

To Secure the Blessings

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“To Secure the Blessings”

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1. Program for a reading of the Blessings Clause

a. Overview of the argument

The Constitution's Preamble states, in part: "We the people of the United States, in order to... secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."¹ I will call this part of the Preamble the Blessings Clause. We might equally well call it the Liberty Clause, since it includes the only instance of the word "liberty" in the original (unamended) Constitution. Or we could refer to it as the Posterity Clause, in light of its exceptionally explicit attention to the Constitution's intergenerational legacy, purpose and effect. Today, concerned as we are with questions about the Constitution's extraterritorial reach and its applicability to non-citizens (such as detainees held in the war on terror), we might call it awkwardly the "Ourselves and Our" Clause, avowing our interest in this part of the larger problem of correlating our political identity as "we the people" with our commitment to the authority and supremacy of the Constitution. But I will call our text the Blessings Clause. In this paper I will offer an account, informed by Biblical narrative and theology, of how we contribute to the worth of fundamental law by embracing that law "to secure the blessings."

A careful study of how Americans wrote and spoke about blessings in late eighteenth-century political contexts would reveal, I think, that they typically avoided choosing between a conception at home in Biblical accounts of the divine-human relationship and conceptions framed by other views of nature, morality and society. Like references or appeals to "their creator," "nature's god," "divine providence," and "the supreme judge of the world," all of which are attested in the Declaration of Independence and other texts, contemporary references to "blessings" often are ambiguous.

Occasionally, as in President Washington's 1789 Proclamation of a national day of thanksgiving, references to blessings are made in a context that tips their meaning in a Biblical direction. Washington begins by treating blessings as favors, including "the civil and religious liberty with which we are

¹ The Preamble says, in full: "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. Constitution, Preamble.

blessed,” that God has conferred upon the American people.² Offering thanks for such favors is certainly consistent with a Biblical view, but it is also consistent with the view that we ought to be grateful for our good fortune. But Washington sounds a Biblical note when he goes on to commend a day of thanksgiving “that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him to pardon our national and other transgressions.”³ As gratitude shades into humility and awareness of wrongdoing, attention to blessings shifts from recognition of favors to an acknowledgement that God’s mediation will be necessary if the republic’s latent good is to be realized. Washington concludes by reserving the day of prayer:

to render our National Government a blessing to all the people by constantly being a Government of wise, just, and constitutional laws, discreetly and faithfully executed and obeyed; to protect and guide all sovereigns and nations (especially such as have shown kindness to us), and to bless them with good governments, peace, and concord; to promote the knowledge and practice of true religion and virtue, and the increase of science among them and us; and, generally, to grant unto all mankind such a degree of temporal prosperity as He alone knows to be best.⁴

Notice that accompanying the shift from gratitude for special favors to supplication for divine intervention is a move “to render our National Government a blessing to all the people,” and to ask blessings upon “all sovereigns and nations.” Here too, the conception of blessings is closely congruent to Biblical accounts. But all of this is not unexpected in the context of a proclamation of a national day of thanksgiving; and even in this context, Washington’s phrasing (“Almighty God,” but also “the beneficent author of all the good that was, that is, or that will be,” and “the great Lord and Ruler of Nations”) is consistent with a generic ceremonial or civic religion.

Compare John Jay’s uses of “bless” in the second Federalist Paper. Jay says of America that “Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the

² “Proclamation: A National Thanksgiving,” October 3, 1989, in A Compilation of the Messages and Papers of the Presidents, Prepared under the direction of the Joint Committee on printing, of the House and Senate Pursuant to an Act of the Fifty-Second Congress of the United States (New York : Bureau of National Literature, Inc., 1897); http://avalon.law.yale.edu/18th_century/gwproc01.asp

³ Id.

⁴ Id.

delight and accommodation of its inhabitants.”⁵ This way of correlating Providence and blessing is entirely consistent with a naturalistic interpretation of “nature’s god” and “divine providence” (terms in the Declaration of Independence). Jay goes on to say that “A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it.”⁶ Here the phrase “the blessings of union,” like “the value... of union,” can mean something like “the moral and political benefits of union.” None of the ten instances of “bless / blessing” as noun or verb in the Federalist Papers gesture toward a Biblical conception. Notably, though, Madison’s discussion of blessings is colored by the realistic view of human reason and motivation he puts forward in the Tenth paper. Madison, as is well known, justifies the Constitution’s structural scheme as a device needed to control for the fallibility of human reason, the link between human reason and self-love, and the human inclination toward faction and mutual oppression.⁷ Accordingly, Madison says in Federalist No. 45 that the people need the Union “to guard them against those violent and oppressive factions which embitter the blessings of liberty....”⁸ As we will see, an awareness of the potential bitterness of blessings is a hallmark of Biblical narrative.

Of the three instances of the phrase “blessings of liberty” or “blessing of liberty” in the Federalist papers (one of which directly quotes the Blessings Clause as a discrete textual unit),⁹ none choose in any way between Biblical and

⁵ Jay, Federalist No. 2, http://avalon.law.yale.edu/18th_century/fed02.asp. Compare Hamilton’s reference in Federalist 15 to “a community so peculiarly blessed with natural advantages as we are.” http://avalon.law.yale.edu/18th_century/fed15.asp

⁶ Id. Compare Madison’s description of political stability in Federalist No. 37 as “among the chief blessings of civil society.” http://avalon.law.yale.edu/18th_century/fed37.asp

⁷ Madison, Federalist No. 10.

⁸ Madison, Federalist No. 45, http://avalon.law.yale.edu/18th_century/fed45.asp. Similarly, Madison observes in Federalist No. 41 that “the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused.” Madison, Federalist No. 41, http://avalon.law.yale.edu/18th_century/fed41.asp (emphasis in original).

⁹ Madison, Federalist No. 45, id.; Hamilton or Madison, Federalist No. 62, instability “poisons the blessing of liberty itself,” http://avalon.law.yale.edu/18th_century/fed62.asp ; Hamilton, Federalist No. 84 (quotes the Blessings Clause as a discrete textual unit), http://avalon.law.yale.edu/18th_century/fed84.asp

other conceptions of blessings. Like “their creator,” “nature’s god,” “divine providence,” and “the supreme judge of the world,” instances of “blessings of liberty” in the Federalist Papers – and, it seems to me, in the Preamble – fit within a family of views. In recent decades, however – and periodically throughout American history – evangelical Christians have urged a view of our founding and of the texts and sources of our fundamental law that assumes Biblical faith and morality as foundational.¹⁰ In previous work, I have indicated what I take to be sometimes surprising consequences of approaching our fundamental law from within that assumption. If the Ten Commandments, for example, are foundational to American constitutional law, as some evangelical proponents of public Ten Commandments displays have asserted, then the context of Sinai in the redemption of the people from bondage in Egypt points to emancipation and the Reconstruction Amendments and Civil Rights Acts as normative. On the evangelicals’ own assumption, the Constitution’s valence is emancipatory and egalitarian.¹¹ Similarly, taking seriously a Biblical element in the Pledge of Allegiance’s affirmation of “one nation under God” might require that we situate the affirmation in Lincoln’s Gettysburg Address, and in the faith that as a result of sacrifice and atonement, “this nation, under God, shall have a new birth of freedom.”¹² A Biblical view of the Declaration’s proposition that “all men are created equal” is alert to the many ways in which our recourse to the proposition casts it in an ironic light, and challenges the assumption that human equality can be grasped adequately within the horizon of assertedly self-evident truths.¹³

In this paper, I will work out a reading of the Blessings Clause that is plausible if we locate (or relocate) the Clause in the context of Biblical narrative. Such a reading stresses some of the same themes that Washington adumbrates in his Proclamation of a national day of thanksgiving. Gratitude for favors received – for a surplus that extends beyond what is due us – leads to an appreciation of human creatureliness, fallibility, and wrongdoing. Thankfulness as humility in relation to favors matures into praise of God, affirmation of a covenant

¹⁰ See generally Peter Irons, God on Trial: Dispatches from America’s Religious Battlefields (New York, 2007); Gareth, “The Ten Commandments and the Fourteenth Amendment,” Hebraic Political Studies, Vol. 4, No. 4 (Fall 2009), pp. 399–416.

¹¹ “The Ten Commandments and the Fourteenth Amendment,” *id.*

¹² Gareth, “‘The Last Full Measure of Devotion:’ Sacrifice and Textual Authority,” 28 Cardozo L. Rev. 277 (2006); Gareth, “Honoring an Inheritance,” USC Law (Fall, 2002), p. 52.

¹³ Gareth, “Creation and Commitment: Lincoln, Thomas, and the Declaration of Independence,” 65 So. Calif. L. Rev. 1477 (1992).

relationship, and prayerful supplication. Without God's aid our blessings turn to curses. With God's aid we turn our blessings inward and outward to all people, accepting God's judgment upon our corrupt motives.

The Biblical view of blessings, I will suggest, is ironizing; it tends to reveal incongruities throughout our picture of ourselves as blessed and as blessing others. Relocating or transposing the Blessings Clause into this Biblical frame has a salutary ironizing effect, enabling us to see the whole project of securing the blessings of liberty to ourselves and our posterity in a more critical light. Without irony, what is otherwise virtuous – our disposition to gratitude – is tainted by the vice of complacency. Without gratitude, the virtue in irony declines into a self-congratulatory sarcasm.

But the whole project of registering American constitutional projects in the idiom and expectations of Biblical narrative is subject to a second layer of ironic critique. Underlying associations or analogies between America and the people Israel often give rise to an inflated estimate of the moral powers and promise of human political association, and constitute an appropriation of a people's identity and sacred texts in ways that ought to concern us. An ample recognition of the internal irony in Biblical narrative may chasten our sense of who we are as a people securing the blessings; but it ought also to chasten the ways we nest Constitutional and Scriptural identities within one another.

Part 1.b. sets out some criteria for a reading of the Blessings Clause, and briefly sketches the lines along which some of these criteria can be met. The reading I work out in this paper does not meet all of the criteria, and much work remains to be done.

Part 2 specifies some of the concepts on which the interpretation depends. Thus, part 2.a. explains how words such as "blessings" and others in its cluster of concepts (such as faith, providence, sacred, created) can straddle sacred and this-worldly meanings. Part 2.b. sketches how arguments about the meaning of the Blessings Clause arise not only in the context of cases or controversies that a court might in principle decide, but also and perhaps primarily in the context of large questions about the nature and ground of the Constitution's authority. Part 2.c. looks to Frederick Douglass and Reinhold Niebuhr to clarify the relevant concept of irony.

Part 3 follows what I take to be one of the two main seams that typically join constitutional and Biblical conceptions: Creation as divine-human relationship. This part works out what the Blessings Clause means when coupled to the proposition that "all men are created equal" and to the universalistic

blessings text in the early chapters of Genesis. Though the interpretation illuminates a possible connection between “blessings” and “posterity,” it fails to account for the Clause’s particularism (“ourselves,” “our”).

Part 4 follows the second major seam joining Constitutional and Biblical thought: the image or conceit of America as a new Israel. The search for a theological reading of the Blessings Clause that not only fits its distinctive wording but also brings out its ironizing value leads to Biblical narratives about God’s blessings upon Abraham, and above all to the story of how Jacob obtained his brother Esau’s birthright and blessing. Moral and perhaps spiritual ambiguities surrounding Jacob’s action to secure the blessings also orbit, I will suggest, the Preamble’s action. These are ultimately the ambiguities of our own action, when and if we truly mean “we” when we say that we the people ordain the Constitution in order to secure the blessings. In this reading: the framers of the law (“fathers”) suppose that they “secure the blessings” to and for the generations to come, but the children actually “secure the blessings” from the “fathers” (by deceit if necessary); “to secure the blessings” it is necessary to overthrow the law (albeit for the sake of realizing it); the blessings are not “secure,” but instead fundamentally open or at risk in a way that gives depth of significance to life and law; life graced with the blessings is not “secure,” and the prosperity or abundance in “blessings” offers no immunity against the human circumstances of pain, loss, grief, anxiety, and guilt; the ground and source of the blessings upon “ourselves and our posterity” require that “we the people” mediate blessings to all humankind; but we exchange blessings for curses if do not act with humility and in awareness of our limitations and mixed motives.

Part 5 concludes, and revisits the idea of liberty in the blessings context. “The blessings of liberty” are not entailed by liberty itself, but are instead a surplus conditioned on and (at best) productive of relational attitudes such as gratitude and caregiving.

It should be stressed that the idea and action of blessing, like the idea of a created endowment (“all men are created equal”) and creation stories unfolding that idea, also figure prominently in non-Biblical religious traditions. Like a mirror with many facets, the organic texts of American constitutional law enable many traditions to recognize themselves in the leading ideas that those texts publish for all to see. I write from a Biblical standpoint because I stand within it; if I do not see (for example) the Navajo blessing way reflected in the Blessings Clause, it is because I do not know that way. But I also write from a Biblical standpoint because, while I stand within it, my faith seeks to improve itself through understanding. And this is equally true of how I write from a

Constitutional standpoint. I hope to know better the blessings that I receive today in my complex and complementary “posterities,” that I might be more worthy of such blessings. I hope also to know better how to perform my office as one of “we the people” to secure the blessings to “posterities” of tomorrow.

b. Criteria for a reading of the Blessings Clause

A reading of the Blessings Clause ought to satisfy several criteria. These include, but are not limited to:

1. Internal coherence. On what understandings of the key concepts – “blessings,” “liberty,” “secure,” and “ourselves and our posterity” – is the stated purpose coherent? Why does this clause look to an intergenerational horizon (“posterity”)? Is it better to read “the blessings of liberty” as (something like) “the benefits or favors resulting from liberty,” or as (approximately) “those favors or good things, liberties”? On the former reading, if “blessings” are an advantageous consequence, boon or benefit resulting from liberty, and if “to secure” this benefit means to guarantee it, is it clear that such a guarantee is consistent with “liberty” as the source of the benefit? Will the Constitution protect liberty even if the results are disadvantageous – if liberty brings curses, not blessings? In securing the blessings of liberty to our posterity, are we blessing our posterity? If so, may the blessees, in the exercise of their liberty, decline the blessing? In general: how does adoption of fundamental law for the republic “secure the blessings”?

2. Suitably disposing the agent. While some public ends (perhaps providing for the common defense is one such end) supply sensible purposes for the ordering of fundamental law regardless of any attitudes held by the public or by office-holders, it is possible that “blessings” are different. A reading of the Blessings Clause should address the question of whether securing the blessings of liberty requires that agents dispose themselves in certain ways. In particular, can something be a “blessing” if it is not received in humility and gratitude?)¹⁴ This

¹⁴ Not uncommonly, the dispositions of persons within religious traditions include a sense of gratitude for blessings received, and a readiness to respond to blessings with humility. The one blessed (“blessee”) understands the offer or conferral of blessings as supplying a reason for participating in a normative form of life which includes relationships to the ultimate source of blessings (God, or the gods, or the spirit). But if blessing relates blessee to bestower of blessing, it also relates or integrates a wider community. The blessee understands the actual or potential receipt of blessings as inviting, authorizing or modeling ways of conferring blessings upon others. Thus in communities that take Scripture to be authoritative, blessings are experienced as similar to (indeed, related to) covenant relationships. Those who understand themselves to be

question then raises a specific instance of the internal coherence problem. What if the clause's triplet of first-person plural pronouns – “we,” “ourselves,” and “our” – suggests a possessive or self-regarding attitude, one that resists rather than fosters a disposition to respond with humility and gratitude to life's “blessings”?

3. External coherence. A reading of the Blessings Clause should make sense of the Preamble as a whole. Why are the blessings specifically “blessings of liberty” (and not, say, of justice, tranquility, or welfare, to take three other goods that the Preamble puts forward as purposes for adopting the Constitution)? Like a reading of any of the Preamble's clauses, a reading of the Blessings Clause should fit not only the operative provisions of the Constitution¹⁵ but other notable statements of the purpose and theory of our system of government (such as the Declaration of Independence and the Federalist Papers) that count as authorities in our practices of constitutional argument.

4. Contribution to the worth of the Constitution and of our normative practices in relation to the Constitution. The worthiness of the purposes for which we make a Constitution contributes to the worth of the Constitution itself and of our normative (interpretive, civic, decision-making) practices in relation to it. I do not assume that the only such worthy purposes are those recited in the Preamble; but I do assume that a reading of the Blessings Clause should explicate a worthy purpose that makes sense of our constitutional project and brings out its value. In the extreme case, a reading of the Blessings Clause either exhibits the worth of the Constitution so persuasively as to explain the authority of the Constitution, or empties the Constitution of worth so devastatingly as to strip the Constitution of its claim to authority (and reject ordinary practices that assume the

addressed by God in words of promise see themselves as enabled by this recipience or address to make responsive promises, not only to God but also to the people of God. Being addressed in blessing has just these features, inviting or enabling a responsive blessing (or praise) and a readiness to bless others.

