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## What Is the Proper Role of the Latter-day Saint with Respect to the Constitution?

### Authors

John T. Bernhard, Mark W. Cannon, Richard L. Bushman, Quinn G. McKay, Richard Bitner Wirthlin, and Garth L. Mangum

# What Is the Proper Role of the Latter-day Saint with Respect to the Constitution?

Since Hiroshima, Americans have found themselves enmeshed in a bewildering, confusing, seething world. A new age has come upon us—for all men as well as for Americans—and we have not fully evaluated its impact on our society.

The very instability and uncertainty of our direction as a civilization has had domestic and foreign implications. In the troubled arena of international relations we have undergone “agonizing reappraisals” of our position vis-a-vis the Soviet Union and the overall ideological threat of communism. This state of affairs virtually commits us to long-term residence by the hostile and ominous crater of modern power politics. Alas, there seems to be no other valid recourse!

In America, frustration and exasperation have forced some to oversimplify problems and to clamor stridently for oversimplified solutions. In addition the nerve-shattering pressures of our age have made many of us unduly suspicious of each other—arguing somewhat idiotically about various “Red” and “Dead” formulae. Obviously, threats do exist, but they should not so rattle us that we become hysterical. Objective and intelligent analysis is absolutely essential if we are to obtain a clear panorama of the world’s nuclear revolution in all its phases.

In the midst of this intellectual and emotional turmoil Americans have come to wonder about the viability of their basic structure and philosophy of government, principally predicated upon the Constitution. What is the *proper* role of the federal government in matters political, social, and economic? How does the Constitution *help* or *hinder* us in the resolution of our varied modern problems? As Latter-day Saints we have an even sharper interest in these questions. Certain doctrinal considerations must be scrutinized by the faithful members of the Church. What is the *proper* role of the Latter-day Saint with respect to the Constitution?

In an effort to bring more light than heat to these perplexing queries, the Order of Artus (an honorary economics society)

sponsored a panel discussion on the B.Y.U. campus, February 26, 1962. The participants, whose contributions follow this preface, were Dr. Mark Cannon, Dr. Richard Bushman, Dr. Quinn McKay, Dr. Garth Mangum, and Professor Richard Wirthlin. Each scholar arrived at his conclusions independently, but all strove to give a fair and balanced presentation of diverse views. From this perspective the panel discussion was a distinct success. In another sense, the panel failed because it did not achieve any unanimity of opinion. It is highly doubtful if any member of the panel would subscribe to all the conclusions drawn by his colleagues. But I suggest this is all to the good. The main purpose of the discussion was to present an intelligent array of views on a set of perplexing questions. In this respect I think the panel made a genuinely important contribution, and I was happy to be associated with it as moderator.

John T. Bernhard

### *The Constitution and Preservation of Liberty*

MARK W. CANNON

The outstanding purpose of the Constitution according to the Doctrine and Covenants is to guarantee each man the freedom to "act in doctrine and principle" according to his "moral agency."<sup>1</sup> The revelation further identifies the founding fathers as "wise men" who were "raised up" for the purpose of writing the Constitution.<sup>2</sup> There is no denial of the now commonly recognized fact that the writers of the Constitution included many property owners who stood to gain more than the indebted classes from the stability and protections of the Constitution. But this revelation, as well as other substantial evidence, makes it clear that the founding fathers were characterized by far more than a desire for economic benefit—that they had wisdom as pertaining to the preservation of freedom.

What, then, was basic to the thought of the advocates of the Constitution? They recognized the weakness of the Articles of Confederation. They wanted a national government, but a

<sup>1</sup>*Doctrine and Covenants* 101:78.

<sup>2</sup>*Ibid.*, 101:80.

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limited government because they were suspicious of the potential abuse of governmental power. This fear was illustrated by the statements of two early Presidents. Thomas Jefferson, although not in the United States during the Constitutional Convention, represented a widespread concern with such statements as the following:

Confidence is everywhere the parent of despotism . . . . It is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obligated to trust with power . . . . In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.<sup>3</sup>

George Washington similarly warned:

But let there be no change by usurpation; for although this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.<sup>4</sup>

The fact that the power lay in the people rather than a single monarch did not particularly alleviate the founding fathers' suspicions. They were fearful that tyranny of the majority and anarchic upheaval and chaos might result from democracy. Shay's Rebellion in Massachusetts, for example, was fresh in mind. Consequently they wished to put restraints and limits upon popular government. One of the means of accomplishing this objective was to detach governmental decision-making from the passing passions of the populace. This was realized to a small degree by the principle of representation in the House and further by the indirect election of Senators by legislatures and of Presidents by the electoral college, life appointments for judges, and requiring that proposed amendments to the Constitution overcome a hazardous obstacle course—approval of two-thirds of both house of Congress (or of a national convention called on petition of two-thirds of the state legislatures) and majorities of three-fourths of the state legislatures (or conventions).

It is clear that the Constitution was designed not only to prescribe procedures but more importantly to proscribe power. What are the principal Constitutional doctrines to restrain

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<sup>3</sup>William R. Barnes, *The Constitution of the United States and the Declaration of Independence* (New York: Barnes and Noble, Inc., 1961), p. 40.

<sup>4</sup>*Ibid.*

power? The four major doctrines are (1) the doctrine of federalism; (2) the doctrine of the separation of powers; (3) the concept of a government of laws and not of men; (4) the substantive doctrine of due process of law and attendant conceptions of liberty.<sup>5</sup>

What has been, in brief, the history of these restraints designed to protect liberty and property?

