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Madison’s Semantic Purity Project and its Sisters

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ABSTRACT.
Madison’s semantic purity project foundered on a reef of Hamiltonian dimensions; its lack of success should intensify our interest in all of its programmatic aspects. This broader view is provided by treating two of JM’s projects – named as Madison’s Ratifications: Exploiting Ratification Debates and Madison’s Taxonomy: Fifteen Methods of Constitutional Reasoning – as co-equal to Madison’s Semantic Purity: Procedures at Risk. The article follows up on The Doctrine of Semantic Purity: Madison’s Project (and Its Difficulties) Introduced, 2 OCL 798.

KEY WORDS: semantic purity, semantic cue.

A. INTRODUCTION. A point of departure is supplied by this quote from Quentin Skinner’s Meaning and Understanding in the History of Ideas, History and Theory, Vol. 8, No. 1 1969 3-53. “The understanding of statements uttered in the past clearly raises special issues, and might yield special insights, about the conditions under which languages change. The philosophers have perhaps been rather slow to take advantage of the possibly very large significance of this fact, both for the analysis of meaning and understanding, as well as for the discussion of the relations between belief and action, and in general over the whole question of the sociology of knowledge.” at 50.

“The ‘context’ gets treated as the determinant of what is said. It needs rather to be treated as the ultimate framework for helping to decide what conventionally recognized meanings, in a society of that kind, it might in principle have been possible for someone to have it intended to communicate.” At 49. (As if this “seminal essay” needed any more advertising, M.L. Frazer’s review elevates Skinner’s essay to “bombshell” status.)

B. THREE STRATEGIES TO DEAL WITH MOST PRIVILEGED TEXT. We are speaking, if Skinner is on the right track, of possibility. This entails the competing feasibility of choices. Madison developed three different strategies to manage the issues raised by
the inquiry, ‘what do we do with text which resulted from the preferences of delegates in ordered discourse’?

(‘Strategic’ is frequently used where ‘tactical’ is more suitable; however, at the level at which Madison operated, OCL suggests that his thinking may be properly characterized as ‘strategic.’)

Skinner suggests this is a wide-open inquiry. All resources are available for exploitation. The reader, Skinner argues, should not accept that options are closed by ‘context’ or any other ‘-text.’ At least on Skinner’s account, the reader must take responsibility for her approach to text. The investigator can neither ‘lay off’ context on the original author nor insist that a single meta-source guides analysis.

(On OCL’s account the investigator’s encounter with text, including text in an artifact – such as statutes, charters, court decisions, administrative and other bureaucratic (be it ukase or rescript) – is a kinetic encounter. Therefore what the investigator does to use text is more a physical then an intellectual effort. Therefore, it is procedures that matter: repeated employment of the same procedures should produce similar results. Therefore, there is a science to exploitation of text because the effort to extract value from the encounter is a replicatable and falsifiable effort. This is a major theme of OCL’s programme.)

If this question – what are the procedures and how are they grouped into strategies – is worth pursuing, then at a very high level of inquiry/abstraction, one should ask, ‘What was the settecento’s take on public text?’ That century considered itself, as OCL contends, well-prepared to tackle these questions.

C. AMERICANS LAUNCH CHARTERED TEXTS, SEVENTEEN AT A TIME. The Eighteenth Century considered itself well-schooled in handling text of any dignity. Into this comfort zone, for that’s how matters stood as of the 1770s – and this is the overwhelming sense one takes of Blackstone – Americans drove 89,667 words of constitutional text into public discourse before and after the Philadelphia convention. See Selected Details of State Constitutions Adopted Before 1787, 2 OCL 312. Also of interest is A Compendium of American Constitutions: Counting Constitutions and Constitutional Text in the Early American Republic, 2 OCL 378.

To gauge the unique nature of this charted text: Going back through the previous two hundred years, Europe’s first chartered organization came into existence via the Treaty of Utrecht (1579) which established the Republiek der Zeven Verenigde Provinciën, the Republic of the Seven United Provinces.
At the federal convention (1787) the enterprise matured to the point that 93 passages of constitutional text were generated in 4,321 words. But the point here needs to be underlined. There were no precedents, James Madison judged, which supplied authoritative and reliable methods to expose “understanding of statements uttered in the past,” in Skinner’s phrase.

