

Chapter One

Joseph Smith and the Constitution

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Throughout his public life, Joseph Smith spoke frequently, insightfully, and supportively about the Constitution of the United States. He understood the importance of its general principles as well as its specific language. He appealed to it in various ways, on differing occasions, both affirmatively to advance the building of the kingdom of God on earth and also defensively to seek protection and reparation for injuries and deprivations. By looking at this material carefully, it becomes clear that Joseph read the Constitution meticulously and that he thoughtfully invoked many of its sections and phrases regularly and effectively.

In order to situate Joseph Smith's understanding of constitutional law within the legal and political context of the early American republic, this overview will (1) discuss what the Constitution was and was not during Joseph Smith's lifetime, (2) examine briefly the four revelations in the Doctrine and Covenants that relate most directly to the U.S. Constitution, (3) argue that when Joseph Smith referred to the "principles" of the Constitution, much of what he had in mind are the legal purposes found in the Preamble to the Constitution, and (4) present, as far as possible, every known explicit statement by Joseph Smith regarding the Constitution in chronological order with a few details about their historical contexts. This discussion lays a foundation for analyzing the ways in which Joseph Smith utilized constitutional law for legal and political purposes in the context of how the Constitution was understood in his day.

The United States Constitution in the 1840s

“In a revolution, as in a novel, the most difficult part to invent is the end,” said Alexis de Tocqueville.¹ During Joseph Smith’s lifetime (1805–1844), the American people were still trying to invent the end of the American Revolution. In those years, the United States was growing into a new vision of a country governed by the rule of law, premised upon new legal theories and sustained by state and federal constitutions. The United States Constitution was still a new and relatively untried experiment, and many political and social forces were forming the foundation of constitutional law in Joseph Smith’s day. Religious groups claimed their traditional role in teaching and inculcating civic virtues that were thought to be essential in taming the desultory human tendencies of greed, folly, factionalism, power-mongering, and mobocracy.² The Industrial Revolution was transforming life in America economically, socially, and legally.³ Expanding frontiers and the implimentation of Manifest Destiny were opening up new vistas and venues never before contemplated. America had been in a state of developmental flux since the days of the Revolution in 1776, but that burgeoning tide became even more dynamic with what Robert Remini has called the “revolutionary age of Andrew Jackson.”⁴

In order to understand Joseph Smith in terms of early American political and legal theory, it is critical to be aware of what the Constitution was and what it was not during his lifetime.⁵ Growing out of the Declaration of

1. Alexis de Tocqueville, *The Recollections of Alexis de Tocqueville* (1896), 71.

2. Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (Oxford: Oxford University Press, 2007).

3. See generally, Morton J. Horwitz, *The Transformation of American Law: 1780–1860* (New York: Oxford University Press, 1992).

4. Robert Remini, *The Revolutionary Age of Andrew Jackson* (New York: Harper and Rowe, 1976). See further Robert V. Remini, *The Jacksonian Era* (Arlington Heights: Harlan Davidson, 1989); Robert V. Remini, ed., *The Age of Jackson* (Columbia: University of South Carolina Press, 1972); Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945); Howe, *What Hath God Wrought*.

5. See the reprint of the 1803 edition of Blackstone by St. George Tucker, *Blackstone’s Commentaries: Volume 1* (New Jersey: Rothman Reprints, 1969), appendix D, 140–377, an extended discussion of the Constitution of the United States. Several treatises were published in Joseph Smith’s lifetime on the Constitution, including William Rawle, *A View of the Constitution of the United States*, 2d ed. (Philadelphia: Philip H. Nicklin, 1829); Thomas Sergeant, *Constitutional Law*, 2d ed. (Philadelphia: Philip H. Nicklin, 1830); James Kent, *Commentaries on American Law*, 2d ed. (New York: Halsted, 1832), vol. 1, part 2, “Of the Government and Constitutional Jurisprudence of the United States”; and the most celebrated, Joseph Story, *Commentaries on the Constitution of the United States; with a*

Independence and the Articles of Confederation, by 1805 the Constitution of 1787 had its preamble, six articles, the 1789 Bill of Rights, and only two amendments. We tend to think of the political axiom that God endowed all men with inalienable rights to life, liberty, and the pursuit of happiness as a constitutional proposition, when in fact those words are found only in the Declaration of Independence. We also tend to think of the separation of powers established by the three branches of federal government as the most distinctive “principle” of the Constitution, but that does not appear to be what Joseph Smith had in mind when he spoke of the “principles” of the Constitution.

Many of the Constitution’s most important amendments were adopted long after the Prophet’s life. They have defined the national government’s relationship with the individual citizen and with the states as we know it now, but in Joseph Smith’s lifetime it was unclear to what extent the federal government could prevent states from denying citizens religious freedom,⁶ from abusing their entitlement to due process, or even from withdrawing from the Union.

In 1865, the Thirteenth Amendment abolished slavery. Three years later, the Fourteenth Amendment for the first time required the states to guarantee all American citizens “equal protection of the laws.” In 1920, the Nineteenth Amendment gave women the right to vote in federal elections. Before that time, while state constitutions guaranteed their citizens certain civil rights and liberties, the state constitutions differed markedly from each other, and their meanings were subject to various interpretations by each state’s courts. It was not until after the Civil War that the divisive issue of states’ rights on these issues was settled. In all, twenty-seven amendments have been added to the original Constitution since its ratification; in Joseph’s day there were only twelve.

Moreover, those twelve amendments were understood somewhat differently then than they are today. For example, the First Amendment has always read, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” While each phrase in this amendment was obviously very important to Joseph Smith and to most Americans

Preliminary Review of the Constitutional History of the Colonies and States, before the Adoption of the Constitution, 3 vols. (Boston: Hilliard, Gray, and Co., 1833).

6. Many states had a religious tax until the 1830s. Massachusetts was the last to abolish the religious tax in 1833. See the discussion in James H. Hutson, “Nursing Fathers: The Model for Church-State Relations in America from James I to Jefferson,” in *Lectures on Religion and the Founding of the American Republic*, ed. John W. Welch (Provo, Utah: BYU Studies, 2003), 15–17; James H. Hutson, *Church and State in America: The First Two Centuries* (New York: Cambridge University Press, 2008).

of his day,⁷ many people today do not realize that the First Amendment originally applied only to the Federal government and did not apply to the *states* until well into the twentieth century. The Bill of Rights originally limited only what Congress could do, as the Supreme Court clearly held in the 1833 case of *Barron v. Baltimore*.⁸ States had provisions in their individual laws and constitutions protecting religion or defining the extent to which local laws could support or establish religion, but each state interpreted the idea of religious liberty as it saw fit, and laws regarding religious matters, such as Sunday closing laws or punishments for adultery, varied measurably from state to state.

In addition, while the word “constitution” had been around since ancient times, it was not clear in Joseph Smith’s day how the American Constitution would be different from its predecessors. The Founding Fathers, in drafting the Constitution, were aware of the Greek writings of Aristotle and Polybius as they grappled with the appropriate scope of federal powers and the rights of individual states⁹ and as they embraced a formal distinction between constitutional and ordinary law.¹⁰ However, while many of the Greek city-states

7. For example, as early as 1833 and again in 1839, the right “to petition the Government for a redress of grievances,” the final part of the First Amendment, was mentioned in revelations regarding the troubles the Saints encountered in Missouri. For statements by John Adams, John Jay, Thomas Jefferson, James Madison, and George Washington regarding the rights afforded here, see James H. Hutson, ed., *The Founders on Religion: A Book of Quotations* (Princeton: Princeton University Press, 2005), 134–38.

8. In *Barron v. Baltimore*, 32 U.S. 243, 1833, the Court held that while the Bill of Rights applied to the actions of federal government, it did not similarly restrict local and state government. As the city of Baltimore grew, sand and earth began to accumulate in the harbor, which made the previously deep waters shallower and diminished the value of the wharf. The wharf owner brought a case against the city of Baltimore claiming that this decrease in both land and value constituted a taking under the Fifth Amendment. Under the Fifth Amendment, the government cannot “take” an individual’s property without just compensation. The Court determined that the Fifth Amendment did not apply in this case because the legal cause of action related to state, not federal, action.

9. R. A. Ames, and H. C. Montgomery, “The Influence of Rome on the American Constitution,” *Classical Journal* 30, no. 1 (1934): 19–27 (the Framers clearly turned to Rome for inspiration, including the framework of three interdependent but sovereign ruling bodies); Gilbert Chinard, “Polybius and the American Constitution,” *Journal of the History of Ideas* 1 (1940): 35–58 (the Framers turned to Rome for resolving the competing interests of large and small states). A scan of the Federalist Papers shows how much of the discussion involved Roman and Greek political history; for example, Paper no. 63 discusses how Roman legislative houses were elected and operated.

10. “A constitution may be defined as an organization of offices in a state, by which the method of their distribution is fixed, the sovereign authority is determined, and the nature of the end to be pursued by the association and all its members is prescribed. Laws,

had adopted rules and regulations, termed constitutions, these documents did not have the legal stature or authority of modern constitutions as fundamental law, but were primarily guiding regulations for how a city-state would be run. Or, as Aristotle used the term, a constitution “is the way of life of the citizen-body.”¹¹

Notably, the British Constitution, which emerged from Cromwell’s Puritan Revolution in the 1640s, was never reduced to a written document. The English Compromise of 1688 resulted in an agreement that established parliamentary sovereignty, but those changes were never codified in a written constitution that defined the separation of powers or ensured fundamental rights. Instead, these British legal provisions were simply codified over time.

Although the American Constitution had the innovative advantage of being a written document, it still needed to be interpreted. Even with its Supremacy Clause in Article VI, which made all federal laws “the law of the land,” it was far from settled in the 1830s how the rules regarding federal statutory preemption, the reach of federal authority, and the rights reserved by the individual states should be interpreted.¹²

For such reasons, many were initially skeptical about the viability of the American dream, especially as other attempts to establish democracies failed. The French Revolution (1789) quickly deteriorated into the Reign of Terror, and the French returned to a monarchy under Napoleon. Most South American countries underwent wars of independence in the 1820s and 1830s, and a few of them created constitutions, but most struggled for decades to establish stable constitutional republics. It was not until 1849 that another country—Denmark—would adopt an American-style constitution. In these years, most of Europe saw only the strengthening of imperialism and the corresponding distrust of democracy and demagogues. It was still an open question whether the American experiment would succeed or fail.

Although early Americans were willing to take on the challenge of forming a new nation, they strongly disagreed among themselves about the proper role of national and local governments. As is well known, Joseph Smith

as distinct from the frame of the constitution, are the rules by which the magistrates should exercise their powers, and should watch and check transgressors.” Aristotle, *Politics* III (350 BC).

