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Bridges

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Bridges

Dallin H. Oaks

I had a sobering duty as a justice of the Utah Supreme Court. I had to vote to disbar a graduate of the Brigham Young University J. Reuben Clark Law School. With that action I stopped assuming that people who have had the right kind of education automatically have the right kind of moral sense.

Law school is a distorting experience in many ways. No one said it better than my classmate and good friend, Roger C. Cramton, former dean of Cornell Law School, in his article “The Ordinary Religion of the Law School Classroom.”¹ He talked about a number of value assumptions in the law school classroom and their impact on the thinking of law students. I want to comment on three of those value assumptions.

One of Dean Cramton’s value assumptions is what he calls the “instrumental approach to law and lawyering.” Under this approach, law is nothing more than an instrument for achieving social goals. The goals are, of course, those of the client. The lawyer need not be concerned with selecting goals or with the value questions associated with them because the lawyer is simply the skilled craftsman who works out the *means* by which predetermined goals are achieved.

The result of this assumption reminds me of the doctor who told an educator that medical science would soon perfect the means to sever the human mind from the rest of the body and with appropriate support systems keep the brain alive indefinitely with no connection with the heart. “That’s really not new,” the educator replied. “We’ve been doing that in our college for years.” I am sure you can see what the instrumental approach, which is inherent in much that is done in the law school classroom, does to the value sensitivities and the value orientations of the budding lawyer. There are reasons for this instrumental approach, even sound pedagogical reasons.

But anyone exposed to it needs to be alert to its evil consequences on our moral and value sensitivities in order to be inoculated against them.

The second point of Cramton's he states as follows:

A skeptical attitude toward generalizations, principles and rules is doubtless a desirable attribute of the lawyer. But skepticism that deepens into a belief in the meaninglessness of principles, the relativism of values or the non-existence of an ultimate reality is dangerous and crippling.²

Put another way, the skeptical attitude toward generalizations, principles, and received wisdom—a desirable attribute for some purposes—inclines the student toward concluding that principles are meaningless and values are relative.

A third assumption of Dean Cramton is that the law school classroom serves up a steady diet of borderline cases with scarcely any mention of routine legal problems of easy solution.

Legal problems that have a routine and easy solution are not considered in law school. The student is faced with a steady diet of hard cases—borderline situations that might reasonably have been decided either way. Since there is a good argument both ways, and the case could reasonably have been decided either way, the student is led to believe that life is that way, that law is that way—there are no *right* answers, just *winning* arguments. This diet of borderline cases thus contributes to value skepticism.³

Those observations from Dean Cramton provide an introduction to the principal message I want to give you this evening.

Some of you may remember that when I was called to the Council of the Twelve I was serving on the Utah Supreme Court. I had authored a dozen opinions that were pending in other chambers or were just about ready to circulate. I had participated in oral arguments and preliminary votes on a hundred or more other cases that were pending in the chambers of the other four justices on the Utah Supreme Court. Consequently, if I had responded immediately to the call by showing up in general conference, I would have been disabled as a practical matter from continuing to work on those cases. Having stepped across the wall between church and state, I would have had no way to get back on the other side to complete my judicial duties without being tainted in some way, especially in a litigious environment.

I discussed this with the First Presidency, and they made the decision to present my name, have me sustained, and then tell me to stay away until I was ready to be ordained and take up my responsibilities. That is what I did. It was about three or four weeks after I was sustained in April Conference, 1984, when I resigned as a judge, went to the Church Office Building to meet for the first time with the leadership of the Church, was ordained, and began my duties.

During this period when I was winding up my cases, I had time to think about the calling in which I would spend the rest of my life. I asked myself what kind of apostle I would be. I took an inventory of my credentials, experience, and qualifications and compared them with the kinds of things which, in my imperfect understanding, I imagined I would be called upon to do. I asked myself, “Throughout the remainder of your life will you be a judge and lawyer who has been called to be an apostle, or will you be an apostle who used to be a lawyer and a judge?”

There is a very large difference between those two. I knew how to do some of the things that I would be called upon to do. I thought that my legal experience might be called upon in some way. I knew about committees; I knew about personnel; I knew about public affairs. I also knew a little bit about human nature in general and myself in particular. I was sure that we all have a tendency to focus our efforts on those things that are familiar and easy—where we feel at home. We are repelled by those things that are unfamiliar and difficult.