The one who understood the challenge – in novelty and magnitude – was Madison; his insights anticipated the Cambridge School. That is the lesser inference suggested herein.

A summary of the programmatic aspects of these three strategies may be useful.

D. MADISON’S RATIFICATIONS, EXPLOITING RATIFICATION DEBATES.

In one of his two political testaments, Madison wrote:

It is the sense of the nation therefore not the sense of the General Convention, that is to be consulted; and that sense, if not taken from the act itself, is to be taken from the proceedings of the State Conventions & other public indications as the true keys to the sense of the Nation.”

had argued this point as early as the Jay Treaty funding bill debate (April 6, 1796). This project drew the concentrated fire of Joseph Story, his appointee to the Supreme Court. There “can be no certainty ... that the different state conventions in ratifying the constitution, gave the same uniform interpretation to its language ... .”

Vast tranches of these debates were unpublished (and unrecorded) in Madison’s lifetime; the Wisconsin Historical Society’s heroic efforts to complete Madison’s metatext serve as pendant to his vision. A vision rife with challenges, to be sure. Most difficult to square are assurances given at ratification conventions by supporters of the proposed constitution. Story might have had this experience (February 27, 1819) in mind: Luther Martin’s parsing of “the debates of the Virginia and New York conventions” to “show that the contemporary exposition of the constitution, by its authors, and by those who supported its adoption, was wholly repugnant to that now contended for ... .” McCulloch v. Maryland, 17 U.S. 316, 372 (1819).

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1 Detached Memoranda, William and Mary Quarterly, 1946, pp. 542-545.
3 Commentaries, Sec. 406.
TABLE 709A  
**COMPENDIUM OF ‘SENSE OF THE PEOPLE/NATION’: PHRASES BY AUTHOR AND DATE**

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Author</th>
<th>Year</th>
<th>Excludes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sense of the community</td>
<td>Hamilton</td>
<td>1796</td>
<td>Conventions other than 87/88</td>
</tr>
<tr>
<td>Other than Sense of the body [= convention]</td>
<td>Madison</td>
<td>1796</td>
<td>Federal convention</td>
</tr>
<tr>
<td>Voice of the people</td>
<td>Madison</td>
<td>1796</td>
<td>Federal convention</td>
</tr>
<tr>
<td>Meaning of the instrument beyond the face of the instrument</td>
<td>Madison</td>
<td>1796</td>
<td>‘The face of the instrument’</td>
</tr>
<tr>
<td>Sense of the people</td>
<td>Martin</td>
<td>1819</td>
<td>---</td>
</tr>
<tr>
<td>The measures of the people themselves</td>
<td>Marshall</td>
<td>1819</td>
<td>---</td>
</tr>
<tr>
<td>Sense attached to it by the people in their conventions</td>
<td>Madison</td>
<td>1821</td>
<td>Federal convention</td>
</tr>
<tr>
<td>Meaning understood by the nation at the time of the ratification</td>
<td>Madison</td>
<td>1821</td>
<td>Conventions other than 87/88</td>
</tr>
<tr>
<td>The sense in which the Constitution was accepted and ratified by the nation</td>
<td>Madison</td>
<td>1824</td>
<td>Everything since 88/90</td>
</tr>
<tr>
<td>Sense of the Nation</td>
<td>Madison</td>
<td>1836</td>
<td>Conventions other than 87/88</td>
</tr>
</tbody>
</table>

OCL suggests the following teasing-out of Madison’s thinking as to this project:

(1) Ordered discourse will supply the most valuable elaborations, as “meaning be liquidated and ascertained by a series of particular discussions and adjudications.”

(2) Madison assumed, as did Jefferson, that supermajoritarian law-making by amendment would become routine, to “keep pace with the advance of the age,” as Jefferson recommended (1824), “in science and experience.”

(3) Given the steady pace of supermajoritarian law-making opportunities, the national experience of the 1787-88 ratification process would be repeated. The ‘sense of the community’ (Hamilton) or ‘voice of the people’ (Madison) would be recorded in public discourse on the subject of any proposed amendment. Story did not address this facet of Madison’s project.

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4 No. 37.
5 TJ to Robert J. Garnett, 1824. ME 16:15.
In this light Madison’s Ninth and Tenth Amendments were designed as an express invitation to the American people to delegate new powers to Congress through amendments which would keep “pace with the advance of the age.” I suggest that the “guilt of usurpation” Madison condemned in his February 2, 1791 speech (in its prospective sense) is this: Congressional majorities robbing anticipated supermajorities of their share of text-writing and text-debating glory.

