ABSTRACT.

Jeremy Bentham’s sieve, tidied up, divides sovereign Shouldstatements into responsibilities and disabilities. Responsibilities are subdivided into commands and permissions. Conditional or contingent statements, dependent as they must be on a future real world, are merely hum-drum expressions of the machinery of governing. A survey of restraints appears from the avalanche of 229 deployments of ‘shall’ in the Early Constitution.

Key Words: contingent statements, conditional statements, Early Constitution

A. INTRODUCTION. Since the future is that which lies before us, it may not be surprising that a good deal of ink (in our 5,224 words worth of Early Constitution, 2 OCL 378) has been spilled on words, phrases and sentences devoted to if ... then ... or provided that ... or but or as will not or unless.

Enter restraints, which enhance or diminish the force of commands and permissions, on the one hand, and, on the other hand, prohibitions.

B. WE ‘SHALL’ HAVE A CONSTITUTION. The English language’s workaday helping verb ‘shall’ draws our attention. It serves to introduce that the future tense has been deployed. In Law English – what has been called ‘the Magnificent Jargon’ – ‘shall’ cues the reader that a state of affairs should be the case. In short, Shouldstatement coming up.

The Philadelphia Constitution deploys 87 sentences, having been crafted in 87 days; ‘shall’ appears 191 times. In the Bill of Rights seventeen appearances are scored in its ten CTUs; while the Eleventh brings up the rear with one and the Twelfth employs twenty in 399 words to get a President elected without the nuisance of the next Aaron Burr. Of course, the President, on inauguration, must swear what she will faithfully do. Twice.

C. CRAFT NOW, RESTRAINT LATER. Since federal and state officials are subject to 229 (future) situations as to which they ‘shall’ concede constitutional status, a variety of expressions may be expected to capture conditional or contingent Shouldness.

The President may block Congressional law-making, but the restraint is not final, being subject to timely veto override or Congressional adjournment. That latter step may (itself) be overcome by a Presidential proclamation. Article I, Section 7, Clause 2.

On the other hand, running out the veto ‘clock’ is not an option for the President, since unsigned unvetoed legislation “shall be a law.” Congress’s power of adjournment, one House or two, is counter-restrained by Article I, Section 5, Clause 4. CTU 25.

D. SIMPLE CONDITIONS. ‘Provided’ is the lexical clue here with two appearances in CTU 70 and one in CTU 87: First, the President’s power to make treaties is restrained by the ‘advise and consent’ of the Senate. Article I, Section 9, Clause 1. Second, Congress’ power to regulate the slave trade, ditto, the ‘1808’ proviso, delaying effective action. Article II, Section 2, Clause 2.

‘Unless’ also makes its appearance, seven times in the Philadelphia Constitution and once in the Bill of Rights.

E. CONTINGENCIES. Language crafted to satisfy the formula ‘what if’ appear as typographic back-eddies: the writer acknowledges that if something goes haywire in the main chance, then future actors will require back-up procedure/s. Article I, Section 5, Clause 1 empowers a House of Congress to organize itself; fair enough. But what if
F. WORKADAY ‘IFS.’ The range of topics touched on by *if [antecedent] then [consequent]* expressions is broad but not evenly paced. When the President and Congress make law, six ‘if’s’ are required to lay out restraint and counter-restraint.

Five ‘if’s’ appear in the Twelfth Amendment (1804), text required because the arrangements for electing the President and Vice-President (1787) were found defective, in the first four iterations, mind you. Four ‘if’s’ in the Philadelphia Constitution had been devoted to this topic. Without getting text-in-action successfully launched.

Of the Early Constitution’s sixteen ‘if’ statements, nine craftings were devoted to the election of two executive officials and this effort over a period of merely fifteen years. Another way to see this: after CTU 63 employs ‘if’ four times, the Early Constitution returns to the explicit ‘if’ until the Twelfth Amendment, where to make up for this inattention, five ‘ifs’ are used.

G. WORKADAY ‘BUTS.’ The Early Constitution deploys twenty-six ‘but’s’ with the count being twenty-two in the Philadelphia Constitution, two in the Bill of Rights and two in the Twelfth Amendment. The Bill of Rights carefully folds its ‘if … then …’ statements into ‘but’-introduced statements (Third and Fourth Amendments).

H. RESULTS. All together a total of forty-six restraints (16 + 26 + 3 + 1 = 46) are cued by the keywords ‘provided,’ ‘if,’ ‘but,’ ‘as will not’ in the Early Constitution. These are quoted along with CTU in Table 283. For this table and other works see //works.bepress.com/peter_nesday Cơ học: How the Convention Painted the Text of the Philadelphia Constitution, 2 OCL 192.

Color Me ‘Not’: Cool and Hot Adverbs in the Early Constitution, 2 OCL 491, discusses the adverbial ‘not’ and its rich count in the Corrective Constitution, that is, text adopted from 1789 through 1804.

Thus, the reader will find that in the Bill of Rights, for example, official action is not restrained; it is prohibited. On the other hand, when the text-crafters in Congress return to the subject of the botched Article II procedures for Presidential elections – in time for the Presidential election of 1804 – English grammar yields more restraints: the subject matter area demands no less.

The final score? Forty-four of forty-seven cued restraints are not in the Bill of Rights. Of the fifty-four total cued restraints in the Early Constitution, only ten appear in the Corrective Constitution.

J. CITATION FORMAT. Please cite as 2 Our Constitutional Logic 283 or 2 OCL 283.

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

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