



Wally

A P O S T L E S

Despite the infusion of billions of dollars into our cities, innumerable studies and blue-ribbon commissions, and decades

of litigation, racial division remains

Recent riots in Los Angeles show how

relations in the past 30 years Social

spin theories of blame and responsibility,



America's most obdurate dilemma

pathetically little has changed in race

scientists, politicians, and activists

and still the song remains the same

Scholars of the New Left and Neoconservatism alike voice a dismal chorus of failure in the realm of civil rights litigation

E Q U A L I T Y

Yet equality, as conceived by mortal law and refined by moral law, is a value intrinsic to the beliefs of a Chris-

tian lawyer and an essential objective in an ethical society How can those schooled in the "knowledge of the

laws of man in light of the laws of

The first step must be that proposed



God,"¹ best pursue the path of equality?

by Critical Legal Scholars: reject legal

ideology as the basis of discussion. There is nothing unique or novel in seeking a higher measure of conduct than that of law. Portia, the heroine of Shakespeare's *Merchant of Venice*, reminds us "that in the course of justice, none of us should see salvation: we do pray for mercy."² Elder James E. Faust, a member of Quorum of the Twelve Apostles, explained:

There is a great risk in justifying what we do individually and professionally on the basis of what is "legal" rather than what is "right." In so doing, we put our very souls at risk. The philosophy that what is "legal" is also "right" will rob us of what is highest and best in our nature. What conduct is actually "legal" is, in many instances, way below the standards of a civilized society and light years below the teachings of the Christ. If you accept what is "legal" as your standard of personal or professional conduct, you will rob yourself of that which is truly noble in your personal dignity and worth.³

Ensuring procedural or formal equality is "legal." Achieving equality of condition, in harmony with applicable gospel principles, is "right."

Despite traditions to the contrary, no Latter-day Saint can hold any racial or ethnic bias and declare himself consistent with official theology. Elder Hunter, President of the Quorum of the Twelve Apostles, unequivocally repudiated any notion that one race is superior to another:

The gospel of Jesus Christ transcends nationality and color, crosses cultural lines, and blends distinctiveness into a common brotherhood. All are invited to come unto him and all are alike unto him. Race makes no difference; color makes no difference; nationality makes no difference. As members of the Lord's church, we need to lift our vision beyond personal prejudices. We need to discover the supreme truth that indeed our Father is no respecter of persons.⁴

Speaking bluntly, President Spencer W. Kimball asked: "What did you do that made you superior to your other darker brothers and sisters?" Take this message back to your people. Racial prejudice is of the devil. Racial prejudice is of ignorance. There is no place for it in the gospel of Jesus Christ."⁵

Prejudice and inequality have plagued the Church from its foundations. Paul wrote to the Saints in Galatia, a commercial center peopled by a multitude of distinct ethnicities, affirming that all are justified in Christ and rejecting the argument that new converts needed to embrace Jewish practice as well as the gospel. Through the covenants of baptism, "there is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus" (Galatians 3:28). Paul does not call upon the Galatians to abandon their respective cultures and heritages. Rather, he gently reminds that we are defined by our

kinship with Christ. Paul firmly instructs the Galatian saints to put off their disputes over conformity, heal the division, and become one.

The Book of Mormon is replete with examples of the consequences of equality and inequality. The people of King Benjamin and his successor son Mosiah aspired to equality and reaped the rewards. King Benjamin told his people:

And now, for the sake of retaining a remission of your sins from day to day, that ye may walk guiltless before God—I would that ye should impart of your substance to the poor, every man according to that which he hath, such as feeding the hungry, clothing the naked, visiting the sick and administering to their relief, both spiritually and temporally, according to their wants. [Mosiah 4:26]

Note King Benjamin's stated grounds for charity—to receive a remission of one's own sins! When Mosiah stepped down, and judges replaced the monarch, he told the people that inequality should be no more in the land (Mosiah 29:32). There must have been notable economic disparity, otherwise Mosiah, Benjamin, and Alma would not have commented on the poor, the needy, and the remedy applied to ease their situation.

The people heeded the counsel and example of Mosiah and his father. A moral law was obeyed and the natural consequence obtained:

And when the priests left their labor to impart the word of God unto the people, the people also left their labors to hear the word of God. And when the priest had imparted unto them the word of God they all returned again diligently unto their labors; and the priest, not esteeming himself above his hearers, for the preacher was no better than the hearer, neither was the teacher any better than the learner; and thus they were all equal, and they did all labor, every man according to his strength.

