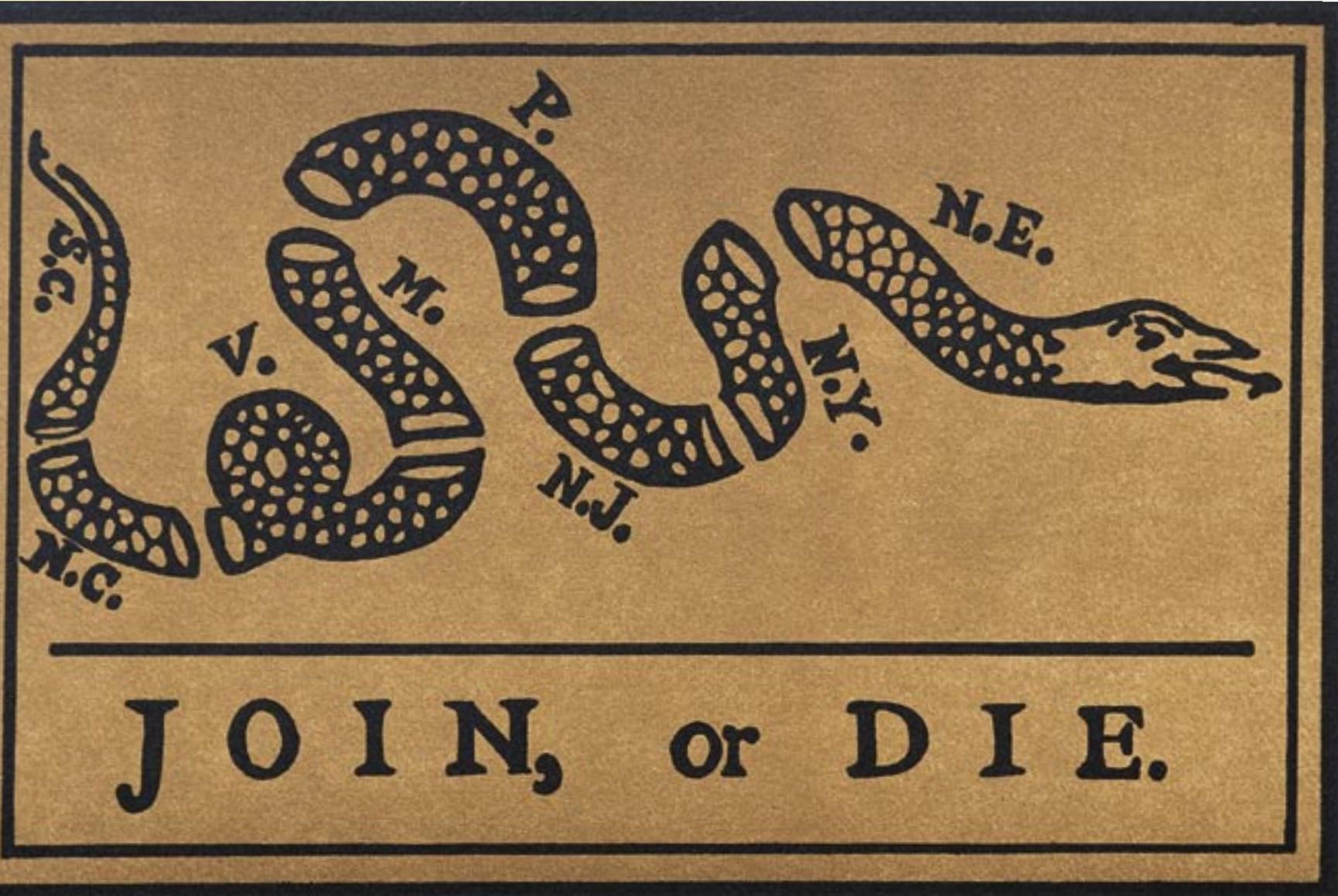


# UNTO THIS



DRAWING  
BY BENJAMIN  
FRANKLIN  
(1754)

