

# **The Doctrine of an Inspired Constitution**



# The Doctrine of an Inspired Constitution

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Eighteenth and nineteenth century Americans very commonly assumed that the guiding hand of God was largely responsible for the founding of their new nation, that God had “called forth certain hardy souls from the old and privilege-ridden nations,” and that he “had carried these precious few to a new world and presented them and their descendants with an environment ideally suited to the development of a free society.”<sup>1</sup> Although this Puritan view “had its classic expression during the Revolution and constitutional period, . . . [it] has appeared repeatedly in the course of American history.”<sup>2</sup>

The echoes of this providential view of America’s origins sounded down thorough the nineteenth century and were even heard in the writings of notable historians.<sup>3</sup> But in the twentieth century, both professional historians and Americans generally have been overtaken by secularization. As our contemporaries look back on the events of those formative years, they fail to discern the guiding hand of God. They satisfy themselves with the sophisticated assurance that the providential views of our ancestors were either rhetoric or mythology.<sup>4</sup> In the twentieth century, we Mormons find ourselves almost alone in our belief that God did play a fundamental role in the founding of our nation, and that the American Constitution was inspired by him.<sup>5</sup>

In the Church today, we speak frequently and loosely of our view that the Constitution was inspired. We can cite numerous clear statements by our prophets which elaborate this idea. In 1833 Joseph Smith recorded the scriptural statement that the Lord “established the Constitution of this land, by the hands of wise men whom [He] raised up unto this very purpose . . .” (D&C 101:80).<sup>6</sup> In an official declaration of Church belief, the First Presidency recently affirmed that

we believe that the Constitution of the United States was divinely inspired, that it was produced by “wise men” whom God raised up for this “very purpose, “ and that the principles embodied in the Constitution are so fundamental and important that, if possible, they should be extended “for the rights and protection” of all mankind.<sup>7</sup>

The commitment of these Church leaders to the view that God was integrally involved in the formulation of the Constitution is unequivocal. Yet this may seem problematic for those Latter-day Saints who hale grown up with the “demythologizing” accounts of on explaining the Constitution

primarily as a political compromise between competing economic interests.<sup>8</sup> Because of the pervasive influence of these secular views in modern histories and textbooks, most Americans may not realize that over last decades the major arguments of the old progressivist school have been significantly qualified by careful researchers.<sup>9</sup>

The historical facts are in every way compatible with the teaching that Constitution was inspired by God. The question of inspiration should not focus exclusively on a few men in Independence Hall in the hot summer of 1787, but also on the gathering together of a people with beliefs conducive to forming a new, free republic. Inspiration can also operate in a diffused manner in the struggle of faithful men to find long-range solutions to real problems, as is illustrated by many developments in Church practice. A confirmation of this kind of inspiration in the Constitution can be found in the recognition that the central principles of rule of law, which the drafters built into the Constitution, are essentially identical to those “just and holy principles” which, according to the scripture, justify the Constitution in the eyes of the Lord.

### **Wise Men Raised Up for This Very Purpose**

The revelation recorded by Joseph Smith calls attention directly to those “wise men” that God “raised up” to establish the Constitution. Many commentators have been impressed by the high character and remarkable political wisdom of the leading American statesmen of the constitutional period. The prominent historian, Henry Steele Commager, wrote:

Yet who can doubt that in the last quarter of the eighteenth century it was the New World—not democracy by our standards but certainly democracy by European—that provided the most impressive spectacle of leadership, rather than the nations of the Old World? Who can doubt, for example, that in the crisis of 1774–1783, the American colonies and states enjoyed far more competent leadership than the British Empire?

The situation is too familiar to rehearse. In the last quarter of the century the new United States—a nation with a white population of less than three million, without a single major city, and wholly lacking in those institutions of organized society or civilization so familiar in Europe—boasted a galaxy of leaders who were quite literally incomparable: Franklin, Washington, Jefferson, Hamilton, John Adams, Samuel Adams, John Jay, James Wilson, George Mason, Benjamin Rush, James Madison, and a dozen others scarcely less distinguished.

What explains this remarkable outpouring of political leadership, this fertility in the production of statesmen—a fertility unmatched since that day? Was it an historical accident? Was it a peculiar response to the time or the place, or to a combination of the two? Or was it a product of conditions and attitudes that were cultivated and directed to calculated ends, and that can be if not re-created at least paralleled in our time?<sup>10</sup>

Such statements testify to the striking political wisdom and leadership of American statesmen in the eighteenth century. What is not as often recognized is that the American people themselves were a remarkable group. Historians have generally acknowledged the unusual political literacy of the eighteenth century Americans, but because of their presumed lack of formal education, this high political literacy has often been discounted by the assumption that their beliefs were largely naive and ideological. Fortunately, careful historical inquiry into the political discourses of eighteenth century America has illuminated anew the depths at which the political wisdom of the founding fathers ran simultaneously through the general populace.

Bernard Bailyn has opened our eyes to the flood of political tracts and treatises that washed across pre-revolutionary America.<sup>11</sup> The sustained success of these publications testifies that people were buying and reading them. A contemporary observer remarked that in Massachusetts

knowledge, at least in its first degrees, is extensively diffused. Not a houses is to be found in the most remote corners of the country where a newspaper is not read; and there are few townships which do not possess a little library formed and supported by subscription.<sup>12</sup>

Although it is true that formal education was beyond means of large numbers of Americans, the picture emerging today suggests that they were a surprisingly literature people and that their intelligent and informed interest in public affairs was extraordinary among eighteenth century societies.<sup>13</sup>

As significant as the political literacy of the people was, the strong spiritual foundations of colonial America were even more important. The major thrust of American settlement came from English Puritans and this Puritanism “provided the moral and religious background of fully 75 per cent of people . . .”<sup>14</sup> even as late as 1776. Transplanted to the free soil of America, English Puritanism thrived and flourished; the Puritan interest in democratic ideas and respect for English legal institutions typified American thought. But the Puritan political revolution was only a side effect of the spiritual regeneration that lay at the heart of the movement.

. . . The Puritan demanded of himself—and of others—a reformation of character, the rejection of idle recreation and vain display, and sober, obedient godliness. . . . The Puritan preacher sought nothing less than a new kind of Englishman . . . [through] “a revolution of the saints.”<sup>15</sup>

Not all Americans were Puritans, but most colonists believed in the Reformation teachings and felt a “calling” that made them “more serious, purposeful, and responsible in both [their] civic and economic roles.”<sup>16</sup> This deep religiosity that linked the secular to the religious, created a respect for law and social order which survived long after the quest for personal holiness had been abandoned.<sup>17</sup>

The radical theology of Puritanism was widely abandoned by the Americans of the late eighteenth century, but “the values and precepts derived from it, however, remained intact,”<sup>18</sup> as characterized by the writings of political radicals through the Revolutionary period.