The moral fabric of blessing has not been much explored. It has not received the attention that has been devoted to the moral logic of covenant theology, or to the ethics of promising and promise-keeping. In a separate paper, I hope to develop an account of Biblical blessings as constituting second-personal (I-you) relationships and a corresponding domain of second-personal reasons. In that paper, I plan to pay particular attention to blessing as integral to reasons for respecting the law. And I will ask how far those reasons operate outside a specifically Biblical horizon – whether blessings, like promises, provide generally negotiable reasons for law's legitimacy, worth, or authority.

¹⁵ In this paper, I bracket the question whether the purposes stated in the Preamble supply reasons that judges may properly advance as grounds of decision in constitutional cases. See part 2.b., *infra*.

authority of the Constitution). (This point is taken up further in parts 2.b. and 2.c., below.)

5. Public reason. A condition of such a worthy purpose is that it be the kind of purpose that free and equal persons can reasonably affirm as an end for which they act in adopting fundamental law for a republican form of government. On what interpretations of “blessings” is the securing of blessings a legitimate or appropriate purpose for adoption of the Constitution of a republic,¹⁶ that is, for enactment of fundamental law delineating the structure and limits of the federal government, and of rights or immunities such a government is bound to respect? Canons of public reason¹⁷ might judge the purpose unobjectionable if it comes down to the idea that a regime of market freedom brings about mutual gains through trade – where market freedom is taken to be the best reading of “liberty,” and mutual gain through trade is taken to be the best reading of “blessings.” The Blessings Clause similarly might state a constitutional purpose that satisfies plausible canons of public reason if it is read more broadly, to include all of the cultural benefits (critical engagement with a diverse realm of ideas, mutual encounter between many religious and non-religious traditions and ways of life,

¹⁶ Madison referred specifically to “the blessings of republican liberty.” Address of the General Assembly to the People of the Commonwealth of Virginia, reprinted in 6 The Writings of James Madison 332 (G. Hunt ed. 1906), quoted in Gerald Neuman, “Whose Constitution?”, 100 Yale L. J. 909 (1991), at 936 note 147.

¹⁷ John Rawls, Political Liberalism (New York: 1996), Lecture 6, “The Idea of Public Reason,” pp. 212-254; Rawls, “The Idea of Public Reason Revisited,” 64 U. Chicago L. Rev. 765-807 (1997). President Obama’s position on public reason illustrates the complexity of the problem. On the one hand, Obama says that “Democracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason.” “Call to Renewal” keynote address, June 28, 2006, available at http://www.barackobama.com/2006/06/28/call_to_renewal_keynote_address.php He points out that we would take Isaac away from knife-wielding Abraham. “We would do so because we do not hear what Abraham hears, do not see what Abraham sees, true as those experiences may be. So the best we can do is act in accordance with those things that we all see, and that we all hear, be it common laws or basic reason.” *Id.* (Obama might point out that God’s blessing upon Abraham is just as invisible or inaudible as God’s call to Abraham to bind and sacrifice his son.) But on the other hand, Obama recognizes a problem in rhetoric: “if we scrub language of all religious content, we forfeit the imagery and terminology through which millions of Americans understand both their personal morality and social justice.” *Id.* He also recognizes that the voice of African-American religious tradition has shaped public understandings and experiences of freedom, equality, and hope; he does question the legitimacy of these contributions.

fostering of political stability and legitimacy through popular participation) within “the blessings of liberty.” But if blessings are understood in a specifically Biblical way, or within the horizon of a particular theology, or perhaps even in a generically spiritual vein, does securing the blessings of liberty satisfy the requirements of public reason?¹⁸

6. Bearing the judgment of slavery. A reading of the Blessings Clause stands under the judgment of slavery. It faces slavery’s existence at the time that the Constitution was adopted, its moral character as a definitive horror and injustice, and the political compromises and trajectories that are associated with the Constitution’s drafting, ratification, and (still unfolding) fate. How do slavery’s factual, moral, and political dimensions determine or circumscribe the meaning of the Preamble’s Blessings Clause? This question is centrally about the nature and ground of an ironic reading. Its leading edge requires us to think carefully and honestly about moral ambiguities that place the public pursuit of the blessings of liberty by means of fundamental law in a familiar but radically uncomfortable place that is both legitimate and illegitimate, worthy and unworthy.

The criteria come into focus together. The ironic relationship between slavery and the Blessings Clause affects what counts as a desirable internal or external “coherence.” The proposed reading of the Blessings Clause exposes stresses and incongruities among the Clause’s elements. (It turns out to be important that we cannot really “secure” blessings to ourselves or to others, in part because blessings are a boon – a gracious bestowal.) These incongruities take shape as irony; and irony has a shape, much like jazz, which elevates apparent discord into a surprising and renewing order.

¹⁸ Canons of public reason might also harbor assumptions about the functional or practical limits of government and of the fundamental law that sets out the purposes and structures of government. For example, it might be assumed that while government and constitutional law can be tolerably effective at securing outward states of affairs, such as the general welfare, the common defense, justice, or domestic tranquility, it is much less capable of fostering inward states of mind, such as gratitude, reconciliation, or love. These assumptions might favor an interpretation of the Blessings Clause that reads blessings as outward advantages or benefits that do not entail particular dispositions or attitudes, such as those of humility and gratitude. Parallel interpretations of welfare, justice, and domestic tranquility, all of which might also be taken to have an attitudinal component, might also be favored for similar reasons. I think that the assumption that fostering attitudes is beyond the practical reach of government and of the constitutional law that organizes and delimits it is mistaken, but cannot engage this large issue squarely here.

A reading of “the blessings of liberty” as “the benefits or favors resulting from liberty” or “those favors or good things, liberties” relieves the public reason problem but exacerbates the slavery problem. Put somewhat differently: such a reading makes the Preamble’s Blessings Clause more respectable in one way (by making the purpose recited in this clause cognizable without recourse to contested faith premises) at the cost of making it less respectable in another way (because slavery makes a mockery of the purpose so construed). The Blessings Clause is more valuable – it shines a better, more instructive purposive light on the Constitution – if the clause is not merely ironized by morality, politics, and history, but also ironizing. Much of the interpretive work I will do in this paper reflects such a preference for an ironizing over a merely ironized reading of the Blessings Clause. For me, then, the aspiration to leave open the possibility of what we might call a Niebuhrian¹⁹ Blessings Clause – a clause whose theological meaning alerts us to the moral ambiguities of our fundamental law and of our own identities and choices in relation to that law – supplies one reason to look beyond a reading of the clause that would relegate it to the safely inert space where hypocrisy is consigned. (The relevant concept of irony is developed in part 2.c., *infra*.)

An ironizing reading of the Blessings Clause that takes to heart the Biblical narratives of blessings does not require that canons of public reason be violated. It does require that these canons, too, be understood within a frame that accepts irony as one of the human circumstances of reason (along with others that Madison describes in the Tenth Federalist). One might almost say that a more critical and rigorous investigation of blessings as a dimension of human existence and as both condition and consequence of the worth of fundamental law confronts us anew with the circumstances of reason, reminding us of our tendency to overestimate the extent of our knowledge and the integrity of our motives. But I

¹⁹ Reinhold Niebuhr, *The Irony of American History* (Chicago: 1952, 2008); William Werpehowski, “Reinhold Niebuhr,” in Peter Scott and William T. Cavanaugh, ed. *The Blackwell Companion to Political Theology* (Oxford: 2004), pp. 180-93; Robin W. Lovin, *Reinhold Niebuhr and Christian Realism* (Cambridge: 1995); Ronald F. Howell, “Political Philosophy on a Theological Foundation: An Expository Analysis of the Political Thought of Reinhold Niebuhr,” *Ethics*, Vol. 63, No. 2 (Jan., 1953), pp. 79-99. On Niebuhr in recent American political culture, see Arthur Schlesinger, Jr., “Forgetting Reinhold Niebuhr,” *New York Times* (Sept. 18, 2005); Brian Urquhart, “What You Can Learn from Reinhold Niebuhr,” *The New York Review of Books*, Volume 56, Number 5 (March 26, 2009); American Public Media, “Obama’s Theologian: David Brooks and E.J. Dionne on Reinhold Niebuhr and the American Present,” <http://speakingoffaith.publicradio.org/programs/2009/obamas-theologian/>

begin on a narrower ground, with three observations about Biblical theology of blessings in relation to the Blessings Clause.

First: it is not helpful to picture interpretation of the Blessings Clause as forcing a choice between reading “blessings” in a this-worldly sense (as benefits) and in a Biblical sense.²⁰ The Bible itself encompasses a complex cluster of blessings concepts. The reader and the person of faith looking to Scripture from an internal viewpoint must find a way to align such diverse practices as God blessing human persons or human nations, human persons or communities blessing (praising? thanking? stressing the sanctity of) God, parents blessing children, and persons or communities blessing (greeting? communicating acceptance of the legitimate claims of) sovereigns or holders of authority. In our English usage, in which the semantic biography of the words “bless” and “blessing” has been influenced significantly (but by no means determined entirely) by translators’ use of it to render forms of *brk* in the Hebrew Bible,²¹ these words also have a range of meanings: some this-worldly, some sacred, and some straddling these senses. To understand texts of blessing or texts about blessing is to inhabit a world in which conventional human practices and ultimate meanings circulate around and through one another, or play off one another. (I develop this point further in part 2.a., below. We should be sensitive to contexts in which texts of fundamental law use words like “blessings,” “faith,” or “sacred” in ways that straddle semantic divides rather than commit to one side or the other.)

Second: the distinction between two concepts of blessings, one sacred and the other referring to this-worldly benefits, must not be pressed too far, because

²⁰ The primary meanings for the noun “blessing” (excluding obsolete uses) are: benediction (authoritative declaration or invocation of divine favor; the form of words used in such benediction; in the plural, Christ’s beatitudes); “The bestowal of divine favour and prospering influence; favour and prospering influence of God;” “A beneficent gift of God, nature, etc.; anything that makes happy or prosperous; a boon.” Oxford English Dictionary (2nd edition, 1989). In light of these meanings, “blessings” in the Blessings Clause harbors two related ambiguities: (1) whether the bestowal involves or requires utterance of a verbal formula (some boons require such utterance and others do not), and (2) whether the “prospering influence” is of God. I read the Blessings Clause as trading in some way on these ambiguities.

²¹ “The sense development [of the verb “bless”] was probably influenced by the use of this verb in versions of the English language Bible to translate Latin *benedicere* to bless, literally, speak well of, resulting in such meanings as to praise or extol, as in bless God....” Robert K. Barnhart, ed. The Barnhart Concise Dictionary of Etymology (New York, 1995), p. 73.

theological or Biblical accounts of blessings include the prospect or promise of prospering (prosperity).²² So the question is not whether but how blessings confer prosperity; not whether abundance is desirable, but what we most desire to abound. Some good things, such as the wisdom that comes with Torah study, might belong to the ideal of a prosperous or prospering life, a life well-lived, within a Biblical concept of blessings, but not belong to the notions of prosperity implicit within “the blessings of liberty” as a purpose for adopting the fundamental law of a republic such as the United States. Or perhaps the wisdom of Torah study does count as an instance of a more general class of benefits included among “the blessings of liberty.” A good such as peace might be widely understood as an element both of Biblical blessings and of this-worldly prosperity; yet peace might have meanings in the former context that it lacks in the latter.

Third: an ironic reading along the lines I am working in this paper makes a contingent or hypothetical claim, addressed principally to Christians who come to public political argument with the assumption that fundamental American law is built on Biblical ground. In this paper I aim neither to affirm nor to deny that assumption, but look to the Blessings Clause to work out its possible implications.²³

²² I will use “prosperity” as a label for this-worldly benefits or advantages – including children, abundant produce from the land (including crops and animals), rainfall, long life, health, influence or dominion among the nations, and absence of strife – that are often associated with blessing in the Biblical blessing texts. See Christopher Wright Mitchell, The Meaning of BRK “To Bless” in the Old Testament, (Atlanta: 1987), (hereinafter, The Meaning of BRK) at pp. 14, 25, 33-34, 37-39. Most, if not all, of these this-worldly benefits are associated – instrumentally or symbolically – with closeness to God (God’s presence, adherence to God’s law, wisdom, peace). But Christian Gospel accounts of blessings stress that those who lack this-worldly prosperity are specially favored in blessing. See text at note 62, *infra*. And the Jacob narratives in the Hebrew Bible – see part 4.c., *infra* – stress that blessing does not suspend the conditions of pain, loss, strife and guilt that are essential structures of human existence.

²³ Rawls’ wide version of public reason admits the legitimacy of what he calls “conjecture,” in which “we argue from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide the basis for public reasons. The ideal of public reason is thereby strengthened.” Rawls, “The Idea of Public Reason Revisited,” *supra* note 17, at pp. 786-787. Whether my proposed reading of the Blessings Clause counts as “conjecture” in this sense depends on how one resolves the question already raised, about whether a stance in ethical irony belongs to the ideal of public reason.

Pronouncement and bestowal of blessings may be met with incredulity, as when Abraham fell on his face in laughter when God told him that God would bless Sarah and make her a mother of nations (Genesis 17:16-17). They may bring joy, as when God blesses the king “with the blessings of goodness,” and the Psalmist praises God: “For thou hast made him most blessed for ever: thou hast made him exceeding glad with thy countenance.” (Psalm 21:3, 6.) This turning of the divine face toward the human face, enabling a responsive “thou,” is the joyful heart of blessing as recipience. But blessings as human pronouncements and bestowals must sometimes be given in desolation of the spirit, from a depleted state in which one has nothing else to say and to give. Rachel Adler describes the state of mind in which Naomi, embittered and grieving the death of her husband and sons, blesses her daughters-in-law.

Displaced and on the road, she offers her daughters-in-law all she has left to give: release from their commitments to her, return to the protection of their own mothers, and a blessing. In giving these gifts, she divests herself of her remaining connections, leaving herself to confront all alone a difficult journey culminating in an unprovided old age.²⁴

Even in the circumstances of loss and suffering, and within our feelings of anxiety and resentment, blessings do not lose their distinctive power, which is the power of reciprocity. If, as the Declaration of Independence asserts, humankind is created equal and endowed by their creator with inalienable rights, then we cannot reciprocate by creating or endowing the creator. If our choices stand under the judgment of “the supreme judge of the world,” then we cannot reciprocate by judging the supreme judge. But as God blesses us, so in the Biblical accounts we bless God. “Blessed art thou, O LORD; teach me thy statutes.” (Psalm 119:12.) In the give and take of blessings, as in the give and take of promises, we will find the Bible’s gloss on the mutuality and reciprocity that are conditions for the worth of fundamental republican law.

2. Framework for the proposed reading: meaning, authority, and irony

a. Three senses: sacred, this-worldly, and straddle

We should attend carefully to the distinction between how a word can be used, and how it is actually used in a particular context. The word “faith” can be and often is used to refer to religious beliefs and attitudes, but it need not be used in that way, and it is not used in that way in the Constitution’s Full Faith and

²⁴ Rachel Adler, Engendering Judaism: An Inclusive Theology and Ethics (Boston, 1998), p. 150.

Credit Clause.²⁵ But in its context in the closing article of the Articles of Confederation, the word “faith” recalls the solemnization of wedding vows (troth-plighting), and suggests a special seriousness of commitment appropriate to entering into a perpetual union.

And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.²⁶

Although troth-plighting need not occur under religious auspices, it is common to view God as the ultimate guarantor of the marital vows and the divine-human relationship as their ultimate referent. The text’s immediately preceding reference

²⁵ “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” Article IV §1.

²⁶ Articles of Confederation, Article XIII. In his First Inaugural Address, Lincoln makes the troth-plighting sense of “faith” more explicit in his argument that the Union may not lawfully be dissolved.

[W]e find the proposition that, in legal contemplation, the Union is perpetual, confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution, was “to form a more perfect union.”

On the relation between troth-plighting, the mutual pledge that closes the Declaration of Independence, and the affirmation of self-evident truths in the Declaration’s second sentence, see Garet, “Together We Wove Our Truths” (unpublished manuscript on file with the author), p. 3:

Knowing these truths, we pledge our troth,
we mutually plight the dangerous vow
of revolution, hazarding for what is true
our lives, our fortunes, and our sacred honor.

To have and to hold, these truths, forever,
in sickness and in health, for richer, for poorer,
beholding together, beloved by one another,
coming to friendship in becoming free.

to “the Great Governor of the World”²⁷ further suggests that the closing article’s use of “faith,” more than uses of the word in other provisions of the Articles of Confederation that more closely mirror the Constitution’s Full Faith and Credit Clause,²⁸ is shaded in tones of solemn commitment recalling divine covenant.