11. Aristotle himself analyzed at least 150 constitutions. Aristotle, *Politics*, trans. E. Barker (Oxford: Oxford University Press, 1958), 180.

12. Cristian G. Fritz, *American Sovereigns: The People and America’s Constitutional Tradition before the Civil War* (New York: Cambridge University Press, 2008), 15; Christopher R. Drahozal, *The Supremacy Clause: A Reference Guide to the United States Constitution* (Westport: Praeger, 2004).

himself challenged the establishment on several occasions, especially as he ran for the United States presidency, but these public debates were conducted within the framework of a strong national commitment to the Constitution of the United States as America's principal source of hope to maintain law, order, civility, and progress in an otherwise untamed and scarcely even explored new world.

In this context, Joseph Smith, like most of his American contemporaries, strongly believed in the Constitution. Even if others did not always agree with him, he stood resolutely loyal to the principles upon which the Constitution was founded. Joseph Smith made at least a score of statements regarding the Constitution as identified below. They show that Joseph keenly understood the Constitution, that he had a very high level of faith in it, and that he believed it would endure forever.

Joseph Smith's Early Revelations Mentioning the Constitution

Although the word "constitution" appears in Joseph Smith's writings for the first time in 1833, he had already become legally aware in New York of many provisions in the United States Constitution well before that time, including the right to a trial by jury in 1819 (Amendment 6), the freedoms of speech, religion, assembly, and of the press in 1826–30 (Amendment 1), and the federal right to secure a copyright in 1829 (Article I, Section 8).¹³ Then, from 1831 to 1839, the Mormons in Missouri and Illinois suffered tremendous persecution and depredation, bringing several other constitutional issues to the fore. This difficult time thrust Joseph Smith into the political sphere and affected his views on the roles of government:

The conflict in Missouri changed Joseph's politics dramatically. For the first time, government figured in his thought as an active agent. . . . The Jackson County attacks made government an essential ally in recovering the Saints' lost lands. . . . From then on, Joseph was never far removed from politics.¹⁴

Four early statements canonized in the Doctrine and Covenants reveal the unique importance of civil obedience to the laws of the land, to the Constitution, its language, and the principles that it embodies. The first such revelation, received on **August 1, 1831**. D&C 58:21 reads, "Let no man break the laws of

13. See chapters 2–6 below.

14. Richard Lyman Bushman, *Joseph Smith: Rough Stone Rolling* (New York: Knopf, 2005), 226.

the land, for he that keepeth the laws of God hath no need to break the laws of the land.”¹⁵ Although not specifically mentioning the Constitution, this revelation uses language similar to a key phrase found in the Supremacy Clause (Article VI, Section 2), which defines the Constitution and all federal laws made in pursuance thereof to be “the supreme law of the land.” This revelation affirms that God approves of human laws and requires his people to obey them, and Joseph believed the Constitution to be a tool in the hand of God to promote divine purposes and to protect all who live his laws.

Second, on **August 6, 1833**, the Lord spoke to Joseph, now recorded as D&C 98:5–7:

And that law of the land, which is constitutional, supporting that *principle* of freedom, in maintaining rights and privileges belongs to all mankind and is justifiable before me. Therefore I the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land: And as pertaining to law of man, whatsoever is more or less than this cometh of evil.¹⁶

Thus, the Constitution bore a divine imprint and was much more than merely a document to be used for good or political ends. It embodied principles that supported freedom in maintaining human rights and privileges, which should not be either expanded or contracted.

Third, only four troubled months later, on **December 16, 1833**, following the Saints’ expulsion from Jackson County, Missouri, and only five days before Joseph Smith filed suit against Doctor Philastus Hurlbut in Kirtland Ohio (see chapter 7 below) another revelation reaffirmed the divine source of the universal rights, protections, and freedom provided by the Constitution. It invoked the language of the First Amendment’s provision of the right to petition for redress and declared God’s direct involvement in the establishment of the Constitution and its principles for legal and doctrinal purposes:

15. Aug. 1, 1831. See also Robin Scott Jensen, Robert J. Woodford, and Steven C. Harper, eds., *Manuscript Revelation Books*, facsimile edition, first volume of the Revelations and Translations series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian’s Press, 2009), 163.

16. Aug. 6, 1833, as punctuated in the first edition (1835) of the Doctrine and Covenants, p. 216, v. 2; emphasis added. See also Jensen, Woodford, and Harper, *Manuscript Revelation Books*, facsimile edition, 549. Notably, the revelation infers that not all enacted laws are necessarily constitutional. Remarkably, it also proclaims that the constitutional principle of individual freedom “belongs to all mankind,” not just to American citizens.

It is my will that [the Saints] should continue to importune for redress ... according to the laws and constitution of the people, which I [God] have suffered to be maintained for the rights and protection of all flesh, according to just and holy *principles*; that every man may act in doctrine and *principle* pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of 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. (D&C 101:76–80)¹⁷

In this revelation, Joseph and the Saints were assured that God approved of using the law to fight injustice and that God had ordained the establishment of the Constitution of the United States by the hands of wise men, in order that people might act as agents “pertaining to futurity” and thus be held accountable for their sins before the judgment of God. Here, the notion of “futurity” encapsulates the principle behind the early American idea that civic virtue required people to believe in some state of “future rewards and punishment.”¹⁸ Many Americans felt the same way—or at least that the Constitution could not have come into being without the influence of divine Providence—including Benjamin Franklin, James Madison, Benjamin Rush, and George Washington.¹⁹

Fourth, on **March 27, 1836**, in the dedicatory prayer of the Kirtland Temple, Joseph again referenced the holy principles that stood behind the formation of the United States government. He prayed that “those *principles*, which were so honorably and nobly defended, namely, the Constitution of our land, by our fathers, be established forever” (D&C 109:54). While Joseph Smith never expressly defined what he meant by the word “principles,” it would appear that the Preamble to the Constitution encapsulate Joseph’s conceptual and practical understanding of the term.

17. December 16, 1833. See also Jensen, Woodford, and Harper, *Manuscript Revelation Books*, facsimile edition, 579; emphasis added.

18. James Hutson, “‘A Future State of Rewards and Punishment’: The Founders’ Formula for the Social and Political Utility of Religion,” in his *Forgotten Features of the Founding* (Lanham, Maryland: Lexington Books, 2003), 1–44.

19. Hutson, *Founders on Religion*, 76–78.

Principles in the Preamble to the Constitution

In D&C 101:77, the revelation referenced “holy principles” and the Lord’s will concerning the United States, and in D&C 109:54 Joseph prayed that “those principles” might “be established forever.” These formative statements speak of principles embedded in the Constitution, and while this word may refer to many things,²⁰ one should look first to the Preamble to find what Joseph meant by the “principles” of the Constitution. The Preamble stands as the first part of the Constitution and reads: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” In 1844, Joseph’s presidential campaign pamphlet quoted the complete text of the preamble.²¹

When Joseph and others in his day spoke of the principles of the Constitution, it seems that the Preamble was never far from their minds. The Preamble has the pride of place in the Constitution, and the word *principle* comes from the Latin words *principalis* and *principium*, meaning the “first,” the “origin,” the “groundwork,” or the “chief” or “guiding” part; that is, through which everything else must pass. These principles were both religious and legal. As the following exploration shows, Joseph was intimately guided by the Preamble’s principles in his legal and ecclesiastical roles. These basic ideals constitute the underpinnings of the constitutional and political views of the Prophet just as much as they operated in his religious goals for the establishment of the Church and the building of Zion. In the Preamble are found the headlines of seven key principles. Whether using the same words or reflecting the same ideas, many of Joseph Smith’s teachings are consonant with these seven principles.

“We the People.” In his *Views of the Powers and Policy of the Government*, the Prophet stated that the power of government rests with the people. He

20. The word “principles” was used in Joseph Smith’s day to describe the provisions of the Constitution “without which the republican form [of government] would be impure and weak.” This term was particularly associated with the just and liberal principles that promote the “general welfare” and “internal peace,” while protecting “individual rights” and insuring “reasonable safeguards of society itself.” See Rawle, *View of the Constitution*, 121–25.

21. *General Smith’s Views of the Powers and Policy of the Government of the United States* (Nauvoo, Ill., 1844), 1–2, reprinted in Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2d ed., rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 6:197–98 (hereafter cited as *History of the Church*).

said, “In the United States the people are the government, and their united voice is the only sovereign that should rule, the only power that should be obeyed.” Thus, he admonished, “The aspirations and expectations of a virtuous people, environed with so wise, so liberal, so deep, so broad, and so high a charter of equal rights as appears in said Constitution, ought to be treated by those to whom the administration of the laws is entrusted with as much sanctity as the prayers of the Saints are treated in heaven.”²²

Likewise, the business of the Church was to be done by common consent of the people: “All things shall be done by common consent in the church.”²³ As Joseph explained, “No official member of the Church has authority to go into any branch thereof, and ordain any minister for that church, unless it is by the voice of that branch.”²⁴ The unanimous voice of the people was always the ideal, and in some cases it was explicitly required.²⁵

“In Order to form a more perfect Union.” In 1787 John Jay wrote an essay on the unity of the United States, saying, “Providence has been pleased to give this one connected country to one united people.”²⁶ But by 1840, the natural unity that had bound the colonies together in the eighteenth century, resulting from their common cultural heritage and the shared experience

22. General Smith's *Views of the Powers and Policy of the Government of the United States*, 8, 3, reprinted in *History of the Church*, 6:208, 198.

23. D&C 26:2; see also D&C 28:13 (“For all things must be done in order, and by common consent in the church, by the prayer of faith”); D&C 104:71 (“And there shall not any part of it be used, or taken out of the treasury, only by the voice and common consent of the order”), D&C 72 (explaining the way in which the poor and the needy should be cared for), D&C 85 (providing information about the law of consecration).

24. Joseph Fielding Smith, comp., *Teachings of the Prophet Joseph Smith* (Salt Lake City: Deseret Book, 1972), 75; see also page 23.