Two later developments in the spiritual and political outlook of the Revolutionary generation need to be recognized. The religious revivals of the Great Awakening, 1740–1790, prepared the common people to challenge constituted authorities and defend their precious liberties. They “also intensified the general tendency of Reformed tradition . . . to set bounds on the will of Kings and the arbitrary exercise of governmental power.”<sup>19</sup> The intellectual developments of the Enlightenment combined with this unique religious background to produce new conceptions of freedom and equality which “were woven into the very texture of American thinking” through the discourses “of the nation’s Patriot heroes and Founding Fathers.”<sup>20</sup> Any arguments about new political institutions depended heavily on whatever support they might derive from that unique moral and religious tradition which distinguished America from every other nation on earth.

It is easy for us to recognize the hand of God in the raising up of a group of luminaries, truly wise men who labored long to inform, persuade, provoke, and lead the American people, first to independence and finally to a happy Union. But we often forget the essential role that thousands of unremembered Americans played in the invention of the political concepts, institutions, and perceptions of an ideal society which distinguished the final document. The actual drafters of the Constitution performed a miraculous task. But it would be impossible without the understanding support of their fellow countrymen and the rich and varied background of political experimentation and discussion on the local level over the preceding decades.

Latter-day Saints have clear scriptural evidence for expecting something extraordinary from those who have come from foreign lands to settle in America. Anciently, Lehi prophesied many things about this land and the people who should come here:

Yea, the Lord hath covenanted this land unto me, and my children forever, and also *all those who should be led out other countries by the hand of the Lord.*

Wherefore, I, Lehi, prophesy according o the working of the Spirit which is in me, that there shall *none come into this land save they shall be brought by the hand of the Lord.*

Wherefore, *this land is consecrated unto him whom he shall bring.* And if it so be that they shall serve him according to the commandments which he hath given, it shall be a land of liberty unto them . . . (2 Ne. 1:5–7. Italics added.)

The modern Americans referred to in this and other passages were a select lot whose general devotion to liberty provided the seed-bed for our remarkable Constitution. The written document only reflects the most

self-conscious stage of a developmental process that had been under way for generations in America. As the Americans struggled throughout the colonial and Confederation periods to shape instruments of government that would protect their individual liberties while effectively serving the public interest, they experimented endlessly in the refinement of institutions and principles which found their way, explicitly, into that summary document. These early Americans were guided by certain principles and ideals of government which they were trying to actualize and institutionalize, as they engaged in extensive experimentation at each level of colonial government. The question is whether there was inspiration in this highly decentralized evolutionary process.

### **Another Model for Inspiration**

It has often been observed that it is not entirely clear what is meant when one says that the Constitution is inspired. No one claims that the authors of the Constitution were prophets in the sense in which that word is used to describe the men from whom we ordinarily accept scripture. Nor did the Founding Fathers claim to be prophets. They did not claim to have seen visions, nor to have received the Constitution in any supernatural way.<sup>21</sup> Further, the records that we have of Federal Convention make it very clear that it was not like a council meeting of Church leaders, with divinely constituted priesthood authority present to make the decisions. And, the actual phrasing that was eventually approved was the result of numerous hard-fought compromises.<sup>22</sup> Yet, if we take seriously the statements of the prophets on the origins of the Constitution, we must recognize that its development was divinely managed, even if in some less direct way.<sup>23</sup>

The Old Testament gives us an example of a society living by laws were given directly to men by God. When the Lord appeared to Moses on the mountain, “all the people saw the thunderings, and the lightings, and the noise of the trumpet, and the mountain smoking” (Exodus 20:18). In addition to the Ten Commandments, Moses received at the same time numerous detailed statutes to govern the daily life of the Israelites.<sup>24</sup>

The Book of Mormon provides the intermediate example of King Mosiah, the prophet who proposed a new constitution without claiming a detailed revelation. But we would not hesitate to call it an inspired arrangement.<sup>25</sup> In the case of the American Constitution, however, there was neither direct divine manifestation, nor were the principal actors prophets. Yet, like the Lamanites, they may have been blessed with the Holy Ghost and “knew it not” (3 Nephi 9:20).<sup>26</sup>

In our search for evidence of inspiration in the development of the Constitution, we would do well to keep in mind a modern analogy. The way in which the institutional devices and principles ultimately embodied

in the Constitution developed over seventy years in American experience is very similar to the development of the present welfare program and other programs in the Church. From the very small beginning forty years ago, the Church has now developed an extensive fully operational program to help its poor. As with our Constitution, so also the emergence of this program is marked most clearly by:

- (1) an experimental approach whereby successful ideas tried on the local level have eventually been incorporated into the structure of the overall program.
- (2) a dogged loyalty to the fundamental principles (such as that every welfare recipient shall provide some service in exchange for the commodities he receives, and that the service and commodities shall, where practicable, be provided through labor of Church members, and not by cash contribution alone), and
- (3) a final crystallization by those authorized to establish general policies.

Members of the church would not hesitate to say that the present Welfare Services is an inspired program. yet it was developed first by individuals who had specific Church responsibilities to fulfill and guiding principles of love, industry, and self-respect to observe in the performance of those assignments.<sup>27</sup> As good and even inspired ideas came to these individuals, they were tried, found true, and adopted as part of the general church program that is continually being organized and reorganized under the leadership of men called and sustained to that responsibility. There is inspiration both in the initiative of the individuals seeking to magnify their specific Church callings and in the adoption and improvement of new programs by general Church leaders.

Other examples of similar inspiration include the youth programs, the Church educational system, and the prospective elders program. Each is inspired; each has undergone significant and continuing changes over the past decade or more. Most of these changes arose initially where local priesthood leaders felt impressed to adapt the general Church program to their particular circumstances in keeping with their callings.<sup>28</sup>

Certainly there are numerous examples of inspired programs which are simply handed down through the Church hierarchy, without prior experimentation. And certainly many programs which arise experimentally in stakes and wards are never adopted into the general Church program. Nevertheless, this remains a very important kind of inspiration which may have helped produce our "inspired Constitution." The political history of seventeenth and eighteenth century America shows that our Constitution emerged from the efforts of a whole people to resolve the conflict between individual liberty and political order, as well as from the creative pens of individual draftsmen.<sup>29</sup>



## **Limitation of Power as a Guiding Principle in the Evolution of Eighteenth Century American Political Order**

Eighteenth century Americans were preoccupied with the threat of arbitrary power. Their political energies were continually devoted to the erection and protection of political and governmental devices designed to protect them from the arbitrary wills of the officers of the crown and of their fellow Americans. While on the one hand they were extremely proud of the magnificent achievement of the mixed constitution of seventeenth and eighteenth century England, they saw almost everywhere means by which individuals in power could be corrupted, thus turning the government power against the people in the interest of a few.