For ease of reference, we can name these three senses of the word “faith” the sacred sense, the this-wordly sense, and the straddle sense. In Luke 17:5, “And the apostles said unto the Lord, Increase our faith,”²⁹ the word “faith” is used in the sacred sense, in that it refers to an aspect of the divine-human relationship. In the Full Faith and Credit Clause, “faith” has a this-worldly sense, in which the divine-human relationship is not part of the word’s connotations or context. In Article XIII of the Articles of Confederation and in Lincoln’s First Inaugural Address, “faith” straddles the sacred and this-worldly senses; the sacred sense haunts or colors the this-worldly sense, intimating that the sacred sense applies unexpectedly outside its familiar contexts. These distinctions are inexact, of course, and their application uncertain. Moreover, the categories’ names reflect the very problem that the categories are meant to address. “Sacred” is among the words that can be used in several senses. The signers of the Declaration of Independence mutually pledge their “sacred honour.”³⁰ Perhaps the word “sacred” here has the “straddle” sense; though the divine-human relationship does not supply to “sacred honour” its immediate context, it colors that more immediate political context in shades of ultimate concern. We pledge our “sacred” honor “with a firm reliance on the protection of Divine Providence” – recalling at the Declaration’s conclusion phrasings encountered earlier in the text (“their creator;” “supreme judge of the world”).

I take the Preamble’s use of the word “blessings” in the Blessings Clause to be unlike the this-worldly use of the word “faith” in the Full Faith and Credit

²⁷ “And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union.” Articles of Confederation, Article XIII.

²⁸ See, e.g., Articles of Confederation, Article IV.

²⁹ Unless otherwise stated, Bible text in this article is KJV (King James Version), the version that has made the strongest imprint on the English language and on both literary and popular Anglophone culture.

³⁰ “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.” Declaration of Independence, last paragraph.

Clause. It is obvious that “faith” in the Full Faith and Credit Clause does not involve religious beliefs or attitudes; a contrary interpretation would not make sense of the Clause’s purpose and wording.³¹ But the Blessings Clause is perhaps more like the Articles of Confederation’s faith-plighting clause. Does the word “blessings” in the Blessings Clause have the straddle sense; does it, like the faith-plighting clause, wrap itself in memories of or analogies to the sacred, and if so to what end?

Surely some uses of “bless” do not convey or depend on religious meanings. When I say “God bless you” after you sneeze, it is unlikely that I mean to ask God’s blessing upon you. The use then is this-wordly. But if I should say “my children are a blessing” or “we should count our blessings,” or if in response to my child’s decision to leave home I should say “you have my blessing” or “my blessing goes with you,” it is not so clear whether or not understandings of divine presence in our lives figure in my speech, and if so, in just what way.³² Now, in the case of “we should count our blessings” or “my blessing goes with you,” determining whether or how religious understandings figure in the speech requires attention to the speaker’s intentions. Do we know the speaker to be observant or pious; does she often see her life and choices as having a religious dimension? But those are not the kinds of questions that I will ask about the Blessings Clause. The questions I will ask are meant to explore what the words of a familiar text can

³¹ “When we see the notice ‘Wines and Spirits,’ we do not think about angels, devils, ghosts and fairies.... When someone speaks about the Stations of the Cross we do not think about railway stations nor about our station in life.” C. S. Lewis, Studies in Words, 2nd ed. (Cambridge: 1990), p. 11.

³² When a candidate for or a holder of public office concludes a speech by saying “God bless you and God bless America,” the utterance’s status and effect as benediction depend on social conventions that include a certain kind of religious grammar. But the conventions are so inclusive that no inferences can reliably be drawn about the precise nature of the good things that the speaker means to bestow on the audience or wishes the audience to receive. Similarly, unless the speech were given within or to a shared faith community, no inferences can reliably drawn about whether the audience understands itself to have been blessed. When millions of Americans sing “God Bless America” during the seventh-inning stretch at baseball games, the lyrics they sing use a conventional formula for asking God’s blessing upon the nation, but that formula is only one among many contributors to the meaning or meanings of the song and of singing the song.

or should be taken to mean, so that the text can meet expectations that, on reflection, we have or should have for it.³³

b. The Blessings Clause's argument contexts

Part 1 of the paper included, among the criteria for a reading of the Blessings Clause, the need to bring out the worth of the Constitution (and of our practices of constitutional decisionmaking). The most obvious way for a construal of any of the Preamble's purpose clauses to meet this need is by filling out the stated purpose so that it can aid in purposive interpretation of the Constitution's operative provisions. But because the construal of the stated purposes, like the language of the purpose clauses themselves, is likely to be couched at a high level of generality, courts might be reluctant to rely on such

³³ A word that once ordinarily or dominantly had a sacred meaning might later come to have dominantly a this-worldly meaning, and vice-versa. More importantly, the crude distinction I have drawn among sacred, this-worldly, and straddle senses is itself historically contingent; it does not work within all horizons of meaning. From a certain religious viewpoint, there simply are no human realities, including words and their meanings, that are untouched by sacred meanings. A word that refers to a utensil, animal or article of clothing may belong to a schema of dietary laws or other norms that invests discourse about seemingly ordinary things with sacred significance. Even the profane takes its meaning under the judgment of the sacred. But it would be a mistake to assume that a word that ordinarily or dominantly has a sacred sense always has that sense. Even within the Hebrew Bible, the verb *brk* sometimes has the primary meaning "greet." Mitchell, The Meaning of BRK, supra note 22, pp. 106-110. I take it that in at least some of these texts, such as Genesis 47:7 and 47:10 ("and Jacob greeted / showed his respects to / thanked / blessed Pharaoh"), *brk* has what I am calling the "straddle" sense. *brk* as "greet" is colored in these passages by the other, sacred meaning, *brk* as "bless." (Robert Alter, like the KJV, gives "bless" in both verses. Annotating them, Alter observes: "The Hebrew verb here also has the simple meaning of 'to greet,' but it seems likely that in this context it straddles both senses." Robert Alter, The Five Books of Moses: A Translation with Commentary [hereinafter The Five Books of Moses], p. 272.) But such interpretations, of *brk* in the Bible as of "blessings" in the Constitution, are debatable, as are the hermeneutic criteria for resolving such debates. Mitchell, id. at 108, understands Jacob to be greeting and expressing thanks, not blessing. Alter's claim is that the straddle sense makes the narrative more valuable because more coherent with the overall Biblical account of Jacob's character. "Jacob of course accords Pharaoh the deferential greeting owed to a monarch, but it would be entirely in keeping with his own highly developed sense of his patriarchal role that he – a mere Semitic herdsman chief addressing the head of the mighty Egyptian empire – should pronounce a blessing on Pharaoh." Id. I would add that understanding Jacob as blessing Pharaoh also better fits God's blessing upon Abraham: that he will be a great nation and a blessing to all the families of the earth (Genesis 12:1-3). See Isaiah 19:24-25 and part 4.a., below.

purposive arguments. The Preamble's purpose clauses loom larger in popular political argument, where they are relatively unconstrained by the limitations of the judicial role, and relatively untethered to judicially enforceable operative provisions. Adduced in this context, the purpose clauses not infrequently are meant to support large claims about the nature and ground of constitutional authority. Such claims may attach themselves to proposals about how a particular issue of public policy should be decided, and in that sense shadow or mirror the role of a court deciding a case or controversy. But the claims may also be made about issues that few if any courts would regard as within the judicial power. So Lincoln famously appealed to the Preamble in his First Inaugural Address, in aid of a constitutional argument – that the Union is perpetual, and secession without foundation in law³⁴ – on which few courts would be willing to rule.

A reading of the Blessings Clause, I take it, should be equipped to engage the popular and largely (but not completely) extrajudicial practice of making large claims about the reach and force of the Constitution turn on the Preamble's text. In our time, a reading of the Blessings Clause should engage the double move sometimes made in the name of that clause: an inclusionary move (the unborn, or those in process of being born, are “our posterity,” hence the Constitution secures to them the blessings of liberty) coupled with an exclusionary move (undocumented immigrants and detainees in the war on terror are not “we... ourselves,” hence the Constitution does not secure to them the blessings of liberty). But this engagement must also address the double move's assumptions about the reach, worth, and authority of the Constitution.

Justice Scalia's dissent in Stenberg v. Carhart illustrates half of the double move, and illustrates the comparatively rare use of the Blessings Clause in a judicial opinion as a warrant supporting a proposed decision of a constitutional question.

The notion that the Constitution of the United States, designed, among other things, “to establish Justice, insure domestic Tranquility, . . . and secure the Blessings of Liberty to ourselves and our Posterity,” prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity is quite simply absurd.³⁵

³⁴ See note 26, supra.

³⁵ Stenberg v. Carhart, 530 U.S. 914 (2000), at 953 (Scalia, J., dissenting.) An editorial celebrating the 36th Annual March for Life in Washington, D.C. illustrates the complete double move. Noting that tears are appropriately shed for babies, including millions of black babies, lost due to abortion, the writer goes on to say: “We too should weep when our president shows the ultimate respect for the lives of terrorists at Gitmo by conferring

Scalia prefaces this comment by saying that “I am optimistic enough to believe that, one day, Stenberg v. Carhart will be assigned its rightful place in the history of this Court’s jurisprudence beside Korematsu and Dred Scott.”³⁶ Placing the Blessings Clause warrant in the context of two of the Court’s most widely denounced decisions is significant not only because it hints that the failures in those cases reflected an insufficiently inclusionary understanding of “our posterity,” but also because it gestures toward failures that betray the larger commitments of our fundamental law. Scalia’s appeal to the Blessings Clause is not the ordinary stuff of constitutional argument but deployment of a kind of rhetorical ultimate weapon, an object lesson in America’s great constitutional failures.

Currently the Clause supplies (and historically it has supplied) a purposive platform on which advocates build arguments meant to address issues of great importance: questions about the extent of the Constitution’s extraterritorial reach, and (especially) questions about whether (or which) provisions limiting federal power or guaranteeing rights or liberties apply to various categories of non-citizens. A former Chief Prosecutor for the Military Commissions at Guantanamo has said:

I don’t believe detainees have constitutional rights. My view is that the Constitution starts with “We the people of the United States” -- it is a document written for the benefit of ourselves and our posterity. It doesn’t say it’s for the benefit of everybody, and particularly not foreigners outside the country who are intent on destroying the Constitution.³⁷

Arguments of this kind shade imperceptibly into claims about the nature and identity of the civic or political community: of what it means to be “we the people of the United States,” and who is included among “we the people.” For example, Samuel F. B. Morse appealed to the Blessings Clause in support of an argument to restrict immigration of Catholics. The framers never intended, said

on them the protection of our precious constitutional rights, but none for the innocents for whom that document was specifically written; namely, ourselves and our posterity.” Lisa Fabrizio, “March Toward Life,” The American Spectator Online, January 28, 2009.

³⁶ Id.

³⁷ Morris Davis, “Civil Liberties in Times of Crisis,” 102 Am. Society of Int’l Law Proceedings 76 (2008), at 77. Cf. editorial, “Court Overstepped on Terror Detainees,” June 18, 2008, The Arizona Republic, p. B5: “The notion that constitutional protections were intended to be extended to enemy fighters is, of course, absurd. The Preamble to the Constitution says, ‘We the People of the United States.’ It is a compact between the people of the United States to form a national government, in part to ‘secure the Blessings of Liberty to ourselves and our Posterity.’”

Morse, that immigrants from the Catholic nations should count among “ourselves and our posterity.”³⁸ In a larger view, of course, the interpretation and effect given to all of the Constitution’s provisions both reflect and shape the identity and commitments of “we the people of the United States.” But because the first person plural (“we”) recurs twice (“ourselves,” “our”) in the Blessings Clause, its wording lends itself particularly well to reflections about the fabric and limits of the political community. The first person plural enters the scene first as the Constitution-making agent (we the people ordain and establish this Constitution) and again as the beneficiary for whom the agent acts (ourselves and our posterity).

Thought about who acts and for whom in making the Constitution deepens into thought about the ground of the Constitution’s authority. Again, in a wider view, all of the purposes recited in the Preamble (though not exclusively those purposes) speak to the worth of the Constitutional project, and in that sense to the Constitution’s claim upon the obedience or fidelity of succeeding generations. If the Constitution were for the sake of liberty (however understood) alone, and not of justice, welfare, and so on, succeeding generations might have less reason to sustain the kind of interpretive relationship with the Constitution in which “we” understand “ourselves” to be a “people” under constitutional authority.³⁹ Yet the Blessings Clause, by speaking specifically of “ourselves and our posterity,” draws special attention to the Constitution’s claim upon succeeding generations. To say that these generations are “posterity” suggests that the Constitution (its making, its meaning) is in the memory of those generations: that it comes down to them as an inheritance, perhaps even that it is a heritage that commands their attention and concern.⁴⁰ To say that these generations are “our” posterity suggests some form

³⁸ S. Morse, Imminent Dangers to the Free Institutions of the United States through Foreign Immigration (1835; reprint 1969), p. 23; quoted in Gerald Neuman, “Whose Constitution?”, *supra* note 16, at 940. Similar arguments are made today about the status of undocumented aliens. “We the people of the United States’ doesn’t mean people who have broken the law to enter our country. It means ‘We the people of the United States’ and not ‘We the people of an alien nation.’.... ‘Secure the blessings of liberty to ourselves and our posterity.’ We are losing our liberties to a people who only want to use the wealth of our land for their own purpose.” Paulette Poole, “Immigration Debate Should Stop at Constitution,” Statesman Journal (Salem, Oregon), June 13, 2006, Opinion, p. 7C.

³⁹ On the relation between interpretive community and hermeneutic object, see Ronald Garet, “Comparative Normative Hermeneutics: Scripture, Literature, Constitution,” 58 So. Calif. L. Rev. 35 (1985).

⁴⁰ The word “posterity” has two meanings: “all who are descended from a common ancestor,” and “all future generations of people collectively, esp. regarded as the

of continuity, mediated (in part at least) by the Constitution and unbroken in spite of intergenerational crises and transformations. The nature of that continuity, memory and claim then presents one of the great, recurring problems of American constitutional thought. Gerald Neuman has pointed out that the Blessings Clause lends itself to a contractarian interpretation: one strand within the larger problematic. “The Preamble arguably speaks the language of social contract, perhaps even narrowing what follows by emphasizing that ‘We the People of the United States, in Order to ... secure the Blessings of Liberty *to ourselves and our Posterity*, do ordain and establish this Constitution *for the United States of America*.’”⁴¹

The language that Neuman singles out for emphasis reveals what he takes to be the Blessings Clause’s gesture toward the social contract. Notice that “Blessings of Liberty” is not emphasized. Would the Preamble’s suggested solution to the problem of constitutional continuity and authority be any different if the Constitution were adopted, say, “to establish justice for ourselves and our posterity,” rather than “to secure the blessings of liberty to ourselves and our posterity”? The question is a slippery one, because the ideas of liberty and justice overlap one another. Initially, then, it might not be helpful to make much if anything depend on the text’s association of liberty, rather than justice, with

beneficiaries of a particular inheritance, tradition, culture, etc.” Oxford English Dictionary, supra note 20. I read “posterity” in the Blessings Clause in the latter sense. Though context makes it clear that the reference is to future generations, further evidence is needed to settle two questions: (1) whether future generations are referred to here specifically as beneficiaries of an inheritance, and (2) whether the future generations may include persons other than those descended from “we the people” as the political community acting on the Constitution’s ratification. (The scope of that political community already raises problems which I set aside here.) In relation to the first question: the word “blessings” suggests that “our posterity” means something like “our beneficiaries,” although stronger claims are needed to support the more specific reading “beneficiaries of a particular inheritance, tradition, culture.” In relation to the second question: Congress’s naturalization power (Art. I §8 ¶4), the negative pregnant of the requirement (Art. II §1 ¶5) that the President must be a “natural born Citizen,” and (more controversially) the negative pregnant in Art. I §9 ¶1 (the so-called Slave Trade Ban Clause) supply some evidence that the future generations comprehended in “our posterity” might include more than descendents. (“Posterity” in the Blessings Clause does not mean “progeny.”)

⁴¹ Neuman, “Whose Constitution?,” supra note 16, at 912. Emphasis in original. Neuman stresses that the social contract conception is not the only possible view of the Constitution’s scope and authority, and that it can and should be reconciled with alternative conceptions.

