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I AM NOT THE HERO
OPENING DOORS
TOWARD A MORE PERFECT UNION

D. Gordon Smith, Publisher
K. Marie Kulbeth, Executive Editor
Rebecca Walker Clarke, Editor
Lena Harper Primosch, Associate Editor
David Eliason, Art Director
Bradley Slade, Photographer

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Religion, Democracy, and the Habits of the Heart

ELDER BRUCE C. HAFEN
Emeritus General Authority of
The Church of Jesus Christ of Latter-day Saints
I am honored to join you leaders of the J. Reuben Clark Law Society (JRCLS) in your 30th-anniversary meeting amid the stunning mountains of Aspen Grove in Provo Canyon. Eighty years ago in this very place, J. Reuben Clark Jr. of the First Presidency of the Church delivered perhaps the most influential discourse on Church education in modern Church history—just one example of why JRCLS members honor him as a role model for their professional and personal lives.

As the long shelf life of that discourse shows, President Clark possessed deep spiritual instincts and a gifted intellect, enhanced by superb legal training and experience, which gave both roots and wings to his written insights. And while he was not a worldly man, he cared about making the world better. He agreed with Justice Oliver Wendell Holmes Jr. that “it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived.” Yet he also felt uncommon gratitude for the needs and contributions of common, everyday people. Further, he taught all of us how to approach Church service with his acutely personal lesson that, “in the service of the Lord, it is not where you say that the grass never grew where Brigham Young spit when he was thinking about lawyers. (As you know, in the days of Joseph Smith and Brigham Young, the law was often used as a weapon of intense persecution against the Latter-day Saints.) When we were drafting the first BYU Law School admissions booklet in 1972, we looked for quotes from early Church leaders to encourage our law students. Here’s every heading we found under “Lawyers” in the index to the Journal of Discourses, a noted collection of sermons by Church leaders from 1854 to 1886:

- Contestion increased by Deceitfulness of
- Dishonest methods among Education needed by to distort truth
- Gospel forsaken by those with single-track minds
- Honest man refuses pay for advice
- Need for among LDS is rare
- Need for young LDS men to defend LDS rights Practices of tend to expel Spirit of God
- Smith, Joseph’s low opinion of Undesirableness of profession in LDS society

We decided not to include those quotes in our booklet.

Well, we have come a long way since that unfortunate era. J. Reuben Clark was the first lawyer called to serve in the First Presidency in 1934. And with the leadership of President Marion G. Romney and President Dallin H. Oaks, both fine lawyers as well as eventual First Presidency members, BYU Law School opened its doors in 1973.

In 1988 the idea of organizing a Law Society arose in a Washington, DC, visit I had with Ralph Hardy, a partner in a DC law firm, a stake president, and a frequent advisor to the Church Public Affairs Committee. I was the new BYU Law School dean, and Ralph wondered how the school was going. He was impressed at how quickly the school was gaining national stature, suggested by the number of our graduates who had become Supreme Court clerks. But he was concerned to learn that we needed more financial resources to sustain the level of faculty research required of a leading law school. We wanted to create a series of privately endowed professorships that would support that research, but our alumni were still too young to help us much financially.

Ralph understood immediately. He had never been a BYU student, but he had attended the Law School dedication in 1973 because, he said, “when the Church announced the creation of that law school, I sensed that the school’s reputation and my own professional reputation were all intertwined, whether I liked it or not.” So he wanted the school to succeed.

“Let’s name the first Law School professorship for Robert W. Barker,” he said, “and I’ll raise the funds.” As a young DC practitioner, Ralph had been overwhelmed with the time demands from his law firm, his church activity, and his family. Then he noticed his stake president, Robert Barker, who succeeded masterfully along all three fronts. Ralph thought, “If Bob Barker can do all of that and do it well, so can I.” Before long, Bob became Ralph’s mentor.

Then Ralph wondered if the Law School might support a society for Latter-day Saint lawyers, separate from our alumni. “We need to find the Bob Barkers in every city,” he said. Creative sparks began to fly as we discussed the possibilities: role models and mentors for young lawyers; a national directory to allow lawyer-to-lawyer referrals; a quality periodic to teach a vision of the organization (this became the Clark Memorandum); and local gatherings to encourage public service, networking, and support. We thought we would perhaps name the society for J. Reuben Clark Jr., a role model whose life reflected our vision.

