Coöpting, Constraining, and Compressing ‘Rights’ Which Pre-Exist A Founding,

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COÖPTING, CONSTRAINING, AND COMPRESSING ‘RIGHTS’ WHICH PRE-EXIST A FOUNDING
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ABSTRACT.
Americans wrote constitutional texts at a furious pace beginning in 1775, with the state count hitting fifteen (as of 1786) and a national charter written and replaced (as of 1787). Our Constitutional Logic shortlists five ‘rights’ – more precisely termed heightened consumerism, from the system’s point of view – that pre-existed each of these chartered organizations. The investigation plays its proper role in supporting a survey of these five ‘rights’ in Quentin Skinner’s Foundations of Modern Political Thought.

KEY WORDS: creating, altering, abolishing, resisting, preserving government, political society, bourgeois society.

A. PRELIMINARY TO THE INTRODUCTION. The reader may profit by Selected Details of State Constitutions Adopted Before 1787, 2 OCL 312, in which OCL surveys the fifteen state constitutions (including those adopted and replaced) from 1776 through 1786, including both of Vermont’s constitutions. The total word count is 81,893 words with 3,894 unique words.

In addition, A Compendium of American Constitutions: Counting Constitutions and Constitutional Text in the Early American Republic, 2 OCL 378, supplies (for the first time) a complete and consistent taxonomy for national charters with word counts. The subject is further developed in Surveying the 831 Unique Words in the Philadelphia Constitution, 2 OCL 180.

This present essay is framed by Everything James Madison Knew He Learned from Quentin Skinner: A Roadmap, 2 OCL 840. The reader may, with advantage, read the article as it relates all of OCL’s essays connected with Quentin Skinner and The Foundations of Modern Political Thought.

Skinner’s founding of departure is the Italian city-state: “a new and remarkable form of political organization,” (I:3) with his writer of choice the twelfth century’s Otto von Freising.

B. INTRODUCTION. Our Constitutional Logic (OCL) regards civil society as the consumer of the outputs of application systems. Civil society (or bourgeois society) is not a human being, but theorists of all ages – including system designers and remote observers of system – have placed the contrivance that is political society in a relation to civil society such that the nearest analogue is anthropomorphic.

One can consider the political society as a system-in-service to civil society. The vocational analogue, master-servant, may be found useful. All this introduces the five modes by which human beings can relate to political society especially at a time when political society acquires the features of systems that will become garden variety by the end of the settecento.

One of OCL’s predecessor theory groups (iM, aka ideaManagement) calls these five instances ‘heightened consumerism’ but the reader may reference them as ‘rights.’ After all, Jefferson did. The point taken was that ‘rights’ ‘endowed’ necessarily preëxist foundings of new chartered organizations.

It’s a bit heavier on the taxonomy than Otto would have expected but nothing that Linnaeus couldn’t handle. OCL seeks to make it clear that this is the system’s point of view by occasional, but hopefully untroubling references, to heightened consumerism, which, naturally, individuals only exhibit when they are of a mind to relate to (from 1775, Atlantic westside) chartered organizations, nascent and contemplated.
C. **THE FIVE SHORTLISTED.** Consumers can

- Create
- Alter
- Abolish
- Resist
- Preserve

political society, acting, of course, in the name of civil society. In their turn, actions (or more usually rhetoric) invoked under these rubrics supply managers and remote observers with the material to gauge how well the consumer-system relationship between political society and civil society is performing.

Noise, in short, counts for something.

An alternate list:

- Create/institute
- Alter
- Abolish/create = secede
- Resist
- Preserve

Now to the details. When we look at the flood of American constitutions (as they are written beginning in 1775), we can see how political societies coöpt, constrain and compress the assertion of these ‘rights’ by men and women who are not users in the system but who take a defined stance just/barely/closely outside political society.

D. **ABOLISH.** ‘Abolish’ is of interest because if the Lockean state of nature myth is worth something as a theoretical construct (at least worth talking about), there exists the possibility of people abolishing a political society and not replacing it with something else. So that’s one instance.