“ourselves and our posterity.” The Constitution aims to secure the blessings of liberty; it might have aimed to secure the blessings of justice. But: why blessings? Consider in this connection the Supreme Court’s well-known affirmation in Planned Parenthood v. Casey: “Our Constitution is a covenant running from the first generation of Americans to us and then to future generations. It is a coherent succession. Each generation must learn anew that the Constitution’s written terms embody ideas and aspirations that must survive more ages than one.”⁴² “Covenant,” of course, has many meanings. In its Biblical meaning, covenants include as one of their defining elements the conferral or promise of blessings, and the parallel prospect or threat of curses.⁴³ As Robert Tsai has observed, in this respect the Blessings Clause echoes covenant theology.⁴⁴ Of course, the fact that blessings figure prominently in covenant theology and that the problem of constitutional continuity and authority can be (and sometimes has been) approached within a conceptual framework influenced by that theology⁴⁵ does not entail that the word “blessings” in the Blessings Clause should be understood as having the same range of meanings that it has Biblically.

The concept of covenant reframes but does not resolve recurring questions about who is bound by the Constitution (who owes it fidelity) and who is protected by it; who are “we the people” as Constitution-making agent and who are “ourselves and our posterity” (blessees, beneficiaries of the blessings of liberty). Each party (person, community) must give a fateful “yes” or “no” to the invitation to share in a law-world. Robert Cover stressed that although Garrisonian abolitionists and slavery’s defenders agreed on the “meaning” of the Constitution’s provisions (e.g., on the interpretation of the Fugitive Slave Clause), they disagreed about the Constitution’s authority – about whether it was law for them.⁴⁶ Cover understood Frederick Douglass’s break with the Garrisonians and his affirmation of the Constitution as law for him as “embracing a vision - a

⁴² Planned Parenthood v. Casey, 505 U.S. 833, 901 (1992).

⁴³ Jon D. Levenson, Sinai and Zion: An Entry into the Jewish Bible (San Francisco: 1985), pp. 29-30.

⁴⁴ Tsai, Robert. “Sacred Visions of Law,” 90 Iowa L. Rev. 1095, 1104 (2005). Tsai interprets Casey’s covenant account of constitutional continuity and authority in light of a New Testament understanding of faith. “In Hebrews 11:1 it is written that ‘[o]nly faith can guarantee the blessings that we hope for, or prove the existence of realities that are unseen. It is for their faith that our ancestors are acknowledged.’” Id. at 1105.

⁴⁵ [cites]

⁴⁶ Robert Cover, “*Nomos* and Narrative,” 97 Harv. L. Rev. 4 (1983), at 37-38.

vision of an alternative world in which the entire order of American slavery would be without foundation in law.”⁴⁷ It is as if Douglass, picturing himself as standing among the nations at Sinai to whom the law was offered, said “yes” in a way that redefined not only himself but the relationship itself. Cover saw Douglass’s account of his turning toward a visionary (redemptive) constitutional commitment as iconic for an important way of inhabiting a realm of legal significance.

Brought directly, when I escaped from slavery, into contact with abolitionists who regarded the Constitution as a slaveholding instrument, and finding their views supported by the united and entire history of every department of the government, it is not strange that I assumed the Constitution to be just what these friends made it seem to be. . . . But for the responsibility of conducting a public journal [in Western New York], and the necessity imposed upon me of meeting opposite views from abolitionists outside of New England, I should in all probability have remained firm in my disunion views. My new circumstances compelled me to re-think the whole subject, and to study with some care not only the just and proper rules of legal interpretation, but the origin, design, nature, rights, powers, and duties of civil governments, and also the relations which human beings sustain to it. By such a course of thought and reading I was conducted to the conclusion that the Constitution of the United States – inaugurated to “form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty” – could not well have been designed at the same time to maintain and perpetuate a system of rapine and murder like slavery, especially as not one word can be found in the Constitution to authorize such a belief.⁴⁸

Here Douglass finds in the Preamble, or projects upon it, an inclination toward liberty.⁴⁹ Seeing the Constitution as turning toward him, he turns toward it; yet

⁴⁷ *Id.*, at 38.

⁴⁸ F. Douglass, Life and Times of Frederick Douglass, R. Logan ed. (1967), pp. 261-62, as quoted in Cover, “*Nomos* and Narrative,” *id.*, at 37-38.

⁴⁹ Douglass also appealed to the Preamble in support of anti-slavery reading of the Constitution in “The American Constitution and the Slave: An Address Delivered in Glasgow, Scotland, on 26 March 1860,” in John W. Blassingame, ed. The Frederick Douglass Papers, Series One: Speeches, Debates, and Interviews, vol. 3: 1855-63 (New Haven, 1985), 340-366, at pp. 360-361. See also “The Political Response to Slavery’s Aggressions: Addresses Delivered in Syracuse, New York, on 28 May 1856,” *id.*, 134-142, at p. 140 (rejecting the Garrisonian view that the Blessings Clause “has a limited meaning, and does not apply to slaves.”); “Is the Plan of the American Union under the Constitution, Anti-Slavery or Not?: A Debate between Frederick Douglass and Charles

his seeing the Constitution as turning toward him is already part of his turning toward it.

c. Irony: Frederick Douglass and Reinhold Niebuhr

We misunderstand Douglass, however, if we assume that his reading of the Preamble and corresponding embrace of the Constitution's authority entailed a straightforward identification of the enslaved with "we the people" or "ourselves and our posterity." Speaking to white anti-slavery audiences who perhaps expected him to affirm the Declaration's principle that "all men are created equal" and build upon it his case against slavery, Douglass chose instead to keep his distance and speak of "your national independence," "your political freedom," "your fathers," "your Union."⁵⁰ "This Fourth [of] July is yours, not mine."⁵¹ "The blessings in which you, this day, rejoice, are not enjoyed in common."⁵² He reframes the invitation to speak on the Fourth of July in the exilic context of Psalm 137; "How can we sing the Lord's song in a strange land?"⁵³

Protesting that it would be demeaning for him to argue the humanity of the enslaved, and to draw the consequences of the Declaration's principle of universal human rights and equality, Douglass insists: "At a time like this, scorching irony, not convincing argument, is needed."⁵⁴ Douglass's ironic stance enables him to embrace the Constitution as law for him but also to keep his distance. The complex ways in which he presents himself as both belonging and not belonging, entitled and disentitled, a son of the fathers and yet not so, are crucial to his construction of the significance and authority of redemptive law.

Lenox Remond in New York, New York, on 20, 21 May 1857," *id.*, 151-162, at p. 153 ("We the people of the United States' – not we the horses – now we the white people, but 'we the people, in order to form a more perfect union, establish justice... and secure the blessings of liberty to' – not the white people, but 'ourselves and our posterity, do ordain,' &c."); "The Dred Scott Decision: An Address Delivered, in Part, in New York, New York, in May 1857," *id.*, 163-183, at pp. 176-177 ("I ask, then, any man to read the Constitution.... Where will he find a guarantee for slavery? Will he find it... in the declaration that the Constitution was established to secure the blessings of liberty?")

⁵⁰ Frederick Douglass, "What to the Slave is the Fourth of July?: An Address Delivered in Rochester, New York (July 5, 1852), in 2 The Frederick Douglass Papers: Series One: Speeches, Debates, and Interviews 1847-1854 (John W. Blassingame, ed. 1982), pp. 360, 361, 368, 383.

⁵¹ *Id.*, 368.

⁵² *Id.*

⁵³ *Id.* See Garet, "Proclaim Liberty," 74 So. Calif. L. Rev. 145 (2000), pp. 151-157.

⁵⁴ Douglass, "What to the Slave is the Fourth of July?," *supra* note 50, at 371.

Douglass makes striking use of Biblical analogies in his speeches, effectively reversing roles and insisting that while white America pretends to be the Exodus people, the enslaved and exiled Africans are the real Israel; America is Egypt or Babylon.⁵⁵ But he does not offer a Biblical account of irony *per se*; that is, of irony as the ethical stance always relevant to political action and choice in virtue of the fundamental incongruity of the human situation. Douglass does not emphasize that all humankind are finite, fallible beings who nonetheless stand under the judgment of eternity and are called to not only justice but love. Reinhold Niebuhr offered such an account: one to which I turn in aid of a reading of the Blessings Clause that is not merely ironized by slavery, but ironizing.⁵⁶

I follow Niebuhr in defining the political-moral concept of irony as an incongruity between apparent or purported virtue and actual (or probable) social-historical result, such that awareness of the incongruity supplies a reason for re-estimation of the apparent or purported virtue.

If virtue becomes vice through some hidden defect in the virtue; if strength becomes weakness because of the vanity to which strength may prompt the mighty man or nation; if security is transmuted into insecurity because too much reliance is placed upon it; if wisdom becomes folly because it does not know its own limits – in all such cases the situation is ironic.⁵⁷

Niebuhr sees all of human history as subject to irony. Indeed, one role of Biblical faith in Niebuhr's thought is to supply a general anthropological ground for the exposure and critique of pretension. "Man is an ironic creature because he forgets that he is not simply a creator but also a creature."⁵⁸ But Niebuhr is particularly

⁵⁵ Garet, "Proclaim Liberty," supra note 53, at 151-157.

⁵⁶ Douglass does not distinguish between irony and the exposure and denunciation of hypocrisy. (See, e.g., "What to the Slave is the Fourth of July?," supra note 50, at 371 (scorching irony calls for withering critique of American hypocrisy). But the framework of his thought invites such a distinction. The condition of being both "we" and "you," both blessed in principle and cursed in fact, will survive the abolition of slavery; it will afflict the best efforts to understand and foster equality, just as it afflicted the worst of the founders' apologies for slavery. Irony as I understand it is the stance appropriate when exposure of hypocrisy loses its edge – when all of us are hypocrites.

⁵⁷ Niebuhr, *Irony of American History*, supra note 19, p. xxiv. Niebuhr distinguishes irony from pathos and tragedy. "An ironic situation is distinguished from a pathetic one by the fact that a person involved in it bears some responsibility for it. It is distinguished from a tragic one by the fact that the responsibility is not due to a conscious choice but to an unconscious weakness." *Id.*, pp 166-167.

⁵⁸ *Id.*, pp. 155-156.

concerned to identify ways in which American culture and heritage – our assumption that we are a new Israel, called to make a new beginning for humankind – open us to ironic incongruities between our self-understanding and the real political limits upon and consequences of our choices.⁵⁹ In the present context, the Niebuhrian concept of irony responds to the question: How could our enacting a Constitution for the purpose of securing the blessings of liberty to ourselves and our posterity be anything less than unambiguously admirable?

Biblical faith figures in two additional ways in Niebuhr’s analysis of “the irony of American history.” First, Niebuhr relies specifically on Christian Gospel texts to ground the reverse incongruity: “The Christian interpretation of ironic failure has its counterpart in the conception of ironic success.”⁶⁰ A man whose mission ended in failure, and who was executed alongside criminals, ironically succeeds on a scale that history cannot register.⁶¹ This reverse incongruity, success depending on and causing a re-estimation of failure, is particularly visible (Niebuhr points out) in the beatitudes: Christ’s sayings about blessings in Matthew 5:3-12 and Luke 6:17, 20-23. Blessed are the poor, or the poor in spirit;⁶² the meek; the merciful; those persecuted for righteousness. From this Christian standpoint, the reverse incongruity of “securing the blessings” is that true blessings go, not to the successful or prosperous, but to those who are despised and rejected.

If Biblical faith serves first as a grounding anthropology and again as a Christian reappraisal of what is lowly or humble, it figures a third time as an interpretive intervention: a narrative frame that enables incongruities (either failure as the secret hidden in success, or success as the secret hidden in failure) to be brought to light. In recognizing the moral incongruities characteristic of our lives we attain to conscious irony, and are able to take ourselves both less seriously (laugh at ourselves, let go of some of our pretensions) and more seriously (accept renewed responsibility for our choices within a posture of contrition and humility).⁶³ Niebuhr’s ministry as a public intellectual generally, and The Irony of American History in particular, were meant to bring the incongruities of American moral character and political action into better view,

⁵⁹ Id., pp. 24, 28.

⁶⁰ Id., p. 161.

⁶¹ Id., p. 162.

⁶² Niebuhr insists on the complementary value of both texts, one in Luke and the other in Matthew; Id. pp. 163-164.

⁶³ Id., pp. 168-169.

where they could surface as irony which could in turn prepare the way for public decisions at once more humble and more realistic.

Niebuhr's account of the irony of American history, and his complex Biblical frames for that account, are especially worth recalling in the present context. We are quite familiar with voices urging a return to what are said to be the Biblical foundations of American law and public life. We are also familiar with voices urging that in our republic, issues of law and public policy should be analyzed and resolved on the basis of political conceptions of justice that do not depend on any claim about the whole truth regarding human nature and destiny. But we are perhaps less familiar with the Niebuhrian position: one in which the good office of Biblical faith is (in great part) to puncture, and precisely not to bolster, claims often made about the special stature or role of America as uniquely called by God to a higher destiny that is exempt from the ordinary limits of history, knowledge, and human striving.

Accordingly, my aim here is not to recover an original, putatively more Biblical conception of "the blessings of liberty," or to restore or rebuild our civic foundations in such a way as to support an allegedly more Christian nation. It is instead to expose, through an ironizing reading of the Preamble's Blessings Clause, moral ambiguities and incongruities that lurk within one of our most familiar and cherished civic purposes. Biblical faith aids us not by guaranteeing our hope to be a people set apart from others, but by reminding us of the blessings that are not in our power to secure, and of the hazards that beset our best efforts to circumscribe "ourselves and our posterity."

(A schematic diagram of the preliminary intertextual reading is given on the next page, as a guide to the discussion in part 3 of the paper.)

Schematic diagram of the preliminary intertextual reading: sources and parallels

Note: the two parallel texts of American organic law, the second sentence of the Declaration of Independence and the Preamble's Blessings Clause, are positioned side by side; two Bible texts, from Genesis 1 and 9, are positioned on an intersecting axis. Thematic and verbal parallels are indicated by shared emphases such as italics, capital letters, small caps, bold face, etc.

So God created man in his own image, in the image of God created he him; male and female created he them. AND GOD BLESSED THEM, AND GOD SAID UNTO THEM, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth. (Genesis 1:27-28)

*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, **governments are instituted among men, deriving their just powers from the consent of the governed....***

*We **the people** of the United States, in order to ... secure THE BLESSINGS of LIBERTY to ourselves and our posterity, *do ordain and establish this Constitution for the United States of America.**

AND GOD BLESSED NOAH AND HIS SONS, AND SAID UNTO THEM, Be fruitful, and multiply, and replenish the earth. (Genesis 9:1)

Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man. And you, be ye fruitful, and multiply; bring forth abundantly in the earth, and multiply therein. (Genesis 9:6-7)

3. A preliminary intertextual reading, and its limits

a. The Blessings Clause and the Declaration's second sentence

Close attention to the clause's text, with an eye to ways in which it either echoes or stands apart from other texts in American organic law, reveals some support for a reading that preserves some theological content, and resists reading "the blessings of liberty" as a wholly this-worldly reference to gains, wealth, or abundance. In suggestive and perhaps surprising ways, the Blessings Clause resembles the second sentence of the Declaration of Independence more closely than it resembles any other language within the original (unamended) Constitution. In this part of the paper, I will exhibit these textual similarities and differences. The analysis will proceed in three steps. First, I will offer some evidence for a reading of the Blessings Clause that associates it with a metaphysical claim about the created endowment of human persons as such. Second, I will expand the intertextual reading so that the Blessings Clause and the Declaration's second sentence are understood not only in relation to one another but also in relation to the Bible's universalistic blessings texts in Genesis 1 and Genesis 9. The blessings God utters upon newly created humankind, and again upon Noah and his children following the flood, fill out the meaning of the ideas that the Preamble's Blessings Clause and the Declaration's second sentence jointly and mutually assert. But third -- and decisively -- a reading of the Preamble's Blessings Clause and of the Declaration's second sentence, in relation to one another and to the universalistic blessings texts in Genesis 1 and Genesis 9, fails to make sense of salient features of the Blessings Clause, features that are also crucial to the clause's Niebuhrian or ironizing value.

At first glance, reading the Blessings Clause and the Declaration's second sentence together seems a less rewarding strategy than reading the former text in relation to the Constitution as a whole, and the latter text in relation to the Declaration as a whole. And of course, it is essential that the Preamble be read in relation to the Constitution as a whole -- otherwise the Preamble loses any special value it may have as a gateway into the purposive interpretation of the whole Constitution or of its particular provisions. I assume, as background for my reading, something like Lincoln's position on the relation between Declaration and Constitution: that the proposition stated in the Declaration, that all men are created equal and endowed by their creator with certain unalienable rights, supplies a normative commitment that frames and ought to frame interpretation and application of the Constitution. I will not try to derive or defend Lincoln's

position.⁶⁴ Instead, let us consider some perhaps surprising ways in which our two sentences are like twins to one another.

