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# WITH RADIANT COUNTENANCE: CREATION, REDEMPTION, AND REVELATION

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*“The New Thinking ‘needs another person and takes time seriously—actually, these two things are identical.’”<sup>1</sup>*

### I. THE “WE” AND THE “WHEN”

The Constitution begins with the word “We,”<sup>2</sup> and the Declaration of Independence with the word “When.”<sup>3</sup> These first words already indicate a people understanding itself as agent or subject within a moment in time. “When” locates political agency within a trajectory, a break from past to

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1. Maurice Friedman, *Dialogue, Speech, Nature, and Creation: Franz Rosenzweig’s Critique of Buber’s I and Thou*, 13 MODERN JUDAISM 109, 109 (1993) (quoting Franz Rosenzweig, *The New Thinking*).

2.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

U.S. CONST. pmbl.

3.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

future. Though a break, it is also a moment of political–moral inevitability under the auspices of nature, and its meaning is experienced as history: “When in the course of human events.” But the Bible begins with the words “In-the-beginning” and “created.”<sup>4</sup> In these first words, there is not yet any first person (singular or plural). Nor do these first words locate the time of Creation against a readily recoverable past. Attention is directed to the beginning, if not absolutely diverted from Creation’s back story.<sup>5</sup> The third word of the Bible is God, “*Elohim*.” God is agent and has created time and world. Humankind is not yet, there is no course of human events, and there is no “We.”

More fundamentally, so far in these opening words the grammar of Biblical action lacks both the tenses of time that enable acts to be spoken as past, present, or future (“when” or “then”), and the persons (first, second, and third) that speech distinguishes. The first sentence states the divine action but not the divine speech. The direct objects of *Elohim*’s Creation are identified as “the heavens and the earth,” but neither creature nor Creator yet say “I am” or “I will be.” Even as God speaks the light into being and worth, and the waters and lands, and all other works of Creation, with words “let there be” or “let be,” the beings are separated from each other, but not so the persons of speech. As Franz Rosenzweig observes, in his great *Star of Redemption*,<sup>6</sup> the persons of speech emerge only with the Creation of humankind. In the work of Creation,

God speaks, but his word is still as if something in him were speaking, and not himself. . . .

Until he opens his mouth for the last act of Creation and says: “Let us make a man.” “Let us”—for the first time the yoke of objectivity is broken, for the first time there comes, out of the one mouth that till now has spoken in Creation, in-

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4. The requirements of English grammar lead to translations such as the King James Version’s “In the beginning God created the heavens and the earth.” *Genesis* 1:1. In Hebrew, however, בְּרֵאשִׁית, “in-beginning,” is one word, and the verb precedes the subject in בָּרָא אֱלֹהִים. All Bible quotations in this Paper, unless they are internal quotations (such as Rosenzweig’s Bible quotations as given by his translator), are to the King James Version.

5. It would be too strong to insist that the Bible does not begin with “when.” See ROBERT ALTER, *THE FIVE BOOKS OF MOSES: A TRANSLATION WITH COMMENTARY* 17 (2004) (quoting *Genesis* 1:1: “When God began to create heaven and earth . . .”). More precisely, it would be too strong to insist that the Bible’s Creation narrative(s) foreclose the possibility of prior events or actions in relation to which “in the beginning” could stand as a “when.” Rabbinic tradition takes that possibility seriously, but also cautions against ordinary inquiry into it. See B. Hag 11b and Midrash ha-Gadol on *Genesis*, quoted in *THE BOOK OF LEGENDS (SEFER HA-AGGADAH): LEGENDS FROM THE TALMUD AND MIDRASH* 6 (Hayim Nahman Bialik & Yehoshua Hana Ravnitzky eds., William G. Braude trans., 1992) (1908-1911).

6. FRANZ ROSENZWEIG, *THE STAR OF REDEMPTION* 166 (Barbara E. Galli trans., 2005).

stead of an “it,” an “I,” and more than an “I”: with the “I” at the same time a “You,” a “You” which the “I” addresses to itself: “Let us.”<sup>7</sup>

There is no “we” in the Bible’s beginning; it comes only with the first speech of person to person, I to you, all on the side of the eternal. Humankind is the work of Creation in the image and likeness of a Creator who encounters and engages in dialogue. God performs the relationship of I and You in the very act of creating the being whom God welcomes into the relationship of I and You. Humankind was created by this I-and-You, in the image and likeness of this I-and-You, for this I-and-You. In this way, even within the horizon of the Creation story, and in the relationship between Creator and creature, there is a modeling of the narratives of Revelation. There is a preview of the divine self-disclosure to humankind, of the calling to Abraham, of the giving of the law at Sinai, all of which invite a responsive “I-and-You” in which there is a “yes” to God and a “yes” to one another, enabling a “let us” on our side, the side of “the people,” who follow God’s way into becoming “we.”<sup>8</sup>

But the Constitution begins with “we” and does not recall “our” origins in the relationships of Creation and Revelation. So “the people,” “we the people,” begin not in response to another—by thanking the Creator, yearning toward the Redeemer, opening up to the Revealer—but in self-concern. This is a “we” that turns quickly to the possessive. We “secure the Blessings of Liberty to *ourselves* and *our* Posterity.” The Constitution ends as it began, framing the “we” within the possessive “our:”

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of *our* Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth[.] IN WITNESS whereof *We* have hereunto subscribed *our* Names . . . .<sup>10</sup>

We the people, the first person plural, perform the action of ordaining and establishing, of witnessing and subscribing. For the sake of blessings upon ourselves and our children, we sign our names in the “when” of time, a date on the timeline of “our Lord.” The Constitution begins and ends with these expressions in the first person plural—their only appearances in the text—to open it and to close it. These moments mark the only appearances of the first person plural and, with one exception almost too insignificant to mention, the only appearance of the first person in the whole of the Constitution.

