of voting show that it is an important move away from presidential power and back toward Congress.

Locating the center of the delegate positions was still a process on this dimension. Vote 21—“resolved that the national executive shall have a right to negative any legislative act which shall not be afterwards passed unless by two third parts of each branch of the national legislature (Farrand, 1966, vol. I, p. 94)—initiated a slight movement back in the direction of presidential power. By modern standards that vote appears to be *highly* consequential as the presidential veto seems like a major power. However, apparently this minor move back toward presidential power was not enough to alarm the coalition pushing for less executive authority.

In some respects the Convention had decided very little. There would be a president. His powers were yet to be determined. The exact balance of congressional power, as opposed to power distributed to the other branches was clearly moving away from the Articles, but how far it would go had yet to be determined. The highest points plotted in figure 4.3, along with figures 4.1 and 4.2, are the New Jersey and Virginia Plans. The debates—particularly the debate over representation—had provoked a reaction from the small states. Before a plan left the committee they wanted to introduce an alternative.

4.4 Selecting a Plan

The Committee of the Whole had served its purpose. Delegates had discovered which ideas were acceptable to at least a majority of their colleagues. The Virginia Plan had been revised and was now ready to go to the floor for additional debate. However, at this exact moment the Vir-

ginia Plan discovered it had competitors. A complete (possibly more than) complete accounting of the plans presented is listed here.

- The Virginia Plan: it had occupied the Convention for weeks and was now revised into a new form clearly acceptable to a number of delegates (though certainly not all).
- Dickinson's motion: Dickinson made a motion to simply take up the articles and make revisions.
- The New Jersey Plan: formally a proposal to simply revise the Articles and go not much further; a foil to the Virginia Plan
- Hamilton's Speech: not truly a plan, Hamilton merely sketched out several propositions that would take the Convention much further than it had previously considered going.¹¹

This was a key moment of decision as the Convention could go in any number of directions. The most logical and obvious agenda was to report the Virginia Plan to the floor, but that was hardly the only option. As indicated by Pinckney's motion and the introduction of the New Jersey Plan the small states were dissatisfied. Rakove portrays the New Jersey Plan as essentially dissatisfaction with the Virginia Plan's representation arrangements. Other authors go further. Beeman, for instance, portrays the introduction of the New Jersey Plan as a desire to return to a government that was "part national and part federal, one that mixed federal and state powers in a system of divided sovereignty (Beeman, 2010, p. 162)."

On the surface this idea that the large state and small state delegations were in fairly strong conflict over *both* representation *and* national power seems very logical. There is some truth to it. Many delegations that wanted little movement on representation also preferred relatively less national powers. However, there are exceptions. Beeman notes that Dickinson was actually a friend to a stronger government quoting him as saying that they "wish for two branches in the General Legislature, and

¹¹There was one additional plan that could be listed here: Charles Pinckney's Plan. Introduced on the first day of real debate this plan was all but discarded by this point. Though Pinckney would later talk about how his plan had great influence, there was virtually no discussion of the plan after its introduction. At this stage of the game it was clearly less relevant than even Hamilton's speech.

are friends to a good national government (p. 162).” The graphs prove the reality of that claim. Dickinson may have not been just like Madison or Hamilton in his views, but he wanted to produce a much stronger national government. It’s just that he viewed the issue of representation differently. Other small state delegates took similar views.

A glance at either figure 4.4 (or the previous figures showing the agenda) reveals that the New Jersey Plan was hardly that different from the Virginia Plan. The key differences were actually on representation more than they were on any of the other dimensions. Relative to the Articles of Confederation both plans were *significant departures*. On both the federalism and national institutional design dimensions the New Jersey Plan is not easily distinguished from the Virginia Plan (see figures 4.2 and 4.3).

As Rakove puts it the key issue motivating the New Jersey Plan was not federalism or national institutional design, but was representation. “The supporters of the New Jersey Plan did not bother to defend Paterson’s proposals as an adequate solution to the problems of union. Instead they argued that the Virginia Plan was at once illegitimate and impolitic. The Convention had no right even to consider any change in the basic principle of representation under the Confederation[.] (Rakove, 1996, p. 62).” Perhaps they did not pretend to defend Paterson’s proposals on the scope and power of the new government because they had far less reason to deviate much from the emerging Virginia Plan’s proposed national power. It was only on the representation dimension that they needed to prevail.

A straightforward debate would have been to pit the New Jersey Plan against the revised Virginia Plan in discussion. Indeed there are some speeches made on this point. Consistent with his claim in the notes that he would argue that the small states should “give up their equality for the sake of an effective government” Madison prepares to argue the Confederation’s weaknesses and how little the New Jersey Plan does to remedy those ills.

However, before the Committee of the Whole turned to this discussion it spent an entire day listening to Hamilton’s musings on good government. This day, June 18, is sometimes regarded as a lost day—largely because Alexander Hamilton must have spoken for several hours (historians suggest the speech might have been five or six hours and it does take up 12 pages of Madison’s notes). For instance, Richard Beeman suggests that “it would have little influence on the subsequent proceedings of the

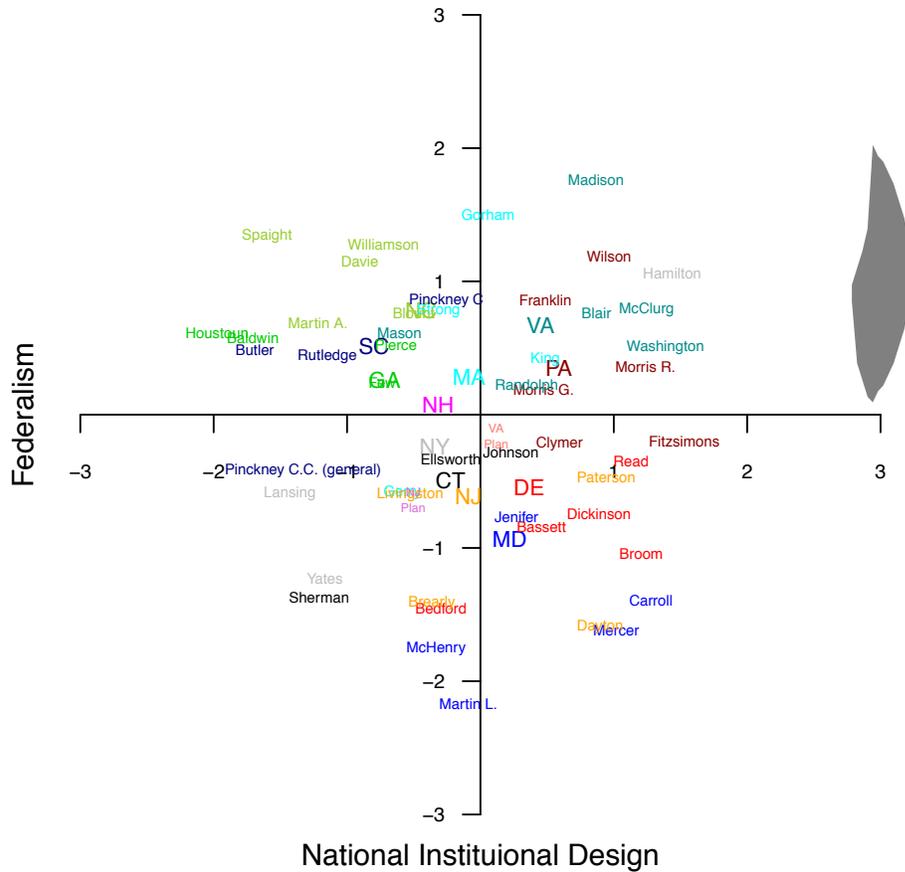
Convention, and, indeed, it no doubt tried the patience of many of the delegates (Beeman, 2010, p. 164).” He goes on to suggest that Madison would have been frustrated and seen the plan as “at best a diversion from the main issues.” Carl Van Doren dismisses the speech by noting that it was “not even discussed (p. 94). Some accounts of the Convention even omit a reference to Hamilton’s speech. It is ironic that in his work on the Convention, *E Pluribus Unum*, Forrest McDonald—a *biographer* of Hamilton does not even reference the speech.

Catherine Drinker Bowen, however, may strike nearer the truth when she writes the conjecture that “Hamilton may have anticipated the effect of his words (p. 115).” Rather than seeing the speech as a hopeless effort she suggests that perhaps “he deliberately outlined to the Convention a system of government so ‘national,’ so ‘consolidated’ that it would make the Virginia plan look tame and the New Jersey plan look impossible.” Though Bowen is not explicit about the dimensions of the conflict she leaves open the possibility that Hamilton is trying to influence debate with his proposal. If Hamilton could place his proposal (though it was never formalized as a proposal) in such a way that it framed the New Jersey Plan as being at one extreme and his own plan at a different extreme with the Virginia Plan in the middle, perhaps he could influence views of the plan.

Clinton Rossiter suggests something very similar but gives the credit not to Hamilton but to “Madison and Wilson [who] had decided to let Patterson, Sherman, and the others hear the views of a 200 percent nationalist, and thus to make the Virginia Plan appear as a reasonable middleground between two positions.” But even he is skeptical of this as he goes on to suggest that “this is, in truth, to imagine a supremely clever bit of strategy for which the evidence is entirely spectral.”

Estimating the locations of the New Jersey and Virginia Plans gives us the possibility of considering just what Hamilton’s plan would have needed to look like to frame the New Jersey Plan at one extreme and the Virginia Plan in the center of debate. This probably cannot conclusively settle the question, but it does go beyond “spectral” evidence to suggesting exactly what Hamilton’s speech would have needed to look like to accomplish its purposes.