25. D&C 102:3 (“Joseph Smith, Jun., Sidney Rigdon and Frederick G. Williams were acknowledged presidents by the voice of the council; and Joseph Smith, Sen., John Smith, Joseph Coe, John Johnson, Martin Harris, John S. Carter, Jared Carter, Oliver Cowdery, Samuel H. Smith, Orson Hyde, Sylvester Smith, and Luke Johnson, high priests, were chosen to be a standing council for the church, by the unanimous voice of the council”); 107:27 (“And every decision made by either of these quorums must be by the unanimous voice of the same; that is, every member in each quorum must be agreed to its decisions, in order to make their decisions of the same power or validity one with the other”); Smith, *Teachings of the Prophet Joseph Smith*, 108 (“That no one be ordained to any office in the Church in this stake of Zion, at Kirtland, without the unanimous voice of the several bodies that constitute this quorum, who are appointed to do Church business in the name of said Church, viz., the Presidency of the Church; the Twelve Apostles of the Lamb; the twelve High Councilors of Zion; the Bishop of Kirtland and his counselors; the Bishop of Zion and his counselors; and the seven presidents of Seventies; until otherwise ordered by said quorums”).

26. John Jay, *Federalist Papers* no. 2.

of the Revolutionary War, was frayed. Joseph praised politicians who could lay aside “all party strife” and “like brothers, citizens, and friends” mingle together with “courtesy, respect, and friendship,”²⁷ and as a candidate for the Presidency he sought a unity that would transcend party squabbling and sectional politics. He boldly asserted,

Unity is power; and when I reflect on the importance of it to the stability of all governments, I am astounded at the silly moves of persons and parties to foment discord in order to ride into power on the current of popular excitement. . . . Democracy, Whiggery, and cliquery will attract their elements and foment divisions among the people, to accomplish fancied schemes and accumulate power, while poverty, driven to despair, like hunger forcing its way through a wall, will break through the statutes of men to save life, and mend the breach in prison glooms. . . . We have had Democratic Presidents, Whig Presidents, a pseudo-Democratic-Whig President, and now it is time to have a *President of the United States*.²⁸

Joseph subscribed to the divine command for unity: “I say unto you, be one; and if ye are not one ye are not mine.”²⁹ He often extolled the blessings available through unity: “Unity is strength. ‘How pleasing it is for brethren to dwell together in unity!’ Let the Saints of the Most High ever cultivate this principle, and the most glorious blessings must result, not only to them individually, but to the whole Church.”³⁰ Unity, he taught, also brought significant progress: “The greatest temporal and spiritual blessings which always come from faithfulness and concerted effort, never attended individual exertion or

27. Letter to the Editor, *Times and Seasons* (May 6, 1841), speaking of the admirable conduct of Stephen A. Douglas and Cyrus Walker who were “champions of the two great parties” in Illinois at the time.

28. *General Smith's Views*, 3, 6, 8, reprinted in *History of the Church*, 6:198, 204, 207.

29. D&C 38:27 (“I say unto you, be one; and if ye are not one ye are not mine”); see further D&C 42:36 (“That my covenant people may be gathered in one in that day when I shall come to my temple. And this I do for the salvation of my people”); 45:65 (“And with one heart and with one mind, gather up your riches that ye may purchase an inheritance which shall hereafter be appointed unto you”); 51:9 (“And let every man deal honestly, and be alike among this people, and receive alike, that ye may be one, even as I have commanded you”); Moses 7:18 (“And the Lord called his people Zion, because they were of one heart and one mind, and dwelt in righteousness; and there was no poor among them”).

30. Smith, *Teachings of the Prophet Joseph Smith*, 174.

enterprise. The history of all past ages abundantly attests this fact.”³¹ Joseph also believed that partisanship had no place in the church and that members should be unified in purpose: “Party feelings, separate interests, exclusive designs should be lost sight of in the one common cause, in the interest of the whole.”³² Joseph clearly felt the principle of unity was paramount in all religious and civic realms.

“Establish justice.” Law, justice, and liberty were Joseph’s constant watch-cries. In an 1843 sermon given in Nauvoo, the prophet proclaimed, “It is a love of liberty which inspires my soul, civil and religious liberty—were diffused into my soul by my grandfathers, while they dandled me on their knees.”³³ He readily invoked the right to appeal to the Constitution in establishing justice and protecting rights. Commenting on his run for the office of President of the United States, Joseph stated, “As the world have used the power of Government to oppress & persecute us it is right for us to use it for the protection of our rights.”³⁴

“Insure domestic tranquility.” While Joseph Smith admired the Constitution’s noble provisions of freedom, he suggested the U.S. Constitution did not go far enough in insuring protection of individual freedom and religious liberty:

Although [the Constitution] provides that men shall enjoy religious freedom, yet it does not provide the manner by which that freedom can be preserved, nor for the punishment of Government Officers who refuse to protect the people in their religious rights, or punish those mobs, states, or communities who interfere with the rights of the people on account of their religion. Its sentiments are good, but it provides no means of enforcing them.³⁵

Diverging sharply from the more limited constitutional interpretations embraced by the federal judiciary and prominent political thinkers of his day, Joseph’s critique of the national political system would soon prove to be prophetic in several ways.

31. Smith, *Teachings of the Prophet Joseph Smith*, 183.

32. Smith, *Teachings of the Prophet Joseph Smith*, 231.

33. Andrew F. Ehat and Lyndon W. Cook, comps. and eds., *The Words of Joseph Smith: The Contemporary Accounts of the Nauvoo Discourses of the Prophet Joseph* (Orem, Utah: Grandin Book, 1991), 229. See also Joseph’s “political motto” in *History of the Church*, 3:9; and “The Mormons,” *New Yorker* 6 (October 13, 1838): 59, both cited below in this article.

34. Ehat and Cook, *Words of Joseph Smith*, 326.

35. *History of the Church*, 6:56–57; see more of this quotation below under October 15, 1843.

“Provide for the common defense.” Doctrine and Covenants 134:11 enjoins people to “appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted or the right of property or character infringed,” and it assumes that law should exist “as will protect the same.” Joseph felt strongly that the government had failed to defend the Saints in Ohio and Missouri.³⁶ He maligned the armies of history that had gained the glory of men at the cost of human bloodshed and misery, claiming that, rather than protecting their people, they had instead oppressed them.³⁷

“Promote the general Welfare.” Joseph spoke strongly in favor of the general welfare and liberty that should be extended to all, especially in matters of faith. In 1839 he wrote: “This principle [of liberty] guarantees to all parties, sects, and denominations, and classes of religion, equal, coherent, and inde-feasible rights; they are things that pertain to this life; therefore all are alike interested ... Hence we say, that the Constitution of the United States is ... like a great tree under whose branches men from every clime can be shielded from the burning rays of the sun.”³⁸

Joseph wanted all people, not just the Saints, to enjoy the blessings of laws to protect their general welfare. In 1843, he said, “If it has been demonstrated that I have been willing to die for a Mormon I am bold to declare before heaven that I am just as ready to die for a Presbyterian, a Baptist or any other denomination.”³⁹ In 1841, as mayor of Nauvoo, Joseph Smith sponsored “An Ordinance on Religious Liberty in Nauvoo” providing that all “religious sects and denominations whatever, shall have free toleration, and equal privileges,

36. See, for example, D&C 123:7 (“It is an imperative duty that we owe to God, to angels, with whom we shall be brought to stand, and also to ourselves, to our wives and children, who have been made to bow down with grief, sorrow, and care, under the most damning hand of murder, tyranny, and oppression, supported and urged on and upheld by the influence of that spirit which hath so strongly riveted the creeds of the fathers, who have inherited lies, upon the hearts of the children, and filled the world with confusion, and has been growing stronger and stronger, and is now the very mainspring of all corruption, and the whole earth groans under the weight of its iniquity”).

37. Smith, *Teachings of the Prophet Joseph Smith*, 248–49; *History of the Church*, 5:61, July 1842.

38. *History of the Church*, 3:304. A true transcription and analysis of this letter from Liberty Jail, with original spelling, grammar, and punctuation, is published in Dean C. Jessee and John W. Welch, eds. “Revelations in Context: Joseph Smith’s Letter from Liberty Jail, March 20, 1839,” *BYU Studies* 39:3 (2000): 125–45, and images of the letter are available at <http://josephsmithpapers.org/paperSummary/letter-to-the-church-and-edward-partridge-20-march-1839>.

39. Ehat and Cook, *Words of Joseph Smith*, 229.

in this city.”⁴⁰ In January 1844, Joseph wrote: “I would strive to administer the government according to the Constitution and the laws of the union; and that as they make no distinction between citizens of different religious creeds I should make none.”⁴¹

“Secure the Blessings of Liberty to ourselves and our Posterity.” The Preamble ends, “And secure the Blessings of Liberty to ourselves and our Posterity.” Likewise, Joseph sought that the principles of the Constitution might be “established forever,”⁴² for now and for the benefit of future generations. He saw the benefits of the principles established by the Constitution of the United States flowing to all peoples. He expressed the hope that “all nations [will adopt] the God-given Constitution of the United States as a palladium of Liberty & equal Rights.”⁴³ In Liberty Jail in 1839, Joseph pled for the blessings of life, liberty, and property to be championed for the benefit of future generations: “It is an imperative duty that we owe to all the rising generation, and to all the pure in heart” (D&C 123:11).⁴⁴

While the word “principles” was used in Joseph Smith’s day to describe the many provisions of the Constitution “without which the republican form [of government] would be impure and weak,” this term was particularly associated with the just and liberal principles that promote the “general welfare” and “internal peace,” while protecting “individual rights” and insuring “reasonable safeguards of society itself.” Thus, in William Rawle’s 1829 treatise on the Constitution, this term refers most prominently to the broad principles set forth in the Preamble that define the purposes of constitutional government generally and that are to be protected specifically by the constitutional restrictions on that government.

The Legal Status of the Preamble in Antebellum America

While likely the best-known section of the Constitution, the Preamble remains largely neglected in the study of American constitutional law today. Questions about the legal force and vitality of the Preamble are not typically

40. *History of the Church*, 4:306, discussed below under March 1, 1841.

41. *History of the Church*, 6:155–56, discussed below under January 1844.

42. D&C 109:54: “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.”

43. Benjamin F. Johnson, *I Knew the Prophets: An Analysis of the Letter of Benjamin F. Johnson to George F. Gibbs, Reporting Doctrinal Views of Joseph Smith and Brigham Young*, ed. Dean R. Zimmerman (Bountiful, Utah: Horizon Publishers, 1976), 31, spelling regularized.

44. Jessee and Welch, “Revelations in Context,” 143.

even raised in academic literature or judicial opinions today. The current state of the Preamble is fairly clear: it is not considered a decisive element in constitutional interpretation and does not enjoy binding legal status. The 1938 annotated Constitution states, “No power to enact any statute is derived from the preamble. The Constitution is the only source of power authorizing action by any branch of the Federal Government.”⁴⁵ The current official annotated Constitution likewise affirms, “The preamble is not a source of power for any department of the Federal Government.”⁴⁶ But for Joseph Smith, the Preamble was the very foundation of the whole system of American government.