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7. *Id.* “God said, ‘Let Us make man in Our image, according to Our likeness . . . .’” *Genesis* 1:26.

8. MIDRASH RABBAH: GENESIS, vol. I (Rabbi Dr. H. Freedman trans., 1983), I:7 (at 4), I:10 (at 9-10), II:5 (at 18-19); AVIVAH GOTTLIEB ZORNBERG, GENESIS: THE BEGINNING OF DESIRE 25-35 (1995).

9. U.S. CONST. pmbl. (emphasis added).

10. U.S. CONST. art. VII (emphasis added).

The possessiveness of the plural agent—"our" posterity, "our" names, "our" Lord—invites the same question when viewed from any of these points. Who is "our" posterity? Who is the "we" who will be *then*, rather than in the "when" (the time of separation, the time of creation)? Who is "Lord," and whose? Is "Lord" a name; if so, whose name? Does the "we" of creation act only in the "name" of the Creator, or also in the "name" of the Revealer and Redeemer? Who called us by name, so that our names may be subscribed?

In the Declaration of Independence, the first word "when" situates a certain crux of action and decision, a fateful undertaking, both in "the course of human events" and in "the laws of nature and of nature's god." But within the first sentence, begun by this first word in this dangerous revolutionary undertaking, the actor remains in the third person. This actor, this "one people," is caught up "in the course of human events," and finds itself in a "when" in which separation "becomes necessary." The "one people" is nonetheless in the plural. This people is not "we" yet, or even "us," but "them." Dissolved now are "the Political Bands which have connected *them* with another;" assumed now is "the separate and equal Station to which the Laws of Nature and of Nature's God entitle *them*."<sup>11</sup> No distinction is drawn between the god of nature and the god of history (the god of "the course of human events"). The "when" is a time of the third person, of the "it," and of a relation between world (nature, history) and "it" in which something "becomes necessary," in which there are "*causes* which *impel them* to the Separation."<sup>12</sup>

The first sentence of the Declaration brings the people to the brink of agency. The people, as objects caught up in natural necessity and in the course of human events, almost become actors, but still are in the third person: "they should declare." The "them" who are compelled to separation are obliged by "a decent Respect to the Opinions of Mankind."<sup>13</sup> As the people separate themselves politically, so a second separation splits the world. The world of nature and of nature's god impels and causes, creating a "them" in "the course of human events." But "mankind" is also more than a course, more than an ordered sequence, because its opinions command the kind of respect that ought to be shown in speech. Only in offering this due spoken respect does "them" complete the movement through "they" to "we":

WE hold these Truths to be self-evident that all Men are created equal; that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Govern-

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11. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776) (emphasis added).

12. *Id.* (emphasis added).

13. *Id.*

ments are instituted among Men, deriving their just Powers from the consent of the Governed . . . .<sup>14</sup>

Just as God breaks through to the first person in a dialogue of I and You (“let us make man”), so the people break through to the first person (“We hold”) in contemplation of “mankind.” We hold, however, not the one truth, but “these truths;” we hold not the one truth of Revelation, but truths “self-evident.” They are self-evident because their evidence is supplied to the natural order by the natural order, all under the auspices of Creation: “[T]hat all Men are created equal; that they are endowed by their Creator with certain unalienable Rights.”<sup>15</sup> In this way, “one people” can perform its decisive acts of political separation and become one of the “powers of the earth,” that is, become one *particular* political-legal people, and in the voicing of *universalistic* reasons to “mankind” become a “we” people.

But just as “we hold” not the one truth, but “these truths,” and do so under the sign of the “laws of nature and of nature’s god,” so we do not confess “our Creator,” but take refuge again in the third person “their Creator.”<sup>16</sup> It remains unsettled whether the referent of “their Creator” is the same as the referent of “our Lord,” and unclear whether the time of the “when” is the same time as “the year of our Lord.”<sup>17</sup> But even in the latter case, the time of “our Lord” is not a fully tensed time in which the present moment invites and commands a response—a word of “yes” or “no”—to God’s word directed to us. There is not yet in this account any word of God directed to us. The dialogue that brings God to the first person is a dialogue within the eternal, and “mankind” may not be aware of it (outside the Revelation that is the Bible). Either it is not “self-evident,” or it is “evident” only to a “self” individuated and personalized by God’s call. “In the year of our Lord” requires no tenses and insists on no privileged special present moment. “In the year of our Lord” measures in the untensed time of the yardstick and the timeline, on which all times are qualitatively just the same. Only the numbers are different. On the timeline, the birth of “our Lord” and the Independence of the United States are just marks—one at 1787, the other at 12. And as the time (the “when”) of this speaking is not fully tensed, so the persons (the who and to whom of this speaking) are not fully personed—not yet fully “selves.”