Figure 4.4 plots the position of the delegates alongside a shaded region (shaded grey in the upper right hand portion of the graph) that represents region where Hamilton could have proposed a plan that would have



been unacceptable to any delegate except Hamilton, but that he would have preferred to the Virginia Plan. In plotting this we are assuming that Hamilton was not suggesting anything different on the dimension of representation (he does within the speech appear to endorse the scheme of representation suggested by the Randolph resolutions). Indeed he only mentions representation a couple of times in his plan. In general he emphasizes other points.

He begins by offering a “comparative examination of the two plans[in order to] prove that there were essential defects in both and point out such changes as might render a national one efficacious.” Hamilton’s plan contains an executive elected for life. He believes such an executive “will therefore be a safer depository of power” because such an executive will be secure in his powers and feel no need to seek greater power than would be granted by the Constitution. In Yates’s notes Hamilton argues that there are a “variety of important objects, which must necessarily engage the attention of a national government,” implying that the states are incapable of governing. Hamilton’s plan would “consist of two branches; and [he] would give them the unlimited power of passing all laws, without exception.”

Yates records him as saying that the Virginia Plan was “pork still with a little change of the sauce,” indisputably a reference to a very moderate Virginia Plan. Perhaps the delegates saw through such claims, but members of the next generation suggested Hamilton went very far on that day. John Quincy Adams recorded in his diary that “[i]f Hamilton were now living, he would not dare, in an assembly of Americans, even with closed doors, to avow the opinions of this speech, or to present such a plan even as a speculation (Nevins, 1951, pp. 477-78).”

Rossiter says the evidence Hamilton’s role as a “200 percent nationalist” is “spectral,” but when you plot the delegate positions it becomes clear just how far Hamilton would have had to go to offer a plan unpalatable to the Convention. Hamilton’s plan never gets a vote or even any discussion. Beyond the records of that day Hamilton’s musings are ignored in the published notes. Rakove suggests that a historian would like to have heard reactions to the speech that evening as they must have ranged “from outrage to bemusement (Rakove, 1996, p. 64).” Beeman goes further and says that upon Hamilton’s conclusion “[n]ot a single delegate rose to comment on it, and certainly no one was inclined to second it and accord it as the stature of being brought to a vote. They simply and im-

mediately adjourned for the day. Hamilton's views strayed so far from mainstream republican principles that they appeared not to merit a response (Beeman, 2010, pp. 169-170)." William Johnson would say a few days later that Hamilton's plan "was supported by none (Farrand, 1966, Vol. 1, p. 363)."

The question is was gaining support ever really the point of the speech? Had Hamilton proposed his ideal point as revealed by the voting it would have been supported by at least a few delegates with similar minds like Wilson of Pennsylvania and McClurg of Virginia, among others. Hamilton's speech goes *so far* that to suit the condition that only Hamilton would have supported it requires a point somewhere out in the grey shaded region of figure 4.4. By our lights it is unlikely that Hamilton, a brilliant man, would have been unable to grasp how such an extreme proposal would have framed the issue: The Virginia Plan was the truly moderate alternative.

We have established that delegates from small states were clearly willing to supper shifting power away from the states and toward the new central government. As the delegates learned about everyone else's preferences this would become clear.¹² Though much debate had already taken place, there must have still been some uncertainty about how far to go. Hamilton's speech lays out a vision that goes *much* further than anything they had previously contemplated. Of course Hamilton's "plan" was never a serious contender. Indeed, referring to it as a "plan" is literary license. Its contribution was not to help them select a new path for the agenda, but to frame the real choice that existed: a choice between the New Jersey and the Virginia Plans.

These two plans, after all, were the real alternatives on the table. Conventional accounts of the Convention sometimes portray these two plans as competing proposals demanding the attention of the Convention. However, the New Jersey Plan was not really a plan to fully compete with the Randolph resolutions. It was merely a response to them to reframe the debate around representation where the real disagreements lay. In this sense, perhaps it was not all that unlike Hamilton's speech. When Paterson introduces it on June 16 he says, "[o]ur object is not such a Governmt. as may be best in itself, but such a one as our Constituents have

¹²Perhaps one of the reasons Yates and Lansing left was that they saw how difficult it would be for their own positions to prevail at the Convention.

authorized us to prepare, and as they will approve (Farrand, 1966, Vol. 1, p. 250),” a claim that clearly nods at the importance of their position on representation.

This statement (and the surrounding text in the original) suggest that pragmatism was guiding Paterson and several other small-state delegates. First, they are arguing their constituents will simply never accept being put on a relatively weaker footing in the new government. In fact, read strictly, Paterson is admitting that his plan is perhaps not the best. But it is the only acceptable solution at this point in the game unless the large state delegates could bend just enough to satisfy the small states on the question of representation. Charles Pinckney of South Carolina took a cynical view of the small state delegations in a startling phrase given the normal gentility of the debate when he said in response to Paterson, “[t]he whole comes to this . . . Give N. Jersey and equal vote, and she will dismiss her scruples, and concur in the Natil. system (Farrand, 1966, Vol. 1, p. 250).” New Jersey was willing to go along with a much stronger national government. The real division was over representation, which was, both for New Jersey and as we have modeled it here: a separate issue.

If we use the metric of days of attention the New Jersey Plan received very little attention indeed. It was introduced by William Paterson of New Jersey on Friday, June 15 (only four days after the crucial June 11 votes). It is debated on Saturday, June 16 and then in Madison’s speech on June 19, after which it immediately goes down to defeat. At best, there was a day and a half of debate on the plan filled with the speeches of its critics. If Hamilton’s goal was to push the New Jersey Plan off of the table he could have hardly seen a better result.

Despite the uncertainty visible in the agenda figures discussed above, the New Jersey Plan was clearly a step backward from the point of view of the large states. And so, in the final act of the Committee of the Whole, the *revised* Randolph resolutions get reported from committee. In that sense, the floor of the Convention was not going to start over from scratch. Changes to the Randolph resolutions would be the beginning point of debate on the floor. And this action is supported by all states except Delaware, New York and New Jersey—Maryland is divided, presumably because of Daniel of St. Jenifer, and Connecticut support voting out the revised Randolph resolutions. The nationalists (whether or not they “assaulted” in Rossiter’s terms) had won most of the victories. They had proposed policies far away from the Articles of Confederation and had

clearly won.

Figure 4.5 plots our estimates of what happened in Convention in this period. Certainly on representation they were the clear victors.

On all three dimensions—but especially on the issue of proportional representation—reformers had won significant victories. The scope of their triumph was still unclear, but the Articles of Confederation status quo was clearly demolished.

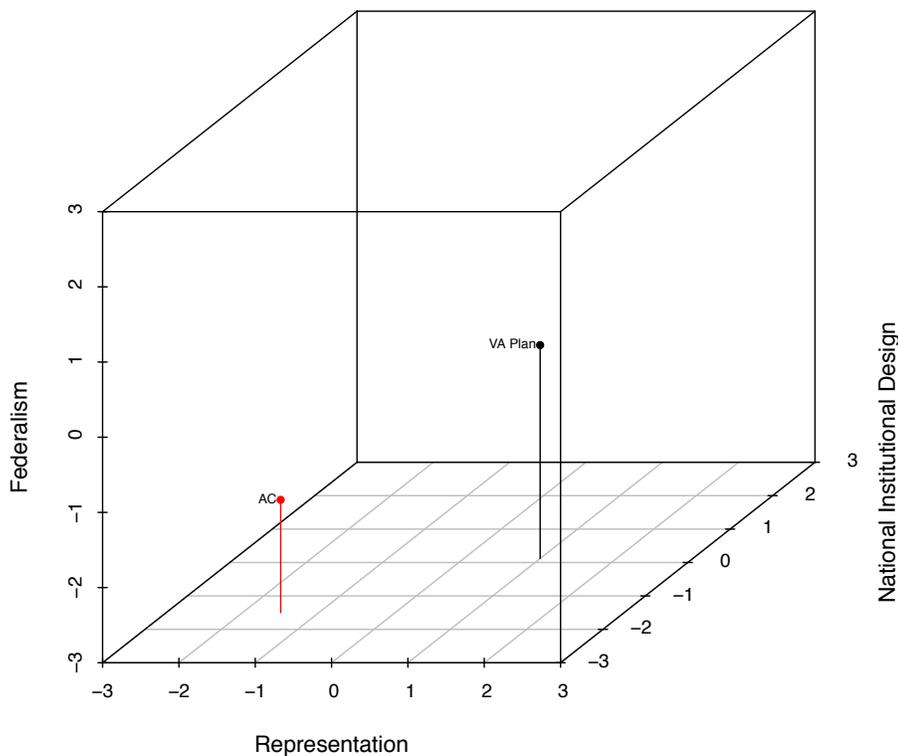


Figure 4.5: The Articles of Confederation and the Status Quo at the end of the Committee of the Whole period, in three dimensions.

By June 19 the delegates had clearly felt that the Committee of the Whole had served its purpose allowing them to move into the second act of the Convention where they would deliberate on the Revised Virginia Plan until July 26 when the proposal would be handed off to the Committee of Detail. The distinction between these two periods—Committee of the Whole, from May 25 until June 19 and then the Convention debating the Revised Virginia Plan until June 26—is an important one to understanding how the Convention proceeded. This division is not simply about timing or plans or debates. The Committee of the Whole existed to discuss and debate initial ideas. And perhaps the original intention was merely to debate and learn preferences, but by June 19 it should have been clear that the delegates had created a new status quo that the convention could debate.

