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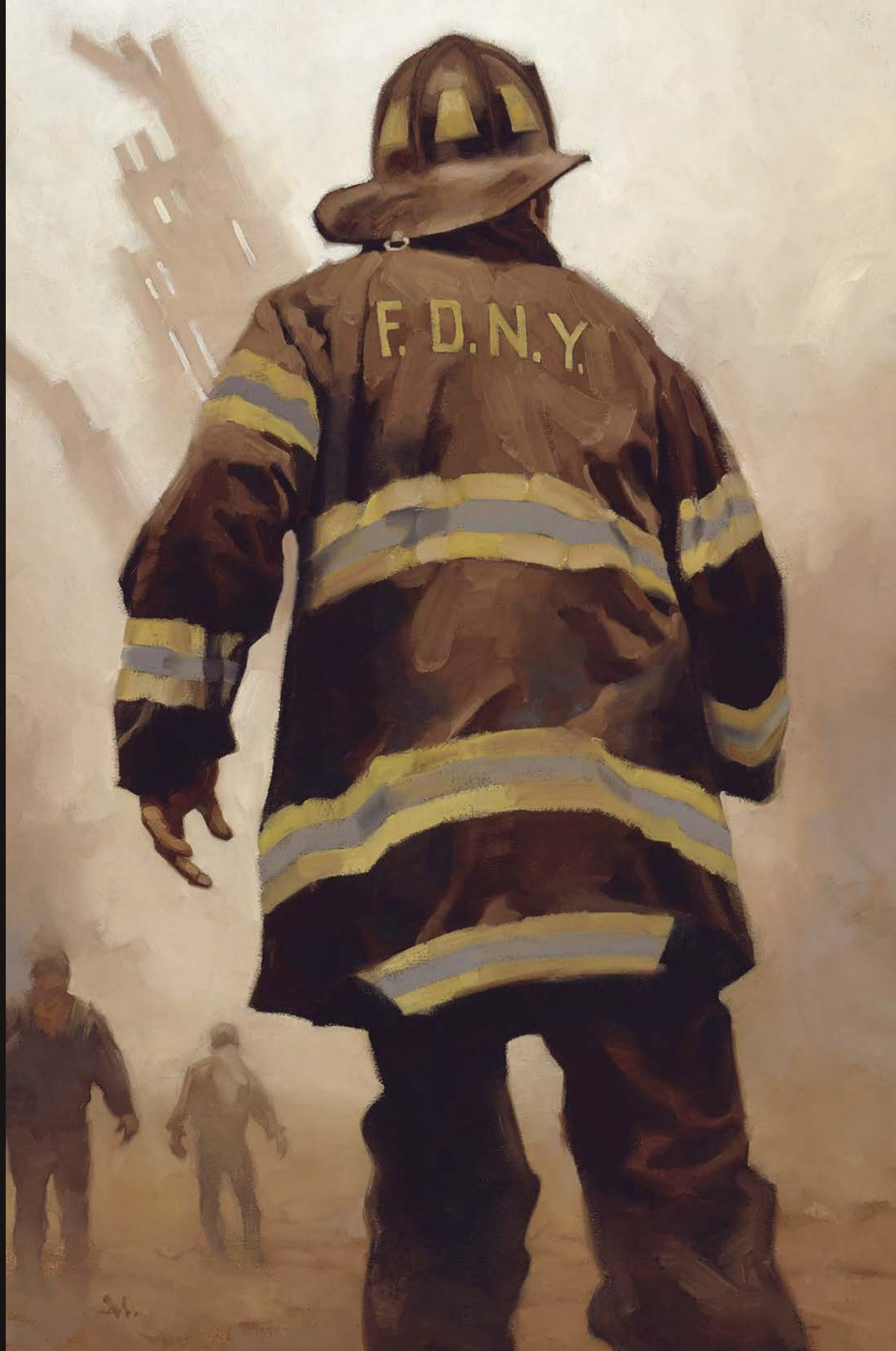
JOHN W. WELCH

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THE 21<sup>ST</sup> CENTURY AS THE CENTURY OF

# DUTIES

I WISH TO TURN YOUR MINDS TO THE CONCEPT OF DUTY AND TO RAISE SOMETHING OF A CALL TO ACTION. I CANNOT IMAGINE A BETTER GROUP ON EARTH WITH WHICH TO SHARE MY HEARTFELT CONCERNS AND DREAMS ABOUT THE IMPORTANCE OF THE PRINCIPLE OF DUTY.



