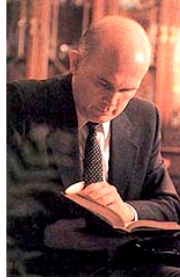


The Divinely Inspired Constitution

By Elder Dallin H. Oaks of the Quorum of the Twelve



Photograph by Eldon K. Linschoten

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Not long after I began to teach law, an older professor asked me a challenging question about Latter-day Saints’ belief in the United States Constitution. Earlier in his career he had taught at the University of Utah College of Law. There he met many Latter-day Saint law students. “They all seemed to believe that the Constitution was divinely inspired,” he said, “but none of them could ever tell me what this meant or how it affected their interpretation of the Constitution.” I took that challenge personally, and I have pondered it for many years. ¹

I hope I will not be thought immodest if I claim a special interest in the Constitution. As a lawyer and law professor for more than twenty years, I have studied the United States Constitution. As legal counsel, I helped draft the bill of rights for the Illinois constitutional convention of 1970. And for three and one-half years as a justice of the Utah Supreme Court I had the sworn duty to uphold and interpret the constitutions of the state of Utah and the United States. My conclusions draw upon those experiences and upon a lifetime of studying the scriptures and the teachings of the living prophets. My opinions on this subject are personal and do not represent a statement in behalf of The Church of Jesus Christ of Latter-day Saints.

Creation and Ratification

The United States Constitution was the first written constitution in the world. It has served Americans well, enhancing freedom and prosperity during the changed conditions of more than two hundred years. Frequently copied, it has become the United States’ most important export. After two centuries, every nation in the world except six have adopted written constitutions, ² and the U.S. Constitution was a model for all of them. No wonder modern revelation says that God established the U.S. Constitution and that it “should be maintained for the rights and protection of all flesh, according to just and holy principles.” (D&C 101:77.)

George Washington was perhaps the first to use the

word miracle in describing the drafting of the U.S. Constitution. In a 1788 letter to Lafayette, he said:

“It appears to me, then, little short of a miracle, that the delegates from so many different states (which states you know are also different from each other in their manners, circumstances, and prejudices) should unite in forming a system of national Government, so little liable to well-founded objections.” ³

It was a miracle. Consider the setting.

The thirteen colonies and three and one-half million Americans who had won independence from the British crown a few years earlier were badly divided on many fundamental issues. Some thought the colonies should reaffiliate with the British crown. Among the majority who favored continued independence, the most divisive issue was whether the United States should have a strong central government to replace the weak “league of friendship” established by the Articles of Confederation. Under the Confederation of 1781, there was no executive or judicial authority, and the national Congress had no power to tax or to regulate commerce. The thirteen states retained all their sovereignty, and the national government could do nothing without their approval. The Articles of Confederation could not be amended without the unanimous approval of all the states, and every effort to strengthen this loose confederation had failed.

Congress could not even protect itself. In July 1783, an armed mob of former Revolutionary War soldiers seeking back wages threatened to take Congress hostage at its meeting in Philadelphia. When Pennsylvania declined to provide militia to protect them, the congressmen fled. Thereafter Congress was a laughingstock, wandering from city to city.

Unless America could adopt a central government with sufficient authority to function as a nation, the thirteen states would remain a group of insignificant, feuding little nations united by nothing more than geography and forever vulnerable to the impositions of aggressive

foreign powers. No wonder the first purpose stated in the preamble of the new United States Constitution was "to form a more perfect union."

The Constitution had its origin in a resolution by which the relatively powerless Congress called delegates to a convention to discuss amendments to the Articles of Confederation. This convention was promoted by James Madison and Alexander Hamilton, two farsighted young statesmen still in their thirties, who favored a strong national government. They persuaded a reluctant George Washington to attend and then used his influence in a letter-writing campaign to encourage participation by all the states. The convention was held in Philadelphia, whose population of a little over 40,000 made it the largest city in the thirteen states.

As the delegates assembled, there were ominous signs of disunity. It was not until eleven days after the scheduled beginning of the convention that enough states were represented to form a quorum. New Hampshire's delegation arrived more than two months late because the state had not provided them travel money. No delegates ever came from Rhode Island.

