

Constitutional Apostasy

Denver C. Snuffer, Jr.

Delivered in Highland, Utah

June 7, 2013

Sometimes the way that you accomplish an objective is indirectly. You accomplish it as a by-product. You don't stare into the sun. You take advantage of what the sun has to offer indirectly because it will damage you if you go staring at it. The clearest way to make this apparent is in our legal system. We have what's called an adversarial system. The adversarial system has as its objective *the byproduct* of finding the truth. That's not what you aim at. The adversarial system has an attorney who represents one side—and his objective is to tell you everything that is in favor of his side and then to point out all the weaknesses, all of the mistakes of the other side. And then the other side's attorney has the exact same goal. Neither one of them is trying to tell you the whole story. They are employed, they are trained, and they are prepared to give you everything that can be mustered in the evidence, in the proof, and in the testimony to support one side. Then a third party is the decision-maker. Whether that third party is a judge or a jury, the third-party decision maker listens to what both sides have to say, and they determine what is the truth. The truth is the by-product of this adversarial system. The alternative to that is an inquisitorial system. And we do not have an inquisitorial system. Because if you're going to take directly the objective of accomplishing "the truth," then under an inquisitorial system (as Torquemada demonstrated in the Iberian Peninsula during the Inquisition), get out the branding irons, get out the rack. I mean, if we could get to the truth by an inquisitorial system, then why not use torture in furtherance of the objective of trying to accomplish the truth? So truth is not the objective of the adversarial system that we use in the United States. Truth is the by-product of the system we use. Because you get far more truth through an adversarial system than you ever obtain through an inquisitorial system, because people will lie to avoid the problems imposed upon them as a part of the Inquisition.

Well, the objective of the Constitution is really simple. There are a whole lot of things that are a by-product of this one objective. But the one objective of the Constitution is to end tyranny. And so everything within the system is designed, in order to accomplish as its by-product, ending tyranny. Because if anyone knew what tyranny was, it was the colonialists who found it unbearable to live under a system of a foreign King, ruling them and imposing taxes upon them disproportionately so that they—the colonialists—were required to pay more taxes so that those back in the home country didn't have to pay taxes on some things or paid far less tax. Because though they were all subjects of the same monarchy, the monarch elected not to treat them equally and to tax them evenly, but to choose some to be benefited through the tax system and to choose others to punish under the tax system. And so they found that the system was intolerable. The reason why we wind up with those kinds of excesses is because of human frailty.

There is this interesting incident that happens, which we have preserved in the Doctrine and Covenants, in which Joseph Smith is in the Liberty Jail. He's been there for about five

months, at the time of the writing of this letter—an excerpt of which is in D&C 121. And he is groaning under the oppression of the state government that has arrested him using the state militia, accused him of treason against the state, and held him without trial in a Missouri dungeon for five months in conditions that were brutal. And in those circumstances he writes (and the writing is inspired):

We have learned by sad experience that it is the nature and disposition of almost all men, as soon as they get a little authority, as they suppose, they will immediately begin to exercise unrighteous dominion (D&C 121:39).

What's interesting about what we have in Doctrine and Covenants 121 is that Joseph Smith is confined and oppressed by a government authority. And in the extremity of being subjected to imprisonment without due process, by the government of Missouri, and Joseph complaining—because if you have the rest of the letter (which is in the *Teachings of the Prophet Joseph Smith*), if you read the rest of the letter, what he's complaining about, what he's asking God for is to avenge the governmental oppression of him. And, as the Lord often does, the purpose of putting Joseph through the oppression in a dungeon is to tell him something about priesthood. The Lord ignores—ignores, you know, lay waste to the government—instead He takes the occasion to say, Okay Joseph, now, now maybe you can understand something. Here's what I was hoping you would understand:

Behold, there are many called, but few are chosen. And why are they not chosen? Because their hearts are [so] set...upon the things of this world, and aspire to the honors of men, that they do not learn this one lesson—That the rights of the priesthood are inseparably connected with the powers of heaven, and that the powers of heaven cannot be controlled nor handled only upon the principles of righteousness. That they may be conferred upon us, it is true; but when we undertake to cover our sins, or...gratify our pride, our vain ambition, or to **exercise control or dominion or compulsion upon the souls of the children of men, in any degree of unrighteousness**, behold, the heavens withdraw themselves; the Spirit of the Lord is grieved; and when it is withdrawn, Amen to the priesthood or the authority of that man...[See] no power or influence can or ought to be maintained by virtue of the priesthood, only [you don't have any authority by virtue of that; you have authority virtue of only]...persuasion [that's your tool—persuasion—and since that is not going to work, the second tool is]...long-suffering [because all you're armed with is persuasion, you can't say, "I'm the authority, you need to do this. I'm the authority; the thinking has been done." If all I've got is persuasion, then I'd better be willing to be long-suffering, because I'm not going to bring you on board with the truth anytime soon, and then]...gentleness [I don't care how frustrated you get] and meekness, and...love unfeigned; By kindness, and pure knowledge, which shall greatly enlarge the soul (D&C 121: 34-37, 41-42).

These are the tools. So Joseph is suffering from governmental oppression, complaining about the government, and the Lord says, "Good! Now maybe you can understand the way

the Priesthood works, because this crap you're going through—if you think it's bad when someone has a militia, oh you just wait, Joseph! As it rolls forward and people have possession of priestly office, you see what happens!" We've been through that; it's called Catholicism. The Lord's focus, as is often the case, is not on the thing that Joseph was asking about. But it was about what the Lord wanted us to understand.

And there are other reasons why the Constitution matters to Latter-day Saints. Doctrine and Covenants 101 tells us—and this is really interesting; 101:76,

And again I say unto you, those who have been scattered by their enemies, it is my will that they should continue to importune for redress, and redemption, by the hands of those who are placed as rulers and are in authority over you—

See, the Lord didn't say, "Based upon the Missouri persecutions and the loutishness of Governor Boggs, dispatch Orrin Porter Rockwell, and take this guy out." He says, "...those who are placed as rulers and are in authority over you." You know, the solution doesn't lie in the end of a barrel. Petition Him, and do it (verse 77):

According to the laws and constitution of the people, which I have suffered to be established, and should be maintained for the rights and protection of all flesh, according to just and holy principles.