■ ***First person plural.*** The first word in both sentences is “we.” The perspective and agency of these sentences is the first person plural; we hold truths that lay the foundation for the legitimate role of government generally, and for stated purposes we enact a particular charter of government, the Constitution. In the Constitution, the first-person agency and perspective are rare; like bookends, the first-person plural opens the text in the Preamble and closes it in the execution or signing clause.⁶⁵ The “we” who secure blessings to “ourselves” and “our” posterity speak and act again as a chorus at the instrument’s close, when “we” sign “our names” in witness, in the year of “our Lord.”⁶⁶ Speech and agency in the first person plural are more characteristic of the Declaration of Independence, which begins in a third-person perspective, but breaks through to the first person in order to address to humankind the reasons that justify the new nation to take its separate and equal position.

⁶⁴ For discussion of Lincoln’s position, see Garet, “Creation and Commitment,” *supra* note 13.

⁶⁵ “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...” Within a Biblical frame such as that sketched in part four, below, the otherwise unremarkable fact of having names comes into view as a blessing. We approach the underlying idea when we recall the fragility of names among the enslaved, one aspect of whose enslavement was the loss of names that might link them with their families and communities of origin, and the replacement of those names with others denoting the master’s family and connoting the master’s dominion. Also within a Biblical frame, the divine name – given as “our Lord” in the execution or signing clause – is also a blessing and a central medium for the realization of blessing. Receipt of blessing may either presuppose or cause a breakthrough in a person’s life – the kind of realization or transformation, or bringing into closer and more transformative relationship with others, that is aptly signified by a change in name. Thus Abram becomes Abraham, and Jacob becomes Israel. Ultimately, the whole action of undertaking or engaging the law by witnessing with the name and under the auspices of the name takes on layers of meaning in the context of blessing that are not apparent outside that context.

⁶⁶ For further discussion of the significance of the first-person, second-person, and third-person standpoint in constitutional and Biblical texts, see Ronald Garet, “With Radiant Countenance: Creation, Redemption, and Revelation,” 2009 *Michigan State L. Rev.* 289-306 (Summer, 2009).

■ **Liberty.** The word “liberty” figures prominently in the Blessings Clause (“blessings of liberty”) and in the Declaration’s second sentence (the unalienable rights, endowed by the creator, include the rights to “life, liberty, and the pursuit of happiness.”) Otherwise the word “liberty” (or “liberties”) does not appear either in the Declaration or in the original Constitution. (“Liberty” reappears twice in the Amendments, in the two due process clauses.)

■ **To secure *the/these blessings/rights*.** The Declaration’s second sentence states the agency of “we” doubly; we hold not only that rights exist as created endowments, but also that “to secure these rights, governments are instituted among men.” (Note that the second sentence is uncommitted, almost studiously so, about the agency that institutes government. Use of the passive voice leaves open the possibility that God institutes governments, or that people institute governments, or that people institute governments whose legitimate authority depends in part on their ability to secure the created endowment of rights.) This purposive structure returns in the Preamble generally; the Constitution is adopted for stated purposes. (Unlike the second sentence the Preamble leaves no doubt about whose agency institutes the government of the union. It is the agency of “we the people” – whether collectively or through the action of the constituent states – and not of God.) But within the Preamble, only the wording of the Blessings Clause closely echoes that of the second sentence. As government exists “to secure these rights” (that is, the rights with which persons are endowed by their creator), so the Constitution is enacted “to secure the blessings of liberty.” This parallelism suggests some kinship between rights and blessings.

The verb “to secure” seems to be used more felicitously, however, in the Declaration’s second sentence than in the Blessings Clause. To secure a right is not only to declare it but also to put in place some device or devices capable of vindicating and enforcing it. In the background lurks the notion of insecurity – absent a securing device, the right will be at risk. The verb is used in this way, in the original Constitution, in the Patent and Copyright Clause, which vests in Congress the power “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Unless Congress acts to “secure” the right, it will not be “exclusive” in the author or inventor. Rival users, in pursuit of their private good, threaten to render the author’s and inventor’s rights non-exclusive and insecure. As Congress acts “to secure” such rights for a larger purpose (“to promote the progress of science and the useful arts”), so legitimate government generally acts “to secure these rights,” that is, those inalienable rights with which persons are endowed by their creator, and which in some sense are equal rights

("created equal"). Absent such governmental action, the rights must be insecure. But it is not so clear that blessings are insecure in the same way that rights are, or that the agency of government (or the agency of the people in creating fundamental law) is either similarly needed or similarly effective "to secure the blessings." If blessings are just the same as rights, then the difficulty is relieved; but this solution is implausible.⁶⁷ Though a convention might entitle one to a benediction of some kind (Biblical narrative indeed presupposes such an entitlement precisely in order to undermine it, as we will see in part four), the primary senses of "blessing" share the sense of "favor" or "boon."⁶⁸ Bestowal of blessings is an act of beneficence, not performance of a duty correlative to a right. Yet once the blessing has vested in the blessee, so to speak, the blessee might have a good claim to it.

If I am correct, the action and the assertion in the Blessings Clause are sufficiently parallel to the action and the assertion in the second sentence of the Declaration to read the former's "blessings" in light of the latter's "unalienable rights" with which humankind is "endowed by their creator" and (perhaps in virtue of which) is "created equal." But what do "blessings" have to do with "creation," and "creation" with some form of normative endowment? Who counts as among "our posterity" in the Blessings Clause; and why does "posterity" come into view in the context of blessings? For possible answers, though ones that ultimately leave much about the Blessings Clause unexplained, we may turn to the universalistic blessings prominent in the opening chapters of Genesis.

b. Expanding the intertextual reading to include Genesis 1 and Genesis 9

This is the account of the creation of humankind in Genesis 1:27-28:

So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.
(Genesis 1:27-28)

We notice straightaway in this account three links or bridges between conceptual or thematic elements of interest. But each bridge raises more questions than it answers.

⁶⁷ See note 81, *infra*, on the similarity in the Hebrew Bible of the words *beracha* (blessing, power to bless) and *bechorah* (birthright).

⁶⁸ See discussion of the meanings of "blessing," *supra* notes 20-21.

First, the account provides a narrative link between blessings and the created endowment of human persons. The textual parallels between the Blessings Clause and the Declaration's second sentence hint at such a link, but do not render it explicit. Genesis 1:27-28 renders the link explicit: God endowed humankind with the divine image, and God blessed humankind. But if the link is explicit, it is still deeply mysterious. Is the blessing just the same as the creation; were the words of creation the very words of blessing? Or are there two acts: first creation in the divine image, then blessing? What, then, is the blessing? Is the divine image a qualification for receipt of the blessing, or perhaps in some way a destiny for its unfolding?

Second, the account provides a narrative link between blessings and what we might tentatively and loosely describe as an intergenerational prospect or perspective. We saw that the Blessings Clause suddenly introduces "posterity" – we adopt the Constitution in part to secure blessings to ourselves and to our posterity.⁶⁹ The whole notion of constitutional entrenchment, of course, implicitly has future generations in view. It is not as if attention to the generations ahead comes as a great surprise. But why does the attention rise to the surface precisely and uniquely in the context of securing blessings? Here again, the account in Genesis 1:27-28 supplies a link; as before, the link is tantalizingly (or vexingly) open to interpretation. God blessed humankind, and God told them to be fruitful and multiply, and replenish the earth. Is human generation and generativity part of, even central to, the blessing? (And/or to creation of humankind, male and female, in the image of God?) Is human fruitfulness measured quantitatively, in number of surviving progeny, or in some more qualitative way that receives or reflects or makes good on the blessing? It is noteworthy, in this context, that the Blessings Clause speaks of blessings to

⁶⁹ Why is the Constitution's sole use of the word "posterity" tied to its sole instance of the word "blessings"? Or to put the question the other way around: why is "posterity" referenced in the Blessings Clause, and not in the justice clause ("establish justice,") or the internal order clause ("insure domestic tranquility,") or the defense clause ("provide for the common defense,") or the welfare clause ("promote the general welfare")? It is as if the Preamble makes use of the same contiguity between blessings and generation as the Biblical creation narrative; yet it must be stressed that there is as yet no reason to associate the Biblical account's (tantalizingly inexplicit) motivation for that connection with the constitutional context. (It should also be apparent that to render the connection plausible, it will need to incorporate justice, welfare, and so on. If our present actions both create future generations and deprive them of justice and welfare, we are hardly securing blessings to these generations; and only in the most ironic sense are they our "posterity.")

“ourselves and our posterity,” and not, say, to “ourselves and our progeny,” or to “ourselves and the generations that will follow us.” “Posterity” is more open than “progeny” to inclusion of immigrants and others not born to the founders. But it is also, in a way, a more restrictive concept, in that it implies a continuing memory, a sense of shared inheritance. As not all who are posterity need be progeny, so not all progeny may be posterity.⁷⁰ The account in Genesis 1:27-28 does not explore these matters, but they loom large in the later Genesis texts that we will include in our intertextual reading in part four, below.

Third, the account in Genesis 1:27-28 provides a narrative link between, on the one hand, the created endowment and blessing, and on the other hand, a normative order of commands and obligation. This link is crucial to the Declaration’s second sentence; the created endowment of equality and rights provides the reason for government. Governments are instituted to secure these rights; if governments fail to do so, they may justly be overthrown. The obligatory force of the state’s positive law, then, depends on the created endowment of equality and rights. A similar link is crucial in the Blessings Clause. We act to adopt a Constitution in order to secure the blessings of liberty. Unless the clauses of the Preamble are eliminable without loss, we learn something from them – perhaps how to give effect to the Constitution’s provisions in such a way as to serve the Constitution’s most fundamental purposes. But as we have already seen, the account in Genesis 1:27-28 does not explain how the created endowment or the divine blessing, either separately or taken together, supply the justificatory ground for the command and obligation to be fruitful and multiply. Neither does the account help clarify the point of the command and obligation, so that those subject to the command and obligation can abide by them most perspicuously.

The blessing upon humankind in Genesis 1:27-28 later is renewed as human realities of strife, envy, and bloodshed unfold, culminating in the flood. The story of the flood concludes with God’s oath or promise not to strike down again all living things (end of chapter 8) and God’s blessing upon Noah (beginning of chapter 9). Here is the blessing/obligation account in Genesis 9:1-7 (which is followed immediately by the establishment of a covenant in 9:8-17):

And God blessed Noah and his sons, and said unto them, Be fruitful, and multiply, and replenish the earth. And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hand are they delivered. Every moving thing that liveth

⁷⁰ See discussion of the meanings of the word “posterity,” supra note 40.

shall be meat for you; even as the green herb have I given you all things. But flesh with the life thereof, which is the blood thereof, shall ye not eat. And surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man. And you, be ye fruitful, and multiply; bring forth abundantly in the earth, and multiply therein. (Genesis 9:1-7.)

Here again we see four elements – blessing, the created endowment of humankind, an intergenerational perspective, and a realm of obligation – compressed into a short narrative in such a way as to associate the elements closely with one another. As before, the relation between blessing and the other elements remains unspecified. But Genesis 9:1-7, perhaps because of the covenant passage that follows, sheds new light on the relation between the created endowment of humankind and the realm of obligation. The status or stature of being created in God's image and likeness grounds immunities or protections. "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man." (Genesis 9:6.) The murderer has no right to an immunity against such punishment; the survivors or community are at liberty to punish the murderer; perhaps the verse even implies that the worth of the human requires punishment of those who purport to negate that worth. The verse offers one theological way of unpacking the Declaration's proposition that humankind are "endowed by their creator with certain unalienable rights," but the Biblical prohibition and its *imago dei* ground do not point specifically to rights, or to government as the agency holding legitimate authority to uphold the prohibition against murder (or, for that matter, the prohibition against eating meat with its blood).

In summary: an intertextual reading of the Blessings Clause and the Declaration's second sentence, alongside Genesis 1 and Genesis 9, proceeds along the following lines. All humankind is equally created in God's image and likeness, and therefore shares equally in the worth or dignity of that status. This endowment of or to humankind is also in some way a blessing upon humankind, or the blessing and the endowment somehow involve or implicate one another. In some way, we observe or honor the *imago dei* endowment and receive (or deserve, or experience) the blessing upon us through generativity, including physical generation (and stewardship and dominion of the created world – referenced explicitly in the Bible passages, implicitly or not at all in the Blessings Clause and the Declaration's second sentence). Perhaps such generativity (and dominion) "secure" the blessings that our created endowment authorizes, grounds,

or enables; but this is only one possible way of understanding connections that are not made explicitly in the texts.

Exercise of authorized powers belongs centrally to the realization of the endowment and to the securing of the blessings. Governments are instituted to secure the rights constituted by the created endowment (Declaration); we enact the Constitution in order to secure the blessings of liberty (Blessings Clause); God authorizes people to shed the blood of those who shed the blood of human persons (Genesis 9, but note that the authorization here does not go specifically to government or to the political community).

c. Limits of the preliminary intertextual reading

The preliminary intertextual reading tries to take blessings seriously in the Blessings Clause as a theological idea embedded in a cluster of ideas – creation in the image and likeness of God, blessings upon humankind, an intergenerational perspective, and a normative order of obligations and powers – that Biblical narrative associates in Genesis 1 and Genesis 9. Yet this intertextual reading is notable for what it fails to illuminate in the constitutional text. Equating humankind’s created endowment with the domain of blessing and posterity, it supplies no convincing answer to the question, “who are ourselves and our posterity?” Surely the point of the Preamble is precisely that a distinct political community, “we the people of the United States,” enacts a distinct organic law, “this constitution.” Correlatively, we act “to secure the blessings” to ourselves and our posterity. It is as if we lacked the power, or the legitimate authority, to realize the blessings meant for all humankind as such – the blessings that somehow bridge our imago dei status and our generativity and dominion. Indeed, the word “secure” more than hints at a scramble for blessings, and at the need to tie them up or down.

The intertextual reading with Genesis 1 and Genesis 9 also fails to make sense of the Preamble’s concept of “the blessings of liberty.” To be sure, powers (of stewardship and dominion) are a kind of liberty. So is the power to visit punishment or retribution upon murderers. Whatever security is afforded human life by the prohibition against shedding human blood, coupled with the authorization to exact retribution, could also be thought of as a liberty, but again only in a loose sense. We have as yet no explanation that would not be equally consistent with “the blessings of justice” or “the blessings of welfare” or “the blessings of domestic tranquility.” Nor is it apparent how, if at all, blessings add to the obligating force of the imago dei endowment or of the divine instructions or authorizations (about generativity, dominion, or killing).

4. A intertextual reading with Biblical narratives of blessings upon Abraham, Isaac, and Jacob

a. Blessings upon Abraham

Now the LORD had said unto Abram, Get thee out of thy country, and from thy kindred, and from thy father's house, unto a land that I will shew thee: And I will make of thee a great nation, and I will bless thee, and make thy name great; and thou shalt be a blessing: And I will bless them that bless thee, and curse him that curseth thee: and in thee shall all families of the earth be blessed. (Genesis 12:1-3.)

Here I will develop several respects in which this text, with its call to and blessing upon Abraham, supplies a better Biblical context in which to read the Preamble's Blessings Clause than do the earlier Genesis texts already considered. It must be noted, though, that God's words to Abraham in Genesis 12:1-3 make promises of blessings, which is not quite the same as conferring blessings. (Compare "and I will bless thee... and thou shalt be a blessing," to "and God blessed them [humankind]," Genesis 1; "and God blessed Noah and his sons," Genesis 9.) We should ask a parallel question about the Preamble's Blessings Clause. Does enactment of the Constitution confer blessings, or is the Preamble's purposive statement better understood as a kind of promise, such that the stated purpose binds future choices (including choices about how to interpret the Constitution)? While it is a mistake to draw a very sharp distinction between conferring and promising, I will follow Martin Luther King in treating "the magnificent words of the Constitution and the Declaration of Independence" as promises.

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 men, would be guaranteed the "unalienable Rights of Life, Liberty, and the pursuit of Happiness." It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked "insufficient funds." [*Sustained applause*]⁷¹

⁷¹ Martin Luther King, Jr., "I Have a Dream" (Aug. 28, 1963), in A Call to Conscience: The Landmark Speeches of Dr. Martin Luther King, Jr., Clayborne Carson and Kris Shepard, eds. (2001), p. 82.

Here King is ironizing the texts of organic law, but he is also bringing out the power of these texts to cast our public actions and character in an ironic light. The “magnificent words” turn out to be a “bad check,” not because the words are hollow or are revealed as mere hypocrisy, but because we bring them down to our own level. Yet the words state a “sacred obligation” that engages what King calls “the fierce urgency of now,” in which we “make real the promises of democracy” and “rise from the dark and desolate valley of segregation to the sunlit path of racial justice.”⁷² While God’s promises, as compared to promises made by “the architects of our republic,” are not a “bad check,” our own actions can bring God’s promises down to our own level – we may act as if God has defaulted.

