

“Fundamentals of Our Constitutions”

Elder Dallin H. Oaks

Utah’s Constitution Day Celebration

Tabernacle, Salt Lake City, Utah

September 17, 2010

“Fundamentals of Our Constitutions”

Elder Dallin H. Oaks

Introduction

I feel very privileged to be invited to speak to this great audience on Constitution Day. I appreciate the University of Utah Hinckley Institute’s invitation and its sponsorship of this and other community events over the last 45 years.

I will speak about the written constitutions of the United States and its 50 states. As I give examples of various issues under these constitutions — matters on which respected public officials have taken controversial positions — please remember that I am not referring to the persons who hold the various offices under those constitutions. I am speaking of the “institution” of constitutional government. The principles I describe apply regardless of who holds the offices and regardless of party affiliation. Our loyalty is to the institution. If we oppose persons who hold particular offices or the policies they pursue, we are free to vote against *them* or work against their *policies*. But we should not carry our opposition to the point of opposing their *offices*, or we weaken the institution of constitutional government.

Some of the things said by various persons in recent public discourse cause me to urge that we be more careful in the way we throw around the idea that something is unconstitutional. A constitution should not be used as a weapon to end debate. A public policy or a proposed law that is unwise is not necessarily unconstitutional. Even if it is a stupid proposal, it is not necessarily unconstitutional. A constitution gives the people and their elected leaders the opportunity to make many decisions that are unwise or even reckless. When that happens — when the government or one of its officials engages in some kind of action that we consider to be wrong — we should engage in vigorous public debate about it. But we should not use up a

constitution by attempting to strike down every ill-conceived act of government or to discredit every unwise official. A constitution is the ultimate weapon, and we preserve that weapon best by using it sparingly and carefully. If we call some action unconstitutional, we should be prepared to explain what provision or principle of a constitution it violates. In this way, a constitution can be used to stimulate discussion and to seek unity.

We should, of course, always be vigilant to insist that our governments and their executives, lawmakers and judges stay within the limits prescribed by our constitutions. That is part of the rule of law, and all of the blessings enjoyed under our constitutions are dependent upon it. President J. Reuben Clark, an honored authority on the Constitution, declared that “our allegiance run[s] to the Constitution and to the principles which it embodies, and not to individuals. All that we say about the Constitution and our reliance upon it depends upon the rule of law and not of the men or women who hold the offices under it.”[\[1\]](#)

There is need for public praise of our constitutions and their principles. A rising generation of influential opinion makers seems to place a lesser value on the United States Constitution. An example of that was related to me by a recent law graduate. In a panel discussion at the Harvard Law School, a professor of constitutional law criticized the United States Constitution in harsh terms. Another faculty panelist speculated that if his colleague’s criticisms were valid we might as well just take our written constitution and “roll it and smoke it.” That kind of disdain for our national constitution is more than concerning.

The United States Constitution is the oldest written national constitution still in use. It has served Americans well, enhancing freedom and prosperity during the changing conditions of more than 200 years. Frequently copied, it has become the United States’ most important export. After two centuries, every nation in the world except six have adopted written constitutions,[\[2\]](#) and the United States Constitution was a model for all of them. Consequently, if we abandon or weaken its fundamental principles, we betray our own national ideals and we also weaken our global neighbors.

Now I will proceed to discuss four major fundamentals of the United States Constitution. In an earlier setting, under Church sponsorship, I referred to these fundamentals as the divinely inspired principles in the Constitution,[\[3\]](#) and I here affirm my belief that they are. But in this setting of a community program I will only refer to these as the great fundamental principles of our Constitution.

As I speak of these great fundamentals, I wish to take the long view. I do not wish to be understood as endorsing or condemning specific actions or proposals on current issues. I know that some will apply what I say — one way or another — to issues currently being reported in the media. But I do not seek to be heard for the short term. Drawing on over 50 years of observing a multitude of controversies over the application of constitutions, I am trying to describe fundamental principles that will be meaningful for decades to come. I leave to my listeners the task of agreeing or disagreeing with my description of the great fundamentals and — if they wish — trying to apply them to the very complex issues of this day and the different issues of the days to come.