BY ELDER NEAL A. MAXWELL

*The following speech was presented at the*

# VERY PURPOSE

  
**P**resident Faust—my mentor of many years—  
President Samuelson, Dean Hansen, ladies and  
gentlemen, brothers and sisters all: While antici-  
pating this occasion, my reflections have turned in  
special gratitude to President Marion G. Romney  
for his personal role in founding the J. Reuben  
Clark Law School. Likewise, appreciation goes  
to Elder Dallin Oaks, President Rex Lee, and all  
who were, and now are, a part of that initial and  
continuing achievement, including Dean Reese  
Hansen and the current faculty. || While I cannot  
speak to you from shared professional experience,



*J. Reuben Clark Law School Founders Day celebration in Salt Lake City, Utah, on September 4, 2003.*

almost all of us share a certain theology. The scriptures contain so many jewels over which we pass too lightly, especially some stunning one-liners. The compressed truth in these terse verses defies our full comprehension. Moreover, such divine declarations come without detailed explanations but are laden with so many implications. || One such cluster, as you well know, has to do with the unique founding of this American nation. Therein, the Lord revealed that He established our Constitution “by the hands of wise men whom [He] raised up *unto this very purpose*” (D&C 101:80; emphasis added). I know of no parallel declaration with regard to the Constitution of any other nation, ours being the first written constitution. Given in 1833 in Ohio, these verses were part of the Kirtland cascade of revelations. Moreover, revealed words, such as “unto this very purpose,” clearly remind us that God’s hand is in the details of such things—sometimes obviously, sometimes subtly (see D&C 59:21).

Granted, we noddingly accept these revealed words, but we seldom stretch our minds to explore their implications. However, if pondered—both as to its substance and the miraculous process of its coming forth—the Constitution is deserving of our prolonged, spiritual applause.

Think of all that the Lord had to oversee, including the shaping events that occurred long before the Constitution was *written, ratified, and implemented*. *First*, it was necessary for God to cause a handful of highly talented and wise individuals to be raised up. *Second*, they needed to live in one geographic area on this planet. *Third*, this contiguity also had to occur in a short time frame. *Fourth*, a citizenry had to be prepared who wanted and would then implement and sustain self-governance. This latter incubation was as important as the later ratification. Thus, the words “raised up” involve multiple and concurrent conditions. Without similar incubation, it is no wonder that establishing modern republics and democracies is not easy. Founders require foundational building blocks. Otherwise, holding elections can be cathartic but not consequential.

The late historian Barbara Tuchman has noted how our Founding Fathers have been called “the most remarkable generation of public men in the history of the United States or perhaps of any other nation” (Barbara W. Tuchman, *The March of Folly* [New York: Alfred A. Knopf, 1984], p. 381). Tuchman observed, “It would be invaluable if we could know what produced this burst of talent from a base of only two and a half million inhabitants” (Tuchman, p. 383).

The Constitution not only needed to be written but also ratified, and there were some dramatic moments and narrow margins of approval. The Massachusetts vote was “one hundred and eighty-seven [in favor] to one hundred and sixty-eight [unfavorable]”; Virginia was “eighty-nine to seventy-nine”; New York, “thirty to twenty-seven” (Catherine Drinker Bowen, *Miracle at Philadelphia* [Boston: Atlantic Monthly Press Book, 1966], pp. 290, 304, 306).

In one instance, extraordinary measures were used:

*Early on Saturday morning [in Philadelphia], September twenty-ninth, a mob . . . seized two assemblymen and carried them, fighting, to the State House, where they were thrust down in their seats, with clothes torn and faces—said one account—*

*“white with rage.” A quorum being thus achieved, it was decided, amidst approval from the gallery, that seated members who had answered to their names were a legitimate part of the House, no matter how they got there. [Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston: Atlantic Monthly Press Book, 1966), Chapter XXIII, p. 274]*

Thus, not only was a special parchment produced, but so were a sufficient number of approving and sustaining people.

One who fought for freedom in the War for Independence was asked why he fought. Was it the Stamp Act? The Tea Party? Or reading Locke? He replied in the negative, saying, “Young man, what we meant in going for those Redcoats was this: we always had governed ourselves and we always meant to. They didn’t mean we should” (David Hackett Fischer, *Paul Revere’s Ride* [New York: Oxford Press, 1994], p. 164).