FOR US AS LATTER-DAY SAINTS, THE FULFILLMENT OF DUTY COMES ALMOST AS SECOND NATURE. OUR DOCTRINES ARE STRONGLY COMPATIBLE WITH CONCEPTS OF OBEDIENCE,<sup>1</sup> STEWARDSHIP,<sup>2</sup> CHOICE<sup>3</sup> AND ACCOUNTABILITY,<sup>4</sup> AND A FUTURE STATE OF REWARDS AND PUNISHMENTS.<sup>5</sup> LDS LAWYERS ARE EXHILARATED BY THE FULFILLMENT OF PROFESSIONAL RESPONSIBILITIES.<sup>6</sup> INSPIRED BY NUMEROUS WIDELY ADMIRE

ROLE MODELS FROM OUR RANKS, LATTER-DAY SAINTS ARE HAPPILY DRAWN TOWARD PUBLIC SERVICE.<sup>7</sup>

We find joy in excellence, fairness, and virtue<sup>8</sup>—all of which, as the mission statement of this society pronounces, are “founded upon the rule of law,”<sup>9</sup> which brings us directly to the concept of duty, for duty gives the rule of law its only source of legitimate efficacy. Without a citizenry obliged in their hearts and souls to obey the law, the rule of law is left as a hollow shell of wishful thinking and empty promises. As Latter-day Saints, we make explicit our pledge to do our duty to honor, sustain, and uphold the rule of law.<sup>10</sup>

For more than 30 years of teaching law, the topic of duties has refused to leave me alone. I have been drawn to it like a moth to a light. With many of you I have studied fiduciary duties in business associations, pension trusts, and private foundations.<sup>11</sup> I have encountered ethical duties in ancient philosophy<sup>12</sup> and modern jurisprudence<sup>13</sup> and pondered communitarian duties in biblical times<sup>14</sup> and natural duties in modern revelation.<sup>15</sup> Indeed, in ancient scriptures the word *duty* appears 16 times,<sup>16</sup> with reference to duties of marriage;<sup>17</sup> everyday duties;<sup>18</sup> “the whole duty of man”;<sup>19</sup> duties of servants and public officials;<sup>20</sup> and, in the Book of Mormon, one’s “duty to God.”<sup>21</sup> And, in numerous other instances in biblical society, the ubiquitous dynamics of honor and shame<sup>22</sup> and collective responsibility<sup>23</sup> were unspokenly taken for granted.

Perhaps signaling to us the need to be more explicit about our duties and obligations, the Doctrine and Covenants emphatically uses the word *duty* much more often—43 times<sup>24</sup>—regarding all kinds of duties to family,<sup>25</sup> to callings,<sup>26</sup> and of priesthood leaders<sup>27</sup> as well as imperative duties to God, angels, wives, children, widows, orphans, the rising generation, and all the pure in heart.<sup>28</sup> From all of this I feel a duty to call for people everywhere to make a difference in promoting the fulfillment of duty.

### Balancing the Rights-Duties Budget

In my title tonight I ask the question, can the 21st century become the century of duties? Let me explain what I mean. I have no doubt that the 20th century will go down in history as the century of rights. The rights trajectory of the 20th century was inexorable and indomitable, progressing from voting rights, suffrage rights, and women’s property rights in the 1920s to workers’ rights in the 1930s and ’40s, civil rights in the ’50s and ’60s, privacy rights in the ’70s, and also human rights, equal rights, gay rights, disability rights, children’s rights, and many more. While I certainly applaud these important steps forward, which have been won at the expense of lives,<sup>29</sup> crusades, reputations, and costs untold, I can only hope that the 21st century will eventually go down in history as the century of duties: civic duties, human duties, equal duties, fiduciary duties, professional responsibilities, intellectual duties, religious obligations, environmental stewardships, and duties to future generations.<sup>30</sup> In 1978 Ronald Dworkin published a book entitled *Taking Rights Seriously*.<sup>31</sup> I’m still waiting for a book entitled *Taking Duties Seriously*, and I hope the wait won’t be too long.

But recent decades have not been very kind to duties. The ideas of obligation and responsibility have not been taken as seriously as rights. Simply do a search on Google Books of some of the literature of the last 200 years. As a search on Google Books can now quickly demonstrate, the word *duty* appeared more than twice as often in the early 1800s as did the word *rights*. But now the word *rights* appears four times more often than *duty*—a dramatic shift. Additionally, over the same time period the rate of occurrence for the word *self* has more than quadrupled. While these data points are probably not surprising to anyone in today’s

entitlement culture, these radical shifts should be arresting to anyone interested in the survival of the rule of law.