I. Popular Sovereignty

I mention first what is probably the most important of the great fundamentals of the United States Constitution—the principle of popular sovereignty: The people are the source of government power; it is they who consented to a constitution that delegates certain powers to the government. I stress this fundamental by emphasizing what are *not* the sources of sovereign power. Sovereignty is not inherent in a state or nation just because it has the power that comes from force of arms. Sovereignty does not come from the divine right of a king, who grants his subjects such power as he pleases or is forced to concede, as in the Magna Carta. And sovereignty does not rest in an aristocracy of self-appointed wise men who think that their high birth or prestigious education gives them the right to prescribe what is best for everyone else. Sovereignty is in the people as a whole, and their sovereignty is supreme, subject only to a few crucial limitations that I will discuss in a moment.

Sovereignty in the people necessarily implies *responsibility* in the people. Instead of blaming their troubles on a king, on a cabal of military leaders, or on some distant group of wise men, citizens who are sovereign must share a measure of the burdens and responsibilities of governing. I will say more of this later.

The delegates to the Constitutional Convention did not originate the idea of popular sovereignty, since they lived in a century when persuasive philosophers had argued that political power originated in a social contract. But the United States Constitution provided the first national implementation of that principle.

After two centuries in which Americans may have taken popular sovereignty for granted, it is helpful to be reminded of the difficulties in that pioneering effort. A direct democracy was impractical for a country of four million people and about a half million square miles. As a result, the delegates had to design the structure of a constitutional, representative democracy, what they called “a Republican Form of Government.”^[4] They also had to decide how minority rights could be protected when the government was, by definition, directed by a majority of the sovereign people. Part of that effort was to resolve whether a constitution adopted by popular sovereignty could be amended, and if so how.

The government of the United States had to be ultimately responsible to the will of the sovereign people, but it also had to be stable. Without stability against an aroused majority, government could not give individuals or minorities protection against overreaching by the ruling majority, a reality most evident when an outraged public calls for immediate punishment of one accused but not yet shown guilty of a crime. Government policies should not be tossed about with temporary swings in public opinion. The Constitution had to give government the power to withstand the cries of a majority of the sovereign people in the short run, but it had to be subject to their direction in the long run. The delegates to the Constitutional Convention achieved the required balance among popular sovereignty, stability, and protection of minorities through a power of amendment that was ultimately available but deliberately slow. It required the action of very large majorities — two-thirds in the Senate and the approval of three-fourths of the states.

II. Division of Powers in a Federal System

Another great fundamental of the United States Constitution is its federal system, which divides government powers between the nation and the various states. This principle of federalism is at the heart of our Constitution. Unlike the next two fundamentals I will discuss, which were adaptations of earlier developments in English law, this division of sovereignty between two government levels was unprecedented in theory or practice. In a day when it is fashionable to assume that the national government has the power and means to right every perceived injustice, we should remember that the United States Constitution limits the national government to the exercise of powers expressly granted to it. The Tenth Amendment provides:

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

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

In my lifetime I have seen much neglect of this fundamental constitutional principle. For example, the power to make laws on personal relationships is one of those powers not granted to the federal government and therefore reserved to the states. Thus, the ordinary laws governing marriage and family rights and duties are state laws, subject to the power of national law to govern the extent to which the law of one state is binding on others. The dominance of state law in these personal matters would have been changed by the Equal Rights Amendment (E.R.A.) proposed about 30 years ago. The dominance of state law will also be changed if, after full review, federal courts decree that a state law on marriage is invalid under the United States Constitution. Whatever the merits of current controversies over the laws of marriage and child adoption and the like, let us not forget that if the decisions of federal courts can override the actions of state lawmakers on this subject, we have suffered a significant constitutional reallocation of lawmaking power from the lawmaking branch to the judicial branch and from the states to the federal government.

III. Bill of Rights

A bill of rights, the third great fundamental of the United States Constitution, came by amendment, but I think almost all Americans look upon these first ten amendments as an essential part of the original Constitution.

