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## Clark Memorandum: Spring 2013

J. Reuben Clark Law Society

BYU Law School Alumni Association

J. Reuben Clark Law School

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CLARK MEMORANDUM

J. Reuben Clark

Law School

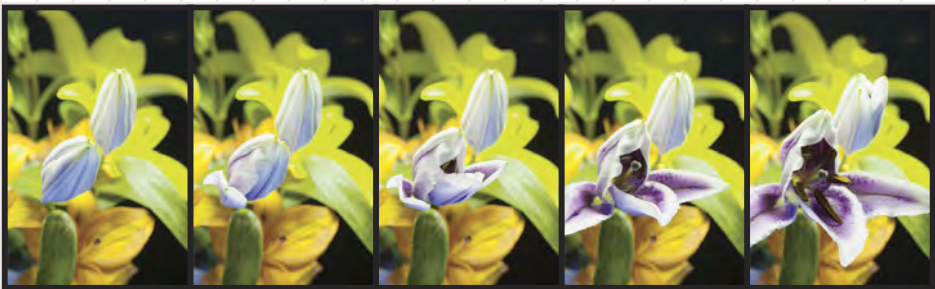
Brigham Young

University

Spring >> 2013



c o n t e n t s



Dean's Message

James R. Rasband

Becoming a Fruitful Tree:  
Christ and the Limits of  
Legal Thinking

Elizabeth A. Clark



Unfolding in Time: The Founding and Mission of J. Reuben Clark Law School

Elder Dallin H. Oaks



Faith to Forgive  
Grievous Harms:  
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James R. Rasband

The 21st Century as  
the Century of Duties?

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MEMORANDA

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- + WHEN IT IS ALL OVER
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DEAR ALUMNI AND FRIENDS,

Before the rise of law schools, lawyers were trained through apprenticeship. Such training involved learning the law the way we expect someone to learn woodworking: in the workplace as a craft and practical trade. One learns woodworking by working with, observing, and imitating an experienced master. We often think that kind of teaching and learning is from a bygone era, but, as explained by my colