

HEINONLINE

Citation: 74 S. Cal. L. Rev. 2000-2001

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Fri Jun 19 19:37:57 2009

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0038-3910](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0038-3910)

“PROCLAIM LIBERTY”

RONALD R. GARET*

I. AN ORAL TRADITION

The most notable centennial observance in American law, to this point in our history, has been Martin Luther King’s commemoration of the Emancipation Proclamation in his address at the March on Washington for Jobs and Freedom. But there are several difficulties. Why does King celebrate the memory of the Proclamation in a speech that insists that his people are still not free?¹ Put somewhat differently: In what sense is the political struggle or political action, undertaken in 1963, a commemoration or observance of the official act of 1863? The difficulty is deepened when we recall that the Proclamation was both a bold edict, a real departure from what had been done before, and an initiative very confined in its scope. Because the Proclamation was a breakthrough—previously the consensus position (and Lincoln’s own) had been that there was no power in the federal government to effect an emancipation (especially an uncompensated emancipation) of people owned as slaves under state law—there were real doubts about its constitutionality.² Because the Proclamation was of carefully limited scope—it applied largely, though not exclusively, to slaves held in specified areas not yet under the control of the Union army, and it did not define the freedom it granted or provide prospective means to secure it—there have always been doubts about whether it was truly emancipatory either in letter or in spirit. Taking these

* Carolyn Craig Franklin Professor of Law and Religion, University of Southern California Law School. I am grateful to my research assistant, Mira Hashmall, and to the librarians and staff of the University of Southern California Law Library.

1. See David Brion Davis, *The Emancipation Moment*, 22nd Annual Fortenbaugh Memorial Lecture, Gettysburg College 7 (1983) (transcript available in the Yale University Library). This is only one of several related questions on which Davis sheds much light in his valuable lecture.

2. See PROCESSES OF CONSTITUTIONAL DECISIONMAKING: CASES AND MATERIALS 225–31 (Paul Brest et al. eds., 4th ed. 2000).

two problems together, we obtain this curious result: Although King's speech is the most notable centennial observance in the history of our law up to this day, the 1963 event was not straightforwardly an "observance," nor was the 1863 event straightforwardly "law."

Perhaps some light is shed on these difficulties if we regard King's address as part of an oral tradition in American constitutionalism.³ Though its boundaries are blurry, this tradition includes speeches made and songs sung at Fourth of July celebrations, along with similar oral performances given at Proclamation Day or Juneteenth observances, and at rallies, public meetings, or conventions timed to coincide with or recall such festival days.⁴ The Declaration of Independence ("Declaration") and the Emancipation Proclamation ("Proclamation") supply not only occasions but also themes for these oral performances.

The oral tradition might be imagined as a binary star system, with the Declaration and the Proclamation as the stars paired around a shared point called Liberty, and the speeches and songs imaged as planets in the stars' orbit. But the chief and instructive deficiency in that image is that though the oral performances do circle around the written texts, they also enlarge their meaning and significance while bringing the texts into a mutual relation that they might not otherwise occupy. The binary stars would be locked in a pair even without the planets that orbit them both, but this is not the case with King's speech and its oral influences. The speeches and songs themselves are responsible for the popular (and provocative) idea that the Declaration and the Proclamation are somehow centrally and importantly tied to one another. Moreover, without the oral performances, those written texts would not seem so momentous, so weighty—so much like a "constitution" (even though that characterization might be withheld

3. Probably it is best to say that there are many such oral traditions. Oral argument in constitutional cases, especially oral argument before the Supreme Court, without a doubt differs rhetorically from campaign speeches that candidates for public office make on contested constitutional questions; other conventions and traditions might be traced in speeches delivered during floor debates in Congress. All of these figure as oral performances within American constitutionalism, but it should not be assumed that these performances have the same functions, follow the same rules, or develop the same themes as speeches made at public gatherings to mark festival occasions such as Proclamation Day or the Fourth of July. Nor is it clear that the concept of "tradition" is equally or similarly applicable in all of these cases.

4. "Despite the fact that the Proclamation did not emancipate the slaves and surely did not do what the Thirteenth Amendment did . . . , it is the Proclamation and not the Thirteenth Amendment that has been remembered and celebrated over the past 130 years[,] . . . [just as we] celebrate the Declaration of Independence, but not the ratification of the Constitution." John Hope Franklin, *The Emancipation Proclamation: An Act of Justice*, Q. NAT'L ARCHIVES & RECORDS ADMIN., Summer 1993, at 149, 151–53.

in other contexts, such as the exercise of judicial review). It is as if the planets were responsible for the enlargement and pull of the very stars around which they circle.

If the concept of an oral tradition in American constitutionalism should prove fruitful—and that cannot be decided except by interpretive exercises such as those attempted here—it must be made clear from the start that this is “oral tradition” in a quite unusual, even contrarian sense. When we think of oral tradition in connection, say, with the transmission of epic, or with the origins of the Gospel accounts of the sayings of Jesus, or with so-called “customary law,” what we usually have in mind is the historical movement from originally oral performances to written texts and to various practices, whether of reading or canon-formation or normativity, that are typical of written cultures. So we tend to think of oral traditions as predating the written traditions that both preserve and reform or displace them. But the oral tradition in American constitutionalism, as it is conceived in this essay, is not understood as prior to written texts. To understand the oral tradition, in fact, we need to see how it goes to work upon existing texts and text-traditions—including not only the Declaration and Proclamation but also, and often in surprising ways, the Bible—enhancing or altering their ranges of meaning and reference.

The oral tradition borrows written texts and brings them into curious contact with one another. But it is more than a compilation. It is a mode of engagement on two levels: between speaker and audience, and between the people and the law that binds them. This engagement makes it possible for us to address the law and to be addressed by it in ways that go beyond the usual categories of compliance, noncompliance, or influence. We will see that the oral tradition fits Professor Cover’s description of law as a “resource in signification” that enables us to mock and also to rejoice.⁵

Where the libertarian force of the written constitutional tradition is propositional (“all men are created equal”) and prohibitory (“no person shall be deprived of life, liberty, or property, without due process of law”), that of the oral tradition is kerygmatic: “[P]roclaim liberty throughout the land unto all the inhabitants thereof.”⁶ Where the written constitution is performative (“We the people of the United States, in order to secure the blessings of liberty to ourselves and our posterity, do ordain and establish

5. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 8 (1983).

6. *Leviticus 25:10* (KJV). All subsequent citations to the Bible are to the King James Version.

this Constitution”), the oral tradition is jussive; “Let freedom ring” is not an accomplishment but an exhortation.

These generalizations about oral tradition are meant not as freestanding proposals but as interpretations of certain speeches and songs within the contexts of their utterance. Our materials raise, but certainly do not answer, the question of whether the full living-out of existence-in-the-law, or the humane articulation and realization of law’s emancipatory potential, requires that constitutionalism encompass an oral tradition. For our purposes it will be enough to see the allusions, quotations, borrowings, and ironizing rhetorical devices that structure our oral tradition as so many accidents, a collection that might look very different were the clock turned back (to the mid-eighteenth century, say) and re-run.

II. PROCLAIMING LIBERTY “ONE HUNDRED YEARS LATER”

King’s “I Have a Dream” speech, delivered on the steps of the Lincoln Memorial in the late summer of 1963, begins by referring to what happened in 1863. “Fivescore years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation But one hundred years later, the Negro still is not free. (*My Lord*)”⁷ King commemorates an act of writing (Lincoln signed a document), but the commemoration itself is not a publication but a civic event, a march and rally in Washington, an occasion for singing, shouting, and public speaking. As “I Have a Dream” proceeds, it moves from a referential mode (where the things referred to are writings or acts of writing) to a proclamatory mode (in which the ground of hope is supplied chiefly by traditional oral materials). But in the early going, King stresses writing; and as he does so he expands his referent to include much more than the Emancipation Proclamation:

In a sense we’ve come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence (*Yeah*), they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white

7. Martin Luther King, Jr., *I Have a Dream* (Aug. 28, 1963) [hereinafter *I Have a Dream*], in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* (Clayborne Carson & Kris Shepard eds., forthcoming 2001). Audience response is given in parentheses and italics. Inclusion of audience response reminds us that speeches are oral performances, and that King’s speeches often shared in the call-and-response tradition of African-American singing, preaching, and oratory. All quotations from “I Have a Dream” in this essay are from the Carson-Shepard edition, which can be previewed at Stanford University’s Martin Luther King, Jr. Papers Project, at <http://www.stanford.edu/group/King> (last visited Nov. 17, 2000).

men, would be guaranteed the "unalienable Rights of Life, Liberty, and the pursuit of Happiness."⁸

Lincoln's signing of the Emancipation Proclamation is telescoped back into the events of the founding: "[T]hey were signing a promissory note to which every American was to fall heir."⁹ Far from repudiating the written constitution, or disparaging it, King gives it emphasis: To put a promise into writing and then sign it is to make it binding. But on this written promise we have defaulted; our written constitution is a "bad check."

The "magnificent words" of our written instruments change moral relations by making promises, but they seem incapable of motivating us to deliver on those promises. The first words of King's speech—"I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation. Fivescore years ago . . ."—hardly supply what is missing, but they do express a more intimate union, of speaker with audience, than lawyerly writing creates between author and reader, or between lawmaker and citizen. They suggest not only intimacy but urgency: a present moment of *kairos*, momentous in relation both to the future ("will go down in history") and to the past ("fivescore years ago"). But if King opens by naming something we already share—"our nation"—he will close his speech by looking forward to a future realization of a greater oneness:

One day right there in Alabama little black boys and little black girls will be able to join hands with little white boys and white girls as sisters and brothers . . . that day when all of God's children, black men and white men . . . will be able to join hands and sing in the words of the old Negro spiritual . . .¹¹

So the frame of oral oneness supplies a hopeful ground for King's subsequent references to written, binding, and broken promises, relativizing the writings and hinting at a different kind of oral promise and oral fulfillment (we will join hands and sing . . .).

King's way of dating back to the Emancipation Proclamation, "fivescore years ago," begins to actualize the oral frame by echoing the opening words of the Gettysburg Address. So from the beginning, we are put on two tracks, one oral and one written. Lincoln is the station that gets

8. I Have a Dream, *supra* note 7.

9. *Id.*

10. *Id.*

11. *Id.*

us onto both tracks; he wrote and signed the Emancipation Proclamation, and he spoke the Gettysburg Address (both in 1863). The oral Lincoln, Lincoln at Gettysburg, speaks of our nation as “dedicated” (promised) “to the proposition that all men are created equal.”¹² The written Lincoln, signing the Emancipation Proclamation, makes no such reference to the Declaration of Independence.¹³ The oral Lincoln looks forward to “a new birth of freedom,” and affirms that republican government “will not perish from the earth.”¹⁴ The written Lincoln describes liberty as an instrument of military strategy rather than in Gospel terms of second birth and the overcoming of death. The oral Lincoln, in his campaign speeches against Stephen Douglas, condemns slavery in the name of the Declaration of Independence:

These communities, by their representatives in old Independence Hall, said to the whole world of men: “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.” This was their majestic interpretation of the economy of the Universe. This was their lofty, and wise, and noble understanding of the justice of the Creator to His creatures. [*Applause.*] Yes, gentlemen, to all His creatures, to the whole great family of man. In their enlightened belief, nothing stamped with the divine image and likeness was sent into the world to be trodden on, and degraded, and imbruted by his fellows.¹⁵

In the Emancipation Proclamation Lincoln does not express any judgment on slavery, though in its conclusion he describes the Proclamation as “sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity.”¹⁶

Intimations from the oral Lincoln bathe magnificent (but written, hence broken) promises in the glow of a higher hope. But they also cast in

12. Abraham Lincoln, Address Delivered at the Dedication of the Cemetery at Gettysburg (Nov. 19, 1863) [hereinafter *Gettysburg Address*], in 7 COLLECTED WORKS OF ABRAHAM LINCOLN 23 (Roy P. Basler ed., 1953) [hereinafter *COLLECTED WORKS*].

13. See Abraham Lincoln, Emancipation Proclamation (Jan. 1, 1863) [hereinafter *Emancipation Proclamation*], in 6 COLLECTED WORKS, *supra* note 12, at 28–31. As with all of his proclamations, Lincoln dates the Emancipation Proclamation not only by the calendar year (“in the year of our Lord one thousand eight hundred and sixty three”) but also by years elapsed since July 4, 1776 (“and of the Independence of the United States of America the eighty-seventh”). *Id.* at 30. Note “eighty-seventh,” not “four score and seventh.”

14. *Gettysburg Address*, *supra* note 12, at 23.

15. Abraham Lincoln, Speech at Lewistown (Aug. 21, 1858), in 2 COLLECTED WORKS, *supra* note 12, at 546.

16. *Emancipation Proclamation*, *supra* note 13, at 30.

even starker relief the realities of life for black Americans "one hundred years later":

One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, (*My Lord*) [*applause*] the Negro is still languished in the corners of American society and finds himself an exile in his own land. And so we've come here today to dramatize a shameful condition.¹⁷

The great task for King is to preserve and heighten, not annul, a mobilizing awareness of these harsh present realities, by juxtaposing them to the past's magnificent words of promise and to the prospect, associated with the oral Lincoln and more fundamentally with Biblical tradition, of a future fulfillment. But to do this, King must stay awhile in the wilderness. The speaker in relation to his texts must be, like his suffering people, "an exile in his own land."¹⁸ Any other stance would make King too much at home in American civil hagiography, and dull the edge of criticism.

III. "BY THE RIVERS OF BABYLON"

Our oral tradition supplies instruction in how to speak as an exile. In the exile's voice, the speaker can use "magnificent words" with stinging effect without too closely identifying with them. Frederick Douglass' 1852 address, "What to the Slave is the Fourth of July?"¹⁹ offers perhaps the most rigorous example of exilic speech to be found in our oral tradition. We fail to understand that tradition unless we appreciate how it makes possible both Douglass' and King's ways of receiving, yet distancing themselves from, orthodox and venerated civic texts. And we are in a better position to understand King when we compare his speech-situation and his oral performance to Douglass'.

Douglass attacked unfreedom before Emancipation, King afterward. But King insists that unfreedom remains "one hundred years later," and Douglass is already the heir to a well-developed tradition of attacking slavery as a violation of the "magnificent words" of the Declaration of Independence. The people who came to hear Douglass speak, in

17. I Have a Dream, *supra* note 7.

18. *Id.*

19. Frederick Douglass, What to the Slave is the Fourth of July?: An Address Delivered in Rochester, New York (July 5, 1852) [hereinafter Fourth of July], in 2 THE FREDERICK DOUGLASS PAPERS: SERIES ONE: SPEECHES, DEBATES, AND INTERVIEWS 1847-54, at 359-88 (John W. Blasingame ed., 1982) [hereinafter DOUGLASS PAPERS].

celebration of Independence Day, must have expected him to offer a familiar argument—that slavery is contrary to the self-evident truth that “all men are created equal, and endowed by their creator with certain unalienable rights.” King does make that argument about segregation and discrimination: “I have a dream that one day (*Yes*) this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’ (*Yes*) [*applause*].”²⁰

Douglass’ 1852 audience, unlike King’s listeners, would not have associated this “creed” with Lincoln. But it was an anti-slavery staple. In the first issue of *The Liberator*, William Lloyd Garrison had laid out his abolitionist program and its basis: “According to the ‘self-evident truth’ maintained in the American Declaration of Independence, ‘that all men are created equal, and endowed by their Creator with certain inalienable rights—among which are life, liberty and the pursuit of happiness,’ I shall strenuously contend for the immediate enfranchisement of our slave population.”²¹ Later, John Quincy Adams, in his argument before the Supreme Court in the *Amistad* case, had asked the Court to treat the Declaration as enforceable law:

I know of no law, but one which I am not at liberty to argue before this Court, no law, statute or constitution, no code, no treaty, applicable to the proceedings of the Executive or the Judiciary, except that law, (*pointing to the copy of the Declaration of Independence, hanging against one of the pillars of the court-room*) that law, two copies of which are ever before the eyes of your Honors. I know of no other law that reaches the case of my clients, but the law of Nature and of Nature’s God on which our fathers placed our own national existence . . . That law, in its application to my clients, I trust will be the law on which the case will be decided by this Court.²²

Adams’ father, of course, was one of the drafters of the Declaration. Douglass, whose own father was the master who owned Douglass’ mother, cannot say “our fathers” in the same way Adams does. He could, if he chose, say “our fathers” as Lincoln would at Gettysburg—to name those who dedicate themselves and their nation to “all men are created equal.” Speaking just after Independence Day in 1858, Lincoln would make the

20. I Have a Dream, *supra* note 7.

21. William Lloyd Garrison, *To the Public*, *LIBERATOR*, Jan. 1, 1831, reprinted in WILLIAM LLOYD GARRISON AND THE FIGHT AGAINST SLAVERY: SELECTIONS FROM *THE LIBERATOR* 70, 71 (William E. Cain ed., 1995) [hereinafter *THE LIBERATOR*].

22. THE ARGUMENT OF JOHN QUINCY ADAMS BEFORE THE SUPREME COURT OF THE UNITED STATES (1841), reprinted in *THE AMISTAD CASE: THE MOST CELEBRATED SLAVE MUTINY OF THE NINETEENTH CENTURY* 8–9 (1968).

point with exceptional clarity. He said of those not physically descended from the revolutionary generation:

[T]hey cannot carry themselves back into that glorious epoch and make themselves feel that they are part of us, but when they look through that old Declaration of Independence they find that those old men say that "We hold these truths to be self-evident, that all men are created equal," and then they feel that that moral sentiment taught in that day evidences their relation to those men, that it is the father of all moral principle in them, and that they have a right to claim it as though they were blood of the blood, and flesh of the flesh of the men who wrote that Declaration (*loud and long continued applause*) and so they are.²³

But Douglass insists on distance precisely where Lincoln finds substantial identity. He declines to regard the Declaration as "the father of all moral principle" in him or his people; though he is "flesh of the flesh" of the white race (through his father), this connection is rather in the nature of an indictment.

The immediate target of Douglass' irony, however, is not the more mainstream (though still nonorthodox) anti-slavery lawyering of Adams, but the vanguard abolitionism of Garrison. In the months before his 1852 address, Douglass had broken with Garrison over the Constitution. Garrison revered the Declaration, as has been seen; but he abhorred the Constitution for its apparent compromises on slavery, and insisted that true abolitionists must not vote or hold office under the Constitution. Just two years later, in 1854, at a notable July Fourth gathering, Garrison would read out loud from Scripture, light ceremonial candles, and then burn a copy of the Constitution, denouncing it as "a covenant with death, an agreement with hell," and requiring his audience to say "amen" (as provided in the litany of holy curses in Deuteronomy, chapter 27).²⁴ Garrison's Independence Day ritual illustrates a limiting case: exaltation of the Declaration of Independence and the Bible, abasement of the Constitution, all accomplished in a performance that requires not only a speaker but the oral participation of the audience.

Toward the close of his own Fourth of July oration, Douglass explains why he had come to believe that the Constitution was not, as the

23. Abraham Lincoln, Speech at Chicago, Illinois (July 10, 1858), in 2 COLLECTED WORKS, *supra* note 12, at 499-500. For discussion, see GARRY WILLS, UNDER GOD: RELIGION AND AMERICAN POLITICS 207-22 (1990).

24. William F. Cain, Introduction to *THE LIBERATOR*, *supra* note 21, at 35-36. See, e.g., Deuteronomy 27:19, 26 ("Cursed be he that perverteth the judgment of the stranger, fatherless, and widow. And all the people shall say, Amen. . . . Cursed be he that confirmeth not all the words of this law to do them. And all the people shall say, Amen.").