And they did impart of their substance, every man according to that which he had, to the poor, and the needy, and the sick, and the afflicted; and they did not wear costly apparel, yet they were neat and comely.

And thus they did establish the affairs of the church; and thus they began to have continual peace again, notwithstanding all their persecutions.

And now, because of the steadiness of the church they began to be exceedingly rich, having abundance of all things whatsoever they stood in need—an abundance of flocks and herds, and fatlings of every kind, and also abundance of grain, and of gold, and of silver, and of precious things, and abundance of silk and fine-twined linen, and all manner of good homely cloth.

And thus, in their prosperous circumstances, they did not send away any who were naked, or that were hungry, or that were athirst, or that were sick, or that had not been nourished; and they did not set their hearts upon riches; therefore they were liberal to all, both old and young, both bond and free, both male and female, whether out of the church or in the church, having no respect to persons as to those who stood in need. [Alma 1:26–30; emphasis added]

The "Crits," a new gang in legal academia, appears to be gaining adherents and is now established as a legitimate legal philosophy. These members of the Conference on Critical Legal Studies feel that minorities are ill-served by pursuing legal rights for racial equality. Critical scholars "trash" (delegitimize) false notions to expose distortions in accepted legal theory. By doing so, the Critics hope to precipitate a fresh dialogue based on "solidarity and individuality."

When civil rights objectives are superimposed onto the skeleton of law (a behemoth created to reinforce the majoritarian worldview), the search for equality becomes futile. In path-breaking commentary, Professor Mark Tushnet comments:

(1) Once one identifies what [is] . . . a right . . . , it invariably turns out that the right is unstable; . . . relatively small changes in the social setting can make it difficult to sustain the claim [of that] right. . . . (2) The claim [of a right] . . . produces no determinate consequences. (3) The concept of rights falsely converts into an empty abstraction (reifies) real experiences. . . . (4) The use of rights in contemporary discourse impedes advances by progressive social forces.

Thus, rights talk impounds legal dialogue, often staging a showdown between competing rights.

Since law is a stabilizer that maintains the status quo, rapid deviation is both unwise and unjustified. Leading Critical scholar Richard Delgado argues that our legal system serves a "homeostatic function, assuring that society has just the right amount of racism. Too little would forfeit psychic and financial benefits, too much would risk disruption." Yet, to acknowledge that law is hegemonic is to concede the inadequacy of law to constructively disrupt the status quo.

Critics see delegitimation as a transformative tool: once the pursuit of social justice is pared from the framework of law, society can begin to mend itself and construct new social canons. It is the latter half of the equation that is troubling. What phoenix will arise once society is freed by "trashing" of established legal ideology? The Critics stumble in response. They fail to recognize that revolutions and peaceful reforms alike occur largely within the framework of established social order. Civil rights leaders of the '50s and '60s urged protesters to spurn violence and work "within the system," exercising the vote, litigating to vindicate rights established a century earlier in the 13th, 14th, and 15th amendments, and exposing the lawlessness of their opponents. The movement's successes were achieved and sustained by invoking the legitimating power of law. The Critics offer

nothing to replace this power as society's ordering force. One scholar has termed the Critics' inability to proceed beyond their emphasis on delegitimation as "dangerously incomplete."

The past two decades brought yet another new voice in political thought: the Neoconservatives. Neoconservatives suggest that the civil rights movement achieved formal equality, and activists would now profit from redirecting their energies into the core problems of the inner city and away from courts and legislatures. The introduction of racial politics has been polluted by legal ideology, according to Neoconservatives. It is legally sufficient, they claim, to guarantee equality as a process, but not as a result. Otherwise, special interest groups will corrupt processes of law and alienate the majority. As an example, they cite the resurgence in white supremacist organizations as the backlash of introducing racial politics into the realm of law.

Perhaps the most significant contribution of Neoconservative thought is the shift to color-blind notions of equality: a white family in the Bronx has no greater (or lesser) claim to guaranteed income than does the Navaho family in Kayenta, Arizona. By shifting the discussion away from race, one is free to concentrate on economic equality. Neoconservatives offer a concrete

RACIAL EQUALITY PRIMER:

Crits and Neos

plan. They offer a combination of "nose to the grindstone, shoulder to the wheel" philosophy, private initiatives, and severely limited government involvement. With help and direction, some have picked themselves up. Family Self-Sufficiency, a private Charlotte, North Carolina, cooperative, has helped twenty-four families buy single-family homes. The program includes home management and career development training. Three years after inception, all twenty-four heads of household are still employed and living in their homes.