I soon tried out the concept with small groups of Latter-day Saint lawyers in several U.S. cities. They responded warmly, many enthusiastically. In Chicago we found an existing Latter-day Saint lawyer group that called itself the Zeezrom Society. They gladly joined us, and, like Zeezrom of old, were converted—to the JRCLS cause.

Looking back, I marvel at the JRCLS’s growth over the past three decades. We now have over 12,000 members, 125 student chapters, and many international chapters and special committees. I am touched to see dozens of JRCLS leaders here tonight from Latin America and other international areas. Your presence says volumes about the growing international strength of both the JRCLS and the worldwide Church.

I am grateful for the reciprocal support I have seen develop over the years between
The Strength of a Lawyer’s Personal Religious Conviction

Some ask, “Is it possible to be a highly educated, serious professional—one who has developed polished analytical skills and street smarts; who feels a passion for civic duty and social justice and cares about people from all backgrounds; who loves life, his or her family, and the law—and still be a fully consecrated disciple of the Savior?” The personal examples of the international JRCLS leaders through the years offer a resounding yes. Indeed, their stories show that the well-educated use of a lawyer’s skills and energy can enhance one’s spiritual discipleship.

This leads naturally to the second part of my topic—“the strength brought to the law by a lawyer’s personal religious conviction.” That idea calls to mind what President Marion G. Romney famously said about the mission of the BYU Law School: We should study the “‘laws of . . . man’ in the light of the ‘laws of God.’”

President Romney’s memorable phrase invites us to look not only at the law but at all knowledge through the gospel’s lens. Elder Neal A. Maxwell similarly taught that we can integrate a secular map of reality into the broader sacred map, but the smaller secular map, with its more limited tools and framework, cannot always accommodate religious insights. Because the gospel map is broader, the gospel will always influence one’s view of the professional disciplines more than the disciplines influence one’s view of the gospel. Thus the Aims of a BYU Education official document states, “The gospel . . . encompasses the most comprehensive explanation of life and the cosmos, supplying the perspective from which all other knowledge is best understood and measured.”

In my own research and writing in family law, I looked to the gospel for the most basic premises for my reasoning—even though I knew I needed to speak the language and accept the constraints of my academic discipline in trying to persuade scholarly editors to publish my work.

At the same time, we concluded in the Law School’s early years that, as a practical matter, President Romney’s injunction invites us to focus more on the individual student or the lawyer’s personal religious convictions than it does on, say, the standard law school curriculum. Is there a religious version of torts or contracts? Rex E. Lee did ask us tongue-in-cheek in one early faculty meeting what legal casebooks could have been written by scriptural characters, such as Strict Liability by Uzzah (who was struck dead for touching the ark of the covenant); Fraudulent Conveyances by Jacob and Esau; and How to Avoid Probate by the Three Nephites.

We came to favor an aspirational concept for our students—a sense of higher law as a personal vision or commitment. The lesser law is what the rules of professional conduct and legal ethics require. Think of the first level of the Hippocratic Oath in medicine—to honor confidentiality and to avoid doing harm. Yet beyond that level, we offered our students a professional seminar course that taught a higher set of attitudes grounded in religious values: not just to avoid harm but affirmatively to seek to be good and to do good—a greater hope than merely to do well. Think of the New Testament’s higher law of Christ compared to the Old Testament’s law of Moses.

We gradually extended that approach to the JRCLS with each issue of the Clark Memorandum, our twice-yearly professional publication. Drawing mostly on selections from the Memorandum, the Law School has now published three volumes called Life in the Law with these three subtitles: Answering God’s Interrogatories, Service and Integrity, and Religious Conviction. The full content is available at digitalcommons.law.byu.edu/life_law:

These volumes contain prized collections of exceptional essays by thoughtful men and women who have examined things that matter most in both their professional and private lives. All of them address important questions about the experience of being a Christian attorney.