Economically and politically, the country was alarmingly weak. The states were in a paralyzing depression. Everyone was in debt. The national treasury was empty. Inflation was rampant. The various currencies were nearly worthless. The trade deficit was staggering. Rebellions against their inclusion in New York State, prominent citizens of Vermont had already entered into negotiations to rejoin the British crown. In the western territory, Kentucky leaders were speaking openly about turning from the union and forming alliances with the Old World.

Instead of reacting timidly because of disunity and weakness, the delegates boldly ignored the terms of their invitation to amend the Articles of Confederation and instead set out to write an entirely new constitution. They were conscious of their place in history. For millennia the world's people had been ruled by kings or tyrants. Now a group of colonies had won independence from a king and their representatives had the unique opportunity of establishing a constitutional government Abraham Lincoln would later describe as "of the people, by the people, and for the people."

The delegates faced staggering obstacles. The leaders in the thirteen states were deeply divided on the extent to which the states would cede any power to a national government. If there was to be a strong central government, there were seemingly irresolvable differences on how to allocate the ingredients of national power between large and small states. As to the nature of the national executive, some wanted to copy the British parliamentary system. At least one delegate even favored the adoption of a monarchy. Divisions over slavery could well have prevented any agreement on other issues. There were 600,000 black slaves in the thirteen states, and slavery was essential in the view of some delegates and repulsive to many

others.

Deeming secrecy essential to the success of their venture, the delegates spent over three months in secret sessions, faithfully observing their agreement that no one would speak outside the meeting room on the progress of their work. They were fearful that if their debates were reported to the people before the entire document was ready for submission, the opposition would unite to kill the effort before it was born. This type of proceeding would obviously be impossible today. There is irony in the fact that a constitution which protects the people's "right to know" was written under a set of ground rules that its present beneficiaries would not tolerate.

It took the delegates seven weeks of debate to resolve the question of how the large and small states would be represented in the national congress. The Great Compromise provided a senate with equal representation for each state, and a lower house in which representation was apportioned according to the whole population of free persons in the state, plus three-fifths of the slaves. The vote on this pivotal issue was five states in favor and four against; other states did not vote, either because no delegates were present or because their delegation was divided. Upon that fragile base, the delegates went forward to consider other issues, including the nature of the executive and judicial branches, and whether the document should include a bill of rights.

It is remarkable that the delegates were able to put aside their narrow sectional loyalties to agree on a strong central government. Timely events were persuasive of the need: the delegates' memories of the national humiliation when Congress was chased out of Philadelphia by a mob, the recent challenge of Shay's rebellion against Massachusetts farm foreclosures, and the frightening prospect that northern and western areas would be drawn back into the orbit of European power.

The success of the convention was attributable in large part to the remarkable intelligence, wisdom, and unselfishness of the delegates. As James Madison wrote in the preface to his notes on the Constitutional Convention:

"There never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them." 4 Truly, the U.S. Constitution was established "by the hands of wise men whom [the Lord] raised up unto this very purpose." (D&C 101:80.)

The drafting of the Constitution was only the beginning. By its terms it would not go into effect until ratified by conventions in nine states. But if the nation was to be united and strong, the new Constitution had to be ratified by the key states of Virginia and New York, where the opposition was particularly strong. The

extent of opposition coming out of the convention is suggested by the fact that of seventy-four appointed delegates, only fifty-five participated in the convention, and only thirty-nine of these signed the completed document.

It was nine months before nine states had ratified, and the last of the key states was not included until a month later, when the New York convention ratified by a vote of thirty to twenty-seven. To the “miracle of Philadelphia” one must therefore add “the miracle of ratification.”

Ratification probably could not have been secured without a commitment to add a written bill of rights. The first ten amendments, which included the Bill of Rights, were ratified a little over three years after the Constitution itself.