That's what the Constitution was designed to accomplish. And when the Lord says that it was established for just and holy purposes, we ought to be approaching constitutional issues with the same sense of the sacred, as D&C 121 talks about respecting the rights of conscience and belief. So it's just, and it is holy—the Constitution.

That every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day[s] of judgment. Therefore, it is not right that any man should be in bondage one to another. And for this purpose have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood. (verses 78-80)

So I want you to note that what we are told in Doctrine and Covenants 101 in the revelation given to Joseph is that the Constitution was established by the Lord's hand, through men He raised up for that purpose, to establish just and holy principles that will protect the rights of all men. What it does not say is that having raised those just and holy men up, that you have a guarantee that forever thereafter you will have in a position of authority over you, running the government of the United States in perpetuity, "just and holy men" whom the Lord has raised up. He put it in place; He put it in operation; He turns it over to us. Then the question is, What are you going to do with it? What are you going to do with what you been entrusted with? That's the question. The Lord did His part; now it's up to us.

The Constitution gets mentioned again, not in a revelation. [Section]101 is a revelation. It gets mentioned in the dedicatory prayer of the Kirtland Temple, in section 109:54. And Joseph says in the prayer:

Have mercy, O Lord, upon all the nations of the earth; have mercy upon the rulers of our land; may those principles, which were so honorably and nobly defended, namely, the Constitution of our land, by our fathers, be established forever. (verse 54)

Well, we have a declaration of belief on how governments ought to behave—that's section 134:

We believe that governments were instituted of God for the benefit of man; and that he holds men accountable...[and so on; oh, I like verse 2]. We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life. (verses 1-2)

It's interesting that we have in [section] 134 the reference to property. John Locke talked in terms of life, liberty, and property. In the Declaration, it was reworded to “life, liberty, and the pursuit of happiness.” (You have to understand the Scottish Enlightenment and what happiness meant, because that was a very specific phrase. The word *happiness* doesn't mean, “I got an Xbox, and I got a noggin full of cocaine, and I'm happy now.” That's not it. Happiness had a highly specific meaning. It meant that you were living your life in conformity with the will of God. They believed in natural law. Natural law meant that it was ordained by God and was given to all men. And when you brought your life into harmony with natural law, with the will of God, then you became happy. So “life, liberty, and the pursuit of happiness” means life, liberty, and that you are living your life in conformity with the will of God, which would bring about happiness.) John Locke cut to the quick, which was property, which is where we would be, even with the 16th Amendment, if property were in there.

19:32 Well, First Nephi 13—there is a series of verses that's giving the prophetic foreshadowing, the foretelling of what was going to happen when the Gentiles became the inheritors of this land. Beginning in verse 12:

And I looked and [I] beheld a man among the Gentiles, who was separated from the seed of my brethren by...many waters; and I beheld the Spirit of God, that it came down and wrought upon the man; and he went forth upon the many waters, even unto the seed of my brethren, who were in the promised land.

There's your answer to the question of whether people got the Holy Ghost without the laying on of hands, at some point. I mean, Columbus was inspired.

It came to pass that I beheld the Spirit of God, that it wrought upon other Gentiles; and they went forth out of captivity, upon the many waters.

So it wasn't just Columbus; it was your own ancestors who were wrought upon by the Holy Ghost to come and occupy this land. Even though two of my ancestors were children in the Liverpool area who accepted a free afternoon boat ride from a captain who was loading the boat up with children, and then proceeded to sail from Liverpool to the United States—to the colonies—where he sold the children off as indentured servants. One of those was a boy and another was a girl who were sold to the same family as indentured servants. And when they worked their way through the indentured servitude and they were free, they married one another. And so I guess the Spirit works directly on some and through captains on others.

And it came to pass that I beheld many multitudes of the Gentiles upon the land of promise; and I beheld the wrath of God, that it was upon the seed of my brethren; and they were scattered before the Gentiles and were smitten. And I beheld the Spirit of the Lord, that it was upon the Gentiles, and they did prosper and obtain the land for their inheritance; and I beheld that they were white, and exceedingly fair and beautiful, like unto my people before they were slain.

Which tells you that what he's talking about is the ones who were the designated inheritors; [they] match a specific description and fit within a certain ethnicity called *Gentile*.

And it came to pass that I, Nephi, beheld that the Gentiles who had gone forth out of captivity did humble themselves before the Lord; and the power of the Lord was with them. And I beheld that their mother Gentiles were gathered together upon the waters, and upon the land also, to battle against them. And I beheld that the power of God was with them, and also that the wrath of God was upon all those that were gathered together against them to battle. And I... beheld that the Gentiles that had gone out of captivity were delivered by the power of God out of the hands of all other nations.

Well, you'd have to know a lot about our early history to know just how very true that is. Sometime, you ought to look into the battle of New York and how Washington managed to escape. And he was the last one to leave that morning. He wanted all of the troops withdrawn before he would leave and enter the boat himself. But for the intervening fog bank, the American Revolution would've ended that day. The hand of God was throughout that. In fact, Washington talked about the hand of Providence ruling throughout.

Then we have Jacob's teaching in Second Nephi 10. Jacob—the one that Nephi thought so much of as a teacher that he gave chapters of his own writing over to his younger brother—Jacob. Jacob, teaching in chapter 10 and beginning in verse 10, says:

But behold, this land, said God, shall be a land of thine inheritance, and the Gentiles shall be blessed upon the land. And this land shall be a land of liberty unto the Gentiles, and there shall be no kings upon the land, who shall raise up unto the Gentiles. And I will fortify this land against all other nations. And he that fighteth against Zion shall perish, saith God. For he that raiseth up a king against me shall perish, for I, the Lord, the king of heaven, will be their king, and I will be a light unto them forever, that hear my words.