A preamble is an introduction that states the document’s purpose. Prefatory statements such as the Preamble serve an important role in statutory interpretation. The Founding Fathers would have been intimately familiar with preambles, which predated the United States Constitution. Similar prefatory statements are found in the Petition of Rights of 1628, the Habeas Corpus Act of 1679, the Bill of Rights of 1689, the Act of Settlement of 1701, the Articles of Confederation of 1777, and a number of state constitutions. Ancient writings give examples of the importance of prefatory statements. For example, in Plato’s *Laws*, the Athenian asks his interlocutor, “Then is our appointed lawmaker to set no such prefatory statement in front of his code?” He suggested that the lawmaker should do more than “curtly tell us what we are to do, add the threat of a penalty, and then turn to the next enactment.” Also, he advised the drafter to include a “word of exhortation,” and “advice.”⁴⁷ Thomas Hobbes, the influential English political philosopher, explained the importance of including exhortation and advice in a prefatory statement:

The Perspicuity, consisteth not so much in the words of the Law it selfe, as in a Declaration of the Causes, and Motives, for which it was made. That is it, that shewes us the meaning of the Legislator; and the meaning of the Legislator known, the Law is more easily understood by few, than many words. For all words, are subject to ambiguity; and therefore multiplication of words in the body of the Law, is multiplication in ambiguity: Besides it seems to imply,

45. The Constitution of the United States of America (annotated): Annotations of Cases Decided by the Supreme Court of the United States to January 1, 1938, S. Doc. No. 74-232 (1938), citing *Dorr v. United States*, 195 U.S. 140 (1904). Courts have consistently held that the governing portion of the Constitution is in the text of the body of the Constitution.

46. The Constitution of the United States: Analysis and Interpretation: Analysis of Cases Decided by the Supreme Court of the United States to June 28, 2002, S. Doc. No. 108-17 (2004), citing *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

47. Plato, *Laws*, 4:723d–e.

(by too much diligence) that whosoever can evade the words, is without the compasse of the Law. And this is a cause of many unnecessary Processes. For when I consider how short were the Lawes of ancient times; and how they grew by degrees still longer; me thinks I see a contention between the Penners, and Pleadors of the Law; the former seeking to circumscribe the later; and the latter to evade their circumscriptions; and that the pleaders have got the Victory. It belongeth therefore to the Office of a Legislator, (such as is in all Commonwealths the Supreme Representative, be it one Man, or an Assembly,) to make the reason Perspicuous, why the Law was made; and the Body of the Law it selfe, as short, but in as proper, and significant termes, as may be.⁴⁸

Following in Hobbes's tradition, the Preamble was created to determine the origin, scope, and purpose of the Constitution.⁴⁹ In fact, it appears that many of the Founding Fathers fully expected the Preamble to be binding.⁵⁰ On the other hand, many anti-Federalists who attended the Constitutional Convention feared that the Preamble possessed too much power. An unnamed anti-Federalist argued that the Preamble of the Constitution, which embodied the "spirit" of the document, would be used by courts to interpret the clauses of the Constitution: "The courts . . . will establish as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts." He feared that the Preamble would infringe upon states' rights because it was by "the people," rather than the states.⁵¹

Alexander Hamilton, on the other hand, argued that the Preamble is the "Key of the Constitution." As such, "Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally

48. Thomas Hobbes, *Leviathan*, ch. 30, p. 182.

49. *Sturges v. Crowninshield*, 17 U.S. 122 (1819).

50. See William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago: University of Chicago Press, 1953), 365–66, 374–79; Eric M. Exler, *The Power of the Preamble and the Ninth Amendment: The Restoration of the People's Unenumerated Rights*, 24 Seton Hall Legis. J. 431, 435–37 (1999–2000); Raymond Marcin, 'Posterity' in the Preamble and Positivist Pro-Position, 38 Am. J. Juris 273, 281–88 (1993).

51. Brutus, Essay XII, in *The Anti-Federalist Papers and the Constitutional Convention Debates*, ed. Ralph Ketcham (New York: Mentor, 1986), 300.

exercised and ought to be resisted.”⁵² It is clear that Hamilton believed that the Preamble would be binding and that even the Bill of Rights was not necessary because the Preamble secured the same basic rights.⁵³

No less a legal giant than Chief Justice John Marshall of the United States Supreme Court also suggested that the Preamble deserves the same respect as the rest of the Constitution. In 1819 he explained that the Preamble provides the spirit of the Constitution, which “is to be respected not less than its letter; yet the spirit is to be collected chiefly from its words.”⁵⁴

William Rawle’s treatise on the Constitution (first edition in 1825; second edition in 1829) spoke of the Preamble as a “distinct exposition of principles” which reveals the motives and intentions that guide readers “in the construction of the instrument,” which he insisted “can only mean the ascertaining the true meaning of an instrument.” Rawle stressed the importance of deducing the meaning of each provision in the Constitution by taking cognizance of “its known intention and its entire text, and to give effect, if possible, to every part of it, consistently with the unity, and harmony of the whole.”⁵⁵ Joseph Smith, a contemporary of Rawle, likewise approached the Constitution holistically.

Supreme Court Justice Joseph Story, whose monumental 1833 commentary on the Constitution dominated American jurisprudence for much of the nineteenth century, began his analysis of “the actual provisions of the constitution” with a fifty-page exposition of the Preamble, arguing that “the importance of examining the preamble, for the purpose of expounding the language of a statute, has been long felt, and universally conceded in all judicial discussions. . . . the preamble . . . is a key to open the minds of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished.”⁵⁶ From the common law, he cited the Latin maxim, *cessante legis proemio, cessat et ipsa lex* (where the preamble [the Latin *proemio*, also means reason, purpose] for a law ends, there also the law itself ends), concluding that “there does not seem any reason why, in a fundamental law or constitution of government, an equal attention should not be given to the intention of the framers, as stated in the preamble. And accordingly we find, that it has been constantly referred to by statesmen and jurists to aid them in the exposition of its provisions.” He continued, “The preamble never can be resorted to, to enlarge

52. James Monroe, *The Writings of James Monroe*, ed. Stanislaus Murray Hamilton, 7 vols. (New York: AMS, 1969), 3:356, citing Alexander Hamilton.

53. Federalist Papers no. 84.

54. See *Sturges v. Crowninshield*, 17 U.S. 122, 202.

55. Rawle, *View of the Constitution*, 29, 30, 31.

56. Story, *Commentaries on the Constitution*, 1:443.

the powers confided to the general government”; but interpreters are not at liberty “to adopt a restrictive meaning [of expressly granted powers], which will defeat an avowed object of the constitution, when another equally natural and more appropriate to the object is before us.”⁵⁷ Justice Story’s admonition notwithstanding, between the years of 1825 and 1990, the sections of the Preamble that reference justice, general welfare, and liberty were mentioned only twenty-four times by the U.S. Supreme Court, and then mostly in dissenting opinions,⁵⁸ as the legal influence of the Preamble waned over time.

In 1905 the Preamble was decisively stripped of any binding legal status. In *Jacobsen v. Massachusetts*, after rejecting the argument that constitutional rights could be derived from the Preamble, Justice Harlan went on to say:

Although that Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States, or any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution, and as such may be implied from those so granted.⁵⁹

Justice Harlan may have rightly recognized that the Preamble of the Constitution does not confer express powers, but his dismissal of it as lacking any substantive power whatsoever ignores the important guiding role that the Framers intended for the Preamble. Whether reading the provisions of the Constitution restrictively or expansively, as the case might require, in order to value, comprehend, and give proper effect to its intended purposes the Preamble ought to be the starting place for subsequent analysis. However, as a consequence of Justice Harlan’s dicta, from 1905 onward the Preamble has only rarely been cited in judicial opinions.

By contrast, in Joseph Smith’s day, the Preamble was highly regarded, and the common view was that it was a significantly compelling part of the Constitution. Consistent with that prevailing view, Joseph saw the Preamble’s fundamental principles as functioning conceptually at the head of all political, legal, and constitutional theory and practice, as the following statements bear out.

57. Story, *Commentaries on the Constitution*, 444–45.

58. Milton Handler, Brian Leiter, and Carole E. Handler, “A Reconsideration of the Relevance and Materiality of the Preamble in Constitutional Interpretation,” *Cardozo L. Rev.* 12 (1990–91): 117, 120–21, n. 14.

59. *Jacobson v. Massachusetts*, 197 U.S. 11, 13–14 (1905).

Joseph's Statements Concerning the Constitution, 1836 to 1844

Through the course of his leadership, Joseph increasingly addressed political and legal topics. These statements came by way of letters, sermons, and official Church pronouncements about law and the Constitution. This section provides a list and brief discussion of each of these statements.

During the Missouri period, Joseph held no political or governmental positions, but as the situation in Missouri worsened, Joseph's involvement in political affairs became more pronounced, as did his statements on the subject of the Constitution and the role of government. The Mormons suffered serious loss during the persecutions in Missouri, which regularly occurred under color of state law. Ultimately, they would file 678 petitions and claim damages totaling \$2,275,789.⁶⁰ This financial claim was independent of the emotional and physical sufferings caused by the persecutions.

On **July 25, 1836**, as their spiritual leader, Joseph counseled members of the Church in Missouri to "Be wise; let prudence dictate all your counsels; preserve peace with all men, if possible; stand by the Constitution of your country; observe its principles; and above all, show yourselves men of God, worthy citizens."⁶¹ Joseph stressed that government works only when citizens obey the law. Any law imposed from the top down will result in tyranny. He also wanted the Saints to be blameless in their dealings with their Missouri neighbors. Around this same time, Joseph expressed the hope that "All nations [will adopt] the God-given Constitution of the United States as a palladium of Liberty & equal Rights."⁶²

In **March 1838**, Joseph's journal reports the following thoughts as he arrived near Far West, Missouri, after traveling from Kirtland, Ohio:

After being [at Far West] two or three days, my brother Samuel arrived with his family and shortly after his arrival while walking with him and certain other brethren the following sentiments occurred to my mind:

Motto of the Church of Latter-day Saints

The Constitution of our country formed by the Fathers of liberty. Peace and good order in society. Love to God, and good will to man. All good and wholesome laws, virtue and truth above all things, and aristarchy, live for ever! But woe to tyrants, mobs,

60. Clark V. Johnson, *Mormon Redress Petitions: Documents of the 1833–1838 Missouri Conflict* (Provo, Utah: Religious Studies Center, 1992), xxviii.