Neoconservatism has its own prophets of doom. One of the new right's most respected analysts, Charles Murray, describes the "dark side" of America's near future. Safely predicting that the rich will be a large segment of America in the coming years, he warns of the "potential for producing something very like a caste society, with the implication of utter social separation that goes with the most un-American of words. . . . As this American caste system takes shape, American conservatism is going to have to wrestle with its soul." Murray's recommendation to fellow Neoconservatives embodies classical conservative principles: "Enforce strict equality of individuals before the law. Prohibit the state from favoring groups, including rich and influential groups."

As the people pursued equality, peace and prosperity followed, and for a season untold riches and commercial success resulted. Yet it was not an invulnerable bliss and could be sustained only as long as equality survived as a living principle.

As the surplus swelled, so did the people's pride, and the heritage of Benjamin and Mosiah was about to be undone. Alma saw it coming; he raised the warning cry. But class division was too enticing to those who had a little more. By segregating themselves and hoarding their possessions, they raised their worldly station a notch or two. It hadn't taken long; a scant eight years had passed from the time Mosiah had warned them to eliminate inequality. Even the elect, the people of the church, "began to wax proud, because of their exceeding riches, and their fine silks, and their fine-twined linen, and because of their many flocks and herds, and their gold and their silver, and all manner of precious things" (Alma 4:6).

The pattern was to be repeated nearly 120 years later, although equality was then to endure as a social condition for four generations. Shortly before his crucifixion and subsequent visit to the American continent, Christ established the one fundamental criterion to be worthy of his name:

For I was an hungred, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in:

Naked and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me

Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me. [Matthew 25:35-36, 40]

"Equality among the Lord's covenant people constitutes the measure of their righteousness."⁶ It has been so from the beginning. While establishing Zion among his people, the prophet Enoch warned of the consequences of inequality: "man hates his neighbor" and "covetousness" reigned as the order of the day, for the people had "trusted in [their] riches."⁷ The Book of Mormon peoples knew well the warnings of Enoch; shortly before the birth of the Savior, Samuel disdained the class divisions embraced by those infatuated with their riches, quoting Enoch: "The Lord's law of equality is no less explicit in modern scripture. In a revelation describing the function of the bishop's storehouse, the Lord cautioned that 'if ye are not equal in earthly things ye cannot be equal in obtaining heavenly things' (Doctrine and Covenants 78:6). A few

months earlier, the Lord had proclaimed the essential role equality played in promoting the spiritual health of the Church: "Nevertheless, in your temporal things you shall be equal, and this not grudgingly, otherwise the abundance of the manifestations of the Spirit shall be withheld" (Doctrine and Covenants 70:14).

Much of the scripture condemning inequality or establishing the law of equality is stated in the context of economic equality. The sin of esteeming oneself as greater than one's sister or brother is no less pernicious when the bias is based on external, immutable characteristics of appearance rather than on relative economic condition. It is the self-aggrandizement that is privative of the Lord's spirit, for such suggests that Father prefers one child, or group, over another. This is false, for the Lord " inviteth all to come unto him and partake of his goodness; and he denieth none that come unto him, black and white, bond and free, male and female, and he remembereth the heathen; and all are alike unto God, both Jew and Gentile" (2 Nephi 26:33). Joseph Smith taught that our responsibility is to lift up our kindred, whether "black or white, bond or free; for the best of books says, 'God hath made of one blood all nations of men, for to dwell on all the face of the earth' "⁹

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—PRESIDENT
SPENCER W. KIMBALL**

Today, as the dogma of "political correctness" has crept into our consciousness, we have learned a new vernacular of code words. For example, when one hears a politician belittling welfare recipients, or members of the underclass,¹⁰ can the audience hold any doubt as to the race and social status and perhaps even the gender of the subject? No modern lawyer would dare publicly remark in a fashion that might be construed as racist, or perhaps even

sexist. Any employment lawyer would shrink at the thought of a client asking a prospective employee how she would perform in light of her obligations to husband and children, or how an applicant would perform as the first minority employee in the shop. Yet few have any such compunctions about revealing class bias. As long as one speaks in code, no one is discomforted. Ruth Sidel, an eminent sociologist specializing in family issues, notes that "when people disparage 'welfare mothers,' it's really [the] code words for the black poor. The term 'underclass' is really a code word for black people. It's very hard to separate our hatred of the poor from racism."¹¹

Sometimes, for instance, we readily distinguish between the Wasatch Front poor—those who are experiencing temporary hardship due to a loss of employment, death of a provider, divorce, or some other fate entirely beyond their control—and the teeming masses whose poverty frankly frightens us, or so it should. We are comfortable with the former. We believe that they are safe within the clutches of bishops and ministers, Deseret Industries, and various community charities. They carry themselves in worn, but not tattered vestments, with a noble humility to which we give our approbation. There is no shame imposed thereon by the comfortable in Zion.