24:52 Well, we all know the story of the Book of Mormon—how there were kings and how there were kingmen and how there were those— I mean, it doesn't mean that there will not be, at least temporarily, those that manage, in this land, to establish temporary monarchies and oppress. It just means that the ultimate destiny of kingship on this land is failure, and therefore, there we are. So we now know what the background is. And we know that there is this effort to create systems to guard against tyranny that have as their by-product the freedom of the people.

And so we look at the Constitution and say, How exactly is it, then, that the Constitution managed to establish a framework inside of which it is possible to preserve freedom? Article 1 Section 1 of the Constitution says that:

All legislative Powers...granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Then Article 1 Section 3 tells us how the Senate operates:

The Senate of the United States shall be composed of two Senators from each state, (chosen by the Legislature thereof,) for six Years; and each Senator shall have one Vote.

So the Senate of the United States consists of this group—two Senators—and they are chosen by the legislature of the state. Now, you might say, Well, we fixed that. Yes, we kind of did. We don't have any problem with the idea that there are positions that are held within the United States which have extraordinary authority granted to them but who are not elected by the people. Every United States federal judge is appointed by the President and confirmed by the Senate. Every sitting member of the United States Supreme Court is appointed by the President and confirmed by the Senate. We don't elect federal judges. We elect men (or women) who choose—We elect men who choose; we've yet to get a woman. The inevitability of that is, however, certain—We elect men; they choose, the Senate confirms, and none of us sit back and say, “Wait a minute! We didn't get to vote!” None of us question the authority, or the dignity, or the legitimacy of their power. And the Supreme Court becomes, of course, the court of last resort in the country. Somehow, however, when it comes to the legislature of the United States, when the United States Senate became a creature of the legislatures rather than being elected directly by the people, we found it so intolerable that we amended the Constitution in order to provide for the direct election of United States Senators.

Well, when they were putting together the United States Constitution and they had a skeptical public, they published a series of articles (Madison and a few of his cohorts, anonymously) in *The Federalist Papers*. And *Federalist Papers Nos. 62 and 63* explain the purpose behind the way in which the Senate was organized. This is just talking about the United States Senate in the mechanism that gets used to choose the United States Senate:

It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former [“secure the authority of the former”—the state government], and may form a convenient link between the two systems.

The United States Senate was designed to be a link between, on the one hand, the state and the state authority—that is, the state Legislature—and the federal government. Because the Senate was the creature that was selected by, appointed by, chosen by the state legislatures and, therefore, answerable to them.

The equality of representation in the Senate is another point which being, evidently, the result of compromise between the opposite pretensions of the large and small states:

...among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an EQUAL share in the common councils....

We're trying to protect the identity of the various states as independent and sovereign.

The equal vote allowed..each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty....to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

It was never the objective to have the United States of America become correlated so that they're all singing the same hymn, preaching the same lesson every week, in uniformity from sea to shining sea. That was never the intent. It was always the intent that there be independence and recognition of the sovereignty of each of the individual sovereign units—who were entitled to elect their own representation; and then have their representatives choose who the senator would be (at the beck and call of the legislature) to go back to Washington and to guard the rights of the state. So—simple system. Think about it. Dividing the power is

a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation...[whereby] the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well

understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

You see, here's the way that works. The way in which you choose the Congress—the House of Representatives—is by direct election. And by direct election, you can be informed by all sorts of passions, prejudice, trends, stupidity, fads—all kinds of things can briefly inflame the passions of those people that are elected by the public directly. But the legislature—out of which the United States Senate grows—the legislature is a completely different kind of body. The legislature in the states only turns over so often. And the legislature is the ones that are holding the reins on the Senate. So when the senators go back there, the things they care about—the fashions of the day, the passions of the people—are quieted, are mollified, are subdued to some extent, because the Senate doesn't have that same problem with direct election as does the House of Representatives. And this is a wise purpose, because of the improbability of sinister combinations in proportion to the dissimilarity between the House and the Senate. Therefore, what you want is dissimilarity. What you want is for them to reckon from different gene pools altogether. What you want is the Senate to be something far different than the House of Representatives. You don't want them running around with, oh, campaign slogans and yard signs and well, in the early days, barrels of whiskey at the polling stations.

Now why are we trying to create such disparity between the two bodies? It's because at the time that the Constitution was being discussed...

...No small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have [been produced] from the heads rather than the hearts of most of the authors of them....A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can...best [be] attained....The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?...Great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of the existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they be executed? What farmer or manufacturer will lay himself out for the encouragement given to

any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government?

The United States Senate was designed to be chosen by the legislature in order to prevent the incessant changing of the law and to provide a stability by which the government could become predictable; its laws known. Change would not be rapid. There could not be an agenda: "I'm running on a platform. Here's my platform. I got this here agenda. We are going to transform America. We are going to make us a new one. We are going to implement. And if we can't get implementation in any other way, then we're going to 'executive order' our way through."

Now, wait a minute...hold on. I thought it said that the legislative power, ALL legislative power herein granted should be vested in a Congress of the United States. So that's Article 1. We don't get to the executive until Article 2. If we had the Senate doing its job, you wouldn't be faced with those issues.

In the next circular of *The Federalist Papers*, *Federalist No. 63*, still talking about the United States says:

The people can never willfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, [rather] than when the concurrence of separate and dissimilar bodies is required in every public act.

The purpose was not merely to make them separately elected and to divide them into two terms: one for two and one for six years. It was to make them dissimilar. The creature that is called the United States Senate and the creature that is called the House of Representatives [were] designed on purpose to be dissimilar. And so anything you do to break down the dissimilarity and anything you do to create similarity between the two bodies is designed to undermine the very purpose that the system that was established was designed to guard against.

Well, they talk about how you can transform and corrupt our country. But in accomplishing that,

Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of

the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?

Yes, if you remove one of them—if you get rid of the legislative control over them—because then you aggregate power at the federal level, and the legislatures of the various states become servants, not sovereigns. They become servants to a homogenized, single, federal unity.