The idea of a bill of rights was not new. Almost 600 years earlier, King John had been compelled to sign the Magna Carta, which contained a written guarantee of some rights for certain of his subjects. Later, the Magna Carta was relied upon by the English Parliament in guaranteeing additional rights against royal power in the English Bill of Rights of 1689. In the century that followed, many of the charters used in the establishment of the American colonies included some written guarantees of citizen liberties and privileges. And in the rush of constitution-making that followed the Continental Congress's 1776 invitation, almost all of the 13 colonies developed these guarantees further. The delegates to the Constitutional Convention were familiar with this

history and made brilliant application of its principles in framing a Bill of Rights suited to the needs of the people of a new nation.

There are several supremely important guarantees in the Bill of Rights, including the freedoms of speech and press. I have chosen only one to discuss in detail.

The Bill of Rights begins with what many believe to be the most important guarantee in the United States Constitution. The First Amendment reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The prohibition against “an establishment of religion” was intended to separate churches and government, to prevent a national church of the kind found in Europe. In the interest of time I will say no more about the establishment of religion, but only concentrate on the direction that the United States shall have no law prohibiting the free exercise of religion. For nearly a century this guarantee of religious freedom has been understood as a limitation on state as well as federal power.

The guarantee of the free exercise of religion, which I will call religious freedom, is one of the supremely important founding principles in the United States Constitution, and it is reflected in the constitutions of all of our 50 states. It is the first expression in the First Amendment to the United States Constitution. As noted by many, this “pre-eminent place” identifies freedom of religion as “a cornerstone of American democracy.”^[5] I maintain that in our nation’s founding and in our constitutional order, religious freedom, and the freedoms of speech and press associated with it in the First Amendment, are the motivating and dominating civil liberties and civil rights.

The American colonies were originally settled by people who, for the most part, had come to this continent to be able to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation’s Bill of Rights. So it is that our national law formally declares: “The right to freedom of religion undergirds the very origin and existence of the United States.”^[6]

This principle was affirmed impressively 22 years ago when a group of prominent citizens assembled at Williamsburg, Virginia, and signed what was called the Williamsburg Charter. I was privileged to sign that charter in behalf of The Church of Jesus Christ of Latter-day Saints. Its stated purpose was to celebrate and reaffirm religious liberty as the foremost freedom in the First Amendment to the United States Constitution.

The Williamsburg Charter states:

“The First Amendment Religious Liberty provisions have both a logical and historical priority in the Bill of Rights. . . . In sum, as much if not more than any other single

provision in the entire Constitution, the Religious Liberty provisions hold the key to American distinctiveness and American destiny.”[\[7\]](#)

The free “exercise” of religion obviously involves both the right to choose religious beliefs and affiliations and the right to “exercise” or practice those beliefs. But in a nation with citizens of many different religious beliefs the right of some to act upon their religious principles must be qualified by the government’s responsibility to protect the health and safety of all. Otherwise, for example, the government could not protect its citizens’ person or property from neighbors whose religious principles compelled or justified stealing or taking human life.

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when government action is claimed to violate someone’s free exercise of religion. As would be expected, many of the battles over the extent of religious freedom have involved government efforts to impose upon the practices of small groups like Jehovah’s Witnesses and Mormons. Recent experiences suggest adding Muslims to the category of threatened religious minorities.

Unpopular minority religions are especially dependent upon a constitutional guarantee of free exercise of religion. We are fortunate to have such a guarantee in the United States, but many nations do not. The importance of that guarantee should make us ever diligent to defend it. And it is in need of being defended. During my lifetime I have seen a significant deterioration in the respect accorded to religion in our public life, and I believe that the vitality of religious freedom is in danger of being weakened accordingly.

A recent book illustrates this danger. In *Freedom From Religion*, published by the Oxford University Press, a law professor makes this three-step argument:

1. In many nations “society is at risk from religious extremism.”[\[8\]](#)
2. “A follower is far more likely to act on the words of a religious authority figure than other speakers.”[\[9\]](#)
3. Therefore, “in some cases, society and government should view religious speech as inherently *less protected* than secular political speech because of its extraordinary ability to influence the listener.”[\[10\]](#)

He concludes:

“[W]e must begin to consider the possibility that religious speech can no longer hide behind the shield of freedom of expression. . . .[\[11\]](#)

“Contemporary religious extremism leaves decision-makers and the public alike with no choice but to re-contour constitutionally granted rights as they pertain to religion and speech.”[\[12\]](#)

I hope that those who might be persuaded by these arguments will consider how easy it would be over time to manipulate the definition of “religious extremism” to suppress any unpopular religion.