President Wilford Woodruff boldly declared in general conference, April 1898:

*I am going to bear my testimony to this assembly, if I never do it again in my life, that those men who laid the foundation of this American government and signed the Declaration of Independence were the best spirits the God of heaven could find on the face of the earth. They were choice spirits, not wicked men. General Washington and all the men that labored for the purpose were inspired of the Lord. [Conference Report, April 1898, p. 89]*

This nation was blessed not only with Washington’s wisdom and prestige but also by his superb character. One of his biographers wrote:

*In all history few men who possessed unassailable power have used that power so gently and self-effacingly for what their best instincts told them was the welfare of their neighbors and all mankind. [James Thomas Flexner, *Washington: The Indispensable Man* (New York: Plume, 1984), p. xvi]*

Washington was the rare man who would not be king!

The cumulative contribution came from such varied personalities. As Franklin’s most recent biographer, Walter Isaacson, wrote,

*Benjamin Franklin is the founding father who winks at us. George Washington’s colleagues found it hard to imagine touching the austere general on the*

*shoulder, and we would find it even more so today. Jefferson and Adams are just as intimidating. But Ben Franklin, that ambitious urban entrepreneur, seems made of flesh rather than of marble, addressable by nickname, and he turns to us from history’s stage with eyes that twinkle from behind those new-fangled spectacles. [Walter Isaacson, *Benjamin Franklin: An American Life* (New York: Simon and Schuster, 2003), p. 2]*

God raised up not only these founders but the necessary supporting cast. Involved, therefore, were not only the obvious luminaries—Washington, Adams, Jefferson, Madison, Franklin, etc., and with Abigail Adams as an added measure of influence—but also, for example, John Marshall, who his biographer, Jean Edward Smith, calls the “definer of a nation” (Jean Edward Smith, *John Marshall: Definer of a Nation* [New York: Henry Holt & Co., 1996], subtitle).

As you would know better than I, Marshall and colleagues did their defining superbly, requiring successive and often unanimous Marshall Courts spanning many years. Even the replacement appointees were vital contributors. Presidents who differed with John Marshall nevertheless appointed justices who were, like Marshall, nation builders. Such was Jefferson’s appointment of William Johnson, and Jackson’s of John McLean.

Such individuals helped the Constitution to become firmly established in the difficult cases that faced the Supreme Court. Nevertheless, times of deep discouragement were experienced. Marshall’s biographer, Smith, wrote :

*As the states rights rhetoric escalated that autumn, Marshall’s spirits sagged. In late September he wrote to Story in an even more despondent mood. “I yield slowly and reluctantly to the conviction that the Constitution cannot last. The Union has been prolonged thus far by miracles. I fear they cannot continue.”*

*But a miracle of sorts was in the offing. Jackson was swept back into office in November and immediately moved to suppress the impending states rights revolt. . . . Jackson said the Supreme Court was the ultimate arbiter of the constitutionality of the nation’s laws and that if the Court held a statute to be constitutional, it must be obeyed. [Jean Edward Smith, *John Marshall: Definer of a Nation* (New York: Henry Holt and Company, LLC, 1996), p. 519]*

Such history should be borne in mind when, from time to time, we may wince—or more—over particular decisions by the ultimate arbiter.

Human history makes abundantly and sadly clear that not all mortals use power wisely. Unsurprisingly, therefore, certain of the Constitution’s central features—such as the vital separation of powers and the precious First Amendment, as conceived and intended—were and are needed to foster moral agency (see D&C 121:39). This later condition is central to God’s plan of salvation for all mortals. Back in the founding days, however, these and other key concepts needed “cleats” that would take hold early in the history of the American nation. Otherwise, things could have come apart soon after the birth of a nation.

