

The Hard Work of Understanding the Constitution

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I am very happy to be with you today. As a graduate of BYU, may I pass along some advice as you begin a new semester or as you begin your college career? I have two daughters here today who fall into those categories. Tori Strong is a senior beginning a new semester. Tanne Cait Griffith is a freshman starting her college career. I will say to all of you what I have said many times to them: make attending devotional and forum assemblies the backbone of your academic week.

Sometime soon after I arrived on campus to begin my studies forty years ago, I read an interview of an upperclassman who became a hero of mine. He still is. In that interview, Clayton Christensen, who went on to win a Rhodes Scholarship to study at Oxford and is today one of the most influential academics in the world, was asked what he thought were the most valuable aspects of his academic experience at BYU. Clayton singled out his regular attendance at the weekly devotional and forum assemblies. I knew that there were not many things I could do to match Clayton Christensen, but this was one of them. I could attend devotionals and forums every week, and I did. To this day I count that among the best decisions I've ever made. The devotionals strengthened my testimony. The forums

introduced me to fascinating people from all walks of life with different perspectives that broadened my views. So permit me this bit of counsel—no, permit me this admonition: Don't miss a devotional or a forum assembly. Go to those that look interesting. Go to those that don't. You may be surprised.

Seeking Understanding in History and in Law

It is a distinct honor to be with you as we mark Constitution Day. As you may know, by gathering today we act in obedience to a congressional mandate that every educational institution receiving federal funds must, sometime this week, celebrate the approval of the federal Constitution by the Philadelphia convention on September 17, 1787.¹ This law was sponsored by the late Senator Robert Byrd of West Virginia, who was an enthusiastic student of the Constitution. Not surprising, the law provided no funding for the celebration. In other words, it is yet another unfunded mandate. Perhaps I shouldn't mention this

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at the beginning of my remarks, but the law also lacks any enforcement provision. In other words, you cannot be arrested for leaving early.

I give a tip of my hat to those who came today knowing in advance the title of my remarks: “The Hard Work of Understanding the Constitution.” Hard work rarely attracts any but the most rugged souls. For those who didn’t get the word about my topic, please stay. This will be the first test of your commitment to attend all forums!

Before I get to the “hard work” part of my talk, let me begin by saying that I applaud the recent trend in the United States to bring the Constitution into public debate. I cheer the fact that our political leaders, candidates, pundits, and talking heads frequently invoke the Constitution in support of their competing ideas. It is common for people in Washington, D.C., to carry a pocket copy of the Constitution, and I think that is a good thing too. Here’s mine.

But here’s some bad news: it’s hard work to understand the Constitution. At least it’s hard work if you try to understand what it meant to those who wrote and ratified its provisions. In my view, that is the understanding we must seek. Many of the provisions in the Constitution were agreed to by citizens who lived in the eighteenth century—a world in which the language, customs, understandings, and problems were, in many ways, different from ours. Understanding their language can be hard work: What is a “letter of marque and reprisal” anyway? Or how about a “bill of attainder”? More difficult still is understanding the problems they were seeking to address. It’s been a while since we’ve labored under a monarchy or were compelled by law to give financial support to an established church. Do you really think of a standing military as a threat to your liberty? And what of the argument of the day in the 1780s that the new United States should mimic the unified island nation of

England and Scotland rather than the federated cantons of Switzerland? According to Professor Akhil Amar of Yale Law School, this particular view of things “informed much of the . . . Constitution’s overall structure and many of its specific words.”² But what if you are not up to speed on the “general geostrategic vision”³ of Americans in the late eighteenth century?

Do you get the sense that understanding the Constitution may involve more than casual reading?

Of course, there is an easy way out. Rather than wrestle with what the text of the Constitution meant to those who ratified its provisions, one can take the view that the Constitution was in large measure the work of dead, white, racist men whose views shouldn’t have much, if anything, to do with how we order our society today. Under this view the Constitution is little more than a license to do what is right by our current lights, by our changing standards of decency. Some argue that we needn’t be shackled today by language in the Constitution that seems obscure or by restraints that are inconvenient to modern objectives. Some speak of a “living Constitution” whose meaning changes with our times. Using the phrase “living Constitution” suggests, however, that the Constitution that has actually been ratified is not quite alive, or is, in the words of the renowned constitutional scholar Miracle Max, “mostly dead.”⁴ Proponents of the living Constitution call upon unelected, life-tenured, and politically unaccountable federal judges—like me—to keep the Constitution up to date. According to this view, federal judges should be the arbiters of the nation’s evolving standards, which we should read into the Constitution. Of course, that is far easier than submitting to the cumbersome and difficult amendment process set forth in the ratified Constitution. But as is often the case with the easy way out, this approach is fundamentally flawed.