The most important parts of my calling—the only parts that are really unique in the service of the Lord—were those parts that I knew nothing about—those parts where I would have to start all over at the beginning. I knew that if I concentrated my time on the things that came naturally and the things that I felt qualified to do, I would never be an apostle. I would always be a former lawyer and judge. I made up my mind that was not for me. I decided that I would focus my efforts on what I had been called to do, not on what I was qualified to do. I determined that instead of trying to shape my calling to my credentials, I would try to shape myself to my calling.

Each of us brings a set of qualifications to whatever we are called to do. We can shape our callings to our qualifications or we can try to shape ourselves to our callings. I mention this because it is not only a challenge to each of us in church service, but it also has something to do with the professional performance of lawyers.

Does training in the law dull one’s sense of justice, or one’s moral and ethical sensibilities? Does it matter what clients and causes we serve with the skills that we have developed?

You are in training for a noble profession, which our society could not do without. It has served humanity ably, responsibly, and effectively throughout my lifetime and for many lifetimes before me. But the whole system of law and the legal profession can be corrupting if we do not understand all of it. When you are busy learning the ins and outs of it, it is probably timely to remind you of the potential corruption of it. It can be corrupted.

When I considered prayerfully what I could say to you about this subject and about my deep concerns for the fundamental integrity of those who

study and practice law, I had an inspiration to recall the story of *The Bridge over the River Kwai*.⁴ I saw the movie many years ago, but I had never read the book. I found a copy in a used-book store. As I studied it, I found the example I sought to illustrate my point. The principle is a very simple one.

The story told in the book is not a true one, but it is based on a true setting: World War II in Southeast Asia where the Japanese took about 60,000 prisoners from the British, Australian, Dutch, and American forces that were guarding the various bastions of their nations. Five hundred of these prisoners, according to the tale, wound up in a camp on the River Kwai in the jungles on the border between Burma and Siam (now Thailand). The Japanese desired to build a railway linking their great seaport at Singapore with the Bay of Bengal. There was great military significance in having a railway that could take the ship traffic that came through sheltered sea lanes to Singapore and move it overland to a point where it could be put to military use against the Allied forces in India.

So it was that the Japanese in the story began to build a railroad hundreds of miles in length between Singapore and the Bay of Bengal. A major obstacle was the River Kwai—a large stream in a chasm over which a great bridge had to be built. The Japanese constructed a prisoner-of-war camp at this site that held 500 prisoners. By luck, Colonel Nicholson, the British colonel and senior military officer in that camp, was an experienced engineer.

Colonel Nicholson's bridge building came to the attention of Allied intelligence in India. For very understandable military reasons, they assembled a commando force to go and blow up that bridge. As the story goes forward, we see the commandos planning the raid and the prisoners, under Colonel Nicholson, building the bridge.

Nicholson was a disciplinarian who got them to build it right. He had the engineering skills to design and build a bridge that was unbeatable for its purpose, and he did so.

The small commando team arrived at the jungle site and prepared to blow up the bridge. They monitored the construction from their observation post in the hills above and from their frequent infiltration into or near the camp.

Colonel Nicholson and his prisoner workers completed the bridge. The ceremonial first train was approaching. The charges had been planted to blow it up, which the commandos planned to do just as the initial train crossed the bridge. A wire had been strung from the explosives to a detonator some distance away so that a visual observation could determine the exact time to bring the bridge down. The train was puffing up with a whole load of enemy troops, generals, dignitaries, ammunition, and all the stores—the initial cargo over the bridge on the River Kwai. Shears, one of the commandos, whispers, “Nothing can stop us now. Fate has no more

tricks to play. The train will surely be here in twenty minutes.”⁵ He scrambles down from the observation post to get a little closer to the action.

Colonel Nicholson inspects the bridge and is satisfied that it’s technically excellent. The author gives a long, loving description of this military engineer’s pride in his professional craftsmanship. Then Nicholson sees the wires. The level of the river has dropped over night, and wires to the detonator, that should have been under water, are exposed. He runs down the bank calling for the Japanese colonel who commands the prisoner-of-war camp to come and see. They stand at the water’s edge near the unbelieving commando, Shears, who is hiding in the weeds. Shears runs out with his knife and kills the Japanese Colonel. He has been trained to do that work quickly, and he does it. Colonel Nicholson stares at him, unbelieving, as the train chugs forward to the bridge.

Shears throws off the lifeless body of his enemy, climbs up the bank to Colonel Nicholson, and introduces himself: “British officer, sir! Force 316 from Calcutta. Commandos. Orders to blow up the bridge.”

