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## IS THERE A PARADOX IN AMENDING A SACRED TEXT?

BEAU BRESLIN\*

The occasion to attend the Maryland Constitutional Law Schmooze on the topic of Religion and the Constitution has afforded me the chance to revisit a distinctively secular book that, curiously enough, provides wonderful insight into the relationship between spirituality and text. In Sanford Levinson's *Constitutional Faith*, the author examines the self-conscious act of signing the constitutional text, the practice of (re)affirming one's fidelity to the original constitutional instrument by literally placing pen to paper (parchment?), and *publicly* acknowledging acceptance.<sup>1</sup> He recounts a story in which he was asked to sign the Constitution during the celebrations surrounding the document's bicentennial, and how his decision to sign was not without considerable anguish.<sup>2</sup> What does it mean to pledge allegiance to the Constitution by "adding one's name" to the document?<sup>3</sup> "How do *we* stand vis-à-vis the Constitution" when we are encouraged to carry out the representational act of ratification?<sup>4</sup> How can we turn a blind eye to the startling inadequacies of the document? And yet how can we *not* endorse a document that, for better or for worse, changed the nature of ordered government throughout the world?

Broadly speaking, Levinson's story (and his dilemma) is intended to draw attention to two related measures, which are the *manner* and the *degree* to which American citizens endorse the country's constitutional charter. He is curious about how individuals embrace the constitutional text—how they make it their own—as well as the depth to which Americans will support the country's constitutional narrative. He is, of course, not alone in examining these theoretical practices. Others have been equally curious about various modes or methods of embracing the Constitution since the moment of its formal ratification. The act of taking an oath, for instance, has been scrutinized as a

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1. SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 180–94 (1988) [hereinafter LEVINSON, FAITH].

2. *Id.* at 180–84; see also SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION* 3–9 (2006) [hereinafter LEVINSON, UNDEMOCRATIC] (revisiting this moment and a similar one at the National Constitution Center to further examine the theory and practice of contemporary ratification).

3. LEVINSON, FAITH, *supra* note 1, at 180–84.

4. *Id.* at 180.

method of expressing allegiance to the text.<sup>5</sup> Public leaders, teachers, civil servants, and others regularly ask American citizens to reengage in various ways with the spirit of the constitutional document.<sup>6</sup> Museums and exhibits have been built or installed that focus on the importance of the Constitution.<sup>7</sup> And, of course, scholars have long been fixated on the text and the implications associated with contemporary approaches to ratification. William Harris is fascinated by the citizenry's ongoing dialogue with the Constitution.<sup>8</sup> More recently, Mariah Zeisberg asked whether citizens are engaged in a "new framing" by virtue of the National Constitution Center's interactive exhibits, including one that forces us to confront directly the self-conscious act of signing.<sup>9</sup>

There are innumerable reasons why one might choose to sign or not sign—to symbolically ratify or reject—the Constitution; some are silly and some are genuinely profound. Levinson draws our attention to several of the more common reasons: For some, he says, adding one's signature to the text represents a sense of duty or obligation, a more or less uninformed commitment based on the assumption that support for the principles at the center of America's political experiment automatically signals support for the nation's fundamental law.<sup>10</sup> The sentiment seems to be that the Constitution ought to be ratified because it is symbolic of the virtues of a free and sovereign people.

On the other hand, there are very significant reasons to reject the Constitution, says Levinson. It implicitly or explicitly perpetuated the institution of chattel slavery; it did not recognize a significant portion of the American population; several of its clauses and provisions are

5. See Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1800–01 (2005) (noting that government officials take an oath to the Constitution and therefore may have a greater moral duty to obey it than ordinary citizens).

6. Almost every presidential inaugural address is a variation on the theme of the importance of America's constitutional text. See, e.g., Abraham Lincoln, First Inaugural Address (Mar. 4, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 262, 263–65 (Roy P. Basler ed., 1953) (invoking constitutional text to address issues of fugitive slaves and the status of the Union).

7. The National Constitution Center and the National Archives are just two of the institutions that highlight the place of the text in America's cultural life.

8. See WILLIAM F. HARRIS II, THE INTERPRETABLE CONSTITUTION xiii (1993) (emphasizing "the interplay between Constitution (with a large "C") and constitution (with a small "c"), document and polity").