Rossiter describes this by noting that the Convention had moved “at a pace neither too fast for Connecticut nor too slow for Virginia, it had taken on a style that was the mark its proceedings to the end (? , p. 178).” Figure 4.5 shows just how far they had come from the status quo of late May. The Convention’s deliberations had abandoned that position very quickly and moved to a completely new position that was moving in a direction favored by the key actors like Madison, Morris and Wilson. Elder statesmen like Washington and Franklin were clearly amenable to this direction—at least they had given no expression against these moves. Sherman’s attempt on June 11 to get a compromise on representation had seemingly failed, though he knew that the proposal was not dead yet.

Given how much was left to be decided perhaps spatial movement is a better analogy than Rossiter’s “pace.” The question of whether or not the small states could win concessions on representation had not yet been resolved. Jack Rakove notes that “the real debate over the thrust of the New Jersey Plan thus began only *after* its rejection (Rakove, 1996, p. 64, emphasis in original).” If the New Jersey Plan was solely an effort to get the delegates to pull back away from the extreme positions considered at the end of this period of Committee of the Whole, then there was no reason to believe that the small states had yet really lost. Their fate would be decided as the Convention moved away from Committee of the Whole and debated the plan on the floor. These early steps had set the stage for a possible compromise, but they had hardly guaranteed it.

Chapter 5

Action on the Floor

William Jackson's notes on June 19 open with the description that the president (Washington) "left the Chair" and that "Mr Gorham took the Chair of the Committee." Immediately after that the "President resumed the Chair." This dance symbolized a shift in the tone and tempo of the Convention. Gorham was about to report the work of the Committee. He pauses to specifically note that the "Committee do not agree to the propositions offered by the honorable Mr Paterson (Farrand, 1966, vol. 1, p. 312)." dispensing with the full New Jersey Plan. Despite that action, the core idea of the New Jersey Plan was still on the agenda: equal state representation in at least one chamber of the legislature.

On that same page, Robert Jackson writes that "they again submit the resolutions, formerly reported, to the consideration of the House." Except that this is inaccurate. Read strictly Jackson implies that the Randolph resolutions were being reported to the floor of the Convention. However, the resolutions had been refined and revised in several crucial ways. When the floor receives those proposals they have been changed substantially. There is no evidence that the Convention wished to revisit *all* of the issues they had started settling in Committee of the Whole.

Starting on June 20, the Convention treated the Virginia Plan¹ as the working document of the Convention. This is not to claim that all questions were settled. Far from it. Several proposals would be voted on again (sometimes multiple times). And some degree of uncertainty hung over the question of representation.

¹The reader can consult p. 233 of Farrand to see the revised proposals

Several delegates—largely from the small states—were trying to convince the large state delegates that that small states were immovable on the issue of representation. Whether or not they were truly immovable on this question will never be answered by history. For both good and ill, the small state delegates probed for the weaknesses in the large-state coalition in order to peel off a state or two and cement the “compromise.”

5.1 Finding a Great Compromise

Heading out of committee and onto the floor, Madison probably breathed a sigh of some relief. But, like Sherman and others, he must have known that the plan had not yet been ratified by the Convention floor. Figure 5.1 captures the crucial next series of proposals on representation from June 19 through the end of July. Essentially every vote in this period is about whether or not to conclude finally that representation in both chambers shall be by according to population or not.

On June 25 the Convention begins to take the final steps on representation. The specific first question came in vote 87 (see figure 5.1. The specific language, as recorded by Madison, was to agree “that the members of 2d. branch be chosen by the indivl. Legislatures[.]” Only Virginia and Pennsylvania protest. Some might argue that this proposition was not truly about representation. This is because, in theory, a state legislature could have simply elected a delegation that was apportioned to the population of the state. Madison did not see it that way. At some point, probably after taking his original notes, Madison recorded a footnote:

It must be kept in view that the largest States particularly Pennsylvania & Virginia always considered the choice of the 2d. Branch by the State Legislatures as opposed to a proportional Representation to which they were attached as a fundamental principle of just Government. The smaller States who had opposite views, were reenforced by the members from the large States most axioms to secure the importance of the State Governments.”

Madison seems to imply that this was a significant defeat for delegates in favor of proportional representation. Figure 5.1 certainly backs up that view: the proposal was the first significant move away from the decisions

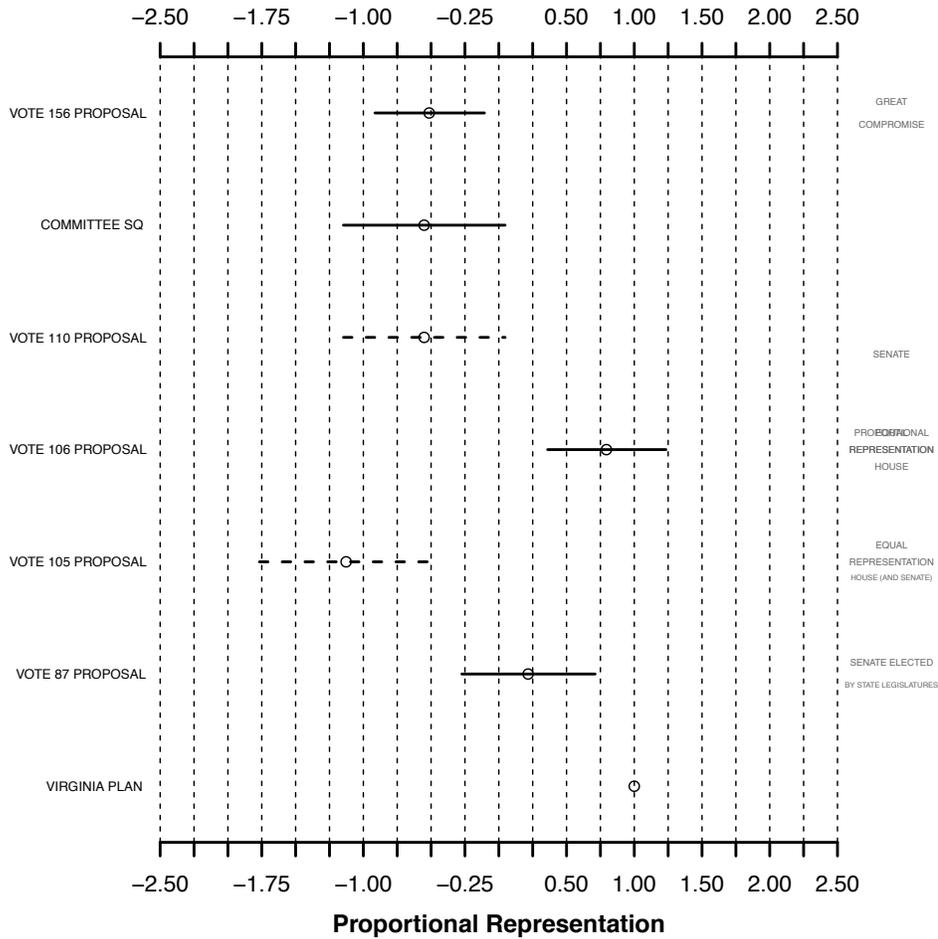


Figure 5.1: Key votes on proportional representation once the revised Randolph resolutions were debated on the floor. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

taken in Committee of the Whole and displayed that the Convention was ready to compromise in some way.

The small state delegates wanted that proposal (Vote 87) to be merely a way station on the way back to a system of representation more favorable to their interests. Four days after Vote 87, on June 29, they make the proposal (Vote 105). The seventh resolution that had been reported to the floor read as follows

Resd. that the rights of suffrage in the 1st. branch of the National Legislature, ought *not* to be according to the rule established in the articles of confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition, including those bound to servitude for a term of years, & three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each State (emphasis added) [.]

That conjunction, *not*, was the focus of their proposal. Lansing, of New York, moves that the word “not” “be struck out (p. 468).” The vote is defeated along predictable lines: Connecticut, New York, New Jersey and Delaware voting in favor with Massachusetts, Pennsylvania, Virginia, the Carolinas and Georgia voting against the proposal. On this day, for some reason, Maryland is divided. A possible reason is attendance, since some of the delegates like Jennifer had been voting for proportional representation.

Sherman’s proposed compromise was proportional representation in the lower branch, but equal state representation in the higher branch. However, at least at this point of the Convention, that proposal was not acceptable. Vote 106 ratifies the Virginia Plan as it was being proposed and appears to move the status quo slightly to the right (see the figure). Though it was simply continuing what had been proposed in Committee of the Whole, now the vote was solidified on the floor. The delegation votes are exactly the opposite as in Vote 105. Madison and his allies must have been pleased. The vote in 87 had threatened to move representation in the direction of state representation. After all, if the states controlled representation in a piece of the legislature it moved representation in their direction. Solidifying proportional representation in the House was a major victory.

Madison and his allies would come to learn, however, that any such victory was fleeting. The forces of compromise were already at work. The status quo as it stood on June 29 would not last.

July 2 was an interesting anniversary of the signing of the Declaration of Independence.² Vote 110 was a proposal from Ellsworth of Connecticut “[t]hat in the second Branch of the Legislature of the United States each state shall have an equal vote (Farrand, 1966, vol. 1, p. 509).” The proposal dies five votes to five with Georgia divided. Georgia was probably divided because of the absence of a delegate. On the day of the vote, both Pierce and Few were absent. Both had pretty clearly favored proportional representation (see appendix figure 2). In their absence, William Houstoun and Abraham Baldwin must have divided on the vote.

