

Religious Freedom

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My dear young friends, I am pleased to speak to this BYU-Idaho audience. I am conscious that I am also speaking to many in other places. In this time of the internet, what we say in one place is instantly put before a wider audience, including many to whom we do not intend to speak. That complicates my task, so I ask your understanding as I speak to a very diverse audience.

In choosing my subject I have relied on an old military maxim that when there is a battle underway persons who desire to join the fray should “march to the sound of the guns.”¹ So it is that I invite you to march with me as I speak about religious freedom under the United States Constitution. There is a battle over the meaning of that freedom. The contest is of eternal importance, and it is your generation that must understand the issues and make the efforts to prevail.

I.

An 1833 revelation to the Prophet Joseph Smith declared that the Lord established the United States Constitution by wise men whom he raised up for that very purpose (D&C 101:80). The Lord also declared that this Constitution “should be maintained for the rights and protection *of all flesh*” (D&C 101:77; emphasis added).

In 1833, when almost all people in the world were still ruled by kings or tyrants, few could see how the infant United States Constitution could be divinely designed “for the rights and protection of all flesh.” Today, a hundred and seventy-six years after that revelation, almost every nation in the world has adopted a written constitution, and the United States Constitution profoundly influenced all of them. Truly, this nation’s most important export is its constitution, whose great principles stand as a model “for the rights and protection of all flesh.” On the vital human right of religious freedom, however, many constitutions fall short of the protections that are needed, so we are grateful that the United States government seeks to encourage religious freedom all over the world.²

II.

To illustrate the importance of basic human rights in other countries, I refer to some recent history in Mongolia, which shows that the religious freedom we take for granted in the United States must be won by dangerous sacrifice in some other nations.

Following the Perestroika movement in the Soviet Union, popular demonstrations in Mongolia forced the Communist government to resign in March, 1990. Other political parties were legalized, but the first Mongolian elections gave the Communists a majority in the new Parliament, and the old repressive attitudes persisted in all government departments. The full functioning of a democratic process and the full enjoyment of the people’s needed freedoms do not occur without a struggle. In Mongolia, the freedoms of speech, press, and religion—a principal feature of the inspired United States Constitution—remained unfulfilled.

In that precarious environment, a 42-year-old married woman, Oyun Altangerel, a department head in the State Library, courageously took some actions that would prove historic. Acting against official pressure, she organized a Democratic Association Branch Council. This 12-member group, the first of its kind, spoke out for democracy and proposed that state employees have the freedoms of worship, belief, and expression, including the right to belong to a political party of their choice.

When Oyun and others were fired from their state employment, Oyun began a hunger strike in the State Library. Within three hours she was joined by 20 others, mostly women, and their hunger strike, which continued for 5 days, became a public demonstration that took their grievances to the people of Mongolia. This demonstration, backed by major democratic movement leaders, encouraged other government employees to organize similar Democratic Councils. These dangerous actions expanded into a national anti-government movement that voiced powerful support for the basic human freedoms of speech, press, and religion. Eventually the government accepted the demands, and in the adoption of a democratic constitution two years later Mongolia took a major step toward a free society.

For Latter-day Saints, this birth of constitutional freedom in Mongolia has special interest. Less than 2 years after the historic hunger strike, we sent our first missionaries to Mongolia. In 1992 these couples began their meetings in the State Library where Oyun was working. The following year, she showed her courage again by being baptized into this newly arrived Christian church. Her only child, a 22-year-old son, was baptized two years later. Today, the Mongolian members of our Church number 9,000, reportedly the largest group of Christians in the country. A few months ago we organized our first stake in Mongolia. Called as the stake

president was Sister Oyun's son, Odgerel. He had studied for a year at BYU-Hawaii, and his wife, Ariuna, a former missionary in Utah, graduated there.³

III.

One of the great fundamentals of our inspired constitution, relied on by Oyun of Mongolia and countless others struggling for freedom in many countries in the world, is the principle that the people are the source of government power. This principle of popular sovereignty was first written and applied on the American continent over 200 years ago. A group of colonies won independence from a king, and their representatives had the unique opportunity of establishing a new government. They did this by creating the first written constitution that has survived to govern a modern nation. The United States Constitution declared the source of government power, delegated that power to a government, and regulated its exercise.

