

SARAH AND THE OLD PRINCETONIANS:

THE TIGERS AND THE TENTHERS.

“If I may, Governor, allow me to introduce Kurt Gödel. Herr Doktor Professor, the Governor of Alaska.”

“Gnädige Frau, I kiss your hand.”

“Delighted I’m sure,” the Governor responds, “but to what do I owe the honor?”

“You seek a riposte for loud-mouthed radio jockeys,” our Austrian hero replies (‘please call me Dr. K’), “who go under the name ‘Tenther,’ if I read the *Zeitgeist* correctly.”

“What’s with the ‘Dr. K’?” I ask.

“ ‘The celebrated *Mister K* performs his tricks on Saturday’,” our Viennese guest answers me. “But *I* have an Institute – an Advanced Institute – to call my own. With Albert, natürlich.”

“This could be an intellectual property violation,” the Governor asides. “Didn’t Einstein trademark his name?”

“It’s 1819,” I reply. “We’re outside the statute of limitations.”

The former President and Mrs. Madison sweep into the room. The effect is dazzling.

“Late harvest Chardonnay,” Paul Jennings assures one and all, pouring at the President’s command. “Eighteen fourteen was a good year.”

“Let us not,” the Governor gets down to business, “traffic in any undecidable propositions.”

“The dreaded *Unscheidbare*?” Dr. K winks at Dolley while accepting the ‘topper-upper’ Paul offers.

“So if the ‘shock jock’ dares his audience on any issue-of-the-day, ‘Let’s look at the Constitution – ’ ”

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“It’s a null set,” Dr. K coughs politely. “I know how to handle these toughs. I’m an Austrian, you know.”

“Did you put him up to this, Mr. Madison?” Dolley asks.

“As to America’s future,” the Governor now turns to our fourth President, “Article Five certainly didn’t capture it. Hence the answers aren’t *in* there.”

“Governor Randolph delivered my plan on May 29, 1787,” Madison backgrounds, “a third of a century after the fall of Constantinople. Resolution No. 13 reads: ‘[P]rovision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto’.”

“The national government would be powerless to defend itself against the course of history,” I gasp. “The Future and its hot younger sister, Progress, might call forth service missions as yet unknown to the men of eighty-seven. And at will!”

“Instead what the convention delivered,” the Governor explains, “was a condition merely sufficient, inserted where a necessary condition was called for. I reference the opening chords of Madison’s Fifth.”

“It was the College of New Jersey at the time,” Madison defends his undergraduate course in Prèdicaments. “How would I know, seventeen decades after I graduated, they’d build you and Einstein an Institute for Advanced Study?”

“Who’d guess, Herr President,” Dr. K replies, “that the physics of fission and the predicate logic of the Constitution would intersect in New Jersey?”

“Congress must forego undertaking a new service mission, one unknown to the men of eighty-seven,” Dolley picks up the thread, “or obtain a constitutional amendment authorizing that responsibility. Unless there is a third way.”

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“Of course,” the Governor continues, “there is plenty of work to be done by the national government. ‘To legislate in all cases to which the separate States are incompetent,’ you phrased it, ‘in which the harmony of the United States may be interrupted by the exercise of individual Legislation ...’.”

“Madison via Randolph, number 13,” I supply the citation.

“We’re talking farms and finance, manufacturing and mining,” Madison offers a quartet nearly Hammersteinian.

“Distribution of economic benefits and burdens throughout states,” Dolley elaborates, “or redistribution. Somebody’s got to do it.”

Jefferson and Goethe join us.

“Some states educate other state’s children,” one declares.

“Some would ratchet up the price for home-state commodities or rent capital at exorbitant rates,” the other chimes in.

“Some would block out-of-state business competitors from their markets,” they chorus.

“And, of course, the poor and elderly will always be with us,” Jefferson adds. “The less fortunate should be distributed fairly throughout the several states, that is, in light of available resources.”

“As for regulating commerce so that the states do not impoverish themselves,” Dolley declares, “if I may point out the obvious, it is a task that they can’t do for themselves.”

Dolley turns to the Governor of Alaska.

“But is it a flaw? I mean, Article Five. It can’t all be my husband’s fault.”

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“It is a riddle,” the Sphinx of Wasilla agrees, drawing us into our confidence. “And, therefore, may best be approached in this manner.”

“We’re all ears,” Goethe and Jefferson agree.

“Take the Manhattan Project. A multi-billion dollar effort to build a secret weapon that would end the war in Japan without allied forces charging the beaches of Honshu.”

“A million casualties were projected and in 1946 alone,” I point out. “My uncle died in a live-fire accident at Cherry Point, North Carolina, training for those landings.”

“I take it,” Madison ponders, “that Congress did not know it was funding these wonder-weapons.”

“No legislation creating our nuclear arsenal could be crafted,” the Governor explains. “Let alone a constitutional amendment.”

We take in the Governor’s well-played point.

“Back to Article Five,” Dolley speaks up. “The text ‘whenever [The Congress] shall deem it necessary’ is not sufficient, if I may pun, to compel Congress to convert sufficiency to necessity.”

“If Congress were compelled,” the Governor joins in, “then necessity would be expressed as in the Second Amendment: ‘A well-regulated militia, being necessary’ – ”

“But in those amendments, especially those numbered one through eight, the disabilities of federal actors are at stake,” Dr. K observes. “Of course, when the Constitution speaks of disabilities it deploys the language of command or prohibition; when it speaks of faculties, permission is employed. Bentham’s sieve – ”

“Footnoted at page 224 of *The Principles of Morals and Legislation* (rev. ed.),” I interject.

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“Demonstrates that these are to be segregated.”

“Aren’t you going to take offense?” Goethe asks Jefferson. “I believe ‘Nonsense on stilts,’ was Bentham’s swipe at your Declaration of Independence.”