Almost all the really important issues in life are illustrated in *A Man for All Seasons*, the classic and incomparable play later made into an Academy Award–winning film that describes the martyrdom of Thomas More, the sixteenth-century English lawyer and statesman who was canonized as the patron saint of lawyers and politicians. The play and the movie create a colloquy between More and William Roper, More’s son-in-law, who is a religious zealot with great confidence that he knows what is right. In this scene Roper has just urged More to seek the arrest of Richard Rich, a hanger-on in More’s household whose suspicious conduct has raised concern in More’s family that he might be in league with More’s enemies. When More asks the grounds for the arrest, he is told that Rich is a “bad” man.

More: There is no law against that.

Roper: There is! God’s law!

More: Then God can arrest him.

Roper: Sophistication upon sophistication!

More: No, sheer simplicity. The law, Roper, the law. I know what’s legal not what’s right. And I’ll stick to what’s legal.

Roper: Then you set man’s law above God’s!

More: No, far below; but let me draw your attention to a fact—I’m not God. The currents and eddies of right and wrong, which you find such plain sailing, I can’t navigate. I’m no voyager. But in the thickets of the law, oh, there I’m a forester.⁵

Lest I be misunderstood, you should know that I have firmly held views about right and wrong, and I call upon them to make decisions in my own life, to teach my family, and to participate actively in my faith and as a citizen of this nation—but not in my work as a judge. Through their elected representatives, the American people have made their decisions about right and wrong and have put them into law. My duty as a judge—a duty I have taken a solemn oath to abide—is to use all the skill I can muster to understand the words in the

laws and apply the judgments they codify. When I do, I reinforce the most fundamental principle that undergirds the Constitution: that “we the people”⁶ decide the rules of our society through our elected representatives. To use my own views of what is right and fair and just would not only violate my oath of office (significant transgression enough!) but would also undermine the very foundation of democratic governance. As Professor Amar observed, “No liberty was more central [to the Framers of the Constitution] than the people’s liberty to govern themselves under rules of their own choice.”⁷

Judges who replace the judgments expressed in the words of the Constitution with their own views of what is right, what is fair, and what is just take from “we the people” the liberty that is most fundamental: to create government “of the people, by the people, for the people.”⁸

The Hard Work

Permit me a personal story that illustrates the difference between the hard way of understanding the Constitution and the easy way out. The day after the Senate confirmed my nomination to the D.C. Circuit, I was the happy recipient of many congratulatory messages in my office in the Administration Building here on campus. One came from a friend who was a former law partner—a person whose experience I value. He had served as a law clerk first to a distinguished judge on the court I was about to join and later to a storied justice on the Supreme Court. My friend asked if he could give me some advice about being a judge. I was teachable and anxious to hear what he had to say.

“The first day of my clerkship on the D.C. Circuit,” he said, “my judge told me, ‘This is how we go about our work: First, we learn the facts of the case. Next, we think long and hard about the fair outcome, the equitable disposition, the just result. Then we go find law to

support our conclusion.’ From what I have observed,” my friend continued, “that is how most judges go about their work, and rightly so.”

The purpose of the call was congratulatory. It was not an invitation to engage in a debate over the role of a federal judge under the Constitution, and so I simply thanked him for his words. But as I hung up the phone, I took a vow that I would never follow my friend’s advice.

So this is what I tell my law clerks their first day in chambers: We, the people, have elected representatives who make the laws that govern our society. When a federal judge is called upon to resolve a dispute, he must first understand the nature of the controversy (on this count my friend’s advice was sound), but then he must work to understand the meaning of the law that governs the disposition of the case. As Justice Felix Frankfurter put it, the judge is merely the “translator” of the law’s command.⁹

BYU law professor Brett Scharffs explained it best: “Following the law places a judge in a role that is, in large part, clerical, where he labors largely as a functionary, applying and implementing the law. . . . The judge’s primary task is to find and follow the law.”¹⁰ In that search, the judge must parse the words that have been put into law. Their meaning is his command, not his own views of what is right. He follows the law as it was enacted; he does not lead the law to where he believes it should go.

