

Fall 2018

Clark Memorandum: Fall 2018

J. Reuben Clark Law School

BYU Law School Alumni Association

J. Reuben Clark Law Society

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CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

University

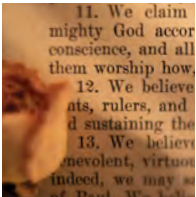
Fall 2018



Many reunions

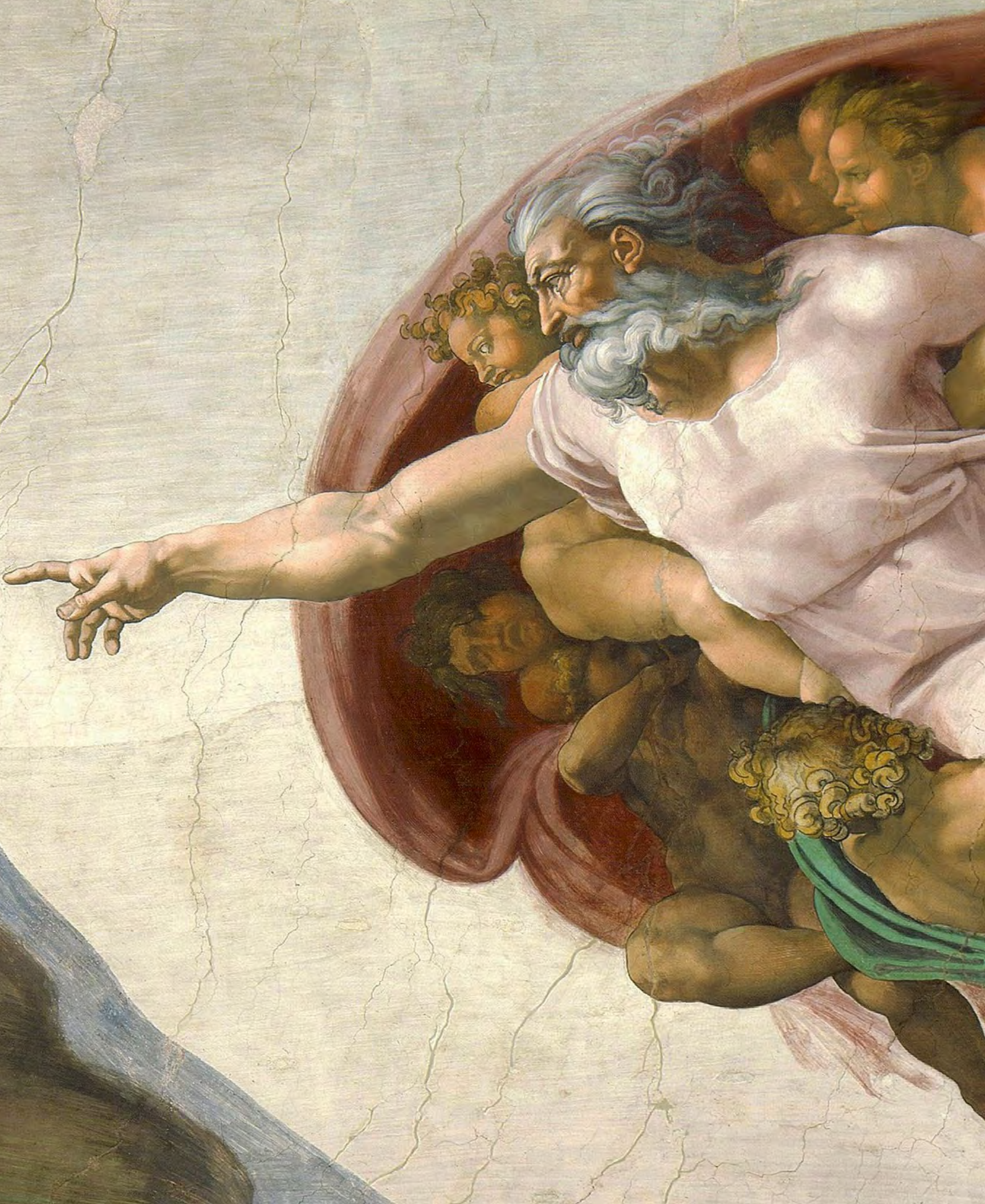
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INSPIRING LEADERSHIP

The Latin word *spīro*—"to breathe"—is a component of many modern English words. For example, *conspire* comes from roots meaning "breathe" and "together"; *expire* from "breathe out"; and *aspire* from "breathe on." But my favorite *spīro* derivative is the word *inspire*, which means "breathe into." Recounting this etymology, I am reminded of Genesis 2:7, in which God "breathed into [Adam's] nostrils the breath of life." In the Latin Vulgate, the word used is *inspirare*—God inspired Adam. It is not hard to see how *inspire* has come to mean "to infuse some thought or feeling into (a person, etc.), as if by breathing."¹

At BYU Law School, I hope that all of us are inspired with a simple but profound idea: we can change the world for the better. I refer to this idea as *inspiring leadership*.

In his seminal talk on the subject of "inspiring learning," President Kevin J Worthen noted the dual meaning of the term: it "describes actions that inspire or motivate students to learn" and is "learning that leads to inspiration or revelation."² Similarly, I view inspiring leadership as actions that inspire members of our community to lead as well as leadership that produces inspiration.

I suggest here three simple words—corresponding to the three years of law school—that I hope will illuminate the idea of inspiring leadership.

YEAR 1 Excellence (Leadership of Self)

Inspiring leadership demands excellence. Although we have a faith-based mission, graduates will inevitably be judged by the world's standards when seeking employment, sitting for the bar examination, and, eventually, making their mark on the world. As a law school, we take President Dallin H. Oaks's injunction seriously: the Law School "must attain a greatness that transcends religious lines and establishes itself in the eyes of legal educators, scholars, the judiciary, the legal profession, the business world, officials of local, state, and federal government, and citizens at large."³ Thus, we aspire to be a great law school in the same way that other law schools are great: as a source of great ideas and as a training ground for great professionals.

YEAR 2 Together (Leadership with Others)

Traditionally, leadership was viewed as a natural outgrowth of legal education, but BYU Law is making leadership training explicit with a suite of innovative reforms. In a course entitled Foundations of Law and Leadership, we promote the theme "Excellence Together" because a distinctive feature of inspiring leadership is community, rather than the more common heroic individual who guides a group of admirers. In our best moments at the Law School, we learn and serve together.

Inspiring leadership is particularly evident in our clinics and field placements, where students "get proximate"⁴ with people affected by the legal system. In the Negotiation and Conflict Resolution Clinic, our professors and students create conflict resolution systems in contentious environments. In the Legal Design Clinic (known as LawX), we design legal technology solutions to improve access to justice. And in the Refugee and Immigration Initiative and the Community Law Clinic, professors work with students and alumni to represent immigrants. In these and myriad other efforts, members of the BYU Law community work together to change the world for the better.

YEAR 3 Innovation (Leadership in the World)

As a Law School, our goal is to advance peace, justice, and opportunity; achieving these ends requires inspiring leadership, which in turn requires innovation. Known as one of the most innovative law schools in the nation, BYU Law is introducing several new initiatives that will promote inspiring leadership. Pro Bono Boot Camps will help people with problems such as domestic violence, housing discrimination, debt collection, and elder abuse. LawStories will launch a series of training sessions and stage a national storytelling event featuring law students. The Leadership Incubator will help students develop legal innovations for real-world implementation. The Council of Innovation Leaders will support BYU Law's efforts in leadership training financially and through time and expertise.

Many law schools claim to train leaders, but the special mission of BYU Law integrates faith and intellect to that end. We can accomplish great things when we demand excellence of ourselves and those around us, when we work together in true collaborations, and when we explore innovative approaches to providing legal services. We have been emboldened by our initial efforts in leadership training, and we invite faculty, students, alumni, and friends of the Law School to generate and implement ideas that will change the world.

NOTES

- 1 Oxford English Dictionary Online, s.v. "inspire," definition 4.
- 2 Kevin J Worthen, "Inspiring Learning," BYU university conference address, Aug. 22, 2016.
- 3 Dallin H. Oaks, in *Addresses at the Ceremony Opening the J. Reuben Clark Law School*, Aug. 27, 1973, 6.
- 4 D. Gordon Smith, "The Path of Present Intention," *Clark Memorandum*, Spring 2018, 5–6; see also Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (New York: Spiegel and Grau, 2014), 12–13.

D. GORDON SMITH



Dean, BYU Law School





good samaritan

Koushik

*Latter-day
Saints,
the “Bonds of
Affection,”
and the Atonement
of Christ*

HEROES of UNITY

THOMAS B. GRIFFITH

JUDGE OF THE U.S. COURT OF APPEALS FOR THE DC CIRCUIT

*J. Reuben Clark Law Society Annual Fireside Address
January 19, 2018*

I am honored by this invitation. I value my association with the J. Reuben Clark Law Society and its mission. I am mindful that the reach of the Law Society is global, and I welcome those who are joining us from around the world. Although some of the examples I will draw upon in my remarks come from the American experience, the points I will try to make know no national boundaries.



The Work of Community Building

Many years ago I happily accepted an invitation to speak at BYU–Hawaii. The title of my remarks was “Lawyers and the Atonement.”¹ Announcing that title drew some laughter, but it wasn’t intended to. It was my thesis that the Atonement of Christ should be the animating force in all we do, and although it may be easy to see how that works for a carpenter (especially one from Nazareth), a counselor, a teacher, an artist, someone in the healing professions, or almost any other profession or trade than ours, it is vital for those of us called to the bar to discover how acting well our part can encourage reconciliation.

This idea comes from the story of Enoch and his city, which was among the first lessons that the Lord impressed upon the heart and mind of Joseph Smith following the founding of the Church. We are told that Enoch and his city “were of one heart and one mind, and dwelt in righteousness; and there was no poor among them.”² Recreating that type of community was the chief goal of the first Latter-day Saints. The story of Enoch is not just about Enoch, his family, or even his clan. It is a story about a city

that set the mark for the type of spirituality to which the Lord calls us in the Restoration.

The Book of Mormon teaches this as well. As Mormon began his own account on the large plates, he started with the story of King Benjamin and his city. I thank Professor Jack Welch of BYU’s law school for the following insight:³ King Benjamin’s city was divided by class, language, and ethnicity. Benjamin had spent a lifetime trying to overcome those divisions through legal and

From Enoch’s city and King Benjamin’s city, we learn that we are engaged in the highest form of spirituality when we work to make the effects of Christ’s Atonement radiate beyond ourselves and our families to build communities. The work of community building is the most important work to which we are called. All other work is preparatory. And here’s where lawyers come into the picture: to build a community involves law. Properly understood, the noblest role a

“PRAY THAT WAY AND THEN

educational reforms, to no avail. Finally, near the end of his life, he delivered a powerful sermon on the Atonement of Christ, and for a season his people, moved with awe and humility, were united in Christ.⁴ I think it highly significant that Mormon, who had special insight into the unique challenges of our day, began his writings on the plates with the story of a person who worked hard at uniting a people divided by class, language, and ethnic identity.

lawyer can fill is to help build communities founded on the rule of law. The rule of law is the idea—of staggering importance in the progress of humankind—that a community should be organized in a way that reflects the reality that each person is created in the image of God and, by virtue of that fact alone, is entitled to be treated with dignity, respect, and fairness. Communities so organized create conditions of liberty and security that unleash human creativity and goodness.

Our Call to Change the World

This is all pretty high-minded stuff, I know. And it is in sharp contrast to the popular view of lawyers reflected in a joke I heard Rex Lee tell on a number of occasions. (I believe he learned the joke from BYU Law professor Jim Gordon.)

It's true that some lawyers are dishonest, arrogant, venal, amoral, ruthless buckets of toxic slime. On the other hand, it's unfair to judge the entire profession by five or six hundred thousand bad apples.⁵

More seriously, at a time in which some are urging Christians to retreat from a society that is growing increasingly secular at an alarming pace—I'm thinking of the interpretation many have given to the important and provocative book by Rod Dreher, *The Benedict Option*⁶—the Lord has called Latter-day Saints to do just the opposite. Jesus's imagery of disciples as the salt of the earth,⁷ combined with scriptural injunctions and the imperatives of modern prophets regarding our distinctive role at this time in the world's history, all urge Latter-day Saints to become part of the fabric of the societies in which we live.

Several years ago I had an interesting conversation with Judge Monroe G. McKay, a distinguished member of the United States Court of Appeals for the Tenth Circuit. Judge McKay is a raconteur without peer, and on this occasion he was musing over the remarkable and good changes in

For years the general authorities have been urging us to lean in to the larger society and join forces with others to do good. We live, work, and play alongside wonderful people of different faiths or no faith who can teach us much about the things that matter most: kindness, courage, beauty, justice, mercy, love, and, perhaps most importantly, how to serve those on the margins of society. Jesus called these "the least," but He also proclaimed that they were His brothers and sisters.⁸ True, there are forces of hatred and division loose in the world. But fortunately there are also countless men and women of goodwill. G. K. Chesterton called them "splendid strangers."⁹ What I offer today is encouragement to join forces with these good people to look for ways to build unity and understanding.

After all, our theology moves us toward others. As Terryl L. Givens has written:

Mormonism's conception of heaven is radically social. . . . Salvation is a communal enterprise. . . . [I]t is a social heaven [Mormons] envision—and so the church must do more than cultivate individual models of sanctity. The church must function as the model, the catalyst, and the schoolmaster for the City of God. . . . Zion-building is not preparation for heaven. It is heaven, in embryo. . . .

. . . The process of sanctifying disciples of Christ, and constituting them into a community of love and harmony, does not qualify individuals for heaven; sanctification and celestial relationality are the essence of heaven.¹⁰

In his recent book, *The Day the Revolution Began: Reconsidering the Meaning of Jesus's Crucifixion*, noted New Testament scholar and Anglican cleric N. T. Wright makes a striking claim that upends how many view Christ's mission. According to Wright, a close reading of the New Testament shows that, for the Christians of the first century, Jesus's death and Resurrection were about much more than getting us to heaven. They were also, and more urgently, about followers of Christ changing the world here and now.¹¹ That is a message familiar to Latter-day Saints. According to the newspaper account of remarks he recently gave at Westminster College, Elder D. Todd

Christofferson emphasized that "spirituality is manifest and nurtured in service."¹²

Or, as President Henry B. Eyring has said:

Instead of thinking of yourself primarily as someone who is seeking purification, think of yourself as someone who is trying to find out who around you needs your help. Pray that way and then reach out. When you act under such inspiration, it will have a sanctifying effect on you.¹³

Certainly that was the profound message of the life of President Thomas S. Monson.

In short, the message of the restored gospel of Jesus Christ is that we are called to change the world for the better—here and now—and we do that best through relationships.

The Binding Power of Christ's Atonement

Last spring Yale Law School asked me to join a panel discussion titled "Mormonism in American Law and Politics" along with Professor Amy Chua of Yale and Professor Noah Feldman of Harvard.¹⁴ Both have written with insight and even admiration about the Mormon experience, and their comments were interesting, provocative, and generous. As the lone Mormon on the panel, I tried to offer an insider's view. But rather than speak about the past, I made a claim about the future that was intended to surprise the audience: Despite the way we are viewed by many, Mormons are uniquely positioned to help negotiate the tension between our nation's twin goals of liberty and equality—a tension that sometimes seems irreconcilable.

Here's how. The late Catholic scholar Stephen H. Webb got it right when he wrote, "Mormonism is obsessed with Christ, and everything that it teaches is meant to awaken, encourage, and expand faith in him."¹⁵ But Webb's description is incomplete. To Mormons, the Atonement of Christ does not only forge a bond between an individual, his or her family, and God; the Atonement of Christ is at the center of our efforts to create community. Latter-day Saints don't use much iconography, but if any symbol expresses who we are and what we are about, it's the beehive, because the

REACH OUT.

— PRESIDENT HENRY B. EYRING

the Church that he had seen during his life. "When I was growing up in Huntsville, Utah," he said, "we talked about only three things at sacrament meeting: tithing, the Word of Wisdom, and 'They're coming to get us!' Now, it's all about the Atonement of Christ and loving our neighbors."

Judge McKay's humorous recounting of our trajectory as a people is spot on. We have spent our time of preparation in the wilderness. Now is the time for us to fully engage.

paramount form of religious expression in Mormonism is building community.

It's within the Latter-day Saint ward that much of that hard work takes place. As Eugene England pointed out in his essay "Why the Church Is as True as the Gospel" (which is near-canonical to me), two features of the ward work in tandem to create a laboratory for Christian living. First, with no paid help, all are called upon to pitch in. Second, because we are members of a ward by virtue of where we live and not because of a hankering to be among those who share our views, we end up working in close quarters with and eventually coming to love people we might not have wanted to take to lunch when we first met them.¹⁶

Each Sunday we gather with our ward to partake of the sacrament of the Lord's Supper. The symbolism of that ritual binds us one to another. When we partake of the sacrament, we share the emblems of Christ's suffering with one another. That sharing is an outward manifestation of an inner commitment that we "are willing to bear one another's burdens, . . . mourn with those that mourn . . . , and comfort those that stand in need of comfort";¹⁷ to go to Young Women camp, Scout camp, and youth conference; to minister to one another; and to help people move their household on a Saturday morning in the cold rain. We receive the bread and water not from our leaders but from whoever happens to be next to us on the pew—a beautiful expression of the powerful idea that C. S. Lewis used to close his most important sermon: "Next to the Blessed Sacrament itself, your neighbour is the holiest object presented to your senses."¹⁸

I served a full-time mission in South Africa and Zimbabwe from 1973 to 1975. I loved my mission, but those years were an unhappy time for the region. Apartheid was still the law in South Africa, Nelson Mandela was still imprisoned on Robben Island, and Zimbabwe was caught up in a civil war. But in the last few weeks of my time there, I caught a glimpse of how the doctrines of the restored gospel, coupled with the experience gained from life in a ward, could provide a way forward for nations divided by race.

One of the paid staff at the mission home was a wonderful woman of mixed race. Ella Baatjies had only recently come

to work at the mission home after a lifetime spent in virtual slavery as a maid at a boarding house. Missionaries who lived at the boarding house befriended Ella and arranged for her escape. I was among the happy group that welcomed Ella to her new life in the mission home hundreds of miles away.

Upon arriving at the mission home, the first thing Ella asked for was the missionary discussions. She wanted to learn about the restored gospel. Our mission president, Robert P. Thorn, granted Ella's plea, and my companion, Steve Oliver, and I had the honor of teaching her. In truth, Ella taught us. She was a woman of profound and exuberant faith. There was, however, one problem: the owner of the boarding house had kept Ella from learning to read. That posed

little experience interacting with people of color in any way other than in a master-servant relationship. That was what her culture had taught her. Still, because she loved and respected the missionaries, Dorothea accepted our request to be Ella's reader. One night as I was walking down the hallway on the residential floor of the mission home, I passed by Dorothea's room. The door was open, and a sideways glance revealed a scene I shall never forget. Dorothea and Ella were sitting side by side on the bed, Ella listening carefully while Dorothea read aloud from the Book of Mormon.

For me, that image represented the restored gospel at its best, bringing together people who had been separated by cultural falsehoods about race and creating relationships of love and respect. When we are



a problem because there is a fair amount of reading required of those considering whether to join the Church.

Serving as the chef in the mission home was a remarkable woman who came to our aid. Dorothea Storey was white and had

doing it right, the restored gospel of Jesus Christ works to bring "at-one" those who are divided by race, gender, nationality, sexual orientation, and other fault lines that too often keep us from fully embracing each other as brothers and sisters.

Civic Charity and the Constitution

This may be where we can be of help to our divided nation. Mormons have a sense that we have a role to play in defending and preserving the Constitution of the United States, and we teach one another to study its text and history. That is all good. But I wonder, is there something even more basic that we can offer?

Matthew Holland, former president of Utah Valley University, is a scholar of the American founding. President Holland has written that the idea of civic charity was central to the creation of the United States and is indispensable to the success of the Constitution's structural protections of federalism and separated and enumerated powers, as well as its guarantees of fundamental rights.¹⁹ It was pilgrim John Winthrop who, in the spring of 1630, first expressed the need for civic charity. In a sermon that has been called the "Ur-text of American literature,"²⁰ Winthrop implored those about to launch the Massachusetts Bay Colony, "We must delight in each other, make others' conditions our own . . . , always having before our eyes our commission and community in the work."²¹

Some 230 years later, Abraham Lincoln gave the fullest expression to the idea of civic charity and its critical role in defending and preserving the Constitution. Lincoln understood that without civic charity, the Constitution could not succeed. And so at the most perilous moment in our nation's history, and in an effort to avoid the cataclysm of a civil war that posed the greatest threat the Constitution has ever faced, Lincoln pled with his fellow citizens:

*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.*²²

As we know, it turned out that those bonds of affection were not strong enough to hold the nation together. War came, and

its consequences are with us still. Near the end of the armed hostilities, Lincoln again invoked those bonds of affection, this time in an effort to reconstruct constitutional government for the nation:

*With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just and a lasting peace among ourselves and with all nations.*²³

In the challenges we face today, strengthening those bonds of affection may be as important as any other task we face in defending and preserving the Constitution.