E. **ABOLISH AND CREATE = SECEDE.** We can move on to a slightly more complex experiment by merging ‘abolish’ and ‘create’ which may be said to have been accomplished by the Declaration (4.7.76) [on one side of the Atlantic] fulfilled by the Declaration and the Treaty of Paris (3.9.83) conceding the ‘abolish and create’ point by those on the opposite side, same seaboard.

Indeed it seems that ‘institute’ or ‘create’ work hand-in-glove, the point Jefferson made in the Declaration.

it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness

We can be more precise. We might call it the right to secede or the right to withdraw one political society (or a handful of provinces ambitious for independence) from allegiance to another.

‘Secession’ would neatly wrap up 89 years of constitutional years and divide the whole into three. Thirteen provinces can secede from the mother country and become a chartered organization, which can then secede from Rhode Island and reorganize and which can then defeat the will of eleven of its provinces to secede in turn. It’s not what you learned in high school, but that’s constitutional logic.

Ironclad, to be sure, but a whole lot easier to remember.

F. **ALTER.** The easiest way to see political society attempting to (and successfully) coöpting, constraining and compressing the ‘right’ to alter political society is to begin from Jefferson’s reference to ‘alter’ in the Declaration which reads:

it is the Right of the People to alter or to abolish it, and to institute new Government ...

It’s hard to see how the people can alter government through heightened consumerism other than by lobbying government to change itself. And in so doing the people remained outside government. If they wanted to be in government they would lobby government for expansion of the franchise. Expansion of the right to vote and hold office which are the two
means by which new talent enters the system as users.

G. LOBBYING/PETITIONING AS THE BASIS FOR ALTERING. The first thing we would expect to tease from the phrase ‘altering government’ is the right to lobby/petition government for changes which is guaranteed in the First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. First Am; CTU 92.

The second point of interest would be a mechanism which would allow organic change; Article V is launched:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. CTU 87.

The reader will notice that only Congress is obliged to deem; two-thirds of the state can oblige Congress to call a convention. The deeming is only a pre-condition for Congressional action.

As the reader may have guessed the state legislatures are proxies for the popular will in this case. The analogue fits because the states are regarded for this purpose – one of the few – as outside the federal system. Hence, states by engaging in heightened consumerism need not ‘deem [anything] necessary.’

H. RESIST. We now turn to resist. From any political society’s point of view resistance must be managed. Note OCL did not say prohibited.

This should be obvious. There is no right to overthrow or even resist a government, not as far as a government can permit by custom or law, and certainly not in a constitutional document, or document of dignity anterior to any law or custom.

So the service mission, at this heightened level, concerns management of very unhappy and potentially/actually violent people.

First things first.

Governments are all about getting people to obey the law – an obvious pre-condition to getting their service missions accomplished – so, at the aspirational level of rhetoric insurrection is implicated in writing constitutional text to manage domestic (un)tranquility and, on the other hand, to promote domestic tranquility.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility ... Preamble; CTU 0.

Second, text writers will want the national charter to secure to the national legislature ultimate power over and responsibility for the local armed force of the county/state/city and so forth.

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions ... Art. I, §8, cl. 15; CTU 41.

Third, text writers should put the national legislature in the position of accountability as to these two (foregoing) service missions: repelling invasion and suppressing insurrections.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence. Art. IV, §4; CTU 86.

I. PRESERVATION AS THE MOST PASSIVE VIRTUE. This leaves the preservation as the most passive virtue; this is the right of the people to vote developed talent, a product of
service in Congress in the first place, back into office directly.

The same applies to the President and Senators who are elected indirectly. What these officeholders have done to ‘preserve’ government may be broad as the imagination of the voter. If, for example, you find Spanish control of the Mississippi River threatening the immediate or distant future of the United States of America, you might (in 1804) vote directly (or indirectly) to cause the three-above-named (classes of) officeholders to be reelected because they had in 1803 obtained control of the Mississippi River through the Louisiana Purchase.

J. JOSEPH STORY EXPLAINS THE BALLOT. In “free governments,” as Story puts it, “the ordinary securities against abuse are found in the responsibility of rulers to the people, and in the just exercise of their elective franchise; and ultimately in the sovereign power of change belonging to them, in cases requiring extraordinary remedies.” Commentaries 1:325; Sec. 425.

