

The Elders of Israel and the Constitution

by

Jerome Horowitz

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Previous Edition
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Preface To 1991 Edition

Why reissue a 21 year old book.

With very little advertising, the original *The Elders of Israel and the Constitution* has been in continual demand since it was first published in 1970. Over the years many people have said it was that book that opened their understanding of the Constitution and motivated them to become actively engaged in seeking to preserve it.

The sixth printing of the first edition was sold out in 1988. This edition is in response to many requests to make the book available again.

What to include in a new edition.

Having decided to reissue the book, the next question was what changes to make.

The original book was mentioned favorably by name by Ezra Taft Benson in his April 1972 General Conference address entitled "Civic Standards For the Faithful Saints."

Among the appreciative letters received from readers was one from Jerreld L. Newquist, author of *Prophets, Principles and National Survival*. He wrote:

"This is certainly the clearest exposition of this inspired document that I have ever read, especially from the L.D.S. point of view. Your explanations have been made systematically and in such a clear manner that there is no difficulty for the reader to thoroughly understand the points you make."

Another letter was from Howard S. Bennion, who had been top man at West Point, a wartime army general, head of Edison Electric Institute, a stake president and a patriarch, and who was unusually knowledgeable on the inner workings of the highest levels of government. He wrote:

"Your book is filled with authenticated material, honestly and intelligently selected and clearly presented. It is the work of an unusually clear, understanding, comprehensively informed and inspired mind."

An especially thrilling letter was one from my father Jacob I. Horowitz, himself a lawyer and author, who thought I had lost my mind when I joined the Mormon Church. He wrote:

"I spent a night and a day reading your book, *The Elders of Israel and the Constitution*. It is a masterpiece and may well be a landmark, a turning point in the salvation of our society from the mess it is in."

Although I am the "author" who "wrote" the book, I believe that there was a great deal of inspiration involved in the process and that to a considerable extent I was more of a Conduit than an author.

In view of the many favorable comments and my own and others' feeling that the book really did involve considerable inspiration, I have concluded to add this new Preface and leave the original text unchanged except for some minor corrections.

A valuable perspective.

Another advantage of leaving the original text unchanged is that reading material written in a time frame of more than 20 years ago should add a valuable perspective to increase understanding of matters of concern today. Here are some examples of important current issues followed by chapters in the book containing helpful information on those issues.

President Bush has repeatedly referred to a "new world order" involving a revitalized United Nations having the power to act as a sort of world policeman. Is this a desirable system or does it pose a danger to our freedom?

See [Chapter 13](#) entitled "The Constitution and the World."

In view of the wide difference of opinion on separation of church and state, what is the place of religion in a free society?

See [Chapter 4](#) entitled "The Indispensable Ingredient" and [Chapter 5](#) entitled "Separation of Church and State."

Today there is heated argument over whether the Constitution should be interpreted according to the ordinary meaning of its words or whether those words should be stretched to cover what are perceived to be different needs. How strictly should the Constitution be interpreted? See [Chapter 8](#) entitled "How Flexible Is the Constitution?" and [Chapter 9](#) entitled "The Lord's Standard of Constitutionality."

What actions should we take to preserve Constitutional freedom?

See [Chapter 10](#) entitled "The Real Threat Against the Constitution," [Chapter 11](#) entitled "Examining Proposed Changes" and [Chapter 17](#) entitled "What Should Latter-day Saints Do?-- An Action Program."

This listing of some important current issues and helpful information on them in the book is far from complete. Even on the few issues mentioned, the brief references to particular chapters do not call attention to the material on those issues in other parts of the book.

While the book is addressed especially to Latter-day Saints, I am grateful that non LDS readers have found it so helpful.

Jerome Horowitz [p. 1]

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Chapter 1 The Constitution and the Prophets

It is a belief of the Latter-day Saints that the Constitution of the United States is divinely inspired. In the Doctrine and Covenants, the Lord declared:

... I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose.⁽¹⁾

It is also a Latter-day Saint belief, declared by Joseph Smith and reaffirmed by subsequent prophets, that the time would come when the Constitution of the United States would be all but destroyed. An expression used is that it would "hang as by a single thread".⁽²⁾

These predictions continue to the effect that the Elders of Israel will be instrumental in saving the Constitution, if it is saved at all.⁽³⁾ The term "Elders of Israel," as used in [p. 2] this context, apparently refers to the Mormon people rather than to a specific priesthood group.⁽⁴⁾

If the Latter-day Saints are to help save the Constitution, it is important that they understand it. It is not sufficient to declare that they believe it, without being familiar with its significant provisions and the principles on which it is based.

Framers Received Correct Principles

Since it is a belief of the Latter-day Saints that the Constitution was given through inspiration, it is especially appropriate to examine the constitutional system intended by the Framers. In doing so, particular effort should be made to understand the basic concepts and principles the Framers accepted, and to know which political concepts they considered to be unsound and rejected.

Before discussing the intent of the Framers, it seems appropriate to comment briefly on a point of view, most often expressed in educational circles, that it is impossible to ascertain just what the Framers did believe because there was no substantial unanimity among them. This lack of unanimity argument sounds particularly incongruous when it is repeated by those who believe the Framers to have been inspired, since it would seem that men who are inspired would also be united.

Actually, much of the confusion concerning the alleged lack of unanimity of intent arises out of a failure to distinguish between thoughts expressed in the process of developing the constitutional system and acceptance of the system agreed upon.

For example, Latter-day Saints believe that to obtain inspiration one does not simply ask and then sit back and wait for an answer. Instead, the procedure is to struggle [p. 3] and experiment with different ideas in a prayerful attitude, and then the inspiration comes in the form of guidance in knowing which ideas to reject and which to retain.⁽⁵⁾ The different points of view

presented by the Framers in designing the constitutional system were part of their struggling for fundamental principles from different directions and with particular concern for different problems. However, this groping from different points of view should not be confused with lack of unanimity of intent with respect to the final product.

The above concept, that the various points of view of the Framers in the Constitutional Convention were a part of the process of obtaining inspiration on the ultimate design, on which they were substantially united, is confirmed by the following comment made by the late J. Reuben Clark, Jr., a noted lawyer and an apostle of The Church of Jesus Christ of Latter-day Saints:

But I see in their divers views, their different concepts, even the promotion of their different local interests, not . . . confusion . . . but a searching, almost meticulous study and examination of the fundamental principles involved, and the final adoption of the wisest and best of all—I see the winnowing of the wheat, the blowing of the chaff.⁽⁶⁾

That there actually is an ascertainable composite intent of the Framers is evidenced by the following statement by Professor Edward S. Corwin:

The tradition concerning the original establishment of the Constitution was still fresh, and . . . the intentions of the framers enjoyed a renewed vitality. . . . the theories which Marshall urged . . . were, in fact, frequently verifiable as theories of the framers of the Constitution.⁽⁷⁾ [p. 4]

Framers' Preparation

Another suggestion made by some for the purpose of undermining confidence in the Framers has been to imply that they did not have sufficient education or experience to design a system of government adequate for today's complex world. The caliber and preparation of the Framers was well summarized by J. Reuben Clark in these words:

What a group of men of surpassing abilities, attainments, experience, and achievements! *There has not been another such group of men in all the one hundred seventy years of our history, no group that even challenged the supremacy of this group.*⁽⁸⁾

Neither [Moses nor Brigham Young] . . . was more clearly trained for his work than these Framers were trained for theirs rich in intellectual endowment and ripened in experience.⁽⁹⁾

As to the Framers' knowledge of the political experiences of other governments, President Clark commented:

The Framers were deeply read in the facts of history; they were learned in the forms and practices and systems of the governments of the world, past and present; they were, in matters political, equally at home in Rome, in Athens, in Paris, and in London; they had a long, varied, and intense experience in the work of governing their various Colonies.⁽¹⁰⁾

As to all matters under consideration by the Convention, the history of the world was combed for applicable experiences and precedents.⁽¹¹⁾

With respect to the qualifications of the Framers, Daniel Webster, who was himself a noted defender of the Constitution, declared:

Truly . . . these founders and fathers of the Constitution were great men. . . . All that reading and learning could do; all that talent and intelligence could do; and, what perhaps is still more, all that long experience in difficult and troubled [p. 5] times and a deep and intimate knowledge of the condition of the country could do,—conspired to fit them for the great business of forming a general but limited government. . . . I love to linger around these original fountains, and to drink deep of their waters. I love to imbibe, in as full measure as I may, the spirit of those who laid the foundations of the government, and so wisely and skillfully balanced and adjusted its bearings and proportions.⁽¹²⁾

Impressive as are these and other testimonies of men concerning the caliber of the Framers, perhaps the most significant confirmation of their qualifications is found in the Doctrine and Covenants. There the Lord declares that the Framers were wise men whom He raised up for the very purpose of framing the Constitution.⁽¹³⁾ In that volume it is further stated that the principles they incorporated into the Constitution should be established forever.⁽¹⁴⁾ [p. 6] [p. 7]

Chapter 2

The Framers' Intent

To understand the Constitution, it is desirable to look back to when it was drafted to see what the Framers were trying to accomplish.

The American colonists paid dearly for their freedom. But there was much concern that it might slip away from them or from their posterity. The Framers' intent in drafting the Constitution was to design a system of government that would make it as difficult as possible for the American people to be deprived of their freedom.

Dangers To Freedom

The Framers saw two principal dangers threatening their newly won freedom:

The first danger was that unless the powers granted to the central government were sufficient to enable it to perform its functions, the United States could not endure as a strong and united country.

The second danger was that unless a way could be found to protect the people against the human nature tendencies of government officials, freedom would eventually be destroyed by the very government intended to protect it.

Framers' Attitude Toward Government Officials

The Framers' attitude toward government officials is similar to that expressed in the *Doctrine and Covenants* in these words:

We have learned by sad experience that it is the nature and disposition of almost all men, as soon as they get a little [p. 8] authority, as they suppose, they will immediately begin to exercise unrighteous dominion.⁽¹⁾

This same attitude was expressed by Thomas Jefferson, founder of the Democratic Party and third President of the United States, in this manner:

It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism—free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited constitutions; to bind down those whom we are obliged to trust with power. . . . In questions of power, then, let not more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.⁽²⁾

Constitution Based on Human Nature

Further evidence of how solidly the Constitution is rooted in human nature, and particularly the human weaknesses of those entrusted with the power of government, is found in *The Federalist*, a series of essays by Alexander Hamilton, John Jay, and James Madison in support of adoption of the Constitution.

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? . . . If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.⁽³⁾

The last two comments quoted above help bring into sharp focus a fact that should be strikingly clear to every [p. 9] student of the Constitution—the fact that instead of being outmoded because applicable only to a particular time, the Constitution is founded on human nature which has not changed since the Constitution was drafted.

The Supreme Compulsory Power of Government

One matter that should be kept firmly in mind in any discussion of the Constitution is a consideration which constituted a basic underlying premise in all the deliberations of the Framers. That fact is the clear realization of the fearful power of government—that by its very nature the government must have supreme compulsory power in all areas committed to its authority. This recognition of the power inherent in the nature of government was expressed by George Washington in these oft-quoted words:

Government is not reason, it is not eloquence—it is force! Like fire, it is a dangerous servant and a fearful master.⁽⁴⁾

The following is a brief summary of some of the main principles worked into the Constitution to protect freedom against human nature tendencies which might otherwise destroy it. Most of the technical provisions of the Constitution involve devices designed to implement these principles.

Local Self Government Preferable To Centralized National Control

One of the great underlying principles of the Constitution is that local self government is preferable to centralized national control.⁽⁵⁾ It was intended that the federal government be as small as possible so that government officials furthest from the people would have a minimum [p. 10] of power to misuse, and so that it would be relatively easy for the people to check on whether their officials properly perform their functions.

Pursuant to this attitude, the Constitution was drafted in such a way that federal authority would extend only to those functions which, because of their nature, could not be satisfactorily administered by the people themselves or the separate states. An example of such a function is making treaties with foreign nations. The Framers felt that treaties must be made by a single agency representing the entire United States.

Since most people's ordinary activities could be well administered by the people themselves or the states, the federal government would have no authority over the daily lives of the people. Instead, authority over the people's ordinary daily activities would be vested in local officials most familiar with local problems and most easily checked on by the people.

The Powers of Government Must Not Be Controlled by Any Single Group

Another basic principle of the Constitution is that governmental power must be divided among different groups so that the government is not controlled by any one group.

Many people are aware of the constitutional provision for separation of the powers of the federal government among the legislative, executive and judicial branches. But more emphasis should be placed on the fact that the Constitution also provides for another aspect of separation of powers. This other aspect is separation between the federal government itself on the one hand and the separate states on the other. Those who launched this free republic felt that this

separation of powers between the federal government and the states was so important that the Tenth Amendment which reads as follows was adopted to confirm it unmistakably. [p. 11]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.^[6]

It is of interest that the Tenth Amendment not only confirms the fact that there are reserved powers not granted to the federal government, but also reiterates the fact that the only powers the federal government has are those specifically delegated to it in the Constitution.

There Must Be Built-in Provisions for Automatically Checking Unauthorized Usurpations of Power

In addition to their belief in the importance of the principle of separation of powers to the preservation of freedom, the Framers strongly felt that mere separation of powers alone was not sufficient. There must also be a device for maintaining the separation. Each department must be prevented from encroaching on the jurisdiction of the others, and perhaps ultimately attaining effective control of the government.

To prevent encroachment of one department on another, the Framers incorporated what is known as a system of checks and balances under which it was intended that the several departments, themselves, resist any attempted encroachment by others on their sphere of authority. The objective sought was to be sure that each department and each official has not only a duty, but also a personal motive to resist any such encroachment by others. This objective was expressed in *The Federalist* in these words.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of others. . . . Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. . . . that the private interest of every individual may be a sentinel over the public rights.^[7] [p. 12]

Summary of Essential Principles To Be Built Into Constitution

In framing the Constitution, the Framers felt that at least the following three areas had to be built into the proposed government structure to protect freedom.

1. The federal government must be given sufficient power and authority to perform those functions which, because of their nature, cannot be performed by the people or by the states. However, it must not be given greater power than this, and even this power must be clearly defined and limited. It was felt necessary to keep the federal government as small as possible in order to keep it the servant instead of the master.

2. The powers of government must be divided among different groups and a system of checks and balances must be worked in so that the human nature tendencies of government

officials to usurp power would collide with and be checked by those same tendencies in other officials.

3. There must be an amendment procedure sufficiently rigorous to prevent even an ordinary majority of the people from changing the basic structure with its safeguards of liberty. [p. 13]

Chapter 3

The Main Provisions of the Constitution

A brief consideration of some of the main provisions of the Constitution will show how the Framers built in those essential requirements.

The Constitution is a fairly short document consisting of seven separate Articles. The first three Articles pertain to the three branches of our government: legislative, executive, and judicial.

Article I—The Legislative Branch

Section 8 of Article I sets forth the lawmaking powers conferred upon the federal government.

Some examples of these conferred powers are powers over interstate and foreign commerce, naturalization of new citizens, coining money and fixing standard weights and measures, establishing post offices and post roads, and powers pertaining to war and the military forces.

The powers listed are consistent with the intention of the Framers and with the understanding of the people at the time the Constitution was drafted and adopted, that the authority delegated to the federal government was to be only in those areas where individual action by the people or the separate states would be inappropriate.

This limited federal government concept is explained by James Madison in *The Federalist* in these words:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. [p. 14] The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. . . . The powers reserved to the several states will extend to all of the objects which, in the ordinary course of affairs; concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. ⁽⁴⁾

Constitution Protected Authority of States

The Constitution not only recognized the authority of the states over local matters, but provided a means for protecting that authority against federal encroachment. This was accomplished through giving the states representation in the federal government. Under the Constitution as framed and ratified, the senators were not representatives of the people directly. Instead, they were chosen by the state legislatures as representatives of the states.⁽²⁾ This representation in the federal government through selection of senators enabled the states to have an element of control over federal legislation and, thereby to protect themselves against federal encroachment.

This function of the Senate in protecting state authority against encroachment by the federal government is explained in *The Federalist* in these words:

The equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty.⁽³⁾

Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States.⁽⁴⁾

When the 17th Amendment⁽⁵⁾ was adopted in 1913, most people who favored it probably thought they were [p. 15] being modern and progressive in providing for direct election of senators. But by depriving the states of their representation in the federal government, this amendment eliminated the principle constitutional device designed to enable the states to protect themselves against federal encroachment.

Article II—The Executive Branch

No part of the Constitution gave the Framers greater difficulty than that pertaining to the executive.⁽⁶⁾

Great concern was expressed over the possibility that the President might become a dictator or tyrant. To prevent this, consideration was given to the advisability of having more than one president at one time, and of making the executive dependent upon the legislature.⁽⁷⁾

The President was made commander-in-chief of the armed forces, but was not given the power to declare war.⁽⁸⁾ Under the Constitution only Congress can declare war.⁽⁹⁾ Furthermore, congressional appropriations of money to support armed forces are constitutionally limited to two years.⁽¹⁰⁾

The President makes treaties with the advice and consent of the Senate, but these are not effective until ratified by two-thirds of the senators present.⁽¹¹⁾

His principal peacetime duty, as set forth in the Constitution, is to take care that the laws passed by Congress are faithfully executed.⁽¹²⁾

Framers Opposed Popular Election of President

The Framers used great care to design a workable system. One problem they especially avoided was that of placing a function or responsibility upon a part of the [p. 16] government when that particular part was not in a position to perform that function or responsibility successfully.

Their avoidance of this problem is especially evident in the arrangements they devised for the selection of the President. They felt on the one hand that the people should be involved in the selection of the chief executive. But on the other hand, the Framers strongly opposed popular election of the President because they felt that the people were not in a position to make a wise selection.⁽¹³⁾ This point of view was expressed in *The Federalist* in these words:

The immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.⁽¹⁴⁾

This attitude that the people themselves were not in a position to select their chief executive wisely was one of the reasons the Framers provided for the election of the President by a limited number of electors chosen for the specific purpose of selecting the President rather than by the people directly.

It is interesting to note how similar the electoral college system is to the method of selecting LDS Church officials. In both cases the qualification of persons whose names are suggested are discussed and evaluated by a small group in the light of the requirements of the specific position. The actual selection is then made, not directly by the people to be presided over, but by the small group or by the presiding authority within the small group. Yet in each case, the selected official functions with the consent of the governed. In the Church, this consent is given when the person selected is presented to the larger group involved [p. 17] for its sustaining vote. Under the electoral college system, consent is given in advance through empowering the electors to make the specific selection.

In recent years there have been increased suggestions that the Constitution should be amended to eliminate the electoral college system of selecting the president. One of the reasons given is that the electoral college is no longer performing its intended function because the "electors are now merely 'rubber stamps' registering the opinions of their political party."⁽¹⁵⁾

It is sometimes said that the failure of the electoral college system to perform its intended function resulted from the failure of the Framers to foresee the growth of the major political party system. However, the Framers did foresee and were much concerned about the possible future growth of major political parties.⁽¹⁶⁾

It does seem to be a fact that the influence of major political parties has prevented the electoral college from functioning as intended by the Framers. In considering whether the

Framers were wise or mistaken in designing the electoral college system of selecting the President and in opposing political parties, the matters discussed in Chapter 6 entitled "The Framers' Attitude Toward Political Parties" should be carefully considered.

Furthermore, a major purpose of the Framers in providing for the indirect selection of the president was to make the government *less democratic*. For a consideration of the Framers' attitude toward democracy see Chapter 7 entitled "Did the Framers Establish a Democracy?" One of the objections of the Framers to democracy was that they believed that in a democracy public decisions would tend to be mass emotional decisions of an uninformed or misinformed populace.

Those who have been involved in actual political events, as this writer has, know how different public information [p. 18] may be from the real facts. It would seem that the quality of political information available to the public may not have changed greatly since Thomas Jefferson wrote:

Nothing can now be believed which is seen in a newspaper. . . . The real extent of this state of misinformation is known only to those who are in situations to confront facts within their knowledge with the lies of the day. I really look with commiseration over the great body of my fellow citizens, who, reading newspapers, live and die in the belief, that they have known something of what has been passing in the world in their time. . . . General facts may indeed be collected from them, such as that Europe is now at war . . . but no details can be relied on.⁽¹⁷⁾

Under the Constitution, the President is to be selected by electors chosen by their fellow citizens for their integrity, wisdom, and knowledge of men and affairs. Is it likely that the greater misinformation of the general public will result in a wiser choice of a President?

Article III—The Judicial Branch

Article III pertains to the judicial power and declares that such power shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time establish.⁽¹⁸⁾

As designed and drafted by the Framers, federal judicial power does not extend to ordinary matters involving the daily lives of the people within individual states. Instead, it is a limited power extending only to those areas peculiarly appropriate to federal jurisdiction, such as cases pertaining to the Constitution, treaties with foreign nations, the laws of the United States, and controversies between states or between citizens of different states.⁽¹⁹⁾ [p. 19]

These limitations on federal judicial power are in conformity with the already mentioned intent that the power of the federal government be limited to those areas where separate action by the states or the people would not be appropriate because of the nature of the problem.

This separation into the federal areas of authority and the state or local areas of authority was intended as a part of the system of separation of powers and checks and balances. Separation of powers between federal authority on the one hand and state or local authority on the other is sometimes called vertical separation of powers. The expression horizontal separation of powers

usually refers to the relationship between the legislative, executive, and judicial branches of government.

It is important to bear in mind that this vertical and horizontal separation of powers under the Constitution resulted in a division of the power of government among four distinct groups. The first three groups are the three branches of the federal government. The fourth group is the separate sovereign state governments.

Significantly, the Framers made the selection of federal judges subject to mutual agreement of the other three of those four groups. The method by which this was done is as follows: The president's authority over selection of federal judges was to be exercised by limiting the choice to those nominated by him.⁽²⁰⁾ The authority of the legislative branch of the federal government was to be exercised by requiring approval of the Senate.⁽²¹⁾ The authority of the state governments was exercised by the fact that the senators were representatives not of the people directly but of the states as states.⁽²²⁾

Although the Constitution originally provided that the senators were representatives of the states as states and did not directly represent the people, this provision was changed by the Seventeenth Amendment adopted in 1913. [p. 20]

That amendment deprived the states of their previous constitutional control over the selection of federal judges by providing for the election of senators by the people directly.

As a further aspect of separation of powers, once the judges are appointed, the Constitution makes them independent of those involved in appointing them. This is done by providing that they may not be removed during good behavior and that their salaries may not be reduced.⁽²³⁾

This independence of the judicial branch is a necessary part of the system of separation of powers and checks and balances. For example, Alexander Hamilton wrote in *The Federalist*:

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority. . . . Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.⁽²⁴⁾

Does the power to declare acts of Congress unconstitutional make the judiciary superior to the other branches? This question is discussed in *The Federalist* as follows:

Nor does this conclusion by any means suppose a superiority of the judicial to the Legislative power. It only supposes that the power of the people is superior to both—and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former.⁽²⁵⁾

How Constitution Protects Against Judicial Usurpation

It will be noted that the comments just made pertain to the right and duty of the judicial branch to prevent [p. 21] usurpation of authority by Congress. What checking and balancing provision does the Constitution contain to protect the constitutional system if the Supreme Court should itself misconstrue the Constitution and usurp authority?

In drafting the Constitution, the Framers also provided a method of checking and balancing the power of the judicial branch. The Constitution provides that the jurisdiction of the Supreme Court over all cases, except those involving representatives of foreign countries and the states of the United States, is subject to the control of Congress. This is handled in the Constitution by making the appellate jurisdiction of the Supreme Court subject to such exceptions and regulations as Congress shall make.⁽²⁶⁾ Since nearly all cases heard by the Supreme Court are there on appeal, this provision gives Congress the power to deprive the Supreme Court of the right to hear most of the cases now decided by it. Congress also has the power to control the jurisdiction of the lower federal courts by virtue of its power to "ordain and establish" them.⁽²⁷⁾

The above-mentioned authority of Congress over the jurisdiction of the Supreme Court and the lesser federal courts is not a conjectural interpretation, but has been repeatedly recognized.⁽²⁸⁾ It has even been used in the extreme case of taking from the Supreme Court the power to decide a specific case upon which it had already heard arguments.⁽²⁹⁾

While Congress is not likely to modify greatly the jurisdiction of the Supreme Court and other federal courts except in unusual circumstances, the power to do so gives the legislative branch an effective method of checking and balancing the judicial branch. [p. 22]

Article IV—General Matters Concerning States

Article IV pertains particularly to general matters concerning states.

It includes provision for recognition by each state of the laws and judicial proceedings of the other states.

It contains the privileges and immunities clause, under which no state may discriminate against citizens of other states without some independent reason for a different classification .

It provides for the admission of new states, and guarantees to every state a republican form of government.

Article V—Amendments

Article V pertains to amendments to the Constitution. The Framers intended that it be difficult to change the Constitution with its safeguards of liberty. They felt that a constitution subject to change with the same ease with which laws are passed and repealed would not provide any real deterrent to enactment of laws restricting liberty.

The Federalist contains the following worthwhile statement by James Madison concerning ease or difficulty of the amendment procedure:

It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.⁽³⁰⁾

Under the Constitution, there is not only a difficult procedure for initiating proposed amendments, but it also provides that proposed amendment is to be valid only when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths of the states.

Article VI—Miscellaneous Provisions

Article VI covers several miscellaneous items and includes the supremacy clause. This clause provides that [p. 23] the Constitution, laws of the United States, and treaties of the United States shall be the supreme law of the land.

The supremacy clause does not increase the powers granted to the federal government or make the federal government supreme over the states in all matters.

What the supremacy clause does is make clear that in those areas where power has been granted to the federal government, state court judges shall enforce federal law rather than state law.

Article VII—Ratification

Article VII pertains to ratification by the states when the Constitution was originally proposed. Its significance is mainly historical. [p. 24] [p. 25]

Chapter 4 The Indispensable Ingredient

The new republic flourished under the Constitution.⁽¹⁾

Foreign visitors observed the happiness, freedom, and growing prosperity of the people in the United States and wanted these blessings for their countries. In one country after another, constitutions patterned after the United States Constitution were adopted.⁽²⁾

But somehow the blessings the American people enjoyed were not realized to a similar extent in the other countries in spite of their adoption of similar constitutions. Apparently there was some additional ingredient that was necessary to the successful operation of a free constitutional republic.

Sometimes when a person receives a gift built by others, he takes for granted the fact that it works, and doesn't realize what makes it work. Also, a better perspective on a familiar subject can sometimes be obtained by looking at it through the eyes of a stranger.

Perhaps the best way to understand why free constitutional government was so much more successful in the United States than elsewhere would be to look back to the early days of the republic and, through the eyes of a foreign observer, to see what the Americans who launched this republic felt was the indispensable ingredient to its success. [p. 26]

In the early 1830's, a Frenchman by the name of Alexis de Tocqueville visited this country. He traveled over 7,000 miles in the United States and Canada and talked to Americans from Canada to the Gulf of Mexico, and from the Atlantic Coast to the frontier wilderness. Then he went back to France and wrote a two volume work entitled Democracy in America, which is regarded as a classic in political science.

He put his finger right on the essential ingredient of a successful free republic. Here it is in his own words:

Religion in American takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for if it does not impart a taste for freedom, it facilitates the use of it. Indeed, it is in this same point of view that the inhabitants of the United States themselves look upon religious belief. I do not know whether all Americans have a sincere faith in their religion for who can search the human heart?— but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society.⁽³⁾

Why Religion is Indispensable to Freedom

Why did those who launched this free constitutional system consider religion to be indispensable to its maintenance? A brief explanation should clarify the relationship between religion and political freedom. [p. 27]

Freedom is not an absolute concept, but is a kind of balance between two extremes. One extreme is the lawlessness and disorder of anarchy, which is the total absence or suspension of government. The other extreme is the absence of liberty resulting from complete control of the people by the government.