Compromise, Equality, and Religious Liberty

Our nation is rightly committed to banishing discrimination that holds back women and racial, sexual, and other minorities from full participation in our national life. Can we pursue that goal while allowing religious minorities to live in ways consistent with conscience? Here is the challenge: equality and religious liberty are in tension.

Martha Minow, recent dean of Harvard Law School, is a political progressive fully committed to equality. She recognizes that our current controversy over equality and religious liberty is high stakes because important rights and values are involved. Dean Minow has wisely called on all sides to temper their rhetoric and alter their tactics in an effort to seek areas of compromise. Compromise, she has pointed out, is not a departure from principle. Compromise allows the type of accommodation that is indispensable for stability in a diverse society. Minow has argued that both sides should seek areas of convergence and compromise where neither seeks total victory and find ways to accommodate the legitimate concerns of the other.²⁴

How is such compromise possible? Dean Minow asserted:

[A]ttitudes of respect, flexibility, and humility can help generate new answers beyond

"exemption" and "no exemption" when religious principles and civil rights collide. . . .

*. . . Humility does not mean self-doubt or doubt about principle, but it does involve restraint and making room for open and respectful exploration of the other point of view.*²⁵

That sounds to me like a description of a pretty good ward council. I believe that our experience in our ward laboratories of Christian living can help—in a big way.

In 2015 the Utah Legislature enacted one of the most far-reaching statutes in the nation barring discrimination in housing and employment on the basis of sexual orientation or gender identity.²⁶ Yet the statute also protects religious liberty. Representatives of the LGBT community hailed the legislation as "a landmark,"²⁷ the result of a change from a relationship of distrust to one of mutual respect and understanding. According to those involved in the negotiations, small-group dynamics were a factor that led to this breakthrough. The compromise was worked out not only around the conference room tables of lawyers but around the dining room tables of people who had become friends despite their differing views. As these friendships formed, ideas emerged about how each side could accommodate the needs of others while maintaining their own core values.²⁸

Significantly, many of the players were Mormons or former Mormons who had experience in the life of a ward. There is a debate over whether the Utah compromise can be accomplished elsewhere. I am not a political scientist, nor am I good at predictions, but I can hope. Is it too much to think that the skills gained from life in a ward can help address the divides that separate our nation? Can it be that our work as ministering brothers and sisters, our weekly passing of the sacrament to one another, and our learning to love those in our ward who see things differently can play a role in helping our nation bridge its divisions?

I believe they can, but only if we get involved in the world beyond the chapel doors.

"Radiant Mormonism"

I know we are all busy with work, family, and church. But the time has come for us to set

our sights on building community beyond the ward.

One way we can do this is to look for ways to make existing Church programs more oriented to serving those in need who are not members of the Church. Over a decade ago I presided over a young single adult stake that was composed largely of students attending BYU. It was a remarkable group of young people, and as a stake presidency we realized there were important things they could do if given the opportunity. And so with the approval of Elder John H. Groberg, the general authority seventy to whom I reported, we created in each ward a Pure Religion Committee, whose charge was to form a partnership with a local service provider so that our members could help those on the margins of society. Our inspiration was Mother Teresa, and we began the new school year with a fireside that showed a documentary about her life of service to the poorest of the poor.

When the stake presidency visited each ward, we shared this message:

I bear you my witness that if the Lord Jesus Christ were to be physically present in Provo today, He wouldn't attend a single meeting of our stake. Why? He has you covered by your bishop, the elders quorum president, and the Relief Society president. My witness is that if the Lord were to come to Provo today, He would spend time at the state mental hospital and the battered women's shelter and visit with a recently arrived immigrant family from Central America. If that's where He would be, then what are we doing here in a comfortable setting at church? Actually, something very important. We are here to partake of the sacrament and encourage one another to trust in Christ and follow Him. But we can do that in three hours. And when our meetings are over, let's go where the Lord would be.

We can also be involved in the life of our neighborhoods, towns, counties, and cities—not as a Church calling but simply as citizens who want to help the common good. As we serve in various capacities, we can bring to others what we have learned and experienced in our laboratory for Christian living.

Celebrated historian Richard Bushman has noted a trend that is startling to some:

“Mormon influence is being felt in many segments of our society.”²⁹ Bushman describes this growing influence for good as “radiant Mormonism”:

*Think of all the individuals who have an impact simply because they live good lives. The psychiatrists, the teachers, the policemen, the bosses, the coaches, the construction workers, who are admired and appreciated by the people around them because they are decent, generous people—people of good will. . . . Everywhere you turn, you find Mormons in positions of power and influence. But the influence goes beyond the eminent and powerful. It is exercised by ordinary Latter-day Saints going about their everyday lives. They may not trumpet their religion to their associates, but they elevate their workplaces and neighborhoods by working for the good of the people around them.*³⁰

According to Bushman, “radiant Mormonism” works only when two conditions are present. First, we must be trusted; people must know that we have their best interests at heart, that we are not maneuvering for our own gain. And second, we must be competent; we must know what we are doing. Brother Bushman is not a man given to hyperbole, but mark these words: “[R]adiant Mormonism must extend Mormon influence. . . . Every day we add to the sum of goodwill among humankind; some day that goodness may save the world.”³¹

Wait, what? Did he just say that we can help “save the world”? That’s a much taller order than what I’m calling for. I’m just asking us to save the Constitution! And I’m asking us to do that by taking what we know about the Atonement of Christ and the life experience we have gained in our wards—how to create and strengthen “bonds of affection”—and by using those skills in our neighborhoods, the workplace, our school boards and town councils, and the halls of Congress to reach across divides and create relationships that result in empathy. Such empathy can then facilitate compromise, an ever-present need in a democratic republic whose motto is *E pluribus unum*.

Get involved with groups and organizations that work to bridge divides. Then, as a member of that group, be yourself. Remember how we reacted to Stephen R. Covey’s success

with the 7 Habits books?³² We realized that he had taken principles that are commonplace among us—the standard fare of many a priesthood and Relief Society lesson—and shared them with a larger audience. So join the PTA, the Rotary, the bar association, or any of a thousand different points of light that seek to do good—or start your own, but if you do, make sure the group includes people not of our faith as well. And show by your example what you have learned about creating unity from your experiences in your ward. Don’t hide your light under a bushel.

Agents of Reconciliation

Allow me a cautionary note about our necessary involvement in partisan politics. Too often those who practice politics play upon passions and biases and use personal attacks rather than treating opponents with respect. We can do better. As we embrace the best that American political culture has to offer—a commitment to liberty and equality of opportunity—I hope that we will reject the brand of politics that has far too often been part of that culture. When I was a student at BYU, we were taught to have “a style of our own” in dress and grooming standards. That seems like good advice for our involvement in politics. We should have a style of our own, a “Mormon approach to politics.”

Don’t get me wrong. I am not saying that you will have certain views about marginal tax rates or about the best way for a nation to conduct its foreign affairs by virtue of the fact that you are a Latter-day Saint. In fact, I am uncomfortable with any who maintain that principles of the restored gospel compel their partisan affiliations. But I am saying that a Mormon approach to politics will be animated by a passion for justice and fairness and a respectful way of treating opposing points of view and the people who espouse them. And it will look for ways to unify people.

Michael Gerson observed:

The heroes of America are heroes of unity.

*Our political system is designed for vigorous disagreement. It is not designed for irreconcilable contempt. Such contempt loosens the ties of citizenship and undermines the idea of patriotism.*³³

Times of change like our own are marked by turmoil and anxiety, making it tempting to lash out in anger and frustration and then seek shelter by retreating to our own tribe of like-minded folk. But I don't think that is what the Lord calls us to do in the Restoration. I believe, instead, that He wants us to join with others and become agents of reconciliation in a divided world. The concept expressed in the English word *reconciliation* has Hebrew roots. When it appears in the Hebrew Bible, it conveys the sense of bringing together into one things that have been separated. The King James translators used a new word for the concept: *atonement*, or "at-one-ment."

Elder Jeffrey R. Holland reminded us in the April 2017 general conference that our best tools for addressing the divisions that beset us are the simple and profound teachings of Jesus, summarized in the two great commandments:

[S]omeday I hope a great global chorus will harmonize across all racial and ethnic lines, declaring that guns, slurs, and vitriol are not the way to deal with human conflict. The declarations of heaven cry out to us that the only way complex societal issues can ever be satisfactorily resolved is by loving God and keeping His commandments, thus opening the door to the one lasting, salvific way to love each other as neighbors.³⁴

It is my hope that we will take from the doctrines of the Restoration and our experiences in our ward laboratory of Christian living the desire to become heroes of unity. If we are trusted and skilled in creating and strengthening the bonds of affection that are a necessary precondition for constitutional government, this may be our greatest gift to a divided nation in this present moment of peril. That we may do so is my prayer, in the name of Jesus Christ, amen. cm

NOTES

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- 3 See John W. Welch, "Benjamin, the Man: His Place in Nephite History," in *King Benjamin's Speech: "That Ye May Learn Wisdom,"* ed. John W. Welch and Stephen D. Ricks (Provo: Foundation for Ancient Research and Mormon Studies, 1998), 48–50.
- 4 See Mosiah 2–5.
- 5 James D. Gordon III, "The Profession Everyone Loves to Hate," *Clark Memorandum*, Fall 1995, 10.
- 6 See Rod Dreher, *The Benedict Option: A Strategy for Christians in a Post-Christian Nation* (New York: Sentinel, 2017).
- 7 See Matthew 5:13.
- 8 Matthew 25:40.
- 9 G. K. Chesterton, *Orthodoxy* (New York: John Lane, 1908), 35.
- 10 Terryl L. Givens, *Feeding the Flock: The Foundations of Mormon Thought: Church and Praxis* (New York: Oxford University Press, 2017), 35–36.
- 11 See Nicholas Thomas Wright, *The Day the Revolution Began: Reconsidering the Meaning of Jesus's Crucifixion* (San Francisco: HarperOne, 2016).
- 12 Tad Walch, summarizing D. Todd Christofferson's remarks at Westminster College, in "International Service Builds World Peace, Elder Christofferson Tells Westminster Students," *Deseret News*, Nov. 29, 2017.
- 13 Henry B. Eyring, *To Draw Closer to God: A Collection of Discourses by Henry B. Eyring* (Salt Lake City: Deseret Book, 1997), 110.
- 14 See Thomas B. Griffith and Noah Feldman, panelists, with Amy Chua, moderator, "Mormonism in American Law and Politics," *Debating Law and Religion Series, Yale Law School*, Apr. 5, 2017.
- 15 Stephen H. Webb, "Mormonism Obsessed with Christ," *First Things*, February 2012.
- 16 See Eugene England, "Why the Church Is as True as the Gospel," in *Why the Church Is as True as the Gospel* (Salt Lake City: Bookcraft, 1986), 6.
- 17 Mosiah 18:8–9.
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- 19 See Matthew S. Holland, *Bonds of Affection: Civic Charity and the Making of America—Winthrop, Jefferson, and Lincoln* (Washington, DC: Georgetown University Press, 2007).
- 20 Andrew Delbanco, *The Puritan Ordeal* (Cambridge, Massachusetts: Harvard University Press, 1989), 72; quoted in Holland, *Bonds of Affection*, 1.
- 21 John Winthrop, "A Model of Christian Charity," sermon delivered on board the *Arabella* in 1630, spelling modernized; quoted in Holland, *Bonds of Affection*, 1.
- 22 Abraham Lincoln, "First Inaugural Address," Mar. 4, 1861.

- 23 Abraham Lincoln, "Second Inaugural Address," Mar. 4, 1865.
- 24 See Martha Minow, "Should Religious Groups Be Exempt from Civil Rights Laws?" *Boston College Law Review* 48, no. 4 (Sept. 2007): 781–849.
- 25 *Id.* at 844.
- 26 See S.B. 296, 2015 Gen. Sess. (Utah 2015), available at le.utah.gov/~2015/bills/static/sbo296.html.
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- 28 See Niraj Chokshi, "Gay Rights, Religious Rights and a Compromise in an Unlikely Place: Utah," *Politics, Washington Post*, Apr. 12, 2015, available at washingtonpost.com/politics/gay-rights-religious-rights-and-a-compromise-in-an-unlikely-place-utah/2015/04/12/39278b12-ded8-11e4-a500-1c5bb1d8ff6a_story.html; Goodstein, "Utah Passes Antidiscrimination Bill"; Jennifer Dobner, "Anti-Discrimination Bill Clears Utah Senate in Historic Vote," *Salt Lake Tribune*, Mar. 7, 2015, available at archive.sltrib.com/article.php?id=2259540&itype=CMSID; and Michelle Boorstein, "LGBT, Mormon Groups Announce Compromise Anti-Discrimination Measure in Utah," *Local, Washington Post*, Mar. 4, 2015, available at washingtonpost.com/news/local/wp/2015/03/04/lgbt-mormon-groups-in-utah-to-announce-compromise-anti-discrimination-measure.
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- 30 *Id.*
- 31 *Id.*, emphasis added.
- 32 See, e.g., Stephen R. Covey, *The 7 Habits of Highly Effective People* (1989).
- 33 Michael Gerson, "A Primer on Political Reality," *Opinions, Washington Post*, Feb. 19, 2010, emphasis added, available at washingtonpost.com/wp-dyn/content/article/2010/02/18/AR2010021803414.html.
- 34 Jeffrey R. Holland, "Songs Sung and Unsung," *Ensign*, May 2017, second emphasis added.

ART

Page 4: *Good Samaritan*, 2017, © Brian Kershnik. Used with permission. Page 6: *Looking for Something*, 2016, © Brian Kershnik. Used with permission. Page 8: *Many Reunions*, 2010, © Brian Kershnik. Used with permission.

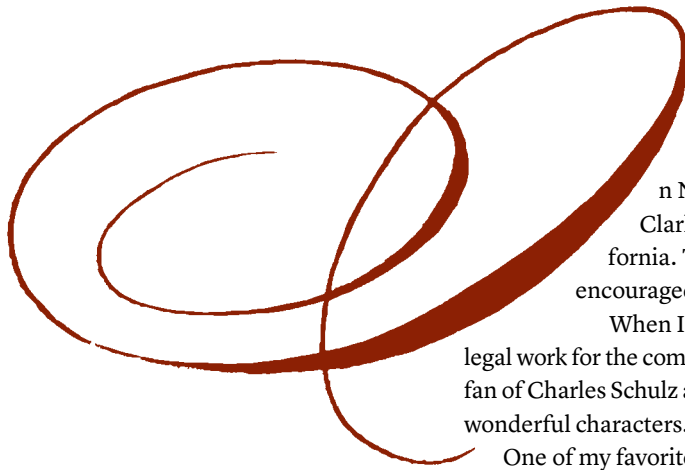
Elder Quentin L. Cook
OF THE QUORUM OF THE TWELVE

*Defend
Divinely
Inspired
Freedoms*

PHOTOGRAPHS BY BRADLEY SLADE

DECLARATION OF
and of nature's God unite
them, a decent respect to the
opinions of mankind requires
that they should declare the
causes which impel them to the
separation.

We hold these truths to be
self-evident --- that all men are
created equal; that they are
endowed by their Creator with
certain inalienable rights: that
among these are life, liberty
and the pursuit of happiness.
That, to secure these rights,
governments are instituted
among men, deriving their
powers from the consent of the



On November 2017 I spoke at a symposium cosponsored by the J. Reuben Clark Law Society and the St. Thomas More Society in Los Angeles, California. The symposium was attended by lawyers of many faiths. I have been encouraged to expand on my principal message given that evening.

When I was a young lawyer in the San Francisco Bay Area, our firm did some legal work for the company that produced the Charlie Brown holiday TV specials. I became a fan of Charles Schulz and his creation *Peanuts*, with Charlie Brown, Lucy, Snoopy, and other wonderful characters.

One of my favorite comic strips involved Lucy. As I remember it, Charlie Brown's baseball team was in an important game—Lucy was playing right field, and a high fly ball was hit to her. The bases were loaded, and it was the last of the ninth inning. If Lucy caught the ball, her team would win. If Lucy dropped the ball, the other team would win.

As could happen only in a comic strip, the entire team surrounded Lucy as the ball came down. Lucy was thinking, "If I catch the ball, I will be the hero; if I don't, I will be the goat."

The ball came down, and as her teammates eagerly looked on, Lucy dropped the ball. Charlie Brown threw his glove to the ground in disgust. Lucy then looked at her teammates, put her hands on her hips, and said, "How do you expect me to catch the ball when I am worried about our country's foreign policy?"

Everyone has always worried about foreign policy. But my principal message is that we cannot drop the ball on religious freedom—regardless of whatever else worries us.

In simple terms, there is a growing number of people who do not feel accountable to God for their conduct and attempt to diminish the rights of those who do feel accountable. Many want to eliminate or even destroy religious freedom.

Lawyers, business leaders, community leaders, educators, students, and conscientious citizens are uniquely able to defend faith and religious freedom. The Church of Jesus Christ of Latter-day Saints has come out of obscurity and is part of the worldwide conversation on faith. We need to be educated and then participate in a positive manner in protecting religious freedom.

I am grateful for the close association we have with Catholic, Evangelical, Jewish, Muslim, and other religious leaders in the United States and the friendship that allows us to work together on common issues of mutual concern, even though our ecclesiastical doctrine is different in many important respects.

My purpose tonight is to review the progression of basic principles that have established religious liberty—the fundamental right of each individual to live according to his or her faith and beliefs—as part of essential or unalienable rights and, as a corollary, that protect the religious institutions that provide the essential framework for the promulgation of faith and belief. In addition, my challenge is that people of faith work together to improve the moral fabric of our nation and protect religious freedom.

Our legal heritage in United States law echoes back to the Magna Carta. The Magna Carta served as an important precursor to the broad protections of religious freedom that came to fruition centuries later in liberal democracies, especially those descending from the British Empire.¹ As early as 1215, it helped establish that deference should be afforded to churches in the governance of their internal religious affairs.

The Magna Carta was initially a treaty to end a civil war, but “it simply started another.”² In 1215 a group of barons sometimes described as rebels and sometimes as heroes opposed King John’s attempt to levy taxes to recover Normandy territory, which the French had seized in 1204.³

The crucial meetings were held at Runnymede, a meadow along the River Thames outside London, which has been described as “an ancient assembly site.”⁴ I first visited the commemoration site in June 1962 while I was a young missionary for The Church of Jesus Christ of Latter-day Saints. Both the location and the Magna Carta itself made a significant impression on me. It was one of the reasons I decided to pursue law as a profession.

The Magna Carta is famous for its clauses limiting the king’s right to exact revenues without common consent and elevating individual protections under the law of the land. But the clauses relating to religious liberty and how justice was dispensed also gave the Magna Carta its enduring fame.⁵

Clause 1 is remarkable for our purposes here tonight. It declares:

*Firstly, we have granted to God and confirmed by this, our present charter, for us and our heirs in perpetuity, that the English church shall be free, and shall have its rights in full and its liberties intact.*⁶

Today the spirit of the Magna Carta lives on in the religious freedoms secured to churches, religious organizations, and individual believers in the United States and many other countries.

The barons were wise enough to know that King John was unlikely to abide by the provisions set forth in the charter. Thus they included in clause 61 a provision that established the Committee of Twenty-Five to help ensure that the king would honor the charter.⁷ This committee evolved to the point that, by 1230, whenever a representative assembly convened, it was called a parliament.⁸ The significance of parliaments as a means of increasing individual rights is clear.

In addition to the Magna Carta, we are the beneficiaries of the concepts and principles established by English common law. In approximately 1600, Sir Edward Coke produced the consolidation of the English law in written form. His work was to law what Shakespeare’s was to literature. Coke seized upon the Magna Carta “as the embodiment of good law.”⁹ In his famous words, he said that the “Magna Carta is such a fellow that he will have no sovereign.”¹⁰

In the American colonies, the Magna Carta was drawn on heavily in both the Declaration of Independence and the First Amendment to the U.S. Constitution. The declaration contains the seminal words “all men are created equal . . . [and] are endowed by their Creator with certain unalienable Rights.”¹¹ The acknowledgement of God, the Creator of the universe, as the ultimate giver of essential rights is proclaimed in a magnificent fashion and clearly reflects the cherished beliefs of most people.