■ *Particularism and universalism.* The (promise of) blessing in Genesis 12:1-3, read intertextually as a context for the elements of the Preamble’s Blessings Clause, illuminates the problem of the relation between the clause’s particularism (“we the people,” “ourselves,” “our posterity”) and the universalism of the created endowment (“all men are created equal, and endowed by their creator with certain unalienable rights”) that in some way stands behind “the blessings of liberty.” Genesis 12:1-3 calls Abraham to be a great nation, and in that sense singles out this nation for a special blessing. Yet the content of the blessing centrally includes being and becoming a blessing to “all families of the earth.” Quite complexly, then, there is one sense in which the people of Egypt or Assyria, say – or even the descendants of Ishmael, and later of Esau -- are not Abraham’s “posterity,” and another sense in which they are. Abraham “secures the blessings,” one might say, to both “posterities.”

Perhaps an intertextual reading with Genesis 12:1-3 opens the Blessings Clause’s ironizing power – as contrasted to its vulnerability to be merely ironized by slavery. It is not simply the case that the promise to secure the blessings of liberty to ourselves and our posterity is revealed as radically unworthy, or a mockery, given the many persons who were denied liberty and not counted as “ourselves.” The problem is deeper and more complex. Forgetful that our calling to be a separate nation is grounded in service to the universal created endowment, we are at risk for counting our own blessings (and in that way denying the call to be a blessing to all families of the earth). Heedful of a universalistic mandate, however, we are at risk for deceiving ourselves into thinking that we truly have other-regarding motives for our self-regarding choices.

But it is also possible that such an intertextual reading exacerbates the human problem of political self-deception. Abraham can act in the knowledge

⁷² Id.

that the ultimate agency is God's. God says clearly that the agency of blessing is God: "I will bless them that bless thee, and curse him that curseth thee." (Genesis 12:3) But "we the people" may deceive ourselves into thinking that ways in which we make friends and enemies, and the rewards we give to our friends and the sanctions we apply against our enemies, embody a comprehensive divine plan rather than reflect what we take to be our own interests. Establishing ourselves as a separate nation, we conclude the Declaration of Independence by "appealing to the Supreme Judge of the world for the rectitude of our intentions."

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 dissolved⁷³

Yet the hazards of such an appeal to heaven are if anything increased when we convince ourselves that our intentions must be upright because they are actually God's intentions.

■ ***Acting in the name.*** The Declaration concludes with another sentence whose subject is the first person plural. "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."⁷⁴ Though "we" who have a new name ("the united States of America") act "in the Name, and by the Authority" of the people, we are comparatively reticent or indirect in naming God. In the texts quoted above, God appears, as it were, under three names: "their creator," "the Supreme Judge of the world," and "Divine Providence." None of these names recur in the Constitution, whose sole invocation of a divine name is in the execution or signing clause: "in the year of our Lord. . . ." Of the four references, only the last is stated in the first person, expressing a personal relation to divinity (as distinct from referencing the divinity's objective existence). But even the invocation of "our Lord" is functionally third-personal, since the phrase "year of our Lord" belongs to a convention about chronology. In this context, the question arises: which of these divinities is the God of blessings, or under which name does God bless? In the calling to Abraham, read intertextually with the Blessings Clause, we have perhaps a suggestion that the answer is "none of the above." Putting the point in a more qualified way: we see

⁷³ Declaration of Independence, para. 32.

⁷⁴ Id.

in Genesis 12:1-3 and in the ensuing narratives about Abraham that creation as divine-human relationship (e.g., Genesis 1:27-28) does not state the last word about blessing.

As is well known, the Hebrew Bible also includes several divine names. Elohim is the god who blesses humankind in Genesis 1:27-28, and who blesses Noah (and invokes the *imago dei* justification) in Genesis 9. The name of God who calls to Abraham in Genesis 12:1-3, and promises blessings to Abraham, and makes of Abraham a blessing to all, is the Tetragrammaton, YHVH. In his dialogue with God in chapter 15, as he questions God's promise of blessing (since he was then childless), Abraham calls God "Lord GOD" (in the KJV). (Adonai ["my Lord"] YHVH). In these passages (15:2 and 15:8), Abraham is the first to address God in this way. Thus there is a suggestion that the name of the blessing God, and the name by which to address the blessing God, are significant.

As is also well known, when Abraham answers God's call and enters into a covenant relationship, God renames him. "Neither shall thy name any more be called Abram, but thy name shall be Abraham; for a father of many nations have I made thee." (Genesis 17:5.) In a way, addition of the letter Heh to Abram's name fulfills part of the promise: "I will... make thy name great." ("And I will make of thee a great nation, and I will bless thee, and make thy name great; and thou shalt be a blessing." Genesis 12:2.) The Midrash (Genesis Rabbah) explains that Heh is the cosmogonic letter: the letter by which God created the heavens and the earth.⁷⁵ Inclusion of the Heh in the name of the one who will mediate or convey blessings to all of the world's families suggests a new creation. "Rabbi Berekiah said: it is not written 'And I will give thee,' or 'And I will set thee,' but 'And I will make thee': I.e. after I have created thee as a new creation thou wilt be fruitful and multiply."⁷⁶ Similarly, the Midrash takes note of an extra Heh in the word "toward heaven" in Genesis 15:5, "And he brought him forth abroad, and

⁷⁵ Genesis Rabba (Lekh Lekha), Soncino Freedman translation, 39.11. Here the Midrash understands the addition of Heh to Abram's name (17:5) by reference to the creation narrative in Genesis 2:4, "These are the generations of the heavens and of the earth when they were created, in the day that the LORD God made the earth and the heavens." *Behibaram*, "when they were created" or "when he created them," is taken to mean "with the letter Heh he created them." In renaming Abram, God includes in his name the cosmogonic letter, signifying that the creation/blessing work that began with God continues onward in the life and work of Abraham (whose name now includes the same letters – Alef, Bet, Resh, Heh, Mem – as the word meaning "when he created them" or "with the letter Heh he created them.")

⁷⁶ Id.

said, Look now toward heaven, and tell the stars, if thou be able to number them: and he said unto him, So shall thy seed be.” How does the transformation of Abraham’s name relate to God’s promise that Abraham will be blessed with a great nation (whose descendents, like the stars, are beyond count), becoming a medium of blessing to all?

Rabbi Abbahu commented thereon, It is not written “Look now *hashamayim* (at the heaven)” but “Look now *hashamaymah* (toward heaven)” (Genesis 15:5). [There is an extra Heh after the word *hashamaymah*.] With this Heh I created the world; behold, I will add a Heh to your name, and then thou wilt be fruitful and multiply. R. Judah said: The numerical value of the letters of thy name will equal those of “*Waaberekeka*” (And I will bless thee). Just as “*Waaberekeka*” amounts to two hundred and forty eight, so do the letters of thy name amount to two hundred and forty eight.⁷⁷

Surely meditation upon and study of the deeper meanings of the name Abraham, and *a fortiori* of the divine Names, exceed the legitimate province of public reason no matter how generously its canons are understood. Yet it is no accident and no minor thing, in the Biblical accounts of blessing, that the (promise of) blessing upon Abraham, which effectively makes him not a mere lessee but blessing itself, is enacted in a new form of mutual address between God and human person. This new mutual address centrally includes addressing one another by new names. This is not the realm of the third-personal, in which “all men are created equal, and endowed by their creator with certain unalienable rights.” It is instead a second-personal address, in which God and human person say “I” and “you” to one another, entering into a more intimate relationship suitably embodied in new names. (We will encounter the change of names again in part four, below, as Jacob takes on the name Israel.)

b. An ironized reading: Winthrop’s “city upon a hill”

I noted in the previous section that reading the Preamble’s Blessings Clause intertextually with Genesis 12:1-3 might yield disparate messages. On one reading, Abraham’s call and empowerment to be blessing to all families of the earth clears a path that leads back and forth between the particularism of “we the people... ourselves and our posterity” and the universalism of “all men are created equal.” Separate status among the nations of the earth and all that goes with it, including borders, citizenship distinctions, and both military and diplomatic distinctions drawn between friends and enemies, is not exacerbated but instead moderated by attention to blessings. Local benefits are legitimated by

⁷⁷ Id.

their universal value. “Posterity” takes on a cosmopolitan meaning. But on another reading, the aspiration to realize value for all humankind simply draws the effort “to secure the blessings” deeper into self-deception. While “we the people” can fashion for ourselves and of ourselves a republican form of government, and do so clear-mindedly in pursuit of shared defense and other benefits, the notion that we do so to fulfill a higher destiny for all of humankind may conceal from us the harms we visit upon others and the prospect of superior power or advantage that stirs us to act.

The image of America as a “city upon a hill,” drawn from John Winthrop’s 1630 “Modell of Christian Charity,” illustrates how America’s meaning and mission may be understood when read against the memory – here, a Christianized memory – of God’s calling and blessings upon Israel.

The Lord will be our God, and delight to dwell among us, as his oune people, and will command a blessing upon us in all our wayes. Soe that wee shall see much more of his wisdome, power, goodness and truthe, than formerly wee haue been acquainted with. Wee shall finde that the God of Israell is among us, when ten of us shall be able to resist a thousand of our enemies; when hee shall make us a prayse and glory that men shall say of succeeding plantations, “the Lord make it likely that of New England.” For wee must consider that wee shall be as a citty upon a hill. The eies of all people are uppon us. Soe that if wee shall deale falsely with our God in this worke wee haue undertaken, and soe cause him to withdrawe his present help from us, wee shall be made a story and a by-word through the world. Wee shall open the mouthes of enemies to speake evill of the wayes of God, and all professors for God's sake. Wee shall shame the faces of many of God's worthy servants, and cause their prayers to be turned into curses upon us till wee be consumed out of the good land whither wee are a going.⁷⁸

There will be “a blessing upon us” as God’s “own people” as we take the Lord to be our God; but it is the larger fate of God’s people either to bring universal glory and praise to the Lord God by instantiating love and justice, or to discredit the Lord God in the eyes of the world by exemplifying strife and selfishness. Blessings shall be multiplied or turned to curses. Winthrop takes his central text in the quoted passage, the “citty upon a hill,” from Matthew 5:14: “Ye are the light of the world. A city that is set on an hill cannot be hid.” In its context near the beginning of the Sermon on the Mount, “the light of the world” is the moral

⁷⁸ John Winthrop, “A Modell of Christian Charity,” Collections of the Massachusetts Historical Society (Boston, 1838), 3rd series, 7:31-48, at 47; available at <http://history.hanover.edu/texts/winthmod.html>

and spiritual light that emanates from the actions, faithfulness and character of those whom Jesus calls “blessed.” (Matthew 5:3-12, the Beatitudes – the series of verses beginning “Blessed are...” – precede 5:14 and show what it means to be the light of the world and a city set on a hill.)

Earlier in “Modell,” Winthrop explains that the moral unity appropriate to civil government is also the unity of members of the church (the body of Christ).

[F]or the worke wee have in hand. It is by a mutuall consent, through a speciall overvaluing providence and a more than an ordinary approbation of the Churches of Christ, to seeke out a place of cohabitation and Consorteshipp under a due forme of Government both ciuill and ecclesiasticall. In such cases as this, the care of the publike must oversway all private respects, by which, not only conscience, but meare civill pollicy, dothe binde us. For it is a true rule that particular Estates cannot subsist in the ruin of the publike.... The end is to improve our lives to doe more service to the Lord; the comferte and encrease of the body of Christe, whereof we are members; that ourselves and posterity may be the better preserved from the common corruptions of this evill world, to serve the Lord and worke out our Salvation under the power and purity of his holy ordinances.⁷⁹

Here Winthrop closely anticipates (or influences) the main lines of a Christian version of the intertextual reading of the Preamble’s Blessings Clause with Genesis 12:1-3. Civil government is by “mutual consent” but also by “a special overvaluing providence.” Both terms reappear in the Declaration, but Winthrop understands by “providence” a call or election, first to Israel and then to the Church. All of the elements of the Blessings Clause – that we lay our foundation for law and government in order to secure the blessings of liberty to ourselves and our posterity – surface in this passage in Winthrop, in more visibly Christian form. The Preamble’s “to secure the blessings” corresponds to Winthrop’s “the end is to improve our lives to do more service to the Lord; the comfort and increase of the body of Christ, whereof we are members.” Like the Preamble, Winthrop states the purpose of government in relation to “ourselves and posterity.” What the Preamble will call “liberty” Winthrop understands as “to serve the Lord and work out our salvation under the power and purity of his holy ordinances.”

Because Winthrop’s shipboard image of the impending civil government on new shores as “a city upon a hill” became a favorite text on which theorists

⁷⁹ Id., at 45. I have editorially removed Winthrop’s internal numbering of his arguments: “secondly, thirdly.”

and advocates of American exceptionalism (including John F. Kennedy and especially Ronald Reagan) loved to enlarge, it is easy cite it in support of the view that any reading of the American undertaking that associates it centrally with a special divine vocation is simply a folly or pretension. On this view, the text lacks the power to open a space for ethical irony, but instead is subject to being ironized by history. Time and again, on this view, it turns out that we secure the blessings and shine our light by suppressing dissenters, enforcing hierarchies, and overthrowing regimes we find inconvenient. History is more instructive than the text.

But this view understates the power of Biblical narrative to undercut homiletic “models” such as Winthrop’s. To see this, let us call to mind episodes that have this salutary complicating effect.

c. Jacob “secures the blessings”: Ironizing readings of “to secure the blessings... to ourselves and our posterity”

Reading the Preamble’s Blessings Clause and the Declaration’s second sentence alongside the Biblical narratives about Jacob and Esau raises questions and perhaps arouses misgivings about the project of securing blessings. Why, and with what effect, and at what cost, do we act to “secure the blessings... to ourselves and our posterity”?

■ ***Realism about “brotherhood.”*** Suppose we share Martin Luther King’s dream that “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,’” so that “the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.”⁸⁰ Recall that when Jacob and Esau sat together at the table of brotherhood, Esau sold his birthright to Jacob in exchange for the soup that Jacob had made. Having obtained his brother’s birthright, Jacob later obtains from their father Isaac the blessing that Isaac meant to bestow on Esau.⁸¹ In securing the blessings of liberty to ourselves and our posterity, are we

⁸⁰ “I Have a Dream,” supra note 71, at p. 85. We might think of brotherhood as the true or ultimate meaning of God’s blessing upon the nation.

America! America! God shed His grace on thee.
And crown thy good with brotherhood
From sea to shining sea.

Katherine L. Bates and Samuel A. Ward, “America the Beautiful,” in Our Land of Song (Theresa Armitage et. al., eds., 1952), p. 189.

⁸¹ In English, the words “rights” and “blessings” neither resemble nor suggest one another. In the texts of organic law that we are discussing, the two are brought into a

– should we be – emulating Jacob? If, as King suggests, we are all “sisters and brothers,”⁸² equal sharers in a created endowment – a kind of human birthright – why (in the Biblical account) is the birthright precisely unequal, with the oldest son receiving a double portion of the inheritance?

■ ***Insecurity and alienability.*** In this connection it is also noteworthy that although the Declaration describes as “unalienable” the rights with which persons are endowed by their creator, and while the birthright may seem to be an inalienable inheritance, Jacob obtains Esau’s birthright in a transaction. Inheritances are not secure; nor is it clear that we would be better off if they were. Ironically, one of the “blessings of liberty” for Esau is that he is free to sell his birthright.

A market in blessings, if not a market in birthrights, would seem to turn a favor thankfully received into a commodity earned. But either exchange or conferral of a blessing could misallocate it, delaying or hindering the destiny of the children of Abraham to be and become blessing to all the families of the earth. If conferral is irrevocable, exchange would seem the better medium, since it would enable blessing to go to those who most value it. Rabbinic tradition expresses concern that blessing might fall, as it were, into the wrong hands. Though God gave Abraham not only blessing but also the power to bless, Abraham did not bless Isaac (instead, God blessed Isaac after Abraham’s death, Genesis 25:11). Perhaps declining to exercise the power to bless was wise; if Abraham aimed to bless Isaac, might not blessing somehow come to Ishmael his brother?⁸³ Notice how close Isaac came to blessing Esau. Might declining to

shared semantic field because of context: instituting government “to secure these rights” (Declaration) resembles adopting this Constitution “to secure the blessings” (Preamble). But in the Hebrew Bible text, the word for blessing (or the power to bless) – *beracha* – is very similar to the word for birthright, or the right of the firstborn (*bechorah*). Rabbinic commentaries explore this close verbal resemblance. What did Abraham give Isaac, as reported in Genesis 25:5, “And Abraham gave all that he had unto Isaac”? “R Yehuda, R Nehemiah, and the Rabbis disagreed on this matter. R Yehuda said this is the *Bechorah* (firstborn rights). R Nehemiah said: this is the *Beracha* (blessing, or the power to bless). The Rabbis said: this is a good burial and a will.” Midrash Tehilim (Buber) 1, 5.

⁸² Id.