Baldwin is the interesting case. Forrest McDonald puts it that “Abraham Baldwin, born in Connecticut, regressed to his youth and started sitting with and voting the same as the Connecticut delegates (?).” Beeman, Rossiter and Bowen all confirm this general idea that Baldwin was searching for a compromise and decided to divide Georgia to get there. Beeman goes further and argues that Daniel of St. Thomas Jenifer, though he had spoken out in favor of proportional representation, was absent that day (allowing Luther Martin to cast the Maryland vote with the small states) because he “may have realized that the insistence of the large-state nationalists on proportional representation in both houses might spoil any chance for a successful outcome for the Convention. He may have concluded that his temporary absence would help ease the way toward compromise and thus keep the Convention alive.” Collier and Collier 1986 argue that Jenifer’s choice as deliberate:

Jenifer had an excellent record of attendance at the Convention: he had missed few sessions, if any. Furthermore, the moment the voting was finished, he strolled calmly into the room. There can be no doubt that he stayed away on purpose, and there can be no doubt, either, that he did it to allow Martin to vote Maryland for the small states’ side. Although he was from a small state, he believed that proportional representation was just: nonetheless, he would allow his state to vote against it, to save the Convention (p. 126).

²The Declaration was announced on July 4.

We have more doubts about this than Collier and Collier, as Jenifer could have been absent for any number of reasons. However the bottom line is that the vote is a tie. The conventional way of interpreting this moment is that “the small states had somehow prevented Madison and his coalition from steamrolling them into submission (Beeman, 2010, p. 187).” Several accounts use the term “deadlock” to describe this moment. Five votes for the small state proposal and five votes against the small state proposal (with Georgia divided) gives the veneer of truth to this interpretation, but it is probably somewhat incomplete.

A better way of describing this moment of the Convention is not deadlock but small-state defeat—though a temporary one. They had been striving hard to find some kind of compromise that would satisfy the larger states and it was now clear that this was not likely to happen without additional action. Even with a fortunate set of circumstances where they had more votes than usual the small state delegations were unable to defeat the large-state coalition. The voting rules are key: it required a majority vote of the states to change the status quo. The small states were simply not able to move that many votes. Some kind of change in the agenda was necessary to pick off at least one additional large state.

The solution was a committee. The ostensible reason for the committee was to develop some kind of compromise. The specific proposer was General Pinckney of South Carolina—a slave state. He argues that “a Committee consisting of a member from each State should be appointed to devise & report some compromise (Farrand, 1966, vol. 1, p. 511).” Some delegates speak in favor of the Committee (or at least do not oppose the formation of it): Gouverneur Morris, Edmund Randolph, Caleb Strong, Hugh Williamson and Elbridge Gerry (all from large states, though some were willing to consider equal state representation). The small state delegate who speaks for it is only John Lansing, and Madison describes him as “expecting little advantage from it (Farrand, 1966, vol. 1, p. 515).” Beeman, Rossiter, Rakove and Bowen, all to some degree, reference the composition of this committee and suggest that it was biased.

Bear in mind that the Committee is *not* the brainchild of the small states. Indeed the only small state delegate who speaks for it expects little. The story that makes the most sense to us is that the Convention had grown weary of the debate but needed some kind of mechanism to keep the hopes of the small states alive. A committee serves both purposes. Discussion of the small state concerns would be moved off of the floor

and onto a committee (for at least a time). If the committee could find some solution so much the better.

The proposal that emerges from the Committee is found in figure 5.1. The model estimates that on the representation dimension it is essentially the *same* as the proposal in 110, which was effectively to give equal representation in the second branch. This leaves us with the possibility that if the Convention was to move away from proportional representation it would do so because of changes on other dimensions of the conflict. As we will see below, the logical candidate for this change was the federalism dimension.

5.2 National or Federal Control?

Concurrent with the debate over representation they were debating the question of state power. It's important to remember that even though there are clearly some overlap on these two dimensions they were not the same thing. For instance, the Connecticut delegation was clearly much more favorably disposed toward the idea of proportional representation than they were toward the idea of granting power to the national government. Some small state delegates like Paterson of New Jersey and Read of Delaware were really quite open to the idea of granting power to the national government, but they had very different preferences about representation. The question of what type of federalism would emerge was an open question as they felt out this compromise.

Though we argue that the representation and federalism dimensions are distinct, we are not arguing that they are unrelated. As we shall see some votes we have placed on this dimension may have been crucial for a change in North Carolina's voting behavior. The Great Compromise depended on more than simply the question of proportional representation.

The first proposal to really affect federalism was vote 71 which would have given state legislatures the power of election over the members of the lower chamber (see figure 5.2). Intriguingly this vote is actually supported by one Southern state, South Carolina. Could the Southern delegates have favored giving states more control? But this vote failed on a vote of 4 to six with one state divided and the very next poll—vote 72—gave the power to elect the first branch to the people rather than to the

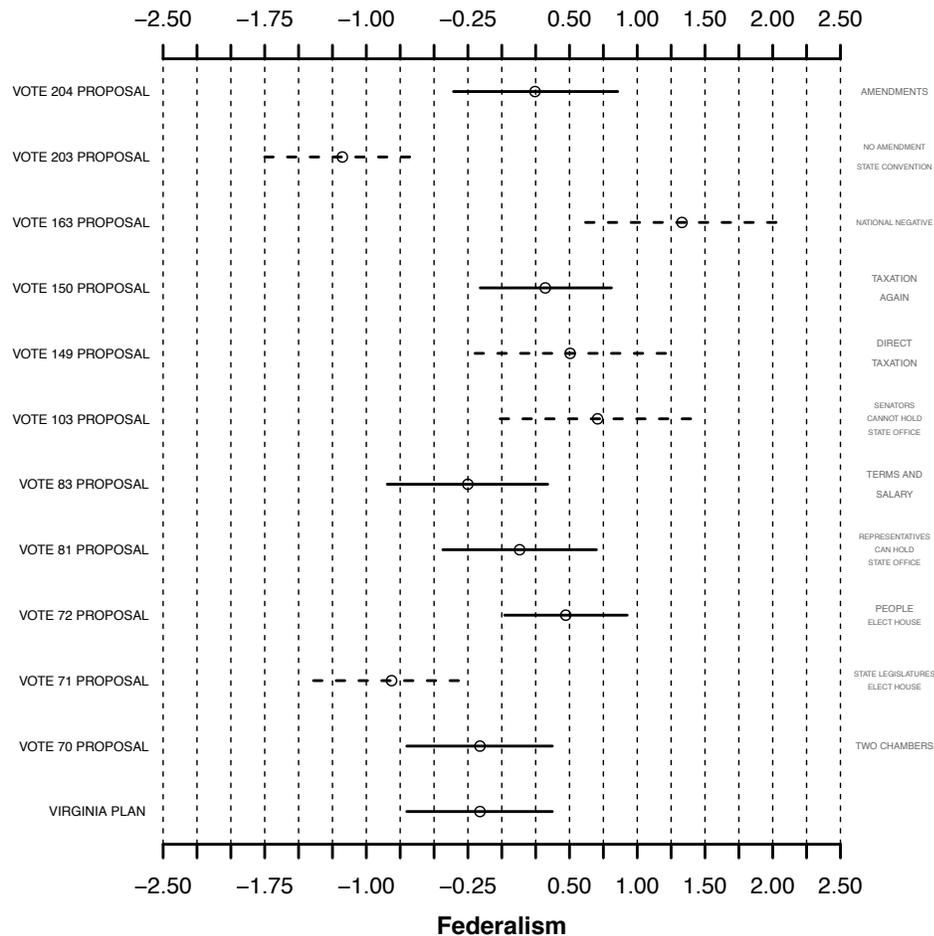


Figure 5.2: Key votes on federalism once the revised Randolph resolutions were debated on the floor. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

states. Only Delaware dissents on this vote (though Maryland is divided). This was a victory for a certain kind of federalism. It did not validate the power of the specific state government officials (as presumably Delaware, and possibly would have preferred). What it did do was give power to the people of the respective states. Delegates must have believed that local citizen control was a sufficient safeguard over the choice of who would wield power in government.

It was shortly clear that they wanted to leave some room available for state influence over legislators. In vote 81 and then in vote 83 (and the entire clause is ratified in vote 87) they accept General Pinckney's motion to make members of the first branch of the legislature eligible for offices "established by a particular state (Farrand, 1966, Vol. 1, p. 386)." So it was established that there would be some room for states to exert influence, even if that was only indirect influence.

The Convention had to avoid two different problems with respect to federalism. On the one hand, it had to give enough local control to make the specific states feel like they were safeguarded. But, on the other hand, they had to make sure that this new central government would not be at the mercy of the state governments.

A few days after these decisions about the lower chamber, the upper chamber came under discussion. Similar to the decision on the House, the Convention refused to ban members of the future Senate from holding state offices (vote 103). This clearly left open the possibility of having Senators under state control and limiting the power of the national government. One would expect that it would be small states alone that would favor it, but in reality it was a coalition of typical small states joined by the southern states of North and South Carolina and Georgia, all of them voting in opposition to Massachusetts, Pennsylvania and Virginia. The estimate in the figure (vote 103) shows it as moving power to the right—in the direction of more nationalism and less state control.

Why would the Southern states agree to this state of affairs? They had previously pushed very hard for a much stronger national government, but that government needed to serve the ends of the constituents back home and at this point in the Convention perhaps the Southern states were seeing just what kind of powers might the federal government have. The upper chamber was being constructed with the greatest amount of power. Madison's plan was being revised in a direction (see the section below on national institutional design) that would make the future Senate

the most powerful branch of the government. Would it have too much power?

5.2.1 Changing the Proposal on Slavery

The small states had failed to win a concession simply by voting for equal state representation (they had been discussing and proposing this option for several days). The latest gambit of a committee had, merely managed to reproduce a proposal on representation that was equivalent to a proposal that had already failed, as seen in figure 5.1. They needed to acquire additional votes for their side. In fact, by this point, they actually needed two additional votes since the New York delegation had left. The logical solution was to find some kind of proposal—possibly on another dimension—that could appeal to a delegation from the large states.