Natural law, or even a belief that we are accountable to God, is not in fashion in much of the legal world today. But the recognition that individual rights are part of the design of a loving Creator is part of Latter-day Saint theology and other faiths. It is not government that has the disposition and power to grant these protections and rights; they are derived from our Creator. The preamble to the Magna Carta acknowledges the grace of God, and the document places the king not only below God but also below the law.¹²

I am encouraged by the memorandum from the United States Office of the Attorney General issued on October 6, 2017. Under the heading “Principles of Religious Liberty,” it declares that “[r]eligious liberty is enshrined in the text of our Constitution.”¹³ It quotes James Madison’s famous words, stating that “the free exercise of religion ‘is in its nature an unalienable right’ because the duty owed to one’s Creator ‘is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.’”¹⁴ The entire memorandum is a remarkable document and is supportive of many of the concerns that each of us has.

Nevertheless, people of faith must be at the forefront in protecting religious freedom—a freedom from which many other essential freedoms emanate. Freedom of religion and freedom of speech are both the heart and the foundation of representative democracy. Freedom

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at the J. Reuben
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Society Annual
Conference on
Friday, February
16, 2018,
at the Salt Lake
Tabernacle.*

to believe in private and to exercise belief and speech in the public square are essential to protecting unalienable rights.

In the American colonies, the practice of religious beliefs was a principal reason for the original settlements in New England, Pennsylvania, and Maryland (a Catholic settlement). As one scholar has noted, “More material was printed in mid-eighteenth-century America about religion than about political science, history, and law combined.”¹⁵

Interestingly, the term “free exercise” first appeared in reference to religion in a 1648 legal document in America when a new Protestant governor and counselors in Maryland promised not to disturb other Christians—with particular emphasis on Roman Catholics—in the free exercise of their religion. This document represented the first attempt in the colonies to ensure that Protestants and Catholics could live together under circumstances of equality.¹⁶ This early example of religious pluralism has continued in the United States, where, on the whole, a multiplicity of religions have been secure in their religious rights. The country has greatly benefited from religious pluralism.

We acknowledge that religious freedom has not always been protected. Both Catholics and members of The Church of Jesus Christ of Latter-day Saints were persecuted in early American history, even after the founding of the new nation. We also acknowledge the persecution of Jews, which is without analog in history.

Speaking at the International Church-State Symposium in 1998, then United States Senator Gordon H. Smith¹⁷ gave two examples of U.S. persecution. He pointed out that nativist groups were organized to supposedly “resist the insidious policy of the Church of Rome, and other foreign influence against the institutions of [the United States] by placing in all offices . . . none but native born Protestant citizens.”¹⁸ Laws were passed that clearly discriminated against Catholics.¹⁹

Senator Smith also recited some of our own history, with which we are familiar. He said: “The Mormons were anti-slavery in Missouri. . . . [They were] forced to leave Missouri under attack from serious mob violence and an ‘extermination order’ from the governor of the state.”²⁰ Joseph

Smith, the founding Prophet of The Church of Jesus Christ of Latter-day Saints, was later murdered by a mob in 1844, and Church members subsequently fled westward across the Great Plains.

Both Catholics and Latter-day Saints thrive in the United States today. The Catholic Church is the largest denomination in the United States, with more than 70 million members. The Church of Jesus Christ of Latter-day Saints is the fourth largest, with somewhat less than 7 million members living in the United States.

Notwithstanding these early aberrations that resulted in persecution, many of the Founding Fathers in the United States were committed to religious freedom. James Madison clearly favored religious pluralism. He stated, “In a free government the security for . . . religious rights . . . consists in . . . the multiplicity of sects.”²¹

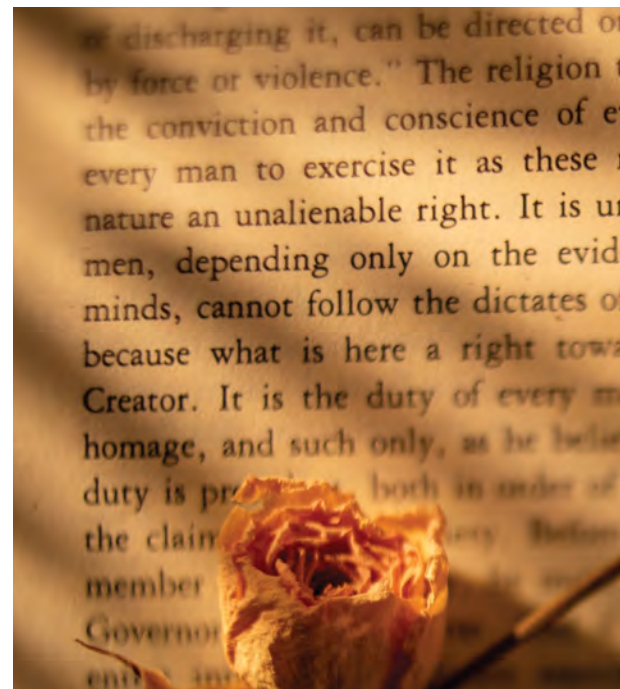
THE TWO MOST IMPORTANT RELIGIOUS PRIORITIES TODAY

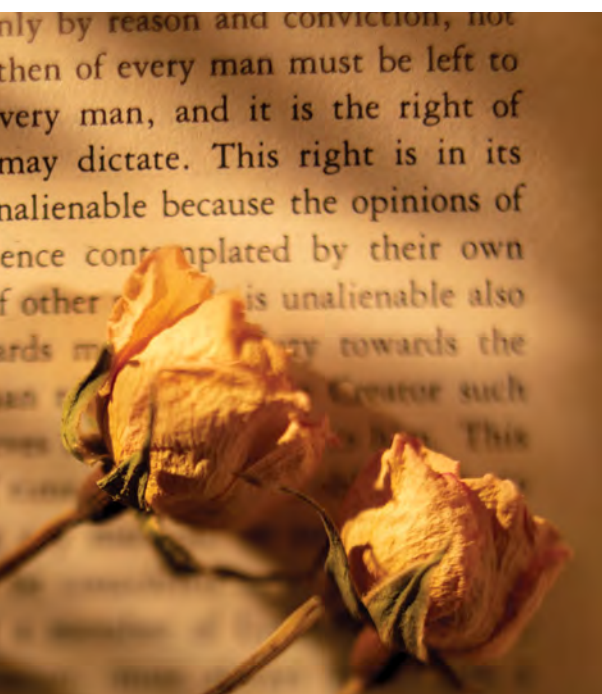
My plea is that all religions join together to defend faith and religious freedom in a manner that protects people of diverse faiths as well as those of no faith. We must protect not only our ability to profess our own religion but also the right of each religion to administer its own doctrines and laws. In 1862 Lord John Acton said it this way:

Where ecclesiastical authority is restricted, religious liberty is virtually denied.

*For religious liberty is not the negative right of being without any particular religion, just as self-government is not anarchy. It is the right of religious communities to the practice of their own duties, the enjoyment of their own constitution, and the protection of the law, which equally secures to all the possession of their own independence.*²²

The two most important religious priorities in today’s world are, first, that individual believers should be able to worship and express faith openly without fear of retaliation or ostracism; to live openly according to religious beliefs; to be free from discrimination in a particular occupation or profession because of religious beliefs; and to be free from religious discrimination in employment, housing, or traditional places of public accommodation, such as hotels, restaurants, and public transportation. This includes the freedom to believe according to the dictates of one’s own conscience without fear of governmental or private retaliation.





This also includes the basic premise of democracy that no one should be punished based on the religious beliefs that he or she holds. Each family must have the right to worship and conduct religious activities within the home. In addition, each church member must be protected in employment, in public office, and when advocating in the public square. No person should be disqualified from participation in national life because of his or her religious beliefs.

The second priority is to protect religious organizations and their right to teach and function according to their doctrines and beliefs. This includes the freedom of a church to form a legal entity; to own and use property, including schools, hospitals, and educational institutions; to establish its doctrine; to govern its ecclesiastical affairs, including employment; to set requirements for church membership; to conduct worship and administer its sacraments and ordinances according to its doctrine; and to speak out on public issues.

Many of you have been valiant in protecting the religiously inspired conduct of those who feel accountable to God. Some have been engaged in the “fighting in the trenches” that has been going on in the United States for some time. Not all examples of incursions into religious freedom are clear-cut. Some are not yet resolved.

*My plea is that all religions join together
to defend faith and religious freedom
in a manner that protects people of diverse
faiths as well as those of no faith.*

The Church of Jesus Christ of Latter-day Saints asserts that those who want their rights protected must be willing to protect the rights of everyone else. We call this “fairness for all.” We are pleased that Professor Robin Fretwell Wilson, who is here tonight, has played such a major role in promoting fairness for all. We see no justification in not giving protections—including constitutional rights—to those who have same-gender attraction and to those in the LGBTQ community. These protections include the right to speak out, petition government, and assemble and interact, all without fear of reprisal; to live the lifestyle they choose openly without fear of retaliation or ostracism; to be free from discrimination in particular occupations or professions because of sexual orientation; to be free from discrimination in employment, housing, and traditional places of public accommodation, such as hotels, restaurants, and public transportation; to form businesses and organizations that serve LGBTQ individuals and groups; and to speak out on public issues and otherwise participate in the public square.²³ Our doctrinal commitment to be compassionate requires us to support these basic rights and to treat everyone with civility and respect.

We must support the religious freedom of persons and institutions of all faiths as well as the freedom of those with no faith. One basic statement that demonstrates the Church’s commitment to freedom of religion for all is our eleventh article of faith, which declares:

We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.

There is also a wonderful statement by the Prophet Joseph Smith, who passionately asserted his commitment to civil and religious liberty when he said:

I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.

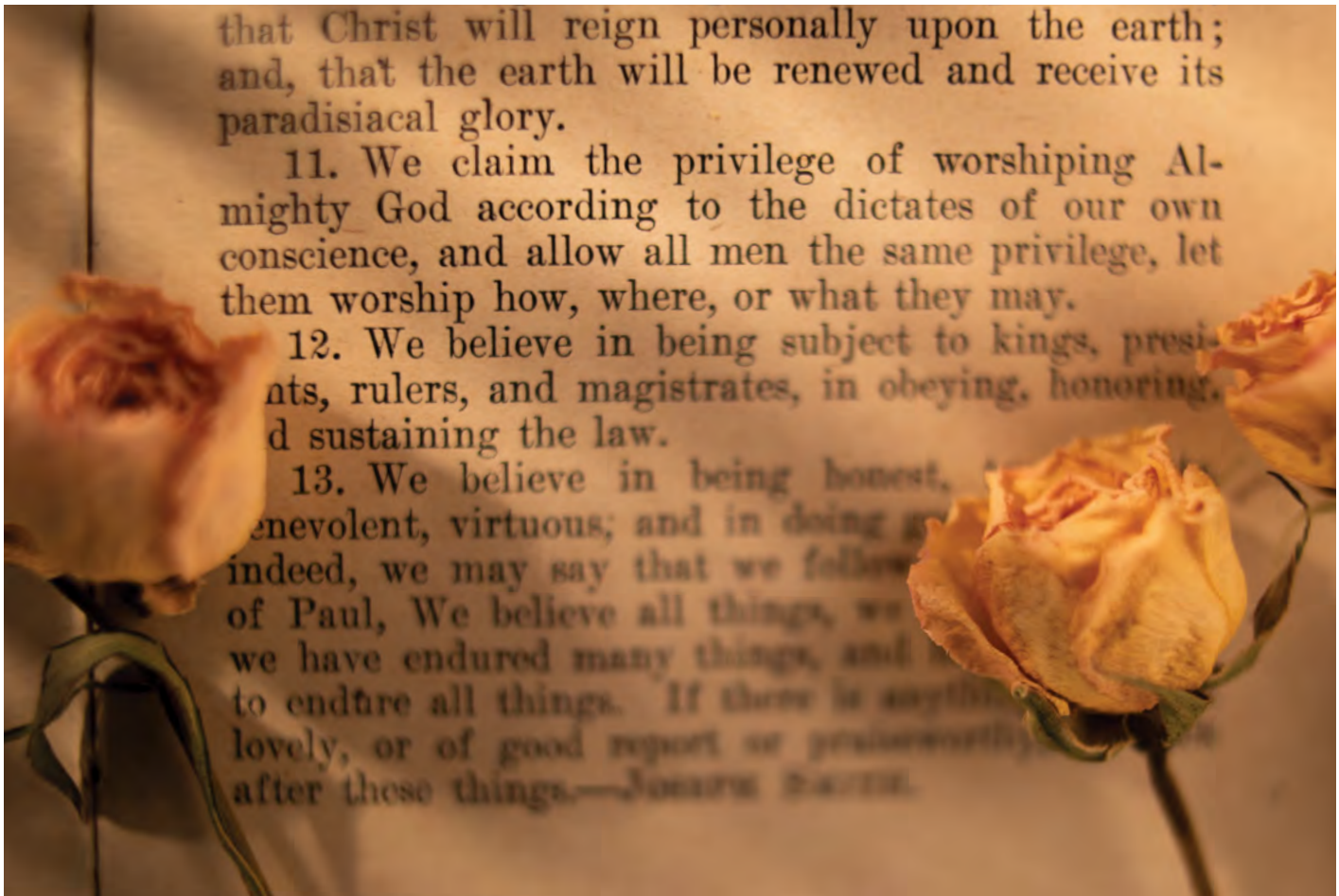
*It is a love of liberty which inspires my soul—civil and religious liberty to the whole of the human race.*²⁴

Catholics, Evangelicals, Jews, Muslims, and Latter-day Saints must be part of a coalition of faiths that succor, act as a sanctuary, and promulgate religious freedom across the world.

THE COMING CHALLENGES TO RELIGIOUS FREEDOM

After World War II the Universal Declaration of Human Rights and other international agreements established the legal framework for the protection of religious freedom. It was more than 69 years ago, on December 10, 1948, that the Universal Declaration was adopted. That document declares:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*²⁵



Notwithstanding historical foundations both in the United States and internationally, there is a chorus of those who do not respect accountability to God and feel perfectly comfortable in demanding that religions eliminate any doctrines that do not support their views. One professor has written a book titled *Why Tolerate Religion?*²⁶ A prominent *New York Times* opinion writer said, “Religion is going to be the final hold-out and most stubborn refuge for homophobia.” He then affirmed the position of a gay advocacy leader “that church leaders must be made ‘to take homosexuality off the sin list.’”²⁷ He conveniently equates conduct with same-gender attraction and refuses to recognize that one can respect and support people with same-gender attraction without embracing conduct. But he clearly does not respect religion or faith.

This chorus of voices was lamented many years ago by a modern apostle of Jesus Christ, Elder Neal A. Maxwell. He said:

How can a society set priorities if there are no basic standards? Are we to make our calculations using only the arithmetic of appetite? . . .

*Decrease the belief in God, and you increase the numbers of those who wish to play at being God by being “society’s supervisors.” Such “supervisors” deny the existence of divine standards, but are very serious about imposing their own standards on society.*²⁸

President Dallin H. Oaks²⁹ is a champion of religious liberty. He has pointed out the following:

*[T]he weakening guarantees of the free exercise of religion are not attributable to causes that are legal but to changes in culture. The diminished value being ascribed to religious freedom stems from the ascendancy of moral relativism. . . . Today an increasing and influential group deny or doubt the existence of a God and insist that all rules of behavior are man-made, to be accepted or rejected as one chooses, because there is no such thing as right and wrong. We live in an increasingly godless and amoral society.*³⁰

In summary, here are a few of the essential questions that are of particular significance to all people who feel accountable to God:

- ❶ Will religious organizations continue to have the freedom to define and perform marriages solely between a man and a woman?
- ❷ Will laws barring discrimination against LGBTQ persons have appropriate religious exemptions and protections so that religious organizations and people of faith can act

in accordance with their deeply held beliefs regarding marriage, family, and sexuality without retaliation?

- ❶ Will religious schools be permitted to have religious requirements for faculty, staff, and students?
- ❷ Will religious believers be excluded from certain professions because of their beliefs, expressions, or actions regarding sensitive social issues?
- ❸ With the decline in religiosity generally, will religious exercise increasingly be limited to the home and places of worship, or will it continue to have a positive role to play in the public life of this great nation?
- ❹ Will religion come to be seen as dangerous—as something the law must protect people from—rather than as a great good for individuals, society, and the state?

THE NEED FOR CONSTANT VIGILANCE

These and related questions highlight some of the challenges that religious organizations and individual believers will likely confront in the years to come. Constant vigilance will be necessary to preserve the great treasure of religious liberty for believers and for society at large.

How do we accomplish this? How do we defend the great treasure of religious liberty more than we have in the past? I am not talking about defending religious liberty legally. Many in this conference already do that. Becket Law and others have been heroic in terms of defending religious liberty in the courts. I am particularly pleased that William P. “Bill” Mumma, chairman of the board of Becket, is here with us. Bill’s colleague and our dear friend Hannah Smith has also participated this evening. We express our gratitude for her outstanding contributions with regard to religious freedom. I would also like to point out that renowned educational institutions, like Stanford, have made major contributions in defending religious freedom.³¹

But in addition to legal and educational defense, we need to win the hearts and

minds of the great people of this nation. We cannot do that when we are silent about issues that impact religious liberty. Elder Maxwell (who, by the way, loved athletics) was said to have put it this way: “With regards to significant challenges, we should not allow uncontested slam dunks.” Elder Maxwell made it clear that those defending faith will not always win every negative encounter or prevent every unsavory episode.

My daughter, who is a lawyer, read my talk and, with a smile on her face, said, “Do you have to use an athletic analogy? Couldn’t you just simply say, ‘Those who love religious liberty should be diligent in defending against those who oppose it?’”

In either case, the voices of people of faith need to be heard and amplified. When this is done, it creates a pause in the discourse and allows people to evaluate where they stand on a particular matter. Silence allows the rhythm of negativity to continue uninterrupted and unchallenged. It erodes the confidence of people of faith.

Two examples put this into perspective. In the September 2017 issue of the *Atlantic*, the cover story, titled “How America Lost Its Mind,” is adapted from the book *Fantasyland: How America Went Haywire—A 500-Year History*. The author, Kurt Andersen, argues that “America was created by . . . people uniquely susceptible to fantasy, as epitomized by everything from Salem’s hunting witches to Joseph Smith’s creating Mormonism.”³² It would be fair to say that the “fantasyland” in the title is Christianity.

The *New York Times* book review on September 5, 2017, featured this book. The reviewer, Hanna Rosin, stated, in a dismissive way, “The most persistent thread in ‘Fantasyland’ is Christianity—the astounding number of Americans who believe in heaven and angels, which most of Europe gave up decades ago.”³³ Not surprisingly, with so much publicity the book rose on the week of September 10, 2017, on the Amazon charts to the number-three “most sold” book in the United States.

We in this room would all defend freedom of speech. However, when there is little or no response, as I previously noted, the rhythm of this kind of negativity, which dismisses the spiritual foundations of a third of the population who are faithful believers, can erode religious commitment, which is so seminally significant to this country. This orchestrated effort by those opposed to people of faith should at the very least have been contested.

A subsequent event is a good example of what should happen when people are dismissive of religious values. Notre Dame law professor Amy Coney Barrett was nominated to serve as a judge on the U.S. Court of Appeals for the Seventh Circuit. In the Senate hearings, one senator openly challenged Barrett, speculating that Barrett’s Catholic faith would lead her to ignore Supreme Court precedents. That senator stated that “the dogma lives loudly within [Barrett]. And that’s of concern.”³⁴

A second senator posed a similar challenge to Barrett’s nomination and is reported to have said, “Do you consider yourself an orthodox Catholic?”³⁵ implying that her faith was a problematic factor in her proposed service as a judge.

In this matter, voices were raised immediately—including the voices of the presidents of Notre Dame and Princeton, who sent letters objecting to the inappropriate characterization

of Professor Barrett's faith.³⁶ In addition, Archbishop William E. Lori, then chairman of the Conference of Catholic Bishops' committee on religious liberty, declared, "People of faith, whatever faith they may hold, should not be disqualified because of that faith from serving the public good."³⁷ The result was that a pause was created in the discourse, and those who denigrated faith were suddenly on the defense.

My point is really quite simple. When allegations are made that are detrimental and often false to either faith or religious liberty, the members of that faith and their friends of other faiths, who feel accountable to God, need to defend them in a positive, statesmanlike manner. We need to defend divinely inspired freedoms. Too many do not make their positive views known when their engagement is sorely needed.

Some are concerned that they would be getting ahead of the respective leaders of their faiths. I would suggest that for people of your capability and training, engagement to defend religious liberty is essential. It can take many forms. It may be as simple as posting something in defense of your faith or the faith of your friends. Please do this on your own volition, understanding that you will not always get things exactly right but also understanding that the far bigger mistake would be to sit silently by.

