

the People

Article I

the constitutional
thought of
j. reuben clark, jr.

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IN JULY 1935, J. REUBEN CLARK, JR., SPOKE at a luncheon at the California Club on the subject of the Constitution and said in part:

*We are deaf today to the approach of tyranny because we have lived so long under the protection of the Constitution that we take for granted the blessings of liberty. . . . We need more people today with strong convictions in support of the Constitution and with courage to back their convictions. [J. Reuben Clark, Jr., *Stand Fast by Our Constitution* (Salt Lake City: Deseret Book Company, 1973), p. 4 (cited herein as “Clark”)]*

One of the fundamental purposes of the J. Reuben Clark Law Society is to emphasize “loyalty to the rule of law and to the Constitution of the United States.”

“From the time I stood at my mother’s knee, I have been taught to reverence the Constitution as God-given.”

Since the substance and meaning of the Constitution has of late been such an important subject in our national discourse and in the minds of many Americans, it seems appropriate for us to focus our attention upon the constitutional thought of that great statesman for whom our society is named: J. Reuben Clark, Jr.

J. Reuben Clark, Jr., was the first native Utahn to receive national and international acclaim for his legal and diplomatic skills. Dallin H. Oaks described J. Reuben Clark as “a widely acclaimed authority in international and constitutional law, and a distinguished public servant,” and said, “His coherent philosophy of law and government was born of brilliance and nurtured by superior education, experience, love of country, and devotion to God” (address to J. Reuben Clark Law School, 1973).

Joshua Reuben Clark, Jr., was born on September 1, 1871, in Grantsville, Utah, to Joshua Reuben Clark and Mary Louisa Woolley Clark. He graduated as valedictorian in the first class at the University of Utah in 1898 and married Luacine Annetta Savage in September of that year. They became the parents of three daughters and one son. In 1903 Clark moved his family to New York City to attend the law school at Columbia

University, where he graduated with an LLB degree in 1906. He excelled in law school and was elected to the editorial board of the *Columbia Law Review*. During his public career from 1906 to 1933, Clark served as assistant solicitor, solicitor, and undersecretary of the U.S. State Department, taught as an assistant professor of law at George Washington University, and crowned his public career by serving as U.S. ambassador to Mexico. It was during his service as undersecretary of the State Department that he published his influential “Clark Memorandum on the Monroe Doctrine” (after which our society’s publication is named). From 1933 on he served for 28 years as a member of the First Presidency of The Church of Jesus Christ of Latter-day Saints until his passing on October 6, 1961.

I have divided the constitutional thought of J. Reuben Clark into two categories: (1) his thoughts on the fundamental principles upon which the Constitution is based and (2) his thoughts on the importance of individual vigilance in understanding and upholding the Constitution in our day. As a further preface to these remarks, please note that this is a brief summary of his thoughts on the subject only and is not intended to be comprehensive in nature. Next, I believe it is important to understand the context in which he viewed this great document. J. Reuben Clark declared, “[T]he Constitution of the United States is a great and treasured part of my religion” (Clark, p. 7). It was his firm belief that the Constitution was indeed inspired by the hand of Providence. He told a group of bankers in 1938: “From the time I stood at my mother’s knee, I have been taught to reverence the Constitution as God-given” (Martin B. Hickman, “J. Reuben Clark, Jr.: The Great Fundamentals,” *BYU Studies* 13, no. 3 [1973], p. 257 [cited herein as “Hickman”]). He was also a devoted and lifelong student of history and of the roots of the American founding. With particularity he studied the Roman legal system and its progeny. From this background he viewed the Constitution “as emerging from a long his-

torical process. . . . [and saw] the framers of the Constitution as being men of great historical knowledge as well as practical experience.” He said:

The Framers of our Constitution . . . were trained and experienced in the Common Law. They remembered the barons and King John at Runnymede. They were thoroughly indoctrinated in the principle that true sovereignty rested in the people. . . . Deeply read in history, steeped in the lore of the past in human government, and experienced in the approaches of despotism which they had, themselves, suffered at the hands of George the Third, these patriots, assembled in solemn convention, planned for the establishment of a government that would ensure to them the blessings they described in the Preamble. [Clark, p. 145, 147]

Yes, he revered the Framers and, describing them, said, “As giants to pygmies are they when placed alongside our political emigrés and fellow travelers of today, who now traduce them with slighting work and contemptuous phrase” (Clark, pp. 135–36).