Confidence must be reposed somewhere; and in free governments, the ordinary securities against abuse are found in the responsibility of rulers to the people, and in the just exercise of their elective franchise; and ultimately in the sovereign power of change belonging to them, in cases requiring extraordinary remedies. Few cases are to be supposed, in which a power, however general, will be exerted for the permanent oppression of the people. And yet, cases may easily be put, in which a limitation upon such a power might be found in practice to work mischief; to incite foreign aggression; or encourage domestic disorder. The power of taxation, for instance, may be carried to a ruinous excess; and yet, a limitation upon that power might, in a given case, involve the destruction of the independence of the country.

The quoted material from Story’s Commentaries wraps, for example, the system’s self-interest in preserving itself with the electorate’s “just exercise” of its franchise. Story goes even further: attempts to restrain the power of taxation, through textual restraints, “might, in a given case, involve the destruction of the independence of the country.”

Story’s point is this: when it comes to self-preservation officials will do whatever is necessary to preserve political society, unless text is written to embody the ‘suicide pact’ provisions, exemplified by ‘one state, one veto,’ which inspired the creation of a new government rather than suffer, for example, “the destruction of the independence of the country.”

K. MORE ON PRESERVATION. The right of the people to exert their right to act out a state of heightened consumerism is nowhere more evident than in the remarks of Madison and Marshall.

This from Madison’s Federalist No. 44, last sentence. The passage underlines Madison’s position that self-preservation is a duty of political society co-equal to the obligation of political society to exert itself energetically on behalf of its users and consumers.

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.
Whether Madison avoids the anthropomorphism is up to the reader. There is little point in denying animus or ‘soul’ to a political society if the consumers’ hope, wish, fear is fully exposed in the analysis. Shays’ Rebellion fleshes out ‘the exigencies of the union;’ even if you like embattled farmers kidnapping judges, you’ll still have ideas on what government can do for you – hence its exigencies – unless you live in some time warp which insists that you don’t want government at all. In which case, you can set out for Alaska and its perfect freedom.

‘Everyone has an agenda’ perfectly supports Madison’s analysis. The Lombard League, in turn, served up embattled citizens rather neatly in the place of Massachusetts farmers, as QS rethreads at the opening of FMPT. As long as you have a vision of what you want from political society, be it a German or British empire, or your local town or city council, you exhibit heightened consumerism.

The phrase “alterations and provisions” corresponds to text which honors the ‘right’ to alter and create, such as the Declaration. The modifier “adequate” informs OCL’s reader of the popular faculty for judging the performance of the system. As noted above human beings have a tendency to say what they want from political society shortly after saying what they don’t want.

In short, the system must take into account the judgments rendered by consumers on its performance. As noted above, it matters not whether the judgment is rendered by those who can be users (adult white male voters/property owners up to the 1820s/30s) or those disenfranchised.

This is the point that iM makes as to ‘consumer,’ one who approaches the system but is not in it. The disenfranchised are consigned to the role of not-users, but then the could-be users who are not users at any given moment are also consumers.


The power of congress to establish a bank, like its other sovereign powers, is supreme, or it would be nothing. Rising out of an exertion of paramount authority, it cannot be subject to any other power. Such a power in the states, as that contended for on the other side, is manifestly repugnant to the power of congress; since a power to establish, implies a power to continue and preserve. (At 391)

As noted above, when challenged states serve the lesser function of serving up instances in which textual ‘null’ cases (‘bank’ is not one of the honored 4,321 words) are turned into proof of the national system’s “power to continue and preserve itself.” As OCL says, it’s pretty disconsolate to get kicked in the teeth for asking a question.

M. Related Articles. The reader may also review Aristotle Divides ‘Laws Correctly Laid Down’ from ‘Laws [Which] Must Necessarily Be Just,’ 2 OCL 326; therein, OCL begins to distinguish modern notions of justice from Aristotle’s. See also Why Do Political Societies Exist? 2 OCL 883, in which OCL details the three overarching or ultimate purposes of political societies: promotion of private wealth (and its ancillary principle avoidance of wealth destruction); disabling hostility to minorities identified as such; setting a threshold by which minorities (in coalition) may block organic change.

N. Status. Complete.

O. Preferred Citation Format. Please cite as 2 Our Constitutional Logic 201 or 2 OCL 201.

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