The Colours of the Constitution: More on Deep Structure and Logics Anterior

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Abstract.
The colours of the Early Constitution, broken down into Philadelphia and Corrective Constitutions, and further subdividable, reveal our first glimpse of the deep structure of constitutional texts. An introduction to constitutional logic—or at least a presentation of the effects of its deployment in venue—demonstrates the divide between crafting responsibilities and disabilities, a divide taken seriously by text writers.

Key words: constitutional logic, anterior, logical possibilities and impossibilities

A. Introduction. Hints have been supplied: ‘Anterior to the gathering in Philadelphia,’ the reader was fairly warned, ‘two streams of necessity joined: first, constitutional logic committed any gathering to take account of certain logical possibilities, impossibilities, unreliabilities and indeterminancies. Second, of the available choices (remaining after consideration of constitutional logic) practicality and experience took a second cut at choices available to the drafters of text.’ Were Early Arrivers in Philadelphia More Likely to Support the Constitution? 2 OCL 101.

B. Other Reading. ‘It’s worth noting that logics anterior to crafting of constitutional text take into account situational pressures: here, the centrifugal and centripetal forces are entirely a product of procedural rules; many other logics exist entirely independent of any process by which human beings, in assembly, craft text as output.

‘The reader may as well become acclimatized to these three logics: predicate, spatial and discrete which are supplemented by process logic, which includes parliamentary procedure. These are the four logics that exist prior to the crafting of constitutional text.’ The Few, The Happy Few: How Many Delegates Would be Required To Organize the United States of America? 2 OCL 108.

In Dual Office Holding / Status Acquisition Requirements/Prohibitions in the Federal Constitution: The Logic of Aspirations Introduced, 2 OCL 129, a modest ‘road test’ was presented: A ‘logic of aspirations exists anterior to the effort of crafting constitutional text; at this remove it would be useful to sort out how many different ways people and offices may intersect, treating the human being as ‘object’ and the office/status as a ‘space’ to be occupied or not; or vacated if occupied; or reoccupied, upon vacation.’

To recap: anterior to every constitutional expression (be it a phrase, half-sentence [the Imperial semi-colon playing its rôle here], sentence or [by USSC tradition] clause or CTU) a logic spatial, discrete or predicate may be found; indeed, sometimes more than one logic may be disclosed.

The imaginative investigator may also found that she has translated the spatial into the discrete (any one into any other), an essay not lethal to the project.

C. Noam Chomsky. One always hesitates, but, then again, ‘she who hesitates’ and all that.

When we speak, we don’t sit down with paper and pencil and work through the grammatical rules which shape our word choices. But when we learn a new language we most certainly do, and the (hard-learned) prattle amo, amas, amat, amamus, amatis, amant is designed to stamp into a brain possible choices so that at least when we want to say something about love or when we hear love invoked, we have the six choices for the present active indicative at hand.

But there is more.

Assume that we want to learn something about how these choices were shaped in the history of Latin. If we were really committed to explore, we would seek a structure anterior to the development of Latin in proto-Indo-European language/s which scholars have proposed and exposed according to their talents.

But there is still more.
The reader will have observed a baby learn her language. What are the choices baby traffics in? What are the rules of any deep structure that an investigator might propose? The rules that shape her howls and grunts into words.

If a personal reflection be in order: my granddaughter Ronja Rebecca (13.6.12) babbled her first ‘ja.’ I’m pretty sure about that. Okay, at nine months, I’m overly eager to proclaim her language skills. But this is indisputable. In an instant those adults around her responded with smiles and congratulations on this ‘ja,’ a word she will surely come to use in her lifetime, nearly as often as her ‘nein,’ forthcoming to be sure.

The deep structure of language can be exposed from the reaction – in our case, in venue – to its products, even if such ‘grammar’ be unexpressed.

D. RETREAT FROM THESE ANALOGIES. In a series of articles OCL offered an explanation to the question: Why may the colours and textures of the four tranches of the Early Constitution vary in such a degree, taken one against another? The survey of these articles appears in When You’re ‘Not’ You’re Hot: Why the Writers of Our Corrective Constitution (1789-1804) Loved the Adverbial ‘Not’, 2 OCL 496, from which the following is supplied:

On Bentham’s account (individual) rights and (government) powers are different; indeed irreconcilable. Since there is nothing but underlying antagonism between lists of government powers and lists of individual rights, Bentham is the first to say – or to be fairly credited – with the notion that the coloring of such texts will be found incompatible. To say the least.

The explanation was merely and barely historical. Bentham’s claim was that (or would be, if he believed in writing lists of rights) text-writing sovereign service missions and text-disabling official interference with civil rights and liberties were very different efforts. And this from a man who knew a thing or two about armchair achievement.

E. BEYOND BENTHAM. Is there really a borne beyond Bentham? Anyone can explain. If you’re the first on the scene, you can theorize without fear of contradiction, at least until you’re noticed and your theorizing overthrown, the ultimate in compliments, to be sure.

But first: OCL proposes that we should be sure that the textures differ. And this article proposes to do so in the following manner.

In the table annexed hereto, two very well known and very comprehensible passages from the Early Constitution are set, one against another. Table 497.

Table 497A first quotes the ‘Veto Clause’ from CTU 25, Article I, Section 7, Clause 2 (crafted 1787). The second passage presents the Fourth Amendment. CTU 95 (crafted 1789). So far, no tricks, nothing up the sleeve and all that.

Two hundred and fifteen words in the Philadelphia Constitution set against fifty-four words drawn from the Bill of Rights.

If OCL says, ‘CTU 25 is restraint rich and CTU 95 is restraint-less,’ the reader can judge for herself. This was covered in Supplemental Restraints Anyone? Restraining Officials and Entities in the Early Constitution, 2 OCL 283.

‘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.’

There is no official action to restrain in the Fourth Amendment; here prohibitions, not conditional commands or permissions, are the order of the day. If you get this point, then the reader has in hand the texture of these two very different products of the logics anterior to crafting the constitution.

F. A MODEST EXPERIMENT. Now look at Table 497B. OCL has rewritten – in brief, thankfully – CTU 25 as if it were written after the fashion of the Bill of Rights; and vice versa: CTU 95’s style is
transposed to the subject matter of the legislative veto and its interaction between President and Congress. There is nothing more to be said. The sale is made or the reader may pass by.

G. STATUS. Complete.

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