Garrisonians thought, a pro-slavery document. This turning in Douglass' thought is remarkable, perhaps even inspiring—it has been celebrated as a break from insular perfectionism toward a visionary and redemptive constitutionalism.²⁵ But Douglass' "conversion" harbors the risk that he will now read too much into the Constitution, as the Garrisonians had read too little. He does not read it ironically, as he comes to read the Declaration. If he reversed ground with the Garrisonians on the Constitution, he did something much more complex and interesting with the Declaration. Where the Garrisonians had simply revered it, and assumed it as an almost natural ground of abolitionist critique, Douglass treats it with rigorous irony. His "celebration" of Independence Day becomes the lamentation of an exile.

Douglass opens by expressing his embarrassment: "The papers and placards say, that I am to deliver a 4th [of] July oration," but "the distance between this platform and the slave plantation, from which I escaped, is considerable."²⁶ Though he addresses his listeners throughout as his "fellow citizens," Douglass keeps his distance, ultimately making it impressively clear that he is committed to the captive's viewpoint: "I shall see, this day, and its popular characteristics, from the slave's point of view."²⁷ He does not "join with you today," as King will say to his Washington audience, nor speak as King immediately does of "our nation":

Fellow-citizens, pardon me, allow me to ask, why am I called upon to speak here to-day? What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us? and am I, therefore, called upon to bring our humble offering to the national altar, and to confess the benefits and express devout gratitude for the blessings resulting from your independence to us?²⁸

Having begun his speech by candidly confessing his own embarrassment as a speaker on this occasion, Douglass now makes his listeners consider whether they are not embarrassed to have asked him to speak—embarrassed if they hoped that he would condemn slavery in the name of the Declaration, and in that curious way affirm the universal validity of the revolutionary tradition. For Douglass speaks "with a sad sense of the disparity between us":

25. See Cover, *supra* note 5, at 37–39.

26. Fourth of July, *supra* note 19, at 360.

27. *Id.* at 368.

28. *Id.* at 367.

I am not included within the pale of this glorious anniversary! Your high independence only reveals the immeasurable distance between us. The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought life and healing to you, has brought stripes and death to me. This Fourth [of] July is *yours*, not *mine*. *You* may rejoice, *I* must mourn. To drag a man in fetters into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. Do you mean, citizens, to mock me, by asking me to speak to-day? If so, there is a parallel to your conduct.²⁹

In these stinging oratorical lashes of almost punitive irony, Douglass reveals the putatively generous impulse of American revolutionary universalism as another episode of the slaveholder's assault, another guilty possession.

And let me warn you that it is dangerous to copy the example of a nation whose crimes, towering up to heaven, were thrown down by the breath of the Almighty, burying that nation in irrecoverable ruin! I can to-day take up the plaintive lament of a peeled and woe-smitten people!

"By the rivers of Babylon, there we sat down, yea, we wept when we remembered Zion. We hanged our harps upon the willows in the midst thereof. For there, they that carried us away captive, required of us a song; and they who wasted us required of us mirth, saying, Sing us one of the songs of Zion. How can we sing the Lord's song in a strange land? If I forget thee, O Jerusalem, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth."³⁰

Bidding the captive sing, America has become like Babylon; sharing that nation's "crimes, towering up to heaven," it may yet be "thrown down" and buried in "irrecoverable ruin." Captives ordered to sing by those who have carried them away to a strange land, the enslaved Africans are in the position of the exiled Israelites, "a peeled and woe-smitten people." And Douglass himself, a noted orator and fugitive slave, risks betrayal in the very act of accepting his hosts' invitation to speak; if he should forget Jerusalem, he vows, let his tongue cleave to the roof of his mouth.

Having quoted Psalm 137 to unmake his Fourth of July oration, Douglass proceeds to unmake an argument about slavery. "I fancy I hear some one of my audience say . . . [w]ould you argue more, and denounce

29. *Id.* at 368 (alteration in original).

30. *Id.* at 368 (quoting *Psalms* 137:1-6 (close to the KJV)).

less, would you persuade more, and rebuke less, your cause would be much more likely to succeed.”³¹ But Douglass insists on denouncing and rebuking. “At a time like this, scorching irony, not convincing argument, is needed.”³² In fact, he does “make” the argument that his audience expects to hear and to find persuasive, but he makes it ironically. The argument he “won’t make” is much like the song he “won’t sing in a strange land.” Both are performances that would fail in their object if simply given in immediacy. To succeed in their object they must be withheld, and the speaker must keep his distance.

“Must I undertake to prove that the slave is a man?”³³ No; the masters concede the manhood of the slave every time they threaten, fine, and punish him. “Would you have me argue that man is entitled to liberty? that he is the rightful owner of his own body?”³⁴ No; you have already declared “that men have a natural right to freedom”; for me to rehearse that principle “would be to make myself ridiculous.”³⁵ In every way, Douglass preserves his ground precisely by refusing to make the very argument that King later will associate with the oral Lincoln.³⁶

What, am I to argue that it is wrong to make men brutes, to rob them of their liberty, to work them without wages, to keep them ignorant of their relations to their fellow men, to beat them with sticks, to flay their flesh with the lash, to load their limbs with irons, to hunt them with dogs, to sell them at auction, to sunder their families, to knock out their teeth, to burn their flesh, to starve them into obedience and submission to their masters? Must I argue that a system thus marked with blood, and stained with pollution, is *wrong*? No! I will not.³⁷

Such scrupulous indirection marks a sharp contrast with the approach that Douglass takes to the “written constitution”—briefly and tentatively in the Fourth of July speech, more extensively in his well-known 1860 Glasgow speech. Douglass’ aim in the latter speech was to take on, point for point, the familiar reading of the Constitution as a pro-slavery document. Coming to the Preamble, Douglass directly challenges the

31. Fourth of July, *supra* note 19, at 369.

32. *Id.* at 371.

33. *Id.* at 369.

34. *Id.* at 370.

35. *Id.*

36. Compare Douglass’ argument, *infra* text accompanying note 37, with Lincoln’s argument, *supra* text accompanying note 15.

37. Fourth of July, *supra* note 19, at 370.

claim "that negroes are not included in the benefits sought under this declaration of purposes".³⁸

The constitution says "We the people;" the language is "we the people;" not we the white people, not we the citizens, not we the privileged class, not we the high, not we the low, not we of English extraction, not we of French or of Scotch extraction, but "we the people;" not we the horses, sheep, and swine, and wheelbarrows, but we the human inhabitants; and unless you deny that negroes are people, they are included within the purposes of this government.³⁹

Where is the difference between the two speeches? Notice that in neither speech does Douglass condescend to argue with those who "deny that negroes are people." The difference lies rather in how the speaker situates himself (and, by extension, his people) in relation to civic texts. In his Glasgow speech, Douglass treats the "written document" or "written instrument," the "written constitution,"⁴⁰ as a text whose meaning is readily discerned and whose application to contested constitutional questions is straightforward. "We the people" names a natural kind—"human inhabitants," not sheep or wheelbarrows. But in his Fourth of July speech, Douglass treats the Declaration of Independence, and the civic festival and anti-slavery argument associated with it, as "yours, not mine." It is as if, in his Fourth of July speech, Douglass is saying to his audience: You misunderstand me when you include me, however generously, in your categories. To understand me you must recognize how harshly you make me foreign and strange.