*The Doctrine of Federalism.* The jurisprudence of Chief Justice Marshall is noted for its nationalism. The exaltation of the supremacy clause was illustrated in *McCulloch v. Maryland*, where the Supreme Court sanctioned the implied right of the national government to establish a bank and prohibited a state from taxing the notes of the bank. It is noteworthy that this decision, in 1819, followed previous decisions intended to strengthen the restraints against abuse of national power such as judicial review (the Supreme Court's power to uphold or invalidate a federal law as unconstitutional) through *Marbury v. Madison* in 1803, and the clear establishment of the right of private property through such cases as *Fletcher v. Peck* in 1810.

Marshall's successor, Taney, elaborated the theory of dual federalism in which the judicial power was viewed as protecting the states from national encroachment as well as upholding the supremacy of valid national laws. The victory of the programs of Franklin D. Roosevelt in the modern court represent a return to Marshall's national federalism, but with very little of the protection of private property which Marshall had established and with a highly restrained attitude toward judicial review. Thus, as Corwin has summed it up, "Dual Federalism as regards the present court, seems today to be at an end, with consequent aggrandizement of national power."<sup>6</sup>

*The Separation of Powers.* The concept of three principal functions of government somewhat approximating the modern legislative, executive, and judicial, was set forth by Aristotle and was joined by Montesquieu to a notion of a mixed constitution of checks and balances. The tendency of men to abuse power would be minimized if government power were not

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<sup>5</sup>Edward S. Corwin, ed., *The Constitution of the United States of America: Analysis and Interpretation*, Senate Document 170, 82d Congress, Second Session (Washington Government Printing Office, 1953), p. xi.

<sup>6</sup>*Ibid.*, p. xiii.

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concentrated but were divided among three branches of government which could check each other.

Other theorists and institutional experience also contributed to our adoption of the separation of powers with the Lockian corollary that legislative power may not be delegated. However, these doctrines have been impaired by government practice. First, the President has come to exercise a strong, if not dominating, influence in the passage of legislation. The veto, for example, which was used sparingly in the early years of the republic and then largely to stop acts which the President believed to be unconstitutional, has become an instrument of presidential power in winning legislative struggles with Congress.

The growth of the national bureaucracy has given the President ready access to extensive professional assistance. This tends to give strong factual support, quality, and prestige to the President's legislative program, which assists him in winning its enactment. The passage of the Budget and Accounting Act of 1921 contributed to the growth of presidential legislative leadership not only by giving him staff agencies but by establishing the annual presidential budget. The departments previously sent their own budgets to Congress which reshaped them into a single budget. Thus presidential influence over appropriations legislation has been enhanced.

The problems of wars and depressions have produced a popular demand for unified positive national leadership which has contributed substantially to the growth of legislative leadership by the President. Ernest S. Griffith noted that of twenty major laws in the middle thirties "eighteen had been incubated in the executive branch and for all practical purposes were passed in the form in which they were incubated."<sup>7</sup>

Not only has the President gained power in initiating legislation but also at the other end of the process through congressional delegation of legislative power. The Congress has also delegated legislative power to the "independent" agencies and commissions which merge the powers of the three branches in varying degrees. The modern economic intervention and regulation by the government is the principal cause of delegated legis-

<sup>7</sup>Ernest S. Griffith, "Problems of Legislative-Executive Relationships," in O. B. Conway, (ed.), *Legislative-Executive Relationships* (Washington: U. S. Department of Agriculture, 1953), p. 10.

lation. It would be virtually impossible for the Congress to impose upon the shifting economic scene the relatively permanent molds of statutory legislation without administrative discretion.

It should not be assumed that all factors work toward increasing presidential power. The Legislative Reorganization Act of 1946, for example, was designed to make the Congress less dependent upon the executive branch by increasing the professional staff of Congress. Of greater significance, the growth of the Civil Service merit system together with an expanding economy have greatly restricted one of the principal traditional instruments of power which Presidents can use to win congressional support-patronage. Also the arrangement of bipartisan coalitions such as the Republican-Southern Democrat Conservative coalition give assurance that Congress is far from a rubber stamp.

The President can normally win the legislative battles which he considers crucial and which he supports with an all-out effort. But he cannot win every battle, so he must select with discrimination the issues behind which he puts full support. The shift toward presidential leadership and away from the separation of powers is perhaps suggested by a comment of Fred Seaton that even though President Dwight D. Eisenhower faced a Congress controlled by the opposition party during six of the eight years of his administration the President still got everything that he really needed and wanted out of Congress.<sup>8</sup>

*A Government of Laws and Not of Men.* The growth of executive dominance has not only impaired the doctrine of separation of powers but also the doctrine of a government of laws not of men.

The draftsmen of the first state constitutions stripped governors of the royal prerogatives of their predecessors, subjected them to annual elections and legislative control. The concept of the governor being restricted to the laws of the commonwealth was made explicit in the Virginia constitution. Before designating the powers of the President, Article II of the United States Constitution reads: "The executive power shall be vested in a President of the United States of America." This clause

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<sup>8</sup>Statement on panel discussion at Western Political Science Association Convention, March 30, 1961, Boulder, Colorado.



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was designed primarily to identify the executive as single and to give the President a title. There is no evidence from the proceedings of the convention that this clause was intended to add power to the President beyond those enumerated. Alexander Hamilton became one of the early protagonists of the view that the "executive power" clause contained an additional grant of authority.