As the “them” of the Declaration’s opening becomes “they” and ultimately—in affirmation of Creation as endowment of equality and rights—the “we” of “we hold these truths,” so “we hold” matures by the text’s end into the mutuality and danger of “we mutually pledge.”<sup>18</sup> This risky and

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14. *Id.* para. 2.

15. *Id.*

16. *Id.*

17. U.S. CONST. art. VII.

18. THE DECLARATION OF INDEPENDENCE paras. 1, 2, & 32 (U.S. 1776).

dangerous vow or oath is sworn under the auspices of the eternal, but not specifically under the auspices of Creation and Creator:

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be, totally dissolved . . .<sup>19</sup>

For the “when” of necessity, “in the course of human events,” it was enough to appeal to “the laws of nature and of nature’s god.”<sup>20</sup> For the holding of abstract truths, it was enough to appeal to the Creator. For the actual performance of separation, however, for risky action announcing a free and independent entity, the “we” appeals beyond nature and Creation, beyond the world, to “the Supreme Judge of the world.”<sup>21</sup> While “nature’s god” might be ingredient or discernible within the “laws of nature,” and Creator’s gift self-evident within the creaturely endowment, here for the first time there is a clear appeal beyond the world to its Judge who stands outside it. Though “we” act here in the “name” and by the “authority” of the “people,” “we” are not the “one people” of the Declaration’s first sentence. “We” are representatives of the very legal entity, the United States of America, whose separate existence “we” bring about, acting as constitutionally empowered (in Congress assembled).

Though “we” act in the “name” and by the “authority” of the “people,” we “appeal” beyond them, as beyond the world itself, to the “Supreme Judge.” As if “we” were unsure of the jurisdiction of this “judge,” our “appeal” is modest. “We” do not act either in the “name” of the “Supreme Judge” (which would prove embarrassing, for what is the name of this Judge—“Creator”? “Lord”?), or by this Judge’s “authority” (is it the authority of the Creator over creatures, or perhaps the authority of lawgiver over those who receive the commandments?). Instead, “we” merely “appeal” as a form of oath-taking. The appeal acts as a preliminary swearing to the uprightness of “our intentions,” before the main event: the hazarding of all that is of worth, the venturing of our own names, our own writing, our own signatures. “And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”<sup>22</sup>

This last sentence of the Declaration, like the Constitution’s first and last sentences, is built around the “we” and the “our,” but its action is stri-

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19. *Id.* para. 32.

20. *Id.* para. 1.

21. *Id.* para. 32.

22. *Id.*

kingly different. Where the Constitution's "we the people" act possessively, securing Blessings for "ourselves and our posterity," the "we" who "mutually pledge" in the Declaration's final sentence act by putting all that is of worth ("our" worth) at risk—letting go of it for the sake of better or more fully securing it. Where "in witness" to what was "done in Convention" "[w]e have hereunto subscribed our Names,"<sup>23</sup> the signing of the Declaration requires a higher witness (comparable to the need that is evident in the expressions "as God is my witness," "as God is my judge"). Where the Constitution's "our Lord" is only an index on a chronology by which the years are conveniently marked, the Declaration finds it necessary to "appeal" to the "Supreme Judge" and to express a "firm reliance on the protection of Divine Providence."<sup>24</sup> But while more is sought in these confident gestures to an Other who guarantees "our" self-confidence, less is claimed. The Other is not "our" but merely "the Supreme Judge." The Other does not confront *us* personally in judgment, but presides impersonally as "Supreme Judge of the world." The Other is not "our" protector, but merely Divine Providence, as impersonal in relation to history as "nature's god" is in relation to nature. At the Declaration's conclusion just as at its outset, the "we" comes into being in the act of declaring to all "mankind" on common ground, even as the "we" in signing the Declaration "mutually pledge" as brethren, sharers in the "one people"—that is, in particularism.

## II. THE TRIADS OF THE STAR

It is well known that the concept of Creation, not merely in its general sense (generativity, origination), but in a more specifically cosmogonic and anthropogonic sense, belongs to the overall framework for understanding and receiving the Constitution.<sup>25</sup> Were it not for anti-slavery constitutionalism, it is possible that the fact that one of the United States' principal revolutionary and organic texts, the Declaration, describes "all men" as "created equal" and "endowed by their Creator with certain unalienable Rights,"<sup>26</sup> would have slipped to the margins of constitutional thought. It might have been no more than an interesting coincidence that the document that was "there at the creation," and helped bring into being the new republic, should frame its own work of political creation in a wider reference to "nature" and to humankind's endowment as created. Certainly the document's argument

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23. U.S. CONST. art. VII.

24. THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776).

25. See generally Ronald R. Garet, *Natural Law and Creation Stories*, in RELIGION, MORALITY, AND THE LAW: NOMOS XXX 218 (J. Roland Pennock & John W. Chapman eds., 1988); Ronald R. Garet, *Creation and Commitment: Lincoln, Thomas, and the Declaration of Independence*, 65 S. CAL. L. REV. 1477-96 (1992).

26. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).



could have been written differently. As it turned out, though, the assertion that the enslaved were “men,” “created equal,” endowed by their Creator with rights because “stamped with the Divine image and likeness,”<sup>27</sup> became a staple in anti-slavery constitutional argument.