61. *History of the Church*, 2:455; *Messenger and Advocate* 2 (August 1836): 358.

62. Johnson, *I Knew the Prophets*, 31, spelling regularized, no date given.

aristocracy, anarchy, and toryism, and all those who invest or seek out unrighteous and vexatious law suits, under the pretext and color of law, or office, either religious or political. Exalt the standard of Democracy! Down with that of priestcraft, and let all the people say Amen! That the blood of our fathers may not cry from the ground against us. Sacred is the memory of that blood which bought for us our liberty.

Signed Joseph Smith, Thomas B. Marsh, David Patten, Brigham Young, Samuel Smith, George Hinkle, John Corrill, and George Robinson.⁶³

It is notable that the motto for the Church begins with the foundation of the Constitution. It may be that “the motto reflects Joseph’s experience with dissent and persecution in Kirtland and signaled his determination to vigorously assert the Latter-day Saints’ right to establish themselves in Missouri and to pursue their goals without harassment.”⁶⁴ But it quickly becomes evident that the motto applied just as much to the situation in Missouri, where the persecution became even more intense, especially at Gallatin, Haun’s Mill, and Far West just a few months later.

As events turned violent, Joseph invoked and affirmed his commitment to the Constitution. In Gallatin, Missouri, a greatly out-numbered group of Mormons fought to defend their civil rights, and on **August 7, 1838**, Joseph wrote: “Blessed be the memory of those few brethren who contended so strenuously for their constitutional rights and religious freedom, against such an overwhelming force of desperadoes!”⁶⁵ As had been articulated in 1835, Latter-day Saints “believe that all men are bound to sustain and uphold the respective governments in which they reside, while protected in their inherent and inalienable rights,” and that “all men are justified in defending themselves . . . in times of exigency” (D&C 134:5, 11). Then, in the face of growing tensions, on **October 13, 1838**, Joseph gave this statement to a New York newspaper: “We are friendly to the Constitution and laws of this State and of the United States, and wish to see them enforced.”⁶⁶ Only three weeks later, Joseph and many others were arrested at Far West and imprisoned in Liberty

63. About March 16, 1838. Dean C. Jessee, Mark Ashurst-McGee, and Richard L. Jensen, eds., *Journals, Volume 1: 1832–1839*, vol. 1 of the Journals series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian’s Press, 2008), 237–38; *History of the Church*, 3:9.

64. Jessee, Ashurst-McGee, and Jensen, *Journals* 1:229 (commentary).

65. *History of the Church*, 3:59.

66. “The Mormons,” *New Yorker* 6 (October 13, 1838): 59.

Jail, even though he was confident that the Mormon militia of the country of Caldwell, acting under the general orders of General Doniphan, had been well regulated and had been “very careful in all their movements to act in strict accordance with the constitutional laws of the land.”⁶⁷ In vain Joseph invoked his right to be heard and released under the constitutionally guaranteed rights of due process and writ of habeas corpus.⁶⁸ Underlying all of this was a deep division over the meaning of constitutional rights. Joseph later recounted a conversation he had with General Wilson, one of the Missouri militia leaders, upon his arrest at Far West: “I inquired of him why I was thus treated. I told him I was not aware of having done anything worthy of such treatment; that I had always been a supporter of the Constitution and of democracy. His answer was, ‘I know it, and that is the reason why I want to kill you, or have you killed.’”⁶⁹

On **March 20, 1839**, after more than five months in Liberty Jail, Joseph called upon the Saints to “present” their evidence and grievances “to the heads of government.” In this letter, he invoked the right guaranteed by the First Amendment to petition the government for redress, which Joseph called “the last effort which is enjoined on us by our Heavenly Father [including the exhaustion of their legal and constitutional rights], before we can fully and completely claim that promise which shall call him forth from his hiding place; and also that the whole nation may be left without excuse” (D&C 123:6). Even under these dire circumstances, Joseph stood by his constant faith in the Constitution. Relying again on his metaphor of the Constitution as a protecting tree, Joseph wrote:

The Constitution of the United States is a glorious standard; it is founded in the wisdom of God. It is a heavenly banner; it is to all those who are privileged with the sweets of liberty, like the cooling shades and refreshing waters of a great rock in a thirsty and weary land. It is like a great tree under whose branches men from every clime can be shielded from the burning rays of the sun. . . . We say that God is true; that the Constitution of the United States is true; that the Bible is true, that the Book of Mormon is true; that the Book of Covenants is true; that Christ is true; that the ministering angels sent forth from God are true.⁷⁰

67. *History of the Church*, 3:162.

68. See chapter 16 below, discussing habeas corpus in Missouri.

69. *History of the Church*, 3:191.

70. *Millennial Star* 1, no. 8 (December 1840): 197; *History of the Church*, 3:304; Jesse and Welch, “Revelations in Context,” 144–45.

If there were any doubt as to Joseph's personal feelings toward the Constitution, his letter unambiguously grants it divine status, on par with his conviction as to the truthfulness of latter-day scripture and his role as a modern prophet. But what did Joseph mean by "the Constitution is true"? Since he was never outspokenly impressed by the separation of powers in Articles 1, 2, and 3, which define the duties of the three branches of government, he more likely had in mind the foundational principles expressed in the Preamble and the Bill of Rights, as discussed above, which called upon the United States government to secure the blessings of liberty and justice to all.

Managing to get out of Missouri and arriving in Quincy, Illinois, the Prophet summarized the depredations the Saints had suffered and noted: "I ask the citizens of this Republic whether such a state of things is to be suffered to pass unnoticed, and the hearts of widows, orphans, and patriots to be broken, and their wrongs left without redress? No! I invoke the genius of our Constitution. I appeal to the patriotism of Americans to stop this unlawful and unholy procedure; and pray God may defend this nation from the dreadful effects of such outrages."⁷¹

On **November 28, 1839**, a few months after settling at Nauvoo, Illinois, Joseph carried a letter to Congress, exercising his constitutional right to petition the federal government for redress⁷² for the Missouri persecutions, basing his claim on the rights that Mormon settlers in Missouri should have been extended under Article IV, Section 2, of the U.S. Constitution:

Your constitution guarantees to every citizen, even the humblest, the enjoyment of life, liberty, and property. It promises to all, religious freedom, the right to all to worship God beneath their own vine and fig tree, according to the dictates of their conscience [Amendment 1]. It guarantees to all the citizens of the several states the right to become citizens of any one of the states, and to enjoy all the rights and immunities of the citizens of the state of his adoption [Article IV, Section 2]. Yet of all these rights have the Mormons been deprived. . . . They have applied to the state of Missouri, courts of Missouri, federal courts.⁷³

The following day, **November 29, 1839**, Joseph obtained an audience with the president during which he continued his petition for redress. After

71. *History of the Church*, 3:332.

72. Amendment 1 concludes by granting "the right of the people . . . to petition the Government for a redress of grievances."

73. *History of the Church*, 4:37.

reading Joseph's letter of introduction, Van Buren responded, "What can I do? I can do nothing for you! If I do anything, I shall come in contact with the whole state of Missouri."⁷⁴ A second visit a few months later brought the same result. Van Buren responded, "Gentleman, your cause is just, but I can do nothing for you."⁷⁵ Joseph learned from this that the president saw himself as powerless in the face of states' rights. Van Buren was a Whig and an advocate of states' rights who "consistently opposed any extension of federal power."⁷⁶ For the rest of his life, Joseph campaigned to encourage federal officials to take action under the authority granted to them by the Constitution. To this effect, he sent personal letters to all the potential presidential candidates in 1843.⁷⁷ In the wake of all the Missouri persecutions, Joseph often expressed frustration with the lack of protection to general citizens. Joseph ardently believed that one of the responsibilities of the United States president was to provide for the general welfare, as well as the protection of property and the right to petition the federal government for redress, all as expressly provided in the Preamble to the Constitution and the First Amendment.

Once back in Nauvoo, Joseph was fully engaged in the legal system. In a time when conflicts of interest were underdeveloped, He was elected by the people and appointed by the city council as mayor, chief judge of the municipal court, lieutenant-general of the Nauvoo Legion, and a member of the city council.⁷⁸ If the voice of the people had functioned properly, as it did in Joseph's case under the provisions of the Nauvoo Charter, then "we the people" could elect or appoint whomever they wished, which officers then had solemn duties to act for the equal benefit of all, which Joseph

74. *History of the Church*, 4:40.

75. *History of the Church*, 4:80; Roll of History, Church History Library; see also *History of the Church*, 6:157; *New York Herald*, January 26, 1844.

76. James B. Allen, "Joseph Smith v. John C. Calhoun: Presidential Politics and the States' Rights Controversy," 21, paper delivered in the Joseph Smith Exhibit Lecture Series at BYU's Harold B. Lee Library, March 8, 2006; James B. Allen, "Joseph Smith vs. John C. Calhoun: The State's Rights Dilemma and Early Mormon History," in *Joseph Smith Jr.: Reappraisals after Two Centuries*, ed. Reid L. Neilson and Terryl L. Givens (Oxford: Oxford University Press, 2009), 82.

77. Joseph sent personal letters to President Van Buren, John C. Calhoun, Lewis Cass, Henry Clay, and Richard M. Johnson. Each of these individuals was considered an 1844 presidential hopeful. *History of the Church*, 6:64–65.

78. Similarly, lawyers could represent a client on one day and then represent that client's competitor or accuser the next day. It appears that, especially in a public setting, it was left to the populace to decide how many offices they would elect a person to hold. The text of the Nauvoo Charter is reprinted in *History of the Church*, 4:239–45. For a study of the provisions of the Nauvoo Charter, see chapter 13 below.

did. For example, in **March 1, 1841**, Joseph attended Nauvoo City Council meetings and presented several bills aimed at creating a civic order in the city. One of these was the Ordinance on Religious Liberty in Nauvoo: “Be it ordained ... that ... all ... religious sects and denominations whatever, shall have free toleration, and equal privileges, in this city.”⁷⁹ The ordinance provided that religious persecution within the city limits was punishable by a fine of up to five hundred dollars, imprisonment for up to six months, or both. Joseph passionately believed in expansive rights for all religions, including his own.

On **March 30, 1842**, Joseph taught the women of the newly formed Relief Society, “We must ... observe the Constitution that the blessings of heaven may rest down upon us—all must act in concert or nothing can be done.”⁸⁰ Quite emphatically, Joseph insisted here on unity, citing the constitutional model.