An excellent example of this occurred when the *New York Times* published an obituary at the death of our prophet President Thomas S. Monson.³⁸ It was tone deaf to the incredible religious and spiritual contributions of a beloved prophet who had served as an apostle and senior leader for more than 54 years. Millions of faithful Latter-day Saints recognized that it was seriously deficient in terms of content, narrowly focused on specific issues, not entirely factual, and demonstrated a clear bias—something not expected from a noneditorial portion of the *New York Times*.

A faithful member immediately responded in a powerful but respectful way, and more than 190,000 people joined in his objections to an inappropriate, disrespectful, and offensive obituary.³⁹

This response was powerful enough that the writer—while he did not apologize—had to explain in a contorted way why he had written such an inadequate and inappropriate obituary. Those who protested, and the enormous number of Church members who were offended, did not receive the response they expected. One might say they did not win.


However, as I previously indicated, we will not always win against every attack that is made on faith and religious liberty, but there should not be a vacuum of positive voices. Our responses should be statesmanlike and respectful but, at the same

time, firm. I respectfully suggest that in defending faith and religious freedom against its opponents, there should be no "uncontested slam dunks."

THE RESPONSIBILITY TO LIVE WELL

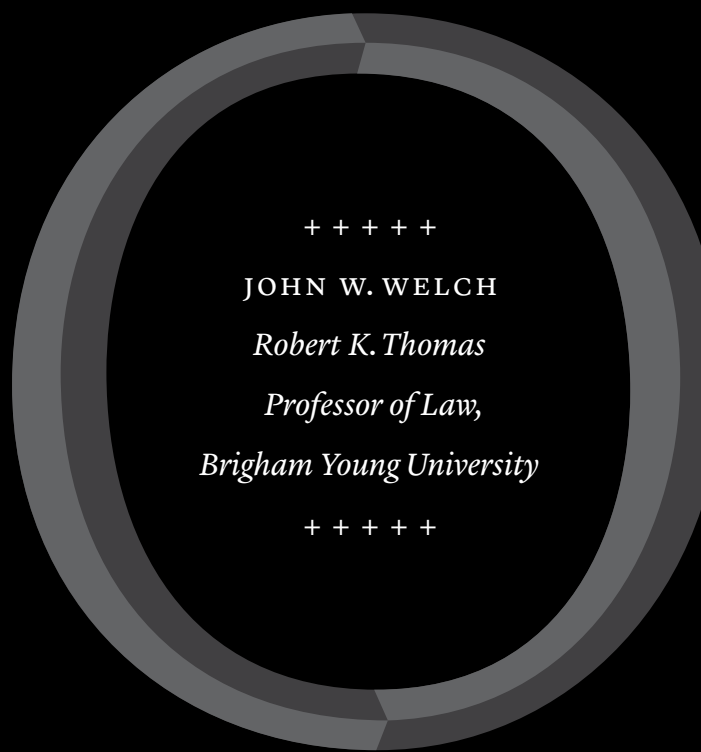
We need not always be overly aggressive in our response. We can do a better job of teaching and educating our responsible friends about the essential value of religious liberty and its importance in protecting our shared values. The *unalienable* human rights enshrined in our constitution are unalienable only insofar as these rights are bestowed by a Divine Creator. It is the accountability to a Divine Creator that is the foundation for assisting those in need, respecting fellow citizens, and respecting and following the law. To the extent that these human rights are merely the creation of man, they are at risk of becoming *alienable*, or being removed by man. To this end, religious liberty is foundational to all other human rights. It is in the best interest of anyone concerned with human rights—even atheists and nonbelievers—to protect religious liberty. We can and must do a better job of communicating our mutual interests.

How people of faith live their lives is extremely important. In addition to this counsel, those of us who feel accountable to God have a responsibility to live upright lives of service to God and our fellowmen, to obey the law, and to be good citizens, neighbors, and friends in all we do. As we do so, ordinary citizens and government officials alike will be more inclined to see the value of religion and to respect the basic principles that allow us to freely live our beliefs. There is no better demonstration of the great benefits associated with religious liberty than for devoted members of various faiths who feel accountable to God to model principles of integrity, morality, service, and love. As others see the goodness of individuals and families—goodness that is founded in strong faith and character—they will be much more likely to speak up in defense of the religious freedoms that allow us to be who we are.

I am grateful for the powerful impact that you have in protecting faith and righteousness and religious freedom. 

- 1 See Mark Scott, "From England to Africa, It's Everyone's Magna Carta," *New York Times*, late edition, Mar. 19, 2015, F19.
- 2 Nigel Saul, "The Kingdom's First Charter," *Country Life*, Jan. 21, 2015, 54. This article sets forth an excellent explanation of the Magna Carta and its influence on English law and the American Constitution.
- 3 See *ibid.*, 54.
- 4 *Ibid.*, 54.
- 5 See *ibid.*, 55.
- 6 Magna Carta (1215), clause 1; cited in Saul, "Kingdom's First Charter," 57. See also James Clarke Holt, *Magna Carta*, 2d ed. (Cambridge: University Press, 1992), 449. The Magna Carta was written in Latin, and there are several translations.
- 7 See Saul, "Kingdom's First Charter," 55.
- 8 See *ibid.*, 58.
- 9 *Ibid.*, 59.
- 10 Sir Edward Coke, debate in the Commons, May 17, 1628; cited in Saul, "Kingdom's First Charter," 59.
- 11 The Declaration of Independence, July 4, 1776, para. 2.
- 12 The legal writer Henry de Bracton wrote in Henry III's reign, "The king must not be under man but under God and under the law." (Often cited as "In England the king is below God and below the law.") Bracton, *On the Laws and Customs of England*, vol. 2, trans. Samuel E. Thorne (Cambridge, Massachusetts: Selden Society and Belknap Press, 1968), 33; cited in Saul, "Kingdom's First Charter," 55.
- 13 Attorney General of the United States, "Memorandum: Federal Law Protections for Religious Liberty," Washington, DC, Oct. 6, 2017, 1.
- 14 *Ibid.*, 1; citing James Madison, "To the Honorable the General Assembly of the Commonwealth of Virginia: A Memorial and Remonstrance," ca. June 20, 1785; in *The Papers of James Madison*, vol. 8, ed. Robert A. Rutland, William M. E. Rachal, and others (Chicago: University of Chicago Press, 1973), 299; also in Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution*, vol. 5 (Chicago: University of Chicago Press, 1987), document 43, page 82.
- 15 Kevin Phillips, *The Cousins' Wars: Religion, Politics, and the Triumph of Anglo-America* (New York: Basic Books, 1999), 94.
- 16 See Maryland Toleration Act: An Act Concerning Religion, Sept. 21, 1649, avalon.law.yale.edu/18th_century/maryland_toleration.asp. See also Gordon H. Smith, "Protecting the Weak: Religious Liberty in the Twenty-First Century," *BYU Law Review* 1999, no. 2 (1999): 488; citing William Thomas Russell, *Maryland: The Land of Sanctuary*, 2nd ed. (Baltimore: J. H. Furst, 1908), 130.
- 17 The International Church-State Symposium was held at BYU on Oct. 4, 1998. Senator Gordon Smith's remarks were later published in the *BYU Law Review*; see Smith, "Protecting the Weak," 479–503.
- 18 Constitution of the Grand Council of the United States of North America, June 17, 1854, article III, section I; in James P. Hambleton, *A History of the Political Campaign in Virginia, in 1855* (Richmond, Virginia: J. W. Randolph), 1856, 47; cited in Smith, "Protecting the Weak," 492. The Know-Nothings were organized based on this insidious notion.
- 19 See, e.g., Wikipedia, s.v. "Blaine Amendment," en.wikipedia.org/wiki/Blaine_Amendment.
- 20 Smith, "Protecting the Weak," 493.
- 21 James Madison, Federalist no. 51, "The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments," Feb. 6, 1788; in Kurland and Lerner, *Founders' Constitution*, vol. 1, chapter 10, no. 16, page 331.
- 22 Lord John Acton, "The Protestant Theory of Persecution," in *Essays on Freedom and Power*, sel. Gertrude Himmelfarb (Boston: Beacon Press, 1948), 90.
- 23 I first presented these ideas of what rights individual believers, religious organizations, and LGBTQ people should be entitled to in an address titled "Accountability to God: Religious Freedom and Fairness," delivered at the Seymour Institute Seminar on Religious Freedom, Princeton University, New Jersey, July 26, 2017.
- 24 Joseph Smith, discourse in Nauvoo, Illinois, July 9, 1843, as reported by Willard Richards, in *History of the Church*, 5:498–99.
- 25 U.N. G.A. Res. 217 A (III), art. 18 (1948).
- 26 See Brian Leiter, *Why Tolerate Religion?* (Princeton, New Jersey: Princeton University Press, 2013).
- 27 Frank Bruni, "Same-Sex Sinners?: Commentary," *New York Times*, late edition, Apr. 5, 2015, SR3; quoting Mitchell Gold.
- 28 Neal A. Maxwell, "Speaking Today: The Prohibitive Costs of a Value-Free Society," *Ensign*, Oct. 1978, 52–53.
- 29 As a young man Dallin H. Oaks served as editor of the *University of Chicago Law Review*. He subsequently clerked for then Chief Justice Earl Warren on the United States Supreme Court. He also served as a professor at the University of Chicago Law School, as president of Brigham Young University, and as a justice on the Utah State Supreme Court. He was called as an apostle in The Church of Jesus Christ of Latter-day Saints in 1984 and was set apart as first counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints on Jan. 14, 2018.
- 30 Dallin H. Oaks, "Challenges to Religious Freedom," address at the Argentina Council for Foreign Relations, Apr. 23, 2015.
- 31 See, for example, Stanford Law School Religious Liberty Clinic, law.stanford.edu/religious-liberty-clinic.
- 32 Kurt Andersen, "How America Lost Its Mind," *Atlantic*, Sept. 2017, 80; see also Andersen, *Fantasyland: How America Went Haywire—A 500-Year History* (New York: Random House, 2017), 11.
- 33 Hanna Rosin, "Fake News: It's as American as George Washington's Cherry Tree," *New York Times*, Nonfiction, Sept. 5, 2017.
- 34 Dianne Feinstein, quoted in Michael Gerson, "Senate Democrats Show Off Their Anti-Religious Bigotry," *Washington Post*, Opinions, Sept. 14, 2017, washingtonpost.com/opinions/senate-democrats-show-off-their-anti-religious-bigotry/2017/09/14/30f11e5e-9970-11e7-82e4-f1076f6d6152_story.html?utm_term=.516351b82b7a; also in Aaron Blake, "Did Dianne Feinstein Accuse a Judicial Nominee of Being Too Christian?" *Washington Post*, The Fix, Sept. 7, 2017, washingtonpost.com/news/the-fix/wp/2017/09/07/did-a-democratic-senator-just-accuse-a-judicial-nominee-of-being-too-christian/?utm_term=.c75a2bad14c9.
- 35 Dick Durbin, quoted in John Kass, "Column: Durbin, Democrats Reveal Their Bigotry in Questioning of Judicial Nominee from Notre Dame," *Chicago Tribune*, Sept. 12, 2017, chicagotribune.com/news/columnists/kass/ct-federal-judge-catholic-kass-met-0913-20170912-column.html.
- 36 See Kevin Freking, "Catholic Leaders Decry Democrats' Questioning of Judicial Pick," *Chicago Tribune*, Sept. 11, 2017, chicagotribune.com/news/nationworld/politics/ct-judicial-pick-democratic-questioning-20170911-story.html.
- 37 William E. Lori, quoted in Freking, "Catholic Leaders."
- 38 See Robert D. McFadden, "Thomas Monson, Mormon Leader Who Held the Traditional Line, Dies at 90," *New York Times*, late edition, Obituaries, Jan. 4, 2018, A20.
- 39 See Bob Mims, "Change Your Slanted Monson Obituary, Tens of Thousands of Mormons Urge the *New York Times*," *Salt Lake Tribune*, Jan. 8, 2018, sltrib.com/religion/local/2018/01/08/change-your-slanted-monson-obituary-tens-of-thousands-of-mormons-urge-the-new-york-times; also "Rewrite Thomas Monson Obituary on *New York Times*," petition started by Nathan Cunningham, change.org/p/new-york-times-rewrite-thomas-monson-obituary.

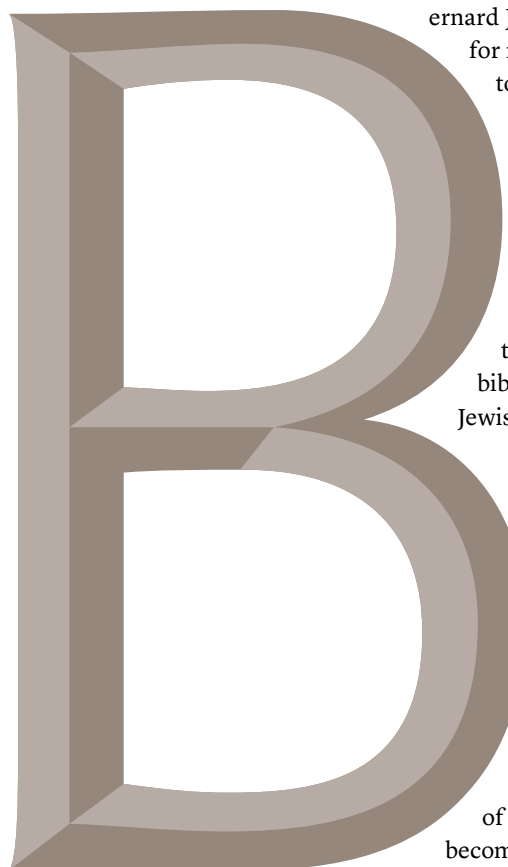
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IN THE OLD TESTAMENT AND THE BOOK OF MORMON

CID



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ernard Jackson's rigorously insightful 1972 volume on theft and robbery in Jewish law¹ opened for me convincing new lines of legal, historical, and textual analyses that have continued to shed new light not only on a wide array of Jewish interests but also on various cultural experiences in ancient life and language reflected in the Roman world, in the New Testament, and, unexpectedly, in the Book of Mormon. Expanding upon his sociolegal approach to biblical law, the present contribution now focuses on homicide accounts in the Hebrew Bible and in the Book of Mormon. These cases are factually entangled and legally complicated, and much has been written about homicide in the Hebrew Bible and about the extraction of legal material from narrative literature.² Indeed, in scriptural texts "the narrative and the laws are not only combined together—at times they are actually merged."³ In recent years several books and articles have highlighted biblical law backgrounds of the legal cases in the Book of Mormon, also relating numerous Jewish religious and cultural features to passages in the Book of Mormon.⁴

Taken on its own literary terms, the Book of Mormon presents itself as generatively related to biblical law and Jewish literature. Its narrative positions itself as a lineage history, primarily of a family from the tribe of Manasseh that begins in Jerusalem shortly before the Babylonian conquest.⁵ At the outset of this narrative, Lehi objects to the actions taken by King Zedekiah and openly prophesies of the city's destruction. Lehi is accused of the crime of false prophecy, as Jeremiah and Urijah ben Shemaiah had been a few years earlier.⁶ His life threatened, Lehi is warned in a dream to take his family out into the Arabian wilderness, in a manner somewhat similar to the withdrawal of the Rechabites into the desert.⁷ Thus begins the saga of their expedition and history for the next thousand years. Encountering obstacles and difficulties—as well as receiving prophetic guidance and spiritual blessings—at every stage along the way, this early group of diasporic Israelites transitions into their own second temple community and eventually becomes a new covenantal Messianic or Christian community.

As Lehi and his family have withdrawn from Jerusalem, a homicide occurs when his youngest son, Nephi, finds the guard of the temple treasury, Laban, drunken and delivered into his hands. This allows Nephi to obtain a copy of the Torah (1 Nephi 3–4). The Book of Mormon account of that homicide—narrated in the first person by Nephi—hinges on several key phrases, especially two from the law of homicide in Exodus 21:13⁸ and another from the oral law principle that, in some cases, one life may be surrendered for the survival of all.⁹

Given the glaring prominence of this daring account in the opening chapters of the Book of Mormon, any reader who gets even seven pages into the book is gripped by the legal and moral conundrums of this detailed narrative and stares directly at the fundamental postulates that are assumed not only by this story but by the society out of which it came. It has been famously said by F. W. Maitland that more can be discerned about a society or a civilization’s laws and ultimate values by observing the way in which it conducts a murder trial than by any other way.¹⁰



Lehi commands his four sons to return to Jerusalem to somehow obtain . . . a set of brass plates containing the law of Moses and other writings.

IN 2013 THE JEWISH LAW ASSOCIATION announced plans to hold its biannual international conference the following summer in Antwerp, Belgium. The call for papers welcomed submissions dealing with aspects of Jewish law anywhere in world literature. Having been a long-time member of this association and having presented before to this body at previous meetings in Boston and Paris, I decided to propose a paper on literary aspects of homicide laws and homicide narratives in the Hebrew Bible and in the Book of Mormon. My proposal was accepted and presented in July 2014 under the title “Narrative Elements in Homicide Accounts.”

Eleven of the papers read at that conference have now been published in *Judaism, Law and Literature*, volume 27 of *Jewish Law Association Studies* (2017), edited by Michael Baris and Vivian Liska, and are available at HeinOnline. Following is a shortened and adapted version of my paper published there. For the sake of clarity, editorial deletions, transitions, and additions have been made in this version without indication of those changes. A PDF of the full version of the original article can be requested at welchj@law.byu.edu. I am grateful for feedback received both at the conference and also in the editorial process.

Narratives about homicides and murder trials expose the balance maintained in a society between such polarities as the contrast between individual rights versus collective needs, family loyalties versus social mores, citizen duties versus leader objectives, political regimes versus priestly institutions, fate versus human choice, and divine providence versus provable objectivity.

And thus it is interesting that both the Bible and the Book of Mormon each contain a score of accounts of actual killings, not to mention about a dozen additional attempted homicides.¹¹ That said, no actual account of a homicide trial—either at a city of refuge or within the enclosure of a town gate—is given anywhere in the Bible, although two interesting homicide cases are woven into the narrative flow of the Book of Mormon: one is the trial of Nehor for the slaying of Gideon and the other the trial of Seantum, which involved the conviction of a divinely detected killer when no witnesses saw the deed committed. Many scholars have analyzed legal aspects of several of the biblical homicide narratives, but no one has tackled the challenge of analyzing all of these homicide narratives as a body, giving a close reading to each of these texts and a composite synthesis of their common narrative features and strategies with legal components in mind.

The following study is an attempt to make sense of all of this information by identifying key legal rubrics reflected cumulatively in these homicide narratives. Several such elements can then be compared to the legal rules expressed in the four well-known provisions of biblical law regarding manslaughter, found in Exodus 21:12–14, Numbers 35:9–34, Deuteronomy 19:4–13, and Joshua 20:2–6. Reading these narrative and legal texts together shows that, while they all are invested with and interested in many of the same essential factors, the narratives usually make a point of telling something about the degree of blameworthiness of the victim and the larger circumstantial forces that would bear on the exculpation of the killer. In contrast, the legal provisions tend to focus much more on objective evidence that indicates the state of mind of the killer while manifesting little interest in the degree to which the victim might be blameworthy

or deserving of death. Thus, my effort to see which elements are emphasized in narratives as opposed to in the statutes builds on David Daube's approach, which used law to illuminate narrative, and also is close to Pamela Barmash's purposes, which are to combine law and narratives in order to understand better which behaviors were defined as criminal and to determine "how legal institutions and principles were thought to operate, whether well or poorly."¹²

From this study, many conclusions can be drawn about the relationship between legal and narrative texts. Such studies often bring to light the differences or similarities between case narratives and corresponding legal norms. They also expose the degree to which a story, on the one hand, merely serves as an illustration of established law or seeks the authentication of a particular law or, on the other hand, aims to reveal inherent problems within a particular legal reality and perhaps even calls for legal change and social reform.

To begin, the following numbered list identifies an array of cases to be considered here. In the Hebrew Bible and Apocrypha, one finds a considerable variety of slayings, not all of which seem like homicides in the modern sense. Many of these killings were committed under extreme pressures, for defensive needs, under royal orders, or in military contexts though off the battlefield, although license to kill was always tightly controlled by divine prerogative.

Entire articles could be—and in some cases actually have been—devoted to each of these cases individually, but for present purposes, these homicide cases will first be listed and numbered for ease of reference below. The facts and legal issues in each can be discerned by attentive lawyerly reading but will not be worked through here in this article. Rather, after a careful consideration of Nephi's account of his slaying of Laban in 1 Nephi 3–4, several observations will be made about newly observed elements that run through these 40 homicide narratives as a whole and which are found with particular effect in Nephi's excruciating and exquisite narrative.