...the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body.

When I was growing up in Idaho, the reaction to that would be: My ass! [laughter]

You know, the United States Constitution was amended. In the 17th Amendment to the Constitution it provides:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years.

If you want to do one thing to change the course of the United States, repeal the 17th Amendment. Overnight, the issue of whether or not the states have legislative authority and independent sovereignty would be re-established with one change. And it's never going to happen. Because the monied interests, at this point, are so far entrenched in this system; and the political parties are so behind this manner of accomplishing the taxing and the gathering and the paying—that Washington simply is off the leash. And the leash came through the United States Senate. And the 17th Amendment cut the leash, and therefore, what we have is exactly the problem that we face today.

Well, never question the wisdom of the folks that the Lord raised up—holy men who He raised up in order to establish a system. And just realize, anytime you tinker with the system—any system—that God put in place, you're going to yield— I was going to say “unexpected consequences.” But that's just— You're going to apostatize from the purpose, and you deprive yourself of the intended blessing God hoped (when He entrusted the system to you) to bless you with. That's the first point.

There's one other point I want to talk about. When the United States of America was established, the United States had about 200 years of slavery that had been built into the core of the country (when the United States was a colony), and it had no right (as a colony) to resist the importation of a slave class. And so, when the United States of America gained independence from England, slavery was an existing economic fact that had been built into the society itself. It's interesting [to read] some of the debates that took place during the drafting of the Constitution. Because one of the theories—and it was a real theory that

bright men considered—one of the theories was that it was impossible to produce the required educated and idle class—and by “idle class,” that means someone that doesn't have to go out and labor in the field with the strength of their body in order to provide the means to feed and clothe and house themselves—you could not produce the required idle class unless you had slavery, because there was no historical precedent for it. And they debated that. And the problem was that history suggested that that argument was an argument that could be made and could be considered. So when independence was achieved, independence was achieved against the existing reality of slavery.

Now Washington, who was the only man considered to be President of the United States—in fact the office of the President was written and designed for one occupant, and that was George Washington—he was the indispensable man in creating this country. Washington was the one who presided over the Constitutional Convention and contributed almost nothing to the debates, other than his presence. And when they reached an impasse, the way they solved the impasse was Washington indicating which side he favored. When they took it [the Constitution] out to sell it to the public, the salesmanship that was done was that “George Washington presided over this.” Everyone trusted that man. Therefore, they adopted an office for that man, and he filled it for two terms. And then he resigned, and he walked away—something that everyone would respect by his mere example, until it was necessary, after FDR, to amend the Constitution again to prevent that from not being the example. Washington, when he died, freed his slaves. He didn't do it while he was alive, but he did it in death. If everyone followed the example of Washington, with time, there would have been no more slavery.

Here's the problem, however. Since the [slavery] institution had been imposed upon the United States as a colony, and since it represented wealth—it represented capital—however offensive to you it may be today—to say human beings are not capital—the economic reality was that slaves were capital, and they represented an investment. So the question becomes, how do you extract yourself from the institution of slavery when you have an economic system in which people have invested capital in human slaves? How do you bring that to a conclusion? Because quite frankly, if all you do is terminate the practice, you would bankrupt the South.

It is probable that the cotton gin alone made the end of slavery inevitable, because it became a problem with the coming Industrial Revolution, one of the first edges of which was the cotton gin. The coming Industrial Revolution made it no longer necessary to have human bondage in order to accomplish it. It wasn't just the ownership of African slaves in the South; it was indentured servitude in the North. Indentured servitude was a way of selling yourself, or someone else, into slavery for a period of time. And servitude was an economic means for producing goods and services. Well, how do you extract yourself?

Joseph Smith published, when he was running for the presidency of the United States, *General Smith's Views of the Powers and Policy of the Government of the United States in Nauvoo*, Illinois in 1844, and this is an excerpt from his campaign:

Petition also ye goodly inhabitants of the slave states, your legislators to abolish slavery by the year 1850 or now, and save the abolitionist from reproach and ruin infamy and shame. Pray Congress to pay every man a reasonable price for his slaves out of the surplus revenue arising from the sale of public lands, and from the deduction of pay from the members of Congress. Break off the shackles from the poor black man, and hire them to labor like other human beings; for “an hour of virtuous liberty on earth, is worth a whole eternity of bondage!”

Joseph Smith's proposal in 1844 was: Here's how we end slavery—we buy them. We pay the purchase price; we purchase their freedom. Now think about that for a moment, as a matter of economic reality. If you are a slave owner, and someone offers the fair price to you for your entire group of slaves, and you sell them into freedom, you now have capital—the capital that you spent buying them. And with your capital, you can hire them. And the people who were formerly merely a commodity now become wage earners. But what happens if, instead of doing as Joseph Smith proposed, you simply destroy the capital of the South by saying no more slavery? Instantly, you bankrupt the South. Instantly, you doom the freed slave, to no longer having anyone who has the capital with which to employ them. Instantly, you leave the South in a position where, out of economic reality, what you do—since you own is land—is you start a sharecropping system, in which the risk of crop failure falls upon those who can least afford to bear the risk of crop failure—that is, the former slaves.

What Joseph Smith proposed would not have required reconstruction. What Joseph Smith proposed would not have caused the Civil War. What Joseph Smith's proposal would have accomplished was the end of slavery. And what Joseph Smith's proposal would have accomplished with the end of slavery was the economic means by which the former slave could rise out of poverty, through labor—because that's all anyone was doing at that time—through their own labor and accomplish, through their employment, the dignity of holding a job and earning an income. But what we accomplished instead was another revolution that has constitutional implications.