Along with many other religious people, we affirm that God is the ultimate source of power and that, under Him, it is the people's inherent right to decide their form of government. Sovereign power is not inherent in a state or nation just because its leaders have the power that comes from force of arms. And sovereign power does not come from the divine right of a King, who grants his subjects such power as he pleases or is forced to concede, as in Magna Carta. As the preamble to our constitution states: "We the people of the United States . . . do ordain and establish this Constitution."

This principle of sovereignty in the people explains the meaning of God's revelation that He established the Constitution of the United States "that every man may act . . . 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” (D&C 101:78). In other words, the most desirable condition for the effective exercise of God-given moral agency is a condition of maximum freedom and responsibility—the opposite of slavery or political oppression. With freedom we can be accountable for our own actions and cannot blame our conditions on our bondage to another. This is the condition the Lord praised in the Book of Mormon, where the people—not a king—established the laws and were governed by them (Mosiah 29:23-26). This popular sovereignty necessarily implies popular *responsibility*. Instead of blaming their troubles on a king or tyrant, all citizens are responsible to share the burdens of governing, “that every man might bear his part” (Mosiah 29:34).

IV.

“[F]or the rights and protection of all flesh” the United State Constitution includes in its First Amendment the guarantees of free exercise of religion and free speech and press. Without these great fundamentals of the Constitution, America could not have served as the host nation for the restoration of the Gospel, which began just three decades after the Bill of Rights was ratified.

The First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The prohibition against “an establishment of religion” was intended to separate churches and government, to prevent a national church of the kind still found in Europe. In the interest of time I will say no more about the establishment of religion, but only concentrate on the direction that the United States shall have no law prohibiting the free exercise of religion.

The guarantee of the free exercise of religion, which I will call religious freedom, is the first expression in the First Amendment to the United States Constitution. As noted by many, this “pre-eminent place” identifies freedom of religion as “a cornerstone of American democracy.”⁴ The American colonies were originally settled by people who, for the most part, had come to this continent to be able to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation’s Bill of Rights. So it is that our national law formally declares: “The right to freedom of religion undergirds the very origin and existence of the United States.”⁵

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

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. Here are just a few examples of current controversial public issues that involve this conflict: laws governing marriage and adoption; laws regulating the activities of church-related organizations like BYU-Idaho in furtherance of their religious missions—activities such as who they will serve or employ—and laws prohibiting discrimination in employment or work conditions against persons with unpopular religious beliefs or practices.

The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when government action is claimed to violate someone's free exercise of religion. As would be expected, most of the battles over the extent of religious freedom have involved government efforts to impose upon the practices of small groups like Mormons. Not surprisingly, government officials sometimes seem more tolerant toward the religious practices of large groups of voters.

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

Religious *belief* is obviously protected against government action. The *practice* of that belief must have some limits, as I suggested earlier. But unless the guarantee of free exercise of religion gives a religious actor greater protection against government prohibitions than are already guaranteed to all actors by other provisions of the constitution (like freedom of speech), what is the special value of *religious* freedom? Surely the First Amendment guarantee of free exercise of *religion* was intended to grant more freedom to religious action than to other kinds of action. Treating actions based on religious belief the same as actions based on

other systems of belief should not be enough to satisfy the special place of religion in the United States Constitution.

V.

Religious freedom has always been at risk. It was repression of religious belief and practice that drove the Pilgrim fathers and other dissenters to the shores of this continent. Even today, leaders in all too many nations use state power to repress religious believers.

The greatest infringements of religious freedom occur when the exercise of religion collides with other powerful forces in society. Among the most threatening collisions in the United States today are (1) the rising strength of those who seek to silence religious voices in public debates; and (2) perceived conflicts between religious freedom and the popular appeal of newly alleged civil rights.

As I address this audience of young adults, I invite your careful attention to what I say on these subjects, because I am describing conditions you will face and challenges you must confront.

Silencing Religious Voices in the Public Square

A writer for the *Christian Science Monitor* predicts that the coming century will be “very secular and religiously antagonistic,” with intolerance of Christianity “ris[ing] to levels many of us have not believed possible in our lifetimes. . . .”⁶

Other wise observers have noted the ever-growing, relentless attack on the Christian religion by forces who reject the existence or authority of God.⁷ The extent and nature of religious devotion in this nation is changing. The tide of

public opinion in favor of religion is receding, and this probably portends public pressures for laws that will impinge on religious freedom.