It seems to me that this disparity and all that it signifies needs to be brought back into balance. We need to balance the Rights-Duties Budget. Our nation is being divided and tested over the challenge we face in balancing federal and state financial budgets. I believe that, in the long term, balancing the Rights-Duties Budget will be just as necessary and beneficial. While I do not have any silver bullet that will solve this problem, I believe it is time for us to begin taking steps in that direction. We can no more close our eyes and think that this imbalance will go away than think that somehow our public debt problems will spontaneously evaporate into thin air.

What do I mean by the Rights-Duties Budget? As I see it, any polity has choices.<sup>32</sup>

A system may place on its citizens a high level of duties and obligations with a low level of rights. We call such a system tyranny or totalitarianism.

Or a system may opt for a very low level of duties and a very high level of rights. We call this anarchy or chaos.

A system in which rights and duties are in balance we might call cooperative or well ordered. Its “body politic” functions smoothly, and, as a whole, it is at least in balance. Aristotle, with his emphasis on the golden mean, would be pleased—and any imbalance needs to be rectified—but balance alone is not enough. Whether a balanced system thrives or not depends on one more crucial thing: namely the height of that balance. Like a hurdle or high-jump bar, the level can be either high, medium, or low.

Should a community choose to support a low level of duties along with a correspondingly low level of rights, that regime could be stable and just, but it would probably not be very prosperous or fulfilling.



The ideal, I would suggest, for a nation, an economy, a family, or a Zion community, would be to maintain the enjoyment of the highest possible level of rights and opportunities while simultaneously engendering the fulfillment of an equally high level of duties and obligations. To accomplish this, it would seem, the first order of business would be to balance the Rights-Duties Budget. But who is even looking in this direction?

Implicit in what I have said is the idea that rights and duties are both necessary. While a state in which everyone has rights and no one has obligations is unimaginable, strides made forward with individual rights are only solidified by balancing steps forward with individual duties. And herein lies a second crucial point that has also been seriously overlooked: the world usually thinks that because I have a right, someone else has a duty, namely to fulfill my right. We are not surprised to see this kind of thinking in political pledges promising that all rights will be automatically taken care of; but even in more sophisticated discourse, the same inadequate logic usually holds sway. Classical contract theory,<sup>33</sup> for example, says, “If I have a contractual right, then *you* have a duty. If *you* have a right, then *I* have a duty.”

Now, while that is true enough, as far as it goes, this is not the whole story. Duties and rights are not polar opposites. They do not stand on opposite sides of the street. Both necessarily go together, hand in glove, and here’s why: with rights come duties. This is because (1) every right naturally confers some power or privilege, either to act or to prevent someone else from acting (which in any event is a power of some sort); (2) every power or privilege is laden with some sort of duty, for all power will necessarily be used either for good or ill (and even the choice not to use a power is a choice for good or for ill); (3) however “good” may be defined, it is philosophically intuitive that people have a duty to do what is good; and, therefore, (4) with every right comes some duty.

As Latter-day Saint lawyers, we intuitively sense all of this. We know, for example, that with professional privilege and power come professional responsibilities. And our scriptures tell us that with greater knowledge (which is also a power and a privilege) comes greater accountability<sup>34</sup> and that everyone



*In 1781 General George Washington—“whose heroic honoring of rights and fulfillment of duties never fail to inspire and should never be forgotten”—courageously led his troops into the Battle of Yorktown. The 20-day siege ended the Revolutionary War, with help from French allies, and led to America’s independence.*

who has been warned has the duty “to warn his neighbor.”<sup>35</sup> Consequently, in every right, power, or privilege that *I* have, *I* inherently also have some duty as its flip side. These are the two sides of *my* coin. This, of course, is not the way people usually think about rights and duties or about balancing, for example, when analyzing Constitutional rights.<sup>36</sup>

But this linkage between one’s own rights and one’s own duties gives us new leverage in balancing the Rights-Duty Budget, for a society’s balance between rights and duties will naturally be achieved at the entity level if each individual member of society individually fulfills whatever obligations attend to the exercise of that individual’s rights and privileges. And, because of this linkage, no one person can simply say that because I have a right, someone else has the duty to satisfy my right without me having some obligation as a part of the package. I may have the right and privilege to drive, but with that right I have the duty to drive carefully and respectfully and to obey the traffic laws.