Political radicals in England since the time of the English Civil War had voiced the dangers of power and corruption to the freedom of the individual. The second quarter of the eighteenth century saw the propaganda and political analysis of this radical opposition transplanted wholesale to the American colonies. The English radical writers—Sidney, Trenchard, Gordon, and Bolingbroke, among others—were extensively republished in the colonies and were very popularly received. Their attack centered on the corruption of the constitution and the government by the crown and on the corruption of the people and the times general. One leading historian has marshaled what he describes as “profuse and unmistakable” evidence that the “opposition vision of English politics, conveyed through these popular opposition writers, was determinative of the political understanding of eighteenth-century Americans.”<sup>30</sup> The Americans universally accepted the view of the English radical that

man was by nature lustful, that he was utterly untrustworthy in power, unable to control his passion for domination. The antinomy of power and liberty was accepted as the central fact of politics, and with it the belief that power was aggressive, liberty passive, and that the duty of free men was to protect the latter and constrain the former. Threats to free government, it was believed, lurked everywhere, but nowhere more dangerously than in the designs of ministers in office to aggrandize power by the corrupt use of influence, and by this means ultimately to destroy the balance of the constitution. Corruption, especially in the form of the manipulation and the bribery of the Commons by the gift of places, pensions and sinecures, was as universal a cry in the colonies as it was in England, and with it the same sense of despair at the state of the rest of the world, the same belief that tyranny, already dominant over most of the earth, was continuing to spread its menace and was threatening even greatest bastion of liberty, England it self.<sup>31</sup>

The primary guiding principle of the Americans was that no Englishmen (especially an American heir to the rights of Englishmen) should be subjected to the arbitrary will of another man. Although they considered government to be necessary to protect individuals in the pursuit of property

and happiness, they realized that it had been obviously perverted throughout history to enable those in power to impose their wills on others. As the founding fathers assumed that it was in the nature of all men to take advantage of political office to increase their personal wealth and power, they therefore developed institutional structures for the United States that were designed to play off greed of one office holder against that of another. The very point of the separation of powers and system of checks and balances was to deny governmental officers the power to carry out schemes that could enhance them personally to the detriment of the people.<sup>32</sup> The limitation of power was indeed the theme of much of the experimentation and reasoning that led to the constitutional provisions. Whereas the mixed government of England theoretically met this function by balancing king, lords, and commons, American society was not naturally divided this way, and new institutional devices needed to be developed.<sup>33</sup>

The political experimentation in America during the first century and a half of political experience was primarily oriented towards developing the independence of the colonial legislatures. This independence was achieved by a number of practical arrangements worked out between the legislatures and the colonial governors, and not by any formal written constitutional revisions. Many of the arrangements that the popularly elected legislatures eventually forced on the king's governors were actually illegal in terms of the charters and constitutions under which the colonial governments operated.

Greene documents nicely how these developments came about in the four southern colonies, showing that as in the other colonies, the lower houses had achieved not only equality with the crown's officers, but even superiority to them.<sup>34</sup> Although the formal documents had not been rewritten to accommodate new arrangements, they became solidly established in practice to resolve particular problems in ways that would be satisfactory to the colonists.

From the late 1600s to the Revolution, the colonial assemblies claimed the rights that Parliament had won in England in its struggle with the Stuarts. These included the full right of local legislation, control over both taxes and expenditures, the right to fix the qualifications of eligibility of House members, the power to apportion legislative districts, freedom of debate, immunity from arrest, and the right of the assemblies to choose their own speakers. "In Britain, these privileges had been fully vindicated by the Glorious Revolution, and in insisting upon them the colonial assemblies believed that they were assuming the normal prerogatives of all sovereign legislative bodies."<sup>35</sup> Of course, English officials were quick to oppose these claims, arguing that colonial legislators were more dependent on royal discretion and did not automatically enjoy the benefits gained by Parliament in the Glorious Revolution. The success of colonial legislatures in imposing their

control over taxation and expenditures, however, enabled them eventually to establish all of their claims. "The victory over the purse string, recapitulating as it did a like victory by the House of Commons over the Crown, was tremendous importance in the growth of colonial internal autonomy."<sup>36</sup>

The ideal of legislative independence in the colonial assemblies was never compatible with the ideals of centralized administration of the empire that were long held by London officials. By the 1760s when the Crown decided to pursue more strictly its ideal of an efficiently-organized empire, it was too late. The Americans regarded their new independence and privileges as constitutional in every way, and saw the attempts of the British government to resurrect centralized colonial administration as an attempt to deny them their constitutional rights as Englishmen<sup>37</sup> and enslave them.<sup>38</sup> Small wonder that with the success of the Revolution the thirteen states agreed on a form of national government which exalted above all things the independence of the state legislatures. This outstanding feature of the Articles of Confederation appeared to be the realization of the spoken and unspoken, recognized and unrecognized objectives of generations of Americans.

But the Union was barely born before the inadequacies of that first constitution became apparent. The jealous state legislatures had allowed the central government no power tax and thereby finance centralized functions. Furthermore, no power was conceded to the central government by which it might exercise regulation over commerce or the economy. The statutes that the Confederation might adopt were unenforceable, as there was no recognized supremacy in its statutes over the statutes of any particular state. There was no central judiciary by which residents of one state might seek redress in the courts of another. There was no central executive, and this resulted in considerable disunity. The states were virtually sovereign and could go their own way whenever they disagreed with a majority vote of Congress. There was no federal mechanism which could settle disputes arising between state and national authorities. There was no popular representation in the national congress, each state having equal representation regardless of size or population. Finally, the jealousy of the states was again emphasized in the crippling amendment procedure which required unanimous assent. The adoption of the Articles of Confederation in the first place had apparently been dependent on this absolute control by each state over any future change in that arrangement.

These defects were soon generally recognized.<sup>39</sup> Consequently, the short career of the Confederation was marked by continued experimentation and theoretical discussion on both the state and national levels, which in turn generated many of the political ideas and institutional devices that were eventually embodied in the Constitution. As one prominent historian observed:

No matter how much the members might talk about democracy in theory or about ancient confederacies, when it came to action they did go outside of

their own experience. The Constitution was devised to correct well-known defects and contained few provisions which had not been tested by practical experience. Before the Convention met, some of the leading men in the country had prepared lists of the defects which existed in the Articles of Confederation, and in the Constitution, practically every one of these defects was corrected, and by means which had already been tested in the States and under the Articles of Confederation.<sup>40</sup>

Other constitutional historians have summarized the same point as follows:

The [colonial] era closed with the ratification of the Constitution, a document embodying the political experience of the preceding two centuries.<sup>41</sup>

Some Latter-day Saints seem to take the prophetic teaching that the Constitution was inspired as a reason for insisting that the original document was a final achievement, which should never be modified or revised. This seems clearly mistaken. First, the Constitution condoned slavery, a practice rejected in modern scripture.<sup>42</sup> But of course the Union of 1787 would not have been politically possible with a strong antislavery clause. Other defects of the original document were once outlined by Joseph Smith.<sup>43</sup> Second, the original document itself provides a formal amending procedure, which was promptly used to adopt the Bill of Rights. Third, serious students of the Constitution find that one of the greatest strengths of the document, which has enabled it to weather the shifting tides of American politics, ideologies, and social change is its vagueness and ambiguity in many key passages.<sup>44</sup> One may object to some of the fruits of this tradition of constitutional interpretation, without denying its importance to constitutional vitality. Fourth, the idea of a fixed and unchangeable Constitution seems inconsistent with the experimental origins of the document. The Americans of the nineteenth century were experimentalist in government, and the Constitution was their grand experiment. But it was not designed to end all experiments. Brigham Young explicitly recognized all this when he taught:

The signers of the Declaration of Independence and the framers of the Constitution were inspired from on high to do that work. But was that which was given to them perfect, not admitting of any addition whatever? No; for if men know anything, they must know that the Almighty has never yet found a man in mortality that was capable, at the first intimation, at the first impulse, to receive anything in a state of entire perfection. They laid the foundation, and it was for after generations to rear the superstructure upon it. It is a progressive, a gradual work.<sup>45</sup>

Society under the Constitution is not static; it can develop increased or decreased respect for its basic principles. The original document was flexible enough to absorb shifts in either direction. The subsequent elimination of slavery certainly represented a shift that was already taking place in the

views of the American public in the direction of increased liberty. However, the example of growing economic and other regulation in the twentieth century seems to signal a dwindling commitment to rule of law, not simply because it is economic regulation, but because this regulation in the twentieth century seems to have been shaped more by political considerations of the moment.<sup>46</sup>

### The Rule of Law

The Constitution (and its authors) assume the rule of law as essential to a free society. The point of the rule of law is to enable individuals to pursue their own ends, without fear of being frustrated by impositions of the arbitrary will of others. F.A. Hayek has explained how man can be free *and* ruled by law:

Provided that I know beforehand that if I place myself in a particular position I shall be coerced and provided that I can avoid putting myself in such a position, I need never be coerced. At least insofar as the rules providing for coercion are not aimed at me personally but are so framed as to apply equally to all people in similar circumstances, they are no different from any of the natural obstacles that affect my plans. In that they tell me what will happen if I do this or that laws of the state have the same significance for me as the laws of nature; and I can use my knowledge of the laws of the state to achieve my own aims as I use my knowledge of the laws of nature.<sup>47</sup>

Legal philosophers traditionally contrast this notion of rule of law with the rule of men, which is more common in human societies. The point is that individuals are free in a system where all men are ruled by the same laws according to their common agreement; men are not free when they are subject to the whims and discretionary commands of human rules. The authors of the American Constitution were extremely sensitive to the latter possibility and built into this document every possible safeguard—or to use Madison's phrase, every "auxiliary precaution"—against the encroachments of tyranny.

To operate fully in all dimensions a society's legal experience the rule of law must be attended by a number of supporting principles—all of which have been recognized to some degree in Anglo-American law. F.A. Hayek and Lon Fuller find an implicit set of rules that must be observed by a society and its government if, in fact, rule of law is to be preserved.<sup>48</sup> These conditions include the requirements (1) that laws be general, applying equally to all members of society, including those who enact or enforce the law; (2) that laws never apply retroactive penalties; (3) that all laws be enacted publicly, never in secret; (4) that the Judges be independent of the other branches of government; (5) that administrators not be allowed discretion in applying the law to individuals; and (6) that free individual

activity can only be limited by *general* rules applying equally to all. These metalegal rules are in most cases general characterizations of specific limitations placed on government, especially in Anglo-American legal history.<sup>49</sup>

The rule of law not guarantee economic security, social status, or even minimal happiness to anyone. Thus it should not be confused either with the utopian scheme of the worldly philosophers or the divine outline of the City of God. Recognizing the human impossibility of the former and the present lack of the latter, the authors of our Constitution wisely selected as their guiding principle the rule of law which guarantees us nothing more than the *absence* of arbitrary coercion. Of course, the rule of law does not imply any general prohibition against affirmative government action in the protection of individuals or in pursuit of the general welfare. Rather it simply marks out certain limits to the use of any governmental coercion. Nothing is guaranteed to us except the freedom to pursue our objectives by our own individual or group efforts within certain constitutional limits. This seems to be the same point Hugh Nibley was making when he said:

The best of human laws leaves every man free to engage in his own pursuit of happiness, without presuming for a moment to tell him where that happiness lies; that the very thing the laws of God can guarantee. At best, the political prize is negative.<sup>50</sup>

The rule of law does nothing more than restrict governmental coercion to those special cases in which certain formal criteria are met. Students of liberty often disagree on the adequacy of the formal rule by itself. Some believe that the formal principle of rule of law needs support in constitutional declarations of certain inviolable substantive freedoms, such as freedom of religion, freedom of the press, and rights to trial by jury. The authors of the Constitution had chosen to omit such declarations of substantive rights for fear that future courts might treat such a list as exhaustive.<sup>51</sup> As Hamilton and others persuaded their brethren in Philadelphia, the Constitution was designed to set out the limits of governmental power, not to limit freedoms of the people.<sup>52</sup>

But Madison spoke for the eventual majority who preferred some explicit constitutional status for those key liberties that Englishmen had won from their king over the preceding centuries. He recognized Hamilton's argument that Americans would have no king to worry about. But he felt insufficient attention had been given to the fact that in a democracy

the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the instrument of the major number of the Constituents.<sup>53</sup>

Madison's view was widely shared, and it was only by promising to immediately append a Bill of Rights that the Federalists were able to obtain ratification in several states.

It is also important to note that the rule of law is a metalegal principle. That means it cannot be legislated or enacted as a safeguard for freedom, because anything that can be written into the law can be deleted from the law. Rather, to be operative in any political society, the rule of law must spring from a moral consensus of the people. It must not only be an assumption of the Constitution but of the people governed by the Constitution.<sup>54</sup> It was thus crucial to the establishment of the Constitution and the rule of law in America that the population have a special character, that is, that it be selected for its love of liberty and be raised up with devotion to the rule of law.

The obvious problem is that there is no way to enforce liberty. Being free entails absence of coercion. Consequently, a legal system can only provide freedom for a population that will voluntarily espouse the principles of liberty. Without this there could be no liberty, but only force. There are numerous examples of developing countries that have admired the American Constitution, adopted its form of government and still lapsed into dictatorships. The usual explanation is that the political culture lacked traditional commitment to “the rights of Englishmen,” as it were, thus robbing the constitutional form of its vital force. A contemporary reaffirmation of this view is given to us Russia’s Alexander Solzhenitsyn, who sees the lack of love for liberty or traditional respect for the principles of rule of law among his people as a major reason for their failure to resist the mass imprisonment of innocent citizens that has continued over the last fifty years.<sup>55</sup> In an age of revolution the Americans were the only ones to exercise restrained sovereignty, stepping back to be ruled by their own legal creation. R. R. Palmer concluded that this approach was “distinctively American.”

European thinkers, in all their discussion of political or social contract, of government by consent of sovereignty of the people, had not clearly imagined the people as actually contriving a constitution and creating the organs of government. They lacked the idea of a people as a constituent power.<sup>56</sup>

The rule of law guarantees a people freedom to pursue their own ends without constraint from the arbitrary will of others, a guarantee which also enables men to assume moral responsibility for their own actions. A close reading of Section 101 of the Doctrine and Covenants suggests that the Constitution and the laws of America are acceptable before the Lord precisely because they are “established *according to* just and holy principles” (D&C 101:77; italics added). And what is the effect of these principles? The same as the effect of the rule of law!