Thomas More was right. It takes a “forester” to work one’s way through the thickets of the law. And when it comes to the Constitution, that is hard work. Well, not always. For example, it is not difficult to understand that the president of the United States must be at least thirty-five years of age, that a senator must be at least thirty, and that a member of the House of Representatives must be at least twenty-five. Nor is there any nuance in the requirement that the chief justice preside over

an impeachment trial of the president in the Senate. But understanding other provisions of the Constitution requires more than simply reading the words of your pocket Constitution.

For many of us that poses a problem, because careful reading is hard work. An example from a source familiar to this audience makes this point. In the first chapter of the Book of Mosiah, Mormon describes King Benjamin, a towering figure (forgive the pun) who, a close reading of the Book of Mormon shows, dominated subsequent Nephite history. Among his many accomplishments King Benjamin is credited with something of a Renaissance in classical learning among his people. The almost 300-year period between the death of Enos and the ascension of King Benjamin to the Nephite throne seems to have been a time of cultural decline. Among the many reforms he championed, King Benjamin “caused that [his children] should be taught in all the language of his fathers.”¹¹ John Welch suggests that King Benjamin “taught [his children] Hebrew, the language of his fathers, as well as Egyptian, which he himself knew. . . . One can assume,” Welch continues, “that he knew and taught them not only vocabulary words, but also grammar, syntax, style, form, composition, and literary appreciation.”¹²

Why did King Benjamin teach his children these skills? Mormon tells us: “That thereby they might become men of understanding; and that they might know concerning the prophecies which had been spoken by the mouths of their fathers.”¹³ My gloss: King Benjamin wanted his children to understand the scriptures—a task that, in his view, required significant preparation.

Some will bristle at the thought that understanding scripture might take more than sincerity of purpose—that it might also involve training. What about Tyndale’s plowboy,¹⁴ you say? Well, sure, a plowboy can understand the scriptures *if he has learned how to read them carefully*. At least King Benjamin

thought his children needed training. Joseph Smith thought the study of Hebrew a worthwhile pursuit to better understand the Old Testament. As you may have noticed, our world is aflame with “sincere” people whose “straightforward” readings of scripture have led to mischief and worse.

My point is only this: important texts deserve careful and close reads. When we engage in that type of study, we learn things about the text’s meaning that don’t yield themselves to casual reading and that may be somewhat surprising. I learned much about the value of close reading from two friends on the faculty at BYU. Both philosophy professor Jim Faulconer and English professor Brandie Siegfried learned how to read a text closely under the tutelage of rabbi scholars. Professor Faulconer suggested to his tutor at Penn State that they take the entire eight-week term to read the Book of Genesis. After all, Jim wanted to study the book carefully. Jim was surprised that his professor was amazed at his proposal, certain that it was impossible to read so much in so short a time. His professor suggested they could only cover the first chapter of Genesis at most. As it turned out, they made it through chapter three, but Professor Faulconer reports that his tutor clearly felt rushed. Professor Siegfried’s teacher at Brandeis wouldn’t be rushed. They spent an entire month on the first verse of Genesis.

Sounds like hard work to me, and from professors Faulconer and Siegfried we get more bad news: Not only is close reading hard work, but it takes time. Much time. Much undistracted time. But BYU students should know that already. As LaVell Edwards has taught us by precept and example, “Far more important than the will to win is the will to prepare.” For my purposes today I would say, “Far more important than the will to understand the Constitution is the will to prepare yourself so that you can understand the Constitution.”

A Close Reading of the Constitution

Let’s look at two examples of what a close reading of the Constitution might show. I have chosen two provisions that have been much debated of late. First we’ll examine the Second Amendment. Then we’ll talk about the Commerce Clause.

The Second Amendment

The Second Amendment reads: “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.”