The deadliest enemy that the United States has ever faced is another American, and the Civil War proves it. There is no more effective and warlike people on earth than the Americans. And when the Americans faced the Americans, and blood was shed, we punished ourselves for slavery. And in the wake of the Civil War, the Civil War amendments—if you take a look at what happened with the Civil War amendments, once again it was a power shift. The way in which slavery was designed to end was gradually and in a way that made economic sense. The way in which it *did* end imposed another century of slavery upon the liberated slaves in the South, as a matter of economic reality. It just was. You would never have had sharecropping—I mean, the only thing they had was land, so what do you do? You let them farm the land. And then the crops that come off the land? You charge them, you take it, and you doom them the poverty.

Well, if you look at what happened in connection with the Civil War, in contrast to the wisdom of what Joseph Smith suggested as an exit strategy to terminate the practice of slavery, you realize that the choice that we made between the two of them not only

resulted in another century of problems following the Civil War and the freedom of the slaves and the bankruptcy of the Southern slave owners, it also resulted in oppression of the former slaves. Because they succeeded into freedom in an economic environment in which it was impossible for them to make value out of what they had to offer, that is, their labor.

The amendments were designed to curtail the rights of the states and to impose upon the individual states the same due process of law, through the 14th Amendment, that we have in the federal government. You see, Congress shall make no law respecting the establishment of religion in the 1st Amendment. However, that didn't apply to the state legislatures, which is why Thomas Jefferson (as President of the United States) refused to acknowledge Thanksgiving as a national holiday—because it was religious. And when he became Governor of the state of Virginia, he not only celebrated Thanksgiving as a state holiday, but he also had a day of fasting—religious fasting—the day before. The United States could not have a state religion, but the states could and did. The 14th Amendment ended that. What that literally meant, at the beginning, is that independent sovereign and equal states could experiment. You could have the state of Utah with a state religion called Mormonism or Latter-day Saintism. And you could have, like they did to the citizens of Massachusetts, a tax that was imposed by the state, collected by the state, and paid over to a church. You could do like the LDS church used to do with employees of ZCMI—that is, they had a payroll deduction for tithing, and they deducted it (if you were employed at ZCMI), and they paid it directly to the Church. They could do that to all of you in the state of Utah if we still had what we had originally. And if you didn't like that, then you could go to Idaho, because in Idaho they worship the potato. I know, because I grew up there. And if you found it detestable to worship a potato, you could go to Wyoming and worship a cowboy. But every state was intended to be an experiment in sovereignty and in freedom, and the aberrations that would appear—the strange concoctions that the states would create of themselves—is just fine, because the citizens of Vermont could say, “I am sick of this government,” and they could pack up, and they could move to Rhode Island. Or they could move to Virginia. Or they could go to Ohio. And sooner or later, some state—like Texas is doing now—could say, “Come here! We're not going to tax you out of existence. We're going to issue you a side arm when you come into the state, and we're going to let you shoot out of your car every road sign you see! And we will replace them, because we have oil money, and we can buy new road signs. Come to Texas!” It's that guy on *The Simpsons*. Yee-haw! With the two guns going off.

And so people from Massachusetts can look down their nose at the folks in Texas. And they could say, “You know, they're ne'er-do-wells; they're hicks.” And the people in Texas can say, “Thank God we're in Texas and not in Massa-damn-chusetts.” We should be so diverse, we should be so dissimilar, we should be so non-uniform that growing out of the United States there should be, at this moment, 50 different experiments underway, using the freedom that people have to choose, to design for themselves the way in which they would like to be governed. And those 50 different ways will ultimately—some fail, some succeed, some turn into Nirvana. And the states are going to look around and say, “Hey that's good!” and they are going to inform their own experiment in democracy by what they see working,

and they are going to inform their own experiment in democracy by seeing what's failing and by saying, "Well, that didn't work! I mean, look at that mess!"

Instead, what you have is a national uniformity in which—when we make a mistake in economic policy; when we make a mistake in the way in which we proceed in trying to regulate and tax and govern; when we make a mistake in taking those who are most productive and confiscate money from them in order to subsidize behavior that we would really like to see end—when we make a mistake, we make a mistake on a grandiose scale. We make a mistake that is so threatening that it is possible to defeat the sovereignty of 50 states and to defeat the sovereignty of the entire union itself, and that was never what the Constitution set out to accomplish. The Constitution set out to accomplish, as a by-product of a system, your freedom. Your rights. And the way in which they accomplished it has been tampered with.

Therefore, I don't care if you've got scriptures as a Latter-day Saint that you can thump on and say, "The Constitution was divinely inspired!" So what! Because every time you tinker with it, every time you change it, if you are not informed by the same degree of inspiration as was evident in the original creation, uninspired men—who DO have a tendency to become tyrannical; uninspired men who DO want to exercise control and compulsion and dominion—they can take any gift given by God to any of us, and they can pervert it into something in which savage uniformity oppresses the hearts and the souls of men and renders it incapable of securing, for the benefit of you and your posterity, the freedom which we find in Christ: the Original Revolutionary.

Constitutional Apostasy: Q&A Session

Well, I've talked long enough. I was told by email that I ought to allow some time for questions.

Question: So you alluded to this a little bit ago and said that things got established that should not be tampered with. Can you draw a comparison between the checks and balances that were set up for our political government and the original form of Church government that is established in Section 107?

Response: Yes, I could. [laughter] Oh man. OK, this is a more important story, but that's the answer to the question that you asked. Yes, I can. [laughter] There's a kid on the team—the kid on the team was literally, he was batting .004 for the season. OK? And he told my daughter that he wished that she would teach him how to hit. And that was the practice before last practice, and in the last practice, which was yesterday, I was watching him in the batter's box, and this is batting practice, and he didn't hit a single ball thrown to him. So I went over, and I asked the coaches, “Can I work with this kid a little?” They said, “It's the last game of the year; he's yours. You're welcome to him.” So I took him over, and I taught him one little technique where you stand next to the chain link fence, you put the bat against your belly button and against the fence. And you get yourself that close. Then, you have to swing the bat without hitting the fence. K? What that does, if you can swing the bat without hitting the fence, if you've got a Little Leaguer, that forces the arms into a 45 degree angle. You can't accomplish that swing without a 45 degree angle. You watch Major League baseball players, they're all swinging at a 45 degree angle. Well, if you're pirouetting, you've got your arms out, you go slower. And if you bring those arms in, you go faster. You rotate on the ball much faster—I mean, you can't hit a fast ball in the major league unless—this is called “casting;” it's what you do to catch fly fish. You cast. You keep it at a 45, and you bring it through fast, and you can hit the ball, and if you're doing it right, then you don't even have to watch the bat, you just take your hands, and wherever the ball is, your hands line up with that, and the barrel follows. So this kid, who was batting .004, this is the headline news, I'll leave his name out, he hit a single and got an RBI tonight. That's all that matters! [laughter and clapping]

Question: Assuming that's the extent of your answer to his question, forget about how it is NOW. How was it ORIGINALLY? What was the check and balance system that was originally designated by the Doctrine and Covenants?