“He was paid to write his stuff,” Jefferson shrugs. “I wish somebody would buy my papers,” he adds.

“Hey!” our fourth President speaks up. “You can pry my record of the constitutional convention from my cold dead hand.”

“I’m looking for at least twenty-five thousand,” Dolley backs up her husband. “It’s my pension.”

“If I may?” Paul does the honors.

“Back our topic,” Dolley continues. “Circumstances required that text be changed. And it was, eleven times from 1796 to 1933. The last one – that is the Twenty-First – preceding our atomic disobedience to Article Five.”

“The amendatory Almagordo,” I add. “And what were the topics of these not-so-dirty eleven?”

“Disabilities of federal and state actors, electoral machinery, and income taxes,” Dolley Madison rifles her well-thumbed pocket copy of the Constitution, *Unabridged for Daily Use*, “being the topics at hand.”

“Ah, let me rethread for you,” the Governor graciously assists her hostess. “Circumstance, delivering present necessity from a then-distant but now-pressing future, obliged that text be changed. On eleven occasions, and so the text was rewritten eleven times. But, at least on one memorable occasion, it wasn’t.”

“Jefferson’s Thirteenth!” the unsung author calls out. “I proposed a constitutional amendment to approve the Louisiana Purchase and its governance.”

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“And, if I may continue without interruption,” Dolley shushes her neighbor, “circumstances – offering a temptation of fissionable dimension – required action. And with no change in constitutional text.”

“The other prong presents itself,” the Governor muses.

“Text can either be changed, on the fly, so to speak,” I suggest, “or it can’t.”

“What do they all have in common, the eleven we speak of, from the Eleventh through the Twenty-First, inclusive?” the Governor asks.

We all stare at our shoes, some buckled, some laced.

“Unnh,” our former President borrows his wife’s text. “All touch on subjects stable enough to be addressed and resolved as a matter of ordered discourse, in both Congress and the state legislatures.”

“Except for bringing the liquor back,” Jefferson calls out. “Which required state conventions for ratification.”

“You banned liquor?” Goethe asks the assembly. “I knew America could be moralistic, but still – ”

“We were fighting Germany at the time,” Dolley ripostes.

“How’d that work out for you?” Goethe asks.

“It didn’t take the first time, so we had to do it again,” Dolley replies, and then returns to her theme. “Is it not noble and sublime that Jimmy’s Constitution is guided by the vast and eternal future, which has shined so brightly on our common destiny?”

“It dictates,” the Governor agrees, “when amendment is a matter of discretion or when such effort would be an exercise in futility.”

“No one, however,” Dolley signals Paul, “has brought us from the Fifth to the Tenth.”

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A silence falls over the room.

“How many fifths in a tenth?” Montpelier’s Major Domo breaks the silence.

“I suppose the latter must be explained in light of the, unh, logical deficiencies of the former,” Madison begins.

“All procedures, and especially those that recursively, mind you, announce the purpose of completing incomplete procedures must be complete,” Dr. K explains. “Or don’t bother starting down that road.”

“The wily Dodgson demonstrated this,” Madison sighs. “And only fifty-nine years after my death.”

“4 Mind 278 (1895),” I blurt the citations. “Bar Rag, November-December, 2003.”

“On reflection, you can’t make an amendment procedure complete,” Madison concedes, “by mere reference to what existed at the time the procedure was adopted.”

“Are we switching from white to red?” Paul asks Dolley.

“In honor of the occasion,” Dolley offers the label to the assembly for our approval. “Merlot d’Albemarle. Eighteen eighteen.”

Jennings and Jefferson offer a generous pour.

“Didn’t this come up at oral argument in *McCulloch*?” Madison asks. “The citation is 4 Wheat. 316, 372 (1819). Save your breath Aschenbrenner.”

“ ‘Having the power antecedent to the adoption of the government, and not being divested of it, by any grant or restriction in the Constitution’,” Governor phrases what Wheaton let Elliot publish, “ ‘the states must necessarily be as fully possessed of such a power as ever they had been’.”

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“John Marshall made that speech at the Virginia ratifying convention,” Madison recalls, “but I put him up to it. The year was 1788,” he adds.

“2 Elliot’s Debates 421 (1836),” I cite.

“If America’s future determines the amendability of the text (that of 9-17-1787) or its unamendability,” Dolley addresses the assembly, “then writing a reference to the past (viewed from 12-15-1791) into the Constitution is not a flaw.”

“Talk Radio seeks what is logically impossible,” the Governor parses the points previously exposed. “The future, from 12-15-1791 forward, isn’t made amenable to amendment, just because an additional instruction is deployed. If this was in doubt before Professor Einstein suggested racing Germany to get the atomic bomb, it was never in doubt after President Roosevelt decided to build it. He wasn’t pussy-footing around.”

“States,” Dolley suggests, “could argue that they had the power to build a nuclear warhead ‘antecedent to the adoption of the government [and] must necessarily be as fully possessed of such a power as ever they had been.’ It depends on the history of man’s search for the secret of radioactivity.”

“You know, Mr. M,” Paul asides, “a Geiger-Müller counter south of the Mason-Dixon line would register an additive three-fifths’ worth of ions.”

“Very funny,” Madison sighs.

“ ‘Powers not delegated’,” Dr. K elides the text of the Tenth, “ ‘are reserved.’ Well, the past tense wraps it up, rather nicely, and in both German and English. You’re a genius, Jimmy. Let me shake your hand. Aschenbrenner, strum that ukulele. Kapellmeister, let your violas soar. Princeton’s Tigers have done it again.”

Let reason rule the fleeting hour,
Her charms beguile our awe;
So logic thrills us with her pow'rs,
In praise of Old Nassau.

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Apparatus

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