Religious *belief* and preaching must be protected against government action, even while the *practice* of that belief must have some limits, as I suggested earlier. But unless the guarantee of free exercise of religion gives a religious actor *greater* protection against government prohibitions than are already guaranteed to all actors by other provisions of the Constitution (like freedom of speech), what is the special value of *religious* freedom? Surely the First Amendment guarantee of free exercise of *religion* was intended to grant more freedom to religious preaching and action than to other kinds of speech and action. Treating actions based on religious belief the same as actions based on other systems of belief should not be enough to satisfy the special place of religion in the United States Constitution.

IV. Separation of Powers

The fourth great fundamental of the United States Constitution and of our state constitutions is the principle of separation of powers. This principle puts our national government on a significantly different foundation than the parliamentary systems of most western governments. The idea of separation of powers came out of the English experience, when parliament wrested certain powers from the king in the conflicts of the 1600s, thus achieving some separation of legislative and executive authority. But the United States Constitution carried this separation much further.

The concept of separating the executive, legislative, and judicial functions was established in the American colonies in the 1700s. A commentary on the Massachusetts Constitution of 1778, of which John Adams was a principal author, explained the basic principle.

“The legislative, judicial, and executive powers are to be lodged in different hands, that each branch is to be independent, and further, to be so balanced, and be able to exert such checks upon the others, as will preserve it from dependence on, or a union with them.”[\[13\]](#)

Thus, we often refer to the principle of separation of powers in terms of the checks and balances each branch exercises upon the others.

If the idea of checks and balances is to work properly, each branch of government must preserve its independence from the others. Moreover, the powers of each of these three branches must be exercised in a good faith effort to serve the interests of the public, rather than to dominate the

others or to enhance the personal position of a particular official. Politics, revenge or personal gain must never be the primary driving force in the application of checks and balances.

For checks and balances to work properly, and for the fundamental principle of separation of powers to be honored and perform its proper function, each branch of government must fulfill its duties fully, and each must refrain from attempting to exercise the functions of the others. For example, Congress should perform its duty of making the laws and specifying the principles—even politically difficult principles—and not dodge this responsibility by delegating this function to regulations made by the executive branch. The courts must limit themselves to interpreting the Constitution and the laws and not stray into the legislative function of law-making. In contrast, we are all aware that in our day the actions of courts on major issues of public policy receive great attention in the media, and are frequently represented and understood as the actions of those who make laws rather than those who merely interpret them.

These are, of course, very broad assertions, and in practice these ideas are complex and controversial. I will attempt to express my thoughts about them without getting into too much technical legal jargon. If my remarks seem to deal excessively with the judicial branch and the conduct of judges, you will understand that I choose to elaborate on that subject because the judicial branch is the one with which I have had my greatest experience.

V. The Judicial Branch's Role in Separation of Powers

There are two different views of the role of the judicial branch of government in our constitutional system. One maintains that the genius of the American system is its expectation that the courts will resolve very difficult and important questions that the legislative and executive branches of government have been unable to resolve. For example, it was the Supreme Court of the United States that compelled this nation to resolve the problem of racially segregated public schools, after many decades in which the nation's elected lawmakers were unwilling to recognize this injustice or unable to resolve it. Other examples could be given. The important thing is that many believe the courts have a legitimate function in lawmaking when the problem is large and urgent enough and the legislative and executive branches have shown by inaction or ineffective action that they are unable to perform their functions to resolve it.

The opposite point of view argues that the courts should stay entirely out of the domain of legislative lawmaking, leaving this function to the popularly elected legislative bodies and the elected chief executives who presumably reflect the will of the people. A generation ago a prominent legal scholar described this position:

“Outside of a few important, well-defined personal liberties set forth in the document, the Constitution allows the people to make public policy through their elected representatives. When the Court ventures into policymaking in the guise of constitutional interpretation, it oversteps the role assigned to it under the Constitution.”[\[14\]](#)

The differences in these approaches will not be resolved. Both will be followed in their time, with the ebb and flow of judicial appointments, politics, and legal thought. But it is important to note that we currently have widespread public dissatisfaction on this subject. The 2006

Georgetown Conference on Judicial Independence considered a Princeton survey finding that 62% of Americans say the courts in their state are legislating from the bench rather than interpreting the law. This reveals a widespread public feeling that the courts are revising the moral and cultural life of the nation by making policy determinations that should be made by lawmakers in the elected branches.