It is the very indignity and mockery entailed in demanding that the slave celebrate and praise the Declaration, that Douglass means to dramatize by insisting that the captive must not sing "the Lord's song in a strange land." "'Nature's God' has made me a 'human inhabitant'"—these are lyrics to "the Lord's song."⁴¹ But the rigor of Douglass' negative dialectics bars him from singing. Douglass honors the Declaration, and the tradition of invoking it against slavery, by making it the song he will not sing—not in slavery's "strange land."

Though Lincoln's Emancipation Proclamation, issued a little more than ten years later, seemingly leaves the land almost as "strange" as before, Douglass celebrates the new text by singing it.

38. Frederick Douglass, *The American Constitution and the Slave: An Address Delivered in Glasgow, Scotland (Mar. 26, 1860)*, in 3 DOUGLASS PAPERS, *supra* note 19, at 361.

39. *Id.* at 361.

40. *Id.* at 347–48.

41. See *supra* note 30 and accompanying text.

IV. "THIS DAY IS THIS SCRIPTURE FULFILLED IN YOUR EARS"

The Emancipation Proclamation was received with resentment by many Union soldiers, who preferred to fight against rebellion than against slavery, and who were not anxious to share the honor of their uniform with freedmen. Without generalizing about what its contemporaries understood the Proclamation to mean, or about their attitude toward it, we can find a common thread among things that were said and sung by those who welcomed it on the day it was issued—January 1, 1863. Especially in celebrations held by black people, we learn a good deal about “proclaiming liberty.”

Frederick Douglass records how the Proclamation was awaited and received at a gathering convened by black abolitionist leaders at Tremont Temple in Boston. (Most of the local white anti-slavery intelligentsia, however, convened separately at the Music Hall, where they too welcomed the Proclamation with song, oratory, and poetry.) When word began to spread, “It is coming! It is on the wires!!,” Douglass reports, “My old friend Rue, a colored preacher, a man of wonderful vocal power, expressed the heartfelt emotion of the hour, when he led all voices in the anthem, ‘Sound the loud timbrel o’er Egypt’s dark sea, Jehovah hath triumphed, his people are free.’”⁴² When at last the Proclamation was read out loud to them, the crowd joined together in singing the hymn, “Blow Ye The Trumpet, Blow”:⁴³

Blow ye the trumpet, blow,

Throughout the world proclaim;
The year of Jubilee is come[!]⁴⁴

In his Fourth of July Speech, Douglass had declined to sing the Lord’s song in a strange land. Now, receiving and celebrating the Proclamation, Douglass sings. He sings liberty; what is more, he lifts his voice in song to encourage others to make a joyful noise: “sound the loud timbrel,” “blow ye the trumpet.” It might appear that the motivation to sing out in this way is simply joy that freedom has been accomplished. But freedom was by no

42. FREDERICK DOUGLASS, *THE LIFE AND TIMES OF FREDERICK DOUGLASS* 352–53 (Rayford W. Logan ed., Bonanza Books 1962) (1892).

43. Frederick Douglass, *The Proclamation and a Negro Army: An Address Delivered in New York*, New York (Feb. 6, 1863), in 3 DOUGLASS PAPERS, *supra* note 19, at 568–569.

44. Charles Wesley, *The Year of Jubilee*, in JOHN WESLEY, *A COLLECTION OF HYMNS* 234 (1847) (also known by its first line, “Blow Ye the Trumpet, Blow”) [hereinafter *Blow Ye the Trumpet, Blow*]. The hymn also was anthologized in popular Baptist and non-denominational hymnals.

means accomplished, as Douglass well knew.⁴⁵ The point of singing was to hasten its accomplishment. Biblical prototypes offered instruction in how to participate in the day of liberty by proclaiming it. "Sound the loud timbrel" and "blow ye the trumpet" are exhortations whose sense depends on a particular appropriation by abolitionists of the salvation-history of Israelites freed from bondage in Egypt.

The Exodus narrative was very familiar to the slaves; it was featured in their spirituals and stressed in abolitionist argument.⁴⁶ Douglass had given that narrative a surprising application in his Fourth of July address. He had described the revolution against Britain as an Exodus, and the festival-day of this revolution (Independence Day) as a Passover. "This, to you, is what the Passover was to the emancipated people of God. It carries your minds back to the day, and to the act of your great national deliverance; and to the signs, and to the wonders, associated with that act, and that day."⁴⁷ But if revolutionary America were to Britain as Israel to Egypt, slavery's ironic reversal of the revolutionary ideology meant that now (in 1852) America was to black slaves as Babylon to Israel. So the lament of the exile gave the truest voice to the situation of the enslaved.

At Tremont Temple, Douglass changes his tune. The Exodus narrative is reclaimed for America's black Israelites. But if the Tremont crowd sings Egypt in joy rather than entreaty—Jehovah's people have crossed Egypt's dark sea to freedom, so no more need to "Tell ol' Pharaoh, Let my people go"—the narrative still points Biblically toward an unfolding realization. On the other side of that dark sea was a wilderness, and in it the Israelites would wander forty years. Moses would not enter

45. Douglass certainly knew that freedom for his people was a long way ahead. One month after the Tremont Temple celebration, in a speech about the Proclamation, he called for "a Negro army" to accelerate the course of emancipation. The Proclamation and a Negro Army: An Address Delivered in New York, New York (Feb. 6, 1863), in *DOUGLASS PAPERS*, *supra* note 19, at 549. Douglass described the Proclamation as a belated and limited act, whose promise might still be realized if the free black people of the Union, and those newly emancipated and fleeing to Union lines, could be recruited and organized into an effective fighting force. But he punctuated his pragmatism with appeals to the ultimate ground of liberty: to "the moral chemistry of the universe," and to "that almost inspired announcement of equal rights contained in the Declaration of Independence." *Id.* at 554. The Proclamation—prosaic and political as it was—somehow made good on the Declaration.

46. On the popularity among the slaves of the story of the Exodus, and the uses to which they put that narrative in their own songs, sermons, and stories, see generally *CALL AND RESPONSE: THE RIVERSIDE ANTHOLOGY OF THE AFRICAN AMERICAN LITERARY TRADITION* (Patricia Loggins Hill ed., 1998) [hereinafter *CALL AND RESPONSE*]. On the readiness of the freedmen to interpret the course of their emancipation in terms of that narrative, see *ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION: 1863-1877*, at 44, 70, 93 (1988) [hereinafter *RECONSTRUCTION*]. See also *MICHAEL WALZER, EXODUS AND REVOLUTION* 31, 58 (1985).