One cannot simply say that because I have a right to work, someone else has the

duty to give me a job. I, too, have a duty to do my best to seek employment.

Property owners have the right to own property, but they still have the duties of property ownership and management.

Spouses have rights and duties in sickness and in health.

Plaintiffs have rights and duties. Defendants have rights and duties. Lawyers have rights and duties.<sup>37</sup>

Because I, as a speaker, have a right and a freedom to speak, others may have the duty to let me speak, but I also have the duty to speak honestly and fairly and to reciprocate by listening.

It would seem, then, that all rights entail duties. This is most obvious in cases in which the rights are extensive and potent, as in cases of high-level fiduciaries and top-level political officers. In cases of weaker powers, the obligations will also be at lower levels, but they will exist nonetheless, and to whatever extent a right confers a power, it confers a responsibility.

This next tells us that no rights are absolute. Even the exercise of inalienable rights



Jessie Field Shambaugh (1881–1971), an “ordinary” woman from Iowa who faithfully and innovatively did her duty, developed a boys’ and a girls’ club to supplement learning with hands-on projects. Her clubs were the forerunners of 4-H, an international youth organization with more than 6.5 million members. Shambaugh helped design 4-H’s clover emblem, the Hs representing head, heart, hands, and health.

is subject to conditions. The word *inalienable* does not mean absolute, unconditional, or nonforfeitable. Even the Declaration of Independence itself makes it clear that the inalienable right to abolish a government cannot be acted upon “for light and transient causes” and that a people’s right (and accompanying duty) to overthrow a government is preconditioned upon the showing of “a long train of abuses and usurpations” that “evinces a design to reduce them [the people] under absolute despotism.”

Moreover, all this also tells us that no single right can somehow be an absolute trump. Yet people often line up to support their favorite right without any regard for what obligations it might require to keep its exercise in balance. Some see freedom of speech as a trump over all restrictions. Others champion freedom of religion as a trump over all incursions. Some stand by the right to assemble or the right to bear arms as absolute privileges not subject to any chills or obligations. But an absolute trump is just another form of tyranny, and Dworkin’s game of trumps breaks down whenever two trump aces are played against each other. So, in the current clash between gay rights groups and religionists, Professor Douglas Laycock of the University of Virginia School of Law has it right: “The problem right now is that each side wants liberty for itself but nothing for the other side. . . . [R]ather than holding out for a total victory, both sides should look for ways to give and take.”<sup>38</sup> They “should,” indeed, as all such claims of right come with some attendant duties.

Interestingly, Joseph Smith’s political platform in 1844 was wary of the idea of rights without duties. He championed the guarantee of freedom so far as the use of freedom “aids in the fulfillment of duty.”<sup>39</sup> He opposed what some were calling “human rights” if their use was to detract from civic unity.<sup>40</sup> All laws, he revealed, have certain bounds and conditions; thus, God-given liberty is contingent upon keeping God’s commands. He made similar points about duties: they are not absolutes either. For example, Doctrine and Covenants 134:5 says that one is bound to support a government but only so long as it protects people in their inherent and inalienable rights.

So, if you are with me so far, rights and duties go hand in hand. We talk a lot about



rights and privileges but much less about duties and accountabilities. There's something wrong here. This imbalance needs balancing, both at the political and the individual levels. And the key to achieving that balance at the political level is for each individual right holder to discharge some corresponding, correlatively commensurate duty.

Indeed, Hugh Nibley once said that the lunch may be free, but work we still must.<sup>41</sup> And as the prophet Micah says: "[God] hath [freely] shewed thee, O man, what is good; and [in return] what doth the Lord *require* of thee, but to do justly, and to love mercy, and to walk humbly with thy God."<sup>42</sup>

### Creating the Century of Duties

Whether what I have said so far makes complete sense or not, I hope that I have gotten you thinking about duties. Whatever theories might eventually be developed to explain where rights and duties come from and what they might require of any of us, I hope that we are all agreed that the duty side of the Rights-Duties Budget is important and yet has been underrepresented in our contemporary discourse.

As we move further into the 21st century, what might be done to change this deficiency? What will it take? Here are some thoughts and modest suggestions.