On **May 22, 1842**, in Nauvoo, when accused of an attempted assassination of Lilburn Boggs, Joseph said, “I am tired of the misrepresentation, calumny and detraction, heaped upon me by wicked men; and desire and claim, only those principles guaranteed to all men by the Constitution and laws of the United States and of Illinois.”⁸¹ Again he expected others to “establish justice,” to uphold such rights as respecting the right of habeas corpus and due process as established by the Constitution.⁸²

On **February 25, 1843**, the Nauvoo city council heard from Joseph about a “sound currency for the city,” again expressly premised upon the Constitution. As provided in Article I, Section 10, “No state may coin money or make any thing but gold and silver coin a tender in payment of debts.” Based on the Tenth Amendment’s reservation of powers to the states, Joseph opined that Article I, Section 10 did not bar the City of Nauvoo from adopting a city ordinance making only gold and silver legal tender. As presented in the *History of the Church*, he reasoned at length:

The city council assembled. The subject of a sound currency for the city having previously arisen, I addressed the council at considerable length...

79. *History of the Church*, 4:306; Roll of History, March 1, 1841, Church History Library.

80. Nauvoo Relief Society Minute Book, March 30, 1842, 22, at <http://josephsmithpapers.org/paperSummary/nauvoo-relief-society-minute-book>.

81. Letter to Bartlett, *History of the Church*, 5:15; Rough Draft Notes of the History of the Church, 1842a-014, Church History Library.

82. On Joseph’s exercise of this right of habeas corpus under Article I, Section 9, of the Constitution, in quashing the three attempts by the Governor of Missouri, in 1841, 1842, and 1843, to extradite Joseph as a fugitive from that state, see chapter 16 below.

Situated as we are, with a flood of immigration constantly pouring in upon us, I consider that it is not only prudential, but absolutely necessary to protect the inhabitants of this city from being imposed upon by a spurious currency. Many of our eastern and old country friends are altogether unacquainted with the situation of the banks in this region of country; and as they generally bring specie with them, they are perpetually in danger of being gulled by speculators. Besides there is so much uncertainty in the solvency of the best of banks, that I think it much safer to go upon the hard money system altogether. I have examined the Constitution upon this subject and find my doubts removed. The Constitution is not a law, but it empowers the people to make laws.

For instance, the Constitution governs the land of Iowa, but it is not a law for the people. The Constitution tells us what shall not be a lawful tender. The 10th section declares that nothing else except gold and silver shall be lawful tender, this is not saying that gold and silver shall be lawful tender. It only provides that the states may make a law to make gold and silver lawful tender. I know of no state in the Union that has passed such a law; and I am sure that Illinois has not. The legislature has ceded up to us the privilege of enacting such laws as are not inconsistent with the Constitution of the United States and the state of Illinois; and we stand in the same relation to the state as the state does to the Union. The clause referred to in the Constitution is for the legislature—it is not a law for the people. The different states, and even Congress itself, have passed many laws diametrically contrary to the Constitution of the United States.

The state of Illinois has passed a stay law making property a lawful tender for the payment of debts; and if we have no law on the subject we must be governed by it. Shall we be such fools as to be governed by its laws, which are unconstitutional? No! We will make a law for gold and silver; and then the state law ceases and we can collect our debts. Powers not delegated to the states or reserved from the states are constitutional. The Constitution acknowledges [Amendment 10] that the people have all power not reserved to itself. I am a lawyer; I am a big lawyer and comprehend heaven, earth and hell, to bring forth knowledge that shall cover up all lawyers, doctors and other big bodies. This is the doctrine of the Constitution, so help me God. The Constitution is not law to us, but it makes provision for us whereby we

can make laws. Where it provides that no one shall be hindered from worship[p]ing God according to his own conscience, is a law. No legislature can enact a law to prohibit it. The Constitution provides to regulate bodies of men and not individuals.⁸³

Based on his persuasive reasoning in light of the law at that time, the Nauvoo City Council passed an ordinance on March 4, 1843, that only gold and silver coin would be accepted as legal tender in payment of city taxes, debts, and fines imposed under the ordinances of the city, while City Scrip would no longer be issued or used as moneyed currency in the city. Anyone passing counterfeit bills, coins, or copper coins would be subject to fine or imprisonment, and anyone passing paper currency would be fined one dollar for each dollar thus passed (letting the punishment equal the crime). Joseph's constitutional law analysis here about the powers of local government was sound. At the same time, he continued to press for a national bank and a national currency as a part of his presidential political platform, which was something the Whigs favored but the Democrats opposed.⁸⁴

When Joseph said on that occasion that the "Constitution is not a law, but it empowers the people to make laws," he saw the Constitution as a foundation document that authorizes people (through their representatives or states) to enact laws within the scope of the powers granted to them. Perhaps he selected Iowa as a way to illustrate this point because Iowa at that time was simply a territory, governed directly only by the U.S. Constitution and such laws as the federal government may have adopted. Article 1 Section 10 of the Constitution limits the scope of powers granted to states; among those

83. *History of the Church*, 5:289–90; Roll of History, Church History Library.

84. The Whig platform of 1844 stood for a well-regulated currency, a tariff for revenue, the distribution to the states of proceeds from the sales of public lands, a single term for president, reform of executive usurpations, and improving governmental efficiency. The Democratic party platform for 1844 advocated limited federal powers, frugality in government, states rights, separation of federal money from private banking, liberty, asylum for the oppressed, use of sales proceeds from public lands only for national objectives, maintaining the president's veto power, and keeping title to the whole territory of Oregon. Thomas Hudson McKee, *The National Conventions and Platforms of All Political Parties: 1789 to 1905* (Baltimore: The Friedenwald Company, 1906); J. M. H. Frederick, *National Party Platforms of the United States Presidential Candidates Electoral and Popular Votes* (Akron: J. M. H. Frederick, 1896); Wilfrid E. Binkley, *American Political Parties* (New York: Alfred A. Knopf, 1959); Felice A. Bonadio, ed., *Political Parties in American History: 1828–1890* (New York: G. P. Putnam's Sons, 1974); Daniel Walker Howe, ed., *The American Whigs: An Anthology* (New York: John Wiley & Sons, 1973); Chandos Fulton, *The History of the Democratic Party From Thomas Jefferson to Grover Cleveland* (New York: P. F. Collier, 1892).

limitations, no state may coin money, issue bills of credit, or make anything except gold and silver coin legal tender for the payment of debts. Thus the Constitution provides bounds within which the states could enact authorized statutes, as they might see fit. Iowa had no legal tender law, because no federal tender law had been adopted and the Constitution did not provide otherwise. Moreover, although no state had seen a need to pass a law making gold and silver coin legal tender, this was not because the Constitution had in any way abrogated that right.

On **June 30, 1843**, the Prophet took yet another occasion to assert the rights and powers given by the state of Illinois to the city of Nauvoo, when he became entangled in yet another wave of attempts the state of Missouri to arrest him. On June 10, a letter was sent from Missouri to Illinois Governor Thomas Ford, informing Ford that Joseph Smith had been indicted for treason. A special agent, Joseph Reynolds, was sent to apprehend Joseph. A week later, Governor Ford issued an arrest warrant for Joseph, who was then arrested on June 23. The next day he obtained a writ of habeas corpus from the Nauvoo municipal court, despite the efforts of the officials to prevent him from doing so. Still under arrest, but having been carried to Nauvoo for the hearing, he was greeted with a band and a procession. He spoke to the assembled crowd with words of comfort regarding the status of their city charter, saying: "It has been asserted by the great and wise men, lawyers and others, that our municipal powers and legal tribunals are not to be sanctioned by the authorities of the state." But, Joseph countered,

If there is not power in our charter and courts [which granted Nauvoo the right to issue writs of habeas corpus], then there is not power in the state of Illinois, nor in the congress or constitution of the United States; for the United States gave unto Illinois her constitution or charter, and Illinois gave unto Nauvoo her charters, ceding unto us our vested rights, which she has no right or power to take from us.⁸⁵

He went on to speak of Article I, Section 9, of the Constitution, which provides: "The privilege of the writ of habeas corpus shall not be suspended." Joseph asserted,

The Constitution of the United States declares that the privilege of the writ of Habeas Corpus shall not be denied. Deny me the right of Habeas Corpus, and I will fight with gun, sword, cannon, whirlwind, and thunder, until they are used up like the Kilkenny

85. *History of the Church*, 5:466.

cats. . . . The benefits of the Constitution and Laws are alike for all; and the great Eloheim has given me the privilege of having the benefits of the Constitution, and the writ of Habeas Corpus.⁸⁶

His view in this regard was legally appropriate in his day and his argument proved successful.⁸⁷

On **October 15, 1843**, Joseph Smith preached a Sunday sermon at the stand east of the unfinished temple in Nauvoo. He spoke on the limitations he saw in the Constitution:

It is one of the first principles of my life, and one that I have cultivated from my childhood, having been taught it by my father, to allow every one the liberty of conscience. I am the greatest advocate of the Constitution of the United States there is on the earth. In my feelings I am always ready to die for the protection of the weak and oppressed in their just rights. The only fault I find with the Constitution is, it is not broad enough to cover the whole ground.

Although it provides that all men shall enjoy religious freedom, yet it does not provide the manner by which that freedom can be preserved, nor for the punishment of Government officers who refuse to protect the people in their religious rights, or punish those mobs, states, or communities who interfere with the rights of the people on account of their religion. Its sentiments are good, but it provides no means of enforcing them. It has but this one fault. Under its provision, a man or a people who are able to protect themselves can get along well enough; but those who have the misfortune to be weak or unpopular are left to the merciless rage of popular fury.

The Constitution should contain a provision that every officer of the Government who should neglect or refuse to extend the protection guaranteed in the Constitution should be subject to capital punishment; and then the president of the United States would not say, "*Your cause is just, but I can do nothing for you,*" a governor issue exterminating orders, or judges say, "The men ought to have the protection of law, but it won't please the mob; the men must die, anyhow, to satisfy the clamor of the rabble;

86. *Journal of Discourses* 2:167; *History of the Church*, 5:470–71. The term "Kilkenny cat" refers to a tenacious fighter.

87. See chapter 16 below.

they must be hung, or Missouri be damned to all eternity.” Executive writs could be issued when they ought to be, and not be made instruments of cruelty to oppress the innocent, and persecute men whose religion is unpopular.⁸⁸

Thus, Joseph expressed his deep frustration with the failure of the federal judicial system to provide justice for him and his people. Also expressing similar disappointments and concerns, Joseph may have said the following about this time: “This nation will be on the very verge of crumbling to peices [*sic*] and tumbling to the ground and when the constitution is upon the brink of ruin this people will be the Staff up[on] which the Nation shall lean and they shall bear the constitution away from the very verge of destruction.”⁸⁹

In **November, 1843**, Church leaders decided to “seize whatever influence they could to achieve redress for the crimes committed against them in Missouri by appealing to the precepts of equality and human rights guaranteed to American citizens.”⁹⁰ Among this series of appeals was a letter, ghostwritten in November 1843 by W. W. Phelps, in which Joseph appealed to citizens of Vermont, his native state, for help.