That every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment. (D&C 101:78)



This verse seems to echo the common sentiment that men are morally responsible for their acts only when they are free from the arbitrary compulsion of others. Thus a man is only responsible for his own sins (or acts of righteousness) when he is free to “act in doctrine and principle pertaining to futurity,” that is, when the future consequence of his acts can be reasonably predicted in the light of previous experience and known rules, without being governed arbitrarily by the will of others. But this means that the rule of law is at the least functionally equivalent to the “just and holy principles referred to in the scripture. The same principle which makes men responsible for their own sins, also makes them free to pursue wealth or happiness in any other form. An inspired constitution embracing that principle could be established by the hands of “wise men” whose motives might vary dramatically from the motives of righteous prophets. Yet each gets the results he desires.<sup>57</sup>

Just as it necessary to devise a substantially new institutional device to preserve the ancient rights and liberties of Englishmen in the new and unique egalitarian society of eighteenth century America, so we might find that other forms of government could well be established “according to just and holy principles” in nations with different political cultures or compositions. King Benjamin proved that all the requirements of the rule of law could be met in a righteous monarchy. His successors went on to establish a government composed only of elected Judges which proved able to preserve the same principles for several generations. Another Book of Mormon prophet saw exactly the same principles as essential, combining in one statement the ends of moral responsibility and personal freedom as achievements of good law. As Mosiah writes:

... I command you to do these things, and that ye have no king, that if these people commit sins and iniquities they shall be answered upon their own heads.

For behold I say unto you, the sins of many people have been caused by the iniquities of their king; therefore their iniquities are answered upon the heads of their kings.

And now I desire that this inequality should be no more in this land, especially among this people; but I desire that this land be a land of liberty, and every man enjoy his rights and privileges alike. . . . (Mosiah 29:30–32, 37–39)

### **Liberty Dependent on Morality**

The inspired principles in the Constitution are the principles of the rule of law which, if preserved, guarantee liberty to every man. These principles are assumed in the Constitution because they had come to be assumed by Americans generally, as they struggled through several generations to find



institutional safeguards for the liberty that they prized so highly. Many theoreticians of law and politics have rejected such a tenuous and fragile basis for a nation's freedom. They dream of constitutional arrangements based on clear liberation principles which would maximize individual liberty whether or not the people understood or supported the basic principles. Their objection does raise the important secondary problem of preserving the liberty we have obtained.

The early Americans themselves recognized the necessity of "public virtue" for the continuing security of their liberty. As a recent prize-winning history summarizes:

In a monarchy, each man's desire to do what is right in his own eyes could be restrained by fear or force. In a Republic, however, each man must somehow be persuaded to submerge his personal wants into the greater good of the whole. This willingness of the individual to sacrifice his private interest for the good of the community—such patriotism or love of country—the eighteenth century termed public virtue. A republic was such a delicate polity precisely because it demanded such an extraordinary moral character in the people. Every state in which the people participated needed a degree of virtue; but a republic which rested solely on the people absolutely required it, although a particular structural arrangement of the government in a republic might temper the necessity for public virtue, ultimately no model of government whatever can equal the importance of this principle, nor afford proper safety and security without it.

Without some portion of this generous principle, anarchy and confusion would immediately ensue. The jarring interest of individuals, regarding themselves only, and indifferent to the welfare of others would still further heighten the distressing scene, and with the assistance of the selfish passions, it would end in the ruin and subversion of the state. The eighteenth century mind was thoroughly convinced that a popularly based government "cannot be supported without virtue." Only with a public-spirited, self-sacrificing people would the authority of a popularly elected rule be obeyed, but "more by the virtue of the people than by the terror of his power." Because virtue is truly the lifeblood of the republic, the thoughts and hopes surrounding the concept of public spirit gave the Revolution its socially radical character—an expected alteration in the very behavior of the people "laying the foundation in a constitution, not without or over, but within the subjects."<sup>58</sup>

This teaching is appropriately extended by King Benjamin's warning:

Now it is not common that the voice of the people desireth anything contrary to that which is right; but it is common for the lesser part of the people to desire that which is not right; therefore, this shall ye observe and make it your law—to do your business by the voice of the people.

And if the time comes that the voice of the people doth choose iniquity, then is the time that the judgments of God will come upon you; yea, then is the time he will visit you with great destruction even as he has hitherto visited this land. (Mosiah 29:26–27)

## The Constitution and the Saints

No matter what happens with the rest of the gentiles, if the Latter-day Saints are righteous and love liberty, the Constitution will be preserved among them, and as liberty declines elsewhere, it will shine forth more brightly among them as a beacon, drawing the honest in heart and lovers of liberty from all the earth to Zion. As John Taylor prophesied in 1879,

We have got establish a government upon the principle of righteousness, justice, truth and equality and not according to the many false notions that exist among men. And then the day is not far distant when this nation will be shaken from centre to circumference. And now, you may write it down, any of you, and I will prophesy it in the name of God. And then will be fulfilled that prediction to be found in one of the revelations given through the Prophet Joseph Smith. Those who will not take up their sword to fight against their neighbor must needs flee to Zion for safety. And they will come, saying, we do not know anything of the principles of your religion, but we perceive that you are an honest community; you administer justice and righteousness, and we want to live with you and receive the protection of your laws, but as for your religion we will talk about that some other time. Will we protect such people? Yes, all honorable men. When the people shall have torn to shreds the Constitution of United States the Elders of Israel will be found holding it up to the nations of earth, and proclaiming liberty and equal rights to all men, and extending the hand of fellowship to the oppressed of all nations. This is part the programme, and as long as we do what is right and fear God, he will help us and stand by us under all circumstances<sup>59</sup>

The eighteenth century radicals that perpetrated the American Revolution were often highly respected men of substance and were widely regarded as moral leaders in their communities. They were usually leaders in the popular party serving as elected representatives in assemblies and other posts of public trust. Their radical creed was characterized by a deep and passionate opposition to arbitrary and uncontrolled government—by a love of liberty, as it has usually been called. We have been warned by contemporary prophets not to associate ourselves with the rhetoric or political tactics of modern radicals of the left or the right, who also wave their flags of liberty. This might seem inconsistent unless we recognize that being a radical does not entail adherence to any particular political doctrine. Rather, it refers to the depth and degree of commitment. The radicals of the left today seek freedom from social and material deprivation through the application of government power. On the right, according to your preferences in political taxonomy, we have either those liberations who would go far beyond the classically liberal view of the founding fathers in restricting the role of government, or those reactionaries who would be willing to invoke arbitrarily the power of government to reshape moral society in their own image. Modern prophets seem to reject both the reactionary and

radical left views. And in clearly recognizing a positive role for limited government, they refuse to join the libertarians. Like those wise men who forged our Constitution they speak out for integrity in public affairs, protection of the rights of individuals from arbitrary government interference, and for loyalty to that constitutional system which has been so successful in securing to us our freedoms in the past. As we seek to teach our children to love and appreciate their liberty, we would in the contemporary context emphasize the virtues of our constitutional system, the need to protect and repair it as necessary, and the importance of holding public officials to strict standards of integrity, allowing no man to stand above the law. Perhaps the most important things we can do to preserve our constitution and our liberty are first to learn to understand and love liberty ourselves and then to teach our children and our fellow citizens these same things.<sup>60</sup> Indeed we might do well to follow the exportation of young Abraham Lincoln who urged his hearers to make love of liberty and the respect for law “the political religion of the nation.”<sup>61</sup>

The Book of Mormon teaches that our continued liberty in this land depends on our obedience to Christ’s commandments. Therefore, we can make our most important contribution to the preservation of national liberty by calling on our nation to repent and come unto Christ. The Constitution of the United States is seriously threatened by the widespread lack of understanding of and loyalty to its fundamental principles. If modern Americans, who have received their constitutional heritage as a free gift, can be helped to understand and support it with the same fervor as have many generations of immigrants, we will have no need to fear for the future.