First, it will take concerted effort. Let's watch carefully for opportunities to give more attention to duties and their linkages with rights—for example, on blogs, in editorials, or through social media. We might also collect and publish a library of classic books and significant articles about duties. There is, of course, Cicero's treatise on duties, and wider circulation should be given to books like David Selbourne's *The Principle of Duty*<sup>43</sup> and Jonathan Sacks's *The Persistence of Faith*.<sup>44</sup> Actually, the total library on duties is woefully small when compared with the massive and elegantly published library of books on rights and liberties so successfully produced by the Liberty Fund in Indiana.<sup>45</sup> But with the web and e-book publications, it now becomes possible to imagine the world's best writings on duties becoming readily available everywhere.

Next, it will take stories. We could collect real-life stories about lawyers, politicians,

corporate officers, trustees, and ordinary people who did their duties, sometimes under extraordinary pressures, highlighting the complementarities of duties and rights. Stories such as Solicitor General Rex Lee refusing to take a case to the United States Supreme Court because he could not legally justify the position that his client, President Ronald Reagan, wanted him to argue—and over which Rex lost his job. Stories of lawyers, such as those that Elder Whitney Clayton told us in our Law Society broadcast in January 2012.<sup>46</sup> There are stories of those such as Los Angeles lawyer Warren Christopher, who was known at O'Melveny & Myers as the Holy Ghost of the Democratic Party; I admired him greatly for leaving the firm to serve as secretary of state in the Carter administration, securing the release of U.S. hostages from Iran and brokering the Bosnian peace agreement for President Clinton. Personally, I have been influenced by stories about my own father, John S. Welch, at Latham & Watkins, whose reputation for integrity at the negotiation table was legendary. One could collect stories of all kinds of ordinary people who admirably did their duty faced with all sorts of contrary pressures or stories of extraordinary people, such as George Washington, Abraham Lincoln, Susan B. Anthony, and Martin Luther King Jr., whose heroic honoring of rights and fulfillment of duties never fail to inspire and should never be forgotten. Shouldn't thousands of such stories be organized, documented, and put online so they can be used in public education as well as in law school classes at appropriate junctures in the curriculum? Telling positive stories is the best way to teach ethical principles and to inculcate in the rising generation an enduring sense of civic responsibility. And think of the role that the J. Reuben Clark Law Society could play in the collection and publication of such positive stories and materials.

On the academic side, it will take motivators. We can easily offer scholarships, writing prizes, and subventions to encourage students, lawyers, and historians to write about duties. How about beginning with a book about the decline of duties in the 20th century? How did that decline happen? Likewise, we can encourage the best and the brightest to analyze the reciprocities

of rights and duties from every imaginable perspective—legally, economically, and socially.

It will also take creative thinking about remedies and levels of enforcement of duties and about ways to give positive incentives to prompt the voluntary fulfillment of obligations and honorable civic service. What course this path may eventually take is hard to envision. But who in 1900 could have foreseen the long step-by-step path that rights jurisprudence took in that century? By the same token, we need not be dissuaded as we move into the 21st century.

In that effort it will certainly help if the amorphous corpus of duties could be given much more in the way of order and structure. For example, classifying all rights as to their source of origin would be a first step in understanding where their attendant duties concurrently come from.

If it is reasonable to claim that a natural right inheres in some state of nature, should it not be equally reasonable to ask what duty that state of nature concurrently requires? Beginning in 1948, Mahatma Gandhi insightfully insisted that there should be something like a Universal Declaration on Human Duties and Responsibilities<sup>47</sup> to go together with the much more famous Universal Declaration of Human Rights.<sup>48</sup> He went so far as to postulate that all human rights could be more accurately defined as duties that we all owe to each other.<sup>49</sup> More work is needed moving in that direction.

Similarly, with political rights, the same authority that grants civic rights has equal authority to impose civic responsibilities. What the large print giveth, the small print taketh away. And what might the duties of citizenship be? We of all people should note that in 1926 President J. Reuben Clark articulated a list of eight such duties. His list includes sincerely believing in the right of the people to govern themselves; honestly believing in the Constitution; participating as fully as possible in the functions of government; observing the laws of the land and encouraging and assisting others to do likewise; leading a clean life in public and private affairs; and exerting every lawful effort to correct any abuses of governmental power.<sup>50</sup> Wouldn't any nation be improved by the promotion of such a list

today? Shouldn't we at least be thinking about what our list could and should contain today?

Lawyers especially could help to advance the culture of duties by giving better structure and clarity to the nebulous law of fiduciary duties. Fiduciary law should be clarified so as to make it clearer who counts as a fiduciary. Besides conventional trustees, others such as investment advisors, real estate agents, mortgage lenders, ordinary employees, professors, and even elected officials should be more aware of when they are actually constructive trustees or virtual fiduciaries and, consequently, of what the law and society require of them as fiduciaries. More often than we think, we are our brothers' keepers.

