

10-16-2002

Just Lawyers

Ralph R. Mabey

Follow this and additional works at: http://digitalcommons.law.byu.edu/life_law_vol1



Part of the [Legal Profession Commons](#)

Recommended Citation

Mabey, Ralph R., "Just Lawyers" (2002). *Vol. 1: Answering God's Interrogatories*. Paper 24.
http://digitalcommons.law.byu.edu/life_law_vol1/24

This Unto What Were Ye Ordained? is brought to you for free and open access by the Life in the Law at BYU Law Digital Commons. It has been accepted for inclusion in Vol. 1: Answering God's Interrogatories by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Just Lawyers

Ralph R. Mabey

I'm honored that each of you would come. I am, after all, just a lawyer. Indeed, the title of my comments is "Just Lawyers"! I respect you. I respect you because you would come out on a Sunday evening after a long day. I know it's a sacrifice. I respect you because of your attendance and study of the law at the J. Reuben Clark Law School. I have a vision of great things that will come from you through your studies and your careers. The theme of Discovery Week is "So we, being many, are one body in Christ, and every one members one of another" (Romans 12:5). Now, how might you say that in Latin? *E pluribus unum*.

E Pluribus Unum: the motto of the Great Seal of the United States of America. In other words, I submit to you that the purpose of the laws of this land is to make of many one. This is not just the purpose of the Constitution but the purpose of all of the laws of this land.

Take the example of two parties who are entering into a contract. They've got different interests. One wants to sell high, the other wants to buy low. One wants to sell for cash, the other wants to buy on terms.

The contract laws of this country allow them to be brought together. Their very different interests are brought together in one agreement. They are unified and enabled to work together for their separate interests—unified by the law.

Now suppose they have a dispute and one claims breach of the contract by the other. The law is still there to forge a compromise. It gives them something to compromise around, a chance for them to reunify themselves based upon the principles of the law. Or, if they're unable to reunify themselves, they can reconcile themselves to each other through the enforcement of the law in court—whose purpose is then to reconcile this unhappy seller with this unhappy buyer.

Think about it. There is something profound in the purpose of our laws when seen in this context.

Even the criminal laws are there to unify us in obedience to those laws and, in the event of a breach of the criminal law, to reconcile the offender with the rest of society, to reconcile that offender through enforcement of the law.

Scripture recognizes that this is the purpose of the civil law. By “civil law,” I mean the secular law.

Doctrine and Covenants 134:6 says of our laws:

We believe that every man should be honored in his station, rulers and magistrates as such, being placed for the protection of the innocent and the punishment of the guilty; and that to the laws all men show respect and deference, *as without them peace and harmony would be supplanted by anarchy and terror; human laws being instituted for the express purpose of regulating our interests as individuals and nations, between man and man*; and divine laws given of heaven, prescribing rules on spiritual concerns, for faith and worship, both to be answered by man to his Maker (emphasis added).

What is meant here? Harmonize? Bring peace between human beings? *The purpose of the law*, according to scripture, is to unify us.

So now we come to the next question: If the purpose of the civil law is to unify us, what is the purpose of lawyers? Can it be that the purpose of lawyers is to unify persons? To harmonize my client’s interests with your client’s interests so that we can do a deal, so that you can go about your business? To reconcile our clients with their adversaries so that they can get on with their lives? Is the purpose of lawyers to unify humankind through adherence to law and/or reconcile humankind through the operation of law?

Perhaps nobody has heard people say that is the duty of lawyers. But it is the divine purpose of our laws—to unify us, separate and different though we are. Then is the divine purpose of lawyers to take us, separate and apart, and unify us under the law or reconcile us with the law?

I submit, brothers and sisters, that that is the purpose of a lawyer: to unify us under the law or reconcile us with the law. And only one of you laughed out loud. I would expect more of you to laugh out loud. It seems counterintuitive to the way we picture lawyers. But I want you to think about this because I submit to you that it is true.