Atheism has always been hostile to religion, such as in its arguments that freedom *of* or *for* religion should include freedom *from* religion. Atheism's threat rises as its proponents grow in numbers and aggressiveness. "By some counts," a recent article in the *Economist* declares, "there are at least 500 [million] declared non-believers in the world—enough to make atheism the fourth-biggest religion."⁸ And atheism's spokesmen *are* aggressive, as recent publications show.⁹ As noted by John A. Howard of the Howard Center for Family, Religion and Society, these voices "have developed great skills in demonizing those who disagree with them, turning their opponents into objects of fear, hatred and scorn."¹⁰

Such forces—atheists and others—would intimidate persons with religious-based points of view from influencing or making the laws of their state or nation. Noted author and legal commentator, Hugh Hewitt, described the current circumstance this way:

"There is a growing anti-religious bigotry in the United States. . . .

"For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as somehow threatening."¹¹

For example, a prominent gay-rights spokesman gave this explanation for his objection to our Church's position on California's Proposition 8:

“I’m not intending it to harm the religion. I think they do wonderful things. Nicest people. . . . My single goal is to get them out of the same-sex marriage business and back to helping hurricane victims.”¹²

Aside from the obvious fact that this objection would deny free speech as well as religious freedom to members of our Church and its coalition partners, there are other reasons why the public square must be open to religious ideas and religious persons. As Richard John Neuhaus said many years ago, “In a democracy that is free and robust, an opinion is no more disqualified for being ‘religious’ than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb.”¹³

Religious Freedom Diluted by Other “Civil Rights”

A second threat to religious freedom is from those who perceive it to be in conflict with the newly alleged “civil right” of same-gender couples to enjoy the privileges of marriage.

We have endured a wave of media-reported charges that the Mormons are trying to “deny” people or “strip” people of their “rights.” After a significant majority of California voters (7 million—over 52%) approved Proposition 8’s limiting marriage to a man and a woman, some opponents characterized the vote as denying people their civil rights. In fact, the Proposition 8 battle was not about civil rights, but about what equal rights demand and what religious rights protect. At no time did anyone question or jeopardize the civil right of Proposition 8 opponents to vote or speak their views.

The real issue in the Proposition 8 debate—an issue that will not go away in years to come and for whose resolution it is critical that we protect everyone’s freedom of speech and the equally important freedom to stand for religious beliefs—is whether the opponents of Proposition 8 should be allowed to change the vital institution of marriage itself.

The marriage union of a man and a woman has been the teaching of the Judeo-Christian scriptures and the core legal definition and practice of marriage in Western culture for thousands of years. Those who seek to change the foundation of marriage should not be allowed to pretend that those who defend the ancient order are trampling on civil rights. The supporters of Proposition 8 were exercising their constitutional right to defend the institution of marriage—an institution of transcendent importance that they, along with countless others of many persuasions, feel conscientiously obliged to protect.

Religious freedom needs defending against the claims of newly asserted human rights. The so-called “Yogyakarta Principles,” published by an international human rights group, call for governments to assure that all persons have the right to practice their religious beliefs regardless of sexual orientation or identity.¹⁴ This apparently proposes that governments require churches and their doctrines and their practices to ignore gender differences. Any such effort to have governments invade religion to override religious doctrines or practices should be resisted by all believers. At the same time, all who conduct such resistance should frame their advocacy and their personal relations so that they are never seen as being doctrinaire opponents of the very real civil rights (such as free speech) of their adversaries or any other disadvantaged group.

VI.

And now, in conclusion, I offer five points of counsel on how Latter-day Saints should conduct themselves to enhance religious freedom in this period of turmoil and challenge.

First, we must speak with love, always showing patience, understanding, and compassion toward our adversaries. We are under command to love our neighbor (Luke 10:27), to forgive all men (D&C 64:10), to do good to them who despitefully use us (Matt. 5:44), and to conduct our teaching in mildness and meekness (D&C 38:41).

Even as we seek to speak with love, we must not be surprised when our positions are ridiculed and we are persecuted and reviled. As the Savior said, “so persecuted they the prophets which were before you” (Matt. 5:12). And modern revelation commands us not to revile against revilers (D&C 19:30).