This balance, called freedom, can exist only as long as the people involved, by their own inward motivation, act righteously enough for it to continue. If their inward motivation toward righteous action is not strong enough, then freedom automatically degenerates toward either anarchy or dictatorship.

This concept, that freedom can exist only among a people who have a strong inward motivation to right action was well expressed by Edmund Burke in these words:

Men are unqualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsels of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.⁽⁴⁾

While some may argue that people can be righteous without a religious motivation, and their argument may be valid in individual cases, human experience seems to indicate that religious motivation is necessary for large groups of people to act righteously over extensive periods of time.⁽⁵⁾ [p. 28]

George Washington, who presided over the wise men the Lord raised up to frame the Constitution, emphasized the necessity for religion to maintain national morality in these words.

Whatever may be conceded to the influence of refined education on minds of peculiar structure—reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.⁽⁶⁾

Consideration of the influence of religion in motivating people to act righteously enough to be free sheds light on a quotation often used among Latter-day Saints. When Joseph Smith was asked how he found it easy to govern so vast a people, while others found it difficult, he said: "I teach the people correct principles and they govern themselves."⁽⁷⁾

De Tocqueville himself has been called one of the greatest of the political scientists. Here is his own comment on the necessity for religion in a free society:

Despotism may govern without faith, but liberty cannot. Religion is much more necessary in the republic . . . than in the monarchy . . . it is more needed in democratic republics than in any others. How is it possible that society should escape destruction if the moral tie is not strengthened in proportion as the political tie is relaxed? And what can be done with a people who are their own masters if they are not submissive to the Deity?⁽⁸⁾

In keeping with this belief that a religious citizenry is indispensable to the successful life of a free constitutional republic, laws encouraging religion have been enacted from the beginning of the United States. A few well known examples of such laws are tax exemptions for churches, chaplains in the armed forces, "In God we trust" on coins, and "Under God" in the pledge of allegiance. [p. 29]

Free Government Must Be Founded On Religious Presuppositions

Not only is the American constitutional system a freedom system requiring a religious citizenry for its successful operation, but its philosophical presuppositions are also rooted in a religious orientation toward life.

All governments are based on certain presuppositions constituting a philosophical attitude toward government. Such presuppositions are necessarily accepted on faith because they are not subject to proof by what is ordinarily regarded as objective evidence.

The appeal of the signers of the Declaration of Independence to the laws of Nature and Nature's God, and their affirmation that men are endowed with their rights by their Creator, confirm that their basic presuppositions were essentially a matter of religious faith.

The acceptance on faith of the political presuppositions of the Declaration of Independence is further shown by the statement, "We hold these truths to be self-evident." The words "self-evident" refer to acceptance on faith without evidence in the usual sense in which the word "evidence" is used. This interpretation is confirmed by the wording of the Rough Draft of the Declaration of Independence in which the following is found:

We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable.⁽⁹⁾

In support of this position they accepted on faith, the signers of the Declaration of Independence proceeded to risk their lives, their fortunes, and their sacred honor. There is considerable evidence that their faith was amply justified by subsequent events. For example, in his First Inaugural Address, George Washington declared: [p. 30]

No People can be bound to acknowledge and adore the invisible hand, which conducts the Affairs of men more than the People of the United States. Every step, by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency.⁽¹⁰⁾

Bearing in mind that the presuppositions of a political system are accepted on faith, the following are a few of the more obviously religious presuppositions of the American constitutional system. Each of these is affirmed in the Declaration of Independence.

1. That there is a God.
2. That God has established natural laws of government.
3. That such natural laws include recognition that because God is the giver of men's rights, those rights cannot be taken from them or even given away by them.

While these are only a few of the philosophical presuppositions of America's constitutional system, they suffice to illustrate how solidly those presuppositions are rooted in a religious orientation toward life.

Various consequences automatically follow from the philosophical presuppositions accepted by a community. One of the main consequences of the religious presuppositions on which the constitutional system is based is that it provides a solid foundation and strong support for individual freedom.

Actually, belief in God is the source from which inalienable rights are derived. This is because their inalienability is an outgrowth of the belief that they are God given. But if God is no longer recognized then there is no firm basis for the belief that men's rights are inalienable. This fact was clearly recognized by Thomas Jefferson, who warned:

Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of [p. 31] the people that these liberties are of the gift of God? That they are not to be violated but with his wrath?⁽¹¹⁾

Furthermore, it is only a religious people who will elect wise and good men to govern them, and will insist that governmental officials properly perform their functions without fear or favor.

Supreme Court Called United States A Christian Nation

An excellent summary of the United States' attitude toward religion is found in the case of *Holy Trinity Church vs. United States*, decided unanimously by the United States Supreme Court in 1892. In that case, after referring to many examples of recognition of God in American historical documents, the official reported opinion of the Court contains this statement:

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire people.⁽¹²⁾

The court opinion then refers to other evidences of religion in the daily life of the American people, and draws this conclusion:

These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that *this is a Christian nation*.⁽¹³⁾

One gains increased understanding of the remarkable history of this nation by comparing these statements with certain comments in the *Book of Mormon*.

Behold, this is a choice land, and whatsoever nation shall possess it shall be free from bondage, and from captivity, and [p. 32] from all other nations under heaven, if they will but serve the God of the land, who is Jesus Christ.⁽¹⁴⁾

A solemn warning contained in that same chapter should not be forgotten.

For behold, this is a land which is choice above all other lands; wherefore he that doth possess it shall serve God or shall be swept off; for it is the everlasting decree of God.⁽¹⁵⁾

Perhaps a word of explanation is appropriate concerning statements that this is a Christian nation. Such comments do not evidence disrespect or intolerance for the beliefs of others, or any restriction on the right of each person to worship according to the dictates of his own conscience. What is meant is rather that the Christian religion is professed by the great body of citizens of the United States, that American laws were founded in Christian principles, and that the general tone of American society is a reflection of Christian attitudes.⁽¹⁶⁾ [p. 33]

Chapter 5

Separation of Church and State

This brief review of the unashamed recognition of God and encouragement of religion in the American political heritage will cause some to wonder how these practices can be harmonized with the doctrine of separation of church and state.

In recent years there has been a tendency to merge and confuse two separate concepts. One is the concept of separation of church and state, and the other is the concept of separation of religion and the state.

The first concept, that of separation of church and state, refers to two organizations, one being an agency of the government and the other being a particular religious sect. The traditional doctrine of separation of church and state has been that the authority of the state could not be used to favor a particular religious sect as against other religious sects.⁽¹⁾

The second concept, that of separation of religion and the state, differs from separation of church and state in that it does not refer to two organizations. Instead, separation of religion and state refers to general governmental encouragement of religion in which the authority of the government is not used to promote or benefit a particular religious sect.

It seems well established that the intent of the First Amendment was to require only separation of church and state, and not to require separation of religion and the [p. 34] state.⁽²⁾ In fact, as indicated in the previous chapter, from the beginning of the United States, governmental encouragement of religion has been considered highly desirable for the preservation of freedom.

Supreme Court Reversed Constitutional Law

Many people seem to misunderstand the real import of the recent Supreme Court decisions on religion in public education.⁽³⁾ The importance of those decisions is not so much whether

children may pray or have devotional exercises in school, important as these activities are. The real significance of these decisions is that they represent a fundamental revision of the doctrine of separation of church and state.

Essentially, what the Supreme Court did was to declare that since there are many atheists in the United States, to be fair to them the government may no longer recognize God or show any preference for religion over atheism.⁽⁴⁾ In other words, the Supreme Court enlarged the doctrine of separation of church and state to include separation of religion and the state.

The significance of this change should not be underestimated. It is a change of the greatest importance, because it makes unconstitutional official encouragement of the one element which, from the beginning of the United States republic, has been regarded as indispensable to the preservation of freedom.

While to some this new doctrine sounds fair and plausible, it should be remembered that it represents a reversal of a fundamental principle of constitutional law without a constitutional amendment and without consulting the people or obtaining their consent. [p. 35]

It is not known to what extent this new point of view will be implemented. There are indications that the Supreme Court may already be backing down somewhat in the application of its broad statements. But it is a source of great concern that the point of view of most of the Supreme Court justices is so different from the traditional American point of view, and that the change has been made without the consent of the people. [p. 36] [p. 37]

Chapter 6

The Framers' Attitude Toward Political Parties

Examination of the main provisions of the Constitution and awareness of the indispensable ingredient for its successful operation indicate that the constitutional system worked out by the Framers under inspiration from God set up a most unusual sort of government. It is difficult to describe it in few words or in a single sentence because the Framers did not adopt any single traditional form of government. Instead, they custom designed a new system with painstaking care using ideas from other forms of government but not adopting any known form in its entirety.

Perhaps the most accurate brief characterization of the form of government the Framers designed is to call it a religiously oriented republic. They believed that freedom could survive only among a religious citizenry living under a government based on harmony and good will. Under such a system, the people were to be united in seeking to follow God's will in their political decisions. Government officials were to be men "called" to public service by their fellows because of their integrity, righteousness, and sound understanding.

Framers Opposed Political Parties

The Framers were much concerned about the possible growth of influences or organizations that might diminish the unity, harmony, and good will among the American people. While it is sometimes said that the Framers failed to foresee the growth of the major political party system, [p. 38] the fact is that the Framers were greatly concerned about the possible future growth of major political parties. ⁽¹⁾

Some of the principal dangers the Framers feared from political parties were these:

They would have a divisive influence among the people and would tend toward disharmony and ill will. They would have the effect of putting ambitious, power-seeking men in office because these would be the sort of men who would seek office through building party organizations and fighting their way into situations of power and influence. The religious influence in government would diminish as the various factions fight for power and gain. Unsound laws would be passed as men with ambition and drive, but without soundness of judgment and integrity, influence laws in order to reward those who supported them. The competition for public support would result in deception and fomentation of antagonisms and would weaken the government itself.

George Washington

An excellent summary of some of the damaging consequences to America's freedom system posed by political parties is contained in George Washington's comment on what he called the "Spirit of Party."

It serves always to distract the Public Councils, and enfeeble the Public administration. It agitates the community with ill founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot and insurrection. — It opens the door to foreign influence and corruption, which find a facilitated access to the Government itself through the channels of party passions. Thus the policy and the will of one country, are subjected to the policy and will of another. ⁽²⁾

It should be borne in mind not only that Washington solemnly warned against political parties, but also that he considered them a grave danger to freedom itself. He said: [p. 39]

Let me . . . warn you in the most solemn manner against the baneful effects of the Spirit of Party. . . .

It exists under different shapes in all Governments . . . but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.—

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension . . . is itself a frightful despotism.—But this leads at length to a more formal and permanent despotism.—The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual; and sooner or later the chief of some

prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.

Without looking forward to an extremity of this kind, (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of the spirit of Party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.—⁽³⁾

It is sometimes argued that political parties are necessary checks to prevent government abuses. Concerning this argument, Washington commented:

There is an opinion, that parties in free countries are useful checks upon the Administration of the Government, and serve to keep alive the spirit of Liberty. — This within certain limits is probably true. . . . But . . . in Governments purely elective, it is a spirit not to be encouraged. — From their natural tendency it is certain there will always be enough of that spirit for every salutary purpose,—and there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it.—A fire not to be quenched; it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.⁽⁴⁾

Today it is popular to acknowledge politely the Framers' concern expressed in No. 10 of *The Federalist* and Washington's solemn warning quoted above.⁽⁵⁾ After such [p. 40] polite acknowledgment, it is customary to express a contrary conviction, namely, that the two major party system is best for the United States.⁽⁶⁾ ; Rejection of the Framers' concern and Washington's warning is not usually directly expressed. Instead, such rejection is generally indirectly indicated somewhat as is the attitude of a teenager who doesn't want to reject categorically the counsel of his parents, but who won't accept it because he is convinced that they just don't understand modern times.⁽⁷⁾

Joseph Smith

Of particular interest to Latter-day Saints is the following comment by Hyrum L. Andrus whose master's thesis and doctoral dissertation were on Joseph Smith's social, economic and political thought:

"The Fathers," Harry Elmer Barnes observed, "are conventionally held . . . to have been above party." But while some have considered them politically naive for espousing an ideal of government restricted in its powers and uncontrolled by political parties, a deeper insight into their intentions reveals a view of political economy that lesser minds have failed to grasp. The truth, Edward Stanwood declared, is that "later generations have departed from what seems to have been their original intentions." That such an apostasy had occurred was recognized by Joseph Smith. One cannot read his "Views of the Powers and Policy of the Government of the United States" . . . without being impressed with the similarity of his concept of government to that of the founding fathers and his desire to return to their ideals. On the issue of parties, the Prophet said—"Unity is power; and when I reflect on the importance of it to the stability of governments, I am astounded at the silly moves of persons and parties to foment discord in order to ride into power on the current of popular excitement."⁽⁸⁾ [p. 41]

Political Parties Undermine Checks and Balances

In considering the desirability of political parties, it should be borne in mind that to a very real extent political parties militate against the principle of separation of powers by undermining the system of checks and balances. They do this by weakening the motivation of government officials to resist encroachment. Under the party system a government official's ambition is best served by maintaining his standing with other members of his party. Hence, when persons influential in his party are involved in encroaching upon the authority of his department, his personal interest in remaining in their good graces is stronger than his personal interest in resisting their encroachment. In fact, if he resists them at all, it is likely to involve a sacrifice of his personal interests rather than a furtherance of them. In other words, unity in support of party is likely to supersede unity in support of the Constitution.

In considering political parties in the context of separation of powers and checks and balances, due concern should be given the possibility that all branches of the government may be controlled by a single party. The danger to our freedom system inherent in that possibility was indicated by James Madison in the following words:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.⁽⁹⁾ [p. 42] [p. 43]

Chapter 7 Did the Framers Establish A Democracy?

Many Americans believe that the Framers favored democracy and the constitutional system they established is a democracy. While this point of view is widely taught and often repeated, it is quite misleading. It is true that there are certain elements in the American constitutional system that resemble a democracy, but the fact is that the Framers were solidly opposed to democracy and the system they set up is not a democracy.

Democracy Defined

Before considering why the Framers were opposed to democracy, it may be well to define democracy. As used by the Framers, the word referred to a government controlled by the direct and unrestricted will of a majority of the people.

The Framers frequently expressed a preference for a republic as distinguished from a democracy. By a republic they meant a system under which the people elected the best men from among themselves and let those men administer the affairs of government, under the watchful eyes of the people. The essential difference between a democracy and a republic is in the question of who makes the decisions pertaining to the operation of the government. In a

democracy those decisions are made by the people themselves. In a republic the decisions are made by the elected representatives, although it is expected that the people will keep in close contact with their elected representatives [p. 44] both to be sure that they function honorably and that they know the people's thinking.

For example, if under its present government structure America functions as a democracy, the elected representatives do not use independent judgment but simply do what a majority of their constituents tell them to do. On the other hand if this country functions as a republic, Americans must be much more careful whom they elect because the function of the elected representative is not merely to carry out the wishes of their constituents but is rather to exercise wise and honorable independent judgment.

Framers Considered Democracy An Unsound Form of Government

The Framers were well aware of the point of view that democracy is the most desirable form of government and that its adoption would solve human problems. However, they did not share that point of view. James Madison had this to say concerning the attitude expressed by some that a complete democracy is a desirable form of government:

Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.⁽¹⁾

However, Madison disagreed with those "theoretic politicians" who favored complete democracy. The attitude he expressed in *The Federalist* toward a complete democracy was that: [p. 45]

Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property.⁽²⁾

It is sometimes said that the Framers' objection to democracy was based on the fact that the country was so spread out that it was not practical for the people to come together to pass their own laws, and that this problem was solved by establishing a representative democracy in which the people chose their representatives to meet and pass laws for them. However, the real reason the Framers were opposed to democracy was not the impracticality of the people coming together and passing their own laws. Instead, their opposition to democracy was based on human nature itself. They felt that the people would be too easily swayed by passion, prejudice, and self interest, and too easily deceived by demagogues.

In other words, the Framers felt that in a democracy public decisions would tend to be mass emotional decisions of an uninformed or misinformed populace. On the other hand, the Framers believed that in a republic the will of the people would be refined and enlarged as outstanding men chosen from among the people thoughtfully make those decisions after careful study.

The attitude of the Framers that the very principle or philosophy of democracy is unsound may seem strange to those who have been conditioned to regard democracy as a panacea for

human ills. But the fact is that the Framers were much concerned about the human nature evils of democracy and particularly that in a democracy the majority could unite in one faction and sacrifice to its passion or personal interest both the public good and the rights of the minority. This danger was expressed by James Madison in these words:

When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion [p. 46] or interest both the public good and the rights of other citizens.⁽³⁾

The Framers believed that because democracy is so subject to the passion and self interest of the majority, it is an unstable form of government leading to turbulence, contention, sacrifice of personal and property rights, and ultimately to tyranny.⁽⁴⁾

Avoiding Evils of Democracy

There were two principal devices the Framers adopted to avoid the evils of democracy. The first of these devices was to establish a republican form of government. Under the system adopted, the people were to elect a limited number of wise and good men from among themselves, and these men were to administer certain government functions, including the selection of certain other officials to administer other government functions. The only federal officials to be elected directly by the people were to be members of the House of Representatives and presidential electors.

The basic advantage of a republic over a democracy was expressed by James Madison in these words:

To refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves.⁽⁵⁾

The second principal device the Framers adopted to avoid the evils of democracy was to build into the Constitution restrictions on the power of the majority. Such [p. 47] restrictions extend all the way from conferring only limited powers upon the federal government, to providing specific limitations such as that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."⁽⁶⁾

Democracy In Republican Garb

In recent years the Framers' distinction between a democracy and a republic has become blurred. This blurring has arisen out of an increasing acceptance of a democratic philosophy of government under which the balanced perspective of the Framers has been distorted. Such distortion takes place when excessive weight is given to carrying out the will of the majority and insufficient weight is given to constitutional restrictions on majority control. An aspect of this change in attitude is the fact that the United States is now popularly referred to as a democracy

instead of a republic. Through this change in attitude, the American system has been moving away from a republic and toward a democracy without changing the outward structure.

Democracy and Religion

The political system of democracy, in the sense of unrestricted control by the will of the majority, militates against the fundamental requirement of a religious citizenry. This is because the underlying philosophy of democracy has deeply anti-religious overtones, since it implies that right or wrong can be determined by the will of the majority.

On the other hand, the American constitutional system is based on recognition of God as the source of correct eternal principles of government, and as the source of unalienable rights. Under this system an individual's unalienable rights to his life, his liberty, and his private property do not derive from the consent of the majority, but rather from the fact that those rights are God given and [p. 48] hence even an overwhelming majority does not have the right to take them away.

Therefore, the basic underlying principle of democracy that the will of the majority controls is the opposite of the basic underlying principle of the American constitutional system of ascertaining and implementing the eternal laws of God. The closer America moves toward the democratic philosophy of complete control by the will of the majority, the weaker become the concepts of God as the source of correct eternal principles of government, and as the source of God given rights superior to even the will of the majority. [p. 49]

Chapter 8

How Flexible is the Constitution?

Consideration of the Constitution as drafted and intended by the Framers raises the question of how the federal government was changed from the small, limited government established by the Framers to the gigantic government Americans are living under today, a government claimed by many to have unlimited power.

The False Doctrine of Flexibility of the Constitution

One of the principal devices used to accomplish this transformation is the widely taught doctrine of flexibility of the Constitution. This is the doctrine that the Framers of the Constitution foresaw that over the years the Constitution would have to be changed to keep up with changing times and differing economic circumstances, and that they wisely made provision for those changes by making the Constitution a flexible instrument that could be readily adapted to changing circumstances by interpretation.

As is typical of false doctrines, there is some truth in the doctrine of flexibility of the Constitution. The function of a constitution is to set up basic principles and limitations under which a government is to operate. Because of this function, there is inherent in constitutional government an element of flexibility as those basic principles and limitations are applied to changing circumstances.

But it should never be forgotten that the true area of flexibility is always *within* the principles and limitations provided in the Constitution.

On the other hand, under the false doctrine of flexibility of the Constitution the principles and limitations [p. 50] of the Constitution are themselves changed without any constitutional amendment. This is a very different thing from merely applying those principles and limitations to changing circumstances.

The underlying premise of the doctrine of flexibility of the Constitution is that the Constitution is based on particular times and economic circumstances.⁽¹⁾ This underlying premise is false. The Constitution is not based on particular times and economic circumstances, but on human nature.⁽²⁾ Since human nature does not change, the claimed need for flexibility in basic principles and limitations to keep up with changing circumstances does not exist.

False Flexibility Doctrine Compared With Amendment Procedure

That the doctrine of flexibility actually is a false doctrine becomes clear by examination of the amendment procedure of the Constitution. What the people accepted when they ratified the Constitution was a small, limited federal government having only specific conferred powers. This clearly defined government they agreed to was not to be taken from them or from their descendants and another government substituted in its place even by agreement of an ordinary majority of the people. Under the amendment procedure built into the Constitution, amendments are not valid until ratified by three fourths of the states.⁽³⁾

This clear and specific amendment procedure is completely incompatible with the loose flexibility doctrine. Under the flexibility doctrine, the most far-reaching changes have been made—not by careful deliberation of the people and acceptance by three fourths of the states—but by a [p. 51] majority of five of nine judges who are not elected by the people and are not accountable to them.

There is another reason why the doctrine of flexibility of the Constitution is a false doctrine—the doctrine of flexibility itself destroys the Constitution. If the principles and limitations of the Constitution are themselves flexible and are only what the Supreme Court thinks they should be at any given time, then there are no fixed principles and limitations, and the federal government can do anything the Supreme Court is willing to permit. This is the basis of the oft repeated statement that the Constitution is only what the Supreme Court says it is⁽⁴⁾ in spite of the known intent of the Framers, the understanding of the people when they accepted the Constitution, and the provisions of the Constitution itself.

In addition to being a false doctrine, the doctrine of flexibility is also a most inappropriate doctrine, because it violates the basic constitutional concept of separation of powers. Under the flexibility doctrine, the Supreme Court not only makes the changes, but then proceeds to sit as a court of last resort and pass judgment on the constitutionality of the very changes it has made.

False Flexibility Doctrine Violates Intent of Framers

The comments thus far made in this work concerning the impropriety of constitutional changes made by the Supreme Court are out of harmony with the currently popular and widely accepted point of view that the Constitution is flexible and may be changed by "interpretation" of the Supreme Court. However, it should also be clearly recognized that the currently popular point of view is out of harmony with the intent of the Framers, the provisions of the Constitution, and the understanding of the people who ratified the Constitution. For example, George Washington [p. 52] expressed the following warning against changes made other than by the regular amendment procedure.

If, in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. — But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.⁽⁵⁾

It is sometimes said that the changes made by interpretation are not real amendment-type changes, but only the application of basic constitutional principles to new facts and circumstances. The falsity of such a claim becomes apparent when one compares the small limited government established by the Framers with the large all but unlimited government into which it has been transformed.

False Flexibility Doctrine Is Perversion of Judicial Review

It is of interest that the false doctrine of flexibility is really a perversion or counterfeit of a true constitutional doctrine, that of judicial review. The doctrine of judicial review refers to the concept that the Supreme Court has the right and duty to interpret the Constitution and declare unconstitutional those laws or activities that are inconsistent with its provisions and principles.⁽⁶⁾ The perversion or counterfeit occurs when the Supreme Court, instead of merely interpreting the Constitution, actually changes it under the guise of interpretation.

The landmark case of *Marbury v. Madison*, decided by the Supreme Court in 1803 clearly established the doctrine of judicial review. The counterfeit doctrine of flexibility so closely masquerades as a part of the doctrine of [p. 53] judicial review that the case of *Marbury v. Madison* is sometimes referred to as authority for the flexibility doctrine. Yet that case not only contains no discussion of the right of the Supreme Court to change the Constitution, but recognizes the absolute supremacy of written constitutions and the United States Constitution in particular. In fact, the court clearly recognized that its own authority was limited to the specific provisions of the Constitution. For example, the opinion, in that case, contains the following statement in the context of the Supreme Court's own authority.

Thus, the particular phraseology of the Constitution . . . confirms and strengthens the principle . . . that a law repugnant to the Constitution is void; and *that courts, as well as other departments, are bound by that instrument.*⁽⁷⁾

A noted modern authority on constitutional law is Dr. Edward S. Corwin who headed a project initiated by Congress to prepare an annotated edition of the Constitution, including cases decided by the Supreme Court through June 30, 1952. Before referring to comments made by Dr. Corwin, it is appropriate to mention that he clearly subscribes to the currently popular and acceptable point of view that judicial review includes the doctrine of flexibility of the Constitution, and that the Supreme Court may properly change the Constitution by reinterpretation without going through the amending process set forth in the Constitution.⁽⁸⁾ For example, Dr. Corwin expressed this point of view in the Editor's Foreword, in these words:

The Constitution has possessed capacity for growth in notable measure. . . . Nor has this capacity resided to any great extent [p. 54] in the provision which the Constitution makes for its own amendment. Far more it has resided in the power of judicial review exercised by the Supreme Court.⁽⁹⁾

Vast Extent of Constitutional Changes Made Under Flexibility Doctrine

Bearing in mind that Professor Corwin endorses the doctrine of flexibility, which this writer considers to be a false doctrine, it is instructive to quote from his Introduction to see more clearly the extent to which the Supreme Court has transformed the United States constitutional system.

Considered for the two fundamental subjects of the powers of government and the liberties of individuals, interpretation of the Constitution by the Supreme Court falls into four tolerably distinguishable periods. The first, which reaches to the death of Marshall,⁽¹⁰⁾ is the period of dominance of the Constitutional Document. The tradition concerning the original establishment of the Constitution was still fresh, and in the person and office of the great Chief Justice the intentions of the framers enjoyed a renewed vitality. . . . the theories which Marshall urged in support of his preferences were, in fact, frequently verifiable as theories of the framers of the Constitution.

The second period is a lengthy one, stretching from the accession of Chief Justice Taney in 1835 to, say, 1895. . . . More and more the constitutional text fades into the background, and the testimony of the *Federalist*, Marshall's sole book of precedents, ceases to be cited . . . the theories which . . . received the Court's approval during this period . . . put the national law-making power into a strait-jacket so far as the regulation of business was concerned.

The third period was that of Judicial Review pure and simple. The Court, as heir to the accumulated doctrines of its predecessors, found itself . . . in possession of such a variety of instruments of constitutional exegesis that it was often able to achieve almost any result in the field of constitutional interpretation [p. 55] which it considered desirable, and that without flagrant departure from judicial good form. Indeed, it is altogether apparent that the Court was in actual possession and in active exercise of what Justice Holmes once termed "the sovereign prerogative of choice." It was early in this period that Governor Hughes, soon to ascend the Bench, said, without perhaps intending all that his

words literally conveyed, "We are under a Constitution, but the Constitution is what the judges say it is." A decade later it was suggested by an eminent law teacher that attorneys arguing "due process cases" before the Court ought to address the Justices not as "Your Honors" but as "Your Lordships"; and Senator Borah, in the Senate debate on Mr. Hughes' nomination for Chief Justice, in 1930, declared that the Supreme Court had become "economic dictator in the United States." Some of the Justices concurred in these observations, especially Justices Holmes and Brandeis. Asserted the latter, the Court has made itself a "super-legislature" and Justice Holmes could discover "hardly any limit but the sky" to the power claimed by the Court to disallow State acts "which may happen to strike a majority [of its members] as for any reason undesirable."

The fourth period is still with us. It was ushered in by World War I, but its results were consolidated and extended during the 1930's, and have been subsequently still further enlarged and confirmed. . . . What they sum up to is this: that what was once vaunted as a Constitution of Rights, both State rights and private rights, has been replaced to a great extent by a Constitution of Powers. The Federal System has shifted base in the direction of a consolidated national power; within the National Government itself there has been an increased flow of power in the direction of the President.⁽¹¹⁾

The above lengthy quotation lucidly indicates the vast changes made in the constitutional system by Supreme Court interpretation without complying with the amendment procedure specified in the Constitution.