9. Mariah Zeisberg, *A New Framing? Constitutional Representation at Philadelphia's National Constitution Center*, 6 PERSP. ON POL. 553, 555, 561 (2008).

10. See LEVINSON, FAITH, *supra* note 1, at 180–81 (casting virtual signing as "a sign of our willingness to join in affirming a 'constitutional faith,' whatever the attendant difficulties in giving content to the notion").

now outdated; and so on.<sup>11</sup> In his most recent book, *Our Undemocratic Constitution*, Levinson continues his inquiry into the usefulness and value of our current constitutional document, claiming that after a lifetime of reflection he has decided now to “reject[ ] the invitation to re-sign the Constitution.”<sup>12</sup> Citing the “inadequacies” of the Constitution today,<sup>13</sup> and the inability of American citizens to engage meaningfully with the document,<sup>14</sup> Levinson suggests that now is the time to abandon this particular charter and summon a new Constitutional Convention.<sup>15</sup>

Embedded within these and other discussions about support for the Constitution, and about the self-conscious act of signing the document, the terms “reverence” and “venerate” inevitably appear.<sup>16</sup> Indeed, the constitutional text is so ubiquitous in the history of the United States, and even in the history of constitutionalism around the world, that it is not foolhardy to assume that this particular charter is worthy of such high praise. Veneration for the Constitution, or at least the *idea* of the Constitution, commenced long ago and by some very prominent figures. There are hints throughout the *Federalist Papers*—especially in those penned by James Madison—that the success of the constitutional order depends on a healthy veneration for the text.<sup>17</sup> Half a century after Madison, Abraham Lincoln spoke of constitutional perpetuity as a necessary feature of regime stability.<sup>18</sup> Presidents from Washington to Obama have spoken with reverence for the constitutional instrument.<sup>19</sup> Recently, the National Constitution Center co-published a survey asking citizens about the various levels of

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11. See William N. Eskridge, Jr. & Sanford Levinson, *Introduction* to CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES 1, 2–4 (William N. Eskridge, Jr. & Sanford Levinson eds., 1998) (highlighting moral and structural constitutional inadequacies); cf. Mark Graber, *Unnecessary and Unintelligible*, in CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES, *supra*, at 43, 48 (“Why should one interpret a constitution that may contain stupid, outdated, or venal provisions? The answer may be that constitutions are compromises between people with very different notions of what is stupid, outdated, or venal.”).

12. LEVINSON, UNDEMOCRATIC, *supra* note 2, at 5.

13. *Id.* at 5–9.

14. *Id.* at 16–20.

15. *Id.* at 9.

16. *E.g.*, LEVINSON, FAITH, *supra* note 1, at 9; LEVINSON, UNDEMOCRATIC, *supra* note 2, at 16–20.

17. See, *e.g.*, THE FEDERALIST NO. 49, at 257 (James Madison) (Ian Shapiro ed., 2009) (suggesting that a “reverence for the laws” should be a goal of the new government).

18. See Lincoln, *supra* note 6, at 264 (suggesting that perpetuity of the Union is implied by the Constitution).

19. See, *e.g.*, President Barack Obama’s Inaugural Address (Jan. 20, 2009), available at <http://www.whitehouse.gov/blog/inaugural-address> (“[O]ur Founding Fathers, faced with perils that we can scarcely imagine, drafted a charter to assure the rule of law and the

their commitment to the Constitution, suggesting in some cases that respect for the text borders on awe.<sup>20</sup> David M. Kennedy, the eminent Stanford historian, even goes so far as to say the following about the American Constitution: “It is our most fundamental political document, *reverenced by all*, the supposed cement of our society . . . .”<sup>21</sup> Levinson, of course, laments the unreflective veneration or reverence for the constitutional text, but even he has to admit that the sentiment is out there among America’s citizens.<sup>22</sup> Siding decidedly with Thomas Jefferson, who believed that constitutional texts were not to be revered and were to be rewritten every generation, Levinson argues that the first step to constitutional renewal is for Americans to overcome our curious reverence for the constitutional charter.<sup>23</sup>

To suggest that the Constitution is worthy of reverence is to suggest that it merits special, heightened, even religious, status. Presumably, those who revere the text worship its many clauses, provisions, aspirations, and rights protections. Doubtless, they also revere the broad contours of the Constitution’s fundamental message(s) and, more generally, how those messages continue to inform the political and constitutional dialogue both at home and around the world. Americans are proud of their constitutional charter (even if they cannot tell us what it says).<sup>24</sup> Moreover, they believe certain parts of the text are truly special. The Preamble, for example, resonates with an American citizenry sophisticated enough to understand the aspira-

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rights of man—a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience sake.”)