Fundamental Principles of the Constitution

J. Reuben Clark firmly believed that the cornerstone of limited government under the Constitution lies in its provision for the separation of powers. He believed, with Locke and Montesquieu, that “a combination of legislative, executive and judicial power in one person or body was destructive of all freedom and justice” and that this fact was key in the founders’ minds in providing in the Constitution for a “government in which these three branches were distinct and wholly independent the one from the other” (Hickman, p. 263). Clark stated:

It is this union of independence and dependence of these branches—legislative, executive and judicial—and of the governmental functions possessed by each of them, that constitutes the marvelous genius of this unrivaled document. The Framers had no direct guide in this work, no historical governmental precedent upon which to rely. As I see it,



The Clark family gathers for a photograph on July 24, 1892. Standing (from left) are Esther, Elmer, Reuben (J. Reuben Clark, Jr.), Edwin, and Frank. Seated (from left) are Mary Louisa Woolley Clark, John (on lap), Samuel, Alice, Joshua Reuben Clark, Sr., and Lucille.



Lucine Annetta Savage Clark wears her wedding gown as she poses in the studio of her father, C. R. Savage, Utah's foremost early photographer.

it was here that the divine inspiration came. It was truly a miracle. [Hickman, p. 265]

His understanding of this basic framework of the Constitution led him to make special efforts “to call attention to the dangers involved in permitting either of the three branches of government to usurp powers that did not rightfully belong to them” (Id.). These efforts included his opposition to congressional subservience to presidential demands and to presidential usurpation of congressional prerogatives. With respect to the first issue, “congressional subservience to presidential demands,” he set forth what he believed to be usurpation by presidents of the legislative power. He stated:

We the people provided in our Constitution that the President should report the State of the Union to Congress and recommend legis-

lation. But there is growing up the custom for the chief executive not only to recommend legislation, but actually to draft it, and submit it to his favorites in Congress to secure its passage. The administration support in Congress takes the bill and makes every effort to pass it. . . . While in [Roman] days men were executed as traitors for not going along with the program, in our days, political vengeance is visited, either by denying patronage, or by social ostracism, or by active opposition at the polls against recalcitrant lawmakers. [Clark, p. 153]

With respect to the latter, “presidential usurpation of congressional prerogatives,” he spoke out on the issue of the president’s right, as commander in chief, to act in times of war—and “he argued that the plain words of the Constitution granted war powers specifically to Congress” (Id.). Although he agreed that the president



Ambassador J. Reuben Clark, Jr., sits at his desk at the U.S. Embassy in Mexico City, September 1, 1931.

could act to repel an invasion, he warned of the growing excesses in presidential power to conduct a war without congressional authority (note that this was in the pre-Vietnam War era). He asserted that:

[T]his authority and these powers are to be measured exclusively by the express statutory enactments of the Congress, passed pursuant to and in virtue of the duty and powers of Congress to provide for the waging of war by the United States as specifically authorized by Constitutional provision. They are not to be considered as growing out of, or in any necessary way, concerned with, related to, or enlarged by his powers as Commander in Chief. [Clark, p. 156]

Finally, on the same premise, President Clark warned of the “growing tendency for our Congress to turn over to administrative commissions the power to make laws. This plan carries the innocent description of making regulations to enforce the laws. But lawyers know that under the guise of issu-

ing regulations, these administrative bodies really legislate, not only in procedural matter, but in substantive matters” (Clark, p. 151).

In describing the concept of federalism inherent in the Constitution, J. Reuben Clark emphasized that there is a dual jurisdiction in our constitutional form of government—state and federal. He felt strongly that a limited federal government is what the Founding Fathers clearly intended in the Constitution and that “local government governs best.” He said:

The Federal Government may only do what we the people have authority to do; if it does more it is guilty of usurpation. The people have reserved to themselves or to their State governments every right and power they have not delegated to the Federal Government, which must always look to the Constitution and its amendments to find its rights, for it has none other. This system puts the great bulk of our daily life activities in the hands of our own neighbors who know us and our surroundings, and not in the

hands of a bureaucrat in a far-away national capitol, who, to all intents and purposes, is an alien to us and our affairs. This plan gives the largest possible measure to local self-government controlling and directing matters pertaining to our personal liberties and to the security of our private property; it will not abide with us if we lose our local self-government. [Clark, pp. 187–88]

Another key feature of the Constitution important to J. Reuben Clark was the Bill of Rights—particularly the First Amendment. He observed that “the greatest struggle that now rocks the whole earth more and more takes on the character of a struggle of the individual versus the state” (Hickman, p. 268). In this regard “he was particularly concerned with the protection of the freedoms guaranteed by the First Amendment: freedom of the press, of speech, and of religion” (Id.). His firm

opinion was that “[t]he fathers felt that when they protected freedom of speech and of the press against government interference, they had effectively guaranteed the citizens freedom to talk and write as they felt and thought about their own government” (Id., p. 269), and that this was essential to a free society.