An Unauthorized Change By the Supreme Court—The Reapportionment Cases

That changes made by the Supreme Court have actually been real amendment-type changes becomes even more [p. 56] apparent through examination of a specific example. A particularly clear example of a constitutional amendment made by the Supreme Court is in the reapportionment of state voting districts.

The Framers' Intent Concerning Federal Authority Over State Election Procedures

The Framers felt that the vital principles of separation of powers and checks and balances applied not only among the branches of the federal government, but also between the states and the people on the one hand and the federal government on the other.⁽¹²⁾

As a matter of fact, the independent sovereignty of the states was clearly recognized and confirmed in the Bill of Rights itself:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.⁽¹³⁾

One problem discussed by the Framers was the possibility of the states destroying the federal government by not making provision for election of federal officials.⁽¹⁴⁾ In *The Federalist* this possibility was expressed in this way:

An exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs.⁽¹⁵⁾

It was argued that such action by the states to destroy the federal government was so unlikely that it could be ignored. But the Framers felt that such a possibility should not be ignored, particularly since one of their principal [p. 57] objectives in drafting the Constitution was to protect against abuses of power by public officials. They felt that such abuses could come from state as well as federal officials.

If we are in a humor to presume abuses of power, it is fair to presume them on the part of the State governments as on the part of the general government.⁽¹⁶⁾

Constitutional Provision Concerning Federal Authority Over State Election Procedures

The Framers therefore inserted the following provision in the Constitution conferring upon Congress the power to make or alter the provisions made by the state legislatures with respect to elections of *federal* senators and representatives.

The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations.⁽¹⁷⁾

Several aspects of this provision made by the Framers should be noted particularly:

Authority Given Congress—Not Courts

1. This power was exercisable by "law" passed by Congress, a political body of elected representatives, not by decision of the Supreme Court, a judicial body not accountable to the people or the states.⁽¹⁸⁾

2. The purpose of the power was not to enable the federal government to exercise general supervision of state election procedures. Rather it was intended to protect the federal government from being damaged or destroyed by improper actions of state legislatures with respect to procedures for election of federal officials. [p. 58]

Authority Extends Only To Election of Federal Officials

3. In harmony with this intent, the power given *extends only to election of federal senators and representatives*, not to election of state officials.

Framers Intended Federal Authority To Be Limited

Not only is there no provision in the Constitution for federal supervision of voting procedures with respect to election of state officials, but it was clearly contemplated that there be no such

power. Such a provision would have violated the principles of separation of powers and checks and balances by making the state governments subject to the control of the federal government. Negating any such intent is the following statement in *The Federalist*:

Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments?⁽¹⁹⁾

Until Recently the Supreme Court Has Followed Constitution on State Election Procedures

Until very recently the Supreme Court has consistently taken the following positions:

1. It has held that the federal government has no authority over elections of state officials.
2. It has recognized that federal authority over elections of federal senators and representatives was vested in Congress and not in the courts.
3. It has refused to become involved in questions of districting even for elections of federal senators and representatives. This was on the ground that apportionment problems were political questions to be worked out in the [p. 59] political arena by the people's elected representatives, and were not the type of disputes to be decided by the courts.⁽²⁰⁾

Congress Has Acted Under Its Constitutional Authority

On the other hand Congress, recognizing its authority to regulate elections of *federal* senators and representatives, has enacted laws prescribing regulations of such *federal* elections beginning in 1842. These laws have varied from time to time. For many years prior to 1929 Congress required that *federal* election districts contain "as nearly as practicable an equal number of inhabitants," but this requirement was dropped in 1929.⁽²¹⁾ From 1929 until the present there have been many attempts to have Congress reinstate the requirement that *federal* election districts be approximately equal in population, but such attempts have consistently failed.⁽²²⁾

In summary then, it appears that since 1929 the repeatedly considered judgment of Congress has been not to require districting according to population even in federal elections over which it had jurisdiction.⁽²³⁾

Suddenly Supreme Court Reverses Itself, Changes Constitution and Overrules Congress

Suddenly, between 1962 and 1964, with no constitutional amendment adopted in the manner specified in the Constitution, all this prior law was reversed by the Supreme Court which decreed that in spite of the intent of the Framers, in spite of the wording of the Constitution, in spite of its own prior decisions, and in spite of the considered [p. 60] judgment of Congress, the new constitutional law on the subject would be as follows:

1. Henceforth, the federal government would have authority not only over elections of *federal* senators and representatives, but also over elections of *state* officials. It is of interest that, as indicated above, such an authority claimed by the federal government was referred to in *The Federalist* as not only improper but as "a premeditated engine for the destruction of the State governments."⁽²⁴⁾

2. Henceforth, federal authority over apportionment would be vested not only in Congress, but in the federal courts as well. By this requirement, the Supreme Court with no constitutional authority simply assumed a power given to Congress in the Constitution.

It should be noted that, by the above two court-made changes in constitutional law, the Supreme Court not only assumed a power given by the Constitution to Congress, but actually took upon itself a greater power than that given to Congress because the power of Congress was limited to *federal* elections whereas the power assumed by the Supreme Court extended to both *state* and *federal* elections.

3. Henceforth, all apportionment must be based on population. This new constitutional requirement imposed by the Supreme Court raises serious questions as to the constitutional relationship between the Supreme Court and Congress as independent co-equal branches of the federal government. Under the Constitution, Congress was given the power to regulate election procedures for elections of federal senators and representatives. Pursuant to that power Congress validly enacted various requirements from time to time. At the time these cases were decided Congress, after repeatedly considering the matter, had decided that apportionment according to population should not be required. However, in these cases the Supreme Court, not [p. 61] being authorized in the Constitution, overruled a decision of Congress acting entirely within its constitutional authority.

In Judge Harlan's dissenting opinion in *Wesberry v. Sanders*, this action of the Supreme Court in overruling the considered decision of Congress is clearly set forth. Referring to the history of congressional enactments under the authority granted to Congress over state apportionment for elections of *federal* senators and representatives, Judge Harlan stated:

This history reveals that the Court is not simply undertaking to exercise a power which the Constitution reserves to the Congress; it is also overruling congressional judgment.⁽²⁵⁾

New Supreme Court Theory Inconsistent With Constitutional History

In his dissenting opinion in *Baker v. Carr*, Justice Felix Frankfurter presented the following historical summary indicating how out of harmony with constitutional history is this new requirement of representation apportioned according to population.

The notion that representation proportioned to . . . population is so universally accepted as a necessary element of equality between man and man . . . that it is, in appellants' words "the basic principle of representative government"—is, to put it bluntly, not true . . . it has never been generally practiced, today or in the past. It was not the English system, it was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even

predominantly practiced by the States at the time of the adoption of the Fourteenth Amendment, it is not predominantly practiced by the States today.⁽²⁶⁾ [p. 62]

Supreme Court Relies on Fourteenth Amendment

In arriving at these changes the Supreme Court relied heavily on the equal protection clause found in the second sentence of Section 1 of the 14th Amendment. The applicable part of that sentence reads as follows:

No state shall make or enforce any law which shall . . . deny to any person . . . the equal protection of the laws.

The Supreme Court interpreted the equal protection clause not just to prohibit discrimination by government agencies because of race, but also to require legislative apportionment according to population so that every person's vote would have the same weight. The majority opinion in *Reynolds v. Sims* expressed this new requirement in this way:

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats of both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.⁽²⁷⁾

Fourteenth Amendment Not Applicable

Judge Harlan, in his dissenting opinion in *Reynolds v. Sims*, made the following comment concerning the majority's interpretation that legislative apportionments are within the purview of the equal protection clause of the 14th Amendment:

The Court's action now bringing them within the purview of the Fourteenth Amendment amounts to nothing less than an exercise of the amending power by this Court.⁽²⁸⁾ [p. 63]

The majority position was that while their new interpretation of the 14th Amendment in this series of cases did represent a major change of prior law, still it was a proper exercise of the Supreme Court's power of judicial review by which it interpreted the Constitution in applying it to changing times. To this majority contention, Judge Harlan replied:

It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored.⁽²⁹⁾

Supreme Court Ignores Fourteenth Amendment Context

This new majority interpretation furnishes an instructive illustration of the willingness of Supreme Court judges to change constitutional provisions to suit their ideas of what such provisions should be, even to the extent of taking a few words out of context and giving them a meaning both their context and the surrounding circumstances indicate was not the intended meaning.

In his dissenting opinion, Judge Harlan pointed out that the entire 14th Amendment is a single text, and must be read as a whole. He then made the following comment on the majority's willingness to interpret the first section in a manner inconsistent with the context that follows it:

Whatever one might take to be the application to these cases of the Equal Protection Clause if it stood alone, I am unable to understand the Court's utter disregard of the second section which expressly recognizes the States' power to deny "or in any way" abridge the right of their inhabitants to vote for "the members of the [State] Legislature," and its express provision of a remedy for such denial or abridgment. The comprehensive scope of the second section and its particular reference to the state legislatures precluded the suggestion that the first section was intended to have the result reached by the Court today. If indeed the words of the Fourteenth Amendment speak for themselves, as the majority's disregard [p. 64] of history seems to imply, they speak as clearly as may be against the construction which the majority puts on them.⁽³⁰⁾

Supreme Court Ignores Fourteenth Amendment Legislative History

Judge Harlan then explained that not only does the language of the 14th Amendment preclude the majority's interpretation, but also that the history of its adoption clearly shows the majority interpretation to be inconsistent with the intended meaning of the 14th Amendment. He declared:

The history of the adoption of the Fourteenth Amendment provides conclusive evidence that neither those who proposed nor those who ratified the Amendment believed that the Equal Protection Clause limited the power of the States to apportion their legislatures as they saw fit.⁽³¹⁾

In the debates concerning the 14th Amendment it seems to have been recognized unmistakably that a state had the power not only to apportion as it pleased, but even to deprive some of its citizens of the right to vote. Hence the second section of the 14th Amendment provided that if it did exercise that power and did deprive some of its citizens of the right to vote, Congress could impose a penalty of decreasing that state's representation in Congress in proportion to the number of otherwise qualified citizens the state deprived of the right to vote.

This clear understanding in the debates is evidenced, for example, by the following comments made by Mr. Bingham, the author of the first section of the 14th Amendment in the Reconstruction Committee:

The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States. The second section excludes the conclusion that by the first section suffrage is subjected to congressional law.⁽³²⁾ [p. 65]

In the interest of brevity, it seems inappropriate to present extensive material on the intent of the 14th Amendment in connection with federal control over reapportionment, or the understanding of those who debated the proposed amendment or the states that adopted it. As Judge Harlan points out in his dissenting opinion, including two appendices of additional contemporary quotations, there was no intent whatsoever that the 14th Amendment give the

federal government control of state apportionment. As a matter of fact, there was a very good reason for making the 14th Amendment so limited in its application. This reason is summarized by Judge Harlan as follows:

The facts recited above show beyond any possible doubt . . . that Congress did not include in the Fourteenth Amendment restrictions on the States' power to control voting rights because it believed that if such restrictions were included, the Amendment would not be adopted.⁽³³⁾

Comments From Dissenting Opinions

Other comments in dissenting opinions by Justices Frankfurter and Harlan declaring that the majority of the Court was not just interpreting the Constitution but was actually amending it are as follows:

The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago. . . . Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. . . . To find such a political conception legally enforceable in the broad an unspecific guarantee of equal protection is to rewrite the Constitution.⁽³⁴⁾

The claim for judicial relief in this case strikes at one of the fundamental doctrines of our system of government, the separation of powers. In upholding that claim, the Court attempts [p. 66] to effect reforms in a field which the constitution, as plainly as can be, has committed exclusively to the political process.⁽³⁵⁾

This Court, limited in function . . . does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process. For when, in the name of constitutional interpretation, the Court *adds* something to the Constitution that was deliberately excluded from it, the Court in reality substitutes its view of what should be so for the amending process.⁽³⁶⁾

It should be emphasized that these dissenting opinions by Judge Frankfurter and Judge Harlan are not offhand conclusions but are carefully thought out and well documented analyses by judges who are regarded as two of the most mature, experienced, and learned members then serving on the Supreme Court.

Supreme Court Rejects Federal Analogy

One of the arguments used by the states to justify their existing apportionment was what was called the "federal analogy." Surely, they contended, the Supreme Court could not declare unconstitutional apportionment arrangements similar to those provided for the federal government in the Constitution itself. They pointed, for example, to the following ways in which federal representation is not based on population.

1. Each state has equal representation in the Senate, regardless of population.⁽³⁷⁾
2. The Constitution may not be amended to deprive any state, without its consent, of its equal representation in the Senate.⁽³⁸⁾
3. Each state has at least one representative in the House of Representatives, regardless of its population.⁽³⁹⁾ [p. 67]
4. The number of presidential electors chosen in each state is equal to the whole number of its senators and representatives. If no one candidate receives a majority of the electoral votes, the President is chosen by the House of Representatives voting by states rather than by population.⁽⁴⁰⁾

However, the Supreme Court held the federal analogy to be "irrelevant to state legislative districting schemes."⁽⁴¹⁾ The majority opinion justified this conclusion by first pointing out that the federal system was not intended as a pattern of what might be permissible, but was simply a compromise without which the Constitution would not have been adopted.

The system of representation in the two Houses of the Federal Congress is . . . one conceived out of compromise and concession indispensable to the establishment of our federal republic.⁽⁴²⁾

Another reason the Court gave for considering the federal analogy irrelevant was that the states of the federal government are separate and independent sovereign entities that have surrendered some of the sovereignty to form a more perfect union, whereas the counties or other election districts are merely political subdivisions created by and continuing at the sufferance of the states.

Political subdivisions of States — counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions.⁽⁴³⁾

Following its explanation of why it considered the federal analogy irrelevant, the Court went on to explain why it felt it necessary that both houses of a state legislature [p. 68] be apportioned by population. The Court's concern was that if one branch of a state legislature can be apportioned other than on a population basis, it would be possible for the minority to frustrate the will of the majority.

Deadlock between the two bodies might result in compromise and concession on some issues. But in all too many cases the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis.⁽⁴⁴⁾

Supreme Court Rejects Framers' Constitutional Philosophy

The Supreme Court's rejection of the federal analogy argument in order to facilitate majority control confirms the correctness of Judge Frankfurter's comment in his dissenting opinion in *Baker v. Carr* concerning the real issue in these reapportionment cases. Judge Frankfurter wrote:

What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really, among competing theories of political philosophy.⁽⁴⁵⁾

As pointed out elsewhere in the work,⁽⁴⁶⁾ it was the political philosophy of the Framers that democracy was an intrinsically undesirable and unstable form of government. For example, James Madison wrote:

Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property.⁽⁴⁷⁾

It was the feeling of the Framers that while in general the will of the majority should control, the majority should not be able to disregard the will of the minority. Hence [p. 69] there were built into the Constitution devices for protecting minority rights by limiting the power of the majority. While it is true that the arrangements worked out were the result of compromise, the system adopted was in harmony with the philosophy of the Framers and did not represent a surrender of their basic principles.

However, in these apportionment cases, the Supreme Court not only amended the Constitution to take upon itself authority over state apportionment, but it also imposed on the states a democratic theory of political philosophy contrary to that of the Framers. In doing so, it disregarded the traditional American concept that questions of political philosophy are matters that should be decided by the people through their elected representatives. Certainly such basic decisions should not be imposed on the people by judges not selected by them or accountable to them. In this regard there is in Judge Frankfurter's dissenting opinion in *Baker v. Carr* an interesting quotation from an early opinion by Judge Woodbury.

Fortunately for our freedom from political excitements in judicial duties, this court can never with propriety be called on officially to be the umpire in questions merely political. The adjustment of these questions belongs to the people and their political representatives. . . . These questions relate to matters not to be settled on strict legal principles . . . if the people . . . should ever think of making judges supreme arbiters in political controversies . . . they will dethrone themselves and lose one of their own invaluable birthrights; building up . . . —slowly, but surely—a new sovereign power in the republic, in most respects irresponsible and unchangeable for life, and one more dangerous, in theory at least, than the worst elective oligarchy in the worst of times.⁽⁴⁸⁾

Essentially, what the Supreme Court did in these cases was to undercut a widely and successfully used method of protecting minority groups against having their wishes and [p. 70] interests engulfed by the voting strength of the large population centers. This has led to the comment that in these cases the Supreme Court accomplished a gerrymander, which is a device

by which persons in key political positions distort political processes to increase the influence of those who support them or agree with them and diminish the influence of those who oppose them or their point of view.⁽⁴⁹⁾

In justification of these decisions, it is sometimes argued that the Supreme Court had to take the law into its own hands because of the unwillingness of the states to reapportion their voting districts fairly. If fairness were really the Court's objective, it would seem that this could have been accomplished by correcting clear abuses without imposing on the states a political philosophy contrary to that of the Framers. Those who are inclined to feel impressed by this argument, that the Supreme Court's action was necessary to correct clear abuses the states were unwilling to correct, should look closely to the case of *Lucas v. Forty-Fourth General Assembly of Colorado*.

In Colorado two alternative reapportionment proposals were presented to the voters. One proposal provided that both houses of the legislature should be apportioned solely according to population. The other proposal provided that the lower house be apportioned solely according to population, but that the upper house be apportioned according to population and other interests. The voters of the state rejected the first proposal and adopted the second by a more than two to one majority.

Suit was brought by a small group of voters who claimed that the method of apportionment so overwhelmingly adopted by the people was unconstitutional. Even though a majority of the voters in every county in which any of the plaintiffs lived voted for the method of apportionment that was adopted, the Supreme Court set it aside. [p. 71] Chief Justice Earl Warren, in writing the majority opinion, declared:

An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of the state's electorate.⁽⁵⁰⁾

As indicated in the foregoing discussion, there was no such "constitutionally protected right" until the Supreme Court in these cases created one, in spite of the fact that such a "right" was plainly contrary to the philosophy of the Framers and the provisions of the Constitution.⁽⁵¹⁾

Meaning of "Constitutional" In Court Opinions

This use by the Supreme Court of the expression "constitutionally protected right" raises a question of the meaning of the word "constitutional" as used by the Supreme Court today.

When the Supreme Court says that something is constitutional or unconstitutional, many people believe this means that they have found it to be consistent or inconsistent with the words or principles of the Constitution as intended by the Framers. Actually, as illustrated in these cases, this is not the correct meaning of these words when used by the Supreme Court today. Instead, the words constitutional or unconstitutional used in modern Supreme Court opinions simply mean that at least 5 of the 9 judges believe this is what the law should or should not be, even though their decision may be the opposite of the wording of the Constitution and of the known intent of the Framers.

Supreme Court Responsible for Unconstitutional Changes

It is sometimes argued that the Supreme Court is not to blame for changing the Constitution because it cannot [p. 72] take the lead in initiating changes, but only interprets laws made by Congress and the state legislatures. There are several basic weaknesses in this argument.

1. It overlooks the reality of court-made law. America's basic system of law is the Common Law, which is actually court-made law except to the extent changed or added to by legislative enactments. One of the fundamental principles of the Common Law has been that of *stare decisis* (pronounced star'e di si'sis) which essentially means that prior decisions are regarded as binding in similar future cases. However, in recent years the courts have taken upon themselves to an increasing extent the right to change prior law without waiting for action by the legislature. ⁽⁵²⁾

2. Laws passed by legislatures today are molded by prior Supreme Court decisions to a very real extent. Such molding results from the fact that proposed laws are consciously and deliberately drafted to comply with standards set by the Supreme Court in its prior decisions. This is done with full realization that if those standards are not complied with, the legislation being drafted may be declared "unconstitutional," even though it is clearly in harmony with the plain wording of the Constitution and the known intent of the Framers.

3. Some of the most sweeping changes have been initiated directly by the Supreme Court in its decisions of cases before it. In the legislative reapportionment cases for example, prior enactments by Congress and the states were in harmony with the words of the Constitution and the intent of the Framers. Yet, the Supreme Court, on its own, with no prior legislation in the direction it chose to go, changed the Constitution and overruled the repeatedly considered judgment of Congress.

Furthermore, the argument that the Supreme Court does not lead misses the point of one of the most important functions of the Supreme Court. That is its function to [p. 73] prevent the Constitution from being corrupted. The Supreme Court is charged with the responsibility of protecting the Constitution as written and intended by the Framers and understood by the people who adopted it, until it is changed in the proper way by amendment.

This responsibility of the Supreme Court to protect the Constitution is as clear as the responsibility of a policeman to maintain order. If the people start a riot, their culpability does not excuse him from neglecting his duty and joining in the riot. In fact, if he does so, he is much more culpable than they because he's also violating his duty to stop the riot. Similarly, if Congress passes a law which violates the Constitution, such action by Congress does not justify the Supreme Court in also violating the Constitution.

The Supreme Court has recognized its obligation to protect the Constitution against changes made by others, as is evidenced by the many times it has declared unconstitutional acts of Congress or state legislatures. Yet, when it changes the Constitution by interpretation, it is itself doing the very thing it recognizes its obligation to prevent others from doing.

It is therefore submitted in all soberness and without rancor or emotionalism that the many changes that have been made in our constitutional system *without amendment in the manner provided in the Constitution* are the direct responsibility of the Supreme Court for the following reasons:

1. The Supreme Court has violated its acknowledged duty to protect the Constitution against unconstitutional changes made by others. Instead, it has "reinterpreted" (changed) the Constitution to conform to such unconstitutional changes.

2. Even in the absence of unconstitutional changes initiated by legislatures or other government agencies, the Supreme Court has decided cases before it on principles contrary to the words of the Constitution, the known intent [p. 74] of the Framers, and the understanding of the people who ratified the Constitution. In this way, the Supreme Court has itself taken the initiative in imposing unconstitutional changes. An example of such a direct court-made unconstitutional change is in the reapportionment cases just discussed.

Jefferson Foresaw Danger

What has actually happened has confirmed Thomas Jefferson's oft repeated fear that the federal judiciary would ultimately be the means of destroying our free constitutional system. For example, he said:

It has long been my opinion, and I have never shrunk from its expression, that *the germ of dissolution of our federal government is in the constitution of the federal judiciary*; an irresponsible body (for impeachment is scarcely a scarecrow), working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because, when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated.⁽⁵³⁾

Congress Also Responsible

Although the Supreme Court is directly responsible for the many unconstitutional changes, it is not solely responsible for them. Under the system as designed by the Framers, it was not intended that any one branch of the government be vested with final authority, thereby making that branch superior to the others. Instead it was intended that, as men with ambition and drive in a particular department begin to usurp authority, those in the other departments because of their own ambition and drive, [p. 75] would repel such invasions. To accomplish this, the Framers took care to provide each department with not only the incentive, but also the means to repel such usurpations. This concept was expressed in *The Federalist* in these words:

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and

personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.⁽⁵⁴⁾

As indicated earlier in this work,⁽⁵⁵⁾ the Framers provided a specific means by which Congress can check the authority of the Supreme Court and protect itself and the American system against judicial usurpation. Practically all cases involving possible judicial usurpation of authority come before the Supreme Court on appeal from lower courts. As to these cases, the Framers made the authority of the Supreme Court subject to the control of Congress; thereby giving Congress the constitutional means to clip the wings of the Supreme Court if it should become necessary to check its usurpations of authority. The specific constitutional provision is as follows:

In all other Cases before mentioned, the "Supreme Court" shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.⁽⁵⁶⁾

The responsibility for the many unconstitutional changes made by the Supreme Court must, therefore, be shared by Congress. This is because Congress failed to use the means provided by the Constitution to do its constitutional duty of protecting the system against judicial usurpation. [p. 76]

People Also Responsible

Furthermore, the blame for the unconstitutional changes must be shared by the people. It should be clearly borne in mind that the preservation of the constitutional system rests ultimately not with mechanical checks and balances, but with the people themselves. The failure of constitutional systems patterned after America's to secure liberty in other countries is evidence of this truth. James Madison expressed it this way:

No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.⁽⁵⁷⁾

This ultimate responsibility of the people for the preservation of their constitutional system and their sleepy unconcern while the bulwarks of America's freedom are destroyed was clearly understood by President McKay who said:

We therefore commend and encourage every person and every group who is sincerely seeking to study Constitutional principles and awaken a sleeping and apathetic people in the alarming conditions that are rapidly advancing about us.⁽⁵⁸⁾

It is interesting to note in President McKay's statement an echo of a famous statement made by James Madison in the context of the need for vigilant and jealous guarding of liberty. [p. 77]

It is proper to take alarm at the first experiment on our liberties.⁽⁵⁹⁾

Desirable Actions By People

In taking alarm, what should the people do about the Supreme Court's unconstitutional usurpation of authority?

In the first place, they should study this country's constitutional system from authentic sources and learn the basic principles of the system and the intent of the Framers. In making such a study, care should be used to distinguish between true constitutional principles and the counterfeit constitutional principles which are now so popularly believed, taught, and promoted. Although the counterfeit principles are made to sound plausible, they are really the philosophy of men mingled with constitutional sounding words and phrases.

In addition, the people should be indignant, vocal, and insistent that the unconstitutional tampering with the constitutional system be stopped and that the damage that has been done be corrected; and they should persist until these results are fully accomplished. Such persistent indignation would not only correct existing damage, but would serve as a warning that future usurpation will not be tolerated.

Furthermore, the people should be much more concerned about who is appointed to the Supreme Court. The constitutional philosophy of most persons nominated to serve on that court is known from their prior writings and speeches.⁽⁶⁰⁾ Although many persons nominated to serve on [p. 78] the Supreme Court have previously indicated a clear rejection of the principles of the Constitution as designed and intended by the Framers, there seems to have been little objection to their confirmation by the Senate on this ground. Again, if the people would insist to their Senators that only those appointments be confirmed in which the nominee has indicated a clear belief in the principles advocated by the Framers (who Mormons believe to have been inspired), the Senate would not confirm the others; and the President would be on notice to submit only the names of those who have indicated support of the Constitution in the tradition of the Framers. [p. 79]

Chapter 9 The Lord's Standard of Constitutionality

In the midst of the conflict of opinion between those who advocate greater centralized control by the federal government under a flexible interpretation of the Constitution, and those who urge return to practices they believe to be more in harmony with the intent of the Framers, where should Latter-day Saints turn for correct understanding?

It is well to recall Nephi's statement in the *Book of Mormon*.

. . . the Lord giveth no commandments unto the children of men, save he shall prepare a way for them that they may accomplish the thing which he commandeth them. ⁽¹⁾

Having placed on Latter-day Saints the responsibility of working to save the Constitution, the Lord has also given them the correct interpretation of it so that they can carry out that responsibility.

Actually, Latter-day Saint understanding of the Constitution comes from an even better source than the writings of the Framers who drafted it. In the *Doctrine and Covenants*, Latter-day Saints have the words of the One who really designed the Constitution and who used the Framers as inspired instruments in bringing it forth. There the Lord declared his purpose in establishing the Constitution in these words: [p. 80]

The laws and constitution . . . which I have suffered to be established . . . for the rights and protection of all flesh, according to just and holy principles;

That every man may act in doctrine and principles 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.

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, by the hands of wise men whom I raised up unto this very purpose. . . . ⁽²⁾

For a person to be fully accountable for his own sins, he must have the moral agency to act voluntarily without compulsion. If his actions are compelled, they are not really his actions, and he is not accountable for them in the day of judgment. He does not himself merit either reward or condemnation for doing what he is compelled to do.

Constitutional System the Freedom Way of Life

Thus the Lord's purpose in establishing the Constitution was to provide a system under which men would be free to do as they wish with a minimum of compulsion, and to enjoy the fruits or suffer the consequences of the actions they choose. This means that the system set up by the Constitution is not just a governmental organization pattern, but is rather a system under which a certain way of life can be lived. That way of life is the way of individual freedom.

America's constitutional system is, therefore, not just a political system, but a complete political, social, and economic system under which men have the right to do as they wish (exercise their free agency) with a minimum of governmental regulation or control (bondage).