Second, we must not be deterred or coerced into silence by the kinds of intimidation I have described. We must insist on our constitutional right and duty to exercise our religion, to vote our consciences on public issues, and to participate in elections and debates in the public square and the halls of justice. These are the rights of all citizens and they are also the rights of religious leaders. While our Church rarely speaks on public issues, it does so by exception on what the First Presidency defines as significant moral issues, which could surely include laws affecting the fundamental legal/cultural/moral environment of our communities and nations.

We must also insist on this companion condition of democratic government: when churches and their members or any other group act or speak out on public issues, win or lose, they have a right to expect freedom from retaliation.

Along with many others, we were disappointed with what we experienced in the aftermath of California's adoption of Proposition 8, including vandalism of church facilities and harassment of church members by firings and boycotts of member businesses and by retaliation against donors. Mormons were the targets of most of this, but it also hit other churches in the pro-8 coalition and other persons who could be identified as supporters. Fortunately, some recognized such retaliation for what it was. A full-page ad in the *New York Times* branded this "violence and intimidation" against religious organizations and individual believers "simply because they supported Proposition 8 [as] an outrage that must stop."¹⁵ The fact that this ad was signed by some leaders who had no history of friendship for our faith only added to its force.

It is important to note that while this aggressive intimidation in connection with the Proposition 8 election was primarily directed at religious persons and symbols, it was not anti-religious as such. These incidents were expressions of outrage against those who disagreed with the gay-rights position and had prevailed in a public contest. As such, these incidents of "violence and intimidation" are not so much anti-religious as anti-democratic. In their effect they are like well-known and widely condemned voter-intimidation of blacks in the South that produced corrective federal civil-rights legislation.

Third, we must insist on our freedom to preach the doctrines of our faith. Why do I make this obvious point? Religious people who share our moral convictions feel

some intimidation. Fortunately, our leaders do not refrain from stating and explaining our position that homosexual behavior is sinful. Last summer Elder M. Russell Ballard spoke these words to a BYU audience:

“We follow Jesus Christ by living the Law of Chastity. God gave this commandment and He has never revoked or changed it. This law is clear and simple. No one is to engage in sexual relationships outside the bounds the Lord has set. This applies to homosexual behavior of any kind and to heterosexual relationships outside marriage. It is a sin to violate the law of chastity.

“We follow Jesus Christ by adhering to God’s law of marriage, which is marriage between one man and one woman. This commandment has been in place from the very beginning.”¹⁶

We will continue to teach what our Heavenly Father has commanded us to teach, and trust that the precious free exercise of religion remains strong enough to guarantee our right to exercise this most basic freedom.

Fourth, as advocates of the obvious truth that persons with religious positions or motivations have the right to express their religious views in public, we must nevertheless be wise in our political participation. Preachers have been prime movers in the civil rights movement from the earliest advocates of abolition, but even the civil rights of religionists must be exercised legally and wisely.

As Latter-day Saints, we should never be reticent to declare and act upon the sure foundations of our faith. The call of conscience—whether religious or otherwise—requires no secular justification. At the same time, religious persons will often be

most persuasive in political discourse by framing arguments and positions in ways that are respectful of those who do not share their religious beliefs and that contribute to the reasoned discussion and compromise that are essential in a pluralistic society.¹⁷

Fifth and finally, Latter-day Saints must be careful never to support or act upon the idea that a person must subscribe to some particular set of religious beliefs in order to qualify for a public office. The framers of our constitution included a provision that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States” (Art. VI). That constitutional principle forbids a religious test as a *legal* requirement, but it of course leaves citizens free to cast their votes on the basis of any preference they choose. But wise religious leaders and members will never advocate religious tests for public office.

Fragile freedoms are best preserved when not employed beyond their intended purpose. If a candidate is seen to be rejected at the ballot box primarily because of religious belief or affiliation, the precious free exercise of religion is weakened at its foundation, especially when this reason for rejection has been advocated by other religionists. Such advocacy suggests that if religionists prevail in electing their preferred candidate this will lead to the use of government power in support of their religious beliefs and practices. The religion of a candidate should not be an issue in a political campaign.