47. Fourth of July, *supra* note 19, at 360.

the promised land. But to him God would speak the law, “mouth to mouth”⁴⁸ at Sinai. And central to this law was a new relationship between God and the people. Freedom would be realized only within this law, and only in recognition of God’s claims upon the people as their deliverer.

In this narrative context, “Jehovah has triumphed” does not mean that what has been accomplished is the definitive victory over bondage; and “his people are free” does not mean that they finally or fully become “his people” in crossing the Red Sea. Their freedom requires a more definitive conquest than the overthrow of the Egyptian chariots and horsemen. “Sound the loud timbrel o’er Egypt’s dark sea” is a striking choice to express the Tremont singers’ appreciation of a deliverance worth celebrating but not yet achieved. For these are the words of “Miriam’s song,” spoken by “Miriam the prophetess, the sister of Aaron,” who “took a timbrel in her hand; and all the women went out after her with timbrels and with dances. And Miriam answered them, Sing ye to the Lord, for he hath triumphed gloriously, the horse and his rider hath he thrown into the sea.”⁴⁹ Here, for the first time in the Bible, the title of “prophet” (given, for example, to Abraham and to Moses) is assigned to a woman. Douglass, who had championed women’s causes and sought closer ties between abolitionism and emergent feminism, sings “deliverance” in the voice of the prophetic woman addressing her sisters who find themselves on the cusp of freedom. In this way he celebrates deliverance while retaining his identity as an outsider, and uses the impressive show of emancipation to throw into greater relief the as-yet unredeemed bonds of actual social relations.

By turning to “Blow Ye the Trumpet, Blow,” another hymn sung at Tremont to welcome the Emancipation Proclamation, we can see more vividly how Biblical narrative and aspects of American political culture made possible the Proclamation’s oral reception and induction into an oral tradition. The hymn’s text is drawn from Leviticus, chapter 25, which records one of the obligations upon the people of Israel that God revealed to Moses at Sinai. Leviticus 25:10 provides, “And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the

48. *Numbers* 12:8. Though the transmission of law “mouth to mouth” refers to the oral law given to Moses at Sinai, and passed down by him through the elders and sages of Israel, it also connotes difference. The burden of *Numbers* 12 is that though Miriam is a prophet, God does not make his revelation known to her (or to Aaron) as to Moses; it is only to *Moses* that God speaks “mouth to mouth.”

49. *Exodus* 15:20–21. The version of Miriam’s song sung by the Tremont crowd was written by Thomas Moore, the Irish Romantic poet. See Thomas Moore, *Sound the Loud Timbrel*, in *THE GOLDEN BOOK OF CATHOLIC POETRY* 127 (Alfred Noyes ed., 1946) (also known as “Miriam’s Song”).

inhabitants thereof: it shall be a jubile unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family." This verse would have been familiar to the Tremont singers not only through Leviticus but also because it was the source of the inscription on the Liberty Bell—a matter of some importance, as will be seen. Leviticus 25:9 provides for announcing the year of Jubilee. "Then shalt thou cause the trumpet of the jubile to sound . . . in the day of atonement . . ." By sounding the trumpet ("blow ye the trumpet"), as required in verse 9, the people begin to "proclaim liberty" as required in verse 10.

The obligation to "proclaim liberty" influences the prophet Isaiah: "[T]he Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound."⁵⁰ By the time that the crowd at Tremont Temple sang "Blow ye the trumpet," both Leviticus 25:10 and this passage from Isaiah had become staples in abolitionist argument. Garrison, for example, wrote a poem based on Leviticus 25:10:

God speed the year of jubilee
The wide world o'er!
When from their galling chains set free,
Th' oppress'd shall vilely bend the knee,
And wear the yoke of tyranny
Like brutes no more.⁵¹

Douglass ends his Fourth of July speech by quoting this poem.

Garrison also put the passage from Isaiah to anti-slavery use, when in an early Fourth of July address he called upon "the ambassadors of Christ everywhere" to "proclaim liberty to the captives" so that "the song of deliverance be heard" and "all Africa be redeemed from the night of moral death."⁵² This is characteristic, but very complex. A Hebrew Bible text is addressed to Christians; the Christianized text is adduced as an anti-slavery text; and the whole ensemble forms part of the background meaning of a civic icon (the Liberty Bell) and of a Christian hymn ("Blow Ye the Trumpet, Blow") that become attached to one another, like the Declaration of Independence and the Emancipation Proclamation, as "binary stars."

50. *Isaiah* 61:1.

51. Fourth of July, *supra* note 19, at 387 (quoting William Lloyd Garrison, *The Triumph of Freedom*, *LIBERATOR*, Jan. 10, 1845).

52. William Lloyd Garrison, *Address to the American Colonization Society*, *LIBERATOR*, July 4, 1829, reprinted in *THE LIBERATOR*, *supra* note 21, at 69.

The year of Jubilee, as described in Leviticus, was a festival celebrated every fifty years⁵³ and proclaimed by a blast of the *shofar* (“blow ye the trumpet”). As every seventh day is a sabbath day in honor of God’s work of creation, and every seventh year a sabbath year, Jubilee marked a sabbath of sabbath years, in remembrance of God’s work of redemption in bringing the Israelites out of bondage in Egypt and into a new covenant relationship.⁵⁴ In recognition of this relationship, they would be required at Jubilee to redeem bondsmen and to restore alienated land.⁵⁵

At Tremont Temple, singing “Blow Ye the Trumpet, Blow,” Douglass signals that God has sped the year, and it has come. Like the sabbath day or the sabbath year, the year of Jubilee is a realization of the eternal in time, and to that extent there is already reason for joy—literally, jubilation. But the coming of Jubilee does not mean that the slaves are in fact free; it means only that the time of their emancipation is at hand.

For Douglass, singing Jubilee at Tremont Temple was not burdened with the guilt of abandoning Jerusalem or forgetting Zion, so he did not invite the loss of his orality—his tongue would not cleave to the roof of his mouth, as he vowed it would if he sang the Lord’s song in a strange land. But the problem of timing, which in its theological dimension is a problem of eschatology—what has been fulfilled already, and what is not-yet?⁵⁶—is hardly tractable. Given its belatedness, its limitations, and its prosaic style, why is the Emancipation Proclamation the Lord’s song? Is wartime America, split between North and South, with the military outcome uncertain, still a strange land; or is it two lands, one more and one less strange; or is it “my country . . . of thee I sing”? Is Douglass still a stranger in a strange land on January 1, 1863, as he said he was on July 5, 1852; or is he an “exile in *his own land*,” as Martin Luther King described himself on August 28, 1963?