20. See STEVE FARKAS ET AL., KNOWING IT BY HEART: AMERICANS CONSIDER THE CONSTITUTION AND ITS MEANING 9–10, 13 (2002), [http://www.policyarchive.org/bitstream/handle/10207/5622/knowning\\_by\\_heart.pdf](http://www.policyarchive.org/bitstream/handle/10207/5622/knowning_by_heart.pdf) (stating that 91% of Americans believe the Constitution protects the interest of all people, 85% believe that it is a major reason for America’s success, and that Americans generally recognize the freedoms set by the Constitution).

21. David M. Kennedy, *Reverence, Ignorance and Blazing Apathy*, N.Y. TIMES, Sept. 14, 1986, § 7, at 11 (book review) (emphasis added).

22. See LEVINSON, UNDEMOCRATIC, *supra* note 2, at 16–17 (recognizing that some Americans “venerate” the Constitution so much that they “find the notion of seriously criticizing it almost sacrilegious”).

23. *Id.* at 16–20; see also Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), in 15 THE WRITINGS OF THOMAS JEFFERSON 32, 40–42 (Andrew A. Lipscomb ed., 1903) (“[L]aws and institutions must go hand in hand with the progress of the human mind.”); Letter from Thomas Jefferson to James Madison (Sept. 6, 1789), in 7 THE WRITINGS OF THOMAS JEFFERSON, *supra*, at 454, 459 (“Every constitution, then, and every law, naturally expires at the end of thirty-four years. If it be enforced longer, it is an act of force, and not of right.”).

24. See FARKAS ET AL., *supra* note 20, at 10, 13–17 (noting that while 85% of Americans believe that the Constitution is a major reason for America’s success, only 16% claim to have a detailed knowledge of it).

tional character of a constitutional instrument.<sup>25</sup> The self-referential quality of the Preamble's linguistic style,<sup>26</sup> combined with its tangible promises of liberty, security, and justice, dovetail nicely with the widely respected (and revered?) language of the Declaration of Independence. More evidently, the Bill of Rights has come to represent the heart of the constitutional text, and in a society infatuated with personal liberty, the reality that a list of freedoms is perceived as the cornerstone of the document will likely elevate that document to reverential standing. To be sure, the Bill of Rights has in many ways eclipsed the original constitutional document in the minds and hearts of the American populace. As I have written elsewhere, "[b]oth literally and figuratively, the Constitution's role in organizing various political institutions is now overshadowed by the perception that the text's first priority is to identify and protect individual rights."<sup>27</sup> When asked what the United States Constitution "means to them," more than half of the individuals surveyed responded that the document is about "freedom" or that it establishes the institutional "basis of our rights."<sup>28</sup> Many Americans revere the Constitution, but (unsurprisingly) even more revere it because it is seen as the vehicle that protects individual freedom and liberty.

To revere is "to show devoted deferential honor to [or to] regard as worthy of great honor."<sup>29</sup> One can revere something secular, but the quality or character of respect that accompanies reverence and veneration is usually reserved for the sacred texts of the world's major religions.<sup>30</sup> Not mere endorsement or affirmation,<sup>30</sup> reverence con-

25. See BEAU BRESLIN, FROM WORDS TO WORLDS: EXPLORING CONSTITUTIONAL FUNCTIONALITY 46–68 (2009) (examining the aspirational qualities of the preambles to the constitutions of several nations).

26. See AKHIL REED AMAR, THE BILL OF RIGHTS 27 (1998) ("The Constitution, after all, was not just a text, but an act—a doing, a constituting. In the Preamble's performative utterance, 'We the people . . . do' alter the old and ordain and establish the new.").

27. BRESLIN, *supra* note 25, at 83; see also Joshua Partlow, *Latin America's Document-Driven Revolutions; Teams of Spanish Scholars Helped Recast Constitutions in Venezuela, Bolivia, Ecuador*, WASH. POST, Feb. 17, 2009, at A1 (reporting that several Latin American countries are undergoing "document-driven revolutions" or constitutional "re-founding[s]," in which regimes are attempting to solidify power by, among other things, making grand promises in their bills of rights) (internal quotation marks omitted).