Selected Killings and Homicide Narratives in the Hebrew Bible and Apocrypha

- 1 Cain » Abel (Genesis 4:1–15)
- 2 Moses » an Egyptian (Exodus 2:11–12)
- 3 Phinehas » Zimri and Cozbi (Numbers 25)
- 4 Jael » Sisera (Judges 4:13–21)
- 5 Abimelech » Abimelech's brothers (Judges 9)
- 6 Samson » Philistines (Judges 14:12–19)
- 7 Samuel » Agag (1 Samuel 15:32–33)
- 8 Doeg » Priests (1 Samuel 22:9–19)
- 9 David and his soldier Abishai do not kill Saul (1 Samuel 26)
- 10 David's servant » an Amalekite who killed Saul (2 Samuel 1:2–16)
- 11 Abner » Joab's brother Asahel (2 Samuel 2:18–23)
- 12 Joab and Abishai » Abner (2 Samuel 3:22–30)
- 13 Rechab and Baanah » Ish-bosheth (2 Samuel 4:5–8)
- 14 David's captain Joab » Uriah (2 Samuel 11)
- 15 Absalom's servants » Amnon (2 Samuel 13:6–29)
- 16 Joab » Amasa (2 Samuel 20:8–10)
- 17 Gibeonites » seven of Saul's sons and grandsons (2 Samuel 21:1–9)
- 18 Benaiah » Joab (1 Kings 2:28–34)
- 19 Ahab and Jezebel » Naboth (1 Kings 21:1–14)
- 20 Jozachar (Zabad) and Jehozabad » Joash (2 Kings 12:20–21; 2 Chronicles 24:24–26) and Amaziah » servants Jozacar (Zabad) and Jehozabad (2 Kings 14:5)
- 21 Servants » Amon (2 Kings 21:23)
- 22 Ishmael, agent of the Ammonite king » Gedaliah (2 Kings 25:25; Jeremiah 40:13–41:2)
- 23 Judith » Holofernes (Judith 13)

Nephi finds the guard of the temple treasury, Laban, drunken and delivered into his hands.



A Summary of Nephi's Narration of His Slaying of Laban

Case 24, the narrative of the slaying of Laban, is the most prominent case of homicide in the Book of Mormon—and perhaps in all of scripture.¹³ It is unusually rich in factual details and literary motifs that allow its threads to be woven tightly together with many key biblical homicide accounts. Although people usually think of the facts of this case only in terms of the culminating moment when Nephi unexpectedly stumbles upon the drunken Laban after nightfall in the streets of old Jerusalem, its legally related elements begin to assert themselves from the outset of 1 Nephi, the first book in the Book of Mormon.

Writing about a dozen years after these events,¹⁴ Nephi, the narrator and the reluctant and perhaps even traumatized slayer, constructs the opening chapters of his record by portraying these events to justify his gruesome action and to solidify his position of succession in the family ahead of his older but less compliant brothers.¹⁵ This elaborately narrated story establishes several fundamental norms at the beginning of the Book of Mormon, including such themes as the importance of having and following the written law, of receiving and hearkening to the Spirit of the Lord in all things, and of knowing that God will prepare a way for His people to accomplish the things that He has commanded them to do. Several points in this narrative are particularly relevant to the text's literary portrayal of this killing.

In brief, Lehi commands his four sons to return to Jerusalem to somehow obtain from Laban—the captain over the temple guard with access to the temple treasury—a set of brass plates containing the law of Moses and other writings. After two attempts to amicably obtain the plates have failed, the youngest son, Nephi, goes into Jerusalem alone and at night toward the house of Laban, not knowing what he should do. He stumbles onto their nemesis, Laban, drunk and alone on the street.

Nephi is constrained by the Spirit to kill Laban. Using a key phrase from Exodus 21:13, the Spirit says to him twice: Slay him, for “the Lord hath delivered him into thy hands” (1 Nephi 4:11, 12). Other considerations enter

Selected Killings and Homicide Narratives in the Book of Mormon

To this set of biblical narratives can be added from the Book of Mormon a comparable array of slayings involving kings, priests, military captains, soldiers, servants, and ordinary people involved in conspiracies, fratricides, and regicides. As in the Bible, only a small number of these killings are regular homicide cases.

- 24 Nephi » Laban (1 Nephi 3–4)
- 25 Priests » King Noah (Mosiah 19:6–20)
- 26 Nehor » Gideon (Alma 1:2–15)
- 27 King Lamoni » ineffective servants (Alma 18:6)
- 28 Lamanite soldiers » 1,005 unarmed Lamanites (Alma 24:21–22)
- 29 Amalickiah's servant » Lehonti (Alma 47:18)
- 30 Amalickiah's servant » Lamanite king (Alma 47:23–24)
- 31 Teancum » Amalickiah (Alma 51:33–34)
- 32 Teancum » Ammoron (Alma 62:36)
- 33 Ammoron's servant » Teancum (Alma 62:36)
- 34 Kishkumen » Pahoran (Helaman 1:9)
- 35 Helaman's servant » Kishkumen (Helaman 2:7–9)
- 36 Seantum » Seezoram (Helaman 9:3, 6, 26–38)
- 37 Servants of Akish » Jared (Ether 9:5–6)
- 38 Heth » Com (Ether 9:26–27)
- 39 High priest » Gilead (Ether 14:8–9)
- 40 Lib » high priest (Ether 14:10)

into Nephi's struggling deliberation over what to do, but ultimately he accepts that "the Lord had delivered Laban into [his] hands" (1 Nephi 4:17). He beheads Laban with his own sword, goes to Laban's house, obtains the plates, and flees with his brothers back into the wilderness.

When reading any homicide account, one must always consider how far back in the book the homicide account begins. Usually, everything that precedes a homicide is part of its prologue. In the case of Nephi slaying Laban, the story begins when Lehi receives a revelation of a heavenly book and divine council that draws Lehi and his posterity into a strong but often contested Messianic Christian direction. The Hebraic and biblical underpinnings of this story are persistent. As several studies have shown, the Book of Mormon—even though it came forth in English in an unusual way—can be read exegetically and hermeneutically as manifesting a number of Jewish literary and legal characteristics,¹⁶ and thus biblical law and biblical literature are also part of this narrative's prologue.

As Nephi is telling the story, it is understandable that he includes at the outset several points that cast his character in a positive light. His account begins by affirming that he has "been highly favored of the Lord in all [his] days" and has "had a great knowledge of the goodness and the mysteries of God" (1 Nephi 1:1). Next Nephi establishes Lehi's credibility as a true prophet.

In answer to a prayer to the Lord, Lehi sees "a pillar of fire [that] dwelt upon a rock before him; and he saw and heard much" (1 Nephi 1:6), and it shakes him profoundly. Returning to his house, Lehi is then carried away into a vision of the heavenly council, where he is given a book and asked to read, and "he was filled with the Spirit of the Lord" (1 Nephi 1:12). The account conveys that this Spirit is the same Spirit that later speaks to Nephi and prompts the homicide (1 Nephi 4:11).

The Spirit causes Lehi to read of the abominations and impending destruction of Jerusalem and the death of many of its inhabitants who "should perish by the sword" (1 Nephi 1:13). Evoking the generic use of the sword as the principal mode of execution for apostate cities in biblical law (Deuteronomy 13:15), Lehi's prophetic judgment speech sets the stage for the slaying of Laban, also to be carried out by the sword—indeed Laban's own sword (1 Nephi 4:18). That the heavenly book of judgments has already consigned Jerusalem to destruction and many of its inhabitants to death readies readers to see the slaying of Laban as an engine of divine judgment and at the same time associates Laban with those who had committed the abominations that precipitated the destruction of Jerusalem.

Indeed, as Lehi goes forth among the populace in Jerusalem prophesying about the revelations that he has seen and heard, he is mocked as the people even "sought his life, that they might take it away" (1 Nephi 1:20). Although it is unknown whether Laban is part of the crowd that attempts to kill Lehi, he may well be implicated among those who charge Lehi with the crime of false prophecy, as Urijah and Jeremiah had been charged a few years earlier (Jeremiah 26). Readers soon learn that Laban was a captain of the guard within the city of Jerusalem, having at his disposal a garrison of 50 soldiers (1 Nephi 4:1). As Lehi then quickly departs from Jerusalem, leaving all of his possessions and taking only a few provisions and tents, he leaves as a fugitive from justice whose safety would have been in dire peril—particularly at the hands of Laban—should he ever attempt to return to the city.

Nephi is promised that if he will keep God's commandments, he will prosper and be led to a land of promise (1 Nephi 2:20). At this point, Nephi's audience understands that Nephi and his people will need to keep the law and the commandments. This need will surface again as one of Nephi's culminating ruminations before he kills Laban, when he remembers that his people "could not keep the commandments" unless they had the plates on which the law was engraved (1 Nephi 4:15–16). Nephi's state of mind does not simply assume that having the plates would be helpful; he infers that the fulfillment of the Lord's promise to him necessitates obtaining the plates.

The story continues as Lehi informs Nephi that, in a dream, the Lord has commanded Nephi and his brothers to return to Jerusalem to obtain a record of the law and a genealogy written on the plates of brass (1 Nephi 3:2–3). Lehi directs Nephi and his brothers to "go unto the house of Laban and seek the records, and bring them down hither into the wilderness" (1 Nephi 3:4). Lehi reiterates that this "is a commandment of the Lord" (1 Nephi 3:5), and it is implied that the sons

are familiar with Laban and his house, making the task seem at least feasible.

Nephi's unwavering confidence (1 Nephi 3:7) that the Lord would make a way for this to happen clearly sets the stage for the events that unfold, certifying that, come what may, the hand of the Lord will be instrumental in controlling the crucial steps in ultimately accomplishing the task assigned by God. Indeed, the narrative conveys the impression that the hand of the Lord is involved in each of the three ensuing attempts to get the plates of brass.

In the first attempt, Laman is selected by the casting of lots to go into the house of Laban and talk with him there (1 Nephi 3:11). Although Laman appears to be somewhat inept in his request, and although Laban becomes angry, at least Laman has probably gone further in this attempt than he had ever thought possible. After all, as the son of a wanted fugitive from justice, Laman cannot reasonably expect to get past the front door of Laban's house, which is guarded by servants (1 Nephi 3:25). The fact that Laman is able to obtain this access may indicate again that Laban knew Lehi and, as some have suggested, may even have been related to Lehi and his family, making this something of an intra-clan dispute.

The narrative then turns its attention to Laban's blameworthiness. He soon grows angry and threatens Laman with a serious indictment: "Behold thou art a robber, and I will slay thee" (1 Nephi 3:13). Being angry was a strong factor in determining culpability in homicide cases (Numbers 35:20–23; Deuteronomy 19:4–6, 11). Samson, angry about the men cheating to get the answer to his riddle, killed 30 Philistines [6]; Saul threatened Jonathan in anger, wrongly demanding that David be slain (1 Samuel 20:30–33). Moreover, when robbers were outlaws or members "of an outside group—a bandit," they could be put to death through military channels without a trial.¹⁷ Bandits and brigands, as public enemies who denied the validity of the central government in power, could not expect to be given a trial of any kind within the established system.

In this context, Laban's threat is not an idle gesture. Vehemently calling him a robber is, of course, an unfair characterization of Laman, although since he came with a band

of brothers, he could plausibly be characterized as a robber. But Laban's indictment is at least enough to terrify him, and he flees from Laban, fearing for his life (1 Nephi 3:14).

As a result, the brothers are about to abandon the cause, but Nephi binds himself with an oath: "As the Lord liveth, and as we live, we will not go down unto our father in the wilderness until we have accomplished the thing which the Lord hath commanded us" (1 Nephi 3:15). Making himself subject to a vow of this nature, Nephi in effect pledges his life to successfully obtaining the plates of brass. So the brothers try again, this time with an attempt to give their wealth to Laban, hoping that he will give them the plates. Laban lusts after their property, seizes it, and sends his servants to kill the four brothers, who flee (1 Nephi 3:25–26).

Of more immediate significance, an angel then promises the brothers, "Ye shall go up to Jerusalem again, and the Lord will deliver Laban into your hands" (1 Nephi 3:29). The legal language of deliverance now enters the narrative. In biblical narratives, enemies were said to be delivered: Goliath was delivered into David's hands (1 Samuel 17:45–46), but accidental and unintentional slayings were also defined as a victim being delivered into the hands of the killer.

In response, Nephi exhorts his brothers to go back to Jerusalem one more time: "Let us be strong like unto Moses" (1 Nephi 4:2). The great prophet and lawgiver Moses divided the waters of the sea and drowned the armies of Pharaoh, and thus Nephi argues that the Lord could "destroy Laban, even as the Egyptians" (1 Nephi 4:3). Reluctantly, the brothers go silently back up to Jerusalem, but they stay outside the walls as Nephi creeps into the city at night, going back toward the house of Laban (1 Nephi 4:5). At this point, perhaps Nephi's rhetorical burst of confidence is not the only reason why Moses should be on the reader's mind. Long before the soldiers of Pharaoh were killed, we recall that Moses had also killed an Egyptian [2]. Readers can already sense that someone might justifiably die in the unfolding of Nephi's account.

If a death should somehow occur, one of the main legal issues that would arise would involve a determination of Nephi's state of mind. Intuiting this, Nephi's narrative next



affirms that he "was led by the Spirit, not knowing beforehand the things which [he] should do" (1 Nephi 4:6). This is almost like the Israelites being led through the wilderness by the pillar of fire at night, and Nephi becomes an embodiment of the children of Israel, as they too faced mortal dangers. Nephi's testimony that he was led solely by the Spirit of God substantiates a lack of preplanning, premeditation, lying in wait, coming presumptuously, or desiring revenge or to harm Laban. He had neither schemed to find Laban by guile nor positioned himself somewhere around Laban's house hoping to be able to ambush him. Apparently unarmed, Nephi gives the impression that he simply hopes somehow to gain access to the repository or to persuade someone who controlled access to the plates to cooperate with him.

As Nephi approaches the house of Laban, the narrative tells that he "beheld a man," that this man "had fallen to the earth" right on Nephi's path, that he was "drunken with wine," and that Nephi "came to him," perhaps to see what he might learn or perhaps even help this fallen person, only to discover "that it was Laban" (1 Nephi 4:7–8). Nephi immediately notices Laban's sword, takes it out of its sheath, and admires its hilt of pure gold and its blade of precious steel (1 Nephi 4:9). Considerable irony looms in the fact that not only Laban would be killed by his own sword, after having threatened and sought to kill Nephi and his brothers, but also the sword was extremely valuable—the instrument of Laban's death thus talionically representing his lust for gold and precious things as a cause of his own undoing.

At this point, Nephi reports that he is "constrained by the Spirit that [he] should kill Laban" (1 Nephi 4:10). Nevertheless, he resists and reflects: "Never at any time have I shed the blood of man. And I shrunk and would that I might not slay him" (1 Nephi 4:10). With these words, Nephi certifies that he is being constrained to do this deed, emphasizing that it is not of his own volition. For several unstated reasons, his preference is to somehow take advantage of this situation without having to kill Laban. He is inexperienced, not bloodthirsty or tainted with bloodguilt. These assertions distance Nephi's action from the core domain of culpable, voluntary homicide.

Hearing words almost identical to those found in Exodus 21:13—"Behold the Lord hath delivered him into thy hands" (1 Nephi 4:11)—Nephi reflects further, seeking to rationalize his action on three grounds: (1) Laban had sought to take away Nephi's own life (and the lives

In the Book of Mormon, Amalickiah, his brother Ammoron, and Kishkumen were all sworn and confirmed enemies of the Nephite people.

of his brothers), but that attempt was unsuccessful and thus not culpable; (2) Laban would not obey this commandment of God, but he also had no obligation to consider a demand made by Lehi's sons as tantamount to a divine command; and (3) Laban had taken away their property, but stealing property is not treated as worthy of capital punishment. Although Nephi's situation—he is alone, unarmed, and out of options—is different than David's when he and his soldier Abishai deliberated and decided not to kill Saul [9], both of these two narratives draw readers into the agonizing deliberations of each potential manslayer over the seriousness of taking such irreversible action.

To make it unmistakably clear that only one reason justifies Nephi's action, the Spirit repeats the injunction a final time: "Slay him, for the Lord hath delivered him into thy hands" (1 Nephi 4:12). These words of the Spirit certify that in this case the Lord has brought together the facts and circumstances, along with the means and methods, necessary to slay Laban. Thus it is not Nephi but "the Lord [who] slayeth the wicked to bring forth his righteous purposes" (1 Nephi 4:13), as in the ideology of divine intervention in combat. Laban, after all, is carrying arms and wearing armor. As a final assertion by the Spirit, the account concludes, "It is better that one man should perish than that a nation should dwindle and perish in unbelief" (1 Nephi 4:13).

This expression resonates with another pivotal narrative, that of Sheba, a rebel guilty of treason against David (2 Samuel 20). When Sheba sought protection in the city of Abel, Joab demanded that Sheba be released to him. The people of Abel then beheaded Sheba, setting an important legal precedent that has been invoked, under certain circumstances, to justify the killing of one person in order to preserve an entire group. This "one for many principle" was reputedly invoked another time, when Jehoiakim was released to the Babylonians (2 Chronicles 36:6),¹⁸ who presumably executed him only a few months before the account in 1 Nephi begins.

With that injunction from the Spirit, Nephi cuts off Laban's head. He takes him "by the hair of the head" (1 Nephi 4:18), as Judith would later do in cutting off the head of the Babylonian commander Holofernes, whose armies would surround Jerusalem shortly after the setting of Nephi's narrative [23]. No one witnessed either of these beheadings. Like Phinehas [3], Nephi and Judith were portrayed as taking the law into their own hands, acting for the benefit of their entire people.

This narrative ends as the sons flee to Lehi's tent in the wilderness. In the case of a killing that was not premeditated, Exodus 21:13 provides that God will appoint "a place" to which the killer may flee. In times and places where the city of refuge laws were in effect, the place of refuge was understood as the altar in one of the six designated Levitical cities. But the term "place" is ambiguous, and except in Exodus 21:14, it is never used to refer to the altar. It refers to the land of Israel in Exodus 23:20 and Deuteronomy 1:31 or to the wilderness in Deuteronomy 1:33; 9:7; 11:5; and 29:7. As the precedents of Cain's banishment [1] and Moses's fleeing into Midian [2] prefigure, leaving the land where a slaying has occurred may be a sufficient denouement of such a case.

New Observations About Homicide Narratives in Biblical and Book of Mormon Literature

Significantly, all of these homicide narratives go beyond the rudimentary story elements or factual concerns that are typically found in the law codes. The topic of homicide is encountered developmentally first in Exodus 21, then in Numbers 35, then in Deuteronomy 19, and finally in Joshua 20. The purpose of these legal provisions is primarily to promote judicial efficiency and objective clarity. Because ancient Israelite law required two or three eyewitnesses to be able to testify of the things which they had seen relevant to the killing (Deuteronomy 19:15), these statutes tended to emphasize the visible, outward evidence to be used in determining if a killer or manslayer was qualified to receive protection in a city of refuge. Thus the person claiming eligibility for asylum would need to show, by virtue of his physical actions and behavior, that he did not lie in wait (Exodus 21:13; Numbers 35:20, 22; Deuteronomy 19:11); that he had not previously been an enemy to the victim (Numbers 35:23), at least on the day beforehand (Deuteronomy 19:6); and that what happened had occurred suddenly or that the victim had not been in the slayer's field

of vision (Numbers 35:22–23). All of these factors would tend to show that the killer was unaware of the presence of the victim (Numbers 35:11; Joshua 20:3) and thus did not intend or seek to harm him (Numbers 35:23) or that he held no animosity or hatred toward the one who was killed (Deuteronomy 19:4; Joshua 20:5).

Only Exodus 21:13, the primary provision in this set of legal guidelines, includes the overall subjective rubric that "God delivered him into his hand" as a way of implying that the slaying occurred by some act of God and not by the intention or inclination of the killer. Alternatively, the other sections came to rely entirely on objective elements, such as the use of an instrument of iron, stone, or wood (Numbers 35:16–18), coupled with demonstrable previous hatred, hostility, or malice (Numbers 35:20–21; Deuteronomy 19:6) and some intentional, actual rising up to go and do the deed (Deuteronomy 19:11), especially with forethought, preplanning, or guile and deception (Exodus 21:14). These elements would then legally support the result—not necessarily in the execution or avenging by killing of the slayer but at least in the slayer being denied the protections of asylum in one of the cities of refuge.¹⁹

Because these four biblical homicide legal passages all try to distinguish between intentional and therefore culpable killings on the one hand and excusable or protectable slayings on the other hand, all four of these sections, to one extent or another, go on to speak of the altar or physical place of refuge (Exodus 21:13–14) or cities of asylum (Numbers 35:13; Deuteronomy 19:2, 9; Joshua 20:2) to which the slayer must be allowed to flee. They also set forth the procedural rules regarding the presentation of objective evidence that would show whether the slayer had been given an opportunity to flee at a normal speed to the place of asylum (Deuteronomy 19:6; Joshua 20:5) and what the slayer must audibly say to the elders standing at the gate in seeking protection (Joshua 20:4). The elders, namely the elders of the avenger's city (Deuteronomy 19:12), would then judge between the slayer and the avenger (Numbers 35:24) and would be entitled to appear before the court in the city of refuge to demand relinquishment of the slayer.²⁰ Finally, these statutes then

are concerned about the length of time that the slayer must remain in the city of refuge (Numbers 35:28; Joshua 20:6) and what may happen should the slayer happen to venture beyond the boundaries of the city of asylum (Numbers 35:26–27).