The history of the presidency has been cyclical, varying in different degrees between the strict constructionist point of view, represented for example by William Howard Taft, that the President can only act where he is specifically authorized to do so by law or the Constitution, and the view that the President can act in any area where he is not specifically prohibited by law or the Constitution. The latter stewardship theory was promoted by Theodore Roosevelt and refined by Woodrow Wilson, who felt that the President should be as big a man as he can. Although there have been historical oscillations, "Taken by and large, the history of the presidency has been a history of aggrandizement."<sup>9</sup>

The animating theme of the "new presidency" is that the people are embodied in the executive, and he should, within wide limits, be autonomous and self-directing. The principal causes of this concept of the presidency are social acceptance of the idea that government should be active and reformist rather than simply protective, the vastly enlarged role of the U.S. in the international field, and the fact that the original objective of the functioning of the electoral college has long since been eliminated and the President and Vice-President are the only officials elected by the people as a whole. It should be recognized, however, that the new presidency undermines the ideal of a government of laws rather than men.

*Substantive Due Process of Law.* The protection against the deprivation of life, liberty, or property without due process of law in the Fifth Amendment was designed to guarantee the common law system of grand juries and petit juries in criminal cases. By the start of the twentieth century the due process clause (applied also to the states through the Fourteenth Amendment) had come to be interpreted as prohibiting govern-

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<sup>9</sup>Edward S. Corwin, *The President: Office and Powers, 1787-1957* (New York: New York University Press, 1957), p. 307.

mental deprivation of property or any restraint on the liberty to contract in numerous situations. Since that time, the Supreme Court has moved, particularly since 1937, to tipping the scales in favor of the rights of government as against the rights of property and contract.

In summary, a review of four principal doctrines of the Constitution designed to support freedom, shows that all have deteriorated under changing historic circumstances. As Corwin concludes: "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."<sup>10</sup>

If, then, we recognize that constitutional doctrines once thought to be important to the maintenance of freedom have been eroded and weakened over the decades, we are left with the challenge of thinking through the question of what steps should be taken to help preserve and magnify freedom in the future.

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<sup>10</sup>Corwin, *The Constitution*, p. xxvii.

### *Inspired Constitution*

RICHARD L. BUSHMAN

Latter-day Saints cherish the Constitution of the United States. Though all Americans revere this important document, we believe it was inspired of God. The Lord has said He "established the Constitution of this land, by the hands of wise men . . . raised up unto this very purpose."<sup>1</sup> Consequently, we believe that constitutional principles are the surest guide in times of political confusion, and that following them is the best way to preserve our liberty.

Unfortunately, remaining true to the Constitution is not so simple as it sounds. From the first years when government was established under its provision, political leaders have differed on interpretation. Loyal and intelligent men have not seen eye to eye on how the principles embodied in the Constitution are

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<sup>1</sup>*Doctrine and Covenants* 101:80. Hereafter abbreviated D.&C.

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to be applied in concrete situations. These differences raise a perplexing question: which interpretation of the Constitution embodies the principles God inspired? Unless we know what is of true and lasting value in the Constitution, it is of little worth as a guide for our actions in day-to-day political affairs.

I do not expect to answer this question fully, but we are, I believe, nearer to an answer if we understand clearly what it means to say the Constitution is inspired. In the Church we know that inspiration takes different forms. The revelation a father receives to guide his household is of a different order from that given the Prophet Joseph when he wrote the seventy-sixth section of the Doctrine and Covenants. The first is intended for one family and usually is not applicable to others; the second is universally true and of lasting value to all. Where does the Constitution stand in the spectrum of revelations and inspiration? An examination of the alternative answers to this question will help us solve the larger problem.

1. *The Constitution was inspired as a guide, solely for one time and place.* Under this interpretation we should feel free to alter it whenever conditions change, or, if it seems appropriate, to abandon the document altogether. We might liken the inspiration of the Constitution under this interpretation to the command Noah received to build an ark. Noah was expected to obey the commandment, but it was not binding on any who followed him.

I do not believe that Latter-day Saints can hold this view of the Constitution in light of what the Lord has told us about it. He has said that it "should be maintained for the rights and protection of all flesh, according to just and holy principles."<sup>2</sup> It was not intended for one people alone, but as He said, for "all flesh." The words, "just and holy principles" imply eternal not temporary truth. It is clear in the scriptures that the Constitution transcends a relativist interpretation.

2. *The Constitution is inspired word for word.* Under this interpretation we should feel obliged to hold strictly to the literal meaning of every provision. We would not dare to change or amend it. Government would be authorized to perform only those actions specifically mentioned. This interpreta-

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<sup>2</sup>D. & C. 101:77.

tion of the Constitution's inspiration would give it the same value as any section in the Doctrine and Covenants. Indeed, we should think of the Constitution as an extension of our scriptures.

This absolutist view, however, is no more acceptable than the relativist interpretation. To begin with, it is not compatible with the document itself. Provision is made in the Constitution for amending it. The framers expected that there would be changes from time to time while no book of scripture provides for its own revision.

Moreover, our prophets have specifically told us that the Constitution is not perfect in every sense. Here is what Brigham Young said on the subject:

The signers of the Declaration of Independence and the framers of the Constitution were inspired from on high to do that work. But was that which was given to them perfect, not admitting of any addition whatever? No; for if men know anything, they must know that the Almighty has never yet found a man in mortality that was capable, at the first intimation, at the first impulse, to receive anything in the state of entire perfection. They laid the foundation, and it was for after generations to rear the superstructure upon it. It is a progressive—a gradual work.<sup>3</sup>

Sound as it is, the Constitution is simply the foundation on which we build government; it is not a complete and perfectly framed structure.