Response: Joseph Smith never called a single member of the quorum of the Twelve into the First Presidency of the Church. The quorum of the Twelve is a traveling high council. Essentially, they were missionaries. The First Presidency of the Church was a different operation. All the congregations were locally controlled, locally elected, locally governed. General authorities came to moderate the election. It was a Congregationalist model. Common consent meant something. Instead of handing out appointments from higher-ups, the local people knew who the local people were, and they chose who they wanted. The general authority came to moderate the ballot. They would take nominations. They would

usually get a slate, they would then vote; whoever got the most votes, they would ask, "Will you sustain him?" And if it wasn't unanimous, they would go to number two, and they would ask, "Will you sustain him?" No. They go to number three, "Will you sustain him?" And if he got the votes, and this was the guy who people had confidence in, then he became the stake president, he became the bishop, he became the whatever. Usually that guy would then ask for one of the other people who had gotten votes to be counselors. And usually, in an act of magnanimity, everyone would say, "Well, he's in charge, and if he wants them, I'm good with that." It was a local model.

At the time that Joseph Smith was killed, he was presiding over the high council in Nauvoo. The way that the Doctrine and Covenants reads, you can have the President of the Church be the president of the high council. Now William Marks was president on a number of occasions, but it was Joseph Smith, primarily, who presided over the high council in Nauvoo. Joseph Smith, presiding over the high council in Nauvoo, regulated and held the church courts that went on in Nauvoo. When he held a church court, he learned a lot of stuff about what was going on inside Nauvoo, because people brought in their issues. Joseph Smith gave a talk that can only be justified by what he was hearing presiding over the high council in Nauvoo. His intimates were the Stake high council. His associates—the guys who knew him best during that time period—was the Stake high council. If a guy or gal didn't show up for their high council court, the court wasn't held. If someone said, "I need more time," they were given more time. If someone showed up and said, "I'm sick," the high council wasn't held. Almost any reason would do to get the high council hearing continued.

Joseph Smith was killed. The quorum of the Twelve came back. If you look at D&C 107, the First Presidency "*form a quorum, equal in authority...*" If you get down through all the "equal in authorities," you get to the high council. And the high council forms a quorum equal in authority with the First Presidency.

So that succession moment, the quorum of the Twelve pulled it off. They became the body triumphant. And then during the excommunication trial of Sidney Rigdon, over which Marks presided, it was rather a Kangaroo Court. Brigham Young was the one leading the charge, making the accusations. But he recognized he didn't have jurisdiction to get rid of Sidney Rigdon. So it had to be the high council that did that. And so in the Rigdon trial—in marked contrast to how the high councils had been conducted with Joseph Smith—Sidney Rigdon said he didn't feel well, and he didn't want the court held. And Brigham Young said, "We're holding the court anyway." The high council went along with that. Brigham said that if Rigdon was well enough to attend a meeting earlier that day, he was well enough to attend his excommunication trial, and so we ought to proceed. And so they proceeded, in the absence of Sidney Rigdon. And then after he succeeded in getting Sidney Rigdon excommunicated—because he was considered the number one rival—he said, Well, you know, we might as well hold court and excommunicate a whole list of people who were sympathizers with Rigdon, because we are going to have to get rid of them sooner or later anyway. So those guys didn't even get notice that there was going to be a high council court, and they got excommunicated, too, because they were guilty by association.

So things changed. And when the quorum of the Twelve became the presiding center of political authority—I mean, you look at what he did: In order to move the high priests out of the jurisdiction of the Stake high council and the Stake President (which was William Marks, who was also considered a rival to Brigham Young), he called every high priest on a mission. Because when you're in the mission field, they were under the jurisdiction of the Twelve. And so every high priest in Nauvoo was assigned a mission somewhere in the congressional district of the United States—now that didn't mean you had to leave Nauvoo, but they were called to that. What that did was to change the authority structure from the Stake President and the high council into the quorum of the Twelve running things. And we've read articles celebrating the reorganization (or the re-empowerment) of the Seventy by Brigham Young, which is also another political move made at the time.

The ripples from the succession crisis that occurred in 1844 is comparable in scope and magnitude to anything we've done in tinkering with the Constitution. And so today we don't have a congregational model anymore. And we are savagely uniform. From Buenos Aires to Tokyo, you can feel comfortable no matter where you go that you're not gonna miss the same Relief Society, Sunday School, Elder's Quorum, and High Priest lesson. And when we have our monthly whatever-that-thing-is-where-we-select-some-talk, everyone's gonna talk about that same-some-talk wherein they're gonna ruminate about what someone recently said. But, you know, what's a little bit of uniformity among friends? But that wasn't what I came here to talk about. You derailed this Constitutional affair.

Question: Joseph Smith went to visit President Van Buren and was told, “Your cause is just, but there is nothing I can do for you because I would lose the vote in Missouri.” Not only was he expressing his desire to remain president but he was also expressing the political reality at the time, because until the 14th Amendment, the state could violate the civil rights of the people. So the 14th Amendment corrected what Joseph found was a fundamental flaw in the Federal Constitution.

Response: Yes. At the expense of a whole lot of other things.

Question: How would you have done it differently?