Surprisingly, however, unlike these objectively oriented statutory provisions, the homicide narratives rarely make explicit mention of any of these objective factors. The narratives are unconcerned with a city of refuge, probably because in most cases the narrative makes it obvious that the slayer would not qualify in any event for protection under the asylum system. Still, one might expect some of these narratives to verify the lack of any of the protective factors mentioned in the law codes, but that is not found to be the case. Likely, the narrators assumed that their readers or listeners understood the elements of the laws on homicide well enough that certain points did not need to be highlighted or emphasized in order for the culpability of the slayer to be obvious. Some things just go without saying. Where the guilt of the killer is apparent in several of these narratives, the weapons or instruments used in the killing are mentioned; the enmity, hatred, or jealousy between the killer and the victim is at least a dramatic undercurrent; or deceptive scheming or luring entrapment are behaviors clearly woven into the narrative buildup.

Nevertheless, almost all of these homicide narratives include important elements that go beyond the factors found in the homicide codes. The facts involved in almost any homicide trial are unique, complicated, and confusing, if not irrational. Therefore, expecting to reduce homicide narratives to a rational and regularly coherent legal rubric is not realistic. Thus it follows that witnesses and advocates in trial settings use narratives and storytelling to humanize the law; to highlight the unique or exceptional elements in the individual case; and to explain, rationalize, and justify the ultimate legal or moral outcome that should rightly emerge out of that case. Just as the law and lawyers use narratives to make the law real, narrators use law to connect with audience anticipations and to construct stories that will be memorably instructive.

The following points digest my main observations regarding the key narratological points emphasized in these homicide narratives.

- 1 *Unlike the biblical laws or modern statutes, homicide narratives usually make a point of telling something about the victim's degree of blameworthiness.*

In a few of these narrative cases, the victim is cast as entirely innocent and not worthy of death. For example, Ish-bosheth [13] was expressly described as “a righteous person” who was killed innocently “in his own house upon his bed” (2 Samuel 4:11). Readers are probably expected to strongly assume that Abel [1] was entirely innocent and respected by the Lord and that the prophet Zechariah was not in any way culpable (2 Chronicles 24:20–22). The legal statutes, however, never mention, nor show any interest in the degree to which the victim is innocent.

However, in real life, victims who provoke caustic or violent reactions from their fellow villagers or leaders are somewhat less sympathetically viewed than are polite people who inoffensively and righteously mind their own business. The lack of blameworthiness of the victim at least requires observers and judges to look for guilty motivations elsewhere—presumably in the mind of the perpetrator.

But even in narratives where blameworthiness may be found, it is not always clear how innocent some of the victims actually are. For example, readers are not told if the Philistines who were killed by Samson [6] really deserved to be slaughtered or not. On the other hand, many of the narratives go to great lengths to demonstrate that the victims were clearly reprehensible, and as a rule these narratives seem to assume that the more guilty the victim, the more excusable the death. Amnon despicably and incestuously raped his half-sister Tamar and then hated her [15], Laban was repeatedly portrayed as reprehensible [24], and Kishkumen was a sworn secret conspirator who was caught in the act of an attempted assassination [35].

Moreover, most of the homicide victims in these cases were high-profile, accountable public leaders. As a result, higher levels of social and moral behavior could be rightly expected, given the high degree of trust and responsibility placed into their hands as well as the widespread consequences of public or national calamity that would follow from any serious misconduct on their part. Ultimate victims included wicked kings, such as Abimelech [5], and unfaithful priests, such as Agag [7]. The Egyptian overseer who was killed by Moses held some public position of power that he apparently had abused [2]. Whereas high-ranking social status tended to protect or mitigate liability for damages under ancient Near Eastern laws, the moral tendency in biblical homicide narratives is to hold high-ranking figures not less but more accountable as role models whose actions should be beyond reproach. The narrators of biblical homicides imply that these men should not be viewed as being above the law but, instead, subject to it.

Bloodguilt is sometimes mentioned as justification for killing the guilty party. For example, David required the blood of Ish-bosheth (2 Samuel 4:11) at the hands of Rechab and Baanah [13]. Joab killed Abner to avenge Asahel's death, even though David had made a treaty with Abner, given him a feast, and let him go [12]. Although Joab thought Abner was spying on David, David was disappointed, affirming that he and his kingdom were guiltless but that Joab had bloodguilt upon his head (2 Samuel 3:28–29). Later, Solomon had Joab killed to avenge the deaths of Abner and Amasa (1 Kings 2:31–34) [12, 16, 18].

Some of the victims are presented as cowardly or greedy. Sisera fled away on foot, leaving all of his men to be killed by the sword (Judges 4:15). He even asked Jael to tell a lie to protect him by telling anyone who might ask that he was not there (Judges 4:20) [4]. Likewise, Laban was greedy and had seized Lehi's property [24].

Others were drunk and thus had presumably put themselves in a position of inability or diminished capacity to control the powers with which they had been entrusted. Amnon was killed when he was carelessly merry with wine [15], Holofernes drank more than ever before on the night he was killed [23], and Laban was found drunk in the streets [24].

Some of the victims were avowed enemies of Israel. The Philistines were confirmed enemies of Israel when they were killed by Samson [6], Sisera had attacked Israel with his 900 chariots at



Had Cain planned to kill Abel, or did it happen on the spur of the moment?

the desired impression that the more reprehensible the victim, the more justifiable his death seems to be. And, of course, if one may imply that God has somehow delivered the victim into the hands of the killer, it is easier for the family of the victim or for readers of the narrative to accept the justice and appropriateness of the outcome and the events that follow.

- ❷ *While the statutes say very little about the blameworthiness of the victim, instead focusing on the state of mind—the mens rea—of the killer, both the narratives and the legal collections share certain key terms.*

Many of the narratives mention the state of a killer's mind beforehand, such as his desiring to smite, lying in wait for the victim, conspiring, or plotting. Abimelech plotted to kill his brothers [5], and Doeg planned to kill the 85 priests [8]. Enmity or hatred can be manifested not just before but also after the crime, such as when Amnon turned to hate Tamar after he had raped her [15]. However, in no case do these objective factors irrefutably establish the guilt of killer. Rather, guilt was a complex determination for which the courts in the cities of refuge were needed, where all the facts in these cases could be heard and judged.

The kinds of details mentioned in these narratives may well reflect the kinds of facts that would have been considered relevant and the sorts of arguments or questions that may have been raised by a killer's pleading for exculpation in such courts in cities of refuge or elsewhere. Had Cain planned to kill Abel, or did it happen on the spur of the moment? Perhaps this uncertainty explains why Cain was allowed to flee to another land with protection by God. Similarly, a reader may ask, when can an avenger kill one who killed his brother? How long may he delay before taking action? And must he wait until he "meets" the killer, or can he somehow trick him into meeting with him, having made him think the meeting is about something else?

The stories that use deceit may help define what is meant by lying in wait. Jael told Sisera to "fear not" (Judges 4:18), and she covered him with a rug [4], but clearly God had delivered him into her hands. Joab killed Amasa by feigning to kiss him [16]. Other instances of deception or lying in wait involve violations of rules of hospitality. Ahab set up Naboth by pretending to honor him at a banquet [19]. Ishmael killed Gedaliah while being trusted and hosted by him [22], and thus "the dastardly nature of the crime is accentuated."²¹ These homicide narratives highlight various uses of preplanning or of coming presumptively upon the victim.

- ❸ *Several homicide narratives include exculpating factors that support the innocence of the killer.* Because the main concern of the law was to ascertain the guilty mind of the perpetrator of the killing, any factor that tended to show that the act was not performed by underhanded, private, or self-justifying treachery was relevant to the overall assessment of culpability. Most saliently, in several narratives people acted on the orders of the king, who held ultimate power and authority. Loyally following his or some other controlling authority's commands shifts the moral and legal responsibility for the killing away from the killer, at least to a cognizable degree. Thus, Doeg acted on order from Saul when he killed the 85 priests. Saul and his house were held accountable, but nothing more is specifically said about Doeg's culpability [8]. King Amalickiah [29, 30] and the chief judge Helaman [35] both deployed servants to carry out extrajudicial executions. In these narratives, none of these servants of regents were mentioned as being legally accountable.

In some cases, the killer was acting as an agent for someone other than a king. Ishbosheth's 12 servants killed David's 12 servants at Abner's order (2 Samuel 2:12–16). Absalom's servants killed Amnon for what he had done to Tamar [15]. It appears that servants or slaves also lacked capacity to be held personally culpable.

When narratives emphasize that a vulnerable killer is acting alone, this also tends to exculpate the killer. When one weak person acts successfully against greater odds, this may indicate God's support and approval, as in David's killing of Goliath. Judith, also perilously alone, slayed Holofernes [23]. Nephi likewise acted alone—a youth against impossible

Mount Tabor [4], and Agag was an Amalekite king killed by Samuel [7]. In the Book of Mormon, Amalickiah [31], his brother Ammoron [32], and Kishkumen [34] were all sworn and confirmed enemies of the Nephite people. But enemy status need not necessarily imply that the victim was actively hostile at the moment of the slaying. Sisera [4] and Holofernes [23] were asleep in their tents when they were killed. Just as former hatred or previous enmity would disqualify a killer from the protection of asylum, enmity or open hostility did not need to be actively threatened at the moment of the slaying in order to heighten the blameworthiness of the victim. Laban's previous use of military power, namely his command that his soldiers kill Nephi and his brothers, left Nephi in a position to take action when he encountered Laban, presumably off duty but armed and dressed for military conflict [24].

In some of these cases, the victim was forewarned. Johanan warned Gedaliah to beware of Ishmael [22]. By ignoring these warnings, which were often issued in the name of the Lord by prophetic messengers, the victims in these narratives left themselves partly to blame when a prophesied tragedy befell them.

Only occasionally do biblical laws speak of the blameworthiness of the victim, as in Exodus 22:2, where a housebreaker at night is culpable and can be killed with impunity. More typically, such legal provisions or legislation make no attempt to articulate the extent to which the misconduct of the victim might mitigate the guilt of the killer. However, the biblical homicide narratives convey

chances of success [24]. Helaman's servant went against overwhelming odds in managing to kill Kishkumen [35]. When strong men act alone, however, it can signal instead a sense of stealth, deception, or mischief.

Additionally, if a person acts under a righteous oath he has sworn or a solemn duty he owes to God, that factor brings a motive of sworn loyalty to God and binding self-deprecation into the narrative. Using a standard oath formula, David said to Abishai, "As the Lord liveth, the Lord shall smite [Saul]" (1 Samuel 26:10) [9]. Nephi also swore an oath: "As the Lord liveth . . . , we will not go down unto our father in the wilderness until we have accomplished the thing which the Lord hath commanded us" (1 Nephi 3:15), and an angel commanded him to "go up to Jerusalem again, and the Lord will deliver Laban into your hands" (1 Nephi 3:29) [24]. Trusting in God by turning the matter over to divine forces is another way of understanding how God might then be seen as having indeed delivered the victim unto death at the hands of a slayer.

A history of restraint always helps the slayer's reputed innocence. Absalom waited two years and did not speak against Amnon before taking action and killing him (2 Samuel 13:21-23) [15]. When a killer debates with himself or herself, this may affect how the legal terms *deliberately*, *premeditated*, or *presumptuously* are to be understood by readers. For her part, Judith offered a long prayer of deliberation, justification, and dedication (Judith 9:1-14) before beheading Holofernes [23]. Nephi also carefully considered the justifiability of his action [24].

These accounts make use of questions, which can be seen as mimicking or anticipating the interrogation and thought processes of judges who could be imagined as seeking to determine the guilt of these killers. While it is difficult to determine how the ancients understood acting volitionally—as opposed to acting involuntarily, at unawares, or against one's will—narratives can use this mental uncertainty to dispel any perception of the killer's culpability.

The presence or absence of witnesses can also affect how the killer is perceived. Zimri and Cozbi's wrongs were done in plain sight of Moses and the people [3]. However, it is more often the case that there are no witnesses who can convict the slayer. Cain killed Abel with no one around [1], no one saw when Moses slayed the Egyptian [2], and Nephi killed Laban on the streets with no one around [24]. In many narrative cases, one is simply left to wonder what could possibly ensue legally without any eyewitnesses to testify concerning these killings. Perhaps for this reason the narratives make unabashed use of circumstantial evidence. Moses said that "this thing is known" (Exodus 2:14) when he was questioned about the Egyptian's death [2]. Circumstantial evidence implicating him was likely enough to get him in plenty of trouble.

❹ *The narratives add a corporate or collective factor not present in the law codes in necessitating and justifying the killing.*

These narratives seem to assume that killings were necessary in the establishment of any new regime, as they have been practically and politically necessary often in the history of civilizations the world over. Cain's killing of Abel first signaled the need for law outside Eden [1]. Moses's slaying of the Egyptian showed that his authority began with blood—a matter of life and death [2]. In some cases, killing was necessary to preserve the people of God. Moses saved the lives of Israelite slaves by killing an Egyptian [2]. Judith killed Holofernes when the men of Judah unwisely swore an oath to deliver the city (Judith 8:11) [23]. Laban was slain by Nephi in order to preserve Nephi's people [24]. The factors allowing the "one for many" idea to be invoked limited the operation of this factor: one life could be required for all, but only when that one was in some sense guilty.

❺ *Any involvement of divine providence or God's active intervention in a case reveals the writer's primary message and the desired audience response.*

Divine intervention signals the message of the writer. Sometimes the Lord delivered the victim into the hands of the slayer. In Moses's case, God delivered him and the daughters

of Reuel, or Jethro, "out of the hand of the shepherds" (Exodus 2:19), which led to Moses's protection by Jethro. In Judith's case, the Lord would not allow the men of Judah to deliver the city into the hands of the invading enemies (Judith 8:33), thus sanctioning Judith's plot [23]. These examples show signs of divine approval.

In some instances, the victims were delivered to the slayer while they were sleeping. Jael stabbed Sisera while he was asleep in his tent [4], as did Judith with Holofernes [23]. In addition, sometimes there were unplanned coincidences, such as the fact that Sisera happened to flee to the particular tent where Jael was, which had not been planned [4]. Some slayers did not know beforehand what should be done and followed the prompts they received. Judith said, "Don't ask of mine act: I will not declare it to you till it be finished" (Judith 8:34) [23]. Nephi proceeded not knowing or even imagining what lay ahead (1 Nephi 4:6) [24].

Some victims were given talionic justice for the crimes they had committed. In some cases, a killing represented the divine fulfillment of a curse on the victim. In other narratives, God's will was set in motion by the event.

❻ *Close family relationships between the victim and the killer are often present in homicide narratives. While this factor goes unmentioned in the laws, it usually makes the killing more despicable.*

The relationship between the killer and the victim can affect how detestable the crime seems. Furthermore, familial killings seem despicable since families are often portrayed as tight-knit and trustworthy. Fratricide is especially odious, as with Romulus and Remus, whose quarrel over land resulted in Remus's death. In the biblical narrative, Cain and Abel were brothers, and yet Cain murdered Abel [1].

❼ *Narratives mention the burial of the victim, whereas the laws do not.*

The law codes never deal with the burial; it was an issue handled by the courts. Whether a killer should be allowed a burial or not tended to be mentioned in stories involving victims who were either very good or very bad. Otherwise, one assumes that the burial rites were handled normally.

- 8 *Beyond conveying the balanced measure-for-measure concept of talionic justice, several interesting effects are served by the chiasmic structures in several of these narratives.*

Chiasmus can serve several functions in narrative and legal texts, such as (1) giving a sense of closure and completion, (2) enhancing the moral imperative of a text by reinforcing reiteration, or (3) conveying a sense of equilibrium or balanced retributive justice, along with the incontrovertible truth of natural consequences.²² The structure of a narrative can also (4) affect the outcome or message of a text: “Structure is ‘an indispensable aspect of [any text]; . . . it is one of the factors governing the effect of the work on the reader and in addition it serves to express or accentuate meaning.’”²³ The use of chiasmus, especially in disturbing cases of ugly and morally unsettling homicides, helps to convey senses (5) of the reestablishment of controlled stability in situations that appear to be out of control, (6) of the presumptive even-handedness and fairness of outcomes, and (7) of the quantitative and qualitative measure-for-measure suitability of punishments that reciprocally mirror the crime, while (8) doubling down on the seriousness of homicide. Chiasmus can also (9) focus the reader’s attention on the most important or central point in the case by heightening climactic turning points. Finally, decisions in hard legal cases, such as homicides, call for (10) strong articulations that persuade and emphasize decisive details or controlling precedents that might otherwise elude notice or be overlooked—all of which chiasmus rhetorically accomplishes.

Several of the homicide legal texts (Genesis 9:6; Numbers 35) and narrative accounts (Leviticus 24:13–23; Judges 9; Numbers 25:1–18; Jeremiah 40–42; Judith 8:1–16:25) in the Bible and the Book of Mormon utilize chiasmic structures.²⁴ But for present purposes, the culminating

explanation of Nephi’s slaying of Laban in 1 Nephi 4 now can be appreciated not only as having strategically included many of the objective legal and subjective narrative homicide factors observed above but also as being a masterful use of a classic chiasmic structure (see below).

Closing the Distance Between Law and Narrative

In conclusion, the distance between law and narrative is not as great as people might think, especially in the legal cases contained in the Bible and the Book of Mormon. While laws tend to emphasize objective factors used in establishing facts about what happened and how events developed, narratives give greater meaning to the unfolding facts and strive to convey human and ethical dimensions about who did what and why actions were undertaken. Knowing both

STRUCTURE IN THE NARRATIVE OF THE SLAYING OF LABAN (1 NEPHI 4:4–27)

A *Without the Walls of Jerusalem*

“They did follow me up until we came without the walls of Jerusalem” (v. 4).

“I caused that they should hide themselves without the walls” (v. 5).

B *Laban and His House*

“I . . . went forth towards the house of Laban” (v. 5).

“I came near unto the house of Laban” (v. 7).

A drunk man: “It was Laban” (vv. 7–8).

C *Sword*

“I beheld his sword, . . . and the hilt thereof was of pure gold, . . . the blade thereof was of the most precious steel” (v. 9).

D *Spirit*

“I was constrained by the Spirit that I should kill Laban” (v. 10).

“And the Spirit said unto me again” (v. 11).

E *Delivered into Thy Hands*

“Slay him, for the Lord hath delivered him into thy hands” (v. 12).

F *Perishing*

“It is better that one man should perish than that a nation should dwindle and perish” (v. 13).

G *The Law and Commandments*

“Inasmuch as thy seed shall keep my commandments, they shall prosper in the land of promise” (v. 14).

“I also thought that they could not keep the commandments of the Lord according to the law . . . , save they should have the law” (v. 15).

H *Imperishable*

“I also knew that the law was engraven upon the plates of brass” (v. 16).

I *Delivered into Thy Hands*

“And again, I knew that the Lord had delivered Laban into my hands” (v. 17).

D *Spirit*

“Therefore, I did obey the voice of the Spirit” (v. 18).

C *Sword*

“I . . . took Laban by the hair of the head, and I smote off his head with his own sword” (v. 18).

B *Laban and His House*

“I went forth unto the treasury of Laban. . . . I saw the servant of Laban. . . . I commanded him in the voice of Laban” (v. 20).

“He supposed me to be his master, Laban” (v. 21).


“I spake unto him as if it had been Laban” (v. 23).

A *Without the Walls*

“To my elder brethren, who were without the walls” (v. 24).

“[Zoram] did follow me . . . as I went forth unto my brethren, who were without the walls” (vv. 26–27).

objective facts and subjective intentions is necessary in order to judge correctly and rightly about events of the past and to encourage and motivate admirable moral behavior in the future. Because of the ugly, disruptive nature of murder, homicide narratives challenge writers and readers alike to deter, constrain, curtail, and prevent murder; to craft accounts that will be persuasive, memorable, and rehabilitating; as well as to particularize these killings in ways that will limit any improper reading and to constrain any manipulative attempt to recreate these extraordinary fact patterns as justifying precedents for unwarranted killings.

This examination of homicide narratives in the Book of Mormon and in the Bible is just the latest installment in my larger project on legal insights in scripture. In 1980, when I began teaching law at BYU, I began a serious quest to identify and understand the legal principles undergirding these two sacred volumes. Several of my print publications over the past four decades have developed this theme, and ten years ago much of this research was published by the BYU Press in a volume entitled *The Legal Cases in the Book of Mormon* (2008). Interested readers can also access further information about legal principles and judicial practices in the Book of Mormon—as well as find answers to hundreds of fascinating Book of Mormon questions—at www.bookofmormoncentral.org. 