Judicial Independence

What concerns us most about this widespread public dissatisfaction is that if not attended to it will threaten the independence the judicial branch must have to perform its function in our system of separation of powers. In the last few years, retired Justice Sandra Day O'Connor has performed a great service by leading a series of conferences at Georgetown University on the state of the judiciary. They focused on this question of judicial independence.

As I have cheered these efforts from the sidelines, I have thought of how our system contrasts with that of the now defunct Soviet Union. During my years as president of BYU (1971–80), I hosted the chief justice of the Supreme Court of the Soviet Union, who was touring the United States in that Cold War period. In a private one-on-one discussion, I asked him how the Soviet system really worked in a highly visible criminal case, such as where a person was charged with an offense like treason or other crimes against the state. He explained that on those kinds of cases they had what they called “telephone justice.” Judges conducted the trial and heard the evidence and then went back to their chambers and had a phone call from a government or party official who told them how to decide the case.

I am grateful that, whatever difficulties we have in our system of justice — and there are many — we are still far away from what he called “telephone justice.” What stands between us and that corruption of the judicial system — what stands between us and the destruction of a vital check and balance in our system of separation of powers — is the independence of our state and federal judges.

I speak of state as well as federal judges because in most citizen encounters with the law state judges are by far the most important representatives of the judicial branch. I thought of that as I listened to our Utah Chief Justice, Christine M. Durham, speak to a group of lawyers last month.^[15] She told them that in a recent year there were 384,000 cases filed in the federal courts, but the state courts had over 47 million. This is about 123 state court cases for every single case filed in the federal courts. She reminded her audience that “state courts are closer to everyday life where the legal meanings of such elemental concepts as birth and death and family take shape.” It is in the state courts where family law issues are adjudicated, where foreclosures take place, and where injured persons come to recover damages. When we speak of the importance of judicial independence, we must not neglect the important role of state courts as a co-equal branch of government.

Chief Justice Durham cited three troubling recent developments that put the judicial independence of state courts at risk. One of these she called “the politicization of state judiciaries.” This is the subject Justice O'Connor’s various conferences have pursued so

persuasively with various recommendations, including judicial selection and tenure, judicial salaries, and limits on judicial campaign contributions.

As I give my strong endorsement of judicial independence, I am conscious that many in this audience will have observed or personally experienced court decisions with which they disagreed. I have also had that experience. In endorsing judicial independence, I do not approve every court decision it makes possible. What I advocate are the conditions necessary to preserve the institution of judicial independence, which is essential to the principle of separation of powers. We must defend judicial independence. We must not tolerate existing laws or support new laws that would make judges the servants of the legislative or executive branches or of any private interest.

At the same time, we must acknowledge that there are limits. Judicial independence does not mean that judges are free to decide controversies or cases according to their personal preferences.

Our constitutions and the acts of our legislative bodies are the paramount and most obvious examples of restraints upon judicial independence. In interpreting these and in applying the common law on subjects where there are no legislative enactments, judges are constrained by the precedents of prior judicial opinions. Less obvious, and subordinate to these restraints, are those elusive but very real community and personal standards of right and wrong that comprise what we might call the moral framework that defines what is workable or appropriate for persons living in an organized society. In total, these constraints should prevent a judge from having his or her personal interests take command of the decision-making process to augment personal power, property, prominence or prestige.

Judicial Activism

Unfortunately, the constraints I have described do not always hold judges within the limits imposed by our constitutional order. The label many put on judicial decisions that break free of these limits is *judicial activism*. It could just as well be called judicial arrogance. It has a variety of causes, including misinterpretation of the law and excessive reliance on personal predilections in the decision of cases. But neither of these should override the framework of the law, especially in those cases where the judicial branch should make no decision, but leave the matter to popularly elected lawmakers.