Between the committee proposal and the final vote on the Great Compromise only a pair of proposals move the position of the status quo in the direction of the large state coalition—particularly the southern states voting in this coalition. The votes came in votes 149 and. Vote 149 occurred on Friday, July 13, just three days before the final compromise. At first glance the substance of the votes appears to be relatively unimportant. Vote 149 is a motion as follows:

That from the first meeting of the Legislature of the United States until a Census shall be taken, all monies to be raised for supplying the public Treasury by direct Taxation shall be assessed on the inhabitants of the several States according to the number of their representatives respectively in the first Branch. (Farrand, 1966)

Up until now the question of whether or not the central government would directly be able to levy taxes had been avoided. There is no substantive debate about it.³ However, at this point the idea of states being able to levy direct taxes is introduced, just prior to the vote on the Great Compromise (a vote that everyone must have known was coming). Why?

As seen in figure 5.1 the vote fails, but the slight alteration in vote 150 passes:

³It is true that later in the Convention taxes and duties would take up much discussion, but the question was not yet well-developed on the agenda.

That from the first meeting of the Legislature of the United States until a Census shall be taken, all monies for supplying the public Treasury by direct Taxation shall be raised from the several States according to the number of their representatives respectively in the first Branch. (Farrand, 1966)

The only difference appears to be the reference to assessing taxes on inhabitants. The proposals are only slightly different, but both would have moved in the direction of states that wanted greater national power. In fact, a plausible interpretation of the vote is that the Constitution is being altered to grant even more federal power: the right to levy direct taxes on citizens. But embedded within that proposal is a clear nod toward slavery.

Madison wrote of his own speech on the vote:

Mr M[adison] said that having always conceived that the difference of interest in the U. States lay not between the large & small, but the N. & Southn. States, and finding that the number of members allotted to the N. States was greatly superior, he should have preferred, an addition of two members to the S. States, to wit one to N & 1 to S. Carla. rather than of one member to Virga. He liked the present motion, because it tended to moderate the views of both of the opponents & advocates for rating very high, the negroes.(Farrand, 1966)

Madison later struck out the following ending clause to this sentence: "as they are to augment the proportion of representatives for the States possessing them." At this moment the delegates are not simply agreeing to a minor point about tax policy and enlarged federal power, but they are also ratifying the implicit compromise over slavery, by taking away the legislature's power to alter the bargain over slavery until at least several years after the new government has begun. This vote is *both* about enlarging the scope of national power, but also about embedding slavery within that national system.

To see this point one has to realize that the proposal about taxation actually originated a few days earlier during the discussion of slavery. In the previous days (beginning with vote 132 on July 11) the delegates had been arguing over the method of the census and who exactly would be counted. They never directly voted on every piece of this compromise. But

they did discuss how taxation would be linked to representation and the counting of the population. The Grand Committee's proposal contained two major parts, a compromise that we know as the "Great Compromise" and an apportionment of initial representation. From July 11 to July 13 the details are hotly debated, but the substance is rarely if ever significantly changed. As the northerners continued to bring up objections to the counting method and the proportion of slaves that would be counted the southern states must have grown more and more nervous. These southern states were voting for increased federal power, but they hardly wanted slavery threatened.

Rakove describes the action by quoting Morris arguing that it was "better to trust to a future legislative discretion that would surely take the value of slaves into account [r]emarks like these could only prompt southern delegates . . . to favor a rule explicitly linking representation and slavery (Rakove, 1996, p. 72)." James Wilson of Pennsylvania noted that

[L]ess umbrage would perhaps be taken agst. an admission of the slave into the Rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by by saying that they should enter into the rule of taxation: and as representation was to be according to taxation, the end would be equally attained (Farrand, 1966, Vol. I, p. 595)"

Wilson then moves for the language cited above with respect to Vote 149 on the census. That does not pass, but the revised version does in vote 150. The final substantive votes on July 13 (especially vote 150) essentially became a ratification of the compromise over slavery.

When the delegates agree that direct taxation shall occur by the rule of representation in the first branch (including the three-fifths compromise), they are generally strengthening the national government, but with the crucial caveat that slavery—a special, protected class of property—would be guaranteed. This powerful precedent for how the national government would treat slavery was reassuring to southern states, North Carolina in particular. The model estimates that the probability of North Carolina voting for equal state representation without this amendment (see vote 110 on July 2) as far less than the chance of North Carolina voting for the proposal once the federalism changes had been put in place (by vote 156).

The Great Compromise, of course, is mostly about representation. However, the small states, after consistently losing, had to go and find votes. The most plausible story for North Carolina's vote for the compromise is laid out here. In truth that did not get the small states quite far enough. They needed one additional vote. It came from Massachusetts. Elsewhere we have argued that the Massachusetts vote is plausibly linked to a desire to compromise (the standard story often told about the Convention). However North Carolina's vote in particular appears to have been motivated by desires that may have been rooted in a specific, peculiar interest.

5.2.2 Some Final Federalism Changes

Randolph's sixth resolution as it was reported from the Committee of the Whole included the power for Congress to override the will of the states: "The Natl. Legislature ought to be empowered to ...negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union, or any treaties (Farrand, 1966, Vol. 1, p. 236). A remarkable power, this would have enabled the legislature to override state considerations. Figure 5.2 clarifies just what a move in the direction of nationalism this would be. However, the vote fails with only Massachusetts, Virginia and North Carolina in support. The delegates, by and large, did not want a national government that was capable of overriding the states. That simply went too far.

The final federalism votes worth considering came on July 23 as the Convention settled on the means of amending the process. The votes are pictured in figure 5.2 and demonstrate how the Convention wanted to avoid giving states too much power. Vote 203 was a proposal where state legislatures would approve amendments to the Constitution, instead of an assembly of delegates elected directly by the voters. It goes down by a vote of three to seven, with only Connecticut, Delaware and Maryland supporting it. However, by a nearly unanimous vote (only Delaware dissented) the Convention agreed to a procedure where once a bill had been approved by Congress, state conventions could ratify an amendment. This maintained the power of the national government, because it kept the national legislature as a gatekeeper over amendments. It would not be possible for some group of states, or even a collection of like-minded citizens

across several states, to force an amendment that was unpopular with the national institutions.

At the same time they were debating these final compromises on state and national power, they also began debating the question of presidential power on the floor. Again, we will see that they had conflicting visions about how these questions should be treated. Rather than the simpler coalitions seen on the first two dimensions the question of national institutions was less clear cut.

5.3 Separating Powers on the Floor

The third dimension was, of course, national institutional design. Little was done on this dimension until representation was resolved. However, once that issue had been resolved they attacked the executive. Rakove (1996) puts it as follows. “On July 17 [they] returned to an issue they had ignored since early June: the executive (p. 82).” They may have ignored the issue until the after representation, but they now had to solve these issues. Rakove describes this period as more “pragmatic (p.82).” Bowen, for her part, argues that after the resolution of July 16, “matters would move more easily; the little states were ready to meet the big, and yield on many questions (p. 186)” the implication being that their concerns had been met over representation.

While we agree with this general tone about the changing debate, we note that the debates were, in at least some respects, even more difficult because they were less clear. Some authors find in the notes of the debate “fatigue, impatience and homesickness (Rakove, 1996, p. 83, is just one example of this refrain).” Without disagreeing, we would note that these later debates were about issues that were far less settled and less clearly connected to constituency interests.

There is no terribly clear narrative arc for this period,⁴ s we can see with the other dimensions. Figure 5.3 presents the key issues decided on this dimension. With looser coalitions and more delegate disagreement, we present a figure that describes the key votes that moved the status quo in this period but have less ability to summarize—partially because they

⁴Rakove describes this period by saying “A narrative of this . . . phase of debate cannot take the same form as the one that culminates on July 16 (p. 83).”

had trouble deciding themselves. Figure 5.3 displays the pattern: they had trouble deciding on what to do about separating powers and designing the national institution. Votes on the agenda show more variance than on other dimensions.

The first key vote in this period came on July 17. The proposal came from Gouverneur Morris, according to Madison's notes. He proposed to change the language in Randolph's revised proposals on selection of the president "to strike out 'National Legislature' & insert 'citizens of U.S (Far-[rand, 1966](#), Vol. 2, p. 29)." As can be seen in the figure this vote—165—was unpopular. It went much too far away from congressional power. The status quo at this point in the Convention was congressional selection of the president. That status quo may have been clearly unpopular with many delegates, but it was difficult to find another solution. In fact, in the very next vote—166—another scheme to change selection of the presidency was proposed: electors chosen by state legislatures. Neither of these two votes garnered any real delegation support. Support to move away from the principle of congressional control may have existed, but to what sort of mechanism was far less clear.

Perhaps in an effort to find some clarity on the dimension the delegates quickly (still on July 17) voted on three quick proposals about presidential terms.

- Vote 168: permit executives to serve more than one term
- Vote 169: To remove the seven year term and replace it with a statement that an executive serves for a term of good behavior
- Vote 170: To replace the seven year term with some unspecified term

To a modern ear, it would seem like vote 168 would move power towards toward a president, but we must remember the important status quo. The Convention had already decided to have *congressional selection* of the president. Giving the office additional terms merely clarified the need for an executive to curry favor with Congress. Vote 168 passes six votes to four. Votes 169 and 170 fail by opposite margins, with similar coalitions. A longer term was perceived as moving *away* from congressional power—especially one of good behavior. Even an unspecified term (Vote 170) was not seen as acceptable—too much presidential power.