Typically, all fiduciaries owe the duties of (1) care; (2) diligence; (3) obedience in following instructions; (4) acting with informed prudence; (5) reporting and voluntarily disclosing information; (6) shunning any semblance of self-dealing or conflict of interest; and (7) taking the initiative to do the best for their principals, clients, and beneficiaries. But how many people can articulate these duties, which, with apologies to Stephen R. Covey, one might call "the seven habits of highly successful fiduciaries"?

### The Preamble: Our Bill of Duties

Turning to constitutional rights, we often invoke the Bill of Rights. But here, also, one might well ask, are there constitutional duties that run with those rights? Recently I got to wondering, what might a Bill of Duties look like? Looking for an answer, I turned to the Constitution itself, and, just as the U.S. Constitution ends with the Bill of Rights, I realized that it actually already begins with a Bill of Duties, only we don't call it that. We call it the Preamble. The importance of the Preamble should not be overlooked. Although it is hardly ever cited in judicial opinions today, that was not the case in the beginning. Early American jurisprudence held that "[e]very grant of power in the constitution has reference to the one or the other of these general objects [purposes or duties]" in the Preamble.<sup>51</sup> The Preamble should not be treated as mere window dressing or as literary prologue. It states the sum and substance of the united obligations and

objectives that we as a people have collectively assumed and specifically authorized our government to accomplish.

Those duty-bound objectives are as follows:

- » To perfect our union. Unity is the first and overriding objective, more salient, apparently, than prosperity, partisanship, or special interests.
- » To "establish justice." Everyone must contribute to the fulfillment of this duty.
- » To "insure domestic tranquility." This is the product of calm respect given to others by listening, caring, and cooperating in every part of civic life.
- » To "provide for the common defense." It remains the duty of all Americans to contribute to our common defense.
- » We hereby undertook the obligation to "promote the general welfare," but it will probably take decades to define what the words *promote*, *general*, and *welfare* actually will mean in the 21st century, just as it took decades in the 20th century to define words such as *equal*, *protection*, and *law*.
- » It is also our agreed duty to "secure the blessings of liberty to ourselves and our posterity." We are duty bound to hand blessings on to generations to come.

Here, I suggest, is the beginning of our constitutional Bill of Duties, if we will only embrace it. And whatever that Bill of Duties might eventually develop into, it must become more than a bill of particulars on paper. It must be written in the hearts of the people. This will take a social fabric in which all human relationships are not seen as optional, transitory, or dispensable. Today's highly interdependent social and economic conditions, both at home and abroad, make the world more like a village than an open frontier, giving greater meaning to John Donne's famous meditation that begins "No man is an island, entire of itself; every man is a piece of the continent, a part of the main,"<sup>52</sup> which actually requires all to rethink the very idea of "self" itself.

### Preserving the Rule of Law

What will it take to make the 21st century a century of duties? It will take a lot of work.

It will take a lot of commitment. It will take organizations, like the J. Reuben Clark Law Society and other like-inclined organizations and leagues. It will take the identification of ways in which laws, theologies, and political philosophies are, or can become, duty friendly without being rights reducing. It will take some old-time religion and lawyers who bring a sense of religious commitment to the office every day. It will take help from world religions that promulgate the principles of both individual rights and collective duties. It will take allies who see rights and duties as inseparable for the betterment of society, who see duties as lifting and ennobling and not to be used to oppress or hold down. It will take prophetic guidance, as it will always be difficult to separate the false freedom of doing what one wants from the true freedom that comes from doing what one ought, for it is only the truth that makes us free.<sup>53</sup> It will take a dream of moving toward a new Jerusalem, that things may be done on earth as they are in heaven. In sum, it will take all we have got, and then some, including a lot of love and a little help from above.

With all due respect to Nephi,<sup>54</sup> may it someday be said that we talked of rights *and* duties, rejoiced in civic rights *and* obligations, preached of religious rights *and* our accountability to God, and wrote of our rights *and* responsibilities to one another so that our children might know the source to which they can look for the preservation of the rule of law and of the heart and soul of all civilization. That it may be so, I sincerely hope and pray.