In criticizing judicial activism, I am not agreeing with those critics who define judicial activism as a circumstance where a judge makes the law rather than merely interprets it. That is an oversimplified definition. Our system of law clearly contemplates that judges will make law as well as interpret it. Appellate courts inevitably make law as they interpret legislative enactments that are ambiguous or contradictory. Judges make law by giving meaning to legislative language that is deliberately vague, such as laws using words like “fair” or “reasonable” or “obscene.” Appellate courts make law gradually on a case-by-base basis as they define and apply the common law, which consists of the decisions of courts on subjects not treated by the legislature. None of these lawmaking functions of judges is subject to criticism as judicial activism, because

if the popularly elected lawmakers don't like these judicial actions, they can change them by legislation.

In my opinion, the judicial lawmaking that has been legitimately criticized as *judicial activism* concerns the interpretation of state and federal *constitutions*. This kind of judicial action is not reversible by the popularly elected lawmakers, and cannot even be changed by the sovereign people except in those unusual circumstances in which a constitutional amendment is feasible. If such judicial action sets aside laws enacted or approved by a direct vote of the people, it offends two fundamentals: separation of powers and popular sovereignty.

Constitutional adjudication is the kind of activity that requires the highest exercise of the judicial talent and should cause the greatest soul-searching on the part of judges. On the one hand, the compelling traditions of common law adjudication show that the law — even constitutional law — can grow gradually to meet the problems and challenges of a new day. On the other hand, the overriding requirements of stability in the law forbid judges from using their office to enact their own personal preferences and moral framework in the way they could justifiably do as legislators. The question that should always be asked in constitutional adjudication is, “Is this a matter that the sovereign people in our democracy ought to decide through their popularly elected lawmakers, or is it a matter that our constitution clearly assigns to judges not directly accountable to the popular will?”

In the end, the only complete remedy for judicial activism is judicial restraint. Only judges can make judicial restraint a reality. The rarest kind of power in our troubled world is a power recognized but unexercised. Yet that is what the people have a right to expect from the judicial branch, which must define the limits of all government branches, including its own. I maintain that the same branch of government that has defined the power and forged the tools of judicial activism should decline to exercise them.

VI. Citizen Responsibilities

I conclude with some suggestions about our responsibilities as citizens. We have a great Constitution whose fundamental principles many believe to be divinely inspired. Therefore what? I will suggest five responsibilities that I believe are appropriate for all citizens—whatever their religious or philosophical persuasion.

1. Understand the Constitution

All citizens should be familiar with its great fundamentals: the sovereignty of the people, the structure of federalism that divides powers between the state and the federal government, the individual guarantees in the Bill of Rights, and the principle of separation of powers among the various branches of government. We should take alarm at and consider how to oppose any action that would infringe these fundamentals.

2. Support the Law

All citizens should give law-abiding support to their national, state, and local governments. My religious faith expresses this principle in an official declaration of belief:

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

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

3. Practice Civic Virtue

Those who enjoy the blessings of liberty under our national and state constitutions should promote morality, and they should practice what the Founding Fathers called “civic virtue.” John Adams, the second president of the United States, declared, “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”[\[16\]](#)

James Madison argued in the *Federalist Papers* that “republican government presupposes the exercise of these qualities [of virtue] in a higher degree than any other form.”[\[17\]](#)

Citizens should also be practitioners of civic virtue in their conduct toward our states and our nation. They should obey the laws. They should be ever willing to fulfill the duties of citizenship. This includes compulsory duties like military service and the numerous voluntary actions they must take if they are to preserve the principle of limited government through citizen self-reliance. For example, since U.S. citizens value the right of trial by jury, they must be willing to serve on juries, even those involving unsavory subject matter.

Then there is the matter of voting. I have been alarmed at the steady decline of voter turnout in many parts of the United States, including Utah. Voting is a fundamental right and responsibility that must not be taken for granted. Political participation can be inconvenient. It requires sacrifices of time and resources, but it is essential to our democratic society. Without substantial voter turnout, the people abrogate the great fundamental of popular sovereignty.

It is also part of civic virtue to be moral in our conduct toward all people. We believe with the author of Proverbs that “righteousness exalteth a nation: but sin is a reproach to any people” (Proverbs 14:34). The personal righteousness of citizens will strengthen a nation more than the force of its arms.