“Blow up the bridge?” Colonel Nicholson asks, still not understanding. It takes a little while for him to realize what is happening. When he finally understands, he shouts, “Help!” at the top of his lungs. The Japanese guards come running.⁶ The *film* has a happy ending. Colonel Nicholson falls across the detonator, the bridge goes up, and the train crashes in the gorge. The *book* is not that way at all. The train gets across the bridge. There is a small charge on the other side of the bridge, and it blows the train off the track. Two cars fall in the river, but the bridge is left standing. All the commando raid really accomplished was to create a very large diversion and to kill a few of the enemy. All of the commandos lost their lives, except one man who made his way back to report. In a conversation with his superior officer in India, he complains that Colonel Nicholson did not understand what was going on. And Shears, the commando with the knife at the water’s edge, did not understand what was happening either. The surviving commando laments:

He should have been more perceptive, more discerning. Then he would have understood that in our job it’s no good cutting any old throat. You’ve got to cut the right throat. Isn’t that so sir?

More insight, that’s what he needed; then he would have known who his enemy really was, realized it was that old blockhead [Nicholson] who couldn’t stand the idea of his fine work being destroyed. A really perceptive mind would have deduced that from the way he strode along the platform. I had my glasses trained on him, sir; if only it had been a rifle! He had the sanctimonious smile of a conqueror on his lips, I remember. A splendid example of the man of action, sir, as we say in Force 316. He never let misfortune get him down; always made a last effort. It was he who shouted to the Japs for help! . . .

He had a highly developed sense of duty and admired a job well done. He was also fond of action—just as you are sir, just as we all are. This idiotic worship of action, to which our little typists subscribe as much as our greatest generals! I'm not sure where it all leads to, when I stop to think about it. I've been thinking about it for the last month, sir. Perhaps that silly old fool was really quite a decent fellow at heart? Perhaps he really had a genuine ideal? An ideal as sacred as our own? . . . Perhaps . . . the same source that provides the impetus which lies behind our own activities? That mysterious atmosphere in which our natural impulses stir us to the point of action. Looking at it like that, perhaps the “result” may have no meaning at all—it's only the intrinsic quality of the effort that counts.⁷

I do not know of a better example of the glories of a technical job well done—craftsmanship in the face of enormous adversity—and the hazards of ignoring whose cause you are serving by your blind craftsmanship, than this homely little adventure play.

I am not here to argue against the fact that everybody needs representation. I am not here to argue with the adversary system. But I am here to say that the same kind of reasoning (or lack of it) that totally obscured the vision of Colonel Nicholson can have and has had its morally deadening effect on lawyers. I could even name names. They are people I knew many years ago when I was serving as a foot soldier in some large litigation wars and saw the seamy underside of legal conflict that is rarely visible to those who sit on the appellate bench or work in a law school classroom. If you are not aware, you will be sometime. All of this has a lot to do with legal ethics. It has a lot to do with morality. It has a lot to do with what I hope is a suitable antidote for the worthy but distorting concentration on craftsmanship that is part of what Dean Cramton called the “ordinary religion of the law school classroom.”

Some words of Alexander Solzhenitsyn provide a takeoff on the final subject I wish to mention before I conclude.

Western society has given itself the organization best suited to its purposes, based, I would say, on the letter of the law. The limits of human rights and righteousness are determined by a system of laws; such limits are very broad. People in the West have acquired considerable skill in using, interpreting, and manipulating law, even though laws tend to be too complicated for an average person to understand without the help of an expert. Any conflict is solved according to the letter of the law and this is considered to be the ultimate solution. If one is right from a legal point of view, nothing more is required, nobody may mention that one could still not be entirely right, and urge self-restraint, a willingness to renounce such legal rights, sacrifice and selfless risk: it would sound simply absurd. One almost never sees voluntary self-restraint. Everybody operates at the extreme limit of those legal frames. . . . I have spent my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with

no other scale but the legal one is not quite worthy of man either. A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses.⁸

From those words I will skip over to others written recently in *Chronicles*, a publication of The Rockford Institute, by the director of Corporate Communications for Walgreen's.