I believe with this purpose in mind—that lawyers are to unify—the Lord said:

We believe that men should appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted or the right of property or character infringed, where such laws exist as will protect the same [and such appeals are made by lawyers]; but we believe that all men are justified in defending themselves, their friends, and property, and the government, from the unlawful assaults and encroachments of all persons in times of exigency,

where immediate appeal cannot be made to the laws, and relief afforded (Doctrine and Covenants 134:11).

To put it another way, no law enforces itself, no law interprets itself. If the purpose of the law is *e pluribus unum*, then the purpose of a lawyer is to effect *e pluribus unum*.

I submit that it is important even to the salvation of Zion, therefore, that we study the law. Indeed, the Lord said in Doctrine and Covenants 93:53: “And, verily I say unto you, that it is my will that you should hasten to translate my scriptures, and to *obtain a knowledge* of history, and of countries, and of kingdoms, *of laws of God and man*, and all this *for the salvation of Zion*. Amen” (emphasis added).

From this I take it the Lord says that for the salvation of Zion we should study the law of man and become lawyers. Now I’m likening this scripture to me and to you. But if Nephi could liken them, perhaps we all can. Out of that, I take a divine call to you and to me to study the law.

I believe then, with the purpose of lawyers in mind, that we must befriend the law. We must seek for wise lawyers and magistrates and persons who will rule on the law. You can tell that I’m referring to scripture. “And that law of the land which is constitutional . . . belongs to all mankind. . . . I . . . justify you . . . in befriending that law.” It is lawyers who must befriend the law. “I, the Lord God, make you free, therefore ye are free indeed; and the law also maketh you free.” That reference has to be to secular law, I believe.

In their entirety these verses read:

And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.

Therefore, I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land;

And as pertaining to law of man, whatsoever is more or less than this, cometh of evil.

I, the Lord God, make you free, therefore ye are free indeed; and the law also maketh you free.

Nevertheless, when the wicked rule the people mourn.

Wherefore, honest men and wise men should be sought for diligently, and good men and wise men ye should observe to uphold; otherwise whatsoever is less than these cometh of evil (Doctrine and Covenants 98:5–10).

I take out of all of these scriptures that, yes, maybe the Lord recognizes that it is our divine obligation to give effect to the motto of the United States of America.

As we—through lawyers, I submit—gain power to organize our businesses, organize our human transactions and relations, and organize the Church, we will be preserved in and able to keep the laws of God. In other

words, now I'm ready to take one further step. The step I'm going to take is to suggest that by lawyers acting in their divine calling to unify people under the law, they are partially fulfilling the divine law stated in Romans, that we should each unify ourselves together under Christ.

You may not want to take that leap with me. But let me read from Doctrine and Covenants 44:1–5:

Behold, thus saith the Lord unto you my servants, it is expedient in me that the elders of my church should be called together, from the east and from the west, and from the north and from the south, by letter or some other way.

And it shall come to pass, that inasmuch as they are faithful, and exercise faith in me, I will pour out my Spirit upon them in the day that they assemble themselves together.

And it shall come to pass that they shall go forth into the regions round about, and preach repentance unto the people.

And many shall be converted, insomuch that *ye shall obtain power to organize yourselves according to the laws of man.*

That your enemies may not have power over you; that *you may be preserved in all things; that you may be enabled to keep my laws;* that every bond may be broken wherewith the enemy seeketh to destroy my people (emphasis added).

There you have it. I submit that the Lord is saying that if you are going to be enabled to keep that divine law that Paul spoke about in Romans, it will be by organizing yourselves according to the laws of man.

I believe we can see the fulfillment of divine purposes by the unifying action of lawyers under the law. We can see Professor Wardle, who is here tonight, and other professors at this university and other legal powers at work in the world, attempting to unify the world through adherence to just law—and thereby opening the world and her peoples to the gospel.