Though none of the founding fathers would have claimed more for their work than President Young did, they disagreed among themselves on how much leeway the Constitution allowed the government. Immediately after the Constitution was put into effect, they debated issues similar to those we have raised here. Some of the early leaders favored a strict interpretation of the Constitution, and others advocated a loose construction theory. The advocates of strict construction held a view similar to the absolutist interpretation. The government was to engage only in those activities specifically mentioned in the Constitution. The loose constructionists believed that a wider range of programs was open. Anything that was "necessary and

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<sup>3</sup>*Journal of Discourses*, VII, 14.

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proper” to the execution of specified powers was, to their minds, authorized by the Constitution.

The specific bill that touched off the debate was one creating a national bank. The Constitution says nothing about banks. The strict constructionists argued that the national government, therefore, had no right to charter such an institution. The loose constructionists, on the other hand, insisted that a bank was necessary to carry out other powers delegated to Congress. Eventually the loose constructionists won out; Washington and Hamilton, along with most of the members of Congress, supported a national bank. Jefferson and the strict constructionists were defeated.

The episode is helpful in answering the question we have set for ourselves, because later on, the Prophet Joseph, took a stand on the very issue the founding fathers had debated. In his platform, written to support his candidacy for the presidency in 1844, Joseph came out in favor of a national bank.<sup>4</sup> By so doing he placed himself on the side of those who favored the loose construction theory. It is also interesting to note that in his own day, strict constructionists held rigidly to the doctrine of states’ rights. They believed that the national government should not intervene in any affairs that primarily concerned the states. Joseph despised this doctrine, because it was in the name of states’ rights that President Van Buren refused to defend the persecuted Latter-day Saints in Missouri. Joseph thought it was foolish that government should be dedicated to the protection of human rights and yet be denied the power to defend them. He favored a broader interpretation of the federal government’s powers.<sup>5</sup>

3. *The Constitution is inspired in certain of its principles.* After eliminating the alternatives discussed above, we are justified in accepting this interpretation. It is the one most consistent with scriptural statements on the subject. The Lord has said, for example, that the “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.”<sup>6</sup> It is clear in this passage, I think, that what is

<sup>4</sup>G. Homer Durham, *Joseph Smith, Prophet-Statesman* (Salt Lake City: Bookcraft, 1944). p. 162.

<sup>5</sup>*Ibid.*, pp. 129-30, 133-34, 162-63.

<sup>6</sup>D. & C. 98:5.

inspired in the Constitution is the "principle of freedom in maintaining rights and privileges" incorporated in the document. This principle, the Lord tells us, is not for one time and place, but "belongs to all mankind." It is, as he says elsewhere, "for the rights and protection of all flesh," not just for the people of the United States. Constitutional principles are lasting, not temporary; but, on the other hand, the Constitution is to be cherished because it contains principles that protect freedom, and not because every word was given by God.

This reading eliminates some erroneous conceptions about the Constitution and must be grasped before we can proceed further. It points up the exact question we must ask to clarify the proper role of a Latter-day Saint with regard to the Constitution. That question is: What principles in the Constitution are inspired? The answer to this question is a prerequisite for any practical political action. For when we understand true principles, we can recognize where we can safely adjust our views about the Constitution to changing circumstances, and where we must hold firm at all costs.

Doubtless many principles in the Constitution might be pointed to as bulwarks of freedom, and all of these might justifiably be included among the inspired principles. However, there is one that the scriptures and the prophets have repeatedly stressed as being essential to good government. That principle is liberty of conscience. It is significant that the two most important scriptural passages dealing with the Constitution were revealed shortly after the Saints were expelled from Jackson County because of their peculiar religious beliefs. At this time, the Church was particularly sensitive to the privilege of free worship. When the Lord said that the Constitution was justifiable because it protected men in their rights and privileges, the Saints would at once have thought of liberty of conscience. In the declaration of belief regarding government adopted at the general conference of the Church in 1835 this principle was stressed. Section one hundred thirty-four, where the declaration is recorded, states: "We do not believe that human law has right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms for public or private devotion; that the civil magistrates should restrain crime, but never control conscience; should punish guilt but never suppress

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freedom of the soul.”<sup>7</sup> The same idea is repeated throughout the section.

In one of his pronouncements on the Constitution, Joseph expressed a similar belief: “It is one of the first principles of my life, and one that I have cultivated from my childhood, having been taught it by my father, to allow everyone the liberty of conscience. I am the greatest advocate of the Constitution of the United States there is.”<sup>8</sup> Clearly, in Joseph’s mind religious liberty and the Constitution were bound inseparably together.

Later in Utah the leaders of the Church consistently made statements in the same vein. Shortly after their arrival in the valley, they were looking forward to the establishment of a new constitution, that given by God for the millennial kingdom to be set up at His second coming. The present Constitution they thought would soon be replaced, yet they declared that the principle of liberty of conscience integral to the Constitution of the United States would be incorporated in the millennial constitution too. That much, at least, was of lasting value.

On this point, the Latter-day Saint position is clear. We are wholly devoted to the protection of men in their right to think and speak freely. But this is merely the beginning. For it is freedom in the fullest possible sense that the Lord recommends in the revelations. After endorsing the Constitution in the Doctrine and Covenants, He says: “It is not right that any man should be in bondage one to another.”<sup>9</sup> Though we may be confused when conflicting ideas are presented to us, there can be no doubt about the paramount value of constitutional government. The first principle is freedom, and that should be our guiding light.