28. Highlights of Telephone Survey of 1,000 U.S. Citizens Nationwide, <http://ratify.constitutioncenter.org/CitizenAction/CivicResearchResults/NCCNationalPoll/HighlightsofthePoll.shtml> (last visited Sept. 30, 2009).

29. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1002 (10th ed. 1996); see also THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1647 (Stuart Berg Flexner ed., 2d ed. 1987) (defining "revere" as "to regard with respect tinged with awe").

30. Formal definitions of "reverence" and "sacred" typically include some reference to religion. See, e.g., MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *supra* note 29, at 1029 (defining "sacred" as "dedicated or set apart for the service or worship of a deity"); 8 THE

notes a deeper, more profound commitment to the item or instrument respected. The definition of reverence is tied up with the principle of faith, a largely unconfirmed (and unconfirmable) belief in the greatness of an object, text, person, or idea.<sup>31</sup> For example, certain people might revere the word of God or the power of nature, and if they do, they cherish those things as sacred. As noted, many revere the Constitution for what it says and what it represents, and thus they also view that particular text as hallowed.<sup>32</sup>

The Constitution's reverential status raises a host of questions, including ones focused on the relationship between sacred texts and amendability: If the Constitution is so worthy of reverence—if it is, as many have suggested, sacred—should it also be alterable? If it is a hallowed institution, meriting the type of veneration typically reserved for religious tomes and teachings, should we be so at ease about the prospect of fundamental and radical structural change, especially if we imagine that the power to alter the constitutional document is so considerable that the text could conceivably be altered entirely out of existence?<sup>33</sup> If the Constitution is sacred, shouldn't it also be sacrosanct? Here, I am specifically referring to the formal power granted in Article V to amend the text, rather than to the ability of the judiciary or other institutions to interpret the Constitution in ways that fundamentally change its meaning. Article V grants authority to various institutions—including Congress and the state legislatures—to propose amendments to the Constitution or to call conventions for the purpose of proposing amendments to said text.<sup>34</sup> The authority to alter small sections or large chunks of the constitutional document is

OXFORD ENGLISH DICTIONARY 818–19 (J.A. Simpson & E.S.C. Weiner eds., 2d ed. 1991) (defining “reverence” as “[d]eep respect and veneration for some place, thing, or person regarded as having a sacred or exalted character”); 14 THE OXFORD ENGLISH DICTIONARY, *supra*, at 338 (defining “sacred” as “[s]et apart for or dedicated to some religious purpose, and hence entitled to veneration or religious respect; made holy by association with a god or other object of worship; consecrated, hallowed”); THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 29, at 1689 (defining “sacred” as “devoted or dedicated to a deity or some religious purpose; consecrated”).

31. See DAVID HUME, *Of Miracles*, in AN ENQUIRY CONCERNING HUMAN UNDERSTANDING, reprinted in DIALOGUES CONCERNING NATURAL RELIGION 124–25 (Richard Popkin ed., 2d ed. 1998) (concluding that Christianity cannot be rooted in human reason).

32. See LEVINSON, FAITH, *supra* note 1, at 14–15 (highlighting instances of near-religious zeal for the Constitution as “a thread running through much American political rhetoric”).

33. Presumably, the power to amend the American Constitution allows for the possibility that an amendment could be passed that would remove the Constitution as the regime's governing charter. HARRIS, *supra* note 8, at 176; see also U.S. CONST. art. V. (containing only two limitations on what may be amended: (1) that Congress could not abolish slavery or impose export taxes until 1808; and (2) that no State could be deprived of equal representation in the United States Senate).