For years there has been a vigorous debate about whether the Second Amendment protects an *individual right* to private ownership of firearms or a *collective right* to possess firearms as a member of a state militia. In 2008 the Supreme Court took up that issue in a case called *District of Columbia v. Heller*.¹⁵ In *Heller* a citizen of the District of Columbia challenged provisions of the D.C. Code that effectively prohibited individuals from possessing handguns in their homes.

In a five-to-four decision, the Supreme Court held that this law violated the Second Amendment. For my purposes today, what interests me most about the Supreme Court’s ruling is not the outcome but the fact that both Justice Scalia, who wrote the majority opinion, and Justice Stevens, who wrote a dissent for the minority, attempted to find the meaning of the Second Amendment using what I have called the “hard work approach” as opposed to the easy way out. Each engaged in a careful reading of the language of the Second Amendment, examining its history and context in an effort to give force to what its words and phrases meant at the time they were ratified. In their opinions, which totaled 149 pages, Justices Scalia and Stevens meticulously dissected every single word and punctuation mark of what is a comparatively brief provision of the Constitution. Their opinions delved

deeply into the history leading up to the decision to adopt the amendment. Grammar, linguistics, history, and the law all converged—on two irreconcilable answers.

Five justices of the Supreme Court concluded that the Second Amendment protects an individual’s right to “keep and bear arms for the purpose of self-defense.”¹⁶ Four thought that it protects only a collective right to possess arms as part of service in the state militia. Writing for the majority, Justice Scalia considered numerous contemporary sources—state constitutions, laws, legal texts, dictionaries, and newspapers—to try and understand how citizens at the founding of the republic used and understood terms like “keep and bear arms.” His study concluded that the Framers thought that private, individual ownership of firearms was a bulwark against tyranny, part of the right of self-defense that reached beyond one’s participation in a state-sponsored militia.¹⁷ Writing for the minority, Justice Stevens observed that “an issue of central concern for the Framers” was “the proper allocation of military power” between the states and the federal government.¹⁸ He concluded that the Second Amendment was part of a broader scheme to protect state militias and avoid the specter of a standing federal army.¹⁹ In Justice Stevens’ view, this purpose limits the scope of the right it protects.

My aim is not to revisit the debate over the meaning of the Second Amendment but to show how nine thoughtful justices of the Supreme Court—acting in good faith and using the same interpretative tools—can arrive at different conclusions about the meaning of an important part of the Constitution.

The Commerce Clause

My next example comes from the Supreme Court’s recent decision that upheld most of the provisions of the Patient Protection and Affordable Care Act,²⁰ called “Obamacare” by some. The argument over the act in the courts

was not about how best to provide health-care in America. Rather, the debate was over a much larger question about the role of the federal government in our lives. That debate turns, somewhat surprisingly to many, to a provision in the Constitution known as “the Commerce Clause.” This clause is set forth in Article I of the Constitution, which describes the enumerated powers granted to Congress: “The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²¹

Defenders of the act argued that the phrase in the middle of the Clause—conferring on Congress the “Power . . . to regulate Commerce . . . among the several States”—laid the foundation on which Congress rested the most controversial provision of the act: the mandate that each person must purchase insurance or suffer a monetary penalty.

You may not like the idea that a majority of Congress can tell you that you must buy health insurance or pay a penalty. After all, you’re young, healthy, and free. On the other hand, you might think it’s a really good idea to compel everyone to participate in a market so that people who have not been able to afford health insurance will be able to do so. But the hard work of understanding the Constitution requires more than simply asking yourself which policy you favor. And in this instance, as with the Second Amendment, the hard work of understanding the Constitution requires an understanding of some history. Follow me on a brief excursion into our economic past.

Recall that the Constitution was born out of the ashes of political failure. Our young nation first attempted to create some form of a union with the Articles of Confederation. But rather than *unifying* our thirteen ragtag colonies, the articles exacerbated the different political and economic interests “among the several States.” Chief among the complaints directed at the Articles of Confederation was

that they encouraged the states to protect their narrow economic interests, to the detriment of the other states. Thirteen separate political bodies authored tax codes and regulatory regimes, favoring local goods and producers over those from other regions. Virginia and the Carolinas had tobacco. Pennsylvania had wheat. Connecticut and Massachusetts had fish. New York had shipping. And so on. Such a system might enrich a few local producers but it could not create a truly national economy. And without a national economy, America would be relegated to second-tier status, always lagging behind those nations that make it easy to buy and sell across regions and oceans, enlarging their economies and enriching their citizens.