With respect to freedom of religion, J. Reuben Clark revered the soul of man as “the holy of holies” (Id.).

He was outraged that the state should intrude onto such sacred ground and there seek to dethrone God and exalt the state into God’s place. [He stated:] “This is the archest treason of them all. For man robbed of God becomes a brute.” President Clark was explicit in his belief that for gov-

J. Reuben Clark, Jr., pauses for a group picture in Toluca, Mexico, September 14, 1931, while serving as U.S. ambassador.

ernment to trespass on the religious life of its citizens was a sin of highest magnitude. “This sin must be felt, not told, for words cannot measure the height and breadth of this iniquity.” [Id., pp. 269–70]

His conviction, no doubt, was born of the memory of the trials, persecution, and suffering of the Mormon people. In an April conference of the Church in 1935, he stated that nothing was so important to this people as “this guarantee of religious freedom, because underneath and behind all that lies in our lives, all that we do in our lives, is our religion, our worship, our belief and faith in God” (Id., p. 270).

The Importance of Individual Vigilance in Understanding and Upholding the Constitution

J. Reuben Clark, Jr., continually stressed the need for all American citizens (and particularly Church members) to “constantly review the purposes for which the Constitution was written” (Id., p. 271). He taught that our patriotic allegiance should not run to individuals or government offi-

cials, “no matter how great or small they may be,” but that the only allegiance we owe as citizens runs to our Constitution. He stated that “[t]his principle of allegiance to the Constitution is basic to our freedom” (Clark, p. 189). He decried “those who . . . are incapable of understanding or appreciating the fundamentals of, or to think practically and creatively about, the problems of free self-government.” He expressed the conviction that “those who understand the spirit as well as the word of the Constitution will be able . . . to preserve its great principles and the republican form of government for which it provides” (Clark, p. 158).



In regard to the founding documents with which every citizen should be familiar and conversant, J. Reuben Clark was a diligent student of the history of the founding and particularly of the Federalist Papers. He made the statement (in agreement with Thomas Jefferson) that “[t]hese essays have been appraised as ‘the greatest treatise on government that has ever been written,’ and its writers have been ranked as of the same order with Aristotle, Montesquieu, and Locke” (Id., p. 135). He quoted Fiske stating that “for all posterity the ‘Federalist’ must remain the most authoritative commentary upon the Constitution that can be found” (Id., p. 167). He also loved George Washington’s poignant farewell address, describing it as a “prophetic admonition and warning.” He frequently quoted excerpts from the address when writing or speaking on the meaning of the Constitution and earnestly recommended to his listeners “to read it in its entirety.”

J. Reuben Clark acknowledged the great price paid by so many to both deliver and redeem this nation and to uphold our precious liberty in subsequent wars. He minced no words in his call to each citizen to remember those sacrifices in order to appreciate and uphold our constitutional freedoms when he stated:

I say to you that the price of liberty is and always has been, blood, human blood, and if our liberties are lost, we shall never regain them except at the price of blood. [Clark, p. 137]

Finally, in connection with constitutional learning and vigilance, he vigorously urged each citizen to be watchful and to discern gradual encroachments to our liberties under the Constitution. James Madison stated: “I believe that there are more instances of the abridgment of the freedom of the people by gradual and silent encroachment of those in power than by violent and sudden usurpations.” In this regard J. Reuben Clark said:

[I]n the whole history of the human race, from Adam until now, Tyranny has never come to live with any people with a placard on his breast bearing his name. He always comes in deep disguise, sometimes proclaiming an endowment of freedom [or rights], sometimes promising to help the unfortunate and downtrodden, not by creating something for those who do not have, but by robbing those who have. But Tyranny is always a wolf in sheep’s clothing, and he always ends by devouring the whole flock, saving none. [Clark, p. 5]

I don’t think that his message to us would be any different if he were here today.

In conclusion, I hope that each of us may learn from the words and example of our society’s namesake and that we, as members of the J. Reuben Clark Law Society, may be found to be both loyal to the Constitution and courageously standing up in defense of the divine principles upon which it is based.

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