Such questions turn in part on what the singers are doing when they oralize a Hebrew Bible text (Leviticus 25) into a Christian hymn sung at a political rally marking the promulgation of a law-like writing. The

53. The Liberty Bell was commissioned in 1751 to celebrate the golden anniversary of a written “constitution,” William Penn’s 1701 Charter of Privileges; hence the choice of the jubilee text, Leviticus 25:10, for its inscription.

54. *Leviticus* 25:38, 54–55.

55. Israelites were obligated at Jubilee to redeem their own people who had fallen from indebtedness into bondage. *Id.* at 25:39–43. They were authorized, however, to keep foreigners in bondage. *Id.* at 25:44–46.

56. The distinction is drawn in recent Christian theology and originates with Oscar Cullmann. See ED. L. MILLER & STANLEY J. GRENZ, *FORTRESS INTRODUCTION TO CONTEMPORARY THEOLOGIES* 50 (1998).

Douglass of 1852, at the critical moment in his speech, quotes to his audience a Hebrew Bible text: Psalm 137 ("by the rivers of Babylon"). It serves Douglass as his ironizing text. Its purpose is to defeat the audience's expectations, so that the Declaration of Independence can serve Douglass not as his text but instead as his ironic text. As the ironizing text, Psalm 137's authority is derivative. Douglass quotes it not because he is committed to the Hebrew Bible as an independently authoritative text, but because it orients him correctly in relation to his speech-situation. In fact, like most or all of those who would join him later in singing at Tremont Temple, Douglass was involved in the Christian hermeneutic practice of reading Hebrew Bible texts as an "Old Testament," to be decoded into types and figures of a "New Testament." The question of where the singers thought they stood, between promise and fulfillment, depends on whether that hermeneutic practice was controlling.

The Gospel of Luke reports that Jesus, preaching in the synagogue at Nazareth, took the above-quoted passage from Isaiah as his text, and described himself as the one who had come to "proclaim liberty" and preach the jubilee year.⁵⁷ Then Jesus "closed the book" and said to the people at the synagogue, "This day is the scripture fulfilled in your ears."⁵⁸ As the movement from writings to oral *kerygma* is a Christian fulfillment, so is the sublimation of Yom Kippur into Christ's substitutional atonement, and the reinterpretation of redemption as salvation from sin. This reappropriation of the Hebrew Bible is very evident in "Blow Ye the Trumpet, Blow":

Jesus, our great High Priest,
Hath full atonement made:

Ye slaves of sin and hell,
Your liberty receive[.]⁵⁹

The *shofar* becomes "The gospel trumpet," which brings "news of heavenly grace," and proclaims the real meaning of the Jubilee: the invitation to "Return, ye ransomed sinners, home."⁶⁰

In purely theological terms, Christ's message of grace can be understood as "scripture fulfilled in your ears," without threatening the integrity of the entreaty to sinners to "return." Christian liberty is freedom from sin and death, given freely in grace, and can be interpreted as freedom

57. See Luke 4:16–19.

58. *Id.* at 4:20–21.

59. *Blow Ye the Trumpet, Blow, supra* note 44.

60. *Id.* The "gospel trumpet" also signals the resurrection of the dead. 1 *Corinthians* 15:52.

from the fatal sting of the law; but the justification of sinners precedes their sanctification. Those who have been given grace can meaningfully be asked to respond faithfully to the gift. But it is not so clear how this “proclaims liberty” in political terms. Once the written text of Emancipation is “fulfilled in your ears” at Tremont Temple, what remains to be done? Who are the “sinners”? If they are the enslaved, where have they sinned, and why should they be asked to look upon their emancipation as an unmerited act, a free gift of grace?⁶¹ If they are the slaveholders, what difference (as a matter of politics) does it make if Christ loves even them? Hasn’t Christ always loved them, even before January 1, 1863? What change is wrought by the Emancipation Proclamation, what liberty worth singing?

It was possible to view events in terms of a less Christianized (or, perhaps better, a differently Christianized) version of Biblical narrative. Leviticus provided that Jubilee was to begin with the *shofar* blast on the day of atonement, and Lincoln had proclaimed a day of penitence, a National Fast Day, to prepare the people for the trials and sacrifices of the war.⁶² Much later, in his second inaugural address, the oral Lincoln would interpret the war’s bloodshed as a penitence for slavery—“until all the wealth piled by the bond-man’s two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword.”⁶³ Though these words had not yet been spoken (by Lincoln, at least) at the beginning of 1863, the crowd at Tremont Temple might have anticipated them. It would have been difficult, emotionally, theologically, and politically, for them to have celebrated Emancipation as both complete and incomplete—complete in the sense that none need earn it, but incomplete in the sense that sinners (on both sides, Douglass insisted in 1852) had not yet fully avowed their sinfulness or “returned” in a truly penitential spirit. To “proclaim liberty” in this way would have required the singers to preserve the “scorching irony” of Douglass’ Fourth of July speech within the joy of Emancipation Day.

61. Davis, *supra* note 1, at 17.

62. See Abraham Lincoln, Proclamation of a National Fast Day (Aug. 12, 1861), in 4 COLLECTED WORKS, *supra* note 12, at 482–83.

63. Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), in 8 COLLECTED WORKS, *supra* note 12, at 333.

V. "LET FREEDOM RING"

While Douglass and the Tremont celebrants in Boston, far removed from the lines of battle, were singing "Sound the loud timbrel o'er Egypt's dark sea" and "Blow ye the trumpet, blow," freedmen at a Union Army outpost chose a different song to welcome the Emancipation Proclamation. Camp Saxton, South Carolina, was located on the Sea Islands, one of the places behind Union lines specifically covered by the Proclamation. The Camp "was the one spot where the abolitionists and missionalry teachers," along with thousands of newly freed slaves, "could celebrate an emancipatory moiment."⁶⁴

At Camp Saxton, "the Sea Island freedmen demonstrated their own loyalty, at the moment when a flag was being presented to the white commander of a new black regiment, by spontaneously singing 'My Country, 'Tis of Thee':"⁶⁵

My country, 'tis of thee,
Sweet Land of Liberty,
Of thee I sing.

Land where my fathers died,
Land of the pilgrims' pride,
From every mountain-side
Let Freedom ring[!]"⁶⁶

King, "one hundred years later," echoes the freedmen's words, and looks forward to a future song of more perfect communion and fulfillment:

[W]hen we allow freedom ring, when we let it ring from every village and every hamlet, from every state and every city (*Yes*), we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last! (*Yes*) Free at last! Thank God Almighty, we are free at last!"⁶⁷

Like "Blow Ye the Trumpet, Blow," "Free at Last" draws on the Biblical image of the freed captive, from Leviticus and Isaiah, to express joy at the Christian's emancipation from chains of sin and death. The Christian thanks God because Christ has defeated sin; indeed, as the song

64. Davis, *supra* note 1, at 10.

65. *Id.*

66. S.F. Smith, *America*, in *BREATHES THERE THE MAN: HEROIC BALLADS & POEMS OF THE ENGLISH-SPEAKING PEOPLES* 81 (Frank S. Meyer ed., 1973) (1832) (also known by its first line, "My Country, 'Tis of Thee") [hereinafter *My Country*, "Tis of Thee"].