I submit that there is a logical and scriptural basis for the progression that I've proposed to you this evening. If that's the case, that's all well and good. But I have to make a living practicing law, and some of you may have to, too.

Can we practice law as the Lord has outlined that we should practice the law, by unifying one with another, by reconciling our clients with others? I think that is an important question.

Could we follow the example of Christ? Isn't He our lawyer with the Father? Don't we read in Jacob 3:1 that "He will console you in your afflictions, He will plead your cause, and send down justice"? "But behold, I, Jacob, would speak unto you that are pure in heart. Look unto God with firmness of mind, and pray unto him with exceeding faith, and he will console you in your afflictions, and he will plead your cause, and send down justice upon those who seek your destruction." We can console and plead. We can't send down justice, but we can try to go get justice.

I think that when it comes down to the practice of law, we can be most successful if we fulfill our calling to unify and reconcile people with each other and the law. We need to seek common ground, to narrow differences.

A few years ago I went to a dinner with my legal adversaries. I represented a client who was missing more than a billion dollars and couldn't find it under any rock or under any bed. The bad guys sat across the table at dinner; we had fought for a couple of years. All of a sudden we reached a compromise—and it had a spiritual undertone to it. Opposing counsel spoke later of the occasion as a dramatic, unexpected, and crucial reconciliation and unification.

I submit to you that settlements under the law are part of our duty, our divine duty in unifying and narrowing the ground. If we do that, we reduce the transaction costs greatly. We reduce the psychic costs too, and we allow people to go forward, to move on.

I conducted a mediation in a hard-fought lawsuit a few weeks ago. These parties settled after a day's mediation. They were apart millions at the beginning of the day (several hundreds of percent in magnitude), and both sides expressed mistrust and pessimism. But they settled. One of the parties said to me, "You know, I didn't realize that my adversary was a pretty good guy. I could have picked up the phone three years ago and we could have settled this."

There is power in narrowing issues, in finding common ground. There is great lawyering in that effort.

A few years ago I was involved in a case where hundreds of millions had been lost, rather publicly, by a rather public family. I ended up mediating a dispute between the family and the party who was suing the family and had gone to the trouble of filing RICO charges against them. It was a nasty dustup.

We sat together for three or four days. One night at about eight or nine or ten o'clock, I was thinking, "This is going nowhere. I should have broken things off and gone to the baseball game." But the parties began talking together without me and without lawyers. By 7:00 A.M. the next morning, we had a settlement.

Well, I asked myself, "What are all we lawyers doing?" These parties got together and settled it themselves after years and much acrimony.

You know, there is a force, a power, in narrowing differences, and there's sometimes a religious component in it. It feels right.

Recently a respected trial judge assisted the parties in a large and disputatious case to reach a global settlement. This judge, a devout Catholic, assesses and reassesses his life at the end of each day. In so doing, he concluded that participating in this settlement was probably his finest day on the bench—ever—exceeding the many years of trials and adjudications at which he had presided and which he had decided.

Another way we can unify is by seeking just results, seeking a just reconciliation by enforcing the law. You know, if you've got the power and you've got the money and you've got the people in your law firm, you can pulverize the other guy.

But J. Reuben Clark, Jr., who served decades as an international lawyer before his call to the First Presidency, said, "Even in war, there should be some things that human beings would not do to their fellows." He opposed one-sided settlements or treaties based upon one party's overwhelming fire-power.¹ He said, "Guns and bayonets will in the future as in the past bring truces, long or short, but never peace that endures. I believe that moral force is far more potent than physical force in international relations."²

Now just a minute here. "I believe that moral force is far more potent than physical force in international relations," said J. Reuben Clark, Jr. The moral force of international law and international opinion may unify people better and forge peace and truces better than guns and bayonets.