That very argument, of course, stitched Declaration and Constitution more closely together than they might have been had there been no slavery, or had the Declaration not invoked Creation. Indeed, the very work of construing the Constitution as somehow inheriting or enforcing (though in the view of many, betraying) the Declaration facilitated the reception of the Declaration as itself a principal text of the republic’s own creation—bringing that text into the canon, and shaping the very notion of a constitutional canon. But in any event, it would have been necessary for the purpose of resolving controversies over slavery, the status of the American Indian communities, and many other issues, to seek out some understanding of the nature and ground of constitutional rights. Some account of equality would also be needed to fill out the meaning and effect of a republican form of government, of due process, and of the ideal of the rule of law. The doctrines and narratives of Creation within the Biblical traditions were available for these purposes, just as they were available for the purpose of understanding the meaning and effect of “creating” a new political order.

It is almost equally well known that the concept of Redemption has figured prominently in American constitutionalism, and that here, as with Creation, the connection was sealed by anti-slavery movements. The enslaved both recognized and protested their condition in light of the Biblical memory of having been slaves in Egypt, of having been freed from bondage by the mighty hand of the Lord, and of looking ahead to the promised land while wandering in a time intermediate between promise and fulfillment. The narratives of Redemption could show the civic conception of “created equal” in an ironic light, or could redirect attention from a past moment of creation to a future moment in which the conception’s full meaning would be realized. Either way, though the traditional Biblical iconography of Redemption was not as apparent in the founding constitutional texts as the iconography of Creation, the dynamics of the narrative of Creation-promise-Redemption always enabled the two sets of concepts, images, and stories to imply one another.<sup>28</sup> Moreover, the two Biblical or quasi-Biblical poles, of

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27. Abraham Lincoln, Speech at Lewistown (Aug. 17, 1858), in 3 LIFE AND WORKS OF ABRAHAM LINCOLN: SPEECHES AND DEBATES, 1856-1858 at 125-26 (Marion Mills Miller ed., 1907).

28. For further discussion of Redemption narratives in American constitutionalism, see Ronald R. Garet, “Proclaim Liberty”, 74 S. CAL. L. REV. 145, 145-68 (2000); Ronald R. Garet, *Gnostic Due Process*, 7 YALE J.L. & HUMAN. 97, 97-138 (1995); Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV L. REV. 4, 33-40 (1983) (discussing “Redemptive Constitutionalism” and its role in anti-slavery argument).

Creation and Redemption, could orient thought about the grandest and most majestic questions concerning the origins and destiny of the republic itself. Similarly, these narratives also informed thinking about contested questions of constitutional law and interpretation debated inside and outside the seemingly official institutions of decision-making.

Such readings of the Constitution in light of Creation and Redemption always risk a flattening out or loss of meaning, on one or both sides of such intertextual interpretations. But it is also immediately apparent from the internal Biblical viewpoint that the whole bi-polar construct, Creation and Redemption, is incomplete and fundamentally inadequate to the life of faith. Creation and Redemption are not poles, but two points or vertices of a triangle whose other point is Revelation. Even this triadic scheme, however, is misleading unless it exhibits how the three ideas (or lived realities) relate to one another and to the structures of existence. Here Franz Rosenzweig showed the way by exhibiting these relations by means of a model (or “configuration” as he called it) that superimposes two triangles (both equilateral) upon one another.<sup>29</sup> The one triangle exhibits Creation, Revelation, and Redemption, while the other exhibits God, “man,” and world (eternal being, our being, and all that we—and God—encounter as “it”).<sup>30</sup> In this model, Creation is a relation between God and world (God created world); Revelation is a relation between God and human being (God speaks to the human being, calling for and to the human being); and Redemption is the consequent relation between humankind and world (the work of humankind upon the world when answering God’s call).<sup>31</sup>

The shape of these nested triads should be seen as fractal, indefinitely repeating itself on any scale. The shape is true, whether viewed up close or from a greater distance, because it is the structuring form of existence. As Peter Eli Gordon has explained:

According to Rosenzweig, the three coordinates of this experiential structure correspond to the temporal dimensions of past, present, and future. But they are best conceived under categories borrowed from religion: creation is the always-already *pastness* of existence, the way we feel ourselves enveloped by and dependent upon the made world; revelation is the miraculous sense of immediacy, the distinctive *now* of love and divine commandment; and redemption is the purposiveness of our

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29. ROSENZWEIG, *supra* note 6, at 3, 411 (depicting superimposed triangles and defining the Star of Redemption as “configuration”).

30. *Id.* at 9-100, 103-280 (discussing Part One of the triangle as God, world, man and Part Two of the triangle as Creation, Revelation, Redemption).

31. See Rivka Horwitz, *From Hegelianism to a Revolutionary Understanding of Judaism: Franz Rosenzweig’s Attitude toward Kabbala and Myth*, 26 MODERN JUDAISM 31, 43 (2006), available at <http://mj.oxfordjournals.org/content/vol26/issue1/index.dtl>.

action, the *future* sense that human beings are bound up with the world in an ultimately meaningful fashion.<sup>32</sup>

Understood from the internal viewpoint, that is, in a hermeneutic phenomenology, existence has both this triadic temporal structure and a nested personal structure: the first person (I and We); the second person (You, whether singular or plural, intimate or otherwise); and the third person (He, She, It). Though these persons, like the three tenses, might be seen as linguistic accidents, they are instead structures of our very experience. More precisely, they are grammatical structures of the languages and texts in and through which the relations of existence are lived and understood. So Rosenzweig criticized Buber, arguing that Buber's I/Thou relation belongs to a wider set of equally significant relations, including the He/It (relation of Creator and world) and the We/It (our use of the shared languages and texts of our community or communities in understanding the world).<sup>33</sup>

The superimposed and nested triangles form the Star of David, the "configuration" that as *Star of Redemption* is both title, method, and subject of Rosenzweig's book. As the book nears its conclusion, Rosenzweig revisits the configuration in light of the idea that God is truth, and that this truth is not an inert external object awaiting the grasp of our reason or perception, but a radiant personal bestowal.<sup>34</sup> Rosenzweig describes this truth as the glowing face of God turned toward us, and to which we can respond with "yes," "amen," or "Truly":

This Truly runs like a silent secret through the whole chain of beings; in man it brings speech. And in the Star, it glows up into visible, self-illuminating existence.

