

piety accorded them by subsequent generations. Constitutional authority, in that sense, combines admiration for the excellence of the design with the personal authority of those who have accepted and acted in an official capacity under it.

This is not the occasion for a close examination of that design, so I content myself with an observation that the nation's early experience demonstrated the resilience of its constitution when subjected to stress. Increasing prosperity and expansion across half a continent proved, with one exception, to be compatible with maintenance of the "empire of liberty." The exception is the sanction afforded to slavery, and that grievous flaw proved almost fatal. In a roundabout way, however, that breakdown of the original constitutional design paid it a supreme tribute. The oceans of blood shed for the sake of preserving the Union testified to its more than quotidian significance. Especially in Lincoln's soaring rhetoric at Gettysburg and in the Second Inaugural, it assumed transcendent significance. When victory was finally secured and the primal blot on the nation's charter was written over by the post-Civil War amendments, the worthiness of the Constitution was burnished with a sacral patina.

Redemption of a nation by blood has at most a marginal role in Israel's covenant but is central to Christianity's. At the risk of over-theologizing, Washington plays the role of Moses/Joshua in the American mythology, while the role of Jesus is taken by Lincoln (and reprised in a fashion by the Kennedys and Martin Luther King).

This provides a partial response to Jefferson's worries about domination of the living by the dead hand of the past. If the living have been confirmed in the faith of their fathers, then they are not conscripts but willing participants in the continuing association. Constitutional structures are capital goods that provide a flow of ongoing dividends. Disassembling them every nineteen years would be like blowing up a productive factory or chopping down an orchard. Inheritance of valuable properties is not a cause for regret, although it very well could be if the capital asset were immutable. (Even Henry Ford knew that his factories had to be retooled from time to time.) However, the constitution handed down by the Founders contains provision for amendment. This is not an easy process to carry out, but neither was its original design. Reasonable people can disagree concerning optimal constitutional malleability, but it must be acknowledged that each generation enjoys some prerogative of altering the document that it has received —and also a prerogative to enjoy its benefits unchanged.

A further respect in which the current generation is master rather than servant of the Constitution is that the job of interpretation is in its hands. The Supreme Court is the interpretive agency par excellence, but applying the Constitution to contemporary realities is also a task for the lower courts, the executive, and the legislature. The term "living constitution" is highly charged, but taken in the most literal sense, it could not be otherwise. The dead are beyond being either rulers or ruled. In a constitutional order, though, their influence remains profound because insofar as contemporaries see themselves as interpreting or reinterpreting the Constitution, they take themselves to be in a dialectical relationship with the entire history extending back to Philadelphia. They are free to apply the Constitution in novel ways, but they are not at liberty to substitute creation for interpretation. Such, at any rate, is the theory of constitutionalism.

The rabbinic theory of faithful allegiance to covenant was similar. A scholar suitably qualified by virtue of office and ingenuity could twist the precepts of scripture like a birthday entertainer does