⁸³ “What did Abraham do? He had two children. One was righteous, and one was evil. Abraham said: if I bless Isaac, Ishmael will request blessing, and he is evil, so I will just do my work as a creature of flesh and blood, and soon I will leave the world, and whatever God wants to do with his world, he will do.” Midrash Rabbah, Numbers (Naso) XI. 2. (God blesses Ishmael, Genesis 17:20; he and his descendents will be a great nation in any event.)

exercise the power to bless be the better part of wisdom? While the alienability of the birthright enables the property subject to the birthright to fall into the “correct” hands, perhaps a testamentary blessing, properly given, is irrevocable.⁸⁴

Jacob deceives Isaac into conferring his blessing upon him in place of Esau. Jacob “secures” the blessing to himself and to his posterity, but in so doing reveals what we might think of as the underlying insecurity of blessing. Far from papering over this insecurity, the narrative brings home the very human anguish of loss, precisely from the perspective of the one who has lost the blessing.

And it came to pass, as soon as Isaac had made an end of blessing Jacob, and Jacob was yet scarce gone out from the presence of Isaac his father, that Esau his brother came in from his hunting. And he also had made savoury meat, and brought it unto his father, and said unto his father, Let my father arise, and eat of his son's venison, that thy soul may bless me. And Isaac his father said unto him, Who *art* thou? And he said, I *am* thy son, thy firstborn Esau. And Isaac trembled very exceedingly, and said, Who? where *is* he that hath taken venison, and brought *it* me, and I have eaten of all before thou camest, and have blessed him? yea, *and* he shall be blessed. And when Esau heard the words of his father, he cried with a great and exceeding bitter cry, and said unto his father, Bless me, *even* me also, O my father. And he said, Thy brother came with subtilty, and hath taken away thy blessing. And he said, Is not he rightly named Jacob? for he hath supplanted me these two times: he took away my birthright; and, behold, now he hath taken away my blessing.⁸⁵ And he said, Hast thou not reserved a blessing for me? And Isaac answered and said unto Esau, Behold, I have made him thy lord, and all his brethren have I given to him for servants; and with corn and wine have I sustained him: and what shall I do now unto thee, my son? And Esau said unto his father, Hast thou but one blessing, my father? bless me, *even* me also, O my father. And Esau lifted up his voice, and wept. (Genesis 27:30-38)

Reading the Preamble’s Blessings Clause with this part of the story in mind, we cannot help but feel the sting of action undertaken “to secure the blessings... to ourselves and our posterity.” We say we are “we the people,” and we secure the blessings to “ourselves.” Isaac asks: “Who?” We act “to secure the blessings” –

⁸⁴ Mitchell, The Meaning of BRK, supra n. 22 at p. 80, explains that “the oral testament given by a dying father was a legally binding will. It was not simply a wish or a prayer.” But Mitchell also explains that “the status of being the firstborn was not necessarily determined by the order of birth.” Id. The father had the power to decide whom he would grant the birthright. Id.

⁸⁵ See note 81, supra, on the similarity between the Hebrew words *beracha* (blessing) and *bechorah* (birthright).

does this mean to take them away from one who awaits them? Shall we read the Preamble's Blessings Clause as Jacob, as Esau, or both? Shall we read as Isaac, and "tremble exceedingly"?

Wary of what it might mean to include the securing of blessings to ourselves and our posterity as a central purpose for which we adopt our Constitution, I take comfort from a reading that reminds us of insecurity, of the pain of loss, of rivalry and bitterness. If the framers are "fathers" – founding fathers – and if they act to secure blessings to us as their posterity, then I prefer to think of the fathers as Isaac, "trembling exceedingly."

■ *Wresting a blessing: the surprising agency of the blessee.* I do not mean to say that the "founding fathers" made a mistake in blessing us, their posterity -- if we are their posterity and if the Blessings Clause is interpreted as a blessing upon us. The Biblical narrative does not say that Isaac made a mistake when he blessed Jacob – he mistook Jacob for Esau, but it does not follow that his blessing was mistaken (improvident, ill-considered, or ineffectual). Isaac blesses Jacob again at the start of Genesis 28, this time both explicitly invoking the blessings upon Abraham (that they might be realized in Jacob and his descendents) and commanding Jacob to marry endogamously. This conveniently removes Jacob for a time from the reach of his angry brother. On his way to Haran, Jacob dreams of a ladder or ramp on which messengers of God go up and come down; and in his dream, God appears, self-identifies as the God of Abraham and Isaac, and promises to Jacob (as before to Abraham), "in thee and in thy seed shall all the families of the earth be blessed." (Genesis 28:14.) Awakening in fear, Jacob makes a vow: "If God will be with me, and will keep me in this way that I go, and will give me bread to eat, and raiment to put on, So that I come again to my father's house in peace; then shall the LORD be my God: And this stone, which I have set for a pillar, shall be God's house: and of all that thou shalt give me I will surely give the tenth unto thee." (Genesis 28:20-22.) Robert Alter notes that Jacob, characteristically for him, wrestles – here, offering to make a deal with God, as though Jacob wanted greater assurance that God's promises would be kept faithfully and come true.⁸⁶ Blessings appear (to Jacob, at least) as subject to a market (albeit a market with only one seller).

Beginning his journey home after years away, years in which God's promise and blessing of children begin to be fulfilled, Jacob hopes to placate Esau, who has become a power in Edom. Esau has prospered after all – he shares in blessings of a kind, though he is subject to the prophecy, or curse, that he will

⁸⁶ Alter, *The Five Books of Moses*, supra note 33, Note on Genesis 28:20, pp. 150-151.

serve his elder brother. Esau's might is so great that Jacob instructs his own messengers to address his brother as "my lord," and to tell him that "thy servant Jacob" hopes to find favor with him. (Genesis 32:4-5.) But Jacob's encounter with another – a man, or an angel or agent of God – intervenes before the fateful meeting between brothers. Jacob and the other wrestle:

And he said, Let me go, for the day breaketh. And he said, I will not let thee go, except thou bless me. And he said unto him, What is thy name? And he said, Jacob. And he said, Thy name shall be called no more Jacob, but Israel: for as a prince hast thou power with God and with men, and hast prevailed. And Jacob asked him, and said, Tell me, I pray thee, thy name. And he said, Wherefore is it that thou dost ask after my name? And he blessed him there. And Jacob called the name of the place Peniel: for I have seen God face to face, and my life is preserved. (Genesis 32:26-30.)

A reading of the Preamble's Blessings Clause in light of these episodes raises surprising questions about the agency of blessing. The apparent agency and the true or effective agency are not the same. We might expect the "fathers" to be the blessers, the "sons" or "seed" to be the blessees, and God to be the ultimate agent who supplies the blessing's force or effect. Yet Jacob secures blessing from his father; he bargains with God, as if to assert even greater agency over his blessing; and he bargains again with his wrestling adversary/partner to extract blessing. All of these actions are very much in character for Jacob; they are even suggested by his name, which is taken to mean that he was born grasping his brother's heel. Yet the struggle that yields blessing upon Jacob also supplies him a second name, Israel, which, while it does not supplant the name Jacob, implies that the blessing encounter is transformative. And the name of the whole people – of "we the people," when read in the Preamble's context – embodies the transformative blessing-giving encounter. Thus the Biblical narrative surprises us twice over when read alongside the Preamble's Blessings Clause. Where we expect the "fathers" to secure blessings to the "sons" (posterity), we find instead that the "sons" take a hand, perhaps even have the upper hand, in securing the blessings. Where we expect the agent and the recipient of blessings to pre-exist the act of blessing, we find instead that blessing transforms both person and community, fittingly resulting in bestowal of name alongside blessing. (It is as if the Preamble said: "We the people, having wrested blessing from our forebears, and recognizing that our posterity too will wrest blessings, become 'we the people of the United States.'")

■ *The blessee's uneasy conscience.* Wrestling with the adversary, wresting a blessing, acquiring a new name, and seeing God face to face (and

surviving this encounter, for which the place too acquires its name) prepare Jacob at last to re-encounter his brother. Jacob had hoped to placate Esau by calling him “my lord” and offering him gifts from Jacob’s own bounty. Though Jacob’s strategy succeeds, the outcome seems to depend on Esau’s perception of his own strength.

And he [Esau] said, What meanest thou by all this drove which I met?
And he [Jacob] said, These are to find grace in the sight of my lord. And Esau said, I have enough, my brother; keep that thou hast unto thyself. And Jacob said, Nay, I pray thee, if now I have found grace in thy sight, then receive my present at my hand: for therefore I have seen thy face, as though I had seen the face of God, and thou wast pleased with me. Take, I pray thee, my blessing that is brought to thee; because God hath dealt graciously with me, and because I have enough. And he urged him, and he took it. And he said, Let us take our journey, and let us go, and I will go before thee. (Genesis 33:8-12.)

To the extent that Jacob and Esau are reconciled (the reconciliation is not complete, as the descendents of Jacob will struggle politically and militarily with the descendents of Esau), an explanation can be sought in the surprising moral psychology of blessing. Though Jacob was perhaps better qualified by temperament to secure the blessings – after all, Esau showed a lack of wisdom, foresight, and self-mastery in readily selling his birthright⁸⁷ – nonetheless Jacob senses that his gain is fragile, and if what he feels is not exactly guilt, it is at least uneasiness. It is as if Jacob is aware of a cloud on his title to the blessing, a cloud not cured by his father’s confirmation of the blessing in Genesis 28. If wresting blessing from the adversary quiets Jacob’s title as well as his uneasiness, perhaps this is because the face of the adversary is not only the face of God but also, as Genesis 33:10 suggests, the face of his brother. (“For therefore I have seen thy

⁸⁷ R. Nachman of Breslov, Likutey Moharan, vol. 1 (Jerusalem and New York: 1995):

For the mind is a great light, and it gives light to that person in each of his ways, as it says, (Ecclesiastes 8:1): “The wisdom of a man will light his face.” And this is the aspect of Jacob. For Jacob was worthy of the *bechorah*, which is the beginning, which is wisdom. As it says (Psalms 111:10) “[The fear of the LORD is] the beginning of wisdom” [Lit. the beginning is wisdom].... But the person who does not connect themselves to the mind and the wisdom and the living energy that is in each thing, this is like Esau, who despises the *bechorah*, as it says (Genesis 25:34) “thus Esau despised his birthright.” Which means the mind, as above, and as it says (Proverbs 18): “A fool hath no delight in understanding, but that his heart may discover itself.”

Translation by Sam Shnider.

face, as though I had seen the face of God, and thou wast pleased with me.”) The image of God is the image of the brother, but not in the straightforward sense of “created equal” and “endowed by their creator with certain unalienable rights.” Instead, one who “secures the blessing” must struggle with an uneasy conscience.⁸⁸ Only grace (“God hath dealt graciously with me,” Genesis 33:11) enables Jacob to live with, and find tentative solutions to, the moral ambiguities of securing the blessings. Having secured the blessings from Esau, Jacob must now offer blessings to Esau. Having once taken the blessing from Esau by stealth, now Jacob must ask Esau to accept blessing: “Take, I pray thee, my blessing that is brought to thee,” (Genesis 33:11). In order for this offer to be effective, the offeree must have the power to decline it. Esau has this power, retaining it somehow either in virtue of his loss or in spite of it.

■ ***Blessings and the inversion of hierarchy.*** Though Biblical faith might be seen as favoring or grounding a morality of order that conserves tradition, and though Biblical faith might be endorsed or criticized because of this supposed connection, time and again Biblical narrative subverts the ostensible rules of social life. Primogeniture is turned upside down repeatedly. As Robert Cover observed, “To be an inhabitant of the biblical normative world is to understand, first, that the rule of succession can be overturned; second, that it takes a conviction of divine destiny to overturn it; and third, that divine destiny is likely to manifest itself precisely in overturning this specific rule.”⁸⁹ Biblical narratives of the conferral of blessings are central to this normative world.⁹⁰ The divine destiny requires that the apparent legal hierarchy be turned upside down, so that blessings go to the younger rather than the older son.

Reading the Preamble’s Blessings Clause with these Biblical stories in mind would invite a similar inversion of hierarchy, as “the blessings of liberty”

⁸⁸ “No longer will it be said that your name is Jacob’: No longer will it be said that the blessings came to you through treachery [*okva* as in *Yaakov*] and deceit, but through nobility [*serara* as in *Yisrael*], and openness of face [full view].” Rashi on Genesis 32:26-30.

⁸⁹ Cover, “*Nomos* and Narrative,” supra note 46, at p. 22. Cover summarizes the relevant narratives at pp. 20-21.

⁹⁰ Robert Alter describes Genesis 48:14, in which Jacob blesses Joseph’s sons Ephraim and Manasseh, as “a kind of summarizing thematic ideogram of the Book of Genesis: the right hand of the father conferring the blessing reaches across to embrace the head of the younger brother, and the elder, his head covered by the old man’s left hand, receives a lesser blessing.” Alter, The Five Books of Moses, supra note 33, p. 279.

would follow the line of the ostensibly disfavored. Such an invitation, of course, presupposes that we inhabit a normative world (to use Cover's phrase) in which apparent American law is read against the background of Biblical narrative. To the extent that we do inhabit such a world, however, it is one that the proposed reading of the Blessings Clause resists.

■ ***Blessings do not prevent life's pain.*** If blessing is boon or favor, one would expect gladness and abundance to follow receipt of the blessing. But the stories about Jacob defeat this expectation. On his return from Paddan-Aram, Jacob experiences a theophany in which his prior encounter and blessing (on the road to Paddan-Aram) are repeated. God blesses Jacob, renames him Israel, and repeats to him the blessings previously bestowed upon or promised to Abraham and Isaac. (Genesis 35:9-15.) This blessing scene is followed immediately by Rachel's death giving birth to Benjamin. (Genesis 35:18-19.) Later, an embittered Jacob says: "few and evil have the days of the years of my life been." (Genesis 47:9.)⁹¹

"The blessings" are not, it seems, fully congruent with "the pursuit of happiness." Blessings cannot be appraised by the typical measures of well-being. This Biblical view goes much further than Madison, who warned that unchecked faction would "embitter the blessings of liberty."⁹² Madison urged ratification of a Constitution designed to compensate for the causes of faction (since these

⁹¹ Robert Alter observes (*The Five Books of Moses*, supra note 33, p. 273):

Jacob's somber summary of his own life echoes with a kind of complex solemnity against all that we have seen him undergo. He has, after all, achieved everything he aspired to achieve: the birthright, the blessing, marriage with his beloved Rachel, progeny, and wealth. But one measure of the profound moral realism of the story is that although he gets everything he wanted, it is not in the way he would have wanted, and the consequence is far more pain than contentment. From his "clashing" (25:22) with his twin in the womb, everything has been a struggle. He displaces Esau, but only at the price of fear and lingering guilt and long exile. He gets Rachel, but only by having Leah imposed on him, with all the domestic strife that entails, and he loses Rachel early in childbirth. He is given a new name by his divine adversary, but comes away with a permanent wound. He gets the full solar-year number of twelve sons, but there is enmity among them (for which he bears some responsibility), and he spends twenty-two years continually grieving over his favorite son, who he believes is dead. This is, in sum, a story with a happy ending that withholds any simple feeling of happiness at the end.

⁹² Supra note 8.

causes could not be eliminated), and in that way to safeguard the sweetness of the blessings. But the Biblical view worked out in the Jacob narratives is that the sweetness of blessings and the bitterness of life coexist. Aiming “to secure the blessings” for the sake of happiness as commonly defined is a vain hope.

■ *Let blessings be indefinite.* When Jacob blesses Joseph’s sons, in the scene described earlier, he is explicit about the reversal of the birthright. “[Manasseh] also shall become a people, and he also shall be great; but truly his younger brother [Ephraim] shall be greater than he, and his seed shall become a multitude of nations.” (Genesis 48:19.) But otherwise Jacob is indefinite. As if he has learned that blessings do not turn out as expected, he avoids specific expectations. Moreover, he legislates an indefinite blessing-formula for all fathers to pronounce upon their sons. “And he blessed them that day, saying, In thee shall Israel bless, saying, God make thee as Ephraim and as Manasseh: and he set Ephraim before Manasseh.” (Genesis 48:20.)

Unless in the words of the Preamble itself, we have no accepted tradition or formula for transmitting “the blessings of liberty” from generation to generation. But perhaps we harbor expectations nonetheless: that our blessings will exempt us from the usual limits on political power and fate. This is the expectation or hope against which Niebuhr warned, confronting us with the irony that our cherished delusion about ourselves was much the same as the delusion that our Cold War enemy cherished about itself. Squaring off against one another, both sides in the conflict pictured themselves as standing outside of or at the end of history, controlling it rather than standing within it.⁹³ Niebuhr urged us to become aware of the incongruity between our pretensions and our actual situation as finite, fallible creatures. He suggested that if “a religious sense of an ultimate judgment upon our individual and collective actions should create an awareness of our own pretensions of wisdom, virtue or power which have helped to fashion the ironic incongruity, the irony would tend to dissolve into the experience of contrition and to an abatement of the pretensions that caused the irony.”⁹⁴

⁹³ Niebuhr, *The Irony of American History*, supra note 19, at xxiv:

Our modern liberal culture, of which American civilization is such an unalloyed exemplar, is involved in many ironic refutations of its original pretensions of virtue, wisdom, and power. Insofar as communism has already elaborated some of these pretensions into noxious forms of tyranny, we are involved in the double irony of confronting evils which were distilled from illusions, not generically different from our own.