As Latter-day Saints, we should heartily subscribe to those programs and to those views on government which we believe will help remove any of the stultifying restrictions on human life, whether they be economic, social, or political. At the same time, we should be alert to challenge centers of growing power that might in time jeopardize liberty. The application of principles is often discouragingly complex, but at least our belief in the Constitution’s inspiration fixes one point—human freedom—by which we can set our political course.

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<sup>7</sup>D. & C. 134:4.

<sup>8</sup>Durham, p. 122.

<sup>9</sup>D. & C. 101:79.

*Can You Support the Political "New Frontier"  
and Still Be A Good Latter-day Saint?*

QUINN G. MCKAY

In other words, excluding some extreme positions, is your standing in the Latter-day Saint Church affected by your political or economic views?

It has been argued by some that a good Latter-day Saint cannot support any group that advocates actions which tend to restrict a person's free agency. This reasoning goes something like this: Welfarism, or governmental control tends to restrict free agency. The Democratic party encourages welfarism. Therefore, they insist, one cannot be a good Democrat and still be a good Latter-day Saint. Before the Republicans get carried away with undue pride, it should be noted that it was Hoover, a Republican President, who started or initiated the ideas for such governmental programs as the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, and approved \$2 billion for federal public works in one term as President. If one adheres strictly to the first sentence of this paragraph, a member of the Latter-day Saint Church can support neither political party without negatively affecting his standing in the Church. This, of course, is absurd.

I feel the importance of having free agency is as clearly understood by me as it is by most people. I am not here to argue against free agency, but to advocate the preservation of the right of free choice to all. To me the crux of the matter is that there are other principles taught by this Church to which most of us also subscribe, and it is not uncommon to find in a given situation that two or more of these principles are in direct conflict with each other. These are situations wherein to choose a solution which satisfies one principle causes the violation of the other.

The individual judgments necessary to resolve these conflicts of principle are the source of legitimately differing points of view on economic and political matters.

Under such circumstances, divergent views are permissible, realistic, and inevitable, and should be accepted without casting any reflection on a person's devotion to the principles of the Gospel. Looking at it another way, the only criticism that can



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be invoked is not that "you aren't devoted to the principles of the Gospel," but that "your judgment led you to choose, from my point of view, the 'wrong' principle to obey."

Let's look at some examples of this conflict of principle to more clearly understand this realm of judgment.

## CONFLICT

**War**

Thou shalt not kill.

Thou shalt defend thy liberty.

**Prohibition**

Men should be free to choose for themselves.

Do away with evils of liquor.

**College Bowl**

Keep the Sabbath Day holy.

Promote the Lord's work.

**Unemployment Benefits**

Provide food and necessities for worker's family.

Don't give people something for nothing.

**Regulate Public Utilities**

A business should not have an uncontrolled monopoly.

Business should be left to free enterprise, and not controlled by government.

**A-Bomb Testing**

We should not permit the maiming of future generations by causing further fall out.

We must build our strength to preserve peace.

For instance, consider the question of whether there should be federal aid to education in the form of individual loans or grants-in-aid to young people desiring to attend college. Many of us are quick to argue that we are against federal aid to education because it increases the tax burden and the resulting government control restricts freedom. Furthermore, we may

argue, there are private sources for assistance without going to the government.

Others may counter with this argument: There are a lot of people who would be unable to go to college without this governmental assistance. Those of us who feel the strongest would likely retort, "If it really boils down to the choice of going to school on federal funds or not going at all (which we don't believe) we are all better off if we preserve the freedom from government control even if it means no school for some."

Our opponents advocating federal aid may then resort to a specific example: Here is a young man, 30 years old, married with six children, has never attended college, is unskilled, and has never earned more than \$3,800 in a year. He has no collateral with which to obtain a bank loan. Neither his widowed mother nor other members of the family can supply any support. He wants to go to college to prepare himself to provide better support for his family and also to be able to contribute more to society. If he continues as is and loses his job at the age of fifty, the obtaining of another job will be a very difficult matter for an unskilled man. In his circumstances he must either get federal assistance or not go to school. So, he takes federal aid and prepares himself to be a teacher. With his education his income is increased and his choices of job opportunities are increased. Literally, federal aid has created freedom for this man and not only that, but all of society has benefited because he is now a much greater contributor.

Does federal aid restrict or create freedom? It probably does both. There will be "good" result either way the issue is resolved. There will also be some "bad" result in either case. The decision which results in the most "good" and the least "bad" is the "right" solution. But who is to say whose judgment about the most "good" is the correct one?

It is assumed that in making these decisions each one of us evaluates the situation, and on the basis of individual judgments we take our stand on the issues involved. Who is to say when a conflict of principles is involved that his judgment is more correct than yours? If the Lord would come down and tell us, as He has in some cases, then it would be unnecessary to exercise our judgment, but He leaves us to make our own judgments on many things, and lets us grow by so doing.

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The G. I. Bill is another example. Some of the principles, pro and con, could be aligned thusly:

<b>Pro</b>	<b>Con</b>
<i>Justice</i> — They deserve it after what they did in the war.	<i>Government control</i> — This is just a form of federal aid to education.
<i>Overcomes ignorance</i> — Many went to school who otherwise would never have gone. This helped to defeat ignorance.	<i>Free agency</i> — We shouldn't be forced, through taxes, to support veterans to go to school.
<i>Makes nation stronger</i> — To enable so many to further their education makes our nation stronger.	<i>Waste</i> — A lot of the G.I.'s wasted their time at school and didn't get any good from it.