4. Maintain Civility in Political Discourse

If representative government is to function effectively under our constitutions, we must have civility in political discourse. We currently have an excess of ugliness and contentiousness in our communications on many political issues. I don’t need to give examples; we have all been exposed to it, and some of us have occasionally been part of it. We all bear some responsibility for the current political polarization and the stalemates that have resulted from it. We ought to

tone it down. Meaningful debate and discussion about policies, programs, and procedures is essential to a democratic society. But contentiousness for the sake of division is bad for democracy. It is bad for law observance. It is bad for neighborly relations. And it is particularly destructive as an example for the rising generation, who, if not taught better, will perpetuate and magnify its ugliness and divisiveness for generations to come.

A year ago our Church published a statement called “The Mormon Ethic of Civility.” I quote from that statement:

“The Church views with concern the politics of fear and rhetorical extremism that renders civil discussion impossible. . . . Our democratic system [should] facilitate kinder and more reasoned exchanges among fellow Americans than we are now seeing.”[\[18\]](#)

Our President, Thomas S. Monson, has said, “When a spirit of goodwill prompts our thinking and when unified effort goes to work on a common problem, the results can be most gratifying.”[\[19\]](#)

5. Promote Patriotism

Finally, the single word that best describes a fulfillment of the responsibilities of citizenship is *patriotism*. Citizens should be patriotic. My favorite prescription for patriotism is that of Adlai Stevenson, the Illinois governor who was twice the Democratic candidate for President:

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

Conclusion

I close with a poetic prayer. It is familiar to most Americans because we sing it in one of our loveliest hymns. It expresses gratitude to God for liberty, and it voices a prayer for continued blessings:

Our fathers’ God, to thee,

Author of liberty,

To thee we sing;

Long may our land be bright

With freedom’s holy light.

Protect us by thy might,

Great God, our King![\[21\]](#)

[1] *J. Reuben Clark: Selected Papers on Religion, Education, and Youth*, ed. David H. Yarn, Jr., Provo, Utah: Brigham Young University Press, 1984, p. 43.

[2] See A. E. Dick Howard, “Making It Work,” *Wilson Quarterly*, Spring 1987, pp. 122, 126.

[3] See “The Divinely Inspired Constitution,” *Ensign*, February 1992, 68-74.

[4] U.S. Constitution, Art. IV, Sec. 4.

[5] Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States, May 17, 1999, p. 6.

[6] 22 USC 6401(a).

[7] The Williamsburg Charter, pp. 11-12. The text of the Williamsburg Charter is reproduced in the appendix (pp. 127-45) of *Articles of Peace, the Religious Liberty Clauses and the American Public Philosophy* (James Davison Hunter and Os Guinness, eds., Brookings Books, Washington, D.C., 1990).

[8] Amos N. Guiora, *Freedom From Religion* (Oxford University Press, 2009), p. 27.

[9] *Ibid.*, at p. 30.

[10] *Ibid.*, at p. 31.

[11] *Ibid.*, at p. 31.

[12] *Ibid.*, at p. 39.

[13] Quoted in Gerhard Casper, “Constitutionalism,” *Occasional Papers from the Law School*, The University of Chicago, no. 22 (1987).

[14] Michael W. McConnell, “Four Faces of Conservative Legal Thought,” *University of Chicago Law School Record*, Spring 1988, 12, 13.

[15] “State Courts and Justice for All,” *BYU J. Reuben Clark Law School Founders Day Dinner*, Salt Lake City, Utah, August 26, 2010.

[16] John Adams, *The Works of John Adams, Second President of the United States*, ed. C. F. Adams (Boston: Little, Brown, and Co., 1854), Vol. IX, p. 229, October 11, 1798.

[17] *Federalist No. 55*, February 13, 1788.

[18] "The Mormon Ethic of Civility," October 16, 2009 (see <http://newsroom.lds.org/ldsnewsroom/eng/commentary/the-mormon-ethic-of-civility>).

[19] Ibid.

[20] Adlai Stevenson, speech given in New York City, 27 August 1952, quoted in John Bartlett, *Familiar Quotations*, Boston: Little Brown and Co., 1955, p. 986.

[21] *Hymns*, no. 339.