Must we, because we believe in the fullness of the Gospel of Jesus Christ, the administration of angels, and the communion of the Holy Ghost, like the Prophets and Apostles of old,—must we be mobbed with impunity, be exiled from our habitations and property without remedy, murdered without mercy, and Government find the weapons and pay the vagabonds for doing the jobs, and give them the plunder into the bargain? Must we, because we believe in enjoying the constitutional privilege and right of worship[p]ing Almighty God according to the dictates of our own consciences, and because we believe in repentance, and baptism for the remission of sins, the gift of the Holy Ghost by the laying on of hands, the resurrection of the dead, the millennium, the day of judgment, and the Book of Mormon as the history of the aborigines of this continent,—must we be expelled from the institutions of our country, the rights of citizenship and the graves of our friends

88. *History of the Church*, 6:56–57.

89. Howard and Martha Coray notebook, in Ehat and Cook, *Words of Joseph Smith*, 416; on the uncertainties of the date of this discourse, see 418–19 n. 1; and Dean C. Jessee, “Joseph Smith’s 19 July 1840 Discourse,” *BYU Studies* 19 (Spring 1979): 390–94.

90. Brent M. Rogers, “To the ‘Honest and Patriotic Sons of Liberty’: Mormon Appeals for Redress and Social Justice, 1843–44,” *Journal of Mormon History* 39, no. 1 (Winter 2013): 37.

and brethren, and the Government lock the gate of humanity and shut the door of redress against us? If so, farewell freedom!⁹¹

On **December 21, 1843**, the Nauvoo City Council invoked the Tenth Amendment and other constitutional provisions as its legal basis in proposing a bill to be adopted by the U.S. Senate and House of Representatives to empower the mayor of Nauvoo to call to his aid a sufficient number of U.S. troops to repel the invasion of mobs, keep the public peace, protect the innocent from lawlessness, and preserve the power and dignity of the Union.⁹²

Joseph believed that the powers of the federal executive and legislative branches had been overly restricted. When Joseph petitioned presidential hopeful John C. Calhoun, who was nominally a Democrat but flirted with the Whig party in 1842 and 1844, Calhoun told Joseph that the type of relief the Mormons requested was outside the scope of the federal government. In response to Calhoun, the Prophet explained his own reading of the Constitution:

I would admonish you . . . to read the 8th section and 1st article of the Constitution of the United States, the *first, fourteenth and seventeenth* “specific” and not very “limited powers” of the Federal Government, what can be done to protect the lives, property, and rights of a virtuous people, when the administrators of the law and law-makers are unbought by bribes. . . . And God, who cooled the heat of Nebuchadnezzar’s furnace or shut the mouths of lions for the honor of a Daniel, will raise your mind above the narrow notion that the General Government has no power, to the sublime idea that Congress, with the President as Executor, is as almighty in its sphere as Jehovah is in his.⁹³

91. *History of the Church*, 6:92.

92. *History of the Church*, 6:124–32; see also 6:84–88.

93. *History of the Church*, 6:160; *New York Herald*, January 26, 1844. Article I, Section 8 deals with taxing powers, Section 14 grants military powers to regulate a land force, and Section 17 give Congress power over lands purchased by the federal government. By arguing to Senator Calhoun that Congress and the President of the United States have broad powers, under Article I, Section 8, paragraph 1, to collect taxes, duties, imposts, and excises, and spend money however they deem in furtherance of “the common defense and general welfare of the United States,” Joseph Smith was advancing a view similar to Joseph Story’s interpretation of this constitutional taxing clause. See Jeffrey T. Renz, “What Spending Clause? (or the President’s Paramour): An Examination of the Views of Hamilton, Madison, and Story on Article I, Section 8, Clause 1 of the United States Constitution,” *John Marshall Law Review* 33 (1999): 83–144; lucidly showing that Hamilton saw “an independent grant of power [to tax] in the General Welfare Clause,” 103; whereas Madison saw a power “to spend beyond the powers enumerated in Article I, Section 8,” and “admitted

Calhoun (like the Whig leader Van Buren) did not initially agree with Joseph on this point, but by 1847 Calhoun would end up agreeing that the Union was endangered by a totally corrupt party system and bribes, and in 1848–49 he would unite the South against Northern political abuses on some of the same grounds that Joseph had raised in his letter to him in 1843.⁹⁴

In **January 1844**, Joseph declared himself a candidate for president of the United States.⁹⁵ In running for president, he sought to strengthen the federal government's ability to ensure justice for all the citizens, and to insure the Constitution was upheld equally in all the states. Indeed, it would appear that Joseph's major motivation in running for national office was to re-enthrone the constitution as the supreme law of the land. In a statement to the *New York Herald* he wrote:

If I should be elected, I would strive to administer the government according to the Constitution and the laws of the union; and that as they make no distinction between citizens of different religious creeds I should make none. As far as it depends on the Executive department, all should have the full benefit of both, and none should be exempt from their operation.⁹⁶

A few days later, on **February 8, 1844**, he reiterated his stance on strengthening the federal government to uphold the Constitution:

a limited spending power in the General Welfare Clause, but argued that this power was applicable only to the enumerated powers," 108–9. Joseph Story, *Commentaries on the Constitution*, 3:373–82 §§911–18, "competently" criticized Madison's views (Renz, "What Spending Clause?" 119); and in *United States v. Butler*, 297 U.S. 1 (1936), Madison's view was finally rejected (Renz, "What Spending Clause?" 123). Nevertheless, as Renz argues, the Welfare Clause in Article I, Section 8, paragraph 1, was probably originally included only "as a limitation on the power to raise revenue," 129, for "Section 8 is, in effect, a limitation on the plenary grant of power in Section 1," 101. The meaning of the federal power to tax continues to raise perplexing interpretive issues, as in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012).

94. Irving H. Bartlett, *John C. Calhoun: A Biography* (New York: W.W. Norton, 1994). Calhoun worked on his treatise, *Disquisition on Government*, beginning in 1843 and completing it in 1849, presenting his ideas on these subjects.

95. For Joseph Smith's presidential campaign generally, see Robert S. Wicks and Fred R. Foister, *Junius and Joseph* (Logan: Utah State University Press, 2005); Timothy L. Wood, "The Prophet and the Presidency: Mormonism and Politics in Joseph Smith's 1844 Presidential Campaign," *Journal of the Illinois State Historical Society* 93, no. 2 (2000): 167–93; Margaret C. Robertson, "The Campaign and the Kingdom: The Activities of the Electioneers in Joseph Smith's Presidential Campaign," *BYU Studies* 39, no. 3 (2000): 147–80.

96. *History of the Church*, 6:155–56; *New York Herald*, January 26, 1844.

I would not have suffered my name to have been used by my friends on anywise as President of the United States, or candidate for that office, if I and my friends could have had the privilege of enjoying our religious and civil rights as American citizens, even those rights which the Constitution guarantees unto all her citizens alike. But this as a people we have been denied from the beginning. Persecution has rolled upon our heads from time to time, from portions of the United States, like peals of thunder, because of our religion; and no portion of the Government as yet has stepped forward for our relief. And in view of these things, I feel it to be my right and privilege to obtain what influence and power I can, lawfully, in the United States, for the protection of injured innocence; and if I lose my life in a good cause I am willing to be sacrificed on the altar of virtue, righteousness and truth, in maintaining the laws and Constitution of the United States, if need be, for the general good of mankind.⁹⁷

In the early months of 1844, missionaries were called to go forth to both preach the gospel and promote Joseph Smith's candidacy for president. Joseph's platform was laid out in a pamphlet, *General Smith's Views of the Powers and Policy of the Government of the United States*, and copies were printed by the thousands for the missionaries to distribute. As one might expect, constitutional issues were central to his platform. Unlike other party platforms, this one quoted the Preamble in full, and it spoke throughout of "the people," "unity" and "union." It further praised George Washington for promoting the "common welfare" and "providing for the common defense," repeatedly advocated peace and "tranquility," extolled the blessings of "liberty" for all, and promised to administer government "with an eye single to the glory of the people." This pamphlet spoke directly of the Constitution: "We are friendly to the Constitution and laws and wish to see them enforced."

In his famous King Follett discourse, on **April 7, 1844**, Joseph boldly claimed his freedom of religious belief, asserting that "every man has a right to be a false prophet as well as a true prophet,"⁹⁸ that "there is no law in the heart of God that wo[ul]d allow any one to interfere with the rights of man,"⁹⁹

97. *History of the Church*, 6:211; Wilford Woodruff, *Wilford Woodruff's Journal*, 1833–1898, *Typescript*, ed. Scott G. Kenney, 9 vols. (Midvale, Utah: Signature Books, 1983–84), 2:349, February 8, 1844.

98. Willard Richards, Diary, in Ehat and Cook, *Words of Joseph Smith*, 341; see also 349.

99. Thomas Bullock, Report, in Ehat and Cook, *Words of Joseph Smith*, 349; see also D&C 134:2, 4.

and that “no man is authorized to take away life in consequence of their religion. All laws and governments ought to tolerate [all expressions of religious belief] whether right or wron[g].”¹⁰⁰

By **June 18, 1844**, Nauvoo was in an uproar over the actions of apostate Mormons who created a slanderous newspaper, the *Nauvoo Expositor*. The City Council had found legal grounds to have this printing press destroyed as a public nuisance, but that action brought on the city the wrath of the state. Joseph responded by calling out the Nauvoo Legion to defend the city and declared martial law: “I have good reason to fear a mob is organizing to come upon this city. . . . The officers of the Nauvoo Legion will see that no one passes in or out of the city without due orders.”¹⁰¹ In his last address to the Nauvoo Legion, Joseph defended this action as a privilege granted by the Constitution:

We have never violated the laws of our country. We have every right to live under their protection, and are entitled to all the privileges guaranteed by our state and national constitutions. We have turned the barren, bleak prairies and swamps of this state into beautiful towns, farms and cities by our industry; and the men who seek our destruction and cry thief, treason, riot, &c., are those who themselves violate the laws, steal and plunder from their neighbors, and seek to destroy the innocent, heralding forth lies to screen themselves from the just punishment of their crimes by bringing destruction upon this innocent people. I call God, angels and all men to witness that we are innocent of the charges which are heralded forth through the public prints against us by our enemies; and while they assemble together in unlawful mobs to take away our rights and destroy our lives, they think to shield themselves under the refuge of lies which they have thus wickedly fabricated.¹⁰²

100. William Clayton, Report, in Ehat and Cook, *Words of Joseph Smith*, 357, assuming, one might add, that in all such cases “a regard and reverence are shown to the laws” and that “such religious opinions do not justify sedition nor conspiracy” (D&C 134:7). On the constitutionality of the civil abatement of printing presses as public nuisances under the law in ante-bellum America, particularly in Illinois, see chapter 18 below.