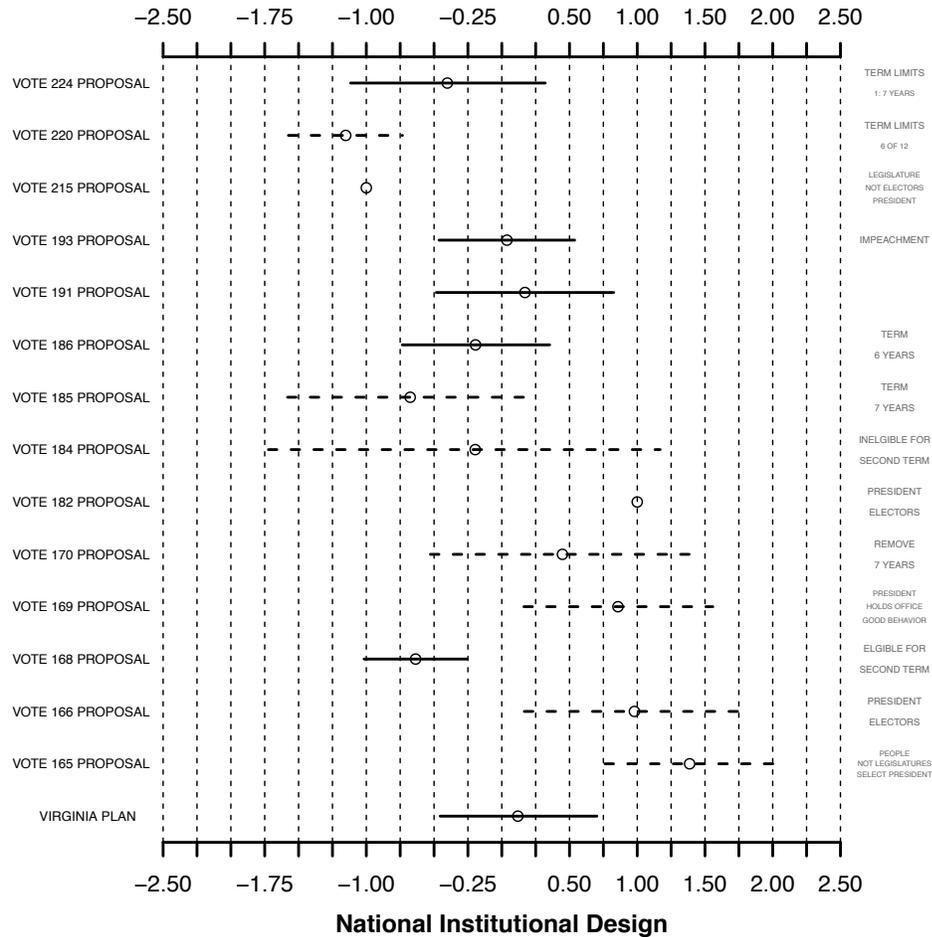


Figure 5.3: Key votes on national institutional design once the revised Randolph resolutions were debated on the floor. Right-hand labels are simple descriptions of the vote content. Bars indicate a highest posterior density interval for the estimate. Solid lines indicate the vote passed. Dashed lines indicate the vote failed. Some key votes were used as “reference” votes for the model and consequently do not come with an attached estimate of error.

Over the next couple of days they made some progress on the issue, but still could not seem to resolve it. Madison, in company with a relatively nationalist coalition, argued that “it be a fundamental principle of Govt. that the Legislative, Executive & Judiciary powers should be *separately* exercised; it is equally so that they be *independently* exercised (Farrand, 1966, Vol. 2, p. 56, emphasis in original).” Many disagreed. Rutledge, for instance, argued that a president “not re-eligible” would be “sufficiently independent (p. 57).” The vote came in Vote 182, when, by a margin of 6 - 3 - 1 (the Carolinas and Georgia were opposed, along with Massachusetts being divided) called for electors. This moved executive power much further away from Congress, who would not elect the president under those circumstances. But, it obviously did not settle the question of a length of term and eligibility.

That would come in votes 184, 185 and 186 (see figure 5.3) which proposed the following.

- Vote 184: make the president ineligible for a second term
- Vote 185: to make the term seven years
- Vote 186: to make the term six years

The estimates in figure five suggest that each of these votes would have moved power away from the executive and back toward the Congress. The principle being that a term-limited executive was less powerful and Congress—a more permanent body—would benefit from the limits on power. Six years, was, at least for now, the agreed upon compromise.

The next two key votes in this argument over presidential selection came on July 20. In Vote 191, Elbridge Gerry offered a plan for electing the president where the electors would be very roughly proportional to population. After some debate on the point Gerry’s basic plan passes by a vote of six to three. Figure 5.3 reveals that the plan was still considered relatively moderate, moving only slightly in the direction of presidential power. The accompanying vote, 193, proposed congressional impeachment powers. It was similarly moderate largely because it was a vote that split the nationalist coalition. Delegates like Morris were against any impeachment on the grounds that an executive would be come “dependent on those who are to impeach (Farrand, 1966, Vol. 2, p. 65).” Other nationalists like Wilson and Madison thought it a worthwhile addition. Madison

argued it was “indispensable (p. 65).” This split in the nationalist coalition is consistent with a story of disagreement and confusion on this dimension. It was simply harder to settle on the national institutional design than it was to argue over representation. The coalitions were far less clear.

Nothing made that more clear than the very next significant vote: 215. The proposal of Houston was that electors “be appointed by the ‘Natl. Legislature (Farrand, 1966, Vol. 2, p. 65)” destroying the compromises of the last few days. Why would this move—unquestionably a move in the direction of congressional power (see figure 5.3)—pass by a vote of seven to four?

They still had not settled on the appropriate means for limiting the executive’s power. The beginning of the Convention had seen the delegates largely agree on moving power far away from the Articles of Confederation. That such a move would happen was not open to question. What remained was how to limit this new executive. In Vote 220, Pinckney proposes that the national executive should be allowed no more than six years out of a twelve year period. In effect, Pinckney’s proposal was to permit no immediate reelection, but permit eventual reelection. This fails very narrowly. The model suggests that it was not a dramatic move away from the status quo of that moment.

Vote 224, however, was a move in the direction of a bit more presidential power. George Mason began the discussions that led to this proposal and vote on July 16 by reviewing all of the mechanisms they had discarded (election by the people, election directly in the state legislatures, by governors of the states, electors chosen by the people, etc.). He appears to joke that they are down to a “lottery” for the presidency “but as the tickets do not appear to be in much demand, it will probably, not be carried on, and nothing therefore need be said on that subject (Farrand, 1966, Vol. 2, p. 119).” He assumes that they will go forward with election via the national legislature. This, at least at this point, seems to be the sense of the Convention and Mason argues that the executive should had a term of seven years and then be ineligible for a second term. Mason’s speech is interesting when contrasted with the results of the model. He speaks eloquently of the need for the preservation of the rights of the people and the need to avoid letting someone hold office indefinitely. However, as can be seen in figure 5.3, his proposal (vote 224), which passes seven to three (Connecticut, Pennsylvania and Delaware are against the motion) moves power away from Congress and toward the executive. This is because

given the arrangements they had arrived at so far a president of seven years (a relatively long period) and without any need—or even ability—to curry favor with the Congress would be quite independent.

As anyone who has read the Constitution knows this was hardly the final disposition of the presidency. However, it was as far as they could go in July. There would now be a break before they concluded the details of all of their bargains. Before turning to those details in the next chapter we review what had happened on the floor.

5.4 The Shape of the Compromise

We conclude by summarizing what happened once the proposals had reached the floor. Figure 5.4 shows the positions of the Articles of Confederation (labelled AC), the Virginia Plan, the Great Compromise (labelled GC) and the Status Quo at the end of the floor debate in July in three dimensions. The story is quite clear. Figure 4.5 showed how much the proposal had moved during Committee of the Whole. The Virginia Plan was a clear victory, but some of those gains are lost when the floor debates the revised resolutions. Figure 5.4 shows that in two steps the Convention decided to move away from the Virginia Plan—but mostly on two dimensions. The key votes on representation came as the Committee proposed a plan (see figure 5.1) and then the Convention debated changes to the federalism dimension (see figure 5.2) that moved things substantially away from the Virginia Plan proposals. The second step was necessary because simply on its own merits the Great Compromise proposal probably was not enough to garner the vote of a state like North Carolina which strongly favored proportional representation. The federalism dimension (in votes 149 and 150 on direct taxation) served as the inducement to change the probabilities for states to consider a compromise. Once that compromise was in place. It served to essentially split the difference between the Virginia Plan and the Articles of Confederation.