Dean Rex Lee observed of such central features:

*In some ways the free-exercise-of-religion guarantee bears closer marks of kinship to the free-expression provisions of the First Amendment than to its sister religion clause. Like the speech, press, and assembly guarantees, the free-exercise-of-religion clause deals directly with the protection of individual liberties, whereas the establishment clause is a structural provision, regulating institutional relationships between church and state.*

*Moreover, speech and assembly are central to most religious activity. [Rex E. Lee, *A Lawyer Looks at the Constitution* (Provo: Brigham Young University Press, 1981), p. 135]*

One cannot resist reflecting on the foliage of the First Amendment. I read somewhere of the contrast between a banyan tree and a Lombardy poplar that is a relevant metaphor. The latter, though a thing of beauty and symmetry, does not really offer much shade from the heat of the day or shelter from the storm, whereas a banyan tree is thick with foliage and has sturdy, wide branches. How ironical, therefore, for some to neglect to nourish certain branches of that First Amendment tree and then seek its shelter later on. Likewise, a persistent preoccupation with freedom of speech to the neglect of other freedoms can diminish the shelter available for religion and eventually for other precious freedoms. The intense twinings of all our freedoms is greater than we realize.

THE LAWS AND CONSTITUTION OF

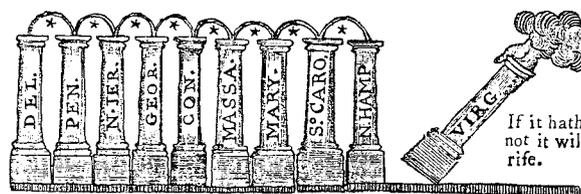
THE PEOPLE, WHICH I HAVE SUFFERED

TO BE ESTABLISHED . . . SHOULD BE

MAINTAINED FOR THE RIGHTS AND

PROTECTION OF ALL FLESH.

NINTH AND THE SUFFICIENT PILLAR



"The ratification of the Convention of nine States, shall be sufficient for the establishment of this CONSTITUTION."  
(Article VII)

Having pondered the miracle of the Constitution's emergence and just how God manages to be in so many details, while at the same time honoring our individual agency, I confess not to fully comprehend it all (D&C 59:21). Only God can strike the divine balance. Such was, nevertheless, the case with the inspired American Constitution. Clearly, God cares too deeply about our moral agency to force things—even things He desires. Clearly, too, God cares about how power is handled and not only in His kingdom. It is likewise clear that He also desires to protect all mortals by means of certain rights and principles:

*According to the laws and constitution of the people, which I have suffered to be established, and should be maintained for the rights and protection of all flesh, according to just and holy principles. [D&C 101:77]*

Elder James E. Talmage believed that our Constitution "is the pattern after which the organic laws of other nations shall be framed" (Conference Report, October 1919, p. 98). President George Albert Smith said in the dedicatory prayer of the Idaho Falls Temple that the Constitution was to be emulated by other governments in fulfillment of Isaiah's words about how "out of Zion shall go forth the law" (Isa. 2:3; see *Improvement Era* 48 [October 1945], p. 564). Years later, President

Harold B. Lee recalled and endorsed President Smith's words (see "The Way to Eternal Life," *Ensign* [November 1971], p. 15).

The ongoing tug-of-war over power and over the preeminence of contending values continues, but does so within the context of a modern condition too little noted. Zbigniew Brzezinski described how "the political structure of the state guarantees the relativism of all values through constitutional protections." Brzezinski also noted how "the traditional socializing institutions—the family, the school, and the church—[when] fully intact . . . provided a moral grounding, a counterbalance to the indulgent propaganda of the mass media" (Zbigniew Brzezinski, "Weak Ramparts of the Permissive West," *At Century's End* [ed. Nathan P. Gardels, ALTI Publishing, 1995], p. 56).

But will the counterbalances check relativism, as was once the case? The heightened emphasis in our time on individuality, often at the expense of community, needs no elaboration with this audience. In my opinion, the big challenge for Christians is maintaining a moral grounding amid surging secularism, and, sometimes, amid arrogant irreligion. Operationally, except for thoughtful and genuine pluralists, irreligion may become, *de facto*, the established state religion with its own rituals, orthodoxy, and various tests for prospective office holders.

Yet, even given such relativism and secularism, many will still deeply honor what was handed down from Sinai centuries ago while, of necessity, being mindful of what is handed down from the marble steps of state or national capitols.