This free agency concept of the Constitution is in harmony with the clearly expressed intent of the Framers that [p. 81] the federal government was to protect the people in their freedom—that is, to be sure their free agency is not taken from them—but to let them work out their own temporal salvation. Thomas Jefferson expressed well this free agency concept in these words:

With all these blessings, what more is necessary to make us a happy and prosperous people? Still one thing more, fellow citizens—a wise and frugal government, *which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement*, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.⁽³⁾

If free agency is the true yardstick to measure constitutionality, then the Mormon people, who are most familiar with free agency—instead of being novices at constitutional law—are uniquely equipped to understand and apply it correctly. [p. 82] [p. 83]

Chapter 10

The Real Threat Against The Constitution

As a matter of fact, the threat against the Constitution is really a threat against free agency itself. That this is the real threat is evidenced by a statement in a small pamphlet entitled *Statements on Communism and the Constitution of the United States*, by President David O. McKay.

We again warn our people in America of the constantly increasing threat against our inspired Constitution and our free institutions set up under it. The same political tenets and philosophies that have brought war and terror in other parts of the world are at work amongst us in America. The proponents thereof are seeking to undermine our own form of government and to set up instead one of the forms of dictatorships now flourishing in other lands. These revolutionists are using a technique that is as old as the human race. . . .⁽¹⁾

What is the technique as old as the human race being used to destroy freedom? If the Latter-day Saints understand the enemy's technique of operating, they should be in a stronger position to withstand his onslaughts. The enemy's technique is exposed by President McKay in these words:

These revolutionists are using a technique that is as old as the human race,—a fervid but false solicitude for the unfortunate over whom they thus gain mastery, and then enslave them.⁽²⁾ [p. 84]

That technique has a familiar ring to Latter-day Saints. Where did they hear it before? Isn't it the same technique used by Satan in the Council in Heaven?⁽³⁾

Paraphrasing Satan's argument will show how familiar that technique really is. Essentially he was saying something like this. "Everybody should be equal. It isn't fair that some should have greater rewards than others just because they do better than others. Just give me the power and I'll see to it that everyone gets the same rewards."⁽⁴⁾

Actually, he was presenting a plan under which he would become the all-powerful dictator, and those for whom he showed such concern would become his puppets. This thought was expressed by President McKay in these words.

Even in man's pre-existent state, Satan sought power to compel the human family to do his will by suggesting that the free agency of man be inoperative. If his plan had been accepted, human beings would have become mere puppets in the hands of a dictator, and the purpose of man's coming to earth would have been frustrated.⁽⁵⁾

Satan's solicitude for the unfortunate was fervid, but it was false because his objective was not really the welfare of the unfortunate, but rather power for himself. Having failed to have his compulsion method of government adopted in the preexistence, he is still zealously promoting it here on earth. By using the technique of a fervid but false solicitude for the unfortunate, he has deceived many well meaning people into believing that his compulsion system is desirable.

Inviolate Property Rights Essential To Freedom

In the *Doctrine and Covenants* the basic rights of each individual to life, liberty, and property are affirmed in these words: [p. 85]

We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.⁽⁶⁾

Today there are those who declare that it is possible to maintain the rights to life and liberty inviolate without maintaining property rights inviolate. This position is used to justify compulsory taking of property from some to give it to others. However, the above Doctrine and Covenants statement concerning the importance of property rights is borne out by the attitude of the Framers concerning the relationship between inviolate property rights and freedom. The Framers firmly believed that freedom could not exist unless property rights are held inviolate. For example, John Adams declared:

The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured, or liberty cannot exist.⁽⁷⁾

Tyranny Begins With Assault on Private Property

Not only is it necessary for the right of private property to be held inviolate for freedom to continue, but in at least one way the right of private property is of even greater significance than the rights to life and liberty. When a government departs from its proper role as the protector of inalienable rights and commences on the road to tyranny, the destruction of freedom ordinarily begins with an assault on private property. The reason for this is that if tyranny's first steps included the deprivation of life and liberty, the loss of freedom would be immediately recognized.

Having referred to a tyranny, it might be well to comment that a tyranny is not limited to a government dominated [p. 86] by a single unjust ruler. Instead a tyranny can be any government under which rights to life, liberty and property are not maintained inviolate. If the government is a tyranny, there can be much jockeying for power and changing of individual leaders without any substantial change in the status of the people.

When a government commences on the road to tyranny, the destruction of individual property rights at first proceeds slowly. Plausible programs are presented that seem to involve the solutions to human needs. But the proposed solutions typically involve the taking of property from some and giving part of that property to others, which solutions violate the right of private property.

How People are Induced To Support Destruction of Private Property

Many people who support the destruction of property rights do not realize that they are helping to undermine freedom. Their attention is diverted to human suffering, and they are motivated to support programs to alleviate that suffering. Their focus is thus shifted from opportunity to security, and they do not have enough understanding of freedom and the proper role of government to realize the destination of the road on which they are induced to travel. However, Latter-day Saints, who believe the Framers to have been inspired, should bear in mind that the Framers deliberately rejected the compulsory taking of property for welfare programs as a violation of property rights. For example, James Madison declared:

Government is instituted to protect property. . . . This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own. . . . That is not a just government, nor is property secure under it, where the property which a man has . . . is violated by arbitrary seizures of one class of citizens for the service of the rest.⁽⁸⁾ [p. 87]

How Violation of Property Rights Leads To Loss of Freedom

There are several reasons why freedom cannot exist if property rights are not held inviolate. The tyrant's control of property makes the tyranny stronger and the people weaker and prevents the people from acquiring the tangible means needed for successful opposition. Also, a tyranny tends to obtain control over people's livelihood and to make people dependent on it for their Support. People whose livelihood is under the control of others or who are dependent on others for support tend to lose their independence of character and desire for freedom. If enough people lose the desire to be free, freedom will disappear. One of the most insidious aspects of government paternalism is that it deprives people of the will to be free. By means of continued doses of government welfare, people are transformed from lovers of freedom, motivated by a spirit of independence, to seekers after security unsure of their ability to stand on their own feet with the help of God. They are willing to forget about freedom if the government will promise them security.

This latter condition is little different in principle from a willingness to barter one's own freedom in exchange for a promise of security from a master—in other words to sell oneself into slavery. Slaves have their lives and a considerable freedom of movement if they convince their

masters they will do only what their masters wish. Any property they have would be subject to the control of their masters; but this is not of great importance to a slave because he is fed, clothed and housed by his master anyhow. The really significant element a slave lacks is the right to exercise his own will in opposition to the will of his master. Yet the Lord declared that He established the Constitution so that people would be free to exercise their own will. [p. 88]

Erosion of Freedom in the United States

When a person mentions that freedom in the United States is being eroded, he is often challenged to point out specific examples. While he senses a lessening of his freedom, he may be unable to give specific instances of reduced freedom. The reason for his difficulty is that he is looking in the wrong direction. He is thinking in terms of less of freedom in the sense of limitation on his movements, when actually his freedom of control of his private property is being diminished. The erosion of his freedom is mainly in the areas of government regulation of his economic activities and appropriation through heavy taxation of a major part of the fruit of his labors for the purpose of giving his property to other individuals. If he would look in the those directions, he would easily find many major ways in which freedom in the United States is being rapidly diminished.

This rapid diminution of freedom in the United States arises out of adoption of a philosophy that it is the responsibility of government to promote prosperity through regulation of the economy and to look after the welfare of the people instead of just protect them in their freedom. Socialism is the word usually used today to describe this philosophy.

Socialism Defined

While socialism is often defined as government ownership or control of the means of production and distribution, a better understanding of socialism is obtained by consideration of its ostensible purpose or philosophy. Socialism is the political, social, and economic system growing out of the philosophy of government that it is the proper function and responsibility of government to promote the social welfare and prosperity of the people. Control of the means of production and distribution is the method by which those objectives are pursued under socialism.

The diminution of freedom in the United States today is often justified on the ground that socialism is a new, [p. 89] modern, more enlightened philosophy that should be adopted in the United States. Unfortunately, most of the people do not seem to be aware that this so-called new, modern, more enlightened philosophy of government is actually very old. Furthermore, not only has it been tried repeatedly, but its record is one of consistent failure.

Socialism Rejected By Framers

Actually, the Framers were familiar with the principles of what today is called socialism and rejected them. As is indicated above, there are really two closely related aspects to socialism. One is government management of the economy, and the other is government welfare programs. Government management of the economy, then called Mercantilism, was the prevailing economic system at the time of the drafting of the Constitution and was rejected by the Framers.

Government welfare programs were also well known to the Framers and consciously rejected by them. The Framers' rejection of the idea of government welfare programs was not based solely on their belief that such programs involved the beginning of the destruction of liberty through violation of sacred property rights. Their rejection was also supported by the belief that such programs were not really in the best interests of the people, but were primarily a pretense for gaining their votes. This attitude was shared by Thomas Jefferson, who wrote:

If we can prevent the government from wasting the labors of the people under the pretense of taking care of them, they must become happy.⁽⁹⁾ [p. 90]

A particularly interesting reference confirming the fact that the various socialistic programs adopted by the federal government in recent decades are really unconstitutional is found in a paper published in 1968 by the Center for the Study of Democratic Institutions. The author of the paper is Rexford G. Tugwell, one of the original Roosevelt Brain Trusters, and an ardent proponent of the welfare state. In this paper Mr. Tugwell argues that the Constitution should be rewritten because it is inadequate to the present time. In attempting to justify the need for such a rewriting, Mr. Tugwell admitted that although it has been consistently claimed that socialistic federal programs were a proper extension of the Constitution, they have really been unconstitutional all along. For example, he said:

The Constitution had been meant for an age . . . with a different notion of men's relations to the government and to each other. . . . The Framers had had different beliefs (from those widely accepted today). . . .

The Constitution was a negative document, meant mostly to protect citizens from their government. . . .

The Framers lived in the age of Adam Smith's economics and Montesquieu's politics.⁽¹⁰⁾

Above all, men were to be free to do as they liked, and since the government was likely to intervene, and because prosperity was to be found in the free management of their affairs, a constitution was needed to prevent such intervention . . . among the Framers there was no concern for the welfare of citizens as welfare is now conceived. Opportunities were open to all, and if they were not taken advantage of, or if an individual lost out to a more enterprising competitor, it was his own fault. . . . The laws would maintain order but would not touch the individual who behaved reasonably. He must pay taxes to support a smallish government and he must not interfere with commerce; but otherwise laws would do him neither [p. 91] good nor ill. The government of the Constitution was this kind of government.⁽¹¹⁾

Joseph Smith on Socialism

Joseph Smith has been described by many as a man of remarkable intelligence and understanding in addition to being a prophet. In September of 1843, at Nauvoo, Illinois, he attended two lectures on socialism given by Mr. John Finch, a socialist from England. In recording the experience, Joseph Smith underlined this comment. "I said I did not believe the doctrine."⁽¹²⁾

Some may question whether Joseph Smith knew what he was talking about in concluding that socialism is a false doctrine. His conclusion can be tested by applying the very testing device suggested by Christ himself in the Sermon on the Mount when he said that the way to detect false prophets is by their fruits.

The Fruits of Socialism

What are the fruits of socialism?

One learns from history that seemingly logical theories are often proved invalid. One would therefore expect that to induce an intelligent person to accept a theory its proponents should show a significant body of examples of its successful operation, and the relative absence of examples of unsuccessful operation.

Examination of socialism reveals that its proponents prefer not to investigate large numbers of specific examples. Instead they tend to limit themselves to general theoretical considerations. This enables them to avoid admitting that the many examples of socialistic experiments of various sorts and sizes have been consistently unsuccessful. The promised day of freedom and plenty is always around the next corner. [p. 92]

Jamestown and Plymouth

It is of interest that socialistic experiments were tried and were unsuccessful in both Jamestown and Plymouth. Neither colony began to prosper until those experiments were discontinued and each man began to work for himself.⁽¹³⁾

Sweden

It has been popular in recent years to refer to Sweden as an example of how successful socialism can be. In fact Sweden is often enthusiastically called a workers' socialistic paradise.

Every lawyer knows how impressive an unchallenged statement can be—until its flaws are exposed in the closer scrutiny of cross examination. In view of the consistent lack of success of other socialistic experiments, it seems appropriate to take a closer look at the Swedish socialistic experiment to see if it really is a valid example of successful socialism. In doing so it should be pointed out that Sweden is only partly socialistic because its underlying economic system is capitalism rather than state ownership of the means of production and distribution.

The following quotations are taken from two recent articles in *U. S. News and World Report*:

After 20 years of building the world's greatest welfare state, Sweden finds most of the original problems unsolved and, in some cases, grown greater instead of fading away.

The costly welfare and educational reforms have not curbed such social ills as crime, alcoholism and drug addiction. Sweden's crime rate has doubled since 1950, with juvenile crime largely responsible.

Now you hear this comment from a high police official: . . . "It has become increasingly clear over the past 10 years that the welfare state we live in is anything but an ideal society."

Housing subsidies are one of the achievements of which the social planners are most proud. [p. 93]

Yet housing today is one of the worst of the messy situations troubling Sweden's welfare state.

Young married couples often are forced to live with relatives. Many face a wait of 10 years before they can have homes of their own.

Workers in the lower and middle income brackets pay in taxes twice as much as Americans in the same brackets.

In this welfare state, wages and salaries have risen even faster than prices, but higher taxes have swallowed most of the gains in pay.

Wage inflation now is beginning to undermine the competitive position of some industries.

Widespread discontent over high taxes, inflation, the housing shortages and other flaws in the welfare state led to a setback for the Labor Government . . . in last autumn's elections.

Sweden's top Communist . . . has greater popularity than any Communist has ever before enjoyed in Sweden.

As the Labor Government moves leftward to meet the Communist challenge, it loses support from business and other "moderate" elements.

So when you look behind the facade of Sweden's "Great Society" you find a disturbing picture—a picture of developing crisis, not one of social problems solved.

Here in Stockholm, suggestions are heard that the U. S. Congress, inundated with new ideas and new plans for bigger and broader benefits to be financed by taxpayers, might take a long, hard look at what has happened in Sweden.⁽¹⁴⁾

Sometimes one wonders why the collectivists turn one's attention toward Sweden, because the Swedish example disproves one of their basic assumptions. This is the assumption that crime is the outgrowth of poverty and an economically deprived childhood. Since Sweden provides "cradle-to-grave security,"⁽¹⁵⁾ if their assumption were correct, crime should have been all but eliminated there, especially among the young. Yet, as indicated in these articles, [p. 94] the reverse is true. Crime has been increasing rapidly, especially among the young.

When one takes a more objective balanced view of the fruits of partial socialism in Sweden, one finds that the Swedish experiment is really additional evidence that Joseph Smith was right and socialism is not a sound doctrine.

Saskatchewan

Here in North America, there is a better example of the fruits of socialism. From 1944 to 1964 the Canadian province of Saskatchewan operated under a socialist government. Unlike Sweden which has traditionally maintained friendly relations with business, the Saskatchewan government followed the usual socialist attitude of being anti-private enterprise.

Finally in 1964 the people of Saskatchewan decided that they wanted the fruits of capitalism instead of the promises of socialism. They elected a government committed to taking Saskatchewan back to a private enterprise economy with reduced government services and reduced taxes. Thereafter, W. Ross Thatcher, Premier of Saskatchewan, was invited to the United States to speak at a Conference of Western Governors on Saskatchewan's experience with a socialist government. Here are a few of Premier Thatcher's comments:

In 1944, the socialists said they would solve the unemployment problem by building government factories. Not only this, they promised to use the profits from these socialist enterprises to build highways, schools, hospitals, and to finance better social welfare measures generally.

Of course, in the overall picture, there were no profits — rather there were colossal losses. Thus the welfare program had to be financed from taxation.

Under the socialist government, our provincial debt went from \$150 million to \$600 million. During the period more than 600 completely new taxes were introduced. 650 other taxes were increased.

All throughout their regime, the socialists tended to use compulsion. Repeatedly, their boards and agencies were manned [p. 95] by some social theorists, who told businessmen how their businesses should be run.

Mr. Chairman, 20 years ago, the socialists promised to make Saskatchewan a Mecca for the working man. Instead, we saw the greatest mass exodus of people out of an area, since Moses led the Jews out of Egypt more than 3,000 years ago.

Mr. Chairman — Is there a lesson to be learned from Saskatchewan's experiences? I think there is—a rather horrible lesson.

If there are any Americans who think that socialism is the answer, I wish they would come to Saskatchewan and study what has happened to our province. Twenty years of socialism gave my province—industrial stagnation;—retarded development;—oppressive taxation;—major depopulation.

In our province, we know socialism not from text books but from hard, bitter experience. We have found that there is nothing wrong with socialism except that it doesn't work.⁽¹⁶⁾

Russia

Perhaps the most comprehensive modern example of an actual socialistic experiment is the Union of Soviet Socialist Republics—Communist Russia.⁽¹⁷⁾ [p. 96]

In connection with the inability of socialism to provide the promised economic benefits, it should be remembered that the economic promises of socialism have not been fulfilled even in Russia where the compulsory power of the state has been used to force socialistic economic progress.

Although, by concentrating its resources, Russia has been able to achieve spectacular results in limited areas, this should not be confused with overall economic progress. On a per capita basis the USSR ranks, not second, but about twentieth in measurable social and economic indices among the principal countries. In fifty years the USSR has not overtaken any country with the possible exception of Italy, which is itself heavily involved with socialism.⁽¹⁸⁾

In a lecture given at Moscow University in the Summer of 1965, Professor Abel G. Aganbegyan, a member of the Soviet Academy of Science, made the following comment concerning living standards.

With respect to increase in living standards, things are going badly. . . . There has not, in fact, been any rise in the standard of living during recent years. Ten million people have suffered a decrease in their living standards.⁽¹⁹⁾

Concerning prospects for improvement in the Russian economy, Professor Aganbegyan declared:

Everything that has been said is highly alarming because it is not just a question of the situation existing in our economy today, but one of the existing trend and this is very, very much worse.⁽²⁰⁾

Is there some conclusion to be drawn from the difficulty socialists seem to have finding examples of successful socialism to counter the consistent pattern of socialist failures? Can it be that although most of the people who accept socialism feel that they are intelligent and enlightened, [p. 97] acceptance of socialism is really based on a kind of unreasoning emotional faith rather than an intelligent analysis of extensive factual evidence?

Even Partial Socialism Undesirable

Some people who admit that socialism is bad in general contend that it is still desirable in small doses. However, that point of view is unsound for two reasons:

In the first place, socialism is like a habit forming drug. Once started, it tends to require larger and larger doses. In this connection W. Ross Thatcher, Premier of the Canadian Province of Saskatchewan, had this to say in commenting on the failure of the Saskatchewan experiment in socialism:

I am sure you have heard some people say

"We don't agree with socialism — we wouldn't support it generally — but a little bit of socialism might be all right."

Mr. Chairman, we found in Saskatchewan that a little bit of socialism is like a little bit of pregnancy. Once it begins to develop, it is pretty hard to stop. ⁽²¹⁾

In the second place socialism introduces a foreign discordant element into a free enterprise economy that impairs the self-regulating nature of the free enterprise system.

The Saskatchewan experiment with socialism illustrates another point. There are many who acknowledge that federal socialism is contrary to the Constitution as intended by the Framers, and admit that socialism is bad on the federal level. But these same people sometimes mention that socialism is not unconstitutional on the state level, and they express the thought that it may be desirable there.

It should be pointed out that the reason socialism was not made unconstitutional on the state level is not because the Framers believed it to be desirable there. [p. 98] The main reason the Framers made socialism unconstitutional only on the federal level is because the then state governments were already in existence and it was the federal government the Framers were designing. The Saskatchewan experiment shows that the undesirable effects of socialism apply even on the provincial or state level.

Should Welfare Help Be Given In Special Cases?

There are some who will tend to agree generally with the above comments, but will argue that there are some cases in which welfare programs should be adopted, such as those in which some cataclysm of nature suddenly leaves people in need through no fault of their own. The following words of Grover Cleveland, twice elected President of the United States as the candidate of the Democratic Party, should be considered thoughtfully in this regard.

The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character, while it prevents indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood. ⁽²²⁾

Many who are seeking to promote socialism confuse the issue by giving the impression that the only alternatives are (1) government help, or (2) no help, which will result in starvation or other dire consequences. However, as President Cleveland pointed out, this is not the issue at all. The real issue has the following two parts:

1. Should help be given at all?

In many cases the giving of help at all is really harmful and tends to be destructive of individual incentive, character, and self respect. Adults as well as children can be spoiled by doing for them what they should do themselves. [p. 99]

2. If help should be given, who should give it?

Even when help should be given, the issue is still not between government help or no help. As is pointed out by President Cleveland, the question here is between government help and private help.

Socialism Contrary to Constitution

As Latter-day Saints consider the question of whether needed welfare help should be given privately or by the government, they should bear firmly in mind that the Framers deliberately drafted the Constitution in such a way as to preclude the federal government from giving welfare help.

The intent of the Framers that the Constitution prevent the federal government from giving welfare help was emphasized shortly after the Constitution was adopted. Early in this country's history an attempt was made to enlarge the intended powers of the federal government by interpreting the Welfare Clause⁽²³⁾ as a separate grant of power authorizing Congress to enact laws it deems desirable involving the use of tax money to promote the general welfare. This attempt was energetically opposed by James Madison, who is noted for the great part he played in designing our constitutional system. Of this proposed interpretation of the Welfare Clause, Madison wrote:

I consider it . . . as subverting the fundamental and characteristic principle of the Government . . . and as bidding defiance to the sense in which the Constitution is known to have been proposed, advocated, and adopted. If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one.⁽²⁴⁾

From the Latter-day Saint point of view it is not necessary to become involved in a consideration of the [p. 100] pros and cons of whether the United States should continue in the direction of becoming a socialist state. This is because Latter-day Saints have the correct standard given them in the *Doctrine and Covenants*. That correct standard is their understanding with respect to the Constitution, which the Lord declared to be correct and which He admonished Latter-day Saints to support.⁽²⁵⁾ Under the constitutional system intended and established by the Framers, there is no possibility of a federal welfare state without first changing the Constitution.⁽²⁶⁾

In this connection, it may be well to recall a talk given by Elder Marion G. Romney, an apostle, a lawyer, and a former Democratic office holder. The talk was entitled "Socialism and the United Order Compared," and was given first to the Brigham Young University student body and repeated at the April 1966 General Conference Priesthood Meeting.

In his talk, Elder Romney pointed out the utter incompatibility of socialism and the United Order. He mentioned that the United States had already gone a long way in adopting socialism, and reminded Latter-day Saints that they must not forget their "duty to eschew socialism and support the just and holy principles of the Constitution as directed by the Lord."⁽²⁷⁾ [p. 101]

Chapter 11 Examining Proposed Changes

Today many suggestions are heard from various sources, including prominent government leaders, that the Constitution as drafted and intended by the Framers is outmoded and needs to be changed.⁽¹⁾ Since Latter-day Saints believe the Constitution to be divinely inspired, Church members should examine such proposals critically, rather than accept them at face value.

Most of the proposed changes seem to revolve around making the government better serve the needs of the people or various categories of people. When such proposals are examined critically, many of them appear to be connected by a disturbing common denominator. Although large numbers of well meaning people support the proposed changes, close examination reveals that many of the changes urged are not likely to accomplish the benefits it is claimed they will achieve.⁽²⁾ Instead, the proposals often appear to have been chosen to facilitate use of a fervid solicitude for the unfortunate as an excuse gradually to transform America's freedom system into a socialistic compulsion system—a system under which the media of communication, the educational institutions, and the compulsory [p. 102] power of the state are used to maintain centralized control over the daily lives of the people.

The above comment constitutes a serious indictment against many proposed changes. As such it should be supported by evidence. For such evidence the case of federal aid to education will be considered.

Federal Aid To Education

Federal aid to education has been widely promoted as a means of providing better educational opportunities to children in low income states. This desirable objective lends itself to fervid solicitude for unfortunate children. It is a difficult proposal to oppose because those who oppose it subject themselves to charges that they callously disregard the welfare of deprived children through too rigid adherence to outmoded technicalities. However, the real nature of federal aid to education is highlighted by a *Deseret News* editorial entitled, "Uncle Has the Worst School Aid Formula." The editorial declares:

In terms of personal income per school child, Utah is one of the poorest states in the nation. You would think that any program of federal support would be directed to help such a state. But Utah ranks fiftieth among the states in the amount of federal aid received per child enrolled in public schools.

New York, with twice as much personal income per school child than Utah, receives nearly three times as much federal aid per child. In effect, Utah, already carrying one of the nation's heaviest school burdens, is also subsidizing the schools of New York. What could be more ridiculous?⁽³⁾

A politically instructive discussion of the school aid bill is found in an article in *National Review* entitled "How to Railroad a School Bill," by Roger A. Freeman. Mr. Freeman is described as an economist with the Hoover Institution at Stanford University and a longtime student of the problem of financing public education. Here are a few extracts from that article. [p. 103]

Even such an enthusiastic proponent of federal aid as Representative Edith Green (D., Ore.) was critical of the bill: "Liberals talk about Mississippi and Alabama and we shed crocodile tears about how awful conditions are down there . . . then when we have a chance to do something—we give New York three times what we will give them in Mississippi and Alabama."

There is of course a perfectly good reason why New York and California get more per child than Mississippi and Alabama: that's where the votes are. . . . A legislator is no more fooled by his own oratory than by LBJ's.⁽⁴⁾ The congressman from New York or California figures that he isn't going to be re-elected just because he sent some of his constituents' money to Mississippi.

At the minority's request I was invited by the House and Senate committees to testify on the bill. But it became obvious in several hours of questioning that the majority simply was not interested in facts. It is an irony indeed that such a bill should be enacted when the school finance picture looks brighter than it has in decades.

Is the main purpose of the bill to aid the public schools financially? That could have been accomplished by simpler methods.

The true purpose of the new program is not to supply more money to the schools but to give the Office of Education a decisive voice in the shaping of the curriculum.⁽⁵⁾

It would seem that Mr. Freeman's comment that the true purpose of the bill was to gain control of the local school districts is supported by the fact that the bill was drafted in such a way as to get it passed, even though the price of passage was hurting the districts it was supposed to be helping.⁽⁶⁾ [p. 104]

His comment is also consistent with the objective of those who seek to use the schools to indoctrinate our youth with their collectivist philosophy as one of the steps in overthrowing the constitutional system. Apparently they feel that it would be easier to accomplish this indoctrination if the authority of local school boards can be bypassed by federal control of education.⁽⁷⁾

Can it be that the real motive behind many proposed constitutional changes is not the preservation of constitutional freedom, but its replacement by collectivism?

The comments made in this work that the tendency of socialism is to destroy freedom should not be taken to mean that all or even most of the people who promote socialism are trying to destroy freedom. On the contrary most people who promote socialism feel that they are understanding and sympathetic and willing to help those in need, and that they are engaged in a worthy cause. [p. 105]

Test Proposals Against Gospel Standards

Latter-day Saints, knowing how contrary the principles of socialism are to the principles of the gospel and the Constitution, should be especially wary that they don't accept and promote unsound principles. They should realize that incorrect principles are generally attractively packaged, made to sound plausible, and are popularly accepted. They should also bear in mind that all concepts presented to them should be examined critically with the gospel as the standard, and with consideration as to the likely human effect.

For example, another proposal involving a change in the constitutional system is to have the government assume responsibility for taking care of older people. This proposal also facilitates fervid solicitude for unfortunate people, this time the older citizens. It has been accepted widely by the people. In fact, a thought often repeated is that one evidence that Americans are socially advanced is that they are willing to tax themselves for the support of their older people.⁽⁸⁾

This proposal is contrary to the gospel principle of being directly responsible for the welfare of older members of one's own family. Furthermore, it would seem that shifting to the government the responsibility of supporting older family members is a substantial contributing factor to the much deplored breakdown in family life and to the lessening of feelings of stability and responsibility on the part of the younger generation. When a person's natural responsibilities are removed, it is only natural for him to tend to become less stable and responsible. In addition, giving additional responsibility to the government necessarily involves subjecting oneself to the rule of a larger and more powerful government. Also making people [p. 106] dependent on the government for their livelihood makes it difficult for them to take a stand against other unsound government policies, since it is unnatural for a person to bite the hand that feeds him.