It is the latter group that slightly troubles us. We don't openly admit it, but our charity and compassion are generally limited by membership in the Church, or at least persons perceived to be roughly equal in social position. It is a short step from concluding that the poor—or at least most of them—are undeserving. Because the fault for their poverty lies with them, they have no claim on tax funds or charity and have forfeited their right to equality. This conclusion is bolstered by a conviction of poverty's inevitability. Believing that there will always be poor assuages our concerns. Mosiah's people were infected by this attitude, and he cautioned them appropriately:

And if ye judge the man who putteth up his petition to you for your substance that he perish not, and condemn him, how much more just will be your condemnation for withholding your substance, which doth not belong to you but to God, to whom also your life belongeth; and yet ye put up no petition, nor repent of the thing which thou hast done.

I say unto you, wo be unto that man, for his substance shall perish with him; and now, I say these things unto those who are rich as pertaining to the things of this world [Mosiah 4:22–23]

Inequality and poverty are not inevitable in our society. Several Western European countries have virtually eliminated poverty. Family Self-Sufficiency, a Charlotte, North Carolina, cooperative, has helped twenty-four families buy single-family homes. The program includes home management and career development training. Three years after inception, all twenty-four heads of household are still employed and living in their homes.¹² A small group of activists has raised nearly a hundred people from poverty to a state of self-sufficiency beyond mere survival. The scriptures stand before us as powerful witnesses that inequality need not afflict even

large and complex societies. What, then, is required, and how may a Christian attorney contribute to the effort?

One must first ask God for an abiding conviction of the essential unity of humankind. Reverend Martin Luther King, Jr., taught: "We are tied together in the single garment of destiny, caught in an inescapable network of mutuality."¹³ Not long ago, I heard Maya Angelou preach a wonderful sermon. She explained that once she obtained a comprehension of her divine parentage, she was constrained to admit that each man and woman is also a child

of God, and hence her brother and sister in the truest sense. As we seek the Father, we, too, will gain a richer understanding of our familial ties.

Since attorneys are key elements in the structuring and ordering of government and commerce, the Christian attorney must "bring her values into the workplace."¹⁴ Lawyers often counsel and lead their clients or agencies in significant decisions. Leadership toward equality cannot long survive without a spiritual dimension; the countervailing forces of pride, greed, and esteeming oneself as higher than one's sister are potent. The force of litigation should be reserved for the most recalcitrant inequities, in general deference to persuasion and negotiation. Litigation to achieve equality is seldom desirable, often being the aftermath of un-Christian behavior and presaging more of the same. "Mankind's history has proved from one era to the next that the true criterion of leadership is spiritual. Men are attracted by spirit. By power, men are forced. Love is engendered by spirit. By power, anxieties are created."¹⁵ True leaders, says Hugh Nibley, have a "passion for equality."¹⁶