Significantly, regarding the fundamental doctrine of moral agency (D&C 101:78), the Lord conjoins individual accountability and constitutional freedoms:

*And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me. [D&C 98:5; emphasis added]*

Why is all this so vital?

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

Whatever the persistence of secular permissiveness, the eventual and sobering reality of individual accountability lies ahead.

A quarter of a century ago, I ventured to write:

*Hopefully, governments will use the test of "by their fruits ye shall know them," and hopefully those*



This State, as with due RESPECT Inscribed to the CONGRESS of the United States, in

*The Engraving by C. Smith, 1796*



officials who cannot thereby distinguish between a peach tree and a pyracantha will put away their pruning shears! First Amendment freedoms, tested before, will surely be tested again. Irreligion, protected by these same freedoms, will surely seek to snuff out real religion. [Neal A. Maxwell, *All These Things Shall Give Thee Experience* (Salt Lake City: Deseret Book Co., 1979), 116]

Almost tucked away in the same 1833 revelation are these words: “Therefore, it is not right that any man should be in bondage one to another” (D&C 101:79). Do we appreciate these revealed and discomfiting words, especially in view of their obvious relevance to so many human situations involving bondage of one form or another?

Given the obvious time span being covered by these remarks, as is by now apparent, I speak not of particular cases. Rather, I am spurred on by the sweep of history with the ebb and flow of Constitutional concerns mirrored therein. Surely the bestowal of such divine attention on a few mere colonies located on one planet is especially reassuring, given God’s governance among “worlds without number,” thus only adding to our wonderment (see Moses 1:33, 35).

A few words about you and the law. As alumni, what you *are* is more important than what you *know* about the law. The long-term influence of your character is more significant than legal expertise, though how commendable when both are combined! Hence, adequate emphasis on character at the J. Reuben Clark Law School is as vital as the curriculum.

Therefore, as you help to manage conflict, you should always practice advocacy without acrimony and without animosity. Be eloquent, not only before the bench but also in your life’s example. You need your own checks and balances, including at times the constraining influence of the Spirit.

The Lord expresses general confidence in the voice of the people; but a slack citizenry and cunning devices can, over time, corrupt even a constitutional system (Alma 10:13, 15, 19, 27). Lawyers can first shape and then exploit the voice of the people, which, if done amiss, can bring the judgments of God (see Mosiah 29:27 and Alma 10:19, 26.) Sixty-two years *after* King Benjamin’s warning, we read:

*For as their laws and their governments were established by the voice of the people, and they who chose evil were more numerous than they who chose good, therefore they were ripening for destruction, for the laws had become corrupted* [Helaman 5:2 (30 B.C.)]

The precepts of men can give ascendancy to that which is more fashionable than it is constitutional (D&C 45:29).

The living Constitution remains a most remarkable document. Nevertheless, the various interpretations of the Constitution are finally more reflective of the moral status of America’s citizenry, its lawyers, and its judges than we may care to acknowledge. A people, for instance, can actually lose the capacity for genuine self-governance by losing one of its precious prerequisites: “Obedience to the Unenforceable.” Lord Moulton, the originator of that perceptive phrase, focused on an individual’s obedience to that “which he cannot be forced to obey,” which, significantly, Moulton, nearly 80 years ago, linked to free choice (The Right Honorable Lord Moulton, “Law and Manners,” *The Atlantic Monthly* 134:1 [July 1924], p. 1).

Secular churning can lead to a heedless democratization of values and truths, which, after all, are not equal—hence, the hunger for a more proportional and a genuine hierarchy among competing values. For instance, would we approve all else that characterized ancient Sodom and Gomorrah if only assured that they balanced their budgets? It may be true, for instance, that the people of Sodom and Gomorrah had absolute free speech, but did they have anything worth saying? Those surfeited in sensualism may produce sounds all right, but scarcely the enlivening and enriching speech that John Stuart Mill and our Founding Fathers had in mind.

Virtue must reside in the people as well as in leaders. John Adams cautioned, “Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other” (John R. Howe, Jr., *The Changing Political Thought of John Adams* [Princeton: Princeton University Press, 1966], p. 195).