As part of an effort “to form a more perfect Union,” we, the people, gave Congress the power “to regulate Commerce . . . among the several States.” In other words, Congress can regulate goods that are produced in one place and sold across state lines—like wheat grown in Pennsylvania and sold in New York. And the Supreme Court said, in a case called *United States v. Darby*, that Congress can even regulate the inputs to goods that travel in interstate commerce—like the wage a farmer pays his field hand for harvesting wheat in one state and selling it elsewhere.²²

But in 1942, in a case called *Wickard v. Filburn*, the Supreme Court articulated an even broader scope of the Commerce Clause.²³ Congress, the court said, has the power to regulate activity that has a “substantial effect”²⁴ on interstate commerce. In *Wickard* Congress had enacted legislation that imposed a quota on the amount of wheat that could be grown. Administering this law, the secretary of agriculture forbade a farmer in Ohio named Roscoe Filburn from growing wheat on more than eleven acres of his farm. Filburn disregarded that directive and grew wheat on twenty-three acres. The secretary ordered Filburn to destroy the excess crops and pay a

fine. Filburn challenged the secretary of agriculture in court.

Filburn grew wheat only for use as chicken feed on his own farm. He did not sell his wheat to anyone, let alone to someone across state lines. Filburn argued in court that Congress had no authority to limit the amount of wheat he grew because none of it was entering interstate commerce and Congress could not regulate his conduct that was not in interstate commerce. To the surprise and consternation of some, a unanimous Supreme Court decided that the wheat quota passed by Congress and enforced by the secretary of agriculture applied to Filburn because his decision to grow and consume his own wheat *substantially affected* the price of wheat produced for interstate commerce. As the court saw it, if Wilburn grew his own wheat for chicken feed on his farm, he wouldn’t be going to the market to meet that need. Not buying that wheat on a market in which wheat was traded nationally would, in the view of the Supreme Court, substantially affect interstate commerce. Because Congress has the power to direct activities that substantially affect interstate commerce, so the argument goes, Congress had the power to tell Filburn he could not grow more wheat than the quota, even though his wheat would never enter interstate commerce.

How far does this view of Congress’s power extend? Supporters of the Affordable Care Act argued that people who choose not to buy health insurance—like Filburn not buying wheat he could grow himself—drive up the price of insurance for those who *do* purchase it. Their action—or inaction—substantially affects the national market for health insurance, and the Commerce Clause gives Congress the authority to regulate their inaction.

But that cannot be correct, say opponents of the act. The ability “to regulate interstate commerce”²⁵ cannot be extended so far as to encompass the ability to regulate inactivity.

Stretching the Commerce Clause that far would mean that Congress could regulate anything that has even the most tenuous influence on interstate markets. There is a difference, they argue, between regulating someone who is participating in a market and forcing someone to enter a market.

These two competing views of the Affordable Care Act reflect a debate as old as our nation. Proponents of a broad view of the Commerce Clause generally trust Congress, as representatives of we, the people, to regulate anything *it* determines has an aggregate effect on interstate commerce. Skeptics of congressional power, on the other hand, distrust Congress to police the limits of its own power. They see a fox guarding the chicken coop.

Five justices ultimately decided that, because the Affordable Care Act regulated inactivity, it exceeded Congress's power to regulate commerce.²⁶ And yet the act was ultimately upheld under Congress's power to tax.²⁷ This decision goes to show that just when you think you've muddled through the hard work of deciphering one small phrase in one small section of the Constitution, another one pops right up to complicate things. This is frustrating, and yet it keeps me employed.

The arguments over the Second Amendment and the Commerce Clause, as well as debates over the extent to which the First Amendment recognizes a zone of religious liberty, what the Fourteenth Amendment means when it speaks of "the equal protection of the laws," and the power of the president to engage our military in hostilities or protect the homeland from espionage, involve the hard work of studying the text and structure of the Constitution and history—a lot of history. What was the problem the Framers were trying to address? Why did they choose the language they did? What did they think they were legislating? What did those who ratified the provision of the Constitution understand it to mean?