34. U.S. CONST. art. V.

embedded within the document itself; the rules for amendment, that is, are outlined in the text itself. This authority is a direct consequence of the Framers' Enlightenment beliefs, particularly in the imperfectability of human nature<sup>35</sup> and the new "science of politics."<sup>36</sup>

Of course, some will claim that the amendment process is itself one of the reverential features of the American Constitution.<sup>37</sup> The capacity to change the document through addition is a crucial mechanism aimed at constitutional maintenance, and without it the Constitution becomes far less esteemed (and probably unworkable).<sup>38</sup> Along with the capacity to interpret the text in different historical moments and within different historical contexts, the ability to alter the document formally is what allows the text to stay current or timely. Interestingly, Stephen Holmes has further insisted that the perennial temporal problem faced by all constitutional regimes—namely, that a contemporary democratic people agree to live by rules and procedures established by a past generation of people—can be offset, at least in part, by the capacity to amend the text.<sup>39</sup> Holmes insists that amendability is one antidote for the problem of precommitment.<sup>40</sup>

Even still, the power of amendment represents a curious and possibly disquieting component of a revered text. If we take seriously the various functions and features of a constitution, and we are willing to

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35. See Sanford Levinson, *Introduction* to *RESPONDING TO IMPERFECTION* 3, 3 (Sanford Levinson ed., 1995) (noting George Mason's and George Washington's realizations that the Constitution would unavoidably contain imperfections).

36. See *THE FEDERALIST* NO. 9 (Alexander Hamilton), *supra* note 17, at 43 (referring to several advancements in political science that formed key elements of the American constitutional system).

37. Scholars, including Levinson and Donald Lutz, have accurately noted that the American Constitution, when compared to the constitutional texts of most other Western regimes, is procedurally among the most difficult to amend. LEVINSON, *UNDEMOCRATIC*, *supra* note 2, at 21. Even still, Lutz has also suggested that the possibility of altering the text to reflect critical political and cultural changes has, for many, come to symbolize America's promise of an open, democratic society. See Donald S. Lutz, *Toward a Theory of Constitutional Amendment*, 88 *AM. POL. SCI. REV.* 355, 355–56 (1994), *reprinted in* *RESPONDING TO IMPERFECTION*, *supra* note 35, at 237, 237–39 (arguing that the amendment process is grounded, in part, in the doctrine of popular sovereignty).

38. See Joseph Raz, *On the Authority and Interpretation of Constitutions: Some Preliminaries*, in *CONSTITUTIONALISM* 152, 173–75 (Larry Alexander ed., 1998) (discussing the importance of amendability for regime stability).

39. Stephen Holmes, *Precommitment and the Paradox of Democracy*, in *CONSTITUTIONALISM AND DEMOCRACY* 195, 240 (Jon Elster & Rune Slagstad eds., 1988) ("While prohibiting precommitments which obstructed further learning, Locke, Kant and others endorsed durable—though not unalterable—constitutional rules."); see also Letter from Thomas Jefferson to James Madison (Sept. 6, 1789), *supra* note 23, at 454 (asking "whether one generation of men has a right to bind another" and insisting "that the earth belongs . . . to the living").

40. Holmes, *supra* note 39, at 240.

admit that the articles, provisions, and clauses that give meaning to those features are truly sacred, what does it say about our commitment to a document that includes an internal mechanism for eliminating or altering those exact articles, provisions, and clauses? What does it mean to admit to the imperfectability of the Constitution at the same time that we classify the document as blessed? Can a constitution be imperfect and still be sacred?<sup>41</sup> Is there an inherent paradox here? Jefferson was curious about a similar line of inquiry, and his response was to discourage the continued veneration of the present Constitution and to take it off of its pedestal: “Some men look at constitutions with sanctimonious reverence,” he wrote, “and deem them like the ark of the covenant, too sacred to be touched.”<sup>42</sup> For Jefferson, reverence should be reserved for other types of texts.<sup>43</sup>

Similarly, the sacred *religious* texts—the Bible, the Koran, the four Vedas of Hinduism, and so on—do not allow for radical alterations, at least not in any formal sense.<sup>44</sup> It is true that they differ from the Constitution in several important respects. Most believers, for instance, view sacred religious texts as “divinely or supernaturally inspired”; only some see the product of Philadelphia’s Constitutional Convention as a “miracle” in a similar sense.<sup>45</sup> Additionally, sacred religious texts serve fundamentally different purposes and appeal to different audiences than constitutions.

These religious texts were not written as practical documents, inspired by enlightenment principles, or influenced by a healthy respect for science and rationality. And yet there are certain similarities in the way all of these secular and non-secular documents are described, exalted, and admired. Sacred religious texts are defined as such because they order the lives of believers and provide moral and ethical guideposts by which individual followers measure their particular ac-

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41. This possibility is more believable if, as I suspect, contemporary American citizens view the *idea* of a constitution as more sacred than the actual physical text. There is a folklore surrounding the Constitution that, I am guessing, resonates more easily with the American populace.

42. Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), *supra* note 23, at 40.

43. Consider, for example, the Jefferson Bible. See THOMAS JEFFERSON, *THE LIFE AND MORALS OF JESUS*, reprinted in JEFFERSON’S EXTRACTS FROM THE GOSPELS 125, 125–314 (Dickinson W. Adams ed., Princeton Univ. Press 1983) (arranging sections from the four gospels to create a single narrative from which to extract the philosophy of Jesus Christ).

44. It is worth repeating that I am limiting my inquiry to the more *formal* method of alteration by amendment and not to the very real possibility that a text’s meaning can change over time as a result of differing interpretations.

45. *E.g.*, CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA* (1966).

tions.<sup>46</sup> Constitutions order lives as well.<sup>47</sup> Ceremonies and rituals separate sacred religious texts from the ordinary; constitutions spawn a whole host of ceremonies and rituals.<sup>48</sup> Sacred religious texts often tell a story—a narrative that acts as metaphor for the teachings of the particular sect. More and more frequently, newly framed constitutions begin by describing—often in narrative form—those events that gave rise to the need for constitutional renewal.<sup>49</sup> Religious texts inspire, comfort, influence, motivate, encourage, and so on. Their sacredness, in fact, stems primarily from their ability to inspire and elevate the human condition. The United States Constitution is and has been inspirational to many. Sacred religious texts were written at a particular point in time and they reflect the ideas and prejudices of that moment. So do constitutions. Part of the success of a sacred religious text is due to its longevity and stability; indeed, most of the sacred religious texts are hundreds or even thousands of years old. The success of the American constitutional charter is also due in part to its enduring quality.<sup>50</sup>

What is interesting is that these sacred religious teachings do not include passages analogous to Article V that suggest the presence of imperfections. More to the point, they do not automatically *invite* the possibility of amendment. Make no mistake: These documents have changed over time. It is customary, for example, to view the Gospels as representing some form of biblical amendments; they are, after all, revisions of the narrative surrounding Christ's life and teachings. The insight of Karen Armstrong, a widely published author and lecturer on religious history, is helpful here. She insists that edits, changes, and alterations have been made to both the Old and New Testaments

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46. Religious denominations based on the principle of monotheism, for example, often insist that followers order their lives around the word of a single deity.

47. See Walter F. Murphy, *Civil Law, Common Law, and Constitutional Democracy*, 52 LA. L. REV. 91, 129 (1991). Professor Murphy explains the following:

The goal of a constitutional text must . . . be not simply to structure a government, but to construct a political system, one that can guide the formation of a larger constitution, a "way of life" that is conducive to constitutional democracy. If constitutional democracy is to flourish, its ideals must reach beyond formal governmental arrangements and help configure . . . most aspects of its people's lives.

*Id.*

48. Consider the place of oaths here. See LEVINSON, FAITH, *supra* note 1, at 90–121 (examining the place of loyalty oaths within the constitutional "faith community").

49. See BRESLIN, *supra* note 25, at 50–53 (citing, as examples, the constitutions of Bulgaria, Poland, the Czech Republic, Cambodia, and France).

50. The United States Constitution is now the oldest enduring written constitution ordering a national polity. Theodore C. Sorensen, *The American Constitution: Basic Charter or First Draft?*, 40 ARIZ. L. REV. 709, 709 (1998).

for thousands of years, usually to reflect the political or cultural concerns of the period.<sup>51</sup> Recounting one of those early moments, she writes the following:

[I]t would be many years before Yahwism became a religion of the book. The exiles had brought a number of scrolls from the royal archive in Jerusalem with them to Babylon, and there they studied and edited these documents. If they were allowed to return home, these records of the history and cult of their people could play an important role in the restoration of national life. But the scribes did not regard these writings as sacrosanct and felt free to add new passages, altering them to fit their changed circumstances. They had as yet no notion of a sacred text.<sup>52</sup>