In this light, how does one’s personal religious conviction strengthen what a lawyer or law student brings to the law—and to fellow lawyers? Here is one recent example from attending the 40-year reunion of the Law School’s first graduating class. Reflecting on his gratitude for his law school years, one charter-class member told me with some emotion that he believes he wouldn’t have remained active in the Church had he gone elsewhere to law school. When I asked him why, he said there was something about the spiritual and intellectual maturity of his BYU
classmates that let him see the gospel and the Church through their eyes in a more substantial light than he had understood before—and their perspectives rubbed off on him.

As we talked further, his experience reminded me of what Justice Holmes once said: “I wouldn’t give a fig for the simplicity on this side of complexity. But I would give my life for the simplicity on the other side of complexity.”

I gathered that this student, in his pre-law school years, had lived his early Church experience primarily in the simplicity on this side of complexity—with innocent and untested attitudes and assumptions. But then he had encountered the complexity of challenges to his faith that left him in a world of uncertainty, ambiguity, and, at times, cynicism. In that unsettled and spiritually tentative state of mind, he had enrolled in the BYU Law School’s first class.

During the next three years, he developed numerous close friendships with gifted classmates who had learned from and grown through their own religious complexities into the serene and fully tested simplicity beyond complexity. The authenticity and integrity of their experiences and attitudes helped him discover, explore, and then internalize his own refined simplicity—a spiritual and intellectual depth that continued growing within him from then on.

This isn’t the place to explore Justice Holmes’s insight more fully, but I consider this student’s honest and grateful description of his own spiritual growth—and especially the place of his classmates in assisting him—a good illustration of how a mature and highly skilled lawyer’s well-developed religious convictions can help him or her strengthen an endless array of family members, friends, and other Church members. The analytical tools of complexity—skills often well developed among lawyers—can be used to tear down or to build up, in courtrooms, boardrooms, church classrooms, or homes. Religiously well-grounded lawyers who have found their own simplicity on the other side of complexity will use their tools and skills to build up.

Religion in the Democratic Society

Now what happens when we let the particular become the general and we imagine the collective influence of religious convictions on the larger society? We value each lawyer’s and each citizen’s personal religious convictions in no small part because religion is absolutely essential in maintaining a democratic society. Consider two classic sources to support that premise: Alexis de Tocqueville and the Founding Fathers.

In Democracy in America, probably the best book ever written about democracy, the French writer Alexis de Tocqueville analyzed why democracy was succeeding in the United States more than in France or elsewhere. After living in America to study his subject in the 1830s, Tocqueville saw that democracy’s self-centered individualism could tear apart the very connections that hold a free society together.

Yet he also discovered a counter tendency unique to American democracy: the crucial role of certain small, local “intellectual and moral associations,” especially families, churches, and schools, that teach each generation “mores”—the values, attitudes, and skills required for self-governance to work. These “habits of the heart” teach us why and how to cooperate with other people and to obey the unenforceable.

These voluntary organizations stand between the state and the individual, functioning as mediating institutions between the public megastructures of society—such as the state, the mass media, and giant corporations—and the private sphere of individual life. In a democracy, the megastructures are not reliable sources of the personal values that give ultimate meaning to individual lives. Rather, the state provides a free and stable economic, political, and social environment, allowing each individual the crucial freedom to develop identity, meaning, and purpose for his or her own life. The mediating institutions are what have been called “the value-generating and value-maintaining agencies in society,” providing the moral foundation for the political order.

For Tocqueville, religion was the most important mediating institution:

*The great severity of mores which one notices in the United States has its primary origin in [religious] beliefs.*

Religion, which never intervenes directly in the government . . . , is therefore . . . the first of their political institutions. Thus,

*[d]espotic may be able to do without faith, but freedom cannot. . . . How could society escape destruction if, when political ties are relaxed, moral ties are not tightened? And what
can be done with a people master of itself if it is not subject to God.\textsuperscript{21}