*This address was given at the J. Reuben Clark Law Society Conference at Stanford University on February 16, 2012. John W. Welch was a Woodrow Wilson Fellow at Oxford University in 1970-72 and received his JD from Duke University in 1975. He founded FARMS (Foundation for Ancient Research and Mormon Studies) in 1979, served on the board of editors for the Encyclopedia of Mormonism 1992, and has served as editor-in-chief of BYU Studies since 1991. Recipient in 2010 of the Karl G. Maeser Distinguished Faculty Lecturer Award, Brigham Young University's highest faculty honor, he is currently the Robert K. Thomas University Professor of Law at J. Reuben Clark Law School.*

- 1 See Hebrews 5:8; Doctrine and Covenants 130:21; Article of Faith 1:3.
- 2 See Doctrine and Covenants 70:4; 124:14.
- 3 See 2 Nephi 2:27; 10:23.
- 4 Matthew 25:23.
- 5 See Matthew 25:26; Alma 41:14; Doctrine and Covenants 127:4.
- 6 See, e.g., Lance B. Wickman, *In Search of Atticus Finch*, in *LIFE IN THE LAW: SERVICE & INTEGRITY* 173 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise, eds., 2009); Dale A. Whitman, *Avoiding Pitfalls*, in *LIFE IN THE LAW: SERVICE & INTEGRITY* 167 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise, eds., 2009).
- 7 See Boyd K. Packer, *On the Shoulders of Giants*, in *LIFE IN THE LAW: SERVICE & INTEGRITY* 225 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise, eds., 2009).
- 8 Article of Faith 1:13.
- 9 Mission Statement, J. Reuben Clark Law Society, available at [http://www.jrcls.org/about/mission\\_statement.php](http://www.jrcls.org/about/mission_statement.php).
- 10 See Doctrine and Covenants 134:5.
- 11 See, generally, Brett G. Scharffs & John W. Welch, *An Analytic Framework for Understanding and Evaluating the Fiduciary Duties of Educators*, 2005 BYU EDUC. & L. J. 159 (2005); D. Gordon Smith, *The Critical Resource Theory of Fiduciary Duty*, 55 VANDERBILT L. REV. 1399 (2002).
- 12 See W. F. R. HARDIE, ARISTOTLE'S ETHICAL THEORY 123–28 (1968).
- 13 See CHRISTOPHER HEATH WELLMAN & A. JOHN SIMMONS, IS THERE A DUTY TO OBEY THE LAW? (2005).
- 14 See JOEL S. KAMINSKY, CORPORATE RESPONSIBILITY IN THE HEBREW BIBLE (1995).
- 15 See Doctrine and Covenants 134.
- 16 See [lds.org/scriptures, search: duty](http://www.lds.org/scriptures/search?lang=eng&query=duty&x=0&y=0), available at <http://www.lds.org/scriptures/search?lang=eng&query=duty&x=0&y=0> (counting *duty* in the Old Testament, the New Testament, and the Book of Mormon).
- 17 See Exodus 21:10; Deuteronomy 25:5–7.
- 18 See 2 Chronicles 8:14; Ezra 3:4.
- 19 Ecclesiastes 12:13.
- 20 See Luke 17:10; Romans 15:27.
- 21 Alma 7:22; see also Alma 43:46; Mosiah 13:30.
- 22 See Lyn M. Bechtel, *Shame as a Sanction of Social Control in Biblical Israel: Judicial, Political, and Social Shaming*, 16 JOURNAL FOR THE STUDY OF THE OLD TESTAMENT 47 (Feb. 1991); David A. deSilva, *The Wisdom of Ben Sira: Honor, Shame, and*