No wonder Michael Novak was moved to write his timely book *On Two Wings*, lest we forget how America’s becoming “airborne” reflected a spiritual wing, too, noting that

SELF-GOVERNMENT

PRESUPPOSES THE

EXISTENCE OF VIRTUE

AMONG ITS CITIZENS

IN A HIGHER DEGREE

THAN ANY OTHER FORM

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this “one wing of the American eagle . . . has been quietly forgotten” (Michael Novak, *On Two Wings* [San Francisco: Encounter Books, 2002], preface, p. 1).

Elder Dallin H. Oaks has written perceptively:

*The citizens who founded this nation understood the relationship between self-government and citizen responsibilities. Their writings are replete with references to public or civic virtue—meaning the willingness of individual citizens to sacrifice their private interests for the well-being of the nation. . . . For example, in The Federalist Papers, James Madison makes pointed reference to the fact that self-government presupposes the existence of virtue among its citizens in a higher degree than any other form of government. [Dallin H. Oaks, Mercer Law Review (Macon: Walter F. George School of Law, 1985) vol. 36, p. 434]*

Therefore, while we cannot fully fathom all that was done in order to raise up wise individuals, I nevertheless praise God for the miracle that came forth, disjointed and discouraging as some events must have been back then.

As you know, the Prophet Joseph Smith praised the Constitution as:

*A glorious standard; it is founded in the wisdom of God. It is a heavenly banner; it is to all those who are privileged with the sweets of its liberty, like the cooling shades and refreshing waters of a great rock in a thirsty and weary land. It is like a great tree under whose branches men from every clime can be shielded from the burnings rays of the sun. [History of the Church, Vol. III, p. 304]*

Note his metaphor of “a great tree” and also the constituency of “men from every clime” (see D&C 98:5; 101:77).

Joseph noted, however, that the Constitution had

*but this one fault. Under its provision, a man or a people who are able to protect themselves can get along well enough; but those who have the misfortune to be weak or unpopular are left to the merciless rage of popular fury. [Teachings of the Prophet Joseph Smith, p. 326]*

After the Civil War, of course, came the 14th Amendment, prescribing equal protection for citizens.

Having attempted, at least briefly, to demonstrate a particularized divine detail with one powerful example—the American Constitution—God willing, I hope to speak sometime soon of even more strategic revelations and stunners so fundamental to the grand mosaic of God’s master plan. Ironically, young Joseph Smith went into the grove merely wanting to know which Church to join, where there began to unfold a supernal serendipity of stunners.

These revelations, as with the one discussed tonight, likewise belong to all mankind (see D&C 98:5).

Paul’s words of commendation about Abraham are an applicable caution to us. Given the stretching and reassuring promises made about his posterity, yet Abraham staggered not in disbelief (see Romans 4:20). There is a risk that we might stagger in the face of such stunning truths.

If Joseph Smith had taught only one of the Restoration’s major revelations, it would be, standing alone, sufficient to insure his prophetic greatness, to say nothing of the cumulative cascade of revelations that came through him. We may smile at Joseph’s occasional imperfect spelling, but instead we ought to be breathless over the gospel restored through him. Besides, Joseph said, “I never told you I was perfect—but there is no error in the revelations which I have taught” (Andrew F. Ehat and Lyndon W. Cook, *Words of Joseph Smith* [Provo: Brigham Young University, 1980], p. 369).

Some of us have grown too content with the largesse of mere gumball machines and are scarcely prepared for the promised deluge, when the windows of heaven are opened and God gives to the faithful “all that [he] hath” (See D&C 84:38). Oh, the poverty of our perceptions!

God bless you all, in the name of Jesus Christ, amen.

#### ART CREDITS

Images from “We the People,” a limited-edition folio featuring authentic reproductions of the founding documents of the United States, published by Edouard Weiss. Presented by David Fischer, ’76, to the J. Reuben Clark Law School in 2001. (See “Gift Commemorates Law School 30th Anniversary,” *Clark Memorandum* [Spring 2001] 37–38.)