101. *History of the Church*, 6:497.

102. *History of the Church*, 6:498. He also spoke against “all those who trample under foot the glorious Consitution and the people’s rights,” swearing to spill his blood if necessary so that “this people shall have their legal rights, and be protected from mob violence.” *History of the Church*, 6:499.

On **June 22, 1844**, just five days before his death, Joseph wrote to Illinois Governor Ford, “I am ever ready to conform to and support the laws and Constitution, even at the expense of my life. I have never in the least offered any resistance to law or lawful process, which is a well-known fact to the general public.”¹⁰³ In response to this volatile situation, Governor Ford accused Nauvoo magistrates of “having committed a gross outrage upon the laws and liberties of the people,”¹⁰⁴ and he called for the end of martial law and for the Nauvoo city council to submit to the arrest warrants that had been issued regarding the destruction of the *Nauvoo Expositor*. As part of his response, Joseph wrote,

As to martial law, we truly say that we were obliged to call out the forces to protect our lives; and the Constitution guarantees to every man that privilege [Amendment 2]; and our measures were active and efficient, as the necessity of the case required; but the city is and has been continually under the special direction of the marshal all the time. No person, to our knowledge, has been arrested only for violation of the peace, and those some of our own citizens, all of whom we believe are now discharged. And if any property has been taken for public benefit without a compensation, or against the will of the owner, it has been done without our knowledge or consent, and when shown shall be corrected, if the people will permit us to resume our usual labors. . . .

“The Constitution also provides that the people shall be protected against all unreasonable search and seizure” [Amendment 2]. True. The doctrine we believe most fully, and have acted upon it; but we do not believe it unreasonable to search so far as it is necessary to protect life and property from destruction. . . .

We do not believe in the “union of legislative and judicial power,” and we have not so understood the action of the case in question.

Whatever power we have exercised in the habeas corpus has been done in accordance with the letter of the charter and Constitution as we confidently understood them, and that, too, with the ablest counsel; but if it be so that we have erred in this thing, let the Supreme Court correct the evil. We have never gone contrary to constitutional law, so far as we have been able to learn it.

103. *History of the Church*, 6:526.

104. *History of the Church*, 6:534.

If lawyers have belied their profession to abuse us, the evil be on their heads.¹⁰⁵

As he had consistently done throughout his life, Joseph asserted the right to stand on his legal and constitutional rights and privileges. His letter to Ford demonstrates a keen awareness of the Second Amendment, asserting that the Nauvoo Legion has been “active and efficient.” The Second Amendment states, “A well regulated militia being necessary to the security of a free State, the right of the People to keep and bear arms shall not be infringed,” and it was generally understood that the corollary to this constitutional language was that “the right of people to keep and bear arms shall not be infringed. The prohibition is general.”¹⁰⁶ He also invoked protection under the Constitution’s Fifth Amendment against double jeopardy.¹⁰⁷

On **June 26, 1844**, the day before his death, Joseph had an interview with Governor Ford regarding a constable who had refused Joseph’s request to be protected from the mob (as later reported by John Taylor):

This very act was a breach of law on his part—an assumption of power that did not belong to him, and an attempt, at least, to deprive us of our legal and constitutional rights and privileges. What could we do under the circumstances different from what we did do? We sued for, and obtained a writ of habeas corpus from the Municipal Court, by which we were delivered from the hands of Constable Bettisworth, and brought before and acquitted by the Municipal Court. . . . After our acquittal, in a conversation with Judge Thomas, although he considered the acts of the party illegal, he advised, that to satisfy the people, we had better go before another magistrate who was not in our Church. . . . In accordance with his advice we went before Esq. Wells, with

105. *History of the Church*, 6:538–39.

106. Rawle, *View of the Constitution*, 121–22, emphasizing that local militias “should be well regulated. . . . A disorderly militia is disgraceful to itself, and dangerous not to the enemy, but to its own country. The duty of the state government is to adopt such regulations as will tend to make good soldiers with the least interruptions of the ordinary and useful occupations of civil life.” To the same effect, see also Story, *Commentaries on the Constitution*, 3:746–47. The prevailing jurisprudence of his day explains why Joseph went out of his way to attest that the Nauvoo Legion had acted efficiently, under strict supervision, and without arrests or interference with the lives or property of the citizens. See also Tucker, *Blackstone’s Commentaries* (1803), which called the right to bear arms “the true palladium of liberty,” the right of self defense being “the first law of nature.”

107. *History of the Church*, 6:540.

whom you are well acquainted; both parties were present, witnesses were called on both sides, the case was fully investigated, and we were again dismissed.¹⁰⁸

Joseph's summary of these events shows not only his respect for constitutional law but also his intimate knowledge of its workings.

Not all Americans in the highly charged political climate of the Mississippi valley in the 1830s and 1840s held the same high for the Constitution as did Joseph. In 1837 in the city of Alton, on the Illinois side of the Mississippi River fifteen miles north of St. Louis, mobs destroyed the abolitionist newspaper that the Reverend Elijah P. Lovejoy had moved to Alton, following the similar destruction of his press by a mob in St. Louis and his expulsion from that city. After promising the citizens of Alton that the *Observer* would not agitate in favor of the abolitionist cause, his paper soon became a partisan abolitionist newspaper "of the fiercest sort, and religion was pressed into its service."¹⁰⁹ On October 26, 1837, a convention assembled, which soon became violent, aroused mainly by a violent harangue against slavery by Reverend Beecher, then president of Illinois College. In his diatribe, Beecher "contended that slavery was wrong, sinful, and morally wrong, and ought not to be borne with an instant. No Constitution could protect it. If the Constitution sanctioned iniquity, the Constitution was wrong in the sight of God and could not be binding upon the people of this country. For his part, he did not sanction the Constitution. It was not binding on him."¹¹⁰ Only two years later in Missouri and seven years later just upstream in Illinois, Joseph encountered the same type of hostilities which were likewise unrestrained by the rule of constitutional law.

Conclusion

Throughout Joseph Smith's many legal encounters, public statements, and private correspondence, he sustained the law, in spirit, word, and deed. Many of his statements throughout his short life confirm that Joseph Smith believed in the unique and divinely inspired importance of the American Constitution.

He spoke often of principles that can be found in the Preamble. Quite remarkably, he made arguments based explicitly on Article I, Section 8 (federal powers, including taxing, regulating armies, and recognizing copyrights);

108. *History of the Church*, 6:582.

109. Thomas Ford, *A History of Illinois* (Chicago: S. C. Griggs, 1854), 235.

110. Ford, *History of Illinois*, 237–38.

Section 9 (the right of habeas corpus); and Section 10 (gold and silver as legal tender); Article IV, Section 2 (becoming full citizens of another state and the extradition power); Article VI, Section 2 (the Supremacy clause); as well as the provisions enshrined in the Bill of Rights' First Amendment (prohibiting state establishment of religion, guaranteeing rights of religious worship, speech, press, assembly, and petitioning for redress), and also the Second (a well-regulated militia and the right to bear arms), Fourth (search and seizures), Fifth (due process), Sixth (speedy trial, right to confront accusers), Eighth (no excessive bail or cruel punishments), Ninth (federal powers shall not deny rights retained by the people), and Tenth (rights reserved by the states) Amendments. He encountered charges of treason (Article III, Section 3). He availed himself of the constitutional right to secure his copyright in published works (Article I, Section 10).

His statements about the Constitution arose in a variety of settings: out of legal and political problems in Missouri, in connection with the establishment of Nauvoo as a municipality under the Nauvoo Charter, in response to efforts by Missouri or Illinois to arrest him, during his campaign for the Presidency, and in his defense of actions taken by the city council of Nauvoo. His fervent and constant defense of the Constitution is most remarkable in light of all he and the early Saints were forced to endure. Even if prevailing legal views did not always agree with him, Joseph stood resolutely loyal to the principles upon which the Constitution was founded. Notably, Joseph found no conflict between God and government, and he sincerely strived to honor and obey both.

While Joseph never developed and articulated a systematic explanation of constitutional law, one can infer key jurisprudential and constitutional law principles from his many legal encounters and statements. It is clear that Joseph believed in order and the rule of law. The free exercise of religion was one of his central beliefs. He taught that order required limits to what the majority or vocal interest groups could say and do at the expense of constitutionally protected liberties. He expected federal officers to use powers they had been given to ensure the enjoyment of rights guaranteed by the Constitution. Joseph was willing to fight, and even die, for fairness, freedom from oppression, equity, and unity. He repeatedly denounced false imprisonment and mob violence. He also believed that the people, as the voice of the sovereign, should be unified. It is clear, however, that Joseph's definition of unity did not require homogenization. He was certainly not a conformist, and he never required people to conform to his beliefs. Even so, Joseph believed that nonconformists must be respectful in their actions and not jeopardize the well-being and peace of the whole. In the face of opposition and prejudice, Joseph strove to

accommodate the people in Ohio, Missouri, and Illinois. He was willing to give respect and demanded that his rights also be respected.

Many questions remain over what Joseph would have said and done if he had been involved in the debates of the late 1840s and 1850s about slavery and states rights. Would he have proposed constitutional amendments to strengthen the Constitution where he saw its deficiencies and failings? Would he have supported Lincoln's efforts to preserve the union through the lengthy Civil War? Would he have issued the Emancipation Proclamation and promoted the extension of civil rights to African Americans and Native Americans? Would he have been able to compensate slave owners in taking slaves from them, as his 1844 platform proposed to do? While we have no answers to many such questions, one can be confident that any answers to such questions would be consistent with his actions, his reliance on revelation, and his core commitment to the principles of the Constitution expressed in the Preamble.

To the end, Joseph upheld the Constitution and its principles, for himself and all others. As he said to Governor Ford, on **June 26, 1844**, the day before his murder: "If there is trouble in the country, neither I nor my people made it, and all that we have ever done, after much endurance on our part, is to maintain and uphold the Constitution and institutions of our country, and to protect an injured, innocent, and persecuted people against misrule and mob violence."¹¹¹

111. *History of the Church*, 6:581.