With representation now behind them, the Convention considered additional changes to the national institutional design dimension. Initially (see figure 5.3) the Convention ended up ratifying items like limiting terms, giving Congress powers of impeachment and eventually—in vote 224—producing a presidency of a single term limited to seven years. This pruned executive power would be the additional change from this

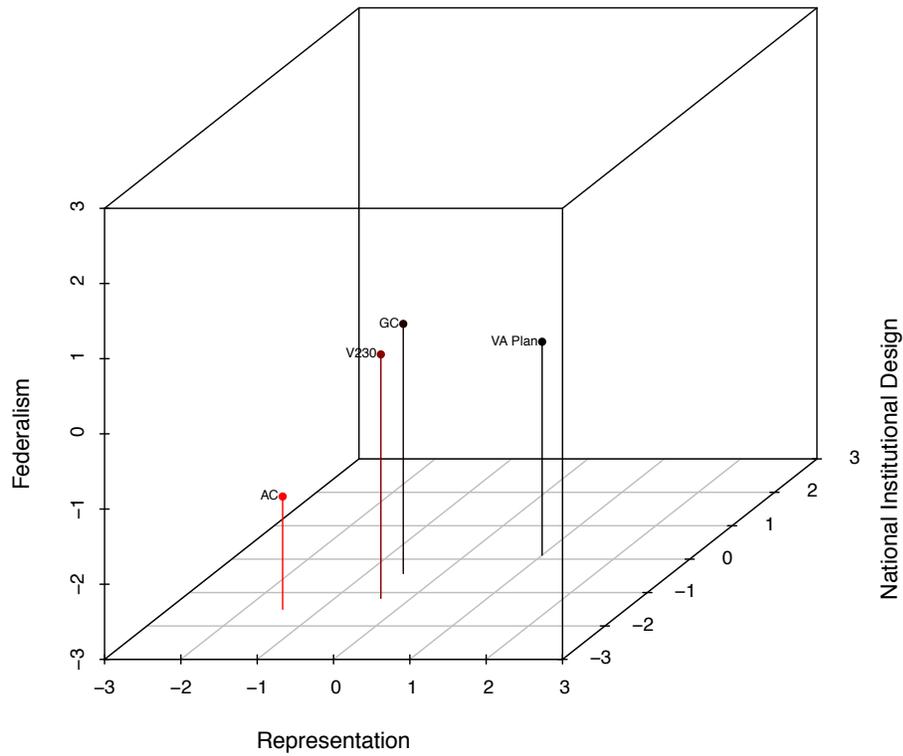


Figure 5.4: Figure plots the positions of the Articles of Confederation, the Virginia Plan, the Great Compromise (labelled GC) and the Status Quo at the end of the floor debate in July in three dimensions.

period. Having considered bold reforms and major revisions in the Committee of the Whole the July floor debate moved back away from those positions substantially. The clear exception is federalism. On that dimension (the vertical dimension in figure 5.4) there is *no retrenchment* back in the direction of the articles. Though the Compromise on representation erased gains on the representation dimension, it did not erase the gains everywhere else. Even on the separation of powers dimension the significant changes back away from an independent executive and towards Congress-centered government really come *after* the Great Compromise was sealed.

Despite the gains in terms of national power, Madison must have seen this as a loss. In fact, on July 16 he wrote

On the morning following ... a number of the members from the larger States, by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote Several of them supposing that no good Government could or would be built on that foundation, and that as a division of the Convention into two opinions was unavoidable it would be better that the side comprising the principle States, and a majority of the people of America, should propose a scheme of Govt. to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States.

But these delegates lacked the unity to make a change. Regrettably Madison is not specific about which delegates attended or their opinions. This moment reflected a key turning point. Up until now, as all of our figures show, the tide had been moving for greater and greater reform. By the end of July those ideas had been put on hold for certain dimensions of conflict: representation and separation of powers. Federalism was the exception: this new government would be much stronger relative to the states. Moving forward, the Convention would be mostly about subtle adjustments to these positions. Bold reforms were now in the past.

Chapter 6

Concluding the Details

There is a ten day long break between the final meeting on Thursday July 26 and Monday August 6. Delegates employed the time in different ways. Washington went on a fishing trip. [OTHERS FROM BEEMAN.]

But when all of them returned they knew that this was the final stage. They probably hoped that the task ahead of them would be relatively short, but that was not to be. In fact, this final stage of the Convention would contain more votes—though less debate—than the previous two periods combined. If delegates did in fact expect to finish the task quickly, they were disappointed because they were about to find out that settling on the final adjustment would be very difficult indeed, but that it would not, in the end, make a massive difference to the perceived policy outcome at the end of the Convention.

6.1 Failures to Adjust Representation

COMMITTEE OF DETAIL DISCUSSION

At this point the question of representation seemed truly behind them. Any delegate who entertained notions of revisiting Sherman's proposed compromise had probably dismissed them by now. That is not to say there were not clear attempts to change the outcome.

August 8, just two days after they return from their recess, was a day devoted largely to questions of representation things like citizenship, the apportionment of the representation and some very interesting discussion of slavery. The vote that touches off the debate is a small substantive

change proposed by Hugh Williamson of North Carolina. He did not like the line in the report from the Committee of Detail regarding representation. Article IV, section four of the Committee of Detail's plan read that the legislature fix representation "by the number of inhabitants, according to the provisions herein made (Farrand, 1966, Vol. II, p. 178)." Dissatisfied with this unclear reference to the settlement of the compromise over representation and slavery, Williamson moved that it be stricken out and substituted with the phrase "according to the rule hereafter to be provided for direct taxation." We cannot stress enough how important it is that Williamson of North Carolina offered this motion.

As argued above, and elsewhere [CITE US], the question of representation was not simply one that could be resolved by splitting the difference between the New Jersey and Virginia Plan schemes of representation. North Carolina had to be enticed with guarantees over slavery. Williamson's motion has the effect of ratifying the compromise on *both* slavery and representation yet again. But by now the effect of that compromise was a bit more controversial and it was Gouverneur Morris [CLARIFY HIS ATTENDANCE] who would push the debate.

Madison records literally no debate on the motion whatsoever, but then the motion touches off a series of arguments on slavery. King begins the debate by effectively admitting he was not (at least now) sure "what influence the vote just passed was meant [to]¹ have on the succeeding part of the Report, concerning the admission of slavers into the rule of Representation (p. 220)." King is clearly uncomfortable with ratifying slavery's part of the compromise and launches into a tirade against the practice. Sherman agrees with his underlying point about the iniquity of slavery (Sherman's term) but does not want to revisit the question of representation after it had been "Settled after much difficulty & deliberation (p. 221)."

King's objections were just the opening act, however, as Gouverneur Morris quickly moves to insert "free" before the word "inhabitants" which would, frankly, undo the entire delicate compromise, not over the simple question of the rule of representation but over the question of slavery and its counting. Morris eloquently argues against the pernicious effects of the practice.

Compare the free regions of the Middle States, where a rich &

¹Madison omits this article from his notes, but it seems implied.

noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of Va. Maryland. & the other States having slaves (p. 222).

But simple descriptions of the practice was not Morris's only tactic. He was also prepared to shred the logic of the compromise.

Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens & let them vote? Are they property? Why then is no other property included? The Houses in this City . . . are worth more than all the wretched slaves which cover the rice swamps of South Carolina . . . the inhabitant of Georgia and S.C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizen of Pa or N. Jersey who views with a laudable horror, so nefarious a practice (p. 222).

The problem, of course, was that reopening slavery would undo the precarious compromise that had opened the way to create this new national government. No one, according to Madison, rises to really rebut Morris's speech. Perhaps they knew it was in vain because it went so far. Perhaps Southerners did not want to dignify the argument. The only Southerner who speaks is Mr. Pinckney who makes an almost wholly irrelevant argument about the "burdensome" nature of the fisheries of New England or the problems of the western frontier. He actually admits that this "could" be demonstrated on some other more "proper" occasion.

Sherman offers the only real rebuttal to Morris by noting that "It was the freemen of the Southern States who were in fact to be represented according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter (p. 223)." But it is a demonstrably incomplete rendition of the compromise. The question of taxation was offered as a sop to North Carolina to get them to accept the compromise but the real import of the question was not simply about taxation it was about representation in the legislature. The Southern states needed to be guaranteed extra representation to enter into this bargain,

because they were only lukewarm on the questions of a strong national government and the nature of power in that government.

Morris's proposal to count only "free" inhabitants in the enumeration goes down to defeat with only New Jersey voting in favor of the proposal. Everyone else had accepted the compromise and it would not be removed at this late date, objections that it was the "curse of heaven" notwithstanding.

North Carolina was hardly done seeking greater representation for its concurrence in the new system of government. In one of the final representation votes that mattered at the Convention (vote 544) North Carolina finally moves for additional representation in the new Congress. This was defeated though all of the Southern states vote for it (including and Delaware, but not South Carolina). But this point was hardly vital. North Carolina had already gained what it most desperately wanted.

6.2 Final Federalism Choices

Vote 303: the power for Congress to create post roads

Vote 345: militias

Vote 346: State appointment of officers in militias

Vote 357: state's would (with equality, as in the senate) elect the president

Vote 402: New state entry (the large and small state coalitions get revived)

Vote 406: Change the word from "limits" to "jurisdiction" on the entry of new states

Vote 425: ratification by the states

Vote 429: ratification by the states (implications for the civil war, cite Rakove)

Vote 432: control of trade

Vote 505: more on slaver and trade

Vote 513: more on slavery and trade

6.3 NATIONAL POWERS DIMENSION

6.4 The Final Position

[DISCUSS FINAL POSITION OF ALL DIMENSIONS AT THIS POINT]

Chapter 7

Voting for Interests or Ideas?

Today it is taken as a given that politicians represent the interests of their constituents. Some scholars refer to this as a “delegate” model of representation (in opposition to a “trustee” model [CITES]). Though citizens sometimes frown on such narrow views they probably prefer representatives who do not stray too far from the key views of the citizenry.¹ Of course this is a democratic value. John Adams put it best when he wrote in *Thoughts on Government* about a legislature where

the greatest care should be employed in constituting this Representative Assembly. It should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this Assembly to do strict justice at all times, it should be an equal representation, or in other words equal interest among the people should have equal interest in it.

As we have already seen, construction of the legislature and the system of representation was uppermost in the minds of the delegates to the Constitutional Convention. But the language one uses to speak of representation changed through time. Today we speak openly of representing labor or African-Americans or even more specific groups like gun-owners or rice-growers. In the more patronage based politics of that period politicians were less likely to talk about representing interests in the language

¹This is true mostly of their own views. Citizens who live in places where they differ from many of their neighbors no doubt find new respect for a trustee model.

of today. But that does not mean the interests were unimportant or even undefined (though they may be less clearly defined).