NOTES

- 1 Bernard S. Jackson, *Theft in Early Jewish Law* (Oxford: Clarendon Press, 1972).
- 2 For a longer version of this article with footnotes to sources, see John W. Welch, “Narrative Elements in Homicide Accounts,” *Jewish Law Association Studies* xxvii (2017): 206–38, used by permission.
- 3 Assnat Bartor, “Narrative,” in *The Oxford Encyclopedia of the Bible and Law*, at 126.
- 4 See John W. Welch, *The Legal Cases in the Book of Mormon* (Provo, Utah: Brigham Young University Press, 2008), available at publications.maxwellinstitute.byu.edu/book/the-legal-cases-in-the-book-of-mormon, as well as the bibliographic sources cited there.
- 5 John W. Welch, David Rolph Seely, and Jo Ann Seely, eds., *Glimpses of Lehi’s Jerusalem* (Provo: Foundation for Ancient Research and Mormon Studies, 2004), available at publications.mi.byu.edu/book/glimpses-of-lehi-s-jerusalem.
- 6 Jeremiah 26:1–24. For an analysis of the trial of Jeremiah in relation to several legal facets of law in the Book of Mormon, see John W. Welch, “The Trial of Jeremiah: A Legal Legacy from Lehi’s Jerusalem,” in *Glimpses of Lehi’s Jerusalem*, *supra* n. 5, at 337–56.
- 7 Jeffrey P. Thompson and John W. Welch, “The Rechabites: A Model Group in Lehi’s World,” in *Glimpses of Lehi’s Jerusalem*, *supra* n. 5, at 611–24.
- 8 “If a man lie not in wait” and “God deliver[ed] him into his hand” (Exodus 21:13). See, generally, Bernard S. Jackson, *Wisdom Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 120–30.
- 9 “Better one should perish than many.” Roger David Aus, “The Death of One for All in John 11:45–54 in Light of Judaic Traditions,” in *Barabbas*

and *Esther and Other Studies in the Judaic Illumination of Earliest Christianity*, ed. J. Neusner, et al. (Atlanta: Scholars Press, 1992; South Florida Studies in the History of Judaism, no. 54), 29–63. See also Nahum Rakover, “The One vs. the Many in Life and Death Situations,” *Jewish Law Association Studies* VIII (1996), 129–53.

- 10 “If some fairy gave me the power of seeing a scene of one and the same kind in every age of history of every race, the kind of scene that I would choose would be a trial for murder, because I think that it would give me so many hints as to the multitude of matters of the first importance.” F. W. Maitland, quoted in Fritz Stern, ed., *The Varieties of History: From Voltaire to the Present* (New York: Vintage Books, 1973), 29.
- 11 In addition to the completed killings that will be discussed here, the Bible includes a number of attempted killings, such as between Esau and Jacob (Genesis 27:41), see Calum M. Carmichael, *The Origins of Biblical Law: The Decalogues and the Book of the Covenant* (Ithaca: Cornell University Press, 1992), 101–06; Pharaoh and Moses (Exodus 2:15); and Ahab and Elijah (1 Kings 18:9–14). Book of Mormon narratives also relate a dozen attempted homicides. Since attempted crimes are not cognizable under biblical or Jewish law, these narratives will not be covered here. See Jacob Bazak, “An Unsuccessful Attempt to Commit a Crime,” *Jewish Law Association Studies* xviii (2008), 9–15.
- 12 Pamela Barmash, “Homicide,” in *The Oxford Encyclopedia of the Bible and Law*, ed. Brent A. Strawn (Oxford: Oxford University Press, 2015), at 400–01.
- 13 For my initial examination of Nephi’s account from purely legal angles, see John W. Welch, “Legal Perspectives on the Slaying of Laban,” *Journal of Book of Mormon Studies* 1, no. 1 (1992): 119–41.

- 14 John W. Welch, “When Did Nephi Write the Small Plates?” in John W. Welch and Melvin Thorne, eds., *Pressing Forward with the Book of Mormon* (Provo: Foundation for Ancient Research and Mormon Studies, 1999), 75–77; Grant Hardy, *Understanding the Book of Mormon: A Reader’s Guide* (New York: Oxford University Press, 2010), 13–14.
- 15 Noel B. Reynolds, “Why Nephi Wrote the Small Plates: The Political Dimension,” in *Pressing Forward with the Book of Mormon*, *supra* n. 14, at 81–83.
- 16 See, for example, 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).
- 17 Jackson, *Theft in Early Jewish Law*, *supra* n. 1, at 180, 251–54.
- 18 Cf. Y. [Jerusalem Talmud] *Terumot* 8:10, 46b.
- 19 See, particularly, the chapter on homicide in Bernard S. Jackson, *Wisdom-Laws*, *supra* n. 8, at 120–71.
- 20 For a discussion of the laws and procedures of accusation and determination of guilt for homicide under biblical law, see, generally, Peter Haas, “‘Die. He Shall Surely Die’: The Structure of Homicide in Biblical Law,” in *Thinking Biblical Law*, ed. D. Patrick (Atlanta: Scholars Press, 1989); Anthony Phillips, “Another Look at Murder,” *Journal of Jewish Studies* 28 (1977), 105–26; Hermann Schulz, “Das Todesrecht im Alten Testament,” *Beiheft zur Zeitschrift der alttestamentlichen Wissenschaft* 114 (1969).
- 21 John Bright, *Jeremiah* (Garden City, New York: Doubleday, 1965), 254.
- 22 John W. Welch, “Chiasmus in Biblical Law,” *Jewish Law Association Studies* IV (1990), 9–10.
- 23 S. Bar-Efrat, “Some Observations on the Analysis of Structure in Biblical Narrative,” *Vetus Testamentum* 30 (1980), 155; Welch, “Chiasmus in Biblical Law,” *supra* n. 22, at 22.
- 24 See John W. Welch, “Narrating Homicide Chiastically,” paper presented at the Chiasmus Jubilee Conference, Provo, Utah, Aug. 16, 2017 (publication forthcoming).

ART

Page 23: *Samson Slaying the Philistine*, by Giovanni Bologna © Victoria and Albert Museum, London. Page 25: Minerva Teichert (1888–1976), *Treasures in Exchange for the Plates of Brass*, 1949–1951, oil on masonite, 36 x 48 inches. Brigham Young University Museum of Art, 1969. Page 27: *Nephi and Laban*, H. H. Haag, Courtesy Museum of Church History and Art. Page 29: Minerva Teichert (1888–1976), *Death of Amalickiah*, 1949–1951, oil on masonite, 35 3/4 x 47 7/8 inches. Brigham Young University Museum of Art, 1969. Page 32: *Cain Kills Abel*, by Julius Schnorr von Carolsfeld, iStock/Getty Images Plus.

THE
DIRECTION
YOU DECIDE TO LOOK
CAN MAKE ALL THE
DIFFERENCE.



BY SHARLA SMITH HALES

My husband and I live in a small town in the eastern foothills of the Sierra Nevada Mountains. We enjoy road biking there. Our favorite ride is a loop near our home that is about 22 miles long. We see many more cows than cars when we do that loop—one of the perks of small-town life.

The interesting thing about riding the loop is that the perspective and the experience of the ride vary dramatically depending on whether we're riding clockwise or counterclockwise—even though it's the same journey, the same elevation gain and loss, and the same starting and ending place. When starting the loop in a westward direction, the vista includes a river, country farms, barns, and meadows—all with a majestic mountain backdrop. In stark contrast, the view eastward riding that very same stretch of road shows very little vegetation, dilapidated buildings, an oddly edited traffic sign, and several unsightly junk heaps.

Using this bike loop as an analogy for the journey through life and a career, how can a person keep a perspective of the beautiful, the appealing, and the enjoyable? How can a person avoid dwelling on the junk heaps and the unsightly things and thus make the ride a joyful experience? I want to share with you today my best thoughts and some experiences that help answer these questions.



How to Enjoy THE Ride

*Choosing to Love
in Life and Career*



MY STORY

I graduated from BYU Law in 1986 and then took and passed the Nevada Bar in 1987. For the next 20 years I practiced very little law—some years not at all, other years just a few hours a week researching and writing for other attorneys. I completely enjoyed being a mostly stay-at-home mom, but I looked forward to beginning a real legal career when the time was right. In 2003 I began a 12-year stint on the local school board, motivated by my belief in education as a critical foundation for happy, strong individuals and families.

In the summer of 2006, 20 years after I graduated, I felt the time was right. Our youngest child was starting middle school, and I felt I could begin at least a part-time job with minimal impact on our family if I organized everything just right. I would be tight on time, but I could make it work. I was excited for a new venture.

Then I got a phone call from the high councilor in our stake assigned to seminary. In our area, the class is held before school starts—early. The high councilor wanted to meet. In the days leading up to the meeting, I feared, I dreaded, and I agonized. I hoped it wasn't what I thought it was. But it was. I have to admit I was not gracious to the high councilor. I made him come back a second time. I guess I hoped that the inspiration would change. But it didn't.

I don't know everything about what it means to "love God with all your might, mind and strength,"¹ but I'm pretty sure it at least means that when you're called to teach early-morning seminary and you reasonably can, you do. Conforming my plans to those from a higher source was a painful process. I expected the hours required to teach seminary—and do a good job of it—would eliminate for me any possibility of working in the law. With concerted effort, I worked on my attitude and accepted the calling.

Contrary to my fears, my life did not end when I started teaching seminary. Six months into it I found I had hit my stride. That February, while attending a national

school board conference and riding up a huge, two-story escalator, I heard a faint voice calling my name. I turned toward the down escalator and saw a board member from a neighboring school district.

He said, "Wait at the top!" He ran down the down escalator and over to the up. When he caught up to me, he explained that their general legal counsel of many years had just walked out. Their district would be requesting proposals for the position. He urged me to submit a proposal.

I did, and a few months later I found myself with a legal career.

Dean Gordon Smith has encouraged you to cocreate your path with God. I am thankful God waited while I caught up to Him in creating my path. My work allows me to represent a cause I believe in, which is a much more enjoyable ride than just working for a paycheck. I have nearly complete flexibility working as an independent contractor, so I can fit in family, friends, and service. There are many Law School alumni who have more visible and prestigious careers than I have, but success comes in many different packages, and I am very grateful for and happy with mine.

LOVE GOD

The position I have has been perfect for me—vastly superior to any I was considering the previous summer—proving that God will make more of you than you will make of yourself if you turn your life to Him² and that sometimes the scripture "seek ye first the kingdom of God . . . ; and all these things shall be added"³ is literal.

Elder Dieter F. Uchtdorf provided a contemporary iteration of that principle: "The two great commandments are the target. On these two commandments hang all the law and the prophets. As we accept this, all other good things will fall into place."⁴

Of course, these two commandments come from Christ, who was asked by a lawyer:

Master, which is the great commandment in the law?

Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.

This is the first and great commandment.

And the second is like unto it, Thou shalt love thy neighbour as thyself.⁵

As the 2017 recipient of the Law School's Alumni Achievement Award, Sharla Hales delivered this address in October 2017 during BYU Homecoming week.

You have heavy concerns: 1Ls may be hoping for excellent grades, or maybe even just passing grades; 2Ls, along with being concerned about grades, have a heightened worry about summer placement; and 3Ls are anxious for jobs—the first job out of law school seeming to lay the foundation for careers. Perhaps you worry about how to balance family, school, church, and work. Perhaps you worry that you've somehow ended up in the wrong place, that law school was a mistake for you.

I say to all of you: You are in the right place! Skills learned in law school will bless you and others in your life, both in and out of your career. Everything will work out. You will succeed. You will find jobs, whatever your grades might be. Your journey through life and career will have unexpected turns. You can't see the end or even the middle from the beginning, but every turn will have wonderful views when you love God and your neighbor. With love in your heart, you will have a scenic, beautiful, and enjoyable ride.

LOVE YOUR NEIGHBOR

The second great commandment requires that we love others, even our enemies and those who are not good to us. This commandment doesn't require a warm, cute-puppy affection for people in positions adverse to ours, but it does require a feeling of charity for all. The Bible Dictionary defines charity as "the highest, noblest, strongest kind of love, not merely

affection.”⁶ “Charity is the pure love of Christ.”⁷ The “of” in that phrase is powerful. The pure love of Christ encompasses love *for* Christ and love *from* Christ and love *like* Christ’s. When we struggle to find love for others, we can borrow some of His.

Sister Neill F. Marriott explained, “The Savior’s Atonement is a conduit for the constant flow of charity from our Father in Heaven.”⁸ Charity requires, as Elder L. Whitney Clayton described, that our actions as attorneys “be drenched with the spirit of genuine Christian goodness.”⁹ Charity means we do good to those who hate us and pray for those who despitely use us.¹⁰

Before practicing law I used to wonder who would ever despitely use me, but now I know. Some years ago the school district that I represent had a teacher with a long discipline history of significant mistreatment of students, mostly involving anger management problems and use of racial slurs. The district determined that under the collective bargaining agreement, he had had enough chances, the requirements of progressive discipline had been met, and he would be discharged. The teachers’ association disagreed. The matter went to arbitration.

I had heard that the opposing counsel in this matter was difficult to work with, and I thought I had steeled myself for his shenanigans. But nothing prepared me for what I encountered in the arbitration hearing. Arbitrations are not like trials, where the parties, the attorneys, and the judge are several feet apart. At arbitrations everyone sits at the same table.

At this hearing I was very well prepared on the facts, the legal analysis, my arguments, and my advocacy. But I was not prepared for the blatant hostility in the form of personal attacks against me, overstatements, sarcasm, and denigration of my client that spewed from the opposing counsel. He told sexist jokes to the arbitrator during breaks. He muttered under his breath while I presented my case, saying things like, “This is so boring,” “That’s just stupid,” and “I can’t believe she’s saying that.”

I was thrown off my game during the entire two-day arbitration. I was a little nauseated and shaky. And I seriously disliked the opposing counsel. Figuratively, my views during this arbitration were the equivalent of rocky, rusty, weedy junk heaps.

I like to think that I still was able to fully put on my client’s case and that the result would not have been different without the opposing counsel’s bad behavior and my inadequate response. The decision of the arbitrator was that the teacher would be reinstated without the six months’ back pay between the dismissal and the reinstatement. This decision was as close to upholding the dismissal as it could be, but it was still a loss. The teacher would be back in the classroom.

Habits are hard to break, though, and within months there was more misconduct by the same teacher, despite the district’s efforts to support him. There was another dismissal from employment. There was another arbitration. I found myself preparing again. It would be déjà vu: same room, same teacher, same type of misconduct, and same opposing counsel. It’s rare to get a do-over like this. While I dreaded it, I was also happy for the chance to figure out how to do it better.

This time I knew I had to prepare not just for the case but also for the opposing counsel. I conferred with mentors and learned tips for dealing with difficult attorneys. For instance, I could stop the presentation of my case and state, “The record should reflect that opposing counsel is muttering derogatory comments” or “The record should reflect that opposing counsel’s gestures are distracting the witness.” I also talked to a few people who had worked with the opposing counsel. I learned some things about him, including that he had been through a bitter divorce. That divorce and other experiences must have changed his direction of travel in life to very unpleasant views of his own. I began to feel a little compassion.

The week before arbitration round two, my best mentor—my husband—suggested I go see this man, look him in the eye, and tell him my expectations for appropriate behavior. Could I put myself in harm’s way like that? Could I walk voluntarily into the lion’s den? As repulsive as this sounded, the principle involved rang true: “If thy brother shall trespass

OF INDOMITABLE SPIRIT

Several years before Sharla Smith Hales began law school, her parents were killed in a small plane crash. Shortly after she and her husband, Jim, were married, Sharla and Jim became the primary caregivers for her three youngest siblings, ages 4 to 14. Within a few weeks after the children moved in, Sharla’s sister who was in college suffered a paralyzing accident on a waterslide and lived with Jim and Sharla during rehabilitation. Sharla took a year off from law school to help her siblings adjust, and then she joined Jim to finish law school together in 1986. She graduated summa cum laude.

For many years Sharla was primarily a stay-at-home mom, raising her siblings and her own four children. She provided occasional independent contract research to her husband and other attorneys and served in many callings in the Church. In 2002 she ran for an open seat on the Douglas County Nevada School Board and held that seat for 12 years. During that time Sharla served as board president three times, was heavily involved with the Nevada Association of School Boards (NASB), and received several awards from the NASB. She continues to provide professional training to NASB members.

When Sharla left the school board, she accepted a position with the Douglas County Family Support Council, a non-profit organization that supports women, including victims of domestic violence. She currently serves as director of public affairs for the Reno Coordinating Council of The Church of Jesus Christ of Latter-day Saints. She has also served as general counsel for Churchill County School District since 2007.

In nominating Sharla for this award, fellow BYU Law alum Kirt Naylor wrote, “Sharla may not be one of those alumni who is in the public eye, but her dedicated service and example in the community, BYU, legal field, home, and church qualify her to receive this most deserving recognition.”

against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother.”¹¹

Dean Smith explained this principle another way:

*As disciples of Jesus Christ we should encourage people to change and improve. If we believe that others have taken a wrong turn, one of the greatest acts of charity that we can perform is to give them room to repent.*¹²

So I went to the office of opposing counsel, sat down with him, and first discussed a few things with him about the exhibits. Then I looked him square in the eye, called him by name, and called him out on his behavior. I was hoping to say something incredibly powerful and profound, but instead I just simply told him the truth: “It’s not okay for you to mutter criticism, make demeaning comments, or tell sexist jokes. If you do, I will call you out on the record.”

His response was a weak denial. And then our talk was over.

A week later I found myself at the arbitration hearing taking the same journey over the same stretch of road I had already traveled, but this time my view was in the other direction. My dislike and fear of this man had turned into compassion and charity. His behavior had improved. The demeaning comments and distracting gestures were gone. He still made overstatements, such as, “She doesn’t have a single shred of evidence.” However, this time I saw them for what they were: bluffing tactics, attempts to show off for his client, and statements he felt he had to make because the facts were not on his side. I had confidence and understanding, and I enjoyed the work. My view was vastly more pleasant and my journey enjoyable regardless of the result, although I am happy the story ends with a decision for the school district: the teacher’s dismissal stood.

Maintaining charity won’t always change the bad behavior of others, but it will allow you to feel good about yourself. Maintaining charity for difficult opposing counsel or others includes giving them the benefit of the doubt, refusing to take offense, and allowing them room to improve.

It does not mean being a pushover or being weak. Good attorneys must be assertive, even aggressive, at times. Good attorneys are clever, creative, and strong. Charitable thoughts and Christian actions require thorough preparation, strong analysis, and concerted self-discipline. Those extra efforts bring greater understanding, which leads to advocacy from positions of strength without resorting to hostilities, hyperbole, or harshness. Interestingly, charitable understanding and Christian goodness often result in more effective representation than stooping to less noble thoughts and actions.

CHARITABLE GOODNESS IS BETTER ADVOCACY

In the school district I represent, a group of special education students alleged to a principal that one of their teachers had treated them with impatience, used derogatory words against them, and, of all things, locked them out of the classroom.

An investigation ensued, but the results were inconclusive. There was no misconduct proven. Still the students and their parents wanted a different teacher. The principal and the superintendent both felt that the teacher was ineffective in that classroom. But under the collective bargaining agreement, the district did not have grounds for a forced transfer.

The superintendent and I met with the teacher to go over the results of the investigation. In preparing for the meeting, the superintendent mentioned to me that the school district had a new opening in a one-to-one setting with a severely disabled student—a position generally seen as less desirable than the teacher’s current placement.



By happenstance, I had just attended a J. Reuben Clark Law Society continuing legal education class on relational communication taught by Russell Wood. We learned about listening carefully, not “one-upping,” asking effective questions, making supportive statements, and avoiding relational conflict—all very compatible with charitable thoughts and Christian actions.

When we met with this teacher, I determined to listen. I used phrases I had learned, such as:

“It sounds like . . .”

“So you mean . . .”

“Tell us more about . . .”

“Mmm,” with a head nod.

The more the teacher talked, the more he became aware that he was not enjoying his class and that his teaching was not effective for these students. The more he talked, the more both he and we understood the challenges in his classroom. I found myself using fewer deliberate listening strategies and more natural feelings of genuine compassion and interest. I came to understand the struggles he had with these students, who had difficult behaviors. Prior to the meeting, I saw him as a teacher who was unable to control the classroom. During the meeting, I saw his strengths: genuine concern for his students, gentleness, and compassion for students with disabilities. My perspective changed. Instead of a problem teacher, I saw a teacher who had strengths the district was not utilizing.