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1. Clinton Rossiter, “The American Mission,” *The American Scholar* 20 (1950–51): 19.

2. Conrad Cherry, *God’s new Israel: Religious Interpretations of Destiny* (Englewood Cliffs, N. J.: Prentice-Hall, 1971), p. 23. From this study of the holy Scriptures, Puritans “recognized that governments, and laws were instituted to restrain man’s sin and hence were truly of God.” Sydney E. Ahlstrom, *A Religious History of the American People* (New Haven: Yale University Press, 1972) p. 129.

3. See, e.g., George Bancroft, *History of the United States from the Discovery of the American Continent* (Boston: Charles Bowen, 1837).

4. See generally Cherry, *God’s New Israel*, and specifically his preface, pp. vii–viii. An interesting exception to this prevailing view is represented by the anthology edited by Frederick Gentles and Marvin Steinfield innocently titled *Dream On, America* (San Francisco: Canfield Press, 1971). Incidentally, Gentles and Steinfield reprint a feature article from the *Los Angeles Times* by John Dart on BYU to give an example of a university and a people that have preserved the central elements of the American dream (“A Campus of Peace and Patriotism,” pp. 67–73).

5. Elder L. Tom Perry and his assistant Richard W. Eyre recently attended a planning meeting of the American Revolution Bicentennial Association along with representatives of 200 other American religious organizations. They encountered “uniform opposition” to their efforts to encourage the association to “place some emphasis on the religious aspects of this nation’s birth,” including the feeling that both the Declaration of Independence and the Constitution were inspired documents. I am indebted to Richard W. Eyre for this information provided by letter, 18 July 1975.

6. Other typical affirmations published by Church leaders include: Brigham Young in *Journal of Discourses* 26 vols. (London: Latter-day Saints Book Depot, 1855–86), 7:13–15 (hereafter cited as *JD*); J. Reuben Clark, Jr., *Conference Report*, 1935, 35:93; Heber J. Grant, *The Improvement Era* 43 (1940):127; and George Albert Smith, *Conference Report*, 1940, p. 182.

7. From a generally distributed letter clarifying the Church position regarding Negroes, signed for the First Presidency by Hugh B. Brown and N. Eldon Tanner and dated 15 December 1969, published in *The Improvement Era* 73 (February 1970): 70. See also note 57 below.

8. See, for example, Charles Beard, *Economic Interpretations of the Constitution of the United States* (New York: Macmillan, 1962).

9. The most important work on Beard’s thesis is Robert E. Brown, *Charles Beard and the Constitution* (Princeton: Princeton University Press, 1956).

10. Henry Steele Commager, “Leadership in Eighteenth-Century America and Today,” *Freedom and Order* (New York: G. Braziller, 1966), pp. 149–50.

11. Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge Mass.: Harvard University Press, 1967), pp. 1–8.

12. This quotation from La Rochefocault-Liancourt, *Travels*, 2:215, is taken from Jackson Turner Main’s study, *The Social Structure of Revolutionary America* (Princeton, N.J.: Princeton University Press, 1965), p. 254. Main reports several studies of inventories and probate records the further support the view that Americans in the North and the South were surprisingly well read (pp. 253–255).

13. See, generally, Kenneth Lockenridge, *Literacy in Colonial New England* (New York: Norton, 1974).

14. Ahlstrom, *Religious History of the American People*, p. 124 This same historian claims that the legacy of Puritanism in America was “no less significant than the impact of Luther upon the German nation.” *Ibid.*, p. 98.

15. *Ibid.*, p. 129.

16. *Ibid.*, p. 348.

17. “Puritanism. . . virtually sacrificed itself on the altar of civic responsibility. It helped to create a nation of individuals who were also fervent ‘moral athletes,’ with a strong sense of transcendent values which must receive ordered and corporate expression in the commonwealth.” *Ibid.*, p. 348.

18. Edmund S. Morgan, “The Puritan Ethic and the American Revolution,” *William and Mary Quarterly*, 3d. series 24 (January 1967), p. 6.

19. Ahlstrom, *Religious History of the American People*, p. 350.

20. *Ibid.*, p. 362.

21. An exception of possible significance occurs in *The Federalist Papers*, No. 37, by James Madison. Near the end of that essay, Madison marvels at the purity of the document brought forth under such adverse circumstances and concludes that “it is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution” (*The Federalist Papers*, ed. Clinton Rossiter [New York: New American Library, 1961], pp. 230–31).

22. Charles Biddle, who was acquainted with most of the members of this convention claimed that some of the best informed members of the federal convention had told him “they did not believe a single member was *perfectly* satisfied with the Constitution, but they believed it was the best they could ever agree upon, and that it was infinitely better to have such a one than break up without fixing on some form of government, which I believe at one time it was expected they would have done” (as quoted from Biddle’s *Autobiography* in Max Farrand, *The Fathers of the Constitution* [New Haven, Conn.: Yale University Press, 1921], p. 141).

23. President J. Reuben Clark, Jr., observed that the founding fathers were “in God’s hand; he guided them in their epoch making deliberations in Independence Hall” (*Conference Report*, April 1957, p. 48). But he saw in their work “the culmination of a long historical process which had its beginnings in the efforts of the English people to free themselves from the tyranny of absolute monarchy” (Martin B. Hickman, “J. Reuben Clark, Jr.: The Constitution and the Great Fundamentals,” *J. Reuben Clark, Jr.: Diplomat and Statesman*, ed. Ray C. Hillam (Provo, Utah: Brigham Young University Press, 1973), p. 32).

24. See especially Exodus 21 and 22 for good examples of this.

25. See generally Mosiah 29.

26. It would be a serious mistake to underrate this inspiration in light of the Savior’s promise to pour out the Holy Ghost on the gentiles making them “mighty above all” unto the scattering of the Israelites (3 Nephi 20:27).

27. Additional insight into this well-known example is provided by a letter written to President Spencer W. Kimball, 12 June 1971, by Paul C. Child, who was called to be a counselor to President Harold B. Lee when Pioneer Stake was reorganized in 1930. At that time President Child was given the responsibility for developing a welfare program for the Pioneer stake.

In this letter, President Child explains how the program developed as opportunities arose providing means by which the needs of the unemployed members of the Pioneer Stake might be met. He gives numerous examples of the explicit dependence of the Stake Presidency on the scriptures, the words of the prophet, and on their own inspiration. He also records how the Pioneer Stake program proved to be the answer to the needs of the Church as the First Presidency undertook to develop such a program on a churchwide basis (Paul C. Child, “Physical Beginning of the Church Welfare Program,” *BYU Studies* [Spring 1974], pp. 383–86.).