These few thoughts concerning the effects of shifting to the government the responsibility of taking care of the older people indicate that this proposal is not only contrary to the gospel, but it also has the effect of weakening the group attitudes and standards necessary for the preservation of the constitutional system.

Beware of Ancient Power Technique

In examining proposed changes in the free constitutional system, American citizens should never lose sight of the fact that fervid solicitude for the unfortunate is a very old device by which designing persons gain power over the people. This device was well recognized at the time the Constitution was framed. For example, Thomas Jefferson wrote:

If we can prevent the government from wasting the labors of the people, under the pretense of taking care of them, they must become happy.⁽⁹⁾

In this day people have been warned by a prophet that their inspired constitutional system is under attack by means of this same age old method of destroying freedom. President McKay has declared:

We again warn our people in America of the constantly increasing threat against our inspired Constitution. . . . The proponents thereof are seeking to undermine our own form of government and to set up instead one of the forms of dictatorships now flourishing in other lands. These revolutionists are using a technique that is as old as the human race, — a fervid but false solicitude for the unfortunate over whom they thus gain mastery, and then enslave them.⁽¹⁰⁾ [p. 107]

Latter-day Saints should be grateful to President McKay for not only warning them of the increasing threat from those among them seeking to undermine America's constitutional system, but also for revealing the technique by which such persons seek to set up a dictatorship here. Since the method used, is an age old method of "a fervid but false solicitude for the unfortunate over whom they thus gain mastery, and then enslave them," Americans should investigate critically any proposals to use the power of the government to alleviate distress of unfortunate or "deprived" groups. In fact, any political proposals presented should be examined carefully. All such proposals should be checked to see if they are in harmony with the freedom system designed by the Framers, or are only a device to facilitate use of a fervid solicitude for the unfortunate as an excuse for making a series of changes that will aggregate an overthrow of that freedom system.

Actually, there are many plausible sounding arguments given in favor of socialism. Latter-day Saints who believe in the inspiration of the Framers should know enough about those arguments and facts concerning them not only to confirm their faith in the Framers' inspiration and the unsoundness of socialism, but also to be able to explain to others why the individual arguments are unsound. A worthwhile book entitled *The Law & Cliches of Socialism*⁽¹¹⁾ can assist in gaining greater understanding of the fallacies of socialism and the flaws in the arguments used in favor of it. The book includes 42 arguments frequently used to promote socialism, together with the answers to those arguments. A copy should be owned and studied by each Latter-day Saint family. [p. 108] [p. 109]

Chapter 12

The Constitution and Capitalism

In any discussion of capitalism, it is appropriate to begin with a definition of terms. This is because attempts have been made for many years by those who would destroy freedom to give a false impression of what capitalism means. They have tried to promote the image of a capitalist as a wealthy, heartless tycoon greedily increasing his wealth by taking advantage of his poor struggling employees.

Unfortunately, many well meaning people, particularly those aware of instances where employers have been less than generous with their employees, have accepted one of the various forms of this class struggle concept of capitalism. In doing so they have failed to realize that they were falling for a cleverly planted idea. The two concepts are not so connected. The fact that

some employers take advantage of their employees does not mean that capitalism is the system under which greedy bosses take advantage of poor struggling workers.

A similar illogical conclusion is that free agency is bad because some people abuse it. In fact, this really is a variation of Lucifer's argument that it is to people's advantage not to be free. He argued that people would best be served by protecting them from the unwise choices they would make if they were given the right to choose. This is, of course, also one of the basic arguments in favor of socialism—that because the people cannot be relied upon to make right choices, government planners should make right choices for them.

What then is capitalism? [p. 110]

Capitalism, The Freedom System

A somewhat oversimplified definition of capitalism, but one sufficiently accurate for present purposes is that capitalism is the economic and social system under which an individual's free agency includes not only his person, but also his property. It doesn't matter whether he's the boss or the worker, or whether the fruit of his efforts comes to him as wages or profits.

Actually, the implications of capitalism are more far reaching than the above simplified definition may seem to indicate. Most government regulation and control of people is through laws pertaining to their property rights. Under capitalism those laws are kept to a minimum with the result that in a capitalistic society a person has the right to live the sort of life he chooses with a minimum of compulsion.

While those who would destroy freedom have been promoting the idea that it is possible to be free through maintaining personal rights inviolate without having inviolate property rights, Latter-day Saints should clearly recognize that idea as unsound. Without property rights, personal rights become meaningless. Realization of this fact was expressed in *The Federalist* in these words:

There are men who could neither be distressed nor won into a sacrifice of their duty; but this stern virtue is the growth of few soils; and in the main it will be found that a power over a man's support is a power over his will.⁽¹⁾

Realization of the necessity of property rights as an essential element of freedom was well expressed by George Sutherland, a former Justice of the United States Supreme Court, in the following statement made when he was President of the American Bar Association:

Property, per se, has no rights; but the individual—the man—has three great rights, equally sacred from arbitrary interference; the RIGHT TO HIS LIFE, the RIGHT TO HIS [p. 111] LIBERTY, and the RIGHT TO HIS PROPERTY. The three rights are so bound together as to be essentially ONE right. To give a man his life, but deny him his liberty, is to take from him all that makes life worth living. To give him liberty but take from him the property which is the fruit and badge of his liberty, is to still leave him a slave.⁽²⁾

President David O. McKay, whom Latter-day Saints regard as the Lord's prophet in this day, has made the following statement evidencing a clear awareness of the deceptiveness of the class struggle concept of capitalism and a realization that capitalism really is the economic and social system of freedom.

Free enterprise is the right to open a gas station or a grocery store, or to buy a farm . . . or to change your job. . . . Free enterprise has nothing to do with politics nor wealth nor class. It is a way of living in which you as an individual are important. . . . Free enterprise has nothing to do with how much money you have or don't have, nor what your job is or is not. Free enterprise means the right to be yourself instead of some nameless number in a horde bossed by a few despots. Free enterprise is the sum of many little things—but how miserable you'd be if someone stole it from you.⁽³⁾

It may be argued that the above comments on capitalism as the economic system of free agency are unfair because there is a middle ground between complete socialism, with its loss of freedom, and complete capitalism, with its lack of restraint. There probably is such a middle ground, although there seems to be much evidence that it is an unstable condition which prevents capitalism from functioning properly and provides an excuse for increasing [p. 112] government intervention.⁽⁴⁾ At any rate it should be kept clearly in mind that it is a fundamental Latter-day Saint belief that the Constitution was written by the Lord through the Framers and that He declared it to be the correct system.⁽⁵⁾ It should also be recalled that the economic and social system set up by the Constitution was solidly capitalistic, as is more particularly indicated by the material presented in the following paragraphs.

The Framers Believed in Capitalism

A most interesting presentation of the Framers' belief in capitalism is found in a paper published by the Center for the Study of Democratic Institutions. The author of the paper is Rexford G. Tugwell, one of the original New Dealers and still a strong proponent of more socialism. The gist of his paper is that because the original Constitution was designed for an eighteenth century society, a new Constitution is needed to fit modern social, economic, and political needs.

In explaining why he believes the Constitution designed by the Framers is out of step with these times, he made the following comment concerning it.

The Constitution was a negative document, meant mostly to protect citizens from their government, not to define its duties to them or theirs to it. They were to require of it none but the most common services—protection from enemies, the regulation of commerce . . . the furnishing of common coinage, and the establishment of a standard of weights and measures.⁽⁶⁾

On the subject of the Framers' attitude towards government regulation of business as opposed to more complete free enterprise, Mr. Tugwell declared: [p. 113]

It would have been . . . fantastic to suggest that individuals ought to be made secure from the risks of their occupations, or to be protected from the hazards of life. . . . Men were to be free to do as they

liked, and since the government was likely to intervene, and because prosperity was to be found in the free management of their affairs, a constitution was needed to prevent such intervention.⁽⁷⁾

In addition to recognizing the free enterprise nature of the American constitutional system, Mr. Tugwell makes another significant statement in the above quotation. That statement is his indication that the Framers believed that a free enterprise system would result in prosperity. A brief background comment may be helpful in better understanding the Framers' point of view that prosperity would result from avoiding government regulation of business.

Preparation for Gospel Restoration

Latter-day Saints often refer to their belief that the Lord prepared the way for the restoration of the gospel. This preparation included discovering America by Columbus,⁽⁸⁾ the raising up of the religious Reformers, bringing to America humble people having the spirit and power of the Lord with them,⁽⁹⁾ and fighting the Revolutionary War for political freedom.⁽¹⁰⁾

There is another historical concept consistent with these beliefs and as a further necessary part of preparing the way for the restoration of the gospel. This additional concept is that the Lord also raised up men who planted the seeds of the political, social, and economic system of freedom. This was done at the proper time so that acceptance of this freedom system could reach sufficient fruition in the minds and hearts of the Framers and the people of the United States to be incorporated into the American constitutional system which was constructed by the Framers, [p. 114] but which the Lord declared was actually designed by Him.⁽¹¹⁾

These new concepts of freedom arose in an environment dominated by governmental regulation of economic matters. While today there are many who mistakenly believe that government management of the economy and regulation of business is a new and modern idea, this is not true. Actually, the concept of a government of extensive powers managing the economy and regulating business is ancient, and was particularly in vogue for more than a century before the American Revolution.⁽¹²⁾ This government regulation of economic affairs was a basic part of the then predominant economic system which was called mercantilism.⁽¹³⁾

The Physiocrats

In the Eighteenth Century, there arose a school of thought opposing government regulation of the economy. Many of those who promoted this new point of view called themselves physiocrats, and declared that:

A statesman's true business was not to make laws for industry and trade in the hope of increasing wealth; but merely to ascertain and protect from encroachment the simple and immutable laws of nature, under which the production of wealth would regulate itself in the best possible way if governments would abstain from meddling.⁽¹⁴⁾

This natural law point of view led the physiocrats to the following concept of the proper role of government:

The functions of government should be limited to the protection of life, liberty and property, and the individual should be permitted to pursue his own interests and make the most of his labor.⁽¹⁵⁾ [p. 115]

The similarity of this statement of the natural law concept of the Physiocrats and two other statements should be noted. The first is an extract from Section 134 of the *Doctrine and Covenants* which sets forth a Declaration of Belief regarding Governments and Laws. Verse two of that Section reads as follows:

We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.

The second of the two other statements that should be noted for its similarity to the physiocrat concept is taken directly from the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

It has been pointed out that while the words "pursuit of happiness" refer to property rights, they are more than a mere euphemism. Instead, they represent an attempt to intimate a larger concept somewhat similar to that implied in the above quoted words of George Sutherland and President David O. McKay. This larger concept involves more than just the possibly dormant protection of property rights. The words "pursuit of happiness" imply, instead, something akin to a dynamic concept of free enterprise economic opportunity—the right to venture and to labor in the enterprise of one's choice and to be secure in the fruit of one's success.⁽¹⁶⁾ [p. 116]

Adam Smith

Interestingly, it was in 1776, the very year of the signing of the Declaration of Independence, that Adam Smith published his *Wealth of Nations*, which is regarded by many as one of the most important books ever written on political philosophy and economic theory. In his *Wealth of Nations* Adam Smith incorporated ideas of Locke, Montesquieu, and Hume as well as ideas of the physiocrats.⁽¹⁷⁾ Basic to Adam Smith's thinking was the concept that:

There is a natural and beneficent order which pervades the universe and of necessity extends to the domain of social, economic and political phenomena — an order which man cannot and therefore should not attempt to alter.⁽¹⁸⁾

As an extension of this basic concept Adam Smith proposed the following fundamental thesis:

Human happiness and the "wealth of nations" can be most rapidly and effectively increased by bringing about complete industrial and commercial liberty, and it was at this point that his political philosophy merged with his economic theory and made possible a unified and coherent body of doctrine.⁽¹⁹⁾

The political aspects of the system proposed by Adam Smith envisioned a government limited to the following:

1. Protection against foreign invasion.
2. Administration of law and justice.
3. Establishment and maintenance of public works and the provision of education.

However, he contemplated that the government would intervene in the last two types of functions only when voluntary action by the citizens failed to function effectively.⁽²⁰⁾ [p. 117]

With respect to government regulation of business, Adam Smith

vigorously urged the immediate abolition of all restrictive state regulation of industry and commerce and the immediate initiation of that regime of unhindered competition which would allow economic affairs to harmonize with the beneficent order of nature and bring the full measure of happiness and prosperity to the human race.⁽²¹⁾

The great principle of prosperity was expressed by Adam Smith in these words:

The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations; though the effect of these obstructions is always more or less either to encroach upon its freedom, or to diminish its security.⁽²²⁾

It was in 1787, eleven years after the publication of *Wealth of Nations*, that the Framers met in Philadelphia and drafted the American Constitution. It should be noted that the American Constitution sets up not merely a governmental organization structure, but a complete political, economic, and social system of freedom. Furthermore, the freedom system the Framers adopted is readily identifiable as basically similar to the political, economic, and social system synthesized by Adam Smith. Of course, concepts incorporated into the Constitution came from other sources also just as Adam Smith incorporated others' ideas into his own system. However, the influence of the physiocrats and Adam Smith are particularly emphasized here in connection with preparing the way for the adoption of the Constitution because, in this section emphasis is placed on the economic aspects of the constitutional system. [p. 118]

It seems strange that even though the evidence appears to indicate quite clearly that the amazing prosperity of this country is due largely to its adoption of the capitalistic system, many Americans feel apologetic about capitalism and believe that it should be eliminated, or at least limited. In fact, when Adam Smith's ideas are taught at all in schools today, it is generally from the point of view that they are not applicable in our modern enlightened society.⁽²³⁾

Framers Favored Property Requirement For Voting

The belief of the Framers that property rights are an essential part of freedom is confirmed and clarified by a brief examination of their attitude toward voting rights. It will be recalled that in designing the constitutional system the Framers used particular care to see that those responsible for each aspect of it had a personal interest in administering their function in such a way as to preserve the freedom system. For example, this concept was expressed in connection with the principles of separation of powers and checks and balances in these words:

But the great security against a gradual concentration of . . . powers . . . consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments. . . . The interest of the man must be connected with the constitutional rights of the place. ⁽²⁴⁾

In keeping with this concept that the people responsible for each aspect of the constitutional system should have a personal interest in its preservation, it appears to have been the consensus of the Framers that only those with property should have the right to vote. The reason for this belief that ownership of property should be a prerequisite [p. 119] to the right to vote was the attitude that only those who had property to protect would have a personal interest in the preservation of property rights, which the Framers equated with liberty. On the other hand, they felt that those without property should not have the right to vote because the Framers believed that property rights and therefore liberty would not be secure in the hands of those with no property of their own to protect. ⁽²⁵⁾

It is of interest to read Madison's comment anticipating the time when the majority of the citizens would be without property and expressing concern for the safety of "the rights of property and the public liberty" if the property-less majority have the right to vote.

Viewing the subject on its merits alone, the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without land, but any other sort of property. These will either combine under the influence of their common situation; in which case, the rights of property & the public liberty, will not be secure in their hands: or which is more probable, they will become the tools of opulence & ambition, in which case there will be equal danger on another side. ⁽²⁶⁾

Karl Marx Opposed Property Requirement for Voting

Sometimes a clearer understanding of a matter is obtained by looking at its opposite. Instead of the freedom system of the Constitution, Karl Marx proposed the compulsion system of communism. He clearly realized that to eliminate the free enterprise system it would be necessary to undermine property rights since these represented freedom of choice in one's economic activities. In this connection, he made the following comment acknowledging the correctness of the Framers' point of view that a property qualification for voting is essential to the preservation of property rights. [p. 120]

Man proclaims politically that private property is abolished as soon as he abolishes the property qualification for the vote. . . . Is not private property as an idea abolished when the nonowner becomes legislator for the owner? The property qualification for the vote is the ultimate political form for the recognition of private property.⁽²⁷⁾

Although it appears definitely to have been the feeling of the Framers that there should be a property requirement for voting, it seems that there were two principal reasons why such a requirement was not incorporated into the Constitution. The first was concern that such a requirement might make ratification more difficult because of the wide diversity of property requirements already in force in the several states. The second was an expectation that such a requirement would automatically be applied anyhow, because most Americans were already freeholders and because the states themselves applied property requirements for voting.⁽²⁸⁾ For example, in the *Encyclopedia Americana* the following, comment is made concerning suffrage requirements in the states at the time:

When the Union was formed, in 1787, in each State . . . the qualification was usually a freehold of 40s. to \square 3, or an estate worth \square 20 to \square 60, or ownership of a certain number of acres.⁽²⁹⁾

The above comments concerning the attitude of the Framers toward a property requirement for voting are made in the context of showing that the Framers considered property rights essential to liberty. But there were also other advantages the Framers felt would accrue from a property limitation on voting rights. They felt that ultimately [p. 121] the preservation of freedom depended on the right to vote being exercised by those who had both good judgment and character, and that property ownership was an indication of the possession of those necessary qualities.⁽³⁰⁾

Capitalistic America the Land of Opportunity

A frequently mentioned objection to capitalism is the argument that free enterprise, without government intervention, does not adequately provide for the poor and underprivileged. But it should be remembered that the free enterprise system is the one system that provides the framework under which the poor can become rich, and that under it America has been the land of opportunity the poor of other lands have struggled to enter. Instead of having to build a wall to keep people in, the United States has the problem of multitudes anxious to sacrifice greatly to enter and establish their posterity in this land of freedom and opportunity.

Those who favor changing America's constitutional system argue that this is no longer the land of opportunity under the free enterprise system and that the government must now intervene to provide opportunities for the disadvantaged. This idea has been repeated so often that there are many who believe it without having analyzed it. However, there is much evidence that this idea is not sound and that any lessening of opportunity results not from the free enterprise system, but from tampering with it. This counter idea is well expressed in *The Mainspring of Human Progress*:

Most of the major ills of the world have been caused by well meaning people who ignored the principle of individual freedom . . . and . . . were obsessed with fanatical zeal to improve the lot of mankind-in-the-mass through some pet formula of their own . . . the harm done by ordinary criminals, murderers, gangsters, and thieves is negligible in comparison with the agony inflicted upon human beings by the [p. 122] professional "do-gooders," who attempt to set themselves up as gods on earth and who would ruthlessly force their views on all others.⁽³¹⁾

Constitution Intended To Protect People From Do-Gooders

Mr. Weaver's comment about do-gooders attempting to set themselves up as gods is significant. It will be recalled that God does not take away people's free agency even though they often do make wrong choices with dreadful consequences. But it was Lucifer, the brilliant Son of the Morning, who sought to set himself up as God and to prevent people from making wrong choices by taking away their freedom of choice. Lucifer is by all odds the most influential do-gooder in the history of the world, and has been since before the earth was created. Contrary to the Lord's plan under which many would fail, Lucifer's plan guaranteed success to everybody. As a necessary part of insuring the success of everyone, Lucifer's plan essentially involved depriving people of their freedom for their own good.⁽³²⁾

Actually, more than one hundred years ago the relationship between the Constitution and the do-gooders who seek to use the compulsory power of the government to help the poor and disadvantaged was well expressed by Daniel Webster in these words:

It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.⁽³³⁾

One should respect the sincerity of purpose of most of those who wish to use the compulsory power of the [p. 123] government to do good. On the other hand, most parents who spoil their children are also sincere in their desires to rear their children well. In this connection there is a particularly worthwhile comment made by Grover Cleveland, one of the leaders of the Democratic Party and twice President of the United States. His statement that "though the people support the Government the Government should not support the people" has often been repeated. But less well known are his comments indicating why, in addition to being unconstitutional, he considered the proposed appropriation undesirable. He said:

The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. . . . Federal aid in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood.⁽³⁴⁾

As indicated in President Cleveland's comment just quoted, the free enterprise perspective of the Constitution has as one of its objectives the building of men and women of character through effort and struggle. On the other hand if a paternalistic government protects people from the

struggle, they are prevented from developing the self-reliant character needed to maintain freedom.⁽³⁵⁾

Constitution Similar To Government of God

This fundamental character-developing aspect of the Constitution indicates how solidly the Constitution is founded on gospel principles, and especially the free agency gospel perspective with its emphasis on individual growth through effort and struggle. This similarity between the constitutional system and the principles of the gospel is [p. 124] of course expected since it is a doctrine of the LDS Church that the American constitutional system is very similar to the government of God.⁽³⁶⁾

This doctrine of similarity between the Constitution and the government of God should serve another worthwhile function. That function is that it should constitute a valuable test of whether the above free agency analysis of the Constitution is correct. If the conclusion that the Constitution establishes a free enterprise political, social, and economic system is correct, and the constitutional system and the government of God are similar, then the economic order of the government of God should also be based on similar private property capitalistic principles.

Law of Consecration Like Capitalism, Not Socialism

The economic order of the government of God is known as the Law of Consecration. In contrast to a few superficial resemblances to socialism, the Law of Consecration has solid and basic resemblances to capitalism. Not only is the Law of Consecration more like capitalism than socialism because it is based on voluntary participation rather than use of the compulsion of government to enforce participation and compliance, but the Law of Consecration is actually a private property system.

For example, when a person elects to participate, he conveys all his property to the Church and receives back his stewardship, which may be the identical property he conveyed or more or less than that property. In any event, the property he receives back as a stewardship is deeded to him in such a manner that his right to it is legally secure under the laws of the land. In fact, if his participation in the Law of Consecration terminates, he has the right to keep his stewardship property. These private property [p. 125] characteristics of the Law of Consecration are evidenced by the following:

And let my servant Edward Partridge, when he shall appoint a man his portion, give unto him a writing that shall secure unto him his portion. . . .

And if he shall transgress and is not accounted worthy to belong to the church, he shall not have power to claim that portion which he has consecrated unto the bishop . . . but shall only have claim on that portion that is deeded unto him.

And thus all things shall be made sure, according to the laws of the land.⁽³⁷⁾

Not only does a participant in the Law of Consecration have a binding legal right to his stewardship property, but he is expected to manage it wisely and to build as prosperous an enterprise as he is able. The surplus he earns above that needed for his family and business he is expected voluntarily to deliver to the Lord's storehouse for the Lord's purposes, such as to help the poor and to provide capital for other stewardships.⁽³⁸⁾

The similarity between this principle of voluntarily contributing of one's means to help others and Grover Cleveland's above quoted comment concerning the undesirability as well as the unconstitutionality of federal aid to help the needy should be noted.

In the early history of Utah in some places and on a temporary basis, there were various types of communal life in force, but these were variations adapted to particular times and circumstances, and were not the Law of Consecration.

The Law of Consecration is actually a sort of religiously oriented capitalism. Just as the gospel is fundamentally individualistic in that each person works out his own salvation with fear and trembling, so the Law of Consecration is also basically individualistic. While it is true [p. 126] that a part of living the gospel and also the Law of Consecration is to be one's brother's keeper and to help the poor and less fortunate, there is no place in either for the socialistic or communistic point of view of merging the individual into the group and thereby leveling down the more capable individual. Even when a person helps others under the gospel and the Law of Consecration, he does it as a free individual, voluntarily choosing to do so out of love of God and his fellow man.⁽³⁹⁾

The individualism of the gospel applies also to the recipients of help. In the gospel sense a person has no unconditional right to be helped by the group. If he is able to work but elects not to do so, he reaps the consequences of his idleness and has no claim for help from the Church. Church doctrine stresses that it is only the worthy poor who are entitled to help from the Lord's storehouse. An expression of this worthiness for help concept is as follows:

Thou shalt not be idle; for he that is idle shall not eat the bread nor wear the garments of the laborer.⁽⁴⁰⁾

Another significant similarity between the constitutional system and the Law of Consecration is that both can function only in a religious society.⁽⁴¹⁾

Meaning of Bible Statement That Early Christians Had All Things Common

There are apparently some people who recognize that the Law of Consecration is a religiously oriented capitalistic system but who wonder how the free enterprise aspects of the Law of Consecration can be harmonized with the widely held idea that the early Christians practiced a sort of communism. It is true that there are statements in the scriptures mentioning that the early Christians had "all [p. 127] things common."⁽⁴²⁾ But what does this expression mean? Some light is shed on it by the following passage:

And the multitude of them that believed were of one heart and of one soul: neither *said* any of them that aught of the things which he possessed was his own; but they had all things common.⁽⁴³⁾

Doesn't this passage indicate that "all things common" refers not to group legal ownership; but rather to an attitude, arising out of his spiritual feeling toward the other in the group, an individual takes toward his own property. In other words the individual members of the group actually owned their own property, but they chose not to speak of it as their own because of the love and unity they felt for each other.

The correctness of the above interpretation is confirmed by an incident recorded in the next chapter of the Acts of the Apostles. Ananias and his wife Sapphira sold some property and pretended to deliver to the apostles the entire purchase price they had received for the property, but they actually held back a part. In condemning them for having lied to God, Peter made the following significant statement concerning their individual legal ownership of the property, indicating that both the property itself and the money received in exchange for it were their private property which they were not obligated to share with the church:

Whiles it remained, was it not thine own? and after it was sold, was it not in thine own power?⁽⁴⁴⁾

A more extensive discussion and refutation of the argument that the early Christians practiced a form of communism is found in *The Naked Communist*, by W. Cleon Skousen.⁽⁴⁵⁾ [p. 128]

Constitutional Freedom System Consistent With Gospel and Approved By Lord

Awareness of some of these background concepts antedating the Constitutional Convention of 1787, and familiarity with the similarity of the constitutional system to the Law of Consecration are helpful in understanding the Constitution for what it really is—not just a design for a government organizational structure, but an entire political, economic and social system under which freedom and prosperity could flourish. While many have criticized abuses of the free enterprise concepts built into the constitutional system, those abuses do not indicate that capitalism is wrong any more than they indicate that free agency is wrong.

Although Adam Smith's theories are rejected by modern advocates of government management of the economy, the following facts should not be forgotten by Latter-day Saints:

1. The predominant economic system prior to the American Revolution was that of governments with extensive powers managing the economy and regulating business in their respective countries.
2. That previously popular economic system was consciously rejected by the Framers who instead chose a system fundamentally similar to that proposed by Adam Smith involving synthesis of the concepts of a small limited government and a free enterprise or capitalistic economic system.
3. Not only has the Lord declared that the system set up by the Framers was designed by Him, but He has admonished Latter-day Saints to support it, and has indicated that "more or less" than that system "cometh of evil."⁽⁴⁶⁾ [p. 129]

Chapter 13

The Constitution and the World

Joseph Smith and other Mormon leaders have expressed repeatedly the belief not only that the United States Constitution was based upon divine principles, but that it was to spread and ultimately become a part of a world government based on similar principles. This world government, called the Kingdom of God, would govern the world during the Millennium. It would be a theocratic republic very similar in form to the government set up by the United States Constitution.⁽¹⁾

The Framers who designed the Constitution and the Americans who launched and nurtured the free republic in its early days also believed that the Constitution would spread ultimately to other nations. They felt that it established the most desirable form of government in the world, and that all countries would benefit if they would adopt it.⁽²⁾

However, it was very clear that this exporting of America's constitutional system was not to be imposed on other countries. America's function was rather to operate her system as a sort of stewardship so that its fruits would be so apparent to the rest of the world that other countries would voluntarily copy it.⁽³⁾ For example, it was Daniel Webster who declared:

We are bound to maintain public liberty, and, *by example of our own system*, to convince the world that order and law, [p. 130] religion and morality, the rights of conscience, the rights of persons, and the rights of property may all be preserved and secured.⁽⁴⁾

There are many who believe the United Nations to be a means of extending America's constitutional system with its freedom and opportunity to the rest of the world. Since this opinion is widely held, it seems appropriate to examine it briefly.