...

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That which is eternal had become configuration in the truth. And truth is nothing other than the countenance of this configuration. . . . "No figure have you seen, only speech have you heard" [Deuteronomy 4:12]—so it is said in the world of Revelation with and around us. But the word grows silent in the afterworld and supra-world, in the redeemed world, which the blessing said at the right time and in the right place, full of higher power, forces hither. Of it, complete and at peace, it is said, "May he let his countenance shine upon you." [Numbers 6:25]

This shining of the divine face alone is truth. . . . [F]or whomever he lets his face shine, toward him he also turns his face. As he turns his face toward us, so may we know him.<sup>35</sup>

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32. Peter Eli Gordon, *Rosenzweig Redux: The Reception of German-Jewish Thought*, 8 JEWISH SOCIAL STUDIES 1, 1 (2001), available at [http://muse.jhu.edu/journals/jewish\\_social\\_studies/toc/jss8.1.html](http://muse.jhu.edu/journals/jewish_social_studies/toc/jss8.1.html).

33. See Friedman, *supra* note 1, at 111.

34. See ROSENZWEIG, *supra* note 6, pt. 3 bk. 3, at 403-47.

35. *Id.* at 439, 441.

This turning of God's face toward us sometimes is a call, even a test, as when God called to Abraham and he answered "Here I am."<sup>36</sup> Though such a call might be understood as issued by God to You-singular, it might also be to You-plural, or to "one people," and so Rosenzweig understands it.<sup>37</sup> God's radiant countenance turns toward us again in the bestowal of the law. "And the LORD spake unto Moses face to face, as a man speaketh unto his friend."<sup>38</sup> The command to love thy neighbor is of special importance here because it is through recipience of and response to this command—acting within its spirit and for its own sake—that human action carries forward the work of Redemption.<sup>39</sup> Love of neighbor is under the sign of Creation (since neighbor is like oneself precisely in sharing the status as created by God in God's image and likeness).<sup>40</sup> However, it is also under the sign of Revelation (since this love is commanded by God and ultimately leads to the response to God's own love of us, in our love of God).<sup>41</sup> Coming under both signs, this love accomplishes the Redemption of the world, the overcoming of the gap between God and world implicit in God's Creation of the world:

That which resounded before in the inclusive, lonely, monological "Let us (make man)" pronounced by God at the Creation of man, comes to its fulfillment in the I and You of the imperative of Revelation. The He-She-It of the third person has vanished. It was only the ground and soil whence the I and You could arise.<sup>42</sup>

Rosenzweig concludes: "For what else would Redemption be but this, that Revelation and Creation are reconciled!"<sup>43</sup>

36. *Genesis* 22:1.

37. ROSENZWEIG, *supra* note 6, at 418 ("The rebirth of the Jew . . . is not his personal one, but the re-creation of his people to freedom in God's covenant of the Revelation. The people and he within it, not he personally as individual, experienced at that time a second birth. Abraham, the patriarch, and he the individual only in Abraham's loins, heard God's call and answered him with his 'Here I am.'").

38. *Exodus* 33:11. This does not imply that Moses saw the face of God. "And he said, Thou canst not see my face: for there shall no man see me, and live." *Exodus* 33:20. Instead, "face to face" describes a personal encounter which is at once fully intimate and fully legal-normative. See Ronald R. Garet, *Mouth to Mouth, Person to Person*, in *A JUST AND TRUE LOVE: FEMINISM AT THE FRONTIERS OF THEOLOGICAL ETHICS: ESSAYS IN HONOR OF MARGARET A. FARLEY* 197-229 (Maura A. Ryan et al. eds., 2007) [hereinafter Garet, *Mouth to Mouth*].

39. ROSENZWEIG, *supra* note 6, at 221; *Leviticus* 19:18 ("Thou shalt not avenge, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself: I *am* the LORD."); cf. *Matthew* 22:37-40 ("Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets.").

40. ROSENZWEIG, *supra* note 6, at 278.

41. *Id.* at 230.

42. *Id.* at 200.

43. *Id.* at 333.

But the “dialogue” to which the “monologue” gives way is not a path of mutual acceptance or ultimate intersubjective understanding or communion. As Leora Batnitzky has stressed, Rosenzweig’s interpersonal dialogue, as well as his dialogue among faith communities (especially Judaism and Christianity), is centered on the exposure of and judgment upon all that is sensitive within.<sup>44</sup> “[M]erely by being other, the presence of another (whether God or a human being) judges the self. . . . The other teaches me something about myself: primarily that I am not self-contained and independent in the ways I had thought I was.”<sup>45</sup>

When the dialogical relation is between two human persons, or between a human person and God, the possibility of love arises.