Given the care and debate over so many issues at the Convention—where the nature of representation probably figured most prominently—the founding generation clearly worried about which interests would be represented. In fact, Madison’s theory of a large republic was based on the idea of interests counteracting one another in a great republic [CITE EARLIER CHAPTER.]. It is inconceivable that the framers believed that interests would matter greatly in the legislature they were about to construct but were utterly uninfluenced by those interests themselves. That may have been what the first several generations of the republic believed, but it is no longer a tenable theory.

7.1 Beard’s Thesis and Its Renovation

Just after the turn of the twentieth century Charles A Beard published what came to be seen as an rigorous attack on the Constitution from the viewpoint of a prominent progressive historian: *An Economic Interpretation of the Constitution of the United States* 1913. The critics of this book have leveled numerous attacks on it from multiple directions. For instance, William Howard Taft wrote that the book “impeach[es] our institutions which have stood the test of more than a century ... with reference to their founders now long dead (Taft, 1913, p. 3).” This is not a surprising claim because Beard’s argument about the Constitution reflected a Progressive critique of the document that it was in the way of entrenched elite power.

Beard’s specific claim was that the Constitution was put in place by a fairly unified elite class that sought to protect both its property and its particular place in society. The property argument focuses on the question of bonds and securities held by particular leaders at the time. The argument (though long) generally takes the following form. A particular group—Beard sometimes takes the argument down to the individual level²—would have benefitted from the constitution because the guarantee of a strong central government would clearly provide this class with security against the vicissitudes of a democratic polity. Beard specifically identifies two broad classes. The first group he refers to as the realty class,

²See, for instance, Beard’s description of George Wahsington on p. XX.

a group of individuals wealthy because of their land and real estate holdings. Beard identifies them generally as farmers. The second class might be referred to as the personalty class. This group held wealth and power because of their private bank, bond, or other security holdings. In Beard's view, the latter group was concerned about their status and preserved it against the great mass of people whose wealth depended on their local farm. Beard extends this argument far beyond the case we consider here, spending several chapters on the ratification conventions (see chapters eight and nine), but the basic ideas always remain the same.³

At its heart, Beard's work, is proposing that the Constitution is not the carefully considered outcome of a deliberative group of politician scholars, but really the work of a consolidated elite expecting to benefit from the new government.

Later, after revisionists like McDonald 1958 and Brown 1956 had taken scalpels to the claims, historians concluded that Beard's interpretation of the Constitution was "decisively refuted (Novick, 1988, p. 366)." The refutations of Beard boiled down to an investigation of his claim about a unified class and found his evidence wanting. McDonald found multiple coalitions at the Convention that did not break down along the neat lines proposed by Beard. Consistent with the pluralist literature on the politics, they advanced a view of the Convention that was far more nuanced and involved a much greater number of constituencies.

While modern historians often do describe Beard as antiquated or dismiss him for other similar reasons,⁴ there is a strong case to be made that many of Beard's core ideas live on in the historiography of the Constitution merely in renovated forms.

Alan Gibson 2010 alludes to this proposition when he says that "it is far more accurate to claim that these criticisms refute specific dimensions of Beard's thesis and set the boundaries of subsequent economic interpretations than to suggest that they amount to refutation of *any* economic interpretation (p. 33, emphasis added)." In fact, as Gibson notes, several

³A modern student of the founding's historiography, Alan Gibson, has called Beard's work "cryptic and duplicitous (Gibson, 2010, p. 21)," noting that the book has internal contradictions and inconsistencies. While we agree that the book is often hard to pin down, we think even critics who go as far as Gibson would agree with at least this presentation of the facts.

⁴One commenter on our work has noted that it was once a sport among American historians to resurrect the "dead husk" of Charles Beard and beat upon it some more.

historians continue to argue for an economic, or pluralist, account of the Convention's deliberations and outcome.

It is simply the case that the economic dimensions have become more sophisticated. After McDonald's early work demolishing Beard, he authored *E Pluribus Unum* (?) a treatment of the motives of the founding generation that was far more sympathetic to economic motivations. The difference between his views and Beard's is best described by a parsimony, too much of it in Beard's case and essentially none of it in McDonald's case. McDonald argues for a complex constellation of interests based in regional, occupational, wealth and social class positions. The resulting mixture is certainly strongly influenced by economic factors, though the overall portrait is not simple.

McDonald offered a renovation of Beard that built a much larger number of wings, rooms and additions on the same basic piece of economic property. But other scholars like E. James Ferguson (?) avoided the need for a deeply complex array of interests by arguing that Beard was right to look for a parsimonious explanation. He was just looking at the wrong explanation. In place of the need for financial security that divided a personalty and realty class, Ferguson argued that a group of nationalists—beginning in the revolution, but culminating in the Constitution and in Hamilton's eventual treasury policies—pushed for the national government to have a taxing power and the consequent ability to control national debt. McDonald may have been right to demolish the idea of the personalty and the realty, but the reality of a nationalist vs. parochialist dimension of economic conflict was still, according to Ferguson, the underlying reality of the period.

Lynd

Main

Hall

Wood

Woody Holton's populist account of the Convention bears far more resemblance to Wood's work on the Constitution than has been previously recognized.

Jillson

Slez and Martin

Dougherty

McGuire

Elkins and McKittrick

Jensen
Rossiter
Rakove

Beard may have been decisively rejected, but summing up the historiography on motivations at the Convention is best seen as extensions of, or responses to Beard's initial case. Alan Gibson is accurate when he writes that "it is no exaggeration to suggest that Beard's book is the most important work ever written on the American Founding, primarily because it liberated scholars to critically study the Founders rather than merely celebrate them (Gibson, 2010, p. 19)."

The questions that get asked over and over again are these. What are the dimensions that characterized the conflict? What interests influenced voting on which dimension? The previous chapters laid out our answers to the question of which dimensions and how the agenda unfolded along those dimensions. Here, we briefly take up the question of interests that could have influenced the outcomes on each dimension.

We do not believe that it is easy to cleanly separate interests from ideas at the Convention. However, we can say that [FILL IN.]

7.2 Specific Variables

[TO BE FINALIZED AFTER REVISIONS.]

Data sources and limitations do not let us analyze every hypothesis in grand detail. However, we can look at the broad patterns.

Previous theory on the convention breaks down roughly into two camps. One camp for an economic interpretation where the wealthy used the new document to help themselves. A second camp may not argue that wealth played no role whatsoever, but suggests that it was clearly not the central motivating force; instead ideas took center stage as delegates pursued their own vision of the good society.

We can look to see which factors predict voting.

7.3 Results

The results are in table ... [TO BE UPDATED]

State-Level Variables	Representation		Scope and Power	
	Estimate	Probability +	Estimate	Probability +
Per Capita Wealth in the State in thousands	-1.497	0.071	-1.427	0.061
Slaves per 100 Whites in the State	0.047	0.964	0.009	0.655
State Population in hundreds of thousands	-0.472	0.431	3.259	0.890
Percentage of the State that is of Scottish Ancestry	0.377	> 0.999	0.045	0.661
Percentage of the State that is of English Ancestry	-0.071	< 0.001	-0.007	0.355
Urban to Rural Population Ratio	7.680	0.856	3.623	0.694
Congregationalist State	5.752	> 0.999	-0.753	0.311
Episcopalian State	1.654	0.968	-0.746	0.200

Individual-Level Variables	Representation		Scope and Power	
	Estimate	Probability +	Estimate	Probability +
Number of Slaves	0.006	0.884	-0.005	0.089
Private Securities Owned in thousands	0.003	0.541	0.028	0.860
Public Securities Owned	-0.211	0.041	-0.012	0.451
Western Lands Holder	0.342	0.686	0.013	0.502
Served in the Revolution	-0.558	0.165	0.789	0.936
English	0.038	0.536	0.211	0.660
Scottish	0.895	0.922	1.489	0.996
Distance (in miles) from Navigable Water	-0.008	0.047	-0.009	0.012
Member of the Congregationalist Church	0.726	0.839	-0.558	0.234
Member of the Episcopal Church	0.551	0.831	0.312	0.729

Table 7.1: The regression portion of the model of state delegation and individual delegate positions at the Federal Convention of 1787; coefficients in **bold** have at least a 90 percent probability of being either positive or negative depending upon the estimate.

Chapter 8

The Convention's Politics and Originalism

The political context of the convention suggests some problems for any originalist interpretation of the constitution. These problems may not invalidate the legal school of thought, but they do suggest a need to be cautious when thinking along these lines.

First, delegates were hardly unified in their preferences and perceptions. When we analyze a particular delegate's discussion of the document (in the *Federalist* or elsewhere) we need to keep in mind their position at the convention.

Hamilton wanted a really strong central government, for example.

In theory, delegates who disagreed over outcomes could still agree on what the document's wording meant. In some cases, no doubt, that is true. However, the inherently political process with a largely spontaneous agenda does suggest that interpreting the founders requires understanding the other possibilities they were considering.

[FIGURE EXAMPLE OF ALTERNATIVES?]

An irony of the originalist perspective is that today it is often deployed by Republicans and Libertarians to argue for a smaller central government. But the Convention was clearly an effort to create a much *stronger* central government. This hardly helps settle today's debates (careful study of the Convention will not determine optimal marginal tax rates), but it is ironic.

8.1 The Progressive Critique

The progressive complaint against the Constitution centered on the document's archaic

How is the schoolmaster, the nation, to know which boy needs the whipping? ... Power and strict accountability for its use are the essential constituents of good government... It is, therefore, manifestly a radical defect in our federal system that it parcels out power and confuses responsibility as it does. The main purpose of the Convention of 1787 seems to have been to accomplish this grievous mistake. The "literary theory" of checks and balances is simply a consistent account of what our Constitution makers tried to do; and those checks and balances have proved mischievous just to the extent which they have succeeded in establishing themselves. (Wilson)

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