Fundamental Characteristics of Constitutional System

There are really only two ways by which peace and order can be maintained. One is by having a religious citizenry who will act righteously without external compulsion because of the inward religious motivations of its individual citizens. This is the method of America's constitutional system, the fundamental characteristics of which are the following:

1. A religious citizenry.

2. The substantial absence of government compulsion except to the extent necessary to protect life, liberty, and property.⁽⁵⁾

3. A small limited government that has neither the right nor the power to direct or manage the affairs of the people except to the extent necessary to protect them in the areas mentioned above.

It is of interest that the second and third characteristics, the substantial absence of government compulsion and the small limited government, are made possible by the first characteristic of a religious citizenry who will act righteously without being compelled or controlled. A clear awareness of these fundamental characteristics of America's constitutional system is helpful to understanding statements such as the following made by John Adams, second President of the United States: [p. 131]

Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.⁽⁶⁾

United Nations Based On Opposite Principles

The only other method of maintaining order is by force or compulsion. This is the basic philosophy and system set up by the United Nations which contemplates the maintenance of world order by the compulsion of external force rather than by voluntary righteousness based on inward religious motivation. It is true that the United Nations really had no choice in selecting the method of external force because of its rejection of a religious foundation. But it should not be forgotten that instead of being fundamentally similar to America's constitutional system with its individual freedom, it is based on opposite principles of force and compulsion.

United Nations Cannot Provide Freedom

As a matter of fact, because it is not based on a religiously motivated society, the United Nations cannot provide freedom. Without a religiously motivated society, increased freedom would result only in increased lawlessness and disorder which would have to be suppressed by force in order to maintain the "peace" the United Nations promises. The non-freedom nature of the United Nations is commented on by the late J. Reuben Clark, Jr., an Apostle and member of the First Presidency of the Mormon Church, and a highly respected international lawyer, in these words:

The Charter does not anywhere provide that freedom and liberty shall come to any state or to any people in the world that are not free. On the contrary it recognizes and, insofar as possible, legalizes every political dominance now existing on the earth and specifically provides for the establishment of others. [p. 132]

None of these peoples are to have, so far as the Charter provision goes, anything to say regarding their fates, the pious provisions of the Atlantic Charter and the San Francisco Charter to the contrary notwithstanding.⁽⁷⁾

In Latter-day Saint theology, the United Nations concept of maintaining an acceptable standard of order by the use of force is very old. This was the method Lucifer contemplated using under which all people would be compelled to act righteously regardless of any desire they might have to act unrighteously. In commenting on why Lucifer's proposal was unacceptable, the Lord mentioned that it involved destroying the "agency" or freedom of man.⁽⁸⁾

It should not be forgotten that loss of freedom is the basic defect of any system under which a particular standard of conduct is sought by the compulsion of external force rather than by inward religious motivation.

Military Action To Enforce Peace Is War

In addition to failing to provide freedom, the principles on which the United Nations is based do not bring permanent peace. Overpowering force can compel people to act in a manner acceptable to those applying the force. But people so compelled have not changed inwardly. When the force is removed, or if they can evade the force or get control of it, the people will continue to act in their own unrighteous way. Hence forced maintenance of order is not curing the disease but only bottling up the symptoms until the pressure increases to the point where the bottle explodes. Even before that point is reached, isn't the application of military force to maintain "peace" really war? This war instead of peace nature of the United Nations is expressed by J. Reuben Clark in these words:

There seems no reason to doubt that such real approval as the Charter has among the people is based upon the belief that if the Charter is put into effect, wars will end. . . . The [p. 133] Charter will not certainly end war. Some will ask,—why not? In the first place, there is no provision in the Charter itself that contemplates ending war. It is true the Charter provides for force to bring peace, but such use of force is itself war. . . . The Charter is built to prepare for war, not to promote peace. . . . The Charter is a war document not a peace document.⁽⁹⁾

The One Way To Peace

Actually the problem of finding peace is not that the way to peace is unknown. The difficulty is that the people of the world choose not to follow the one way to peace, because they don't want to change their ways. Over the centuries the way to peace has been made known repeatedly through those who speak with more than human wisdom. For example, in 1947 it was expressed by the First Presidency of the Mormon Church in these words:

Faith in God is the first essential to peace. It is folly for the United Nations now seeking ways and means to permanent peace to exclude the idea of God from their deliberations. Only through an acknowledgment of the Divine Being as Father can the sense of human brotherhood have potency. Only thus can life have purpose and humanity as a whole live in peace.

With faith in God must be associated the realization that *peace springs from the individual heart*. . . . Jesus taught that "a man's duties to himself and to his fellow men are indissolubly connected." His idea was to have each individual imbued with faith in God, with desires to live uprightly, and to deal justly

with his fellow men; then a thousand, ten thousand, such individuals grouped together would constitute a community of worshipful, peace-loving human beings. A thousand such communities would make a nation; and a hundred such nations, a world.⁽¹⁰⁾

United States Membership In United Nations Is Unconstitutional

Another serious problem pertaining to the United Nations becomes apparent when United States participation [p. 134] in that organization is compared with the authority granted to the federal government under the Constitution. This is the problem that, if the Constitution is read the way it was intended and written by the Framers and understood by the people who adopted it, then America's participation in the United Nations is clearly unconstitutional.

The Treaty Power In the United States Constitution

United States acceptance of the United Nations Charter was under the treaty power found in Section 2 of Article II of the Constitution in which various powers of the President are listed. The treaty power provision reads as follows:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.

The question of constitutionality of acceptance of the United Nations Charter under the treaty power hinges on whether the United Nations Charter constitutes a treaty in the sense intended by that provision.

The Federalist

The treaty power is discussed in *The Federalist* in Numbers 64 written by John Jay, and 75 written by Alexander Hamilton. It is there clearly indicated that the term "treaty" is used in the Constitution to refer to a bargain or contract between two independent sovereign nations pertaining to subjects that are customarily and traditionally considered to be treaties.

The concept that under the treaty power the President and two-thirds of the Senators present could surrender American independence was completely inconsistent with the limited extent of the authority the Framers felt should be given to the federal government. How out of harmony with constitutional principles such a concept is becomes even clearer when one considers two particular facts. One is that the colonists had only recently fought a bloody and [p. 135] terrible war to gain their independence. The other is their great suspicion and distrust of public officials.⁽¹¹⁾ In fact, as is pointed out in Chapter 2 of this work, one of their principal objects in designing the Constitution was to protect the people from improper action of government officials. Guided by these thoughts they surely would not have empowered the President and two-thirds of the Senators present to bargain away American independence without the consent of the people.

James Madison

James Madison, who has been referred to as the principal architect of the Constitution, had this to say with respect to the treaty power:

I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great, essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.⁽¹²⁾

Thomas Jefferson

The extent of the treaty power was commented on by Thomas Jefferson in these words:

By the general power to make treaties, *the Constitution must have intended to comprehend only those objects which are usually regulated by treaty*. . . . It must have meant to except out of these the rights reserved to the states; for *surely the President and the Senate cannot do by treaty what the whole government is interdicted from doing in any way*. And also to except those subjects of legislation in which it gave a participation to the House of Representatives.⁽¹³⁾

J. Reuben Clark

The unconstitutionality of United States' acceptance of the United Nations under the treaty power has been well summarized by J. Reuben Clark in these words: [p. 136]

It has been said we cannot have a world-state without a surrender of some of our sovereignty. This is probably true. But *if and when we come to the surrender of that sovereignty, it must be done by an amendment to our Constitution authorizing it*, the amendment to be made in the form and manner that we the sovereign people have prescribed in the Constitution itself. Let us not surrender our sovereignty by *illegal usurpations by our treaty-making agents*. I am speaking of voluntary surrender of sovereignty. . . .

It cannot be too often repeated that any suggestion of any doctrine such as this at the time of the Convention, would not only have broken up the Constitutional Convention itself (it would have been treated with . . . scorn . . .) but would, having in mind the then temper of the people, also have made the formation of the United States of America under the Constitution an impossibility. . . .

The whole of the discussions in the Constitutional Convention itself, in the State Conventions considering the adoption of the Constitution, and in "*The Federalist*," all join in what seems *a unanimous voice that the treaty-making power was to extend to the normal incidents of the intercourse and relationship of sovereign nations, and no further*.⁽¹⁴⁾

Test Framers' Inspiration By Subsequent Events

Having ascertained that the United Nations is based on opposite principles to those of the American constitutional system, and that American participation in the United Nations is

unconstitutional, it is appropriate briefly to look more closely at that organization to test by subsequent events the reality of the Framers' inspiration.

Important Problem of Who Will Control The United Nations

In addition to the inability of the United Nations to preserve either freedom or permanent peace because of the principles on which it is based, there is another most serious problem pertaining to that organization. That is the problem of who will control it. The importance of this problem lies in the prospect that if the contemplated arrangements [p. 137] both in the United Nations and in the American government are carried out, the United States will surrender voluntarily its ability to defend itself and will look to the United Nations forces for protection.

That this prospect is real is evident from a statement entitled "Freedom from War, The United States Program for General and Complete Disarmament in a Peaceful World," issued by the State Department of the United States in 1961. The point of view repeatedly expressed in that statement is that world disarmament must proceed as rapidly as possible, provided there are adequate safeguards of the security of the disarmed nations. According to that United States statement, the principal safeguard of the security of the disarmed nations would be the United Nations Peace Force, which would then constitute the only real war making power left in the world. The disarmed nations would retain only sufficient military power to maintain internal order. For example, that published statement declares:

States would retain only those forces, non-nuclear armaments, and establishments required for the purpose of maintaining internal order; they would also support and provide agreed manpower for a U. N. Peace Force.

The U. N. Peace Force, equipped with agreed types and quantities of armaments, would be fully functioning.

The manufacture of armaments would be prohibited except for those of agreed types and quantities to be used by the U. N. Peace Force and those required to maintain internal order. All other armaments would be destroyed or converted to peaceful purposes.⁽¹⁵⁾

While it may be argued that the above quoted statements refer to a goal that would occur only after the successful operation of prior disarmament stages, it should not be forgotten that the steps one takes from day to day are [p. 138] determined to a large extent by one's goals. Furthermore, there appears to be substantial evidence that America may already be disarming more rapidly than reasonable caution would justify.⁽¹⁶⁾

Additional reasons for concern as to who will control the United Nations were expressed by J. Reuben Clark in these words:

Not only does the Charter Organization not prevent future wars, but it makes it practically certain that we shall have future wars, and as to such wars it takes from us the power to declare them, to choose the side on which we shall fight, to determine what forces and military equipment we shall use in the war, and to control and command our sons who do the fighting.⁽¹⁷⁾

The Secretariat

In seeking an answer to the question of who will control the United Nations there is evidence that, as with most large organizations, the real control of the United Nations is in a relatively small inner group rather than the various voting delegates who usually don't have the information necessary to exercise intelligent independent control. In this connection Conor O'Brien wrote of his feelings when he was transferred from his position as a delegate from Ireland to the staff of the Secretariat in these words:

Neither the General Assembly nor the Security Council had the full materials necessary for an adequately informed discussion and adequately motivated decisions. . . . The only people who had these materials were the . . . inner circle of the Secretariat . . . the Secretariat—rather than the half paralyzed Security Council or the amorphous General Assembly—was the reality of the United Nations . . . the Secretariat played its card remarkably close to its chest. . . . What I was actually most conscious of was . . . pleasure at now being . . . [p. 139] "on the inside" of this major international operation, combined with a sense of deflation, on realizing how very much "on the outside" one had been as an ordinary delegate in the corridors of the Assembly and at the Advisory Committee.⁽¹⁸⁾

Realizing that it is the Secretariat that controls the United Nations, the following extract from the presentment of a Federal Grand Jury in New York raises serious questions as to how unbiased the actions of the United Nations are likely to be.

This jury must . . . advise the court that startling evidence has disclosed infiltration into the U N of an overwhelmingly large group of disloyal U. S. citizens, many of whom are closely associated with the international Communist movement. . . . Their positions . . . were ones of trust and responsibility in the United Nations Secretariat and in its specialized agencies.⁽¹⁹⁾

The findings of the New York Grand Jury were confirmed by the findings of other investigating bodies. Senator James O. Eastland had this to say regarding the Senate Internal Security Subcommittee's investigation of Activities of the United States Citizens Employed by the United Nations:

I must say that I am appalled at the extensive evidence indicating that there is today in the United Nations among the American employees there the greatest concentration of Communists that this committee has ever encountered.⁽²⁰⁾

The controlling influence in the United Nations by communism is significantly shown by the failure of the United Nations to take determined action in behalf of one invaded member country and the armed intervention by the United Nations in another. [p. 140]

Hungary

It will be recalled that in October 1956 the Hungarian people revolted against the communist government that had gained control of the country. The revolution was successful and the

Hungarian people were free for a short while until the country was invaded the following month by overwhelming Russian military forces. Many Hungarians were killed by the Russian invaders or sent to Russia as prisoners, and a new communist puppet government was imposed on the Hungarians by Russian military force.⁽²¹⁾

There was no firm insistence on the part of the United Nations that the Russian military forces cease their invasion of Hungary, or that the free Hungarian government be reinstated.⁽²²⁾ A small team of investigators was sent to Europe by the United Nations to interview refugees and document what had happened.⁽²³⁾

Public indignation over the Russian invasion of Hungary gradually subsided and after several years "the problem of Hungary" was dropped from the United Nations agenda.⁽²⁴⁾

Katanga

An opposite situation took place in the Congo. Belgium granted independence to the Congo on June 30, 1960. With the aid of communist arms, ammunition, supplies, "diplomats," and money, Patrice Lumumba gained control of the country.⁽²⁵⁾ Disorder and terrorism spread throughout the Congo.⁽²⁶⁾

The province of Katanga seceded and set up a separate anti-communist government under the leadership of Moïse Tshombe, a college graduate, a devout Christian, a staunch anti-communist and an advocate of the American limited [p. 141] government free enterprise system.⁽²⁷⁾ Order was quickly restored throughout most of Katanga. The situation was described by Philippa Schuyler, an American newswoman on the scene in these words:

Elisabethville, a bastion of anti-Communism in a sea of Congo leftist terror, was calm and functioning smoothly.⁽²⁸⁾

The situation in the Congo was remarkably opposite to that of Hungary. In Hungary the people had risen up and gained their freedom from their communist rulers, and the United Nations then tolerated the invasion of the country by the Russian communists and the destruction of its freedom. In the Congo, on the other hand, the country had been taken over by a communist supported government and the people of Katanga broke away from the chaos and bloodshed and set up their own free orderly government.

The United Nations action was opposite in the two instances. Although the United Nations tolerated the Russian invasion of Hungary to destroy freedom and to replace it with communism, there is abundant evidence that it did not tolerate the Katangan secession from communism to gain freedom.⁽²⁹⁾

While charges that the United Nations used its military forces and political influence to destroy freedom and orderly government in Katanga and promote communism throughout the Congo have been denied by the Secretary General and other United Nations officials, there are many responsible eye witness reports contradicting the official United Nations account of its activities in the Congo.⁽³⁰⁾

The Civilian Doctors of Elisabethville

For example, the forty-six civilian doctors of Elisabethville, the capital of Katanga, sent out a series of telegrams [p. 142] to various world leaders trying to alert the world to the murders and the terrorism they declared were being perpetrated by the United Nations forces in Katanga. In 1962, in a further attempt to alert world opinion, those civilian doctors published a pamphlet they called "46 Angry Men." With details and photographs they documented murders and other atrocities committed on civilians in Katanga by the United Nations forces. That pamphlet also contains the text of the telegrams they had sent from Katanga. The following statements are made in a preliminary note to the text of the telegrams. The doctors typically referred to the United Nations and the United Nations Peace Keeping Forces as U. N. O. or United Nations Organization.

The World must be alerted . . . one must shout, denounce and shake opinion without respite, and thus prevent the U. N. O. from continuing its inexcusable massacres. . . .

What could we do against an Organization having the most powerful means of broadcasting false news, lies, denials. . . .

We believe in U. N. O. but in a U. N. O. . . . whose . . . aim is . . . to preserve peace and not to bring disorder where order reigns, misery where prosperity reigns, death where life continues. . . .

"U. N. O. communique" has become synonymous with deliberate lies.⁽³¹⁾

In their telegrams, these civilian doctors on the scene actually demanded that the Secretary General and other United Nations officials be arrested and tried as war criminals. Apparently feeling that in view of the seriousness of their charges and the denials issuing from the United Nations, the recipients of their telegrams might not believe them, the doctors repeatedly pleaded for an independent [p. 143] impartial investigation of United Nations actions in Katanga. For example, a telegram sent to President Kennedy and many other world leaders reads in part as follows:

On our honour as physicians we declare as lies the denials of U. N. O. Secretariat General—stop—insist upon inquiry here by high magistrates and presidents of medical orders of all civilized nations—stop—only means of convincing the world of inconceivable actions of U. N. O.⁽³²⁾

There is much other information confirming the charges made by these civilian doctors on the scene that the reports issued by the United Nations on its activities in the Congo were far from accurate.⁽³³⁾

Joseph Z. Kornfeder

A former Communist Party member, Joseph Z. Kornfeder who worked at the Moscow headquarters of the world Communist Party nearly three years and was acquainted with most of the top communist leaders, and was himself a leading Communist Party worker⁽³⁴⁾ has made this comment about the United Nations.

From the point of view of its master designers . . . the U N was, and is, *not* a failure. They and the Kremlin master minds behind them never intended the U N as a peace-keeping organization. What they had in mind was a fancy and colossal Trojan horse. . . . And in that they succeeded, even beyond their expectations. . . . Its internal set up, Communist designed, is . . . aimed to serve the purpose of Communist penetration of the West. It is ingenious and deceptive.⁽³⁵⁾

United States Acceptance of the United Nations

The foregoing brief review of the United Nations indicating that it is based on principles opposite to those of [p. 144] the Constitution, that American membership in the United Nations is unconstitutional, and that the United Nations is to a large extent controlled by the communists and used to further their purposes raises the question of how the American people and their Senate were induced to support American participation in that organization.

Following World War I the question of American membership in the League of Nations was widely debated throughout the United States. President Wilson tried to secure public support for the League, but after hearing both sides, the people did not accept it, and the Senate rejected it.

After World War II a new world organization was proposed. Although this new organization was called the United Nations, it was similar to the old League of Nations, but the nomenclature was carefully changed.⁽³⁶⁾ Those who wished to secure American acceptance of the United Nations were careful not to follow the same route that had resulted in American rejection of the League of Nations.

What was it that caused American rejection of the League of Nations? It was free and open debate—the opportunity to examine carefully and thoughtfully what was being offered before deciding whether to accept it. Based on experience gained in that unsuccessful attempt, it was decided that there were two major requirements that had to be met to secure acceptance of the United Nations.

1. A massive propaganda effort must be launched both to condition the American people to believe in the desirability of American participation in the United Nations, and to discredit and ridicule those who might oppose such participation. This great propaganda effort would make possible the second requirement which was as follows:

2. Extensive debate must not take place. Acceptance must be obtained rapidly before the people or the senators had a chance to consider carefully the details of what they were being asked to buy. [p. 145]

Bryton Barron, who was Chief of the Treaty Staff of the United States State Department at the time of America's acceptance of the United Nations, has summarized events leading up to that event in these words:

In the early forties the American public was subjected to a selling job unparalleled in all history. . . . To those of us who had thrilled to the great debate over the League of Nations in 1919, the pressures which choked off healthy discussion in 1945 were indeed lamentable.⁽³⁷⁾

A major aspect of the great propaganda effort to secure American acceptance of the United Nations was to discredit America's traditional foreign policy. This was done by repeatedly and plausibly arguing that times have changed and that a new foreign policy must be adopted consistent with modern means of transportation and communication, and with modern weapons of war. Since these arguments are still widely and energetically used, it is appropriate to examine them briefly.

America's Traditional Foreign Policy

The foreign policy deemed by the Framers to be most appropriate for the United States was expressed by George Washington in these words:

It is our true policy to steer clear of permanent alliances, with any portion of the foreign world.⁽³⁸⁾

A careful analysis of Washington's comments will reveal that distance or isolation was not the reason for advocating an independent foreign policy. This was only a circumstance making it easier to follow such a policy. The real reason for the independent foreign policy advocated by the Framers and followed by America for so many years was that this nation was based on different principles than other nations and could not permanently tie its policies to theirs except to America's disadvantage. [p. 146]

This nation was established on a religious foundation with the sovereign power of the government vested in the people and not in a ruler or ruling group. In other nations the people were not the masters but were subservient to a ruler or ruling group. This was a natural condition for other nations because they did not have the religious base on which a free society could be built.

However, the result of the principles on which other nations have been based has been constant conflicts and wars arising out of the ambition, rivalry, and even caprice of the various rulers. Such conflicts and wars have rarely been for the benefit of the people but generally have been to promote some ambition or objective of a particular ruler or ruling group or to substitute one ruler or ruling group for another.

The basic principles of other nations and the natural results of those principles have not changed to any extent in the last two hundred years that would indicate that our foreign policy of avoiding permanent alliances should be abandoned.

Modern Developments Confirm Wisdom of Traditional Foreign Policy

As a matter of fact, there has been one change that makes it more vital than ever that America pursue an independent foreign policy. This change is the growth of the communist criminal conspiracy bent upon destroying freedom in all nations, including the United States.

In the past it was possible to make treaties with other nations with a reasonable expectation that those nations would at least make a sincere attempt to fulfill their treaty obligations. But when one deals with communists, he must realize that he is dealing with international gangsters,

criminal conspirators, murderers, thieves and liars. Since communists do not feel themselves bound by their treaty obligations, there is no basis on which to make an agreement with them. [p. 147]

In support of this point of view that there is no basis for making treaties with communists is the following statement by Bryton Barron, former Chief of the Treaty Staff of the State Department of the United States:

It is my overwhelming conviction from a study of the secret files of countless U.S.-USSR negotiations that it folly—utter, dangerous folly—to trust any agreement, understanding, "consensus"—call it what you will—made with Communists. It is basic red doctrine that agreements are . . . made to be broken when it suits their purpose. They are determined to bury us. For our leaders to talk about "relaxing tensions" is silly because the "tensions" are stages in the aggressive policy which is Communist ideology.⁽³⁹⁾

Furthermore, it hardly seems reasonable to combine forces in a peace keeping organization with the very criminals who are disturbing the peace. Doing so benefits only the criminals by letting them participate in the discussions of what actions should be taken against them, and by giving them a measure of control over those actions.

If a peaceful person and a criminal are separated by distance, their isolation is some protection for the peaceful person. But if they are close together, their nearness doesn't mean that they must join forces, but only that the peaceful person must be more vigilant and more prepared than ever in order to protect himself against the criminal. This is the situation in the world today in which the hard facts of reality do not bear out the oft repeated hopeful statements that communism is mellowing.

Apparent Changes In Communist Goals

Of interest with respect to the claim that communist objectives are changing is the following quotation on the subject of the dialectical nature of communist progress.

The Communist goal is fixed and changeless, but their direction of advance reverses itself from time to time. They approach their goal by going directly away from it a considerable [p. 148] portion of the time. . . . If we judge where the Communists are going by the direction in which they are moving, we will obviously be deceived.

The Communist method of advance may be likened to the hammering of a nail. . . . A person seeing the reverse movement of the hammer as an isolated act in time and not understanding the process of which this was a part, might find it difficult to believe that this hammer was driving in the nail. When he sees the backward swing as a portion of the complete process, he realizes that the withdrawal is as important as the downward thrust to the realization of the objective.

For those not trained in dialectical thinking, it is very difficult to understand that the Communists have a fixed and changeless goal, but that their method of approach reverses itself all the time. The tendency is to judge where they are going by the direction in which they are moving.⁽⁴⁰⁾

If the communists had attempted to maintain a constant advance, they would long ago have been stopped. But, by using this dialectic method of advancing, they have kept those who might oppose them in a state of indecision as to whether or not the communists really have reformed.

Prophetic Warning of Awful Danger From Secret Combinations

Actually the spread of communism with its death, misery, slavery and terror has been accomplished largely by trickery and deceit. Through the secret nature of this conspiracy or combination, it has managed to infiltrate and immobilize its victims.

Such secret combinations have been in the world from time to time from the beginning. In abridging the Book of Ether, Moroni comments on them in these words:

And now I, Moroni, do not write the manner of their oaths and combinations, for it hath been made known unto me that [p. 149] they are had among all people, and they are had among the Lamanites.

And whatsoever nation shall uphold such secret combinations . . . until they shall spread over the nation, behold, they shall be destroyed. . . .⁽⁴¹⁾

With great earnestness Moroni then proceeds to warn the people to whom the Book of Mormon shall come of the great danger facing them.

Wherefore, O ye Gentiles, it is wisdom in God that these things should be shown unto you, that thereby ye may repent of your sins, and suffer not that these murderous combinations shall get above you. . . .

Wherefore, the Lord commandeth you, when ye shall see these things come among you that ye shall awake to a sense of your awful situation, because of this secret combination which shall be among you. . . .

For it cometh to pass that whoso buildeth it up seeketh to overthrow the freedom of all lands, nations, and countries; and it bringeth to pass the destruction of all people, for it is built up by the devil, who is the father of all lies. . . .⁽⁴²⁾

Management of Foreign Affairs A Great Danger To Freedom

The Framers were well aware of the reality of secret combinations and conspiracies and particularly were concerned about them as a grave danger to freedom. They felt that foreign affairs especially lent themselves to being secretly manipulated for the purpose of destroying freedom. They were much concerned that those in charge of the government could use foreign dangers they might themselves have arranged as a means of inducing the people to give them powers the people would not otherwise have granted. This point of view was expressed by James Madison in these words:

The management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to a Government, because they can be concealed or disclosed, or [p. 150] disclosed in such parts and at such times as will best suit particular views; and because the body of the people are less capable of judging, and are more under the influence of prejudices, on that branch of their affairs, than of any other. *Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.*⁽⁴³⁾

Madison's concern that government officials might be less than accurate in the information they give to the people concerning foreign affairs is borne out by the following statement made by Bryton Barron, former Chief of the Treaty Staff in the State Department of the United States:

Through many years of service in our government, with long access to records of what actually happened on numerous eventful occasions, I am constantly reminded that our officials can not be blindly trusted to safeguard the national interest. Deceit, trickery, misrepresentation are ugly words, yet time and again in the last quarter century men in high places have been guilty of these practices as a cover up and/or to achieve fantastic, fateful ends.⁽⁴⁴⁾

Acceptance of UN as Means of Permanent Peace Is Inconsistent With Gospel

As indicated thus far in this discussion, serious questions are raised when the U N is examined in the light of the political philosophy of the Framers. However, when the U N is compared with the doctrines of the gospel, further questions are raised because it then becomes apparent that acceptance of the United Nations as a means of permanent peace is inconsistent with two basic gospel doctrines.

In the first place such acceptance is inconsistent with the oft repeated prophecies that the future of the world is not a future of peace but a future of wars to be poured out in increasing measure until the state of the world as [p. 151] now known will be destroyed. This doctrine is evidenced by many prophecies. One that sets the time as following the Civil War declares:

Then war shall be poured out upon all nations. . . .

And thus, with the sword and by bloodshed the inhabitants of the earth shall mourn . . . until the consumption decreed hath made a full end of all nations.⁽⁴⁵⁾

This doctrine has been expressed repeatedly by Church leaders. One such expression, which clearly indicates the very situation in which this country finds itself, is found in a talk given by George Q. Cannon in which he said:

It is worse than useless for men to cry "peace, peace," when there is no peace or to flatter themselves that the terrible issue of war can be avoided. . . . War in their midst is inevitable unless they take the course pointed out by the Lord which, however, they seem determined not to take. They are to be wasted away by war. . . .

Elaborate and beautiful theories may be constructed, but they will crumble into atoms . . . and leave those who adopt them in a worse predicament than they were in before.⁽⁴⁶⁾

The second basic doctrine inconsistent with the concept of pursuing peace through the United Nations is the doctrine that the only way to peace is the gospel rather than by force through world organizations.