[T]o be fully open to the love of the other . . . is to move beyond the mere discomfort of self-judgment and to substitute the judgment of the other for oneself. In substituting the judgment of the other for myself, I do not become the other, but rather a new self.<sup>46</sup>

But whatever may be the case for nation-states, peoples, and other associations and groups, the dialogue of judgment that Judaism and Christianity enter into with one another cannot allow either of these communities to accept the judgment of the other, and in that sense love one another. Instead, running alongside all of the contingent historical enmities or misunderstandings between these two communities—or at least going deeper than all of them if not actually explaining them—is a fundamental and unbridgeable difference in their existential orientations. Rosenzweig calls this difference “the whole wider opposition that rules between Jewish and Christian life,”<sup>47</sup> and explains:

Christian life begins with rebirth. . . . It is a matter of drawing this entire here that is still outside, this entire world of naturalness, into the series of Christian becomings which began with the great now of rebirth. Christian life leads the Christian into the outside. The rays shine continually until all that is outside is filled with the rays. Jewish life is exactly the reverse. There, the birth, the whole natural here, the natural individuality, the indivisible participation in the world already exist . . . . Taking the place of the transfer of the one-time common birth into one’s own reborn heart there is a re-experiencing of the one-time common rebirth, thus, taking the place of the representing of the past therefore there is a leading back of the present into the past. Every person must know that the Eternal One led him himself out of Egypt. The present here enters into the great now of the remembered experience. Hence, as the Christian way becomes expression and renunciation and

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44. Leora Batnitzky, *Dialogue as Judgment, Not Mutual Affirmation: A New Look at Franz Rosenzweig’s Dialogical Philosophy*, 79 THE J. OF RELIGION 523 (1999).

45. *Id.* at 534.

46. *Id.* at 535.

47. ROSENZWEIG, *supra* note 6, at 420. For a very illuminating discussion, see Batnitzky, *supra* note 44, at 533.

filling with rays of that which is outermost, so Jewish life becomes remembrance and deepening and filling with a glow that which is innermost.<sup>48</sup>

So the radiance of the Star, which is the divine countenance turned toward humankind, and which reconciles Creation and Revelation in Redemption, does not reconcile Judaism and Christianity. Instead the Star's radiance is always two-directional, and always enables two contrary movements of the Self in relation to world and time. Christians experience, in their rebirth in Christ, "the 'surprise attack of the Self,'" which empties out all that was previously natural in the individual and turns the individual outward in the world, in its institutions whether of Church or State.<sup>49</sup> By contrast, "the Jew possesses in him and carries with him his being-Jewish," and his "rebirth . . . is not a personal one, but the re-creation of his people to freedom in God's covenant of the Revelation."<sup>50</sup>

### III. REVELATION OF AND TO THE "SELF"

Rosenzweig's account of the life experience of Christians and Jews is not meant as a sociology of religion written from an external viewpoint. Nor is it meant as a reconstruction from an internal viewpoint of the best, most coherent meaning that Christians and Jews can give their sacred texts and worship practices. Instead the account is, like Heidegger's work, a hermeneutic phenomenology of existence, an unfolding or clarifying of the structure or "configuration" of the being of the human in relation to the being of the world, to death (and all that it symbolizes or threatens), time, and selfhood.<sup>51</sup> Rosenzweig is especially attentive to language or speech; he works out ways in which we have been spoken to or addressed, and ways in which we do or do not respond to such addresses in our own speech.

This exercise of hermeneutic method is not philosophy in a traditional vein, because Rosenzweig's whole effort stays within a community's or a tradition's internal viewpoint, but neither is the method purely relativistic. Its stance is one from which Judaism and Christianity can be seen as different and even irreconcilable, though both are comprehensible as workings-out of a unitary "configuration." Are the practices (traditions, inner mean-

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48. ROSENZWEIG, *supra* note 6, at 420.

49. *Id.* at 419.

50. *Id.* at 418-19. Rosenzweig, in the *Star*, often includes Islam along with Judaism and Christianity, or against one or the other of them, in his analyses of existence under the call of the eternal. His analysis of Islam is quite judgmental, perhaps in keeping with his overall view that the faiths must judge one another rather than merely accept or affirm one another. See *supra* notes 21-24 and accompanying text.

51. See SAMUEL MOYN, *ORIGINS OF THE OTHER: EMMANUEL LEVINAS BETWEEN REVELATION AND ETHICS* 114-15 (2005) (arguing there are similarities between Rosenzweig's "new thinking" and Heidegger's hermeneutics of authenticity); MARTIN HEIDEGGER, *BEING AND TIME* 21 (John Macquarrie & Edward Robinson trans., 1962).

ings, frameworks, possibilities, and snares) of republican constitutionalism and those of Biblical faith similar to those of Judaism and Christianity in this methodological respect? Hermeneutically, do republican constitutionalism and Biblical faith differ (even irreconcilably), yet belong to a central existential structure? Or does the radiance of the divine countenance not shine inwardly and outwardly within republican constitutionalism? And does the manner or extent of its radiance or non-radiance differ regionally and historically across the constitutional communities and traditions?

Some observations might pertain to such questions, though they do not offer answers.