E. MADISON’S TAXONOMY. FIFTEEN METHODS OF CONSTITUTIONAL REASONING.

Publication “should be delayed,” Madison declared his motives for postponing publication of his Notes in his letter to Thomas Ritchie (September 15, 1821), “till the Constitution should be well settled by practice ....”

OCL terms this the ‘incubation’ period of constitutionalism. If Americans feared the ‘dead hand’ of the convention’s official journal, the fear was unwarranted. Moreover, during the incubation period, text-based methods of constitutional reasoning were on the defensive as soon as Congress convened in 1789. By September of that year, Congress discovered the power to enforce Article VII by declaring a trade war on non-ratifying states. This is another of David Currie’s finds.

Crisis and opportunity substituted for textual invitations to legislate. The few “difficult subjects,” delegate Baldwin explained (1796), “that were left a little unsettled might, without any great risk, be settled by practice or by amendments in the progress of the Government.”

And from the other end of the century, this passage from Justice Harlan’s dissent in Pollock v. Farmers’ Loan & Trust Company, 158 U.S. 601, 662 (1895): “questions involved ... have been examined just as if they had not been settled by the long practice of the government as well as by judicial decisions covering the entire period since 1796 and giving sanction to that practice.”

The Supreme Court was reluctant to cite its own prior experience (under the rubric of stare decisis) until 1847. It was, however, more than willing (as of 1819) to

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6 Shipping flagged by North Carolina or Rhode Island to be treated as foreign after January 15, 1790; immediate imposition of duties on rum, loaf sugar and chocolate imported through these states. 1 Stat. 69-70, Secs. 2,3; Act of September 16, 1789.


approve Congress’s reliance on its own legislative precedents. Drawing on Madison’s work over four decades, I have identified fifteen methods of constitutional reasoning with sources in Madison’s works.

F. MADISON’S SEMANTIC PURITY: PROCEDURES AT RISK.

The Semantic Purity project suffers from several deficits: to avoid recapitulation the reader is cited to *The Doctrine of Semantic Purity: Madison’s Project (and its Difficulties) Introduced*, 2 OCL 798. There are no procedures, tested to any degree by investigators, which will reliably return usable values from the search from issues-of-the-day or proposed legislation (for example) to text-in-artifact. This was established in the Bank Bill debate and doubters should read the House’s reaction to Madison’s offer to lecture his fellow Congressmen – a second time – on this point. Semantic Purity wasn’t persuasive then – real time, real space, real wagers in play – and it hasn’t gotten acquired any more force in the meantime.

The lack of success of the *Semantic Purity* project must itself be placed in the context afforded by Madison’s two other projects.

In his *Taxonomy* Madison turned his attention from text-based to non-text based reasoning, by elevating past official experience and conferring (therefrom) a source equal to most privileged text.

In his *Ratifications* Madison turned his attention from constitutional text to meta-text, elevating attention to ratification debates over parsing of text itself.

Taken as a whole: the *Taxonomy* exploits the individual’s faculty for teasing meaning from both text and experience. The *Ratifications* exploits the popular or collective faculty. Corporate responsibility is on display in his *Semantic Purity* program. The latter two projects rely on ordered discourse with its powers of semantic regulation through “particular discussions and adjudications.”

G. CONCLUSION. One may object that, even if teased out correctly, this Madison is mere historiography and furnishes only a side note to history.

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(If this point was valid, Skinner and Pocock have thoroughly disproven the conceit.)

There is plenty of logic that Madison’s analysis discloses. Constitutional logics – OCL’s preferred phrase ‘chartered logic/s’ – furnish the insight required to discover “the opinions & the reasonings from which the new System of Govt. was to receive its peculiar structure & organization.” ¹⁰ Madison’s three projects furnish as many portals into such “structure & organization.”

H. RESOURCES. For on-line access to Peter Aschenbrenner’s articles, tables and charts see purdue.academia.edu/PeterAschenbrenner or works.bepress.com/peter_aschenbrenner/

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¹⁰ This quotation, taken from Madison’s ‘sketch,’ his other testament, appears as Item 401, at 3 Farrand 550.