When these arguments fail to demonstrate unequivocally that the person's stand is "the right one," which ever side he takes, he usually resorts to the argument that a lot of those G. I.'s just didn't want to go to work and they abused the rights of the bill, implying or stating that the bill never should have been passed. Another may counter with, "Well, if you're going to throw out something just because it is abused, you have to do away with free agency because it is also abused."

So now where does one stand on the issue of the G. I. Bill and other issues—even nationalized medicine or federal aid to education? These situations involve conflicts of principles and hence judgments as to which is the more important. Where my judgment is involved you are also entitled to yours. And while I take a firm, zealous stand on the basis of my judgment, you have equal right to your position without my accusing you of being a Latter-day Saint who has less devotion to your Church than do I.

Finally, I believe Church practice also substantiates the idea that people can hold opposing political and economic views and still be good Latter-day Saints. It is of interest to note that in the First Presidency there are two Democrats and one Republican. One may argue that they are party members in name only, but in reality hold the same political views. This I do not believe, especially in light of the fact that not too long ago one of the counselors to the President was the keynote speaker at the state Democratic party convention.

If members of the First Presidency can individually hold and advocate differing economic and political views, I believe members should be able to do the same. Each member should be able to and should take a firm stand, advocate, and vigorously try to persuade others to views resulting from his judgments. Those with differing views should be able to do the same thing without abuse, accusation, social sanction, or aspersions concerning his worthiness.

From either logic or example set by our leaders, I conclude that individuals can hold differing economic and political viewpoints, and still be good Latter-day Saints, excepting those few who maintain very extreme positions.

*Economic Power and the Constitution:  
A Quarter Century of Change*

RICHARD BITNER WIRTHLIN

We have been led to believe this afternoon that the power of the Constitution to secure the individual's right of conscience represents the divine touchstone of that great document. Certainly none of the several objectives stated in the Preamble of the Constitution takes precedence over securing the blessings of liberty to ourselves and to our posterity. In fact it could be cogently argued that the other objectives enunciated in the Preamble—to establish justice, to insure domestic tranquility, to provide for the common defense, and to promote the general welfare—are but inseparable concomitants of that single, grand objective of liberty.

In this regard we as Latter-day Saints might appropriately ask ourselves, "Do economic programs created and administered by the government, ostensibly designed to insure domestic tranquility, or to provide for the common defense, or to promote the general welfare limit individual liberty to the extent that we as members of the Church should bend every effort to check and curtail the development of such programs?" Our answer to this question will determine to a large degree our role with respect to the Constitution.

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My contribution to this panel is to provide a factual basis for a better understanding of the dimension of economic power of government over the past quarter century as it affects individual liberty. Only after we obtain a view of reality can we attempt to judge the beneficial or deleterious impact of economic power on the individual's right of conscience.

One need not look beyond his daily newspaper to find evidence, or at least allegations, that government economic power as measured by total government expenditures is expanding at a tremendous rate. It is true that when we use unadjusted or raw data total government expenditures rose from 15.9 billion dollars to 149.8 billion dollars, an increase of 842 per cent in the quarter century 1936-1961. From this and similar statistical "facts" it is concluded by some that government power has seriously encroached upon the sacrosanctity of the individual. But such statistical facts are so superficial that they are virtually meaningless.

In the first place dollar statistics do not take into account price changes and are emptied of any comparative value when the price level shifts as significantly as it did in this country between 1936 and 1961. A 1961 dollar is worth less than half of a 1936 dollar.

In the second place the bald dollar statistics in no way reflect the fact that the dimensions of society which government serves has expanded considerably in the last twenty years. Professor Mangum has indicated how the revolutionary process of industrialization alters the tasks of government. In this connection it should be pointed out that almost a hundred million more citizens of this nation now live in urban areas than in 1936. Proportionately more of the old and more of the young are now represented in our population than were represented twenty years ago; population itself has increased forty per cent since 1936.

In the third place the size of the total economy is increasing at an even faster rate than the growth of population. Thus if government expenditures, adjusted for price and population changes, remained the same over a given period, this would indicate that the relative economic role of government was shrinking in respect to the entire economy.

Hence, using unadjusted dollar figures to compare present economic power of government with its magnitude of an earlier

date must obviously lead to distorted judgments. The tremendous margin of distortion can be partially appreciated when we realize that the 842 per cent increase in unadjusted dollar government expenditure is cut by considerably more than half to about 287 per cent when the froth of inflation is skimmed out of the figures. The 287 per cent is cut again by half to about 173 per cent when the increasing size of the population is accounted for by taking per capita figures. The 173 per cent is cut by four-fifths to 39 per cent when the relative role of government is measured in terms of Gross National Product.

Thus the increase in government expenditure from 1936 to 1961 shrinks from 842 per cent to 39 per cent when its relative economic role is considered. It should be emphasized that this latter figure in no way attempts to reflect increases in government expenditures generated by advancing urbanization and by the changing structure of population.

But still someone may quite logically argue that there is much room for concern for individual liberty if the relative economic role of government as measured by its expenditures expands by over a third. Certainly such an argument would be well taken if this increased governmental economic power represented the taking over by government the primary means of production. Closer examination of the data reveals, however, that virtually the entire increase in governmental expenditure for the period we are considering is attributable to war-related and defense costs. Does this increase represent a curtailment of individual liberty? This question can best be answered when the alternatives to increased defense expenditure are considered. What could we now say about individual liberty if this nation had failed to rise to the terrible challenge of totalitarian facism of the forties or to the danger of atheistic communism of the fifties? Of what significance would the right of conscience have under a Hitler or a Khrushchev?

When expenditures for wars, defense, and international relations are excluded, general government expenditures as a proportion of total Gross National Product fell from 15.2 per cent in 1936 to 12.4 per cent in 1961.