First, Revelation initially appears much more foreign than Creation or Redemption to the language, framework, and dispositions of the American Constitution (or American constitutionalism). If Creation and Redemption are useful metaphors, talk of Revelation in constitutionalism (for virtually any purpose) seems in very poor taste at best. But the talk in our constitutionalism of Creation and Redemption is not simply metaphorical, nor is it simply a trope drawn from a parallel or antecedent literature. Creation and Redemption are symbols, not metaphors, in that they participate in the being they designate and point to that being's ampler, if more elusive, realization. But in carrying out this work, both Creation and Redemption already presuppose Revelation. Time is created, and death is a natural reality for all creatures, but both time and death give rise to presentiments of the eternal. "The created death of the creature is at the same time the sign that announces the Revelation of life which transcends that of the simple creature."<sup>52</sup> Redemption already presupposes both a first Revelation in the Creation of all human persons equally in God's image and likeness, hence equally the neighbor, and a second Revelation in God's word of love to the person, which is at the same time a command to love the neighbor and a way to the love of God. So Creation and Redemption already implicate Revelation, just as they implicate one another. The three stand or fall together.

Second, Creation appears initially to be least problematic because of its temporal ontology: the time of Creation is the past, and so it seems easy enough to respect a past moment of political creation that invokes a moment from the deeper past, one creation nesting itself within another. But the authority of origins, whether in familiar "original intent" accounts or others, makes the past pertain to and disturb the present. Moreover, if Creation is truly a dimension of sacred time, it must be able to become fully present and fill the present with its meaning. Thus the Sabbath brings the sacred time of Creation into the cycles of lived present time, as it also brings the sacred

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52. ROSENZWEIG, *supra* note 6, at 168.

time of Redemption.<sup>53</sup> Thus one could say that Independence Day, or June-teenth, or Martin Luther King's Birthday, are sabbaths of American constitutionalism, bringing into the cycle of present time both the Creational past and the Redemptive future of "created equal." In fact, more fundamentally than any civic occasion or ceremony of remembrance or hope, constitutional decision as such is always decision for me and for us, here and now. The Creational past and the Redemptive future exert their leverage on us in our present choices, so that we completely understand King when he says that "Now is the time," and when he insists on "the fierce urgency of now."<sup>54</sup> Now is the time of decision, when the vectors of past and future intersect in us, and now is precisely the time of Revelation. "All Revelation is placed under the great sign of the today," says Rosenzweig.<sup>55</sup> "[I]t is 'today' that God commands and it is 'today' that his voice is to be heard. It is the today in which the love of the lover lives—this imperative today of the commandment."<sup>56</sup>

Third, Creation and Redemption may seem more fitting than Revelation for constitutionalism because they are less personal. Being created, even in God's image, seemingly requires no personal choice, and the "endowment" of rights appears initially as a universal truth that transcends the subject's own consciousness or wishes. This universality or objectivity of equal natural rights certainly supplies one possible meaning to the inalienability of such rights ("endowed by their Creator with certain unalienable rights"). And the third person wording of the Declaration reinforces this sense that in rights one is simply reading off the world as it is, rather than making a personal choice in the matter. But every outward and inward act and every consideration pertaining to the act—for example, if it comes from love of neighbor—puts in play or at risk my own status as created in God's image and likeness. Redemption also has this double-sidedness, in that my own hope and destiny and the renewal/restoration of the world in God's love cannot be separated out from one another. So does Revelation, which

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53. Compare two versions of the Decalogue: *Exodus* 20:8-11:

Remember the sabbath day, to keep it holy. Six days shalt thou labor, and do all thy work: But the seventh day is the sabbath of the LORD thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gate: For in six days the LORD made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the LORD blessed the sabbath day, and hallowed it,

and *Deuteronomy* 5:15: "And remember that thou wast a servant in the land of Egypt, and that the LORD thy God brought thee out thence through a mighty hand and by a stretched out arm: therefore the LORD thy God commanded thee to keep the sabbath day."

54. Martin Luther King, Jr., "I Have a Dream" Address (Aug. 28, 1963), in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 82 (Clayborne Carson & Kris Shepard eds., 2001).

55. ROSENZWEIG, *supra* note 6, at 192.

56. *Id.*



is always simultaneously intimate and legal-normative. God spoke to Moses “mouth to mouth,” in a communication and communion that is equally an intimacy and a transmission of the law (along with the hermeneutic traditions and norms for the law’s elaboration).<sup>57</sup> Creation, Redemption, and Revelation are as deeply personal as they are deeply impersonal, and these two sides require one another.

Surely the sovereign people are not God, and even what the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey* called “the full meaning of the covenant” is not Revelation.<sup>58</sup> Nor does the Equal Protection Clause<sup>59</sup> comprise Redemption, or define the measure of its ultimate significance. Nor does the Declaration of Independence explore the heights of Creation, the sense in which God saw that all of it was good, or the depths of human creatureliness. Nowhere is the light refracting from the facets of Rosenzweig’s fractal Star more needed than within the institutions of our finitude, to teach us that finitude precisely in relation to the eternal. So the Star illuminates and challenges these central tenets of our constitutionalism:

*The judgment.* “We . . . appeal[ ] to the Supreme Judge of the World for the Rectitude of our Intentions . . . .”<sup>60</sup> But all encounter with the divine Other is judgment, and carries with it growth and change in the self. If the “one people” were already upright in its self, it would not require God’s command, law, and love.