For a current illustration of Tocqueville’s point, Harvard business theorist Clayton Christensen told of meeting with a Marxist economist from China who was studying in Boston. Christensen asked what the Chinese economist had learned in the United States that most surprised him. The man said:

\begin{quote}
I had no idea how critical religion is to the functioning of democracy. . . . The reason why democracy works . . . is not because the government was designed to oversee what everybody does, but rather democracy works because most people, most of the time, voluntarily choose to obey the law. And in your past, most Americans attended a church or a synagogue every week, and they were taught there by people who they respected. . . . Americans followed these rules because they had come to believe that they weren't just accountable to society, they were accountable to God.
\end{quote}

So Christensen asked himself:

\begin{quote}
As religion loses its influence over the lives of Americans, what will happen to our democracy? Where are the institutions that are going to teach the next generation of Americans that they too need to voluntarily choose to obey the laws? Because if you take away religion, you can't hire enough police.\textsuperscript{22}
\end{quote}

Now consider the views of the American founders on why religion is an essential prerequisite for the Constitution and for democracy to succeed. Both the Declaration of Independence and the U.S. Constitution were premised on the concept of natural human rights. Natural rights theory was first developed by such European writers as John Milton, Thomas Hobbes, and John Locke; then the theory crossed the Atlantic to put sharp intellectual arrows into the quivers of America’s founders.

Thomas Jefferson was clear about the source of human rights: “We hold these truths to be self-evident,” he wrote in the Declaration of Independence, “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” (emphasis added). And “[g]overnments are instituted among Men” precisely in order “to secure these rights.” In other words, the human rights included in the American Constitution’s Bill of Rights existed prior to the state’s existence. They were derived directly from God, not from the state, and the state’s role was and is to protect those prior rights.\textsuperscript{23}

Some years ago in South Africa, the late U.S. senator Robert F. Kennedy used language very familiar to Latter-day Saints when he echoed Jefferson. English judge Sir Rabinder Singh summed up his words: “[T]he essence of human rights thinking is that each human being is the precious child of God.”\textsuperscript{24} Building on this idea, Judge Singh said that even though “belief in human rights does not have to depend on . . . belonging to any faith system,” still, “throughout history the concept of human rights has been shaped and influenced by those” whose religious faith taught them “that we are all the children of God and members of one human family” and that, therefore, “every human being is a brother or a sister” and “ethical living requires universal love towards others.”\textsuperscript{25}

Speaking of being children of God, modern scripture gives the Latter-day Saints a unique understanding about the Creator’s divine role in founding the American republic. In 1833 the Lord said that He had “established the [United States] Constitution . . . by the hands of wise whom I raised up unto this very purpose.”\textsuperscript{26} No wonder Wilford Woodruff would later say that the “men who laid the foundation of this American government . . . were the best spirits the God of heaven could find on . . . the earth.”\textsuperscript{27}

The approach of the American founders to the subject of religious freedom was especially important to Latter-day Saints. Why? Because even though religious liberty was clearly emerging in England, the Crown still allowed only one state religion, as did virtually all other countries in which a new church might have been organized. And prior to U.S. independence in 1776, nearly every one of the American colonies also had an official religion. But the U.S. Constitution in 1787 unleashed new winds of religious freedom. Thus by Joseph Smith’s time in the 1820s, it was finally lawful to organize a completely new church in the state of New York.

Steven Waldman’s recent book Founding Faith: Providence, Politics, and the Birth of Religious Freedom in America\textsuperscript{28} focuses on the lives and thoughts of Benjamin Franklin, George Washington, John Adams, Thomas Jefferson, and James Madison—the five founders who had the greatest influence in developing the American vision of religious freedom embodied in the First Amendment to the U.S. Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

As Waldman summarizes, “The Founding Faith . . . was not Christianity, and it was not secularism. It was religious liberty—a revolutionary formula for promoting faith by leaving it alone.”\textsuperscript{29} Despite their individual differences, these five key founders all believed deeply that God intervenes in the affairs of humankind, and they all “felt religion was extremely important . . . to encourage moral behavior and make [their new nation] safe for republican government.”\textsuperscript{30} Thus they believed that religion would help their free government thrive “by keeping officeholders honest and voters virtuous.”\textsuperscript{31}