Conclusion

It was the Christian principles of human worth and dignity that made possible the formation of the United States Constitution over 200 years ago, and only those

principles in the hearts of a majority of our diverse population can sustain that Constitution today. Our Constitution's revolutionary concepts of sovereignty in the people and significant guarantees of personal rights were, as John A. Howard has written,

“generated by a people for whom Christianity had been for a century and a half the compelling feature of their lives. It was Jesus who first stated that all men are created equal [and] that every person . . . is valued and loved by God.”¹⁸

Professor Dinesh D'Souza reminds us:

“The attempt to ground respect for equality on a purely secular basis ignores the vital contribution by Christianity to its spread. It is folly to believe that it could survive without the continuing aid of religious belief.”¹⁹

Religious values and political realities are so inter-linked in the origin and perpetuation of this nation that we cannot lose the influence of Christianity in the public square without seriously jeopardizing our freedoms. I maintain that this is a political fact, well qualified for argument in the public square by religious people whose freedom to believe and act must always be protected by what is properly called our “First Freedom,” the free exercise of religion.

[Close with testimony]

¹ Robert Debs Heinl, Jr., *Dictionary of Military and Naval Quotations*, (U.S. Naval Institute Press, 1978), p. 141.

² Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States, May 17, 1999, pp. 6-7, 30-65. The International Religious Freedom Act, adopted in 1998, 22 USC 6401 et seq., established an office of international religious affairs in the U.S. State Department headed by an Ambassador at Large and the U.S. Commission for International Religious Freedom. Both of these bodies submit annual reports that assess the status of religious freedom under international standards worldwide and help encourage better implementation of commitments countries around the world have made to respect this fundamental right.

³ The information about events in Mongolia was obtained from correspondence with President Odgerel and from Mary Cook, former senior missionary and wife of Richard E. Cook, the first mission president in Mongolia.

⁴ Final Report, *supra* note 2, at p. 6.

⁵ 22 USC 6401(a).

⁶ Michael Spencer, “The coming evangelical collapse,” *The Christian Science Monitor*, March 10, 2009.

⁷ E.g., John A. Howard, “Liberty: America’s Creative Power,” Howard Center, June 22, 2009, p. 6.

⁸ “In God’s Name: A Special Report on Religion and Public Life,” *The Economist*, November 3, 2007, p. 10.

⁹ E.g., *The Six Ways of Atheism*, which was advertised “to absolutely disprove the existence of God, logically and simply,” was sent free to leading universities and public libraries in all major English-speaking countries in the world. Press Release, May 26, 2009.

¹⁰ Note 7 *supra*.

¹¹ Hugh Hewitt, *A Mormon in the White House?* (Regnery Pub. Co., Washington, D.C., 2007), pp. 242-43.

¹² Karl Vick, “Gay groups targeting Mormons,” *Salt Lake Tribune*, May 30, 2009, A8. (*Washington Post* story).

¹³ “A New Order of Religious Freedom,” *First Things*, Feb. 1992, p. 2; also see Neuhaus, *The Naked Public Square* (William B. Eerdmans, Grand Rapids, Mich., 1983).

¹⁴ The Yogyakarta Principles, Principle 21 (Yogyakarta, Indonesia, 2006).

¹⁵ “No Mob Veto,” *New York Times*, Dec. 5, 2008.

¹⁶ M. Russell Ballard, “Engaging Without Being Defensive,” BYU Commencement Address, August 13, 2009.

¹⁷ Among the advocates of this position are Kevin Seamus Hasson, *The Right to be Wrong* (Encounter Books, San Francisco, 2005); Douglas Laycock, Anthony Picarello, Jr. and Robin Fretwell Wilson, *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Rowman and Littlefield Publishers, Inc., 2008); and Michael J. Perry, “Liberal Democracy and Religious Morality,” 48 *DePaul Law Rev.* 1, 20-41 (1998). For examples of this kind of advocacy, see *What’s the Harm?* (Lynn D. Wardle, ed., University Press of America, 2008); Monte Neil Stewart, “Marriage Facts,” 31 *Harv. J. of Law & Pub. Policy* 313 (2008).

¹⁸ John A. Howard, *Christianity: Lifeblood of America’s Free Society (1620-1945)* (Summit Press, Monitou Springs, Ohio, 2008), p. 57.

¹⁹ “How Christianity Shaped the West,” Hillsdale College, November 2008, Vol. 37, No. 11, p. 5.