Response: You can have cheese, but you only get cheese. And you get a whole lot of cheese. And you don't get any broccoli to go with it. I mean, in for a penny, in for a pound. What we are trying to guard against is tyranny. And what we have is either separate sovereign experiments, in which some things may go awry, and that'll inform forever in the future whether or not the state of Missouri ever again gets one penny of patronage or one bit of help from an entire community—that has been alienated. An entire growing body of politically-active and wealth-producing and successful Latter-day Saints, by their failure to behave reasonably. Or we can just homogenize everything and say, “Now the President can...”

There was this incident that happened during the Korean War, when President Truman sent the National Guard in to operate a steel mill during a strike by the steel workers. And a

federal judge sent them home because he said the President doesn't have the authority to do that. Oh, the good old days.

Question: Why do you think many General Authorities in the past have expressed that they think that President Lincoln was inspired?

Response: I'm certain he was an inspired...there's no question about that.

Question: But whom was he inspired by?

Response: Well...therein lies the rub. Look, the problem is this: What, in the end, do you prize the most? Do you prize all of the risks, all of the responsibilities, all of the potential for failure, all of the individual accountability? I mean—I read you the scripture a moment ago—what was the purpose of the Constitution? It was to make you free so that you can exercise moral agency, and you get the opportunity to succeed or fail. The purpose of the Constitution is to set you in a position in which it is possible for you to accomplish either one, so that you—YOU— become accountable—not someone back in Washington, not someone to whom you have surrendered your choice, not someone else to run your life, not someone else to tell you the comings and the goings, the when's and the where's and the why's. YOU the Constitution was designed to accomplish. YOU become morally accountable, because you are the agent that gets to choose.

And what the original structure did—and you can say, well, it was errant; it was excessive; there's just too much freedom there; it was licentious. I mean, for goodness' sake, look at what happened: slavery was doomed; period. Slavery was doomed. If the Federal government didn't do anything about it, it would come to an end, and the way in which it would have come to an end would have probably not involved the loss of so many lives and so much treasure. Nor would it have propelled the country into a circumstance in which, for the next century, the former slaves paid a very dear price for the way in which they exited from the institution of slavery.

You know, Lincoln was a Republican, and the Republicans wanted to end the twin relics of barbarism. I mean, when he got done with the Civil War, he probably would've sent Johnson's army out a lot earlier. Look, every one is a mixed blessing. Every leadership dilemma is an opportunity for wisdom and prudence or excess and failure. When you consider the leaders that we've had in this country, there's no question that George Washington fashioned a way of wielding power that was selfless and not self-centered. He was interested in being a servant to the people. When Jefferson became President—he's the guy who invented the embargo; he was looking for a peaceful way to obtain agreement using peacefully coercive means. The way in which the founding fathers proceeded was an extraordinary balance of prudence and wisdom, caution and daring. They proceeded through a landmine field without blowing themselves up.

Ask yourself this question: Let's assume that we had Washington, Adams, Jefferson, Madison, Monroe—let's assume we have all those guys at the time of the Civil War, and we

say, "Slavery's got to end, and it's got to end now." Do you really think the route that those men would've taken was the same one that Lincoln chose?

Look, Joseph Smith had a way out. It was part of his platform when he ran for the Presidency. I mean, if Joseph was inspired and a prophet, and he chose a means diametrically opposed to the one that Lincoln chose, and you say, well, one looks for a way to accomplish it by peaceful means by preserving life, by preserving property, and creating freedom. And the other one managed to accomplish it by brute force, by the deaths of three-quarters of a million Americans, and by the impoverishment of those whose capital was lost—because they had to pay just compensation if they wanted to take your property; and at the time, whether you like it or not, the definition WAS property—ummmm... yeah. I agree. Lincoln WAS inspired.

Question: I think that the Constitution has all but been destroyed. My question to you is: In the short term of one to three years, how do you see things playing out? And in a longer view, how do you see things playing out with most of the population, including our LDS brethren, apparently asleep?

Response: We have a really fortunate confluence of scandal right now back in Washington. We are blessed, and we are protected, not by the wisdom of our leaders, but by the foolishness and vanity of our leaders. And we have now, potentially—because of the seriousness of the groups that have been offended—we have a potentially three-year lame-duck president, which would be highly useful, because the aggregation of executive power is something that—

I mean, Nixon's the poster boy for the left to say, "Look at that—look at that excess!" when, in fact, Nixon doesn't even hold a candle to the administration we've got now. I'm hoping that this confluence of scandal will hamstring because even still—what we have is a balance between the egos of various political offices back there, and that was one of the purposes of the Constitution. It was to establish a way in which you could take politically ambitious people and put them back there and let them fight with one another so they'll leave us alone. So what I'm hoping is that we have enough scandal going, and enough egos back there right now, that they will brutalize one another and leave us alone. It's like Mark Twain said, "No one is safe in their life and property while the legislature is in session." They may be in session, but hopefully what they're fighting over is one another.

Question: When Supreme Court Judge Roberts made the decision on the "un"affordable healthcare, somebody said it was a wise decision, because it allows the states to stand up against it. But they are not doing that. What is your opinion?

Response: Here are the horns of the dilemma I have. I am a member of the bar of the United States Supreme Court, and I'm not supposed to say anything that would reflect dishonor or discredit on a member of the United States Supreme Court. So let me just say—not about Justice Roberts, the Honorable Chief Justice Roberts—but about the opinion. It makes no sense at all to me. Quite frankly, I believe it was motivated by the

notion that if you turned it into a tax, you could write the majority opinion, and the tax would be so offensive that the upcoming election would be swung against Obama, and the act would be repealed. I think the opinion was an attempt to engage, from the bench, in determining the fortunes in the next election. And it didn't work. You can't go to the legislative history of the enactment of Obama-care and find anyone—you can't find anyone—that advocated it as a tax. That wasn't the purpose. In fact, it's a damnable lie to stand up in oral argument, as the solicitor general of the United States did, and advocate that it is an act that can be upheld because of the taxing power of the country, if the country never sought to invoke the taxing power as the basis upon which to adopt the act. And I think Robert's opinion is a lesson in the disadvantages of trying to be, from the bench, a politician. It's a bad opinion, in my view.

