The Pace of Change in Civil Polity 1688-1765 As Cataloged in Blackstone’s Commentaries on the Laws of England

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ABSTRACT.

Wm. Blackstone’s *Commentaries on the Laws of England* (in its ultimate chapter, Book IV, Chapter 33) lists 35 changes in English civil society from 1688-1765. The list references sixteen Acts of Parliament, four instances of executive acquisition of power and fifteen instances of judicial reform. At the rate of 35 changes in political society over 77 years, the rate compute to one change every 2.2 years. OCL investigates.

**Key words:** civil society, civil polity, political society, pace of change, gradual improvements

A. INTRODUCTION. In Book IV, Chapter 33, of *Commentaries on the Laws of England* (the ultimate chapter of the *Commentaries*) WB lists sixteen Acts of Parliament, four instances of executive acquisition of power and fifteen instances of judicial reform. The chapter is titled “Of the rise, Progress and Gradual Improvements, of the Laws of England.”

These 35 changes in political society over 77 years compute to one change every 2.2 years, making generous allowances for assumptions. The “gradual improvements” occurred between 1688 and 1765 when publication of his *Commentaries* began. The pace is assumed to be linear.

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

C. THE ‘GRADUAL IMPROVEMENTS’ LISTED. The reader will note that:

- The changes are subdivided into legislative, executive and judicial action.
- Each category (by actor/body) is made accountable for the change noted; that is, credit or discredit is not distributed to any other actor/body.
- No program involving the spending of money other than the “standing army” as a “vast acquisition of force” is mentioned.
- No events in foreign policy/action war/peace are mentioned.
- No colonial acquisition or management issues are noted.
- No developments in education, health, welfare are mentioned.
No developments in government support for basic scientific research are mentioned.
The Bank of England (1694) is not mentioned as an accomplishment.
Developments in government (including ministerial) organization are not mentioned.
Customs and customary law, other than in Chancery / courts of equity are not mentioned.

D. ACCOUNTING FOR THE (MOST RECENT) REVOLUTION. A cursory glance at the list suggests that a number of Acts of Parliament were enacted at the time of the Revolution; therefore, one may further subdivide the list into:

- Changes made at the (re)founding of the civil polity (mostly 1688);
- Changes made as “gradual improvements” during the interval named: after revolutionary change in 1688 and through the publication of his first edition (1675).

E. WORK IN PROGRESS. As indicated in the survey (see Table Annexed), OCL is making steady, but slow, progress towards identifying and fixing citations to political, legal and historical events that provide the backdrop for each of the “gradual improvements.”

F. MEASURING U.S. AND U.K. ‘IMPROVEMENTS’ IN COMPARABLE INTERVALS: Four comparable intervals suggest themselves, if Blackstone’s catalog were to be transposed to the U.S.

- 1775 + seventy something years
- 1776 + seventy something years
- 1787 + seventy something years
- 1789 + seventy something years

1775 offers, as its start date, a candidacy based on the crafting of the first state constitutions from that year. 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.

1776 offers the Declaration of Independence, an artifact which has more than a passing resemblance to an instrument marking /occasioned by a major change in the civil polity. It seems obvious that if 1688 (for the U.K.) marks a ‘revolution’ then Blackstone’s ‘American’ catalog must take account of the U.S.’s most revolutionary document.
1789 is another likely candidate. This date launches official action – the subject of WB’s list – and takes us to 1866 and the eve of the Fourteenth Amendment. If that’s not a major change in civil polity then the Civil War was a waste of time.

1787 is also a viable candidate as well, since so many changes in the Constitution of the Year Four were ‘self-fulfilling’ or ‘self-contained’ and required no action by Congress, when it organized under the Constitution of the Year Eleven. See *Our Aesthetic Constitutions: A New View*, 2 OCL 258.

H. **More on the Point of Departure for ‘Gradual Improvements.’** There is a point here: Americans made no end of stopping and starting, restarting, amending, revising, and rejecting the process of making political society a workable contrivance in service of civil society.