As John Adams put it:

\begin{quote}
It is Religion and Morality alone, which can establish the Principles upon which Freedom can securely stand. . . . The only foundation of a free Constitution, is pure Virtue, and if this cannot be inspired into our People, in a greater Measure, than they have it now, They may change their Rulers, and the forms of Government, but they will not obtain a lasting Liberty.\textsuperscript{32}
\end{quote}

And what did the founders mean by “religion”? Each had his own distinctive approach, but Jefferson’s was typical, especially as he mellowed with age: To live a life worthy of salvation, Jefferson wrote to a friend, “Adore God. Reverence and cherish your parents. Love your neighbor as yourself, and your country more than yourself. Be just. Be true. Murmur not at the ways of Providence.” Such a life is “the Portal to [a life] of eternal and ineffable bliss.”\textsuperscript{33}

These five founders all had serious reservations about the organized Christian churches of their time, and they disliked the
tyranny they saw being imposed by some state religions in the individual colonies. So, in a process that I believe was attended by divine inspiration, they finally came to a unique, shared approach based on three key principles:

- First, religion is essential to the flourishing of a democratic society.
- Second, church and state should be separated, because that separation spawns more authentic religious beliefs and practices.
- And third, “God gave all humans the right to full religious freedom.”

The American founders understood the personal and social value of genuine religious faith so clearly that they resisted the temptation to establish an official state religion. They knew for themselves that imposing faith will keep real faith from thriving and will jeopardize the rights of minority believers.

The general trend of the last two centuries shows that the American founders were correct in believing that their approach would lead to more religious liberty and to more genuine religious practice. In 1776, 17 percent of the U.S. population claimed membership in a church. By 1850 that percentage had doubled to 34 percent, and by 2014 it had more than doubled again, as 76 percent of Americans said they are affiliated with a religion. Gallup surveys for the last 20 years tell us that well over half of the U.S. population have consistently said that religion is very important in their lives.

Of course, the gap between how we believe and how we actually live is always a challenge. In one U.S. poll, 77 percent said they believe religion is now “losing its influence,” but by 10 years earlier, 71 percent thought religion was “increasing its influence.” And a 2015 Gallup poll found that Americans’ confidence in organized religion has hit a new low. In the mid-1970s about 70 percent had high confidence. That figure is now 42 percent. Public confidence in most institutions has been declining for years, but by 2015 organized religion had also slipped from being the most trusted institution to being the fourth most trusted—behind the military, small businesses, and the police. Still, “compared with [other] developed nations, Americans believe in God more, pray more, and attend worship services more” and “are the most religiously vibrant nation on earth not despite separation of church and state—and religious freedom—but because of it.”

Moreover, this pluralistic brand of religion with its many churches has blessed society. Over the years most American social reform movements that improved the status of the disenfranchised or the maltreated were fueled by religious faith. For example, ending slavery and child labor, improving working conditions, establishing public schools, creating a social safety net, and promoting civil rights were all “driven in large part by people of faith.” The key axiom has been that civilized religion “is committed to the principled and active betterment of society as a whole.”

Waldman gives us some personal and spiritual glimpses of the founders in his last chapter, “Friends in Heaven: The Founders End Their Spiritual Journeys and Prepare to Continue the Conversation in the Next Life.” For example, John Adams and Thomas Jefferson, both former U.S. presidents, had once been good friends before becoming political enemies. In their later years they renewed their friendship, exchanging thoughtful letters for more than 10 years. In 1823, three years before they both died, one of Jefferson’s letters to Adams imagined “the two of them standing at the windows of heaven, blissfully reminiscing and peering below, without the burdens of responsibility.” Jefferson wrote, “You and I shall look down from another world on these glorious achievements to man, which will add to the joys even of heaven.”

In 1818, when Adams’s dearest friend, his wife, Abigail, had just died, Jefferson wrote to Adams. Listen to Jefferson’s belief about relationships beyond the grave—perhaps intuiting the prospect of eternal love and even eternal marriage:

Altho’ mingling sincerely my tears with yours, will I say a word more, [even though] words are vain, but that it is of some comfort to us both that the term is not very distant at which we are to deposit . . . our sorrows and suffering bodies, and to ascend in essence to an ecstatic meeting with the friends we have loved and lost and whom we shall still love and never lose again. God bless you and support you under your heavy affliction.