- the Maintenance of the Values of a Minority Culture*, 58 CATHOLIC BIBLICAL QUARTERLY 433 (1996); Johannes Pedersen, *Honour and Shame*, in ISRAEL: ITS LIFE AND CULTURE I–II 213–44 (1973).
- 23 See KAMINSKY, *supra* note 14.
- 24 See [lds.org/scriptures, search: duty](http://www.lds.org/scriptures/search?lang=eng&query=duty&x=0&y=0), available at <http://www.lds.org/scriptures/search?lang=eng&query=duty&x=0&y=0> (counting *duty* in the Doctrine and Covenants and Joseph Smith—History).
- 25 See Doctrine and Covenants 20:47, 51.
- 26 See Doctrine and Covenants 107:99.
- 27 See Doctrine and Covenants 20:46–57; 107:85–88.
- 28 See Doctrine and Covenants 123:7–11.
- 29 See, e.g., ENCYCLOPEDIA BRITANNICA ONLINE, s.v. *Martin Luther King, Jr.*, accessed March 26, 2012, <http://www.britannica.com/EBchecked/topic/318311/Martin-Luther-King-Jr>.
- 30 See John W. Welch, *Toward a Mormon Jurisprudence*, 21 REGENT U. L. REV. 81, 99 (2009).
- 31 RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1978).
- 32 See, e.g., Samuel J. Levine, *Unenumerated Constitutional Rights and Unenumerated Biblical Obligations: A Preliminary Study in Comparative Hermeneutics*, 15 CONST. COMMENT. 511, 526 (1998) (“[T]here are limits on what rights society will recognize and protect. Likewise, there are limits to the conduct required.”).
- 33 See the work of Wesley Newcomb Hohfeld, including *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L. J. 16 (Nov. 1913).
- 34 See Alma 9:16, 19. Discussed in relation to Exodus 21:29 and Numbers 15:27–28 in JOHN W. WELCH, THE LEGAL CASES IN THE BOOK OF MORMON 244 (2008).
- 35 Doctrine and Covenants 88:81.
- 36 Discussed further in John W. Welch, “*Thy Mind, O Man, Must Stretch*,” 50 BYU STUDIES 63, 72–74 (2011). See, generally, Rom Harré & Daniel N. Robinson, *On the Primacy of Duties*, 70 PHILOSOPHY 513 (1995).
- 37 See David Pannick, *Duties and Powers*, in ADVOCATES 89–125 (1992).
- 38 *Paraphrased in* Sara Israelsen-Hartley, *Colliding Causes: Gay Rights and Religious Liberty*, DESERET NEWS, Feb. 12, 2012, at A14.
- 39 JOSEPH SMITH, GENERAL SMITH'S VIEWS OF THE POWERS AND POLICY OF THE GOVERNMENT OF THE UNITED STATES 4 (1844).
- 40 *Id.* at 6.
- 41 See Hugh W. Nibley, *Work We Must, but the Lunch Is Free*, in APPROACHING ZION 202–51 (1989); reprinted from BYU TODAY, Nov. 1982, at 8–12.

- 42 Micah 6:8 (emphasis added). See the discussion of the applicability of these words from Micah to the duties of modern judges in Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 UC DAVIS L. REV. 127 (1998).
- 43 DAVID SELBOURNE, THE PRINCIPLE OF DUTY: AN ESSAY ON THE FOUNDATIONS OF THE CIVIC ORDER (1994).
- 44 JONATHAN SACKS, THE PERSISTENCE OF FAITH: RELIGION, MORALITY AND SOCIETY IN A SECULAR AGE (2005).
- 45 See <http://www.libertyfund.org/books.aspx>.
- 46 See L. Whitney Clayton, *He Answered Discreetly*, CLARK MEMORANDUM, fall 2012, at 20.
- 47 See, e.g., *Declaration of Responsibilities and Human Duties*, 8 GLOBALIZATION (2002), available at <http://globalization.icaap.org/content/v2.2/declare.html> (an example of an attempt to realize Gandhi's idea); see also Press Release from the United Nations Educational, Scientific and Cultural Organization (UNESCO), Declaration of Human Rights and Responsibilities, written in Valencia, presented to UNESCO Director-General, April 28, 1999, available at <http://www.unesco.org/bpi/eng/unescopress/1999/99-92e.shtml>.
- 48 See RICHARD L. JOHNSON, GANDHI'S EXPERIMENTS WITH TRUTH: ESSENTIAL WRITINGS BY AND ABOUT MAHATMA GANDHI 185 (2006).
- 49 *Id.*
- 50 See *What Constitutes a Good American*, in J. REUBEN CLARK: SELECTED PAPERS ON AMERICANISM AND NATIONAL AFFAIRS 45–46 (David H. Yarn Jr., ed., 1987).
- 51 John E. Hall, 6 AMERICAN LAW JOURNAL 359 (1817).
- 52 *Devotions Upon Emergent Occasions (1624): Meditation XVII*, 3 THE WORKS OF JOHN DONNE 574–75 (Henry Alford, ed., 1839), accessed at <http://www.luminarium.org/sevenlit/donne/meditation17.php>.
- 53 See John 8:32. Gordon B. Hinckley has asked, “Can anything be more false or dishonest than gratification of passion without acceptance of responsibility?” in his *In Search of Peace and Freedom*, 19 ENSIGN, Aug. 1989, at 5.
- 54 My allusion is to 2 Nephi 25:26.

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