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March, 2013

Hamilton and Madison Deploy ‘Exigencies’ In Works Dated to 1787/88, 1790/91 and 1817-1836 Surveyed by Percent of Words in Source

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Available at: https://works.bepress.com/peter_aschenbrenner/155/
In this third of three articles, frequencies by Madison and Hamilton for ‘exigencies’ are cumulated. Hits surveyed in the three disputed essays are divided equally between Madison and Hamilton. Frequency (by percent) is multiplied by 1000 for ready comparison. The Word vs. the Need contest for primacy at the supra-constitutional level; JM and AH are scored accordingly.


B. THE WORD VS. THE NEED. So what matters in constitutional theory? Is it public need which, more than text, drives the analysis when laws are molded, considered, tried, enacted, rejected, repealed or modified? Or is it text of any pedigree, adopted prior to the molding, considering, etc. of laws?

This pointed was debated in 1776 when the Continental Congress had to decide how to go about severing the relationships between each colony (or province, commonwealth and so forth) and the Kingdom of Great Britain.

One possibility was to maximize disorder: proclaim that each colony (however styled) was independent and leave it at that.

But John Adams had other ideas.

He suggested (and this is May 10, 1776) that before a Declaration of Independence was to be adopted each colony adopt a constitution. It doesn’t sound like much, but it would certainly appeal to Hans Kelsen. This was a major event in the practice of constitutional theory.

There was – and could be – no pedigree for these thirteen ‘states’ as they were now styled from Text. The Word could not supply any such dignity. Or any pedigree at all.

En arche ōn ho logos, and all that, but there was no Word to which the Continental Congress could appeal as a legal justification for organizing colonies into anything other than rebel gangs, thugs, or anarchists.

C. NEED OVER WORD. So Adams and Jefferson did the best they could: the alternative to the mimesis of text is the kinesis of need. 2 OCL 364, 2 OCL 357 and 2 OCL 811, noted above, work through the details. Did this resolve the primacy of public need against prior text?

It appeared that Madison, by 1787/1788 did not see the looming battle. The two were hopelessly incompatible: public need as ample justification for writing statutes could not live with the straitjacket of prior constitutional law, which would necessarily be restrictive when crafting laws became the order of the day.

D. THE “NECESSARY OBJECTS OF THE UNION.” Justice Joseph Story thought Madison gave the game away in JM’s TFP No. 44 and said so in his Commentaries. (1833) In two sections, Story carefully stitches Madison’s TFP No. 44 and Marshall’s McCulloch into seamless constitutional observation. 1 Commentaries Sections 430 and 432.
Take this passage. *TFP* No. 44 finds Madison (in Story’s retelling), a “distinguished statesman,” offering ‘nature of government’ reasoning:

We have now reviewed in detail, all the articles composing the sum or quantity of power, delegated by the proposed constitution to the federal government; and are brought to this undeniable conclusion, that no part of the power is unnecessary or improper, for accomplishing the necessary objects of the union. The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, whether or not a government commensurate to the exigencies of the union, shall be established; or, in other words, whether the union itself shall be preserved.

When Madison channels Hamiltonian ‘nature of government’ reasoning Madison is teamed with John Marshall and the Supreme Court’s *McCulloch* decision, which upheld Congress and Madison in their official action rechartering the Bank of the United States (1816).

E. TABLE ANNEXED. Table 365 is annexed. http://works.bepress.com/peter_aschenbrenner/

F. NOW TO PERCENTS. Look at Table 365C: Hamilton (nearly) doubles Madison in the frequency of deployment of exigencies in their TFP essays. Hamilton is clearly on to something which is that, as Madison said in No. 44, you look to the objects of the union and reason backwards from there. This is ‘nature of government’ reasoning triumphant. If spending a dollar depended on the quantum value of ‘post office’ or ‘fort’ or ‘commerce’ Madison would have said so.

Now observe what happens in the bank bill debate. Hamilton redoubles his score. Once every three thousand words he deploys ‘exigencies.’ Madison is furiously cleansing his vocabulary, refusing to deploy ‘exigencies’ at all. As noted in 2 OCL 364, Madison’s references to ‘exigencies’ in the works composed at the end of his life are studiously designed to avoid committing himself on the main issue: if government must act – if only to preserve itself – then no constitutional text can be invoked to force the government to suicide. And this is the point that Madison made in No. 44.

We will revisit this point when the Reconstruction Amendments come into focus. “The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.”

Governments survive.

They thrive on need and survive as they must.

When words are appealed to as justification for doing nothing and suffering the consequences, words lose.

G. STATUS. Complete.

H. CITATION FORMAT. Please cite as 2 Our Constitutional Logic 365 or 2 OCL 365.

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

J. LAST REVISED. This file was last revised on March 4, 2013; it is version 005.

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