Then the Lord extended one last stamp of heavenly approval to Adams and Jefferson, those leaders among the “wise men whom [He] raised up” to prepare the American Constitution. On July 4, 1826, John Adams was on his deathbed at the age of 90 while the country was celebrating Independence Day. Among his last words, Adams remarked about his old friend and competitor, “Thomas Jefferson survives.” But in fact, Jefferson had died earlier that same day in Virginia at age 83. How striking that these two intellectual and spiritual giants would both have died 50 years to the day after each had signed the Declaration of Independence, of which Jefferson was the principal author.

As David McCullough wrote in Adams’s biography:

That John Adams and Thomas Jefferson had died on the same day, and that it was, of all days, the Fourth of July, could not be seen as a mere coincidence: it was a “visible and palpable” manifestation of “Divine favor,” wrote [Adams’s son] John Quincy in his diary that night, expressing what was felt and would be said again and again everywhere the news spread.

Finally, may I be a bit personal about the founders and their religious instincts? From 2010 to 2013 my wife, Marie, and I were blessed to be in the St. George Temple. We walked its sacred pioneer halls and learned its history as the first temple after the Nauvoo Temple, dedicated in early 1877—16 years before the Salt Lake Temple. We came to feel a special gratitude and kinship for President Wilford Woodruff, the first temple president in St. George. There he and Brigham Young directed the performance of the first-ever endowments for the dead, the first complete writing of the temple ordinances, and other new patterns needed to complete the restoration of temple work.

When the temple was first dedicated, the Brethren believed that they would be doing temple ordinances for the dead—but
only for their family members and friends. Then President Woodruff received an astonishing manifestation that vastly expanded the scope of temple work. In August 1877, just days before Brigham Young’s death, all of the signers of the Declaration of Independence and George Washington “called upon me, as an Apostle of the Lord Jesus Christ, in the Temple at St. George [on] two consecutive nights, and demanded at my hands that I should go forth and attend to the ordinances of the House of God for them.”

On September 16, 1877, President Woodruff told an audience in the Salt Lake City Tabernacle that the founders wanted “to know why we did not redeem them.” The Church was now doing endowments and sealings for the dead in the temple, yet, they said, “Nothing has ever been done for us. We laid the foundation of the government you now enjoy, and . . . we remained true to it and were faithful to God.” The implications of the founders’ visit were breathtaking. President Wilford continued:

I thought it very singular, that notwithstanding so much work had been done, and yet nothing had been done for them. The thought never entered my heart, from the fact, I suppose, that heretofore our minds were reaching after our more immediate friends and relatives.

As historian Richard E. Bennett wrote:

The importance of extending [the temple ordinances] to this . . . unique group of people, unconnected as they were to any [known] families in the Church, reinforced the doctrine that . . . the ordinances of salvation should [now] be offered to all through proxy work.

In other words, it was now clear that we would eventually do temple work for everyone. With that new understanding, President Woodruff and his associates in the St. George Temple immediately identified a number of other historically significant men and woman for whom they also performed the ordinances—even though there is no evidence that any of these other people appeared to him as the founders had done.

Current Church policy, of course, emphasizes that Church members should concentrate on family history and temple work for their own family members. But, as the founders’ visit showed, the ultimate scope of the work will extend to all who desire to receive the gospel as it is preached in the spirit world.

It is sweet to sense that Jefferson’s inspired instincts about eternal love and marriage, like his inspired instincts about God-given natural rights and the critical role of religion in democracy, were spot on.

Once in a while now, when I see the painting of the founders and Wilford Woodruff in the St. George Temple, I think of John and Abigail’s proxy sealing and remember Jefferson’s words to Adams: “[T]he term is not very distant at which we . . . [may] ascend in essence to an ecstatic meeting with the friends we have loved and lost and whom we shall still love and never lose again.”

So, my friends in the J. Reuben Clark Law Society, when you draw on your own personal religious convictions to strengthen the law and society, “think it not strange . . . , as though some strange thing happened unto you: . . . for the spirit . . . of God resteth upon you”—because your convictions and your lives are fulfilling the highest aspirations of those who founded our democratic society.