The Responsibility of Citizenship

I'm sorry to be the bearer of this bad news of hard work, but remember what Susan W. Tanner taught us repeatedly and so well when she was president of the Young Women organization: "I can do hard things."²⁸ And our system of constitutional government supposes that you and I will engage in this hard work. The serious study of the Constitution is a lifelong endeavor. Writing in the *Ensign* magazine, Elder Dallin H. Oaks repeated what he called his "favorite prescription for patriotism," which comes from Adlai Stevenson, the former governor of Illinois, who was twice the presidential nominee of the Democratic Party: "Patriotism . . . is not short, frenzied outbursts of emotion, but the tranquil and steady dedication of a lifetime."²⁹

Being a citizen is a great honor with significant responsibilities—responsibilities not discharged by merely watching *The Daily Show*. To be sure, Jon Stewart should be part of the mix of the information you ingest, but so also should be reading the *New York Times*, the *Wall Street Journal*, the *National Review*, the *New Republic*, and other journals of opinion and analysis in which the serious debate about our nation is carried on. It's a lot to do, I know, but citizenship is serious business that requires effort.

This idea has ancient and venerable roots. Aristotle understood citizenship to be more than simply reaping the benefits of others' participation in the civic and political life of the community. The work of citizenship, he taught, is hard work that calls upon us to use our best thinking, our most careful study, and our most rigorous analysis.³⁰ Theodore Roosevelt may have been channeling Aristotle when he said, "The first requisite of a good citizen in this Republic of ours is that he shall be able and willing to pull his weight."³¹

I have another purpose in my remarks, and it may be more important than anything else I've said. I began by applauding the increased

use of the Constitution in our public discourse. But there can be a danger in invoking ultimate authority like the Constitution in support of an argument. If we are not careful, we may lose sight of one of the most important civic virtues: humility.

The incomparable Judge Learned Hand captured this sense of humility by quoting Puritan revolutionary Oliver Cromwell: “I beseech ye in the bowels of Christ, think ye may be mistaken.” Judge Hand then added: “I should like to have that written over the portals of every church, every school, and every court house, and, may I say, of every legislative body in the United States.”³²

Judge Hand also wisely noted, “The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women.”³³

I have noticed that some of the political debate in our community has lost sight of Judge Hand’s observations. I distance myself from the foolish nonsense that to be a Latter-day Saint in the United States today requires or even tends toward a particular partisan affiliation. Quoting one of his former professors, Harold Macmillan—prime minister of Great Britain and chancellor of Oxford University from 1960 to 1986—described the primary purpose of a university education to a graduating class at Oxford:

*Nothing that you will learn in the course of your studies will be of the slightest possible use to you in after life—save only this—that if you work hard and intelligently you should be able to detect when a man is talking rot, and that, in my view, is the main, if not the sole purpose, of education.*³⁴

If your education at BYU hasn’t helped you see that such partisan talk is “rot,” then you have failed in your studies. And I’m not kidding.

Disagreement is critical to the well-being of our nation. But we must carry on our arguments with the realization that those with whom we disagree are not our enemies; rather, they are our colleagues in a great enterprise. When we respect each other enough to respond carefully to argument, we are filling roles necessary in a republic.

About civility, Peter Wehner wrote:

Civility has to do with . . . the respect we owe others as . . . fellow human beings. It is both an animating spirit and a mode of discourse. It establishes limits so we don’t treat opponents as enemies. And it helps inoculate us against one of the unrelenting temptations in politics (and in life more broadly), which is to demonize and dehumanize those who hold views different from our own.

*. . . Civility, properly understood, advances rigorous arguments, for a simple reason: it forecloses ad hominem attacks, which is the refuge of sloppy, undisciplined minds.*³⁵

As he frequently does, C. S. Lewis puts it best and in language this audience will understand: “Next to the Blessed Sacrament itself, your neighbour is the holiest object presented to your senses.”³⁶

And so, as we engage in the challenging and vexing work of citizenship, and especially as we debate fundamental principles of how best to carry out the unique calling that is America’s, keep in mind the counsel, nay the plea, of our greatest president, delivered at the most perilous time in our nation’s history:

*We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.*³⁷

Thank you very much. May God bless you. And may God bless the United States of America.