Businesses of every kind are much enamored these days with the demanding ideal they call the "pursuit of excellence." Devotion to this pursuit is so widespread as to qualify as a form of "natural religion" to which everyone can pay homage without the snickers that accompany talk of things divine.⁹

The pursuit of excellence about which we hear so much is very closely related to the worship of self and the worship of technique illustrated in *The Bridge over the River Kwai*. I continue the quote:

The professional person is powerfully motivated today by the search for excellence. Let us hope that search can transcend the desire to just have more and extend to "being more." . . . The *true* pursuit of happiness involves a *personal*—a moral—as well as a professional effort. And if that man or woman is receptive to the Judeo-Christian tradition he or she realizes that the rewards of this effort [that is the effort to be more not just to make more] are imperishable.¹⁰

It may seem a strange thing for me to make such a plea to students, my brothers and sisters who are essentially poverty stricken. But if you don't think seriously now about *being* more, not just *making* more, husbands and wives are likely to make so many promises to one another that the fulfillment of those promises is going to bend the lawyer out of shape in the formative years of his or her practice of law. And once you are bent out of shape in the legal profession, it is very difficult to get straightened out again.

There are a lot of hard choices ahead of you in determining what bridges you will build. I suggest that the books you use to tell you how to build a bridge are not going to tell you who to build it for, or in whose cause you will spend your professional qualifications.

I surely do not want to be understood as saying that you shouldn't represent a criminal defendant. I need to tell you that the client who gave me the greatest personal satisfaction was a young Polish boy whom the Supreme Court of Illinois appointed me to represent in his appeal to that court. I lost the appeal seven to nothing and acknowledged the result as just. But I had a great deal more satisfaction in helping that young man have due process of law than I had representing some prestigious but sometimes quite underhanded corporate clients.

I'm not trying to make this advice easy by telling you who your clients should be. But I am suggesting that there is a large world of causes out there and that while one little piece of representation doesn't make one of those causes, a succession of representations of a particular character can add significantly to a mosaic and amount to a pattern. I am asking you to think about that, and I'm also asking you to think about what kind of rewards you want from the practice of law. Ask yourself whether those rewards amount to the reward of getting or the rewards of serving and becoming.

The Apostle Paul said, "Set your affection on things above, not on things on the earth" (Colossians 3:2). He wrote to his young companion Timothy to withdraw from men of corrupt minds, "destitute of the truth, supposing that gain is godliness" (1 Timothy 6:5). What a sermon there is in those words "supposing that gain is godliness." That is a lesson not learned by many, not understood or accepted by many in this church today, including a few in the profession for which you are in training.

In the parable of the sower, in the 13th chapter of Matthew, the Savior taught that certain seeds, representing the word of God, fell among the thorns. In explaining this parable later to his apostles, he said that this represented the word that went to people who were caught up in the cares of the world and the deceitfulness of riches, which choke the word and render it unfruitful.

My brothers and sisters, this is an exciting time of your life. Poor though you may be, rich you are and will be. The kind of riches you will gain depends on what you put into your head now in the way of priorities, more than what you learn in the way of techniques and professional craftsmanship. What you have in the way of priorities to guide your skills is of eternal significance. What you have in terms of technical skills is going to be outdated when you draw your last breath.

I know that the gospel is true. I know that this Law School is pleasing to our Heavenly Father. I was close enough to the current of inspiration in the founding of this Law School to have my heart tingle. I know that it serves a purpose. And I am positive that the purpose is not pecuniary. Though I do not understand what it is, I know well what it is not. It is not to augment the tithing revenues of the Church. It is to serve that end the Savior described when he said, "Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal: But lay up for yourselves treasures in heaven, where neither moth nor rust doth corrupt, and where thieves do not break through nor steal" (Matthew 6:19–20).

May God bless you to remember that admonition throughout your professional preparation and practice, is my prayer, which I offer as I bear my testimony to you of Jesus Christ, the light and life of the world. In the name of Jesus Christ, amen.

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Notes

1. Roger C. Cramton, “The Ordinary Religion of the Law School Classroom,” 29 *Journal of Legal Education* 247 (1978).
2. *Id.* at 253.
3. *Id.* at 254–255 (emphasis in original).
4. Pierre Boulle, *The Bridge over the River Kwai*, trans. Xan Fielding (New York: Grosset & Dunlap Publishers, 1954).
5. *Id.* at 203.
6. *Id.* at 215.
7. *Id.* at 145–146.
8. Alexander Solzhenitsyn, “A World Split Apart,” Commencement Address Delivered at Harvard University, 8 June 1978.
9. Mammoser, “Letter from Corporate Headquarters,” *Chronicles*, Jan. 1987, 38.
10. *Id.* at 39 (emphasis added).