⁹⁴ *Id.*, p. 169.

5. The blessings of liberty

The story of Declaration and Constitution continues onward to include the Amendments. The goal of securing “the blessings of liberty” gives rise to – or gives way to – the Due Process Clauses of the Fifth and Fourteenth Amendments. These Clauses protect liberty, though it is uncertain whether they do (or can) “secure the blessings of liberty.” Blessings are gifts: favors drawn either from God’s infinite reservoir or from the parched wells of our human hearts. Their grammar is a structure of bestowal and recipience. But the Due Process Clauses are about deprivation of liberty, not bestowal and recipience. If they address blessings, they do so from the standpoint of Esau, who cries out against the loss of what he thought was his. They do not address blessings from the standpoint of Adam and Noah, who experience endowment as blessing, or from the standpoint of Abraham and Jacob/Israel, for whom blessing is not so much an inheritance that falls to them as a calling that claims and tests them, and to which they respond by laying claim. Their claiming will indeed result in a struggle over shares, which is the Madisonian side of Biblical narrative. We need impartial judgment and principles of reasonableness to adjudicate such conflicts in the family, and that is the province of Due Process. But as we build proper defenses against deprivation, we need to consider how and why we are a family; and this requires a countermove, an openness to the family life of giving and receiving, of lovingkindness and gratitude. The Due Process Clauses serve the purpose of securing liberty, but they cannot carry the full load of the Constitution’s larger purpose of securing the blessings of liberty.

As the Constitutional text continues onward past 1787 and 1789, Biblical narrative continues past Genesis. The lineage of Biblical blessings, following the universalistic passages about Adam and Noah, begins with God’s blessings upon Abraham and then upon Isaac, and continues with Jacob’s securing Isaac’s blessing. Jacob blesses the twelve tribes, and ultimately the power to bless is reposed in the priests.⁹⁵

And the LORD spake unto Moses, saying, Speak unto Aaron and unto his sons, saying, On this wise ye shall bless the children of Israel, saying unto them, The LORD bless thee, and keep thee: The LORD make his face shine upon thee, and be gracious unto thee: The LORD lift up his countenance upon thee, and give thee peace. (Numbers 6:22-26.)

Now that God has self-revealed to the people Israel at Sinai, and Israel has accepted the offer of a covenant relationship with the God who is not only the God of Abraham, Isaac, and Jacob, but the God who redeemed the people from

⁹⁵ On the lineage of blessings, see Midrash Rabbah, Numbers (Naso), XI. 2.

bondage in Egypt, blessing itself must be revalorised to express the new relationship. The Priestly Blessing in Numbers 6 figures prominently in this revaluation. It is not only a culmination of the routinization of the charisma of blessing, but also a condensation of the power of a short verbal utterance to transmit or perform life's highest meaning and worth within the framework of legally constituted authority. Because the action of blessing itself is regulated by law, it is qualified to fold the community within law's significance. The priestly authority to bless is supplied by the authority of law, which in turn embodies the authority of God: as creator of humankind, as creator of renewal and renaming (the God of Abraham, Isaac, and Jacob), as redeemer from bondage, as presence in wandering and exile, as promise of a more complete presence and peace.

The priests who pronounce the Priestly Blessing face the people⁹⁶ and say "you" ("thee") to them six times. This repeated personal address performs or achieves nearness or presence. By contrast, the Constitution never says "you." It begins and ends, as we have seen, with the first person, but it never breaks through to the second person. (This absence is not a necessary feature of our fundamental law. In Article XIII of the Articles of Confederation, in the "faith-plighting" paragraph, the phrase "know ye" is part of the bridge between the reference to "the Great Governor of the World" and the undertaking, "we do further solemnly plight and engage the faith of our respective constituents...")⁹⁷ The Constitution requires one officer – the President – to recite a verbal formula in which he or she must say "I."⁹⁸ But the Constitution, unlike the Bible, requires no officer or any member of the political community to say "you." The Preamble gives voice to a "we people" but not even the Preamble's Blessings Clause gives voice to an I-You relationality among this "we people."

The second-personal address of the priests emulates the divine second-personal address that is the benediction's subject and aim. The favor that

⁹⁶ "'On this wise ye shall bless the children of Israel': Face to face. Or, is it to be back to face? No, since Scripture states, 'Ye shall say unto them,' it must mean face to face, as one person speaking to another." Midrash Rabbah, Numbers (Naso), XI. 4.

⁹⁷ Articles of Confederation, Art. XIII; see supra note 26.

⁹⁸ Presidential Oath Clause, Art. II, § 1, cl. 8:

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."

See Garet, "With Radiant Countenance," supra note 66, at [].

constitutes the blessing is precisely the turning of the divine face toward the community and all within it. It is as if the whole people Israel are brought within the face-to-face encounter and blessing of eponymous Israel (Jacob) at Peniel. This turning of the divine face toward the personal and communitarian face of Israel means: “may He remove His anger from you.... Our text states in effect, That countenance of indignation which should deservedly have been turned upon you He will turn away from you.”⁹⁹

The idea stands within the same horizon as Washington’s observation, in his Proclamation of a national day of thanksgiving, that we will benefit from a common day in which to pray to God to look past our transgressions.¹⁰⁰ It also is akin to Lincoln’s admonition (quoting Matthew 7:1; cf. Luke 6:37) in his Second Inaugural Address: “Judge not, lest ye be judged.”¹⁰¹ Blessings are not generically equivalent to favors, and certainly not equivalent to natural advantages or good fortune. Instead, the definitive blessing (comprehending all of the blessings subsequent to the cosmogonic and anthropogonic narratives of Genesis 1) is the suspension of divine judgment, which is also divine wrath.

Lincoln makes it clear that sacrifice is necessary to prepare the way for such blessing. Every drop of blood drawn by the lash may be paid for by a drop drawn by the sword.¹⁰² He says at Gettysburg: the brave men who struggled here have consecrated the ground by giving their lives, stirring a new consecration of the nation to the cause of a new birth of freedom.¹⁰³ This consecration or

⁹⁹ Midrash Rabbah, Numbers (Naso), XI. 7.

¹⁰⁰ Supra, text at note 3.

¹⁰¹ Abraham Lincoln, Second Inaugural Address (March 4, 1865), in 8 The Collected Works of Abraham Lincoln (Roy P. Basler, ed., 1953), pp. 332-333.

¹⁰² Lincoln, “Second Inaugural Address,” id.:

Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, 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, as was said three thousand years ago, so still it must be said “the judgments of the Lord, are true and righteous altogether [Psalm 19:9.]”

¹⁰³ “Address Delivered at the Dedication of the Cemetery at Gettysburg” (Nov. 19, 1863), in 7 The Collected Works of Abraham Lincoln (Roy P. Basler, ed., 1953) at 17, 23 (Final Text):

We are met on a great battle-field of that war. We are met to dedicate a portion of it as the final resting-place of those who here gave their lives

sanctification is the essence of blessing.¹⁰⁴ It requires the deeds of love: “charity for all,” and care of the widows and the orphans. It requires abolition and Reconstruction, and transposing Due Process into the brave new world of the Fourteenth Amendment.

The rabbis and sages noticed and commented upon an apparent conflict between the Priestly Blessing and the rule of law. The Bible elsewhere says: “For the LORD your God is God of gods, and Lord of lords, a great God, a mighty, and a terrible, which regardeth not persons, nor taketh reward: He doth execute the judgment of the fatherless and widow, and loveth the stranger, in giving him food and raiment.” (Deuteronomy 10:17.) The Hebrew that the KJV translates “regardeth not persons” could be rendered more literally: “lifteth not up the countenance.” Thus the object of the Priestly Blessing is apparently to contradict the very principle of impartiality that Deuteronomy specifies and which is essential to the rule of law.

R. Jose b. Dosai expounded: How can these two verses be reconciled? In this way, “The Lord will lift up His countenance” in a matter that concerns you and Him, but “who lifteth not up the countenance” is a matter that concerns you and your neighbor.¹⁰⁵

Issues among neighbors are not resolved by the blessing, but are reserved (I take it) for what we call due process of law. The two frameworks require one another. How can we be stand before God face-to-face, even through the priestly intermediary, if we do not do justice with and to our neighbors? How can we turn

that that nation might live. ... But in a larger sense we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it far above our power to add or detract. ... It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to the cause for which they here gave the last full measure of devotion – that we here highly resolve that the dead shall not have died in vain, that the nation shall, under God, have a new birth of freedom, and that the government of the people, by the people, and for the people, shall not perish from the earth.

¹⁰⁴ Bless, “probably about 1225 *blessen*, developed from Old English *blædsian*... meaning to make holy or sacred by some sacrificial rite, originally, to mark with blood and hence related to *blōd*, BLOOD.” Barnhart Concise Dictionary of Etymology, supra note 21, at p. 73. [*æ* in *blædsian* should have a macron]

¹⁰⁵ Midrash Rabbah, Numbers (Naso) XI. 7.

toward our neighbors if we do not recognize in them the face always turning toward us in spite of all?¹⁰⁶

The Priestly Blessing is a bestowal of nearness to and with God, and a bestowal of peace.

Great is peace, for no vessel can retain blessing so effectively as peace.... [The Priestly Blessing concludes] “and give thee peace.” This is to tell you that blessings in themselves are of no avail unless peace goes with them.... Great is peace for the seal [conclusion]... of the priestly benediction is peace. Great is peace, for it was given to the meek...¹⁰⁷

Such peace is found in reconciliation, which brothers Jacob and Esau sought (did they achieve it?) and to which we too are called (have we achieved it?)

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us finish the work we are in, to bind up the nation’s wounds, to care for him who shall have borne the battle, and for his widow and his orphans, to do all which may achieve and cherish a just and a lasting peace among ourselves and with all nations.¹⁰⁸

Liberty is a good, a great good worth dying for, but it is also a realm of clash, claim, and counterclaim, which in the circumstances of human reason (as Madison knew) would “embitter the blessings of liberty.”¹⁰⁹ Civil war among the brothers is the bitterest cup we have yet had to drink. The blessings of liberty, as distinct from liberty itself, require not only the Madisonian devices built into the Constitution but also much more. The blessings require capacities for reconciliation. These are the relational dispositions that Lincoln affirms in

¹⁰⁶ Midrash on the Priestly Blessing reads the scope-delimiting phrase “children of Israel” in an inclusionary way.

“On this wise ye shall bless the children of Israel, etc.” This tells me only that the blessing is for Israel. How do we know that it is also for proselytes, women, and manumitted slaves? Because Scripture says, *Ye shall say* unto them (Numbers 6:23); that is, to *all of them*.

Id., XI. 4. But this does not decide who counts as the “neighbor,” for purposes of applying the impartial justice or “due process” principle described in text at note 105, *supra*.

¹⁰⁷ Id. Psalm 37:11, “But the meek shall inherit the earth; and shall delight themselves in the abundance of peace.”

¹⁰⁸ Lincoln, Second Inaugural Address, *supra* note 101.

¹⁰⁹ *Supra* note 8.

closing: charity (*caritas*, neighbor-love) in place of malice, care and concern for those desolated by loss. It is not enough to “achieve”; we must also “cherish.” It is not enough state self-evident truths, or to appeal to the Bible; after all, both sides in the fratricidal war “read the same Bible and pray to the same God, and each invokes His aid against the other.”¹¹⁰ We need “firmness in the right” -- another disposition, not reducible to knowledge of the right – “as God gives us to see the right.” We stand in need of God’s gift of vision, opening our eyes. Because these dispositions ordinarily elude us, because we are apt instead to oppress one another, we are radically in need of grace. We need to be awakened to self-giving and thanksgiving. We must be stretched beyond ourselves in our recognition of others, responding to them in the first humility that is contrition and the second humility that is love of neighbor. The blessings of liberty are the gifts of mind and heart that dispose us in these relational ways.

Lincoln speaks as a provider of care to all of us in our role as providers of care. But all of us are always and equally active and receptive, givers and receivers of concern.¹¹¹ It diminishes we the people who are widows and the orphans, and all of us who are the needy, to see us only as recipients. Though we are recipients in a welfare frame, we are agents and providers in the frame of blessings. Discussing the Book of Ruth, Rachel Adler makes the important point:

There are two gifts that even the destitute can bestow. The first of these is *hesed* [lovingkindness].... The second gift is *berakah*, “blessing.”.... Blessing the giver, then, reinvolves the detached and the destitute with the other from whom they have been estranged; the blessing provides them with something of substance to offer in return.¹¹²

Lincoln’s is a worthier Constitution even than Madison’s, because it is a Constitution that supplies not only a device to control the effects of our compromised reason and dark hearts but also a humanizing call that can be heard beyond the reach of all devices. Our fundamental law is the more valuable, makes the greater claim upon our fidelity, because among its purposes is one so challenging that it cannot be pursued as a mere external goal. The purpose of securing the blessings is one that we begin to pursue by inhabiting a particular kind of moral domain: one in which our gratitude (to the dead at Gettysburg and all whose suffering and death have made and continue to make liberty more real) matures into contrition, recommitment, and new ways of relating to one another.

¹¹⁰ Lincoln, Second Inaugural Address, *supra* note 101.

¹¹¹ Margaret A. Farley, “Feminist Consciousness and the Interpretation of Scripture,” in *Feminist Interpretation of the Bible*, ed. Letty M. Russell (Philadelphia, 1985), pp. 41-51.

¹¹² Adler, *Engendering Judaism*, *supra* note 24, at p. 149.

“To secure the blessings of liberty to ourselves and our posterity” is to be drawn into rounds of giving and receiving so subtle and complex that we cannot say where the giving leaves off and the receiving begins.

But as Lincoln does not speak for the desolated who are us, and who minister to us by blessing us and in that way giving all that they have to give, so Lincoln does not speak for the enslaved who are us. This is not a defect; he has no standing to speak for the enslaved and for the emancipated, or to call us as enslaved and emancipated to forgiveness and reconciliation.

We the people as enslaved and emancipated sometimes withhold our blessings. We decline to sing the Lord’s song in what must always be a strange land, because it is not given to any political community in its capacity as sovereign state to be the promised land, or to become or reach that land.¹¹³ How it stings, to be scorned by the withholding of blessing! But this withholding, this distance, is not scorn. In civic as in other profound relationships distance and intimacy complement rather than contradict one another. The grammar of blessings is necessarily also a grammar of curses. It is hard to receive a curse where one wanted or expected a blessing; hard to be Esau, who receives a

¹¹³ Rev. Jeremiah Wright, “Confusing God and Government,” sermon delivered at Trinity United Church of Christ, April 13, 2003. A non-authoritative text is available at: <http://www.blackpast.org/?q=2008-rev-jeremiah-wright-confusing-god-and-government> As Frederick Douglass refused to sing the Lord’s song in a strange land (see supra note 53), so Wright declines to sing “God Bless America.” “When it came to treating her citizens of African decent fairly,” Wright said, “America failed.”

She put them in chains. The government put them in slave quarters, put them on auction blocks, put them in cotton fields, put them in inferior schools, put them in substandard housing, put them in scientific experiments, put them in the lowest paying jobs, put them outside the equal protection of the law, kept them out of their racist bastions of higher education and locked them into position of hopelessness and helplessness. The government gives them the drugs, builds bigger prisons, passes a three-strike law, and then wants us to sing “God Bless America.” No, no, no. Not “God Bless America”; God Damn America! That’s in the Bible, for killing innocent people. God Damn America for treating her citizen as less than human. God Damn America as long as she keeps trying to act like she is God and she is supreme!

Wright’s central theme in this Palm Sunday sermon is that all governments lie, change, and fail – because they are human and are not God. We commit idolatry when we confuse God and government. Only God is truth and unchangeable, and only God turns the apparent failure of Good Friday and the grave into the success of Easter and the resurrection of the dead.

blessing that is in some respects a curse. But if blessings were mandatory they would bring with them no new name, no new creation, no new commitment. Nor would they be blessings of liberty. The blessings of liberty are the mutual encounter and recognition of human persons who are always free to turn toward or away from one another. Both kinds of turning are needed to avert a reification of the “we,” “ourselves,” and “our.” Sometimes it is by keeping “our” distance, and by addressing one another not intimately but ironically, that we most honor the Constitution.