That the Constitution was ratified is largely attributable to the fact that the principal leaders in the states were willing to vote for a document that failed to embody every one of their preferences. For example, influential Thomas Jefferson, who was in Paris negotiating a treaty and therefore did not serve as a delegate, felt strongly that a bill of rights should have been included in the original Constitution. But Jefferson still supported the Constitution because he felt it was the best available. Benjamin Franklin stated that view in these words:

“When you assemble a number of men to have the advantage over their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does. ... The opinions I have had of its errors, I sacrifice to the public good.” 5

In other words, one should not expect perfection—one certainly should not expect all of his personal preferences—in a document that must represent a consensus. One should not sulk over a representative body’s failure to attain perfection. Americans are well advised to support the best that can be obtained in the circumstances that prevail. That is sound advice not only for the drafting of a constitution but also for the adoption and administration of laws under it.

Inspiration

It was a miracle that the Constitution could be drafted and ratified. But what is there in the text of the Constitution that is divinely inspired?

Reverence for the United States Constitution is so great that sometimes individuals speak as if its every word and phrase had the same standing as scripture. Personally, I have never considered it necessary to defend every line of the Constitution as scriptural. For example, I find nothing scriptural in the compromise on slavery or the minimum age or years of citizenship for congressmen, senators, or the president. President J.

Reuben Clark, who referred to the Constitution as “part of my religion,” 6 also said that it was not part of his belief or the doctrine of the Church that the Constitution was a “fully grown document.” “On the contrary,” he said, “We believe it must grow and develop to meet the changing needs of an advancing world.” 7

That was also the attitude of the Prophet Joseph Smith. He faulted the Constitution for not being “broad enough to cover the whole ground.” In an obvious reference to the national government’s lack of power to intervene when the state of Missouri used its militia to expel the Latter-day Saints from their lands, Joseph Smith said,

“Its sentiments are good, but it provides no means of enforcing them. ... Under its provision, a man or a people who are able to protect themselves can get along well enough; but those who have the misfortune to be weak or unpopular are left to the merciless rage of popular fury.” 8 This omission of national power to protect citizens against state action to deprive them of constitutional rights was remedied in the Fourteenth Amendment, adopted just after the Civil War.

I see divine inspiration in what President J. Reuben Clark called the “great fundamentals” of the Constitution. In his many talks on the Constitution, he always praised three fundamentals: (a) the separation of powers into three independent branches of government in a federal system; (b) the essential freedoms of speech, press, and religion embodied in the Bill of Rights; and (c) the equality of all men before the law. I concur in these three, but I add two more. On my list there are five great fundamentals.

1. Separation of powers. The idea of separation of powers was at least a century old. The English Parliament achieved an initial separation of legislative and executive authority when they wrested certain powers from the king in the revolution of 1688. The concept of separation of powers became well established in the American colonies. State constitutions adopted during the Revolution distinguished between the executive, legislative, and judicial functions. Thus, a document commenting on the proposed Massachusetts Constitution of 1778, speaks familiarly of the principle “that the legislative, judicial, and executive powers are to be lodged in different hands, that each branch is to be independent, and further, to be so balanced, and be able to exert such checks upon the others, as will preserve it from dependence on, or a union with them.” 9

Thus, we see that the inspiration on the idea of separation of powers came long before the U.S. Constitutional Convention. The inspiration in the convention was in its original and remarkably successful adaptation of the idea of separation of powers to the practical needs of a national government. The delegates found just the right combination to assure the integrity of each branch, appropriately checked and balanced with the others. As President Clark said:

"It is this union of independence and dependence of these branches—legislative, executive and judicial—and of the governmental functions possessed by each of them, that constitutes the marvelous genius of this unrivalled document. ... As I see it, it was here that the divine inspiration came. It was truly a miracle." 10

2. A written bill of rights. This second great fundamental came by amendment, but I think Americans all look upon the Bill of Rights as part of the inspired work of the Founding Fathers. The idea of a bill of rights was not new. Once again, the inspiration was in the brilliant, practical implementation of preexisting principles. Almost six hundred years earlier, King John had subscribed the Magna Charta, which contained a written guarantee of some rights for certain of his subjects. The English Parliament had guaranteed individual rights against royal power in the English Bill of Rights of 1689. Even more recently, some of the charters used in the establishment of the American colonies had written guarantees of liberties and privileges, with which the delegates were familiar.