Armstrong contends that the practice of editing, uniting, and altering the biblical narrative continued until the nineteenth century, when a movement emerged that called for the *literal* interpretation of the text.<sup>53</sup> Before then, few could have even conceived of a literal reading; part of the tradition of oral history is that the storyteller is granted certain license to suggest improvements. After the emergence of this group of literalists, however, few edits or changes have even been attempted. In fact, the call for a literal interpretation of the Bible, Armstrong's account suggests, seems to coincide perfectly with the ceasing of modifications altogether.<sup>54</sup> Those who advocate a literal translation of the text have, in a sense, won an important battle: They have locked down the text and prevented the possibility of radical or tangible revisions.<sup>55</sup> The Bible has been mostly unchanged for close to two hundred years now. That particular moment in the nineteenth century, therefore, helped to solidify the belief that the stories captured in the Bible, once textualized, were somehow sacred and unalterable. Followers, in short, had discovered the "notion of the sacred text."<sup>56</sup>

51. KAREN ARMSTRONG, *THE BIBLE: A BIOGRAPHY*, *passim* (2007).

52. *Id.* at 11.

53. *Id.* at 3.

54. *See id.* at 3 (noting that the Bible was not interpreted as literal fact until the nineteenth century).

55. Of course, they have not been fully able to prevent the variety of interpretations from changing the book's meaning over the years. *See id.* at 196–201 (detailing the rise of conservative literal interpretation of the Bible in the nineteenth century in response to a new "widespread hunger for certainty").

56. *Id.* at 11 (relating the older tradition of biblical interpretation, in which scribes, having "no notion of a sacred text," adapted and amended biblical text to fit new circumstances).

Other religious documents include similar histories; they too have been altered through the years and have taken on reverential status once in written form. And yet the ability to modify what is printed in the text is neither announced in these religious tracts, nor is the formal mechanism for fundamental change viewed as one of the principal virtues of the entire document. These documents are truly sacrosanct; believers celebrate the *solidity* of their governing text as much as they celebrate the perspective or world-view that emerges from a collective reading of the text. The Constitution, in contrast, is mostly sacrosanct in spirit. Its broad contours and its central messages may be sacred (and that may be enough), but its particulars remain subject to review. It is more the *idea* of the constitutional document that resonates with the American citizenry; the individual words, phrases, and clauses are themselves vulnerable to revision or modification. In the end, perhaps that is what primarily distinguishes constitutions from certain revered religious manuscripts.

This brings us back to the self-conscious act of signing the Constitution. Accompanied by my daughter, I too recently found myself in Signers' Hall of the National Constitution Center confronted with Levinson's intriguing dilemma: Should I ratify the text, warts and all? Do I lend my signature to a document that I believe has changed the world but has not always lived up to its promise? Do I revere *this* text, or is it just the idea of the text that stirs my emotions? Do I ratify the Constitution because of its symbolism, its meta-quality as the polity's governing charter, or do I focus on the individual phrases and clauses that seriously trouble me? Is this Constitution sacred? Is it worthy of reverence?

Spending a career thinking about the theory of constitutionalism and the importance of constitutions did not make the decision any easier. My daughter, Molly, eagerly signed (claiming something about just wanting to "get out of the museum to find ice cream"), but I was not so sure. To ratify or reject the constitutional instrument was a far more profound and difficult decision than I had anticipated. As it turned out, it was precisely the imperfectability of the constitutional text that inclined me toward ratification. After acknowledging that the act of signing (as well as the physical environment of Signers' Hall) has itself become part of the ceremony and ritual—indeed, the symbolism that renders the charter sacred—I could admit that the Constitution's revered status is probably just a social construction. The idea of a Constitution of this sort was enough for me, even if I share Levinson's view that the text is chock full of inadequacies. What the Constitution stood for and its enduring potential, I concluded,

rendered it sacred. As such, it seems that Benjamin Franklin probably captures my sentiments most accurately. At the close of the Constitutional Convention, Franklin addressed General Washington and his fellow delegates and admitted to having many doubts about what they had just accomplished. Too weak to stand and speak, Franklin's friend and fellow Pennsylvanian James Wilson read Franklin's words:

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others . . . .

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us . . . . I doubt too whether any other Convention we can obtain, may be able to make a better Constitution . . . . Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best . . . .

On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.<sup>57</sup>

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57. James Madison, *Notes of Debates in the Federal Convention of 1787* (Sept. 17, 1787) (statement of Benjamin Franklin), in *THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA* 577, 577-79 (Gailard Hunt & James Brown Scott eds., Greenwood Press 1970) (1920).