There is some truth to this, I submit, in our practice of law. That truth is that if you can reach a fair settlement, that settlement is likely to stick. It's likely to be enforced. Those parties are likely to be able to do business with each other again in the future. They're likely to get on with their lives. Justice is more likely to be done.

If it's just guns and bayonets, then it's going to be expensive. It's going to go on a long time, and any peace achieved may well later fall out of bed.

So I believe also in this principle: Fulfilling a lawyer's divine calling makes good sense in the practice of law.

Now what about respecting diversity, a fundamental precept of Discovery Week?

E pluribus unum. The idea in Romans is not that we are homogenized—the idea is out of many, one. It is that the arm and the ankle and the elbow and the eye can be unified in purpose. So it is in the practice of law: We must work together with diverse peoples in bringing about unity. That is our calling.

You need go no further than the seller and the buyer. They've got very diverse interests. Your job is to allow them to do the business they want to do unified under the umbrella of that law, in their diversity.

Diversity is crucial to entrepreneurial success. It's crucial to the energy of this country. As we unify, we must respect diversity.

As President J. Reuben Clark began his assignment as ambassador to Mexico, he adopted this credo: "There are no questions arising between nations which may not be adjusted peaceably and in good feeling, as well as with reciprocal advantage, if those questions are discussed with kindly candor, with a mutual appreciation of and accommodation to the point of view of each by the other, and with patience and a desire to work out fair and equitable justice."³

When he was ambassador to Mexico, President Clark filled one of the most important ambassadorships in the world. There were momentous disputes between the U.S. and Mexico. There were upheavals and internal armed conflicts and boundary disputes with us. There were calls for armed U.S. intervention.

J. Reuben Clark served seven presidents of the United States as their lawyer, as undersecretary of state, as the chief legal officer for the Department of State, and in many other assignments, as well as ambassador to Mexico. He knew the international law, and he said the way to forge agreement is peaceably, with good feeling, through questions discussed with candor, mutual appreciation, and accommodation of each other's point of view, through desire to work out fair and equitable justice.

What happened when he left the ambassadorship? This is what the *Mexico City Excelsior* editorialized: Ambassador Clark had "distinguished himself by a virtue that is not common among diplomats: that of not putting himself forward, of not calling attention to himself, of observing a prudent reserve that has won him the esteem of all social classes in Mexico."⁴ He practiced what he intended to practice.

There is, I think, a great lesson in that: have respect for your adversary. How often are we or the other side painted as Satan simply because we play adversarial roles in our judicial system? It makes it very difficult to unify our differing interests.

There has been and is discrimination in this country. A friend told me of a kid who went to work at a great Los Angeles law firm not too many years ago and realized that he was making a thousand dollars less than the others in his class. He went to the senior partner and complained. The senior partner said without apology, "We can pay you less. You're Jewish. Where else are you going to get a job for more?"

A professor friend of mine who is preeminent in her field tells of standing up for a client in court for the first time. The judge looked over his glasses and said to her client, not realizing that she might have a *woman* lawyer, "Don't you have a lawyer?" Well, that judge was very apologetic. But it may have been the first time he had seen a woman lawyer—and it was not many years ago.

A person of color, a student of mine, reminded me that a few years ago, to travel in this great country, his family had to take their food with them and sleep in the car. Discrimination is unfortunately still with us.

There are strong differences among us. Our job is to respect those with whom and against whom and for whom we practice law and to forge unity. That means no ethnic or cultural jokes, brothers and sisters. That means that even if she tells a joke on herself, I will not repeat that joke. If I tell a joke about Mormons, that's fine. If you tell a joke about Mormons, that's not so fine with me. It means not saying things like, "Yeah, some of my best

friends are Mormons. I took a Mormon to lunch last week.” Do you feel the condescension in that? We have got to be careful about what we say, even when we have good intentions.

The J. Reuben Clark Law Society stands for these principles of J. Reuben Clark, these principles of *e pluribus unum*, of unifying the world under law, whether as graduates of this law school or any other law school, whether as members of this faith or of any other faith.