I have always felt that the United States Constitution's closest approach to scriptural stature is in the phrasing of our Bill of Rights. Without the free exercise of religion, America could not have served as the host nation for the restoration of the gospel, which began just three decades after the Bill of Rights was ratified. I also see scriptural stature in the concept and wording of the freedoms of speech and press, the right to be secure against unreasonable searches and seizures, the requirements that there must be probable cause for an arrest and that accused persons must have a speedy and public trial by an impartial jury, and the guarantee that a person will not be deprived of life, liberty, or property without due process of law. President Ezra Taft Benson has said, "Reason, necessity, tradition, and religious conviction all lead me to accept the divine origin of these rights." 11

The Declaration of Independence had posited these truths to be "self-evident," that all men "are endowed by their Creator with certain inalienable Rights," and that governments are instituted "to secure these Rights." This inspired Constitution was established to provide a practical guarantee of these God-given rights (see D&C 101:77), and the language implementing that godly objective is scriptural to me.

3. Division of powers. Another inspired fundamental of the U.S. Constitution is its federal system, which divides government powers between the nation and the various states. Unlike the inspired adaptations mentioned earlier, this division of sovereignty was unprecedented in theory or practice. In a day when it is fashionable to assume that the government has the power and means to right every wrong, we should remember that the U.S. Constitution limits the national government to the exercise of powers expressly granted to it. The Tenth Amendment provides:

"The powers not delegated to the United States by the

Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people."

This principle of limited national powers, with all residuary powers reserved to the people or to the state and local governments, which are most responsive to the people, is one of the great fundamentals of the U.S. Constitution.

The particular powers that are reserved to the states are part of the inspiration. For example, the power to make laws on personal relationships is reserved to the states. Thus, laws of marriage and family rights and duties are state laws. This would have been changed by the proposed Equal Rights Amendment (E.R.A.). When the First Presidency opposed the E.R.A., they cited the way it would have changed various legal rules having to do with the family, a result they characterized as "a moral rather than a legal issue." 12 I would add my belief that the most fundamental legal and political objection to the proposed E.R.A. was that it would effect a significant reallocation of law-making power from the states to the federal government.

4. Popular sovereignty. Perhaps the most important of the great fundamentals of the inspired Constitution is the principle of popular sovereignty: The people are the source of government power. Along with many religious people, Latter-day Saints affirm that God gave the power to the people, and the people consented to a constitution that delegated certain powers to the government. Sovereignty is not inherent in a state or nation just because it has the power that comes from force of arms. Sovereignty does not come from the divine right of a king, who grants his subjects such power as he pleases or is forced to concede, as in Magna Charta. The sovereign power is in the people. I believe this is one of the great meanings in the revelation which tells us that God established the Constitution of the United States,

"That every man may act ... 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.

"Therefore, it is not right that any man should be in bondage one to another.

"And for this purpose have I established the Constitution of this land." (D&C 101:78-80.)

In other words, the most desirable condition for the effective exercise of God-given moral agency is a condition of maximum freedom and responsibility. In this condition men are accountable for their own sins and cannot blame their political conditions on their bondage to a king or a tyrant. This condition is achieved when the people are sovereign, as they are under the Constitution God established in the United States. From this it follows that the most important words in the United States Constitution are the words in the preamble: "We, the people of the United States ... do ordain and establish this Constitution."

President Ezra Taft Benson expressed the fundamental principle of popular sovereignty when he said, "We [the people] are superior to government and should remain master over it, not the other way around." 13 The Book of Mormon explains that principle in these words:

"An unrighteous king doth pervert the ways of all righteousness. ...

"Therefore, choose you by the voice of this people, judges, that ye may be judged according to the laws. ...

"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." (Mosiah 29:23–26.)

Popular sovereignty necessarily implies popular responsibility. Instead of blaming their troubles on a king or other sovereign, all citizens must share the burdens and responsibilities of governing. As the Book of Mormon teaches, "The burden should come upon all the people, that every man might bear his part." (Mosiah 29:34.)