Notes

1. See Consolidated Appropriations Act, 2005, Pub. L. No. 108–447, § 111, 118 Stat. 3344–45 (8 December 2004).

2. Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 51.

3. *Id.*

4. In William Goldman, *The Princess Bride*, directed by Rob Reiner, Act III Communications (1987).

5. Robert Bolt, *A Man for All Seasons: A Play in Two Acts* (New York: Vintage Books, 1990), 65–66; emphasis in original.

6. U.S. Constitution, preamble.

7. Amar, *America's Constitution*, 10.

8. Abraham Lincoln, Gettysburg Address, 19 November 1863; http://avalon.law.yale.edu/19th_century/gettyb.asp.

9. Felix Frankfurter, “Some Reflections on the Reading of Statutes,” *Columbia Law Review* 47, no. 4 (May 1947): 534.

10. Brett Scharffs, “The Role of Humility in Exercising Practical Wisdom,” *UC Davis Law Review* 32, no. 1 (fall 1998): 189–90.

11. Mosiah 1:2.

12. John W. Welch, “Benjamin, the Man: His Place in Nephite History,” in John W. Welch and Stephen D. Ricks, eds., *King Benjamin's Speech: “That Ye May Learn Wisdom”* (Provo: Foundation for Ancient Research and Mormon Studies, 1998), 37.

13. Mosiah 1:2.

14. See John Foxe, *Foxe's Book of Martyrs*, ed. Harold J. Chadwick (Alachua, Florida: Bridge-Logos, 2001), 111–12.

15. See *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

16. *McDonald v. Chicago*, 130 S. Ct. 3020, 3026 (2010).

17. See *Heller*, 128 S. Ct. at 2791–97.

18. *Id.* at 2831.

19. See *id.* at 2831–36.

20. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).

21. U.S. Const. art. I, § 8, cl. 1, 3.

22. See *United States v. Darby*, 312 U.S. 100 (1941).

23. See *Wickard v. Filburn*, 317 U.S. 111 (1942).

24. *Id.* at 129.

25. *Id.* at 112.

26. See *Nat'l Fed'n of Indep. Bus.*, at 2593.

27. See *id.* at 2600.

28. Susan W. Tanner, in “For the Strength of You: A Conversation with the Young Women General Presidency,” *Ensign*, October 2007, 12.

29. Adlai Stevenson, speech given in New York City, 27 August 1952; see Dallin H. Oaks, “The Divinely Inspired Constitution,” *Ensign*, February 1992, 74.

30. See *Aristotle's Politics*, book III, trans. Benjamin Jowett (Oxford: Clarendon Press, 1908), 100–144.

31. Theodore Roosevelt, address at Chamber of Commerce banquet (11 November 1902); reprinted in “President Roosevelt at Chamber Banquet,” *New York Times*, 12 November 1902, 1.

32. Learned Hand, testimony before Senate committee, 28 June 1951 (quoting Oliver Cromwell, letter to General Assembly of the Kirk of Scotland, 3 August 1650); see *The Yale Book of Quotations*, ed. Fred R. Shapiro (New Haven: Yale University Press, 2006), 336 (also 179); see also “Learned Hand, 1872–1961,” *Yale Law Journal* 71, no. 1 (November 1961): 108.

33. Learned Hand, “The Spirit of Liberty” (speech), New York, 21 May 1944; see *The Yale Book of Quotations*, 336; quoted in Antonin Scalia, “The Millennium That Was: How Democracy Swept the World,” *Wall Street Journal*, 7 September 1999, A24.

34. John Alexander Smith, quoted in Harold Macmillan, “Oxford Remembered,” *The Times Saturday Review* (London), 18 October 1975, 11; emphasis in original.

35. Peter Wehner, "Civility as a Political Virtue," *Contentions, Commentary*, 1 December 2010; www.commentarymagazine.com/2010/12/01/civility-as-a-political-virtue.

36. C. S. Lewis, last paragraph of "The Weight of Glory," in *The Weight of Glory and Other Addresses* (New York: Touchstone, 1996), 40.

37. Abraham Lincoln, First Inaugural Address, 4 March 1861; avalon.law.yale.edu/19th_century/lincoln1.asp.