I was moved when the J. Reuben Clark Law Society in Salt Lake City presented its annual award to Nick Colessides of the Greek community. The Greek Orthodox clergy appeared at that luncheon in the Joseph Smith Building, honoring him and honoring us. Lawyering is building these bridges. That is what the J. Reuben Clark Law Society is all about. That is its mission.

I have one other radical suggestion for you on the practice of law. This time you can all laugh out loud. You will be successful and you will be living the scriptural admonitions for lawyers and the law if you will practice the paradox of humility. You will be smarter, better, and more successful if you are humble. It makes you happier. Someone said, “Too many humble people are proud of it.” So I can’t speak for myself. But I speak for you, brothers and sisters. (In general priesthood meeting last October, Bishop Richard C. Edgley spoke of the paradox or irony that strength comes from humility.)⁵

The way you become the best trial lawyer you can is with the humility to learn from what that witness tells you, to learn how that other attorney does it.

You may say, “Michael Jordan, he’s not humble. He says, ‘Give me the ball.’” And that’s what a good lawyer says: “Give me the ball.”

How did Michael Jordan come to want to get the ball and to know what to do with it? He did it through the humility of working harder than others, of learning everything about his opponents, of learning every move from the other guy and employing it. There is the paradox in humility.

You will be a smarter lawyer, a happier lawyer, and a better lawyer if you—if we—can learn that paradox. Learn to say to the client who says, “You’re charging me 500 bucks an hour. What’s the answer?” “I don’t know the answer.” Learn not to take credit for every deal. Just get it done even though you’re thinking, “I’ve got to be out there self-promoting myself or I’ll starve to death.” Your work and your service will promote you.

I’ll close with scriptural proof of this paradox, expressed in Helaman 3:35:

Nevertheless they did fast and pray oft, and did wax stronger and stronger in their humility, and firmer and firmer in the faith of Christ, unto the filling their souls with joy and consolation, yea, even to the purifying and the sanctification of their hearts, which sanctification cometh because of their yielding their hearts unto God.

Now there's the paradox, and I think it applies to us temporally as well as spiritually.

And in Ether 12:27 we read,

And if men come unto me I will show unto them their weakness. I give unto men weakness that they may be humble; and my grace is sufficient for all men that humble themselves before me; for if they humble themselves before me, and have faith in me, then will I make weak things become strong unto them.

We become strong through the humility to pray, through the humility to let the Lord know that we're imperfect, and through the humility of repentance. We become strong in the practice of law through the humility to learn from the other person, to listen to others, even to adversaries, and to change ourselves for the better.

In conclusion, I submit this: It isn't that there is a religious life we live and a lawyer's life we live and that we'd better try to reconcile them as best we can. No, I'm proposing something maybe a little more dramatic: that they are the same life, that your calling as a lawyer under *e pluribus unum* is part of your calling as a disciple of Christ under Romans 12:5. I say this in the name of Jesus Christ. Amen.

This Discovery Week fireside was given at the BYU Law School on November 14, 1999. Reprinted from the Clark Memorandum, Spring 2000, 2–9.

Ralph B. Mabey received his J.D. from Columbia University in 1972 and served as United States Bankruptcy Judge for the District of Utah 1979–83. He is currently a partner at LeBoeuf, Lamb, Greene & MacRae in Salt Lake City, Utah.

Notes

1. Edwin Brown Firmage and Christopher L. Blakesley, "J. Reuben Clark, Jr.: Law and International Order," 13, no. 3 *BYU Studies* (Spring 1973): 81.
2. *Id.* at 68.
3. Frank W. Fox, *J. Reuben Clark, The Public Years* (Provo, Utah: Brigham Young University Press, 1980), 549.
4. *Id.* at 583.
5. Richard C. Edgley, "Behold the Man," *Ensign*, Nov. 1999, 42–44.