President Clark's third great fundamental was the equality of all men before the law. I believe that to be a corollary of popular sovereignty. When power comes from the people, there is no legitimacy in legal castes or classes or in failing to provide all citizens the equal protection of the laws.

The delegates to the Constitutional Convention did not originate the idea of popular sovereignty, since they lived in a century when many philosophers had argued that political power originated in a social contract. But the United States Constitution provided the first implementation of this principle. After two centuries in which Americans may have taken popular sovereignty for granted, it is helpful to be reminded of the difficulties in that pioneering effort.

To begin with, a direct democracy was impractical for a country of four million people and about a half million square miles. As a result, the delegates had to design the structure of a constitutional, representative democracy, what they called "a Republican Form of Government." 14

The delegates also had to resolve whether a constitution adopted by popular sovereignty could be amended, and if so, how.

Finally, the delegates had to decide how minority rights could be protected when the government was, by definition, controlled by the majority of the sovereign people.

A government based on popular sovereignty must be responsive to the people, but it must also be stable or it cannot govern. A constitution must therefore give government the power to withstand the cries of a majority of the people in the short run, though it must

obviously be subject to their direction in the long run.

Without some government stability against an outraged majority, government could not protect minority rights. As President Clark declared:

"The Constitution was framed in order to protect minorities. That is the purpose of written constitutions. In order that the minorities might be protected in the matter of amendments under our Constitution, the Lord required that the amendments should be made only through the operation of very large majorities—two-thirds for action in the Senate, and three-fourths as among the states. This is the inspired, prescribed order." 15

The delegates to the Constitutional Convention achieved the required balance between popular sovereignty and stability through a power of amendment that was ultimately available but deliberately slow. Only in this way could the government have the certainty of stability, the protection of minority rights, and the potential of change, all at the same time.

To summarize, I see divine inspiration in these four great fundamentals of the U.S. Constitution:

- the separation of powers in the three branches of government;
- the Bill of Rights;
- the division of powers between the states and the federal government; and
- the application of popular sovereignty.

5. The rule of law and not of men. Further, there is divine inspiration in the fundamental underlying premise of this whole constitutional order. All the blessings enjoyed under the United States Constitution are dependent upon the rule of law. That is why President J. Reuben Clark said, "Our allegiance run[s] to the Constitution and to the principles which it embodies, and not to individuals." 16 The rule of law is the basis of liberty.

As the Lord declared in modern revelation, constitutional laws are justifiable before him, "and the law also maketh you free." (D&C 98:5–8.) The self-control by which citizens subject themselves to law strengthens the freedom of all citizens and honors the divinely inspired Constitution.

Citizen Responsibilities

U.S. citizens have an inspired Constitution, and therefore, what? Does the belief that the U.S. Constitution is divinely inspired affect citizens' behavior toward law and government? It should and it does.

U.S. citizens should follow the First Presidency's counsel to study the Constitution. 17 They should be familiar with its great fundamentals: the separation of powers, the individual guarantees in the Bill of Rights, the structure of federalism, the sovereignty of the people, and the principles of the rule of the law. They

should oppose any infringement of these inspired fundamentals.

They should be law-abiding citizens, supportive of national, state, and local governments. The twelfth Article of Faith declares:

We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law."

The Church's official declaration of belief states:

"We believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them. ...

"We believe that all men are bound to sustain and uphold the respective governments in which they reside." (D&C 134:1, 5.)

Those who enjoy the blessings of liberty under a divinely inspired constitution should promote morality, and they should practice what the Founding Fathers called "civic virtue." In his address on the U.S. Constitution, President Ezra Taft Benson quoted this important observation by John Adams, the second president of the United States:

"Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other." 18

Similarly, James Madison, who is known as the "Father of the Constitution," stated his assumption that there had to be "sufficient virtue among men for self-government." He argued in the Federalist Papers that "republican government presupposes the existence of these qualities in a higher degree than any other form." 19

It is part of our civic duty to be moral in our conduct toward all people. There is no place in responsible citizenship for dishonesty or deceit or for willful law breaking of any kind. We believe with the author of Proverbs that "righteousness exalteth a nation: but sin is a reproach to any people." (Prov. 14:34.) The personal righteousness of citizens will strengthen a nation more than the force of its arms.