This point of view was well expressed by President McKay in the statement quoted earlier in this section. Another expression of this same concept is found in the following statement by J. Reuben Clark:

Men may . . . set up world organizations, they may gather together great armies, they may spend the wealth of the world, they may slaughter by millions our young sons, but these will not bring rest and peace. . . .

If men would have peace, they must . . . keep the commandments of God; they must love the Lord . . . and their neighbors as themselves. [p. 152]

Permanent peace comes only by this road. Force will never bring it. Force only silences the cannon's roar while men gird for the next onslaught.⁽⁴⁷⁾

The comments in this chapter concerning the United Nations are not intended as a complete analysis of the real nature of that organization. Rather, what is intended is to make clear that the United Nations really is not similar to the American constitutional system, and that support of the United Nations does not represent helping to export American constitutional principles to other nations.

A secondary objective of the comments on the United Nations in this work is to indicate that there is another side to it than the widely publicized favorable information. It is then up to intelligent readers who cherish freedom to study the facts carefully on both sides of this vital issue and to make their decision based on the facts. They should then seek to influence others with detailed information rather than with slogans, generalities, or hopes.⁽⁴⁸⁾ [p. 153]

Chapter 14

The Philosophy of Men Against the Wisdom of God

Latter-day Saints seeking to return to the sound constitutional principles of the Framers are constantly confronted by the point of view that times have changed and that the principles of the Framers are no longer applicable. In fact, one usually hears plausible sounding reasons why the constitutional system established by God through the Framers cannot work in this day. But Latter-day Saints hearing those arguments should bear firmly in mind that they are hearing the wisdom of men criticizing the wisdom of God.

The Counterfeit Wisdom of the World

Although the wise of the world praise each other and receive honors of men, Latter-day Saints should not be deceived by this show of wisdom, but should look to the record. The record shows that their wisdom is only in appearance and not in substance, because it consistently fails. Concerning the effectiveness of the wisdom of the world the Prophet Joseph Smith wrote:

The world itself presents one great theater of misery, woe and "distress of nations with perplexity." All, all, speak with a voice of thunder, that man is not able to govern himself, to legislate for himself, to protect himself, to promote his own good, nor the good of the world.⁽¹⁾

Attempts to promote universal peace and happiness in the human family have proved abortive; every effort has failed every plan and design has fallen to the ground.⁽²⁾ [p. 154]

Sources of Counterfeit Wisdom

The popular political ideas taught as sound in most schools, urged by most politicians, and favored by most communications media, come from two principal sources. The first of these two sources is the learned and prominent men of the world, of whom the prophet Jacob wrote:

O the vainness, and the frailties, and the foolishness of men! When they are learned they think they are wise, and they harken not unto the counsel of God, for they set it aside, supposing they know of themselves, wherefore, their wisdom is foolishness and it profiteth them not.⁽³⁾

The second principal source of the popular political philosophy of the world is those who are consciously conspiring to overthrow our free constitutional system. All Latter-day Saints should carefully study an extremely important pamphlet entitled *Statements on Communism and the Constitution of the United States*, by President David O. McKay, from which the following statements are taken:

There is another *danger even more menacing than the threat of invasion. . . . It is the unpatriotic activities and underhanded scheming of disloyal groups and organizations within our own borders . . . the secret, seditious scheming of an enemy within our ranks, hypocritically professing loyalty to the government, and at the same time plotting against it, is more difficult to deal with.*⁽⁴⁾

I mentioned Communism in its war against individual liberty and free enterprise as surreptitiously sowing poisonous seeds within the body politic.⁽⁵⁾

The popular political philosophy of the world promoted by both the worldly wise and the communist conspirators is essentially the same. This is to be expected because both receive their inspiration from the same source, [p. 155] the usurper Satan, who is temporarily permitted to exercise dominion as "the god of this world."⁽⁶⁾

Sound Political Principles Unlike Popular Political Philosophy

The Prophet Joseph Smith pointed out that sound political principles are very different from the popular political philosophy of the world.

The government of the Almighty has always been very dissimilar to the governments of men, whether we refer to His religious government, or to the government of nations. The government of God has always tended to promote peace, unity, harmony, strength, and happiness; while that of man has been productive of confusion, disorder, weakness, and misery.⁽⁷⁾

Furthermore, Latter-day Saints should not expect the worldly wise to accept or even understand sound principles since these can only be understood through the Spirit of the Lord. Lacking that spirit, the worldly wise will receive their inspiration from another source, and will regard foolishness as truth, and truth as foolishness. This fact was expressed by Paul, who wrote:

But the natural man receiveth not the things of the Spirit of God: for they are foolishness unto him: neither can he know them because they are spiritually discerned.⁽⁸⁾

Latter-day Saints Should Interpret the Constitution the Way They Interpret Scripture

There is a special reason Latter-day Saints should reject the popular political philosophy of the world. That reason arises out of the fact that it is their belief that the Framers acted under inspiration in designing the Constitution. Hence, Latter-day Saints have a duty to support the Constitution as originally intended by the Framers. This attitude [p. 156] toward the Constitution was expressed by J. Reuben Clark in these words:

To me, that statement of the Lord, "I have established the Constitution of this land," puts the Constitution of the United States in the position in which it would be if it were written in this book of Doctrine and Covenants itself. This makes the Constitution the word of the Lord to us.⁽⁹⁾

If a person recognizes the Constitution as being of the nature of scripture, then he should interpret it as scripture is interpreted. How does one interpret scripture? Clearly, he does not interpret it correctly if he ignores both the words and the known intent of the writer and instead gives the words a meaning in harmony with currently popular philosophy but contrary to the intent of the prophet who wrote them. Such a method of interpretation amounts to nothing less than rejecting the word of the Lord in favor of the futile wisdom of men.

How then should scripture be interpreted? First, the task should be approached with an attitude of prayerful humility and faith and a willingness to accept the counsel of the prophets even if contrary to one's preconceived beliefs. Next, the words must be studied for their natural, ordinary meaning, particularly in the light of their context. In addition to their written context, the words should be considered in the light of the writer's intent or objective and other related principles of the gospel and other statements on the same or similar subjects by the same writer.

When Latter-day Saints recognize the Constitution as a form of scripture and interpret it as such, they find themselves returning to the intended constitutional system as established by the Lord. They also see clearly that the many changes made by interpretation under the false doctrine of flexibility of the Constitution amount to nothing short of rejection of the real Constitution and the substitution by uninspired men of a different system made of the [p. 157] popular philosophy of men mingled with some of the words of the original Constitution.

Socialism Contrary To True Interpretation of Constitution

Furthermore, when Latter-day Saints interpret the Constitution as scripture is interpreted, they also see clearly that the constitutional system, with its free enterprise economy and solid recognition of private property as a God given and unalienable aspect of freedom, is utterly contrary to socialism. Since the two systems are incompatible, faithful Latter-day Saints will reject the popular political philosophy of men and will cleave to the Constitution as written and intended by the Framers. This thought was well expressed by Marion G. Romney, an apostle, a lawyer, and a former Democratic office holder when he reminded Latter-day Saints of their "duty to eschew socialism and support the . . . Constitution as directed by the Lord" ⁽¹⁰⁾

Socialism Based On Satan's Philosophy of Equality

Actually, socialism is really an outgrowth of Satan's philosophy of equality which is the opposite and a counterfeit of the true gospel philosophy of equality. The true philosophy of equality is that all people are equal in the sight of God in that He is no respecter of persons. This means that each person will be judged and rewarded or condemned according to what he himself did, regardless of who he is or who his ancestors may have been.

As the scriptures point out, a necessary consequence of the true philosophy of equality is that men are likely to be unequal in all other respects. This is because individual differences will result in each person performing differently and receiving a different reward or condemnation. ⁽¹¹⁾ [p. 158]

On the other hand, Satan's counterfeit philosophy of equality is the opposite. It seeks to equalize rewards regardless of individual performance. It is often expressed in terms of taking from those who have and giving to those who have not—that is, using compulsion to share the wealth. Instead of the gospel philosophy of rewards and condemnation based on individual performance, it proposes no condemnation but only equal rewards for all regardless of individual performance. ⁽¹²⁾

This means that under Satan's false philosophy of equality men will not be equal in the sense of being judged fairly according to a single standard and receiving what they deserve. Since men will perform differently, equalizing rewards will require the use of the compulsory power of the state to take from some a reward they merit in order to give others a reward they don't merit. ⁽¹³⁾ This will violate the gospel philosophy of equality or fairness in judgment since it will mean that some will be judged by a more lenient standard than is applied to others. [p. 159]

Furthermore, from a false temporal philosophy, Satan's philosophy of equality spills over into a false and treacherous religious philosophy. This is the popular philosophy of the world that regardless of a person's efforts all are going to the same place and all will receive the same reward in the next life—although many who accept this philosophy do not believe that there is a life after death.

Instead of looking to socialism to solve problems, Latter-day Saints should be grateful that the lessons of socialism have confirmed the inspiration of their prophets, and particularly the Framers in rejecting socialism both as economically unsound and as leading to loss of freedom. [p. 160] [p. 161]

Chapter 15

The Molding of Men's Thinking

Promotion of sound constitutional principles has become increasingly difficult in recent years. One of the major reasons for this increasing difficulty is the predominance attained in most educational institutions and in the mass communications media by the false philosophy of the world.

While Americans tend to pride themselves on doing their own thinking, there is much evidence that their thinking is actually manipulated to a very large extent. This is done both in getting them to believe falsehoods and half truths as "facts" while the real facts are withheld from them, and in conditioning them through constant repetition into acceptance of certain ideas and ways of thinking.

For example, the Framers were much opposed to democracy.⁽¹⁾ They specifically pointed out that the constitutional system they framed is not a democracy, but a limited republic.⁽²⁾ From the days of the Framers until very recently, the American people were careful to recognize this distinction and to reaffirm their agreement with the Framers in their antipathy toward the concept of democracy. Then suddenly, in the lifetime of people now living, American thinking on this vital matter seems to have been reversed. Instead of the former attitude that democracy is an undesirable and unstable form of government, a great many Americans now seem to have an unthinking emotional devotion to the idea of democracy, and seem to believe the widely repeated untruth that the Framers favored democracy. [p. 162]

Source of Indoctrination in False Principles

Other examples could be cited, but the above will suffice to indicate the presence of some powerful influence misinforming Americans as to facts and transforming their thinking. Much light is shed on that influence by a well-documented penetrating study published by the Veritas Foundation.⁽³⁾ The following are a few extracts from that study:

American Fabian socialists for 78 years had been active in building up a socialistic strategy and a pro-socialist following, while at the same time, consciously avoiding the use of the word "socialist."⁽⁴⁾

There is . . . a central direction. . . . The connecting link of the multiple socialist movements today is a quiet organization with wide connections and ramifications known as the League for Industrial Democracy (L.I.D.).⁽⁵⁾

Shunning wide publicity but steadily boring within the nation's educational system and means of communication, the L.I.D. has . . . operated on the basis of infiltrating key control centers . . . including both major political parties.⁽⁶⁾

Every phase of education and public information has been "permeated" by these leftists.⁽⁷⁾

Fabian pursued a policy of "permeation" into established organizations. They . . . explained . . . that by degrees through [p. 163] such permeation . . . society "will pass into collective control without there ever having been a party definitely and openly pledged to that end."⁽⁸⁾

The Unity of Socialism and Communism

In considering this socialist penetration of American institutions it should be remembered that "socialists" and "communists" are working toward the same end. That end is the destruction of America's freedom system and replacing it with a different system under which a small, self-perpetuating group uses the compulsory power of the government to control the masses. This joint objective is expressed in the Veritas study in these words:

There is never any fundamental disagreement between communists and socialists about the fact that socialism is the ultimate aim of both movements.⁽⁹⁾

Both socialists and communists face the same enemy, the system of individual freedom and private enterprise.⁽¹⁰⁾

There are many who do not accept the fact that communism and socialism are basically the same. Although they believe communists do many terrible things, they tend to regard socialists as well meaning do-gooders. That their appraisal of socialism may be less than accurate is indicated by the following:

Many leading socialists forsee with complacency the necessity of killing their opponents, once they have seized power. Bernard Shaw and Stuart Chase have boldly stated so.⁽¹¹⁾

Socialism Promoted Mainly By Sincere People Who Have Been Deceived

There is one fact implicit in what has been said that should be clearly stated and unmistakably emphasized. [p. 164] That fact is that the conscious deliberate conspirators are relatively few when compared with the great numbers of people who help them. In fact, most of those who promote socialism and communism are ordinary people who have been deceived by propaganda ultimately originating with the conspirators. There are two principal factors

contributing to their acceptance of these false ideas. One is that they have not really understood the constitutional system in the first place. This ignorance arises partly out of the fact that textbooks containing American history as it really happened are now a rarity in American schools. The second contributing factor is their desire to hold beliefs acceptable to the predominantly influential intellectual group.

Realization that the work of these conspirators is largely done by others who are not consciously a part of the conspiracy is essential to understanding how the conspiracy operates. For example, one of the methods by which this is accomplished is shown in the following extract from *The Great Deceit—Social Pseudo-Sciences*:

Sidney Webb, the father of Fabian socialism explained how those who have once been drawn into leftist activities continue to promote socialism thereafter. In speaking of socialist organizations, he stated:

"Their programmes and principles remain, and even their leaders, but their active membership is continually changing. A steady stream of persons influenced by socialist doctrines passes into them, but after a time most of these cease to attend meetings, the subjects of which have become familiar, and gradually discontinue their subscriptions. These persons are not lost to the movement; they retain their socialist tone or thought, and give effect to it in their trade unions, their clubs, and their political associations. . . ."

The millions who were indoctrinated in the socialist-communist fronts provided a continuous backwash of influence in all the political parties in America, and in education and social life.⁽¹²⁾ [p. 165]

It should be borne in mind that this same principle applies to the millions of students who are indoctrinated in socialist thinking in their high school and college experience, and who thereafter "are not lost to the movement" but "retain their socialist tone of thought, and give effect to it in their . . . political associations" and other activities after their school experience is completed.

An Example of Socialist Influence In American Education

An enlightening specific illustration of socialist influence in the educational system is contained in a small book entitled *American History Was My Undoing*.⁽¹³⁾ The author, Mrs. Donzella Cross Boyle, a teacher and "hobby historian" was approached by a publishing company to write a new American history textbook. Through painstaking time-consuming research in original sources, she was able to write a factual history untainted by the opinions of other authors. However, soon after she started the project she received some inkling of problems that would arise if she attempted to continue her factual approach. Of this she wrote:

However . . . my friends in the teaching profession . . . labeled my project complete folly. I was wasting my time. The schools would not buy a text with the truth . . . about our history. Teachers who valued their jobs and opportunities for promotion would not recommend such a book. . . . Facts had to be garbled to create certain social attitudes in the minds of the children.⁽¹⁴⁾

In *American History Was My Undoing*, Mrs. Boyle tells of the pressures brought to bear to induce her to write a slanted history. With great difficulty she withstood the pressures and ultimately produced a factual American history textbook. Then, although the book was supposed to be one of a series, it was removed from the series after [p. 166] one small printing and was thereafter simply "out of print." Incidentally, in *American History Was My Undoing*, Mrs. Boyle presents a worthwhile analysis of some of the techniques by which textbooks are slanted against the American tradition and in favor of collectivism.⁽¹⁵⁾

Of Course There Is A Conspiracy

There are many today who loudly proclaim that there is no conspiracy in this country seeking the destruction of the American constitutional system. It is a tribute to the power of propaganda over common sense that anyone would seriously believe that there is not a massive subversive conspiracy at work in this country. The typical method of socialist conquest, whether in the name of communism or some other name, is by infiltration and subversion. The United States is both the greatest potential obstacle to socialist conquest of the world, and the greatest prize to conquer. With these facts in mind, it is unthinkable that there would not be a tremendous conspiratorial effort put forth to immobilize and to conquer America.

In testifying before the House Committee on Appropriations on March 6, 1961, J. Edgar Hoover, Director of the Federal Bureau of Investigation made the following comments in connection with the extent to which the communist conspiracy had already infiltrated our institutions:

They have infiltrated every conceivable sphere of activity: youth groups; radio, T.V. and motion picture industries; church, school, educational and cultural groups; the press; nationality minority groups and civil and political units.⁽¹⁶⁾

As one considers the urgency of the present situation, he needs to bear in mind that the above statement was made more than nine years ago. [p. 167]

Chapter 16

The Forgotten Fundamentals of The Constitution—A Summary

This chapter, which is in the format of an analysis of the three forgotten fundamentals of the Constitution, is a summary of the constitutional system established by God through the Framers. Through presenting the summary in this way, there should emerge a clear understanding of the guiding principles followed by the Framers, and an accurate bird's eye view of the true nature of the constitutional system they designed. Also included with each forgotten fundamental is a series of questions to help test political matters against the eternal principles revealed through the Framers. A comparison of the constitutional system of the Framers, as summarized in this

chapter, with the present government of the United States will show how completely the principles of the Framers have been abandoned and the constitutional system has been perverted.

The First Forgotten Fundamental—A Religious Foundation

The first of the three forgotten fundamentals of the Constitution is its religious foundation. To understand the real significance of this religious foundation, it must be considered in two particular areas.

1. The American constitutional system is a freedom system that can function only among a religious citizenry.

2. The philosophical presuppositions on which the constitutional system is based are essentially religious.

The fact that the American constitutional system is a freedom system that can function only among a religious [p. 168] citizenry was clearly expressed by John Adams in these words:

Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.⁽⁴⁾

There are only two ways by which order can be maintained in society. One is by having a religious citizenry who will act righteously without external compulsion. The other is by the method of force or compulsion.

Only A Religious People Can Be Free

It is only among a righteous people that freedom and order can exist together. If unrighteous people are given their freedom, they will act in a disorderly manner. This will result ultimately in anarchy if order is not restored by force. But if force is used to restore order? such use of force is itself a partial deprivation of freedom. Furthermore, maintaining order by force requires a powerful compulsion type government which is inimical to a free society. On the other hand, if force is not used to maintain order among an unrighteous people, they will lose their freedom anyhow to the roaming mobs as the government degenerates into anarchy.

It is sometimes suggested that sufficient righteousness for freedom to exist can be engendered without religion, such as by education. George Washington, who presided over the wise men the Lord raised up to frame the Constitution emphasized in his Farewell Address that education without religion is not sufficient to maintain national morality.

The various laws encouraging religion that have been passed throughout American history were not enacted merely because a religious influence was thought to be generally desirable. Rather, they were motivated by a realization that the very preservation of freedom requires a religious citizenry. [p. 169]

Today, Americans are born citizens of a country with a tradition of freedom. Not having had to achieve it themselves, or set up a system to preserve it for their posterity, they tend to take it for granted. They seldom think deeply about it or learn the essential prerequisites for freedom to continue. But the Americans involved in the launching of this free constitutional republic and their immediate descendants did think deeply about freedom, and well understood freedom's indispensable prerequisite of a religious citizenry.⁽²⁾

Free Government Must Be Founded On Religious Presuppositions

In addition to being a freedom system requiring a religious citizenry for its successful operation, the American constitutional system is founded on philosophical presuppositions which are rooted in a religious orientation toward life.

Underlying all governments are certain presuppositions constituting a philosophical attitude toward government. The United States government is based on religious presuppositions including the following:

1. That there is a God.
2. That God has established natural laws of government.
3. That such natural laws include recognition that because God is the giver of men's rights, those rights cannot be taken from them or even given away by them.

These religious presuppositions provide a solid foundation and strong support for individual freedom. This is because belief in God is the source from which inalienable rights are derived. In fact, their inalienability is an outgrowth of the belief that they are God given. If as a nation Americans cease to believe in God, then there is [p. 170] no longer a firm basis for the belief that men's rights are inalienable.

Specific Tests Under First Forgotten Fundamental

In applying this first forgotten fundamental that the constitutional system can function only among a moral and religious people, this question must be asked:

Does the matter being considered tend to promote religion among the people, or retard it?

This question must be applied not only to encouragement of organized religion in general, but also to determination of whether the particular matter encourages or detracts from attitudes and practices having religious implications. Areas to consider include the following:

1. Is it in harmony with the American tradition of unashamed acknowledgment that Americans are a religious people, and that this is a religiously oriented republic? This, of course, does not mean intolerance of the views of others. On the other hand tolerance of the atheistic minority does not mean that Americans must change their system to avoid offending the atheists among them.

2. Does it recognize and confirm the belief of those who established this republic that a religious citizenry is necessary for the preservation of freedom? Or does it ignore or deemphasize that historical fact?

3. Does it encourage reliance upon one's own efforts with the help of God, as distinguished from reliance upon an arm of flesh such as a government agency?

4. Does it promote growth toward that independence of character associated with being godlike? Or is it of a paternalistic nature tending to dependence, immaturity, and irresponsibility?

5. Does it diminish individual responsibility by depriving people of the responsibility to prepare for their own future? One of the great blessings of free agency is the growth deriving from individual responsibility, including [p. 171] the opportunity to exercise thrift, self-reliance, and wisdom in temporal matters.

6. Does it diminish self-respect and promote selfishness, greed, and ingratitude through giving people something they have not earned, and arousing the expectation they will continue in the future to receive something for nothing?

7. Does it diminish awareness of responsibility for one's own sins, of principles of cause and effect, and of the importance of obedience to eternal law through giving material advantages without corresponding effort on the part of the recipient?

8. Does it promote brotherhood through voluntary service to others? Or does it tend to promote disharmony and ill will through compulsory taking of property for the benefit of others?

9. Does it confuse standards of right and wrong by authorizing the government to engage in activities that would be immoral if done by individuals?

10. Is it itself contrary to moral law? In this connection it should be borne in mind that people are as much bound by moral law when they act indirectly through the government as when they act alone.

11. Does it promote and solidify family loyalty and responsibility? Or does it shift one's responsibility for family members to a government agency?

The Second Forgotten Fundamental—Freedom of Person and Property

Any discussion of the second forgotten fundamental of the American constitutional system should begin with the Lord's purpose in establishing the Constitution. That purpose was to provide a system under which men would be free to do as they wish with a minimum of compulsion, and to enjoy the fruits or suffer the consequences of the actions they choose. [p. 172]

The second forgotten fundamental of the constitutional system is, therefore, that the Constitution establishes not just a political system, but a complete political, social, and economic

system under which men have the right to do as they wish with a minimum of governmental regulation or control.

Inviolable Property Rights Essential To Freedom

Today there are those who declare that it is possible to maintain the rights to life and liberty inviolable without maintaining property rights inviolable. However, the Framers firmly believed that freedom could not exist unless property rights are held inviolable. For example, John Adams declared:

The moment the idea is admitted into society that property is not as sacred as the laws Of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured, or liberty cannot exist.⁽³⁾

Framers Adopted Basic Ideas of Adam Smith

The incredible economic and social progress of the United States has been achieved under a free agency economic and social system chosen under inspiration by the Framers. Their philosophy of government was based to a considerable extent upon the ideas of Adam Smith, whose concepts are largely looked upon with disfavor by political scientists and economists today.

Two of Adam Smith's concepts are particularly pertinent to this discussion. The first is that there are God given natural laws in the political and economic as well as the physical realms. He believed that to establish a government for the greatest happiness and prosperity of the people, those eternal laws of God must be sought out and the system established must be in compliance with them. [p. 173]

The second concept of Adam Smith which was accepted by the Framers was that prosperity could not be achieved by government regulation of the economy, but by free enterprise with the least interference by government. Both believed that human economic laws could only diminish prosperity by hampering the free operation of natural laws of prosperity.⁽⁴⁾ This point of view was expressed by Adam Smith in these words.

The natural effect of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations; though the effect of these obstructions is always more or less either to encroach upon its freedom, or to diminish its security.⁽⁵⁾

Today there are many who criticize the Framers for their attachment to the free enterprise system and protection of property rights. In fact, the Framers are sometimes referred to as men pursuing an ulterior motive of protecting their own property when they designed the Constitution.⁽⁶⁾ But their concern was actually for the economic well being and freedom of all

Americans, including unborn generations. It should never be forgotten that it was under the system they adopted that America forged ahead of other nations and became so great and prosperous as to be looked upon as the land of opportunity for the poor and downtrodden of the world. [p. 174]

Socialism A Continuation of Satan's Technique of Gaining Power By False Promises

In spite of the fact that the Framers were familiar with and rejected the system which today is called socialism, there are many who now believe that the Framers were mistaken and that socialism is a preferable system. Since Latter-day Saints believe the constitutional system was established by the Lord through the Framers, it seems appropriate to examine in an eternal perspective this opposite system of socialism which the Lord rejected.

Church members are familiar with the scriptures describing Satan as the great deceiver and liar from the beginning. One of his devices is to make promises he cannot keep in order to gain power. An example is his promise in the Council in Heaven to save all so that not one soul would be lost. To accomplish this, he proposed to substitute a compulsion system for the Lord's free agency system. But without free agency none could be saved. Instead of the salvation he promised, his plan would have resulted in all becoming his puppets.⁽⁷⁾ Thus his entire scheme was really a deceptive device designed to gain power for himself, and falsely presented as an idealistic concern for those less likely to be successful through their own efforts.

Satan's false and deceptive promises were fantastically successful. Although these promises by their very nature were impossible to fulfill, one third of God's children were deceived by them and chose to follow Satan instead of God.

After men began to go through their mortal probation, Satan continued to use this same deception that had proven so successful in the premortal sphere. Here his deception has experienced similar success. For example, the great evil of our day is often referred to as communism. The fantastic success of communism in spreading from one [p. 175] country to another over the earth is in large measure the result of its false promise of temporal salvation in exchange for power.

Because so many people today recognize communism as evil, a major effort is made to free socialism from the stigma of communism by claiming that it is something different. But Latter-day Saints should not forget that the fundamental nature of both is the same—giving those in control of the government the power to exercise compulsion over the daily lives of the people in exchange for a promise of temporal salvation. The communists themselves acknowledge that communism and socialism are really the same system, differing only in degree of maturity.⁽⁸⁾ How were so many Americans deceived by Lucifer's ancient technique of obtaining power through making false promises? In large measure the answer is to be found in a warning given by President McKay seeking to alert the people to a revolutionary conspiracy striving to undermine the American constitutional system and to set up a dictatorship in the United States. In exposing the methods used by these revolutionists, President McKay declared:

These revolutionists are using a technique that is as old as the human race—a fervid but false solicitude for the unfortunate over whom they thus gain mastery, and then enslave them.⁽⁹⁾

The great sympathy and good will of the American people are thus being used as a means of inducing them to accept a system which not only will fail to solve the problems of the unfortunate, but will destroy the freedom of this country if it is not stopped.

Socialism Unable To Fulfill Promises

It is of interest that the Lord's freedom system and Satan's compulsion system (whether called communism, [p. 176] socialism, or some other name) carry into the temporal sphere their respective ability and inability to keep their promises. The Lord's freedom system promises temporal prosperity and joy and delivers them when its standards are met. Satan's false and deceptive compulsion system also promises temporal prosperity and joy, but cannot deliver them. The contrasting temporal performance of the two systems is plainly visible in the earth today.

The Lord's constitutional free enterprise system has produced in the United States an incredible abundance shared generally by the people according to their ability and effort—just as salvation itself is graded, although more accurately according to ability and effort.

On the other hand temporal experience with Satan's compulsion system has exposed it for what it is—a means of gaining power by making false promises which it cannot deliver.

Not only do the communists regard socialism and communism as essentially the same, differing only in degree of maturity, but people who live under the two systems seem to evidence their displeasure in a similar way. One hears a great deal about the Berlin wall the communists erected to keep their people from fleeing to West Germany. The impression generally is given that people want to flee from communism, but not from socialism. Actually, the socialistic experiment in the Canadian province of Saskatchewan shows that people will also flee from socialism when they can. This is shown by the following extract from a talk given by W. Ross Thatcher, Premier of Saskatchewan after that province had undergone 20 years of experience with socialism.