28. This phenomenon has been labeled “creative stewardship” by W. Keith Warner and Edward L. Kimball (“Creative Stewardship,” *The Carpenter* 1 [Spring 1971]: 17–26). In this insightful article, Warner and Kimball analyze not only the process, but the doctrinal support for it. They also have several examples that illustrate how local leadership can create inspired programs, some of which ultimately prove suitable for general church use. Their intent is to encourage Church members “not only to be willing workers, but also to be creative stewards” (p. 26).

Good scriptural support for this notion of individual revelation comes from D&C 58:24–29. Edward Partridge and his associates had been commanded to go to Zion and after some delay had inquired of Joseph Smith as to the means by which they should travel. The Lord’s reply instructs Edward Partridge to seek the direction of the Lord personally. “Let them bring their families to this land, *as they shall counsel between themselves and me*” (v. 25). “For *the power is in them* wherein they are agents unto themselves” (v. 28). This seems to suggest that the power in them or the Holy Ghost, will aid them as they counsel between themselves and their Father in heaven to find his will in this matter. On this occasion, the Lord took time to expand upon the principle

underlying his reply, explaining that “it is not meet that I should command in all things [presumably through the Prophet] for he that is compelled in all things, the same is a slothful and not a wise servant. . . . Men should be anxiously engaged in a good cause, and do many things of their own free will, and bring to pass much righteousness” (vv. 26–27). In this instance we have a clear example of a Church member being told not to seek complete direction from the head of the Church in carrying out his assignment, but to seek that direction from the lord himself.

This teaching is supported in the instructions given to Oliver Cowdery in Section 9 of the Doctrine and Covenants. Oliver had failed in his attempt to translate the record because he had “supposed that I would give it unto you, when you took no thought save it was to ask me” (v. 7). The Lord goes on to explain that the individual must exert his own efforts in resolving the problem before he calls upon the Lord for inspiration. “But behold, I say unto you that you must study it out in your own mind; then you must ask me if it be right, and if it be right, I will cause that your bosom shall burn within you; therefore, you shall feel that it is right” (v. 8). Or as Oliver was promised earlier, “I will tell you in your mind and in your heart by the Holy Ghost, which shall come upon you” (D&C 8:2).

29. This evolutionary view of the formulation of the Constitution is not original. As Martin Hickman has observed, “There is nothing in President [J. Reuben] Clark’s writings on the Constitution which suggests that he thought the whole of the drama of the Constitution was played in Philadelphia in 1787. Rather he saw the Constitution as emerging from a long historical process. . . . President Clark was fully aware that the political principles which are enshrined in the Constitution had their origins in the development of Anglo-Saxon legal and political experience. . . . [The Framers] bought to their task, as he clearly saw, a mastery of the political ideas which had gradually emerged from the struggle of Englishmen for self-government” (Hickman, “J. Reuben Clark,” pp. 27–28).

William C. Kimball has claimed that the most important factors in the shaping of our Constitution were “the historical traditions of the English rule of law, the century and a half of unsupervised self-government, the lack of entrenched vested interest in the New World, and the literally boundless expanse of territory in which the New America could expand. In addition, one must take into consideration that the society itself was and is democratic—that is, we are all, of most of us, brought up to respect the rules of government, to support the regime, and constantly tinker with the mechanisms of government, to adapt them to our changing needs.” “The Constitution as a Delphic Oracle,” Address delivered to the Cambridge Massachusetts Institute of Religion, 10 October 1969, p. 3.

Sydney George Fisher develops in detail the view that the component elements of the Constitution were the results of a long evolutionary history in English and American politics. This view was current even at the time the Constitution was written and was clearly derived from English legal history in which all Englishmen could see the clear evolution of individual liberty through the development of more and more effective restraints on government. Sydney George Fisher, *The Evolution of the Constitution of the United States* (Philadelphia: Lippincott, 1897).

30. Bernard Bailyn, *The Origins of American Politics* (New York: Random House, 1967), p. 56.

31. *Ibid.*, pp. 56–57. Richard L. Bushman has corrected Bailyn’s generalization somewhat by showing that colonial concern over corruption did not extend to legislatures until after 1750. Whereas the colonists had long complained of the inherent corruptibility of their appointed governors of little or no personal means and no vested interest in the colonies, it was only after 1750 and “under the tutelage of English

radicals” that “a growing number of colonial politicians came to see that were not part of a struggle extending beyond their own mercenary governors. . . .” Their notion of corruption “grew from simple greed to include corruption of the legislature through patronage and electoral influence.” Thus Bushman believes the revolution was fought not only “to escape the dominion of an oppressive ministry and a corrupted Parliament but [also] to create a government of men they could trust, men whose interests mingled with own and whose lust was checked by all the limitations on power enlightenment thinkers had devised” (Richard L. Bushman, *Corruption and Power in Provincial America*, *The Development of a Revolutionary Mentality* [Washington, D.C.: Library of Congress, 1972], p. 82).

32. Cf. Bushman, p. 73 and Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford, Calif.: Stanford University Press, 1970), pp. 63–75.

33. Bailyn, *Politics*, pp. 59ff.

34. Jack P. Greene, *The Quest for Power* (Chapel Hill: University of North Carolina Press, 1963). As Greene and other historians have carefully demonstrated, colonial legislatures were fantastically successful in gaining controls over finances, the payment of fees and salaries, their own legislative procedures concerning membership and internal proceedings, and control over the affairs of the executive, including the collection of revenue, public works, printers, military affairs, Indian affairs, courts and Judges, and church offices. For a detailed study of similar developments in Massachusetts see Bushman, “Corruption and Power,” p. 82, who concluded; “It was that perception of power, those animosities and fears pulsing below the surface of the constitutional disputes, that compelled the assemblies to defend and enlarge their privileges.”

35. Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origin and Development*, 3rd ed. (New York: Norton, 1963), p. 30. See also Michael G. Hall, Lawrence H. Leder, and Michael G. Kammen, eds., *The Glorious Revolution in America* (Chapel Hill: University of North Carolina Press, 1964), p. 214.

36. Kelly and Harbison, *The American Constitution*, p. 31.

37. Modern Americans may need to be reminded that the constitutional rights of eighteenth century Englishmen were simply those liberties and privileges that had been won from the king through military or political struggle and established by general observance over the years.

38. The attitude of Americans toward these crown policies was not fully appreciated before the Harvard historian Bernard Bailyn carefully examined the full range of political literature published in that pre-Revolutionary period. After that study, Bailyn concluded that: “We shall not understand why there was a revolution until we suspend disbelief and listen with care to what the Revolutionaries themselves said was the reason there was a revolution.

“ . . . We shall have much disbelief to overcome. For what the leaders of the Revolutionary movement themselves said lay behind the convulsion of the time—what they themselves said was the cause of it all—was nothing less that a deliberate ‘design’—a conspiracy—of ministers of state and their underlings to overthrow the British constitution, both in England and in America, and to blot out, or at least severely reduce, English liberties” (Bailyn, *Politics*, p. 11).

39. Hamilton appealed for support of the new Constitution by using a systematic review of the defects of the Articles of Confederation in *Federalist Papers* 21 and 22, pp. 138–152.