Citizens should also be practitioners of civic virtue in their conduct toward government. They should be ever willing to fulfill the duties of citizenship. This includes compulsory duties like military service and the numerous voluntary actions they must take if they are to preserve the principle of limited government through citizen self-reliance. For example, since U.S. citizens value the right of trial by jury, they must be willing to serve on juries, even those involving unsavory subject matter. Citizens who favor morality cannot leave the enforcement of moral laws to jurors who oppose them.

The single word that best describes a fulfillment of the duties of civic virtue is patriotism. Citizens should be patriotic. My favorite prescription for patriotism is that

of Adlai Stevenson:

"What do we mean by patriotism in the context of our times? ... A patriotism that puts country ahead of self; a patriotism which is not short, frenzied outbursts of emotion, but the tranquil and steady dedication of a lifetime." 20

I close with a poetic prayer. It is familiar to everyone in the United States, because U.S. citizens sing it in one of their loveliest hymns. It expresses gratitude to God for liberty, and it voices a prayer that he will continue to bless them with the holy light of freedom:

Our fathers' God, to thee,
Author of liberty,
To thee we sing;
Long may our land be bright
With freedom's holy light.
Protect us by thy might,
Great God, our King! 21

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Footnotes:

1. A version of this address, given at the Freedom Festival, Provo, Utah, was printed in *Utah Forum*, Fall/Winter 1989, pp. 1–11.
2. See "The Constitution," *Wilson Quarterly*, Spring 1987, pp. 97, 126.
3. Letter from Washington to Lafayette, 7 Feb. 1788, quoted in Catherine Drinker Bowen, *Miracle at Philadelphia*, Boston: Little, Brown and Co., 1966, p. xvii.
4. Quoted in William O. Nelson, *The Charter of Liberty*, Salt Lake City: Deseret Book Co., 1987, p. 44.
5. Notes of the Debates in the Federal Convention of 1787 Reported by James Madison, p. 653, quoted in Nelson, *The Charter of Liberty*, p. 57.
6. J. Reuben Clark, Jr., *Stand Fast by Our Constitution*, Salt Lake City: Deseret Book Co., 1973, pp. 7, 172.
7. J. Reuben Clark, Jr., quoted in Martin B. Hickman, "J. Reuben Clark, Jr.: the Constitution and the Great Fundamentals," in Ray C. Hillam, ed., *By the Hands of Wise Men*, Provo, Utah: Brigham Young University Press, 1979, p. 53.
8. *History of the Church*, 6:57.
9. Quoted in Gerhard Casper, "Constitutionalism," *Occasional Papers from the Law School*, The University of Chicago, no. 22 (1987).
10. Church News, 29 Nov. 1952, p. 12, quoted in Hillam, "By the Hands of Wise Men," p. 48.
11. Ezra Taft Benson, *The Constitution, a Heavenly Banner*, Salt Lake City: Deseret Book Co., 1986, p. 6.

12. First Presidency letter of 12 Oct. 1978.
13. Benson, *The Constitution, a Heavenly Banner*, p. 7.
14. U.S. Constitution, Art. IV, Sec. 4.
15. *J. Reuben Clark: Selected Papers on Religion, Education, and Youth*, ed. David H. Yarn, Jr., Provo, Utah: Brigham Young University Press, 1984, p. 165.
16. *Ibid.*, p. 43.
17. First Presidency letter of 15 Jan. 1987.
18. Benson, *The Constitution, a Heavenly Banner*, p. 23.
19. *The Federalist*, no. 55.
20. Adlai Stevenson, speech given in New York City, 27 August 1952, quoted in John Bartlett, *Familiar Quotations*, Boston: Little, Brown and Co., 1955, p. 986.
21. *Hymns* (1985), no. 339.