Am I suggesting that government economic activity never threatens the freedom of the individual? Not at all, for I am firmly convinced that either government ownership of the primary means of production or massive government regulation

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of the free market would rob us of part of our free heritage. I am suggesting that the Frankenstein monster of governmental economic power in our age, as defined by the dimensions of gross governmental spending, collapses like the punctured balloon of a child when these figures are critically examined.

We are a more populous, a more wealthy, a more urbanized nation than we were twenty, thirty, or fifty years ago. Such change works for ineluctable change in the economic role assumed by government. Further, this country now faces a foe that is completely dedicated to our economic and political downfall and this, too, imposes its economic burden on the federal powers.

If we refuse to face that challenge on the international scene; if we refuse to provide sufficiently for our aged, our lame, our halt despite our opulence because charity was a private and not a public matter of concern a hundred years ago; if we refuse to recognize that forced idleness is as abhorrant to a free society as forced labor; if we refuse to recognize that mass unemployment is a problem that impinges upon domestic tranquillity as well as the general welfare and that the national government possesses monetary and fiscal tools not possessed by any state or city that can and do alleviate forced idleness, then the Constitution of this great land may, by default, become but an anachronistic curio in the halls of the Kremlin.

What then should be the role of the Latter-day Saint with respect to the Constitution?

It should be a conservative role in that our deepest loyalty is to the ideal of liberty. To paraphrase James Madison, we should support the conferral of power to government only if it is decided that such power works to the benefit of the public good; if such power must be given we should guard as effectively as possible against the perversion of that power. We should attempt to keep the matter of choice as close to home as possible. All problems that can be solved by the city should be solved by the city. All problems that can be solved by the state should be solved by the state. Only those problems that cannot be solved by the local or state governments or those problems of a pressing nature that these two lower levels of government refuse to solve should be of concern to the federal government.

In addition to being a conservative role, the role of the Latter-day Saint with respect to the Constitution should be a liberal role in that obedience to, and the administration of, the laws should be done without prejudice, but with compassion and tolerance, with charity and devotion.

The role of the Latter-day Saint with respect to the Constitution should also be a progressive role in that time change and the social order continues to evolve until that perfect, God-ordained order is established.

### *Industrialism and the Role of Government in the American Economy*

GARTH L. MANGUM

My contribution to the question before the panel will be an attempt to put into economic perspective the changing role of government in the American economy and then relate that role to the Latter-day Saint and the Constitution.

To understand that changing role, it must be kept in mind that the United States was born on the eve of the greatest revolution in human history—the industrial revolution. The agrarian society was characterized by stability and self-sufficiency, but a low standard of living; the industrial society by the interdependence of specialization and exchange, large accumulations of economic power in the individual business firm, dependence on wage and salary income, urbanization, a rising standard of living, and a rapid rate of economic and technological changes. We still do not fully realize the dramatic nature of this transition which our nation has experienced, but we live daily with its problems.

Among the many myths with which we seem to be burdened is the one that has the U. S. economy rising to great wealth and power in an environment of *laissez-faire* (A term of French origin which has come to mean the absence of government intervention in the economy) and then declining under pressure of government intervention. This myth like many others will not stand the test of history. Despite the coincidental dating of both Adam Smith's *Wealth of Nations* and the Dec-



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laration of Independence in the same year—1776—*laissez-faire* did not come to America for another hundred years and then never completely and only briefly. Mercantilism—extensive government regulation for promotional purposes—was still the prevailing economic philosophy of the late 18th century.

While no one would deny the individual American enterpriser his central role in American economic development, one must keep in mind that local, state, and national governments and foreign sources were the major sources of capital for the development of the new nation. It was only after such promotional intervention had brought development to the point where private capital accumulation was substantial that the business community shook off the governmental hand which had supported it and ushered in the post-Civil War age of *laissez-faire*. Until then bounties, subsidies, franchises, tax exemptions, grants of monopoly privilege, tariffs, government loans, government stock, and bond purchases and other trappings of mercantilism continued their role. Indeed, some were never removed.

The post-Civil War period of minimal, though not nonexistent, government intervention was shortlived. By the time the larger business community felt ready to venture forth from the nest of government sponsorship, small businessmen and farmers were becoming aware that government was not the only possible threat to their freedom. Attempts in the 1870's and 1880's to control accumulations of economic power in private hands began a long-term regulatory trend designed to insure the free market economy against the effects of monopoly, protect consumers and investors from more crass manifestations of the search for profits, and insure the public against some of the uncertainties of a wealthier but more unstable society.

In the new economy of specialization and exchange, the farmers and small businessmen felt themselves to be at the mercy of the railroad's transportation monopoly. The result was, first, state regulation and then the Interstate Commerce Act of 1887. Three years later the same farmer-small business alliance was successful in winning the passage of the Sherman Anti-Trust Act but they were never strong enough to get it enforced. During the next decade, the sensational exposés of the food preparation and patent medicine industries by the "muck-rackers" led to passage of the Pure Food and Drug Act. Recurrent "money panics," particularly that of 1907, brought into

being the Federal Reserve System in 1913. The same year saw the cumulation of a forty-year fight for an income tax, again at the behest of the farmer-small business coalition now being augmented by the rising power of the new industrial working class. The following year saw the passage of the Clayton Anti-Trust Act, unsuccessfully designed to reverse the Supreme Court's negation of the Sherman Act. The 1920's brought the Federal Power Commission, the Federal Communications Commission, and special legislation to aid the chronically ill agricultural industry. All of this presaging a quickening of the trend to government activity in the economy during the 1930's.