*The truth.* “We hold these Truths to be self-evident . . . .”<sup>61</sup> But if God is truth, then some part of the truth in human equality and human rights, some pertinent part of the truth in our status as created, is hidden. We have at best a preliminary understanding, just as we have at best imperfect intentions. To the extent that God is truth, then the light in that truth radiates upon us. We cannot hold the truth any more than we can hold the light.

*The blessing.* “We the People of the United States” establish the Constitution “in Order . . . [to] secure the Blessings of Liberty to ourselves and our Posterity.”<sup>62</sup> Given what has already been said, with what degree of confidence can we recognize “we the people” in the call and promise to Abraham? Shall we understand the “we,” “ourselves,” and “our posterity” in the particularism of a nation (“one people” assuming a “separate and

57. For further development of this dual character of the divine-human encounter in the bestowal, reception, and transmission of the law, see Gare, *Mouth to Mouth*, *supra* note 38.

58. *Planned Parenthood v. Casey*, 505 U.S. 833, 901 (1992).

59. U.S. CONST. amend. XIV.

60. THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776).

61. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

62. U.S. CONST. pmbl.

equal station”), in the universalism of “all men are created equal,” or in some dynamic tension between these two principles? Who is the “you” who receives the blessing, “May he let his countenance shine upon you,”<sup>63</sup> and in what way (if at all) can the work of constitutionalism “secure” it?

*The self.* The self in “self-evident” is at risk for hubris. This is the self that appeals to the Supreme Judge of the world for the rectitude of its intentions; that holds the truth, in a posture that may not lend itself to beholding in the light of truth; that claims to know already who is “we” and “our.” But “I become an ‘I’ only thanks to the Thou of the divine who calls and therefore individuates my self . . . [W]hile God calls Abraham twice, only the second time, when he answers ‘Here I am’ to God, does Abraham achieve genuine selfhood.”<sup>64</sup> It is idolatry, however, to answer “Here I am” when it is not God who calls.

*The oath.* The sweep of communal action in politics and history sometimes enables the formation and expression of a collective self, however authentic or inauthentic. The power to say “we” is like the power to say “I do”—a move to be and become someone and something new, and to be recognized as such. A solemn swearing, an undertaking, an oath, calls forth this new self or does not, depending on the inward devotion of the partners and the outward recognition and support that is given them or withheld from them. “We” have sworn three times: first when “we” appealed to the Supreme Judge for the rectitude of our intentions (a testimonial oath); second when “we” mutually pledged our lives, our fortunes, and our sacred honour (a revolutionary oath); third when “we” subscribed “our” names to the Constitution. In the act of signing our names, “we” expose and commit an emergent public self. But all of this is in the first person plural. Is there no place in the texts and traditions of constitutionalism for the first person singular?

Article II section 1 concludes by laying an obligation on each newly elected President:

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”<sup>65</sup>

Only in this one portion of the constitutional text does the text command that the text be spoken.<sup>66</sup> Here in this oath, this little recitation that we will

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63. ROSENZWEIG, *supra* note 6, at 441 (quoting *Numbers* 6:25).

64. MOYN, *supra* note 51, at 148 (describing Rosenzweig and the influence of his “dialogical” philosophy upon Levinas). See ZORNBERG, *supra* note 8, at 27-32 (discussing the relation between God’s “I am” and the “I” of human beings).

65. U.S. CONST. art. II, § 1, cl. 8.

66. Compare the commandment of *Hak'hel*, *Deuteronomy* 31:9-13:

all be listening to a few days from now,<sup>67</sup> one person says “I.” “I solemnly swear.” “I will faithfully execute.” Here are the only appearances of this word in the Constitution, and only the incoming President can speak this little word in fulfillment of the Constitution’s command.

The whole world will watch, and in the days and years to come the debate about what it means to “preserve, protect and defend the Constitution” will continue. While many will argue about whether the President is preserving or destroying the Constitution, protecting and defending it, or abandoning it, some will ask with more particularity whether the President is executing the duties of his office “faithfully” as the oath requires. Does “faithfully” go to the inner commitment, to meaning and motivation, or only to the outer act? And some of us, finally, will add to these concerns one final question. What does the Constitution mean by “I”? The unity of the self is surely as elusive a concept as that of the unitary Executive, and equally controversial in its own way. How does the self grow in authenticity? How does it integrate, under the strains of the call? With what hope, with what hubris, can one speak for oneself, and for all those who have gone before and those who will follow, the responsive words “Here I am”?

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And Moses wrote this law, and delivered it unto the priests the sons of Levi, which bare the ark of the covenant of the LORD, and unto all the elders of Israel. And Moses commanded them, saying, At the end of every seven years, in the solemnity of the year of release, in the feast of tabernacles, When all Israel is come to appear before the LORD thy God in the place which he shall choose, thou shalt read this law before all Israel in their hearing. Gather [*Hak'heil*] the people together, men and women, and children, and thy stranger that is within thy gates, that they may hear, and that they may learn, and fear the LORD your God, and observe to do all the words of this law: And that their children, which have not known any thing, may hear, and learn to fear the LORD your God, as long as ye live in the land whither ye go over Jordan to possess it.

Maimonides understood this mitzvah as an occasion for re-enactment or re-experiencing of the Revelation at Sinai. THE CODE OF MAIMONIDES: BOOK NINE, THE BOOK OF OFFERINGS (Herbert Danby trans., 1950) 59, (II, iii, 6) (1950).

67. This Paper was presented on January 9, 2009.