67. *I Have a Dream*, *supra* note 7.

points out, Christ has gone right down into Hell itself to triumph over Satan, and come back to lead the saints.⁶⁸

But the twin difficulties—that a Jew cannot sing that Christ has defeated sin and death, and that freedom from oppressive segregation is “not yet”—are partially relieved by King’s framing device. Where the Tremont Temple celebrants actually greeted the Emancipation Proclamation by singing the jubilee hymn, King’s whole point is that (“one hundred years later!”) we are *not yet* able to sing “Free at last.” The day of realized eschatology, “when we allow freedom to ring,” is *not yet* come. And so the force of King’s conclusion is “let it ring,” or, as he nine times puts it in his peroration, “let freedom ring.”

The freedmen who sang “let freedom ring” at Camp Saxton on January 1, 1863, resolved any doubts about the meaning of what they sang—is freedom already realized and now to be more fully proclaimed, or is the “not-yet” as important as the “already”?—by their readiness to bleed and die. King suggests that he and his people are also prepared to do so; the difference is that unlike the Camp Saxton men, they are not at war and will not employ violence. Should his commitment to nonviolence mislead anyone into thinking that King holds that the promise contained in the “magnificent words” of freedom is already fulfilled, he makes it clear that “now is the time” to act in furtherance of the day he envisions with his faith (his dream), and that “with this faith we will be able” to turn despair to hope, and “to sing with new meaning, ‘My country, ‘tis of thee’” (The verb tenses and moods of “I Have a Dream” are its theological backbone.⁶⁹)

In 1832, when Samuel Francis Smith wrote “My Country, ‘Tis of Thee,” he might have been thinking of the old Statehouse bell in Philadelphia, with its inscription from Leviticus 25:10, “Proclaim liberty throughout the land unto all the inhabitants thereof.” By 1863, when the freedmen at Camp Saxton sang to celebrate Emancipation, abolitionists had given it its new name, the Liberty Bell.⁷⁰ The Bell had rung in 1776, on

68. *Free at Last*, in CALL AND RESPONSE, *supra* note 46, at 558 (folk spiritual).

69. The temporal sequence proceeds in this order: (1) “what will go down in history;” (2) “Fivescore years ago;” (3) “one hundred years later” (*repeated four times*); (4) “Now is the time” (*repeated four times*); (5) “Nineteen sixty-three is not an end, but a beginning;” (6) “I have a dream that one day” (*repeated seven times*); (7) “With this faith we will be able” (*repeated three times*); (8) “This will be the day” (*repeated two times*); (9) “Let freedom ring” (*repeated ten times*); (10) “When we let it ring . . . we will be able to speed up that day when all of God’s children will be able to join hands and sing;” (11) “Free at last!” (*repeated three times*). I Have a Dream, *supra* note 7.

70. ERIC FONER, THE STORY OF AMERICAN FREEDOM 70, 89–90 (1998).

July 8, to call people to the first public reading of the Declaration of Independence. Now, as the freedmen sang "let freedom ring," it continued its work of transferring written "constitution" into the oral tradition. Where once it was the Declaration, now it was the Proclamation that would be oralized. More precisely, the Proclamation that would "ring out" audibly would be the Declarationized Proclamation. The process is far too complex to count the winners and the losers; specific Biblical and theological associations to the texts of Leviticus, Isaiah, and Luke, which informed the hymns sung at Tremont Temple, transformed the oral tradition and were transformed by it.

When they heard the Emancipation Proclamation, many listeners—not only those at Tremont Temple, but those at the Music Hall, and at Camp Saxton—must have thought that the true principles of American constitutionalism were at last being brought to a more perfect realization. Since the 1850s, in speech after speech, Lincoln had indicted slavery in the name of "all men are created equal." Now, on the first day of 1863, surely he must have ordained equality for the freedmen, and secured to them their right to life, liberty, and the pursuit of happiness. The "Great Messiah of 'Dis Jubilee,'" the Lincoln revered by black people who fled to the advancing Union lines,⁷¹ could not have intended to proclaim a lesser Emancipation. Surely, in his Proclamation, the long-stilled Bell pealed once again for Liberty.

This is the Emancipation Proclamation that King recalls implicitly at the end of his "Dream" speech. The speech opens, as has been seen, with an express centennial commemoration of the Proclamation. It closes by "proclaiming liberty," prolonging the Proclamation—but in terms of the oral tradition. Those who have ears to hear will understand as King imagines the new day of new liberty: "the day when all of God's children (*Yes*) will be able to sing with new meaning: 'My country, 'tis of thee (*Yes*), sweet land of liberty; of thee I sing. Land where my fathers died, land of the pilgrim's pride (*Yes*), From every mountainside, let freedom ring!'"⁷²

And now the ninefold tintinnabulation: "And so let freedom ring (*Yes*) from the prodigious hilltops of New Hampshire. . . . Let freedom ring from Stone Mountain of Georgia (*Yes*). . . . Let freedom ring from every hill and molehill of Mississippi (*Yes*) [*Applause*]. From every mountainside,

71. FONER, RECONSTRUCTION, *supra* note 46, at 70 (quoting a letter by General William T. Sherman describing freed Georgia slaves' references to Abraham Lincoln).

72. I Have a Dream, *supra* note 7 (quoting *My Country, 'Tis of Thee*, *supra* note 66).

[*Applause*] let freedom ring. [*Applause*]⁷³ At this moment the delivery comes so very close to deliverance itself. The very bell is pealing once again; the cracked bell peals, the slain President speaks again. “At that moment it seemed as if the Kingdom of God appeared,” Corretta King commented. “But it only lasted for a moment.”⁷⁴

In fact, King cannot bring the Kingdom, and he is not proclaiming it in his speech. What is “already” he carefully poises against what is “not yet,” preserving the true futurity of hope. There “will be the day [*Applause continues*]”—it has not come yet—when we will sing together “let freedom ring.” “And when we allow freedom ring”—we have not yet done so—*then* we “will be able to join hands and sing in the words of the old Negro spiritual, ‘Free at last! free at last! . . .’”⁷⁵

Until then, as with Frederick Douglass on the Fourth of July, “Free at last” will remain one of the songs we make a show of not-yet-singing—one of the “songs of Zion.”

73. I Have a Dream, *supra* note 7.

74. A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR., 217 (James Melvin Washington ed., 1986).

75. I Have a Dream, *supra* note 7.