The new shift was in the direction of increased governmental concern for the welfare of the individual. The hallmarks are familiar to us all—government concern for maintaining a high level of employment and a guarantee of at least a minimum of economic security in the form of unemployment compensation and old age and survivor's insurance. During these same years, another of the phenomena of industrialization was occurring. The industrial labor force, disturbed by the unilateral rule-making of their employers was attempting against great odds to organize for participation in the rule-making process. Here, too, government played a role, generally opposing organized labor until 1932, taking a briefly *laissez-faire* position in the labor market until 1935 and swinging to a promotional role thereafter. Something was happening which the Marxians thought impossible. The problems of industrialism were being solved, not perfectly, but adequately within the context of a free democratic society with a private enterprise economy.

What is the constitutional role of government in our economy? This depends on one's view of the Constitution. To state the question somewhat unfairly, "Is the Constitution to be an obstacle to the solution of social and economic problems, or does it just establish a framework within which problems are to be solved while individual liberty and the general welfare are maintained?" The Constitution says surprisingly little about economics. Congress has the power to coin money and regulate the value thereof, tax for the common defense and general welfare, impose tariffs, and regulate foreign and interstate commerce. Internal tariffs are forbidden. Private property can be taken for public use, but due process of law must be followed and just compensation paid. The actual type of an economic

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system and its adjustment to changing problems was left to a pragmatic solution, though preference for a diffusion of political power also suggests a bias toward the diffusion of economic decision-making available in a private enterprise economy.

The founding fathers were practical men. They must have known that government by the consent of the governed is the instrument by which men pursue collectively the goals they cannot or do not care to attain individually. They knew they lived in a changing world and they wrote into their document provisions for change to meet changing problems. Their purpose was not to prevent the people from meeting the problems of future ages but to insure careful consideration before the change and through checks and balances prevent a single interest group from running away with the machinery of government.

The remarkable aspect of the Constitution, it seems to me, is the flexibility with which it has met the tremendous problems of the transition I have described. To have denied the Constitution this flexibility would have been the surest way to destroy it. God's instructions to Noah in his shipbuilding enterprise are of little value in building atomic submarines, yet the Bible is not out of date. Neither is the Constitution, but we must now apply those "just and holy principles" to new problems. Government can be, but is not necessarily, a threat to individual liberty. Poverty, lack of opportunity, and accretions of economic and political power in private hands can threaten individual liberty as well. Government wisely used can protect the individual from these other threats to his liberty.

Even the strictest model of a free market economy must allow for a public sector to satisfy collective wants such as national defense which cannot be met by private enterprise. There is another area of quasi-collective goods such as education which produce social benefits over and above the private benefits. Only the private benefits can be sold in the market place. The welfare of society will be diminished unless the social benefits are supplied by public provision or subsidy of the service. The technical nature of some production processes require the productive unit to be so large that the restraining hand of competition is not available. These natural monopolies require either public regulation or public ownership, and, since

the normal market forces are not available, the differences between them are not great.

Modern fiscal and monetary policies can be used to promote a high level of economic activity and employment without interfering directly with the functioning of the market mechanism. Thus the wastes of under-utilization of resources and the high human costs of unemployment can be reduced within the framework of private enterprise and free individual economic decision-making. Unemployment insurance insures the industrial worker against the temporary dislocations of technological change and change in consumer demand as well as his own freedom of occupational choice. Smaller families, high mobility, the disappearance of the extended family unit, and the sharp cut-off date of retirement from industrial employment rather than the gradual retirement of the aged in agriculture have made the costs of aging a charge upon society.

Government regulation can be used to promote competition and enhance the functioning of the free market economy. It can be used to intervene in the market to protect the consumer, the investor, or natural resources against an occasional excess of avarice. Unfortunately government regulation can also be used to interfere with the market on behalf of special interest groups whether they be farmers, businessmen, or organized labor. Also unfortunately we seem to have an overdeveloped notion of the efficiency of legislation as a solver of problems and a reluctance to accept the results of private decision-making. Yet the answer is not elimination of government regulation but the wise and restrained use of regulation.

In our own rather peculiar form of government, another question must be asked. Not only do we have to decide whether to solve problems publicly or privately, but our federal system requires a decision as to which level of government shall supply any particular service. There is real value, in my opinion, in handling local problems locally and national problems nationally. Part of the trend toward increasing centralization is a result of the increasing interdependence of our society. Unfortunately it is also in part a result of failure to handle local problems at the state and local level. In our society we have a few people who would like government to do nothing and a few who would like government (preferably federal) to do everything, but most of us are only concerned with finding a

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solution to social problems. The surest way to insure government intervention is to refuse to solve privately problems which could be solved in the private sector of the economy. The surest way to insure federal intervention is to refuse to handle local problems through the machinery of local government.

What should be the attitude of Latter-day Saints toward the Constitution in 1962? I am authorized to speak only for one Latter-day Saint, and I'm not even prepared to claim divine origin or bear testimony of his views. However, it seems to me there are two possibilities. One can insist that the Constitution must be interpreted exactly as it was interpreted in 1789 (though most Latter-day Saints who take this view seem more enamored with the Social Darwinist interpretations of 1889) and refuse to face any social problem which was not existent and being faced in George Washington's day. One who does so can expect to contribute no more than amusement and mild exasperation to his age. On the other hand, one may choose to face the problems of his time and help in the search for a solution which is compatible with the just and holy principles of the individual liberty, human dignity, and freedom of conscience.