May you have charity for your classmates and for the attorneys you will work with and against, thereby building enjoyable and enriching relationships.

As he talked more and we listened more, we all came to understand that he was in the wrong placement. Still the district did not have the right to force a transfer, and I could not see my way clear to making that happen. Then the solution presented itself: out of the blue he asked for a transfer.

The superintendent and I paused, poker faced. I asked the teacher to excuse us so we could confer about openings. We diplomatically exited into the adjacent room, closed the door, and gave each other high fives. Genuine, compassionate listening took us to a win-win that legal provisions under the contract would never have provided.

My view on my metaphorical ride at work that day was breathtaking. Solving problems for my client is incredibly satisfying because, ultimately, I am helping the school district’s children learn, achieve, and prepare for life.

That day reinforced what I have found true many times: When I choose to view others through a lens of charity, I find I am surrounded by people who generally want to do good in the world, who want to be fair and reasonable, and who want to treat me well. When I see them as good people, I treat them that way, and they usually respond in kind. I have a beautiful view of the world when I do this.

A SPECTACULAR VIEW


What is your view right now? What have you set your sights on?

An acquaintance of mine told me about a law school classmate who twice in quick succession was unprepared when called on. The impulse among this classmate’s peers was to avoid him like poison. My acquaintance (who may or may not be my husband) to this day regrets not reaching out to lend support. He realizes that no one comes to class twice unprepared unless there are serious challenges in their life. Fortunately, I am happy to say that the classmate went on to do well in law school.

If you see your classmates as competitors for a limited supply of positions, you will be surrounded by people pushing you out of the way for their own success. You will spend your law school years surrounded by self-centered, greedy people.

On the other hand, if you determine to view your classmates through a lens of charity, you’ll be surrounded by caring, kind, and supportive people with remarkable ideas and insights who can help you be successful. Give your classmates the benefit of the doubt. Refuse to take offense. Attribute negative actions not to hostility or criticism but to other reasonable explanations. Resist the urge to label your classmates. Then your classmates will help you do your best.

Rather than elbowing each other for limited positions, you will share a common goal: mastering an unlimited supply of skill and knowledge important for success, whatever package success comes in for you. You will all be traveling in the same direction, and that direction will have a spectacular view.

May you move forward with a love of God and of your neighbor. May you have charity for your classmates and for the attorneys you will work with and against, thereby building enjoyable and enriching relationships. May you be blessed as you seek and create beautiful panoramas in your personal and professional lives. 

NOTES

- 1 Moroni 10:32.
- 2 See Ezra Taft Benson, “Jesus Christ—Gifts and Expectations,” *New Era*, May 1975.
- 3 Matthew 6:33.
- 4 Dieter F. Uchtdorf, “Aiming at the Center,” *Ensign*, January 2017.
- 5 Matthew 22:36–39.
- 6 Bible Dictionary, s.v. “charity,” 632.
- 7 Moroni 7:47.
- 8 Neill F. Marriott, “Abiding in God and Repairing the Breach,” *Ensign*, November 2017.
- 9 L. Whitney Clayton, “He Answered Discreetly,” *Clark Memorandum*, Fall 2012, 23.
- 10 See Matthew 5:44.
- 11 Matthew 18:15.
- 12 D. Gordon Smith, “What’s in a Name?” BYU devotional address, 26 June 2012.

Bringing Justice to All

A LOOK AT THE GROWING UTAH NONPROFIT

The civil legal aid nonprofit “And Justice for All” (AJFA) strives to live up to its name. The organization provides free legal representation for clients who are low on financial resources or are otherwise vulnerable. Tatiana Christensen, ’05, staff attorney and pro bono coordinator, is one of five BYU Law alums who work for one of the three partner agencies involved in AJFA. Christensen explains, “We work with those who are facing challenges to very basic human needs—physical safety, freedom from sexual assault, food, shelter, healthcare, etc. The legal system is often difficult or impossible for our clients to navigate on their own.”

AJFA provides services throughout Utah by coordinating legal services and raising funds, and it strengthens communities through a focus on serving individuals. The AJFA website states that they are “saving the world, one Utahn at a time.”

An Innovative Idea

AJFA was formed in 1998 when Utah Legal Services (ULS), a nonprofit law office, was facing decimating cuts in their Legal Service Corporation funding. Lauren Scholnick, an attorney at ULS at that time, came up with the idea of forming a joint

Left to right: Amberly Datillo, ’04, Tatiana Christensen, ’05, and Craige Harrison, ’92—three of the five BYU alums who work with AFJA.



fundraising campaign. The three major agencies that provide civil legal services in Utah—Utah Legal Services, the Disability Law Center, and the Legal Aid Society of Salt Lake—underwent a study about the viability of a joint campaign. Armed with positive responses, the three agencies formed “And Justice for All” with the goals to increase resources from the legal community and improve access to civil legal services throughout Utah.

An Efficient Solution

Part of AJFA’s efficacy stems from the fact that it acts as an umbrella organization that simplifies donating and streamlines administration of services for those in legal need. Stewart Ralphs, executive director of the Legal Aid Society of Salt Lake and founding partner of AJFA, states that funds raised by AJFA serve as the single largest source of private funding for all of the AJFA partner agencies, and those funds are critical because they serve as “matching” funds for many major governmental grants. Although the three founding agencies do most of the fundraising and receive the majority of funds, AJFA sets aside 10 percent of the annual campaign to provide resources to programs in other organizations that provide civil legal services such as immigration, limited scope, and mediation services.

AJFA also helps direct the delivery of legal services. Anne Milne, ULS executive director and founding partner of AJFA, asserts that AJFA strives to eliminate duplication and fill gaps in services. “By consolidating, AJFA is able to minimize overhead expenses as well as administrative and fundraising

costs,” she says. “We take collaboration seriously and work collectively to make the best use of resources.” AJFA works closely with the bar and court programs to help meet the civil legal needs throughout the state, and AJFA agencies collaborate on special projects between agencies and law firms.

In addition, AJFA simplifies the necessary costs and organization of running an agency. Through a capital campaign, AJFA purchased the Community Legal Center, which now houses

“We as a society are stronger when all of the members of our community have access to justice.”

—STEWART RALPHS

the Salt Lake offices of all three founding agencies, saving them hundreds of thousands of dollars every year. “This central location of our programs in the same building serves as a one-stop shop,” says Ralphs. “A person seeking services from one agency may be quickly referred to another agency or program that better fits her or his needs.”

A Wealth of Results

The idea that Utahns need these services is unquestioned. AJFA figures that 67 percent of households had one or more legal

problem in 2017, and 14 percent had more than five. A full 87 percent of legal problems were met by citizens who were not assisted by an attorney. In 2017 alone, AJFA helped 29,877 clients as well as 18,789 “secondary beneficiaries,” such as the children or other family members of the primary beneficiaries. In total, AJFA’s partner agencies helped 48,666 individuals last year, and the organization estimates they reached another 4,316,249 through systemic advocacy efforts.

One example of the people AJFA has assisted are those in domestic violence situations. The AJFA website states that 28 people died in domestic violence incidents in 2017. Last year LAS and ULS helped 4,123 people get protective orders to avoid that same fate.

A Constant Need

AJFA is a place where attorneys can put their legal expertise to work. Milne expressed the ongoing need AJFA has for creating relationships with those who can help provide legal services and mentioned BYU Law’s recent innovation, SoloSuit, which grew out of the school’s LawX Legal Design Lab.

Milne says, “We need and welcome new partners, whether individual lawyers taking pro bono cases, new nonprofits focused on providing legal services, or law students and professors designing efforts like solosuit.com.”

Adina Zahradnikova, executive director of the Disability Law Center and AJFA founding partner, echoes this need. She says, “Law clerks and interns play a critical role in supporting the mission of the Disability Law Center. They add a vibrancy and passion to our organization that

helps ensure we are serving clients with integrity, enthusiasm, and impact.”

A Deeper Meaning

The mission of AJFA is meaningful on both a community and a personal level—not only for those who are served but also for those who serve. For Christensen, the service she gives in AJFA has been an important foundation. She says, “My religious and spiritual convictions have encouraged me to seek out opportunities in my career and in my personal life to serve, in whatever way I can, those who are less fortunate than I. And I feel that I have been able to do that at AJFA.” BYU alum Amberly Datillo, ’04, is a staff attorney at Disability Law Center, one of AJFA’s partner agencies. Growing up, she loved helping her grandmother, a special education teacher, in her classroom, and Datillo entered BYU Law planning to use her degree to advocate for people with disabilities.

In 2011 Datillo’s son was diagnosed on the autism spectrum. Datillo notes that her work done under the AJFA umbrella at the Disability Law Center became even more important to her, as it allows her “to advocate for people with disabilities, including my son, to have the resources they need to lead full and included lives.” She adds, “Our community misses out when we don’t include people of all abilities.”

And Ralphs agrees: “We as a society are stronger when all of the members of our community have access to justice.”

To donate your time or other resources to AJFA, or to learn more about the organization, please visit andjusticeforall.org.

On Taxation, Inequality, and the Citizen's Role

AN INTERVIEW WITH USC'S PROFESSOR KLEINBARD

At BYU Law School on March 26, 2018, USC professor Edward D. Kleinbard delivered the Bruce C. Hafen Endowed Lecture, titled "What's a Government Good For? Fiscal Policy in an Age of Inequality." Recently, BYU professor Cliff Fleming followed up with him to discuss Kleinbard's professional trajectory, advice for budding lawyers, and ideas on taxation.

Fleming: You had a lengthy career at a high level of law practice followed by a period of high-level government service. How would you compare the satisfactions of those two parts of your professional life?

Kleinbard: I enjoyed law practice very much. In contrast, from 2007 to 2009 my service as chief of staff of Congress's Joint Committee on Taxation (JCT) required me to be the principal non-partisan tax adviser to the most partisan collection of men and women on the planet. I was surprised at how little interest there was in improving our tax laws unless the improvement would advance a partisan agenda. Working as a staff member at JCT is an interesting way of observing bare-knuckle politics, but the chief of staff is a job I wouldn't wish on anyone.



But the Treasury Department's Office of Tax Policy and the IRS's Office of Chief Counsel are excellent places for young lawyers to both contribute to the public good and gain important skills and experience—usually without quite as much day-to-day political drama as one faces on the Hill. I highly recommend that kind of service.

F: What advice would you have for an undergraduate who is considering law school?

K: Too many people go to law school because they can't think of anything else to do. It's true that law school provides a broad educational experience that is useful in many vocational settings, but a legal education has become very expensive. Anyone contemplating that expense should first understand that lawyers are service providers. If one doesn't enjoy solving other people's problems, advocating other people's causes, and resolving

other people's controversies, then practicing law will not be a good fit. My joke has always been that if I couldn't be a lawyer, I would have been a butler; I like taking other people's burdens off their shoulders and making them mine. Most any legal specialty practiced at a high level requires sustained analytical effort, strong writing skills, and a willingness to read and absorb an enormous amount of material, but if you want to pursue the most intel-

lectually demanding specialties, then I would look to tax and intellectual property.

F: A current meme among politicians is that America is an over-taxed nation. You have presented a strong case for the proposition that Americans are undertaxed in comparison to other nations with developed economies. What are your thoughts on how the overtaxed narrative has gotten such traction?

K: I think it's due to three things. First, there is a small but very wealthy set of Americans who simply do not want to pay taxes at a level commensurate with the good fortune with which they have been blessed. They are, however, willing to spend substantial sums in the political process to secure their preference for low taxes on themselves. Second, these individuals have done a brilliant job of selling Americans on the notion that there is a magical "growth fairy" who will automatically reward us with broadly enjoyed economic growth if we lower taxes. The empirical evidence is to the contrary, but the message has been successfully sold. Third, this sales job has been aided by a related sales job—i.e., successful advocacy for the proposition that the American ideal of individual political liberties must be conflated with low taxes and small government. That is simply not so. Through fundamental constitutional guarantees and the control of government exercised by Americans through the democratic process, we can have the individual liberties that Americans prize while taxing ourselves at a level that pays for the government services Americans demand and that avoids saddling our children and

grandchildren with government debt that we have incurred for our own benefit.

F: You mentioned in your lecture that your current work involves an examination of the role of luck in our lives. Would you please say something about that?

K: The evidence is overwhelming that for most Americans, some of the most important determinants of their life achievements are where, when, and to whom they were born. The right align-

ment of those factors creates an overwhelming likelihood that a person will enjoy comfortable economic outcomes. The wrong alignment creates the opposite likelihood. It is certainly true that some people are able to overcome adversity, and we rightly hold them up for praise. Nevertheless, being born to the right parents in the right place at the right time is not an outcome earned through meritorious achievements in a prior lifetime. It is simply good fortune. This means a few important things.

First, we who are successful need to be wary of telling ourselves that we made it on our own and owe little to anyone else. Second, we should be willing to share our good fortune with those who were born to the wrong parents or in the wrong place or at the wrong time. Finally, this should help us understand the potential of government to fulfill an insurance role. To be specific, when we recognize that good people can have bad things happen to them through no fault

of their own, we can see that an adequately funded government can act to mitigate at least the worst of the bad consequences, just as private insurance mitigates the financial consequences of a house fire.

improve the process so that we get more carefully considered tax legislation that has stability because it draws bipartisan support?

K: The fundamental failure of our democratic processes is the collapse of a functioning legislative branch. If Americans pay attention to the electoral process, actually show up to vote, and elect members of Congress who are reasonably intelligent, committed to the good of all citizens, and endowed with some experience or training to have given them exposure to the complex issues on which they will have to legislate, these problems will largely dissipate. Without a better informed, more critical, and more committed electorate who take the franchise seriously, we will continue to get what we got in December 2017.

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F: The major federal tax legislation enacted in December 2017 was passed in a very hurried fashion that, we are discovering, produced errors and unintended consequences. Moreover, the legislation was passed without bipartisan support. How can we

The Robert C. Packard Trustee Chair in Law at USC's Gould School of Law and a fellow at the Century Foundation, Edward D. Kleinbard was one of four individuals honored as a 2016 International Tax Person of the Year by the non-partisan policy organization Tax Analysts. He is also the author of We Are Better Than This: How Government Should Spend Our Money (Oxford University Press, 2014), which Pulitzer Prize-winning journalist David Cay Johnston described as "a masterpiece of tax, fiscal, and economic policy." In 2007 Kleinbard was appointed as chief of staff of Congress's Joint Committee on Taxation. Prior to that, he was a partner in the New York office of Cleary Gottlieb Steen & Hamilton LLP for more than 20 years. Kleinbard received an MA in history from Brown University and a JD from Yale Law School. He joined the USC law faculty in 2009.

Entertaining Strangers

*Based on remarks from the
2018 annual J. Reuben Clark Law
Society Leadership Conference*

By Gayla Moss Sorenson

BYU LAW ASSISTANT DEAN OF EXTERNAL
RELATIONS; JRCLS EXECUTIVE DIRECTOR

Since assuming my role as executive director of the J. Reuben Clark Law Society in January of this year, I have enjoyed traveling around the country to meet with members of the Law Society and with BYU Law alumni from sea to shining sea—literally! I have been impressed by the camaraderie, the educational events, and the service given by those I have visited. I have felt a genuine sense of gratitude for our members' generous donations of skills, time, and money, and I have developed a deep sense of responsibility to help lead this society in a way that consecrates the use of those resources.

As I have pondered that responsibility and counseled with other leaders about the direction of the Law Society, I have become convinced that we need an even greater focus on the practical application of one of the commitments made in our great mission statement: to

"strive through public service . . . to promote fairness and virtue."

Although I did not participate in the drafting of our mission statement, I believe that each word was carefully chosen by the group of highly skilled attorneys who wrote it. Accordingly, our commitment is not to some generalized form of service but to *public service* that promotes *fairness* and *virtue*. What does it mean to serve the public, and how do we do so in a way that promotes fairness and virtue?

Public Service

As it is commonly used, a public service is one offered to *all* members of a community. As attorneys of faith, I suggest we

look to sacred texts to help us think about that more deeply. In Hebrews we are given an interesting directive: "Let brotherly love continue. Be not forgetful to entertain strangers: for thereby some have entertained angels unawares" (Hebrews 13:1-2).

As a young adult, I applied my preferred definition of "entertain" and took this as an injunction to invite people I did not know very well to my parties. However, while having strangers over for game night or Sunday dinner is an enjoyable way to pass time, my more mature perspective has led me to understand that the secondary meaning of "entertain" is more applicable. The truly

Christlike interpretation would be to carefully consider those who are not readily known to me. Accordingly, I have come to cherish these verses as a call to extend my brotherly love to those who are outside my established circle of family and friends and to carefully consider how I should do so.

As we couple this admonition in Hebrews with the Law Society's mission statement, I believe we must be more motivated to search out opportunities to serve strangers—people who are unlike us and people who are not a part of our nuclear or faith-based families. I have reached a point where I cannot simply help a family member with some



estate planning or advise a ward member who is engaged in a landlord-tenant dispute and feel that I am fully living up to the commitments I have assumed as an attorney of faith and as a member of the J. Reuben Clark Law Society. Just as when we are shopping for a car and suddenly begin to see the model we are considering everywhere, once we start to carefully seek out the “strangers” we can serve, opportunities will miraculously begin to present themselves.

Strangers can be found in so many places: among veterans trying to navigate a complex system to claim benefits, among refugees and asylum seekers faced with bewildering legal processes, or among former convicts seeking pardons so they can find work and contribute in professions otherwise barred to them. True public service and true compliance with gospel teachings require us to serve them all.

Fairness and Virtue

Although seeking out and serving strangers is not easy, our mission statement actually requires even more of us. There are countless people who can provide service in a multitude of ways, but we have committed to promote both fairness and virtue, and our legal training uniquely fits us for this task. Only 0.4 percent of the United States population are attorneys, and the percentage globally is even lower.¹ As taught in one of my favorite Primary songs, as attorneys we truly “have a work that no other can do.”²

First, fairness. Fairness is a concept linked to the particular circumstances of a given case, so in order to promote fairness, we have to dive—not wade—into understanding the plight

our stranger is in. In conjunction with the encouragement to serve strangers, we are counseled as follows: “Remember them that are in bonds, *as bound with them*; and them which suffer adversity, *as being yourselves also in the body*” (Hebrews 13:3, emphasis added).

If we are truly going to promote fairness, we cannot simply direct matters from afar; we must understand those we are serving at a level from which we can completely identify with the bonds and adversity they face.

I believe we must be more motivated to search out opportunities to serve strangers—people who are unlike us and people who are not a part of our nuclear or faith-based families.

This means we must indeed “entertain” these strangers we are committed to serve.

Next, virtue. Virtue requires just application of the law, and even though many of us do not practice in the areas where strangers are most likely to need our help, our skill sets enable us to acquire expertise in new areas if we apply ourselves. Moreover, while I do not want to minimize the complexities of any given area of law, our baseline abilities to read legalese, parse through the requirements of an application, and organize information in a way that supports a claim often go a long way toward clearing what feels like an insurmountable hurdle to someone in need.

While we cannot guarantee the desired outcome, we can ensure that the outcome is virtuously, and therefore justly, based on complete and accurate facts presented in compliance with required processes.

Entertaining Angels

I hope you are personally motivated to entertain strangers and to “strive through public service . . . to promote fairness and virtue.” I speak to you, though, not just as individuals who may be making new commitments

to volunteer there. However, based on a combination of valid reasons and weak excuses, I failed to take any concrete steps to help these strangers. Then our Women in Law Committee organized a group of attorneys to volunteer in Dilley. My reasons and excuses quickly evaporated. Someone else took the time to set up the logistics, others could speak Spanish, and still others were willing to provide the basic training necessary to help with this phase of the asylum process.

A society-wide approach allows us to apply our complementary strengths while motivating each other directly and through our examples. Because of a society-wide approach, I now have concrete plans to provide public service in a way I otherwise could not or would not have done.

In closing, I’d like to briefly touch on the tantalizing possibility of entertaining “angels unawares.” I feel sure that, more often than not, those we serve will, in turn, be angels who help us refine our better selves and who affirm that we are doing our Heavenly Father’s will. Although those we serve may be strangers to us, they are not strangers to Him. The aspirations of our Law Society are lofty, and while we do great good, I know we can do even more.

NOTES

- 1 See “Numbers of lawyers in the United States from 2007 to 2018,” Statista, [statista.com/statistics/740222/number-of-lawyers-us](https://www.statista.com/statistics/740222/number-of-lawyers-us), accessed Sept. 24, 2018; also “U.S. and World Population Clock,” United States Census Bureau, [census.gov/popclock](https://www.census.gov/popclock/), accessed Sept. 24, 2018.
- 2 “Dare to Do Right,” words by George L. Taylor, music arr. by A. C. Smyth, *Children’s Songbook* (1989), 158.



Clark Memorandum

J. Reuben Clark Law School

Brigham Young University