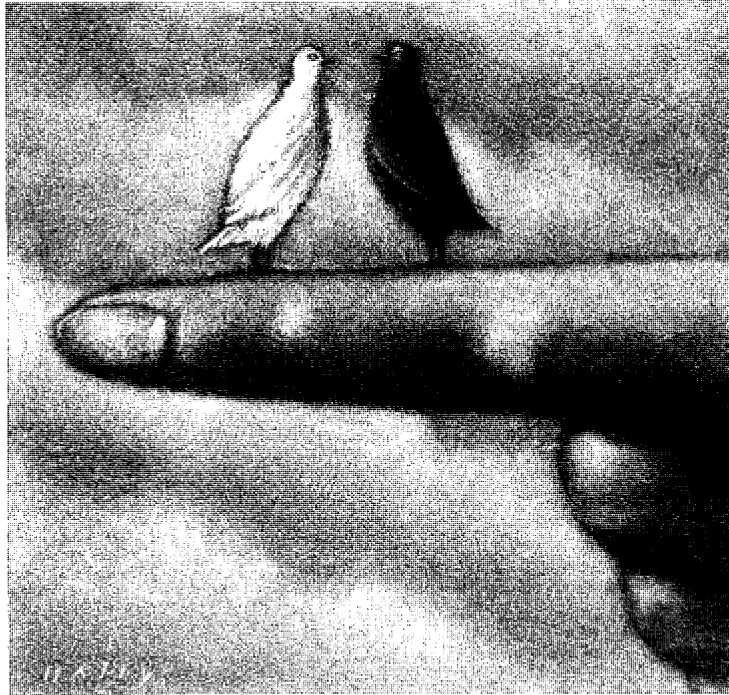
Many developing, equality-promoting concepts hold great promise. Most cannot be facilitated without attorneys. The Family Self-Sufficiency housing and employment project required many hours from real-estate attorneys. Corporate attorneys must assist in the formation of private undertakings. The

business acumen and steady hand of veteran attorneys can be invaluable on boards of directors.

One of the most promising Neoconservative initiatives, the concept of enterprise zones, is utterly worthless without the services of those skilled in redevelopment and taxation law. Individual small businesses, the sort most likely to employ neighborhood workers, created in those zones need low-cost, start-up legal counsel.

One committed individual can alleviate much suffering. Charles Ballard was alarmed at the number of single mothers in his community. He foresaw the consequences of hundreds

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of children maturing without the guidance of a father in the home. Benevolently bold, he launched Teen Fathers of Cleveland, Ohio. Over the past four years, he has persuaded more than two hundred fathers to marry and stay with the mothers of their children—creating a legacy of hundreds of children who now live in two-parent homes.¹⁷ In Salt Lake City, Utah, Reverend France Davis of the Calvary Baptist Church ministered to many elderly who lived in inadequate housing. Mustering his congregation, and securing government financing, he spearheaded the construction of Calvary Tower, a safe and comfortable home for many low-income elderly persons. Reverend Earl Lee, of the Twelfth Street Baptist Church in Detroit, used church funds to buy up crack houses one by one. As the drug dealers were evicted, Lee employed church members to rehabilitate the houses,

creating local jobs. The church extended mortgages to poor, but earnest, church members. In nine years, Reverend Lee and his parishioners have rolled over the funds many times, buying up more dilapidated drug dens. Crime near the church has dropped 37 percent. As Bishop Glenn Pace gently reminds us, we cannot be the salt of the earth if we are lumped together in the cultural hall.¹⁸

We must allow equality to inform our counsel and choices, professional and personal. Viewing clients' circumstances and needs through the lens of the equality pronounced by the gospel will help inoculate clients from litigation and elevate the profession to its traditional position of respect. For example, a lawyer guided by the ethic of equality while counseling her client in an employment situation may suggest multicultural awareness programs as a tool to

smooth employment relations and increase morale as well as productivity. Is it not more profitable to teach employees about each other than to defend against a discrimination or harassment action? An extended outlook on a client's needs might result in a recommendation that the client actively participate in community education programs, boosting individual employability and strengthening the client's prospective labor pool.

We can be saved from the repercussions of inequality. Parallel to the velocity with which many of the world's totalitarian regimes are crumbling is the immediacy with which the gospel takes hold in those lands as they gain new stability. Is it any less likely that a surge in racial harmony and economic prosperity, obtained through the pursuit of equality, will be accompanied by an outpouring of the Lord's spirit? Mosiah's subjects transformed their society from Zion to one not unlike our present society in eight short years. Hitler steered an entire nation into perverse prejudice and destructive hate in one brief generation. Disaster may yet attend our society if we fail in the struggle for equality.

As we form new circles in our communities, we must be mindful of diverse cultural heritages. Whites must struggle to become conscious of behaviors that minorities may perceive as racist. Minorities should welcome efforts to establish new bonds and strive to eliminate their own racist thinking. We must leave behind the political fray—both the right and the left, and even the middle, have room for “equality activists.” Certainly, there will be risks and fears. Risks are inherent in any worthwhile venture. The Great Emancipator, Abraham Lincoln, implored all Americans to extend “charity toward all.” This was his prescription to “bind up the wounds” inflicted in the course of the Civil War.¹⁹ It is a timeless prescription, first recorded in ancient scripture. Paul described the awful circumstance of one not possessing charity (1 Corinthians 13:3). True charity conducts one to an abiding belief in equality. Steeling ourselves with compassion and charity will ease the growth pains.