I understand this might go up on the web, and one of the things I like to do when things are going out there is to say things like *jihad*, and *we are going to avenge Waco. Muslim Brotherhood. And Homeland Security...you go screw yourself.* [applause]

I have a client who is in Europe right now, and we talk on occasion. And whenever I'm talking to him, I'll say, "Okay I gotta do something now because this is international, so I can help out our folks at Homeland Security," and I go through the list of taboo words.

Question: Do you know of anything that was compiled on Joseph Smith and his platform to end slavery?

Response: Actually if you google the *Joseph Smith Presidential platform*, you'll kick up a copy of the platform and an article in *Mormon Dialogue* magazine that deals with it. And it's not a bad article, and the platform is right there. Just google that, and you'll find the *Mormon Dialogue* article.

Question: You didn't answer the second part of the question, of "Where do you think we are going after three years or so?" I'm still waiting for that part.

Response: Well you know, "Ohmmmmm..." [Denver starts to hum as if in meditation]. When the Lord says, "My peace I give unto you," He coupled that with, "Not as the world gives, give I unto you." In this world, you get to enjoy all of the benefits of a Telestial atmosphere. Right now, perhaps for one of the first times in history, you have a politicized economy. You have a politicized stock market. I've spent three weeks in trial against a bank; I was in a closing argument in the case earlier today. All I can say is—there was a Taylor Swift concert my daughter went to; that song about *trouble, trouble, trouble...* Sometimes it's like that song by Simon and Garfunkel said, "the words of the prophets are written on the subway wall." And sometimes they are written by country-western singers. We're in trouble. That's obvious, don't you think?

Question: So we are morally bankrupt, and we are about to be bucked off our horse...?

Response. Well, there's always the possibility that we repent [nervous laughter]. But the agenda suggested by the Book of Mormon is that that's unlikely.

Question: Your talk is entitled “Constitutional Apostasy.” So, my question is: What's the consequence of our Constitutional Apostasy?

Response: You lose the blessings. What the Lord intended to confer upon you—and what you might have had—you lose. This isn't the responsibility of God. He's not doing this to you. He gave you, as a gift, an opportunity. What you do with the opportunity, then, is up to you. And when you walk away from, and you decide that you would dis-prefer to preserve, for any reason, what it was that God had intended to bless you with, you can't obtain the blessing without conforming to the law upon which the blessing is predicated, and that was established before the foundation of the world. And if you decide that you will not conform to the condition upon which the blessing is predicated, then you get to enjoy the absence of the blessing. And you get to mill around in darkness, because blessings confer light. That's why they call it *enlightenment*. That's why the founding fathers were enlightened, because they were gathering, to themselves, light. And when you throw that away, then you get less of that—and darkness. But you'd be surprised how long you can run into the darkness, hyping up the flashlight and the penlight and the sparks from your tap shoes on the pavement, until *it ends*.

Question: Ezra Taft Benson said that the elders of Israel would save the Constitution. How do you see that happening?

Response: Ezra Taft Benson is making that statement in reliance upon Joseph Smith's comment about the elders of Israel. If the Constitution is to be saved, it will be the elders of Israel that did it. And the comment about the Constitution lasting on into the millennium—My view is that if the elders of Israel have a role in preserving the Constitution, that role is not by legislating. That role is by converting people to the truth, because the Constitution is designed to govern a moral people. It is entirely unfit to govern any other kind of people. Therefore, if you want to fix what's wrong at the Constitutional level, you need to go out, and you need to preach the Gospel and convert people and change their hearts. Because right now, the hearts of this nation—the hearts of this people—are harder, are more strident, are more resistant to— I mean, look, what's the tool? Gentleness, meekness, and persuasion—that's the tool. That's what you get to use. Why do you think the Savior took a beating and forgave them? I mean, he shows you the tool. He revolutionized the world, ultimately, simply because he was unwilling to return to brutality anything other than kindness and forgiveness that would break the hearts of anyone who hears the story of who this man was. The elders of Israel need to convert the people.

Voice: Glenn Beck's an Elder.

Response: Yes...just change the hearts of the people.

Question: We have a pretty big movement across the nation right now...the nullification movement. Could you tell us what they thought about nullification?

Response: The pragmatics of it are: you need enough people with the right sentiment. Right now you have a legitimate effort to split Colorado into two states because of political differences and rights issues. There's talk about the same thing in parts of California. Texas was a sovereign nation before it joined the United States, and it has the right to split into separate states. And if it were to do so, it would probably do so in order to increase the number of senators. Look, I don't think there is going to be anything dramatic succeed politically until you get enough people who are no longer interested in the Kardashians and who become interested in the erosion of their freedom. And that's a tall challenge.

I've gone longer than I ever thought I would. We need to wrap it up.

Question: You mentioned Joseph Smith's quote about how an hour of virtuous liberty on earth is worth a whole eternity of bondage. I was wondering what your comments are about that.

Response. We have this really unique opportunity in mortality. This is the only place where you could come where you can bleed, and you can die, and you can sacrifice for a cause. Cowardice is unbecoming anyone who would try to lay hold on the riches of heaven. Because down here, in this dark well, you have an opportunity to prove who you are. You have an opportunity to prove what you are. And you don't prove that you are anything worth preserving on into eternity if you don't live with nobility. And I don't care who it is that is pressuring you or what means they think they can employ. That statement, "I regret that I have but one life to give for my country" is not the language of a slave. It's not even the language of a captive. There is a man who is free indeed, even though he's about to be killed. You know, we lack the fortitude—we lack the self-confidence—to hold on to our freedom. You surrender to fashion. You surrender to peer pressure. You surrender to those people that you think are respected members of society. You surrender, but you don't have to. Freedom is still possible in this day. Thank you.

[Transcription Lori Larsen, v2.1]