In 1782 state constitution-making in the United States celebrated its own best-seller. I refer to the second edition of *The Constitutions of the Several Independent States*, whose first edition was originally published 1780.\(^1\) It is the third edition (Boston, 1785) that draws our attention.\(^2\) The work was prefaced by printer Wm. Jackson’s *Editorial Advertizement*, which receives its due later on. Taking pride of place in this compilation, the New Hampshire constitution (January 5, 1776).

The point is driven home by the fact that there is no ‘list’ of ‘gradual improvements’ in political society/ies in the United States. It would difficult to construct such a list until a point of departure is accepted. But it isn’t.

It would hard to pick the start date given that a first artifact, Constitution I, of 3,453 words was partially incorporated and partially revised and otherwise abandoned in the course of birthing Constitution II; The 4321 words of that charter required a further 903 corrective and completing words, so that, from 1776 to 1804, a not-inconsiderable interval of 28 years, 8,677 words of chartered text were written and, more importantly, rewritten.

Where is the *terminus a quo*?

Moreover, this analysis ignores the fact that there would be no United States without state governments (and vice versa) and they came into existence via fifteen different constitutional assemblies, of varying dignity, from 1775 through 1787 (taking that as our end point), and here are another 81,893 words driven into the public discourse. See *Table Annexed to Article: Selected Details of State Constitutions Adopted Before 1787*, 2 OCL 312.

That makes a total of 89,667 words committed to parchment, which comprise national and state charters by September 17, 1787. State constitution writers crafted their fifteen charts with 3,894 words while the national effort consisted of 774 and then 831 words, of which 431 words in Constitution II were recycled from Constitution I.

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\(^1\) With the second edition (London, 1782).

\(^2\) Boston: Printed by Norman and Bowen, in Marshall’s-Lane, near the Boston-Stone, M.DCC.LXXXV. [1785] 28, 5-180, [1], 29 p.; 8.
The course of human events from 1775 (the first state charter) to 1787 (the proposal of the second national charter) offers many good choices.

I. BACK TO SEMANTIC PURITY. The foregoing assumes semantic purity in action: every slice of chartered text represents, indeed describes, what official actors and bodies do in political society and every change in civil society is promptly translated into chartered text, which in turn commands obedience. What officials do is what they should do. Text and society therefore resonate one with another.

That’s the conceit.

And it was Madison’s and he was one of the first to abandon it and rather publicly so, conceding that the negative exercise of the franchise – ‘the bums were not thrown out of office’ – substitutes for semantic pedigree. In doing so, Madison admitted that the First Federal Congress had been right and he had been wrong in opposing Hamilton’s bank bill: The support of “successive legislative bodies through a period of years,” for a popular program, serves as a “course of precedents amounting to the requisite evidence of the national judgment and intentions.”

J. CONCLUSIONS. What is lacking is a ‘pace of change’ measure for the U.S. For at least one interval – 1789-1861 – Blackstone’s pace would compute to 1 every 2.11 years.

Throw out, as WB did, banking and similar finance/debt/tax legislation; ignore colonial acquisition and management; trade wars, quasi-wars, Barbary Wars, the burning of Washington and other trifles: Do we really have 34 moments of Blackstonian dignity? Or more? Or less?

These need not be, as Paley pointed out, moments of constitutional dignity, that is moments associated with a change in the most privilege text of any chartered society. See Wm. Paley on What is Constitutional and What is Legal, 2 OCL 265.

Error correction certainly doesn’t count. The Eleventh Amendment drops out of the analysis and perhaps the Twelfth as well.

Our Bill of Rights counts for one, given Blackstone’s approach. As far as the ratifications were concerned, the twelve amendments offered by Congress (September 25, 1789) corrected and completed what the Philadelphia convention should have done in the first place.

Again: was our early republic changing – and into the main current of the Industrial Revolution in the ottocento – only at the measured pace of England’s settecento? That’s the gage Blackstone throws down. Change at a greater rate than one ‘gradual improvement’ more than every two years may not just be a change to be ‘avoided’ – the take-away Americans insist is Blackstone’s motto – it may also be impossible. What is required here is a comparison of change as assessed by James Kent in his Commentaries on American Law (1826) and Joseph Story in his Commentaries

These would be the first writers of stature equal to Blackstone to summarize change in a chartered organization.


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