*It may well be that the survival of the species will depend on the capacity to foster a boundless capacity for compassion. In the alchemy of man's soul, almost all noble attributes—courage, love, hope, faith, beauty, loyalty—can be transmuted into ruthlessness. Compassion alone stands apart from the continuous traffic between good and evil proceeding within us. Compassion is the antitoxin of the soul. Where there is compassion, even the poisonous impulses remain relatively harmless.*²⁰

Counselors at law ought to be “apostles of equality.”²¹ Equality must become a beatitude of personal and professional life. “Behold, this I have given unto you as a parable, and it is even as I am. I say unto you, be one; and if ye are not one ye are not mine” (Doctrine and Covenants 38:27).

NOTES

- 1 Marion G. Romney, Address and Dedicatory Prayer for J. Reuben Clark Law Building, 5 Sept. 1975 (copy in author's possession).
- 2 *The Merchant of Venice*, act 4, sc. 1, ln. 200.
- 3 James F. Faust, “The Study and Practice of the Laws of Men in Light of the Laws of God,” *Clark Memorandum* (Fall 1988): 20.
- 4 Howard W. Hunter, “All Are Alike unto God,” *Ensign* (June 1979): 72, 74.
- 5 *The Teachings of Spencer W. Kimball*, ed. Edward Kimball (Salt Lake City: Bookcraft, 1982), 236–237.
- 6 Avraham Gileadi, *The Last Days*, 2d rev. ed. (Salt Lake City: Deseret Book, 1991), 200.
- 7 James H. Charlesworth, ed., *The Old Testament Pseudepigrapha: Apocalyptic Literature & Testaments*, vol. 1 (New York: Doubleday & Company, Inc., 1983), 1 Enoch 84:8, 2 Enoch 34:1–2.
- 8 Cf. Helaman 13:21–22, with 1 Enoch 84:8; see Hugh Nibley, *Enoch the Prophet* (Salt Lake City, UT: Deseret Book Co.; Provo, UT: Foundation for Ancient Research and Mormon Studies, 1986), 71, 86.
- 9 See Joseph Smith, Jr., *Times & Seasons* (Nauvoo, IL: Times and Seasons, 1971), 5:28–33 (citing Acts 17:26); quoted in Martin B. Hickman, “The Political Legacy of Joseph Smith,” *Dialogue* 3 (Autumn 1968): 22, 29.
- 10 Gunnar Myrdal, *Challenge to Affluence* (New York: Pantheon Books, 1963), 34. Swedish social commentator Gunnar Myrdal coined the term “underclass” to represent the lower economic strata of society, that group believed to be destined for permanent poverty.
- 11 “Bigotry Shifts Its Emphasis: Poor Are the New Target,” [Minneapolis] *Star Tribune*, 28 Dec. 1991, sec. 1E. Ruth Sidel is the author of *Women and Children Last: The Plight of Poor Women in Affluent America* (New York: Viking, 1986).
- 12 *Id.*
- 13 Martin Luther King, “Nobel Prize Acceptance Speech,” in *Negro History Bulletin* (May 1968): 22.
- 14 Joseph Aligretti, “Christ and the Code,” *Clark Memorandum* (Fall 1990): 16, 23.
- 15 *The Autobiography of Malcolm X* (New York: Grove Press, 1965), 424.
- 16 Hugh Nibley, “Leaders and Managers,” Commencement Address at Brigham Young University, 19 Aug. 1983, *Speeches of the Year* 1982–83 (1983): 184, 186.
- 17 “What We Can Do Now,” *Fortune*, 1 June 1992, 41.
- 18 Bishop Glenn L. Pace, “A Thousand Times,” *Ensign* (Nov. 1990): 10.
- 19 Second Inaugural Address, reprinted in Diane Ravitch, ed., *The American Reader: Words that Moved a Nation*, 1st ed. (New York: HarperCollins, 1990), 153.
- 20 Eric Hoffer, “Beware the Intellectual,” *The National Review* 28 (Sept. 1979): 11.
- 21 Matthew Arnold, *Essays in Criticism* (London: MacMillan and Co., 1865), ii.

Kenneth R. Wallentine, '90, practices with Parsons Behle & Latimer in Salt Lake City. This article was written in response to the dean's invitation for further discussion of the theme introduced in Joseph Aligretti's article, “Christ and the Code.”