Mr. Chairman, 20 years ago, the socialists promised to make Saskatchewan a Mecca for the working man. Instead, we saw the greatest mass exodus of people out of an area, since Moses led the Jews out of Egypt more than 3,000 years ago.⁽¹⁰⁾ [p. 177]

Premier Thatcher's comments concerning the failure of Saskatchewan's socialistic experiment and particularly his pointing out that the real fruits of socialism are very different from what the textbooks say is typical rather than unusual.

In fact, socialism has not been temporally successful even in Russia where the compulsory power of the state has been applied ruthlessly to try to force socialist economic progress. Russia has been able to achieve spectacular results in limited areas by concentrating its resources. But when the Russian economy is examined on an overall per capita basis, it appears that Russia is

not second but about twentieth among the principal nations. Furthermore, in 50 years the USSR has not overtaken any country, with the possible exception of Italy, which is itself heavily involved with socialism. ⁽¹¹⁾

Objective examination of the facts reveals that the Framers were right in rejecting what is today called socialism and setting up instead a free agency system, including a private property free enterprise economic system. Socialism not only deprives people of an ever increasing portion of their freedom, but it also fails to provide the economic benefits its proponents promise.

Specific Tests Under Second Forgotten Fundamental

The second forgotten fundamental of the American constitutional system is that it is a complete freedom way of life. It recognizes and protects an individual's right to free enterprise and private property which is the fruit of his efforts, and it precludes the federal government from taking his property and giving it to others in the form of welfare programs. In examining matters under consideration against the standard of this second forgotten fundamental, appropriate questions to ask would include: [p. 178]

1. Does it violate a person's inalienable right to his property through using the compulsory taxing power of the government to take it from him to give it to another?
2. Does it violate a person's inalienable right to control his own property by taking it or regulating its use not for one of the purposes enumerated in the Constitution, but to achieve Social objective deemed desirable by those in control of the government?
3. Does it violate a person's inalienable property rights by appropriation or regulation of his property to achieve objectives those in control of the government or even the majority of the people regard as morally desirable, but which do not involve crime or the maintenance of order in their traditional senses? It should be emphasized that laws appropriating or regulating the use of a person's property to achieve such moral objectives not only constitute an unconstitutional interference with his property rights, but such laws also violate his freedom of religion, and actually amount to the beginnings of an unconstitutional compulsory state religion. This is because one of the fundamental and distinguishing characteristics of a religion is the establishment of moral standards.
4. Does it involve an attempt to use the power of the government to make people equal? The Framers believed equality to be a false theory, except to the extent achieved through individual ability and effort, and except for the concept of equality in one's inalienable rights to be protected in his life, his liberty, and his property.
5. Does it tend to diminish prosperity by diminishing the incentive to produce? The efficient producer's incentive is diminished by taking from him a major portion of the fruit of his efforts. The inefficient producer's incentive to produce is diminished by giving him what he needs regardless of his production. The incentive to produce of both efficient and inefficient are reduced by government regulation. [p. 179]

The Third Forgotten Fundamental—Protect Freedom Against Human Nature

The third forgotten fundamental is that the Constitution was designed carefully to protect freedom against the human nature weaknesses both of government officials and of the people themselves. Instead of regarding public officials as the people's benefactors who were to use the powers of government to provide for the people's welfare, the attitude of the Framers was that mortal men are corruptible and should be given as little government power as possible, and then should be carefully watched to be sure they do not misuse the little power it is necessary to give them. The following are some of the main principles and beliefs of the Framers in the context of protecting freedom against human nature tendencies which might otherwise destroy that freedom.

Local Self Government Preferable To Centralized National Control

One of the great underlying principles of the Constitution is that local self government is preferable to centralized national control.⁽¹²⁾ It was intended that the federal government be as small as possible so that government officials furthest from the people would have a minimum of power to misuse, and so that it would be relatively easy for the people to check whether or not their officials properly perform their functions.

Pursuant to this attitude, the Constitution was drafted in such a way that federal authority would extend only to those functions which because of their nature could not be satisfactorily administered by the people themselves or the separate states. Since most people's ordinary activities could be well administered by the people themselves or the states, the federal government would have no authority over the daily lives of the people. [p. 180]

The difference between federal and local spheres of authority under the Constitution was explained by James Madison in *The Federalist* in these words:

The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. . . . The powers reserved to the several States will extend to all of the objects which, in the ordinary course of affairs; concern the lives, liberties and properties of the people, and the internal order, improvement, and prosperity of the State.⁽¹³⁾

The Powers of Government Must Not Be Controlled By Any Single Group

Another basic principle of the Constitution is that governmental power must be divided among different groups so that the government is not controlled by any one group.

The constitutional provisions for separation of the powers of the federal government among the legislative, executive and judicial branches are well known. But the people should be more aware of the fact that the Constitution also provides for separation of powers between the federal government itself on the one hand and the separate states on the other. Those who launched this free republic felt that separation of powers between the federal government and the states was so

important that the Tenth Amendment was adopted to confirm it beyond any possibility of misunderstanding.

There Must Be Built-In Provisions For Automatically Checking Unauthorized Usurpations of Power

In addition to their belief in the importance of the principle of separation [p. 181] of powers to the preservation of freedom, the Framers strongly felt that mere separation of powers alone was not sufficient. There must also be a device for maintaining the separation. Each part must be prevented from encroaching on the jurisdiction of the others and perhaps ultimately attaining control of the government.

To prevent encroachment of one part on another, the Framers incorporated what is known as a system of checks and balances under which it was intended that the several parts themselves resist any attempted encroachment by others on their sphere of authority. The objective sought was to be sure that each part and each official has not only a duty but also a personal motive to resist any such encroachments by others.

As a part of the system of checks and balances, the Constitution gave the states the power to defend themselves against federal encroachment. This protection was achieved by giving the states as states representation in the federal government and a veto power over federal legislation. These powers were given the states through the constitutional provision that the senators were to be chosen by the state legislatures rather than the people.⁽¹⁴⁾ However, in 1913 the 17th Amendment, which provided for direct election of the senators by the people instead of by the state legislatures, was adopted, thereby destroying the portion of the constitutional system enabling the states to protect themselves against encroachment by the federal government.

Framers Regarded Political Parties As A Great Danger To Freedom

The Framers' attitude toward political parties should be considered in connection with the principles of separation of powers and checks and balances. Although it is popular today to look with favor on the American two party system, it should be remembered that the Framers were solidly opposed to political parties. In his Farewell [p. 182] Address, George Washington warned against them at length. Among the many undesirable and dangerous consequences of political parties is that they undermine the personal motivation of government officials to resist usurpations of power. This results from the fact that under the party system a government official's personal interests are best served by giving his primary allegiance to the party rather than to the Constitution.

Framers Believed the Right To Vote Should Be Limited To Property Owners

Another area that should be considered in connection with the Framers' belief in the importance of a personal motive to preserve the freedom system is found in their attitude toward a property requirement for voting. They considered such a requirement necessary, but did not include it in the Constitution primarily because the states already required property ownership for the right to vote, and they felt the states would continue to do so.⁽¹⁵⁾

The reason they regarded a property requirement necessary for voting was because they believed the protection of private property was an essential element of freedom, and that people without property of their own to protect would not have a sufficient personal motive to protect the property rights of others.

In 1964 the 24th Amendment was adopted prohibiting the imposition of any poll tax in federal elections. Although a poll tax is actually a less stringent limitation than a direct property requirement, it does tend to limit the vote to those with property. In ratifying that amendment the United States rejected the point of view of the Framers and voted to undermine a political safeguard the Framers regarded as fundamental to the preservation of freedom. By ratifying that amendment, the people were requiring that the right to vote be given to many who would consider that [p. 183] their personal interest would be served by destroying instead of preserving the inviolability of private property.

Framers Considered Democracy An Unsound Form of Government

No doubt many who voted in favor of the 24th Amendment felt that they were helping to advance the American ideal of democracy, not realizing how solidly the Framers were opposed to democracy. The Framers believed that while the authority of the government should derive ultimately from the people, who should be responsible for its proper functioning, the people's control over the government should be indirect rather than direct.

As used by the Framers, the word "democracy" referred to a government controlled by the direct and unrestricted will of a majority of the people. Their fundamental objection to democracy was that they felt that in a democracy public decisions would tend to be mass emotional decisions of an uninformed or misinformed populace. They feared that such emotional decisions would disregard both sound principles and individual rights. On the other hand, the Framers believed that in a republic the will of the people would be refined and enlarged as public decisions are thoughtfully arrived at after careful study by outstanding men chosen from among the people.

Framers Believed Constitution Should Be Changed Only By Amendment—Not By Interpretation

The next principle that should be considered concerns amendments to the Constitution. Here again, the Framers were concerned about limiting the power of the majority. If the Constitution were amendable by an ordinary majority vote, then the majority could change the system to give themselves greater control than the Framers provided. The Constitution, therefore, provides both that a rigorous procedure for initiating amendments be required and that after an amendment is successfully initiated, it is still not [p. 184] adopted until ratified by the legislatures or conventions in three-fourths of the states.⁽¹⁶⁾

There is an important problem pertaining to amendments that has arisen repeatedly, beginning in the lifetime of the Framers. This is the problem of changes made without complying with the amendment procedure set forth in the Constitution.

The False Doctrine That The Supreme Court Has the Right to Change the Constitution By Interpretation

Over the years the Constitution has been changed repeatedly without complying with the amendment procedure. The justification for these unconstitutional changes is the false doctrine that the Supreme Court has the right to change the Constitution by interpretation. This false doctrine is now taught as sound and correct in most law schools and in American history and political science courses, and is accepted without question by a great many Americans.

Constitution Not Flexible

One of the methods used to solidify acceptance of the false doctrine that it is proper for the Supreme Court to change the Constitution by interpretation is to refer to that doctrine by the learned sounding term "flexibility of the Constitution." However, the Constitution was not intended by the Framers to be flexible or there would have been no need for a rigorous amendment procedure. In fact, if needed changes could be made by interpretation of a flexible Constitution, then the rigorous amendment procedure would be not only unnecessary but also misleading. The fact that the Framers included a difficult amendment procedure conveys the very clear impression that amendments can be made only in the prescribed way with the consent of the people in general. Certainly the [p. 185] inclusion in the Constitution of the specific and difficult amendment procedure is inconsistent with the concept that constitutional changes may be made by five of the nine Supreme Court judges who are not selected by the people or accountable to them.

Judicial Review Not Applicable

Another device used to promote the false doctrine that it is right for the Supreme Court to change the Constitution by interpretation is to use the term "judicial review" to refer to such changes. However, application of the term "judicial review" to constitutional changes made by court interpretation is really a perversion of that term. The true doctrine of judicial review refers to the duty of the Supreme Court to strike down actions of others when they are inconsistent with the Constitution. In other words, the term "judicial review" refers to the upholding of the Constitution against attempts of others to change or misconstrue it. How inappropriate it is to apply a doctrine under which the Supreme Court has a duty to preserve the Constitution inviolate against unauthorized changes by others by perverting that doctrine into one under which the Supreme Court is authorized to do the very thing the doctrine requires it to prevent others from doing.

Constitution Really Amended By "Interpretation"

It is sometimes argued that the changes made by court interpretation are not real amendment type changes, but that they are only the application of constitutional principles to changing circumstances. While this point of view is repeated by many, it is simply not true. The fact is that the changes made by legitimate amendment are minor when compared with the vast changes made by court interpretation. This fact is evidenced by the following statement by Edward S.

Corwin, a noted authority on constitutional law and a proponent of the doctrine that it is proper for the Supreme Court to change the Constitution: [p. 186]

The Constitution has possessed capacity for growth in notable measure. . . . Nor has this capacity resided to any great extent in the provision which the Constitution makes for its own amendment. Far more it has resided in the power of judicial review exercised by the Supreme Court.⁽¹⁷⁾

Unauthorized Court made Changes Strike At Heart of Constitutional System

As a matter of fact, in addition to the vast and basic changes in the American constitutional system made over the years by court interpretation, two changes made by the Supreme Court in recent years without the consent of the people or any attempt to comply with the legitimate amendment procedure strike at the very heart of our free constitutional system.

The first of these changes is found in the Supreme Court's decisions holding that our government may no longer recognize God.⁽¹⁸⁾ As is pointed out in connection with the first forgotten fundamental, the American constitutional system is based on recognition of God for its very foundation. Without such recognition, there are no inalienable rights, because their inalienability derives from their being recognized as God-given.

The second of these changes is found in the reapportionment decisions. In those decisions the Supreme Court disregarded unmistakably clear provisions of law in order to superimpose on the carefully balanced representative republic a one-man-one-vote-majority-rule democratic philosophy which is inconsistent with the intent of the Framers and with the limited constitutional republic the Lord established through them.⁽¹⁹⁾

The combination of these two Supreme Court made changes in the American constitutional system amount to [p. 187] nothing less than a rejection of the philosophical foundation on which our constitutional freedom system is built. The Supreme Court not only has rejected the sound foundation given us by the Framers. It also has substituted instead a philosophy of government involving non-recognition of God and acceptance of the will of the majority as supreme, which concepts the Framers regarded as incompatible with the preservation of freedom.

Preservation of Freedom Depends on People—Not Government Leaders

Awareness of the dangerous and unsound areas into which this country has been led through the Supreme Court's usurpation of the people's right to amend the Constitution should help Americans to be aware of several important items: The first is that the Framers were right in their expectation that government officials would usurp power if permitted to do so. The second is that the wise and learned of the world in many cases do regard truth as foolishness and foolishness as truth. The third is that if America's freedom system is to be preserved, it will not be by government leaders but by an awakened people who are willing to sacrifice their personal ease to be informed, and who will insist that their leaders abide by the sound principles of the Constitution as drafted and intended by the Framers. Realization that the preservation of the American freedom system depends ultimately on the people and not on the leaders was expressed by James Madison in these words:

To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.^[20] [p. 188]

Specific Tests Under Third Forgotten Fundamental

The third forgotten fundamental of the American constitutional system, then, is that it recognizes and attempts to protect against the human nature weaknesses of both government officials and the people themselves. In checking specific matters against the standard of this third forgotten fundamental, questions such as the following should be asked:

1. Does the matter under consideration place excessive confidence in government officials, thereby failing to give due regard to the human nature tendencies of government officials to misuse authority given them, or to usurp authority not given them?

2. Does it show awareness of the fearful power of government and the necessity for keeping the government small and a servant; lest becoming large it becomes a master? Does it tend to increase or diminish the control the government has over the people?

3. Does it take into account the fact that local self government is greatly to be preferred over centralized national control, and that the latter should not be used at all unless necessary and in conformity with at least one of the enumerated powers granted to the federal government under the Constitution? Is it in conformity with the limited federal government concept of the Framers that the federal government is to function only in those areas where because of the nature of the problem (such as more than one state being involved) action by the separate states or the people would be inappropriate?

4. Does it give due recognition to the principle of separation of powers, or does it tend toward greater concentration of power in one part of the government, thereby upsetting the constitutional balance of powers among the three branches of the federal government and the state governments? It should be remembered that the balance of powers is almost automatically destroyed as the government becomes large. This results from the undue cumbersomeness [p. 189] of the legislative branch enacting laws to cover the multitudinous details involved in the administration of a large government. As the bureaus of the executive branch proliferate to administrate those details, the legislative branch is eclipsed by the executive branch.

5. Does it realistically provide for a system of checks and balances under which there are other government officials who have a personal interest in preventing the particular government officials involved from usurping authority? In this regard does it tend to give undue recognition and encouragement to political parties, or does it represent an effort to return to the system envisioned by the Framers under which unity and support of sound principles are encouraged, and government by political party is discouraged?

6. Does it follow the Framers' belief that the vote should be given only to those who have a personal interest in the preservation of the freedom system and particularly those who have

private property of their own to protect? Or does it follow the unsound democratic philosophy of giving an equal vote to those who do not have property to protect and, hence, have a personal interest in undermining the freedom system with its inviolate property rights?

7. Does it tend to move the system away from a limited representative republic in the direction of a more complete majority rule democracy, which is a system the Framers believed to be incompatible with stability and freedom?

8. Does it confirm existing improper usurpations by courts or others, or does it represent an effort to undo such usurpations and return to the specific provisions and limitations of the constitutional system established by the Lord through the Framers? In this regard it should be remembered that the doctrine of flexibility of the Constitution is a false doctrine by which, without the consent of the people under the legitimate amendment procedure, the freedom system established by the Lord has been transformed to a major extent into a compulsion system such as was rejected by Him. [p. 190]

9. Is it really necessary to use the compulsory power of the government to solve the particular problem? Latter-day Saints particularly should remember that one of the typical devices used by those who would destroy the American freedom system and substitute a compulsion system is to promote the idea that it is necessary to use the power of the government to solve problems it is really not the function of the government to solve—in fact, that the government actually cannot solve. Such proposals are typically welfare programs of one sort or another. Latter-day Saints should bear clearly in mind that under the constitutional system established by the Lord through the Framers, the federal government does not have the power to engage in welfare programs. They should remember that it was James Madison who characterized attempts to interpret the Welfare Clause as conferring such power as

subverting the fundamental and characteristic principle of the Government . . . and as bidding defiance to the sense in which the Constitution is known to have been proposed, advocated, and adopted.⁽²¹⁾ [p. 191]

Chapter 17

What Should Latter-day Saints Do?—An Action Program

With the forgotten fundamentals firmly in mind, what specific steps should Latter-day Saints take in their efforts to save the Constitution?

Study Constitutional Principles

One of the first things they should do is to follow the counsel of their Prophet contained in a little folder available through stores handling Latter-day Saint books entitled "A Statement by

President David O. McKay concerning the position of The Church of Jesus Christ of Latter-day Saints on Communism." Here are a few sentences from that published statement:

We therefore commend and encourage every person and every group who is sincerely seeking to study Constitutional principles and awaken a sleeping and apathetic people to the alarming conditions that are rapidly advancing about us. We wish all of our citizens throughout the land were participating in some type of organized self-education in order that they could better appreciate what is happening and know what they can do about it.

While the study necessary to gain an understanding of America's constitutional system requires time and effort, this is in conformity with the basic gospel principle of work which underlies all progress and in fact is the key to salvation. Unless a person puts forth the effort necessary to gain such an understanding, it is all but impossible for him to be effective in the struggle to save the Constitution. Without that understanding he may think he is valiantly [p. 192] helping to save the Constitution when he is really helping destroy it through his promotion of widely taught counterfeit constitutional principles.

Be Aware That Most Modern Materials On Constitution Promote Unsound Philosophy of World

As Latter-day Saints and their families study the American constitutional system, one problem they encounter is that the most popular and widely respected sources present constitutional philosophy very differently from the intent of the Framers. Fortunately, the Lord has anticipated this problem and has provided the correct standard to know in which direction to strive regardless of how popular or plausible a contrary direction may be made to appear. This He has done by declaring that He established the Constitution through wise men He raised up for that very purpose. By thus affirming the inspiration of the Framers and the correctness of their work, He has indicated that the correct standard is the orientation of the Framers as expressed in the Constitution itself and in their other writings.

Since Latter-day Saints believe the Framers to have been inspired in drafting the Constitution and to have been prophets to that extent, they can obtain the best understanding of the Framers' work through the words of other prophets.

Perhaps the best place for Latter-day Saints to start studying constitutional principles as suggested in President McKay's statement would be to become familiar with the perspective of their Prophet. This can be done by carefully reading a 39-page pamphlet entitled, *Statements on Communism and the Constitution of the United States*, by President David O. McKay.⁽¹⁾ [p. 193]

There are also a number of other Church books and pamphlets that can help Latter-day Saints in studying constitutional government. These are available at any book store handling Latter-day Saint books.

Seek Guidance of Spirit

Plausible sounding but false arguments are constantly presented to promote unsound principles relating to the American constitutional system. Consequently, Latter-day Saints must seek the guidance of the spirit to help distinguish truth from error. To obtain such help, they must be solidly active in the Church and carefully live the gospel. This would include a regular program of studying the scriptures, praying diligently, and cultivating spiritual receptivity. This will make it possible to have the guidance of the spirit in making correct judgments.

Promote Sound Principles

As Latter-day Saints increase in their understanding of the Constitution, they should seek to promote sound principles among all those with whom they come in contact. Even among those who do not believe the Constitution to be inspired, Latter-day Saints should attempt to exert an influence to help such people to think more in terms of freedom and opportunity rather than in terms of security and government control, which lead only to reduction of free agency and really don't produce the promised blessings anyhow. The rightness of seeking to influence others in the direction of sound political principles was declared by Joseph Smith.

There is one thing more I wish to speak about, and that is political economy. It is our duty to concentrate all our influence to make popular that which is sound and good, and unpopular that which is unsound.^[2]
[p. 194]

Be An Example

Latter-day Saints attempting to promote sound political principles should always retain a clear awareness of the overriding importance of example. In this connection they should be particularly alert to the human nature tendency to give lip service to an ideal, but to violate it when it seems to one's financial advantage to do so. This problem arises out of today's political practice of offering benefits from the public treasury in so many areas that there seems to be something for practically everyone. Those who profess adherence to the principles of the Framers must use great care not to forsake those principles in exchange for government benefits.

In urging Latter-day Saints to support the Constitution in the tradition of the Founding Fathers, President McKay has emphasized the importance of not violating that tradition in exchange for government welfare benefits in these words:

Never be found guilty of exchanging your birthright for a mess of pottage!^[3]

Maintain Uncompromised Position

This matter of violating one's principles for personal advantage is important in another area besides that of example. It is necessary that Latter-day Saints keep themselves in an uncompromised position so that they can stand steadfast in support of what is sound and in opposition to that which is unsound. This they cannot do if they have compromised their position by seeking benefits contrary to the principles they claim to espouse.

Unfortunately, today, government is operated to a large extent by the exchange of favors. While there is a strong motivation to play the game, Latter-day Saints should avoid doing so lest they find themselves in a position of being called upon to support an unsound proposal in exchange for a favor previously received. [p. 195]

Seek Candidates Who Will Uphold Constitution

Actually, the widespread practice of government by exchange of favors and the related problem of government by ambition (that is, lending one's support to programs that will further one's ambitions regardless of whether or not the programs are sound) are really related to the question of the type of people who are elected to public office. This question leads to another Latter-day Saint responsibility which is to obtain and uphold honest, wise, and good men in political office.⁽⁴⁾ More specific information on how to judge the qualifications of candidates for public office is found in the following statement by President McKay.

Above all else, strive to support good and conscientious candidates of either party who are aware of the great dangers inherent in Communism, and who are truly dedicated to the Constitution *in the tradition of our Founding Fathers*. They should also pledge their sincere fealty to our way of liberty—a liberty which aims at the preservation of both personal and property rights. Study the issues, analyze the candidates on these grounds, and then exercise your franchise as free men and women.⁽⁵⁾

As President McKay's comment emphasizes, it is not sufficient merely to choose honest and good men for public office. A patient who dies after being given a wrong prescription is not less dead because the doctor was an honest and good man. It should be noted that in addition to having a good character, a candidate must have sound political understanding and devotion in the following areas specifically mentioned by President McKay:

1. He must be aware of the great dangers inherent in Communism.
2. He must be truly dedicated to the Constitution in the tradition of our Founding Fathers. It is not possible to believe in both the modern popular political philosophy [p. 196] and the tradition of the Founding Fathers because they are contradictory. As is repeatedly pointed out in this work, the modern popular beliefs concerning the Constitution consist of the unsound philosophy of men masquerading behind constitutional sounding words and phrases.
3. He must pledge his sincere fealty to the American way of liberty which aims at the preservation of both personal and property rights. This means he must oppose socialism with its violation of sacred property rights through taking from some to give to others.

Oppose Unsound Principles

As Latter-day Saints use their influence to promote sound principles, they should not forget that part of promoting sound principles is opposing unsound ones. This matter of opposing unsound principles is applicable particularly today in view of the strong momentum in favor of greater government control and reduction of free agency. It is vital that this trend be halted and reversed. In this regard it would be well to recall Washington's warning.

Towards the preservation of your Government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you *resist with care the spirit of innovation upon its principles, however specious the pretexts.*^[6]

What does it mean to "resist with care the spirit of innovation" upon constitutional principles? Essentially it means preserving inviolate the constitutional system established by the Lord. Since many unsound innovations have been adopted, it means striving to eliminate the unsound innovations and to reinstate the original sound constitutional principles.

More specifically, following Washington's counsel means giving solid support to the three forgotten fundamentals [p. 197] of the Constitution. The following are a few of the ways in which this should be done:

In connection with the first forgotten fundamental, Latter-day Saints should stand up and be counted with those who believe that this is a Christian nation and that the government should recognize God and encourage religion and not be neutral concerning a matter so necessary to the perpetuation of freedom. They should point out to others that a religious citizenry is an indispensable prerequisite of a successful free constitutional government. They should use their influence to secure government policies that tend to promote rather than diminish religious attitudes among the people.

As to the second forgotten fundamental, Latter-day Saints should remind others that inviolate property rights and a free enterprise economy are essential to the preservation of freedom. They should emphasize that this is the economic system under which America has forged ahead of all other nations. They should stress concepts of individual responsibility for oneself and one's family members. Where this is not sufficient, they should promote private assistance rather than government welfare. As is carefully pointed out in this work, use of federal government power for welfare programs is inconsistent with the constitutional system established by the inspired Framers.

With respect to the third forgotten fundamental, Latter-day Saints should call to peoples attention that the American system is based on distrust of government officials who should be closely watched and unhesitatingly called to account. They should remind others that the government should be small and the compulsory power of the government should be used sparingly, and only when authorized by the Constitution. They should point out especially that the role of government should be limited to the protection of life, liberty, and property, and not to the accomplishment of social or moral objectives beyond that limited role. They should oppose the philosophy of democracy [p. 198] and should remind others that the American system is not a democracy but a republic with many built in devices designed to limit the power of the majority. They should emphasize that the fundamental orientation of the American republic is not to implement the currently popular philosophy of the majority, but to ascertain and implement the beneficent and eternal laws of God.

Realize That Improvement Comes From People and Not Leaders

Latter-day Saints should bear firmly in mind that any improvement must come from the people. They should realize that it was the attitude of the Framers that government officials could not be relied upon to preserve the free constitutional system. In fact, one of the most serious problems faced by the Framers was how to protect the system against government officials. Ultimately it was the attitude of the Framers that the only way the system could be preserved is by a religious citizenry who are alert, dedicated, and willing to sacrifice to preserve the freedom system for themselves and their posterity.

Constitution So Far Gone That Tremendous Dedication Required To Save It

How urgent is it that Latter-day Saints commence their efforts to save the Constitution? In the Spring of 1966 Clarence Manion, Dean of Notre Dame Law School and a constitutional law professor for many years, spoke in the Tabernacle in Salt Lake City. It was interesting to hear him begin his talk by saying that he had heard that the Mormons had a prophecy that the Constitution would one day hang by a thread, and they would be the means of saving it. Then he very earnestly said that if the Mormons are going to save the Constitution, they had better wake up and get going, because it seemed to him that it was already almost too far gone to save. [p. 199]

In the struggle to save the Constitution, Latter-day Saints should never forget that half-hearted or luke-warm efforts will not be sufficient. What is required is devotion such as that expressed by Daniel Webster in these words:

I am not partly for the Constitution, and partly against it; I am wholly for it. . . .

I disdain . . . the character of an uncommitted man. I am committed, fully committed . . . to the Constitution. . . . And I am committed against everything which, in my judgment, may weaken, endanger, or destroy it . . . and especially against all extension of executive power; and . . . any attempt to rule the free people of this country by the power and the patronage of the government itself. . . .

And now . . . I . . . conjure you . . . go on, right on, straightforward, in maintaining, with your utmost zeal and with all your power, the true principles of the best, the happiest, the most glorious Constitution of a free government, with which it has pleased Providence, in any age, to bless any of the nations of the earth. ⁽⁷⁾

If Latter-day Saints do these things, they will be qualifying themselves and directing their efforts in the direction of the Lord's program. He will then more specifically guide them as He sees fit, and give their efforts such success as is in conformity with His program. [p. 200] [p. 201]

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