40. Farrand, *Fathers of the Constitution*, pp. 141–42.

41. Kelly and Harbison, *The American Constitution*, p. 5.

42. “It is not right that any man should be in bondage one to another” (D&C 101:79).



43. Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols. (Salt Lake City: Deseret Book, 1971), 6:7.

44. For example, Rex E. Lee, first dean of the J. Reuben Clark School of Law, sees this feature of the Constitution as additional evidence of its inspiration, and as the explanation for the ability of the Constitution to function successfully over a 183-year period of “explosive growth.” (Rex E. Lee, “The United States Constitution: Divinity and Controversy”, Commissioner’s Lecture Series [Provo, Utah: Brigham Young University Press, 1972]). Very likely much of this vagueness was deliberate. Anyone who has served on writing committees knows that vagueness is the child of compromise. See, for example, the explanation given by Gouverneur Morris for his use of vague terms in Article IV, Section 3, as quoted in Max M. Minty, *Gouverneur Morris and the Revolution* (Norman, Oklahoma: University of Oklahoma Press, 1970), p. 191.

45. *JD*, 7:13:–15. As J. Reuben Clark, Jr., once stated, “It is not my belief nor is it the doctrine of my Church that the Constitution is a fully grown document. On the contrary, we believe it must grow and develop to meet the changing needs of an advancing world” (J. Reuben Clark, Jr., “Constitutional Government: Our Birthright Threatened,” *Vital Speeches of the Day* 5 [1938]:177).

46. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), part III.

47. *Ibid.*, p. 142.

48. See *Ibid.*, pp. 208–219 and Lon Fuller, *The Morality of Law*, Rev. ed. (New Haven, Conn.: Yale University Press, 1969), pp. 33–94.

49. For an exciting yet concise historical analysis of the development of rule of law, see Francis D. Wormuth, *The Origins of Modern Constitutionalism* (New York: Harper and Row, 1949). Wormuth has influenced several other authors mentioned in this essay. His account should, however, be compared with the more traditional one by Charles Howard McIlwain, *Constitutionalism Ancient and Modern*, Rev. ed. (Ithaca, N.Y.: Cornell University Press, 1947).

50. Hugh Nibley, “Beyond Politics,” *BYU Studies* 15 (Autumn 1974):11. Nibley’s reference to the *Teachings of the Prophet Joseph Smith* is worth repeating here: “The laws of men may guarantee to a people protection in the honorable pursuits of this life. . . and when this is said, all is said” (Joseph Fielding Smith, comp., *Teachings of the Prophet Joseph Smith* [Salt Lake City: Deseret Book, 1938], p. 50).

51. The Ninth Amendment clearly stipulates that “the enumeration of certain rights in this Constitution shall not be construed to deny or disparage others retained by the people.” Some observers believe that fears of Hamilton and Wilson have been realized as this provision has been frequently forgotten (Hayek, *Constitution of Liberty*, p. 186). The historical failure to use the Ninth Amendment has been documented and lamented by L. W. Dunbar, “James Madison and the Ninth Amendment,” 42 *Virginia Law Review* 627. The utility of the Ninth Amendment has since been recognized by Justice Goldberg who tried develop it to support the right of privacy which is not enumerated in the Bill of Rights. See his 1964 concurring opinion in *Griswold v. Connecticut*, where he observed: “The Ninth Amendment to the Constitution may be regarded by some as a recent discovery and may be forgotten by others, but since 1791, it has been a basic part of the Constitution.” 381 *United States Reports* 479, 491.

52. See his argument in *Federalist Paper* 84, especially pp. 513–14. Also see James Wilson’s argument to the Pennsylvanians in *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, ed. Jonathan Elliot (Philadelphia and Washington: J. B. Lippincott, 1863), 2:436, where he described the proposal for a bill of right as “highly imprudent.”



53. From a letter to Jefferson dated 17 October 1788 published by S. K. Padover, ed., *The Complete Madison* (New York: Harper, 1953), p. 254. I am indebted to Hayek's book for the references in these two footnotes.

54. Cf. Hayek, *Constitution of Liberty*, pp. 180–82.

55. Aleksandr I. Solzhenitsyn, *The Gulag Archipelago* (New York: Harper & Row, 1974). Or as he says of prisoners who are broken, “We lost the *measure of freedom*” (p. 143). Other passages emphasizing the habitual disregard of the rule of law in Soviet Russia include, pp. 15, 147–49, 151–53, 161–62, 177–78, 281–91, 298, 308–09, 329, 333, 352, 359, 367, 399, 407–08, 431, 505, 537, and 563.

56. R. R. Palmer, *The Age of Democratic Revolution*, 2 vols. (Princeton, N.J.: Princeton University Press, 1959), 1:214–215. Palmer believes that although “the American and the French revolutions ‘proceeded from the same principles’ . . . the difference is that these principles were much more deeply rooted in America. [The] ideas of constitutionalism, individual liberty, or legal equality—were more fully incorporated and less disputed in America than in Europe (p. 189).

57. This analysis seems generally consistent with Hugh Nibley's essay on the “ancient law of liberty” in which he concluded that “it is more that Fourth of July rhetoric when the Latter-day Saints declare that the Constitution is an inspired document. It actually is the restoration to the earth of that ancient law of liberty which has been preached by the prophets in every age allowing every man to act in doctrine and principle according to the moral agency which God has given him, to be accountable for his own sins in the day of judgment. Such acts may never be prescribed or judged by any human agency, the Constitution maintains, and we firmly believe that to be the will of God: it was known to the early Christians as the ancient law of liberty” (Hugh Nibley, *The World and the Prophets* [Salt Lake City: Deseret Book, 1962], p. 173).

58. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton and Co., 1969), p. 68. See also Bushman, “Corruption and Power,” p. 63, and Stourzh, *Alexander Hamilton*.

59. *JD*, 21:8. Brigham Young had acknowledged much earlier that “we have the best system of government in existence, but queried if the people of this nation were righteous enough to sustain its institutions.” He answered his own rhetorical question: “I say they are not, but will trample them under their feet” (*JD*, 12:119). Cited in Nibley, “Beyond Politics,” p. 14.

60. As Harold B. Lee has put it, “We would hope that we might be instrumental in developing statesmen—men not only with unsurpassed excellence of training in the law, but also with an unwavering faith that the Constitution of the United States was divinely inspired and written by men whom God raised up for this very purpose;” and “May I voice a plea for all Americans to love this country with a fervor that will inspire each to so live as to merit the favor of the Almighty during this time of grave uncertainties, as well as in times to come. I would that all men could believe in the destiny of America as did the early pioneers: that it is the land of Zion; that the founders of this nation were men of inspired vision; that the Constitution as written by the inspiration of heaven must be preserved at all costs.

“I will make a further plea that the citizens of this favored land live righteously that they might enjoy the fruits of their righteousness in this land of promise” (Harold B. Lee, *Ye Are a Light of the World* [Salt Lake City: Deseret Book, 1974], pp. 118, 181–82).

61. A speech at the Young Men's Lyceum, Springfield, Illinois, 27 January 1838, entitled, “The Perpetuation of Our Political Institutions,” *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 8 vols. (New Brunswick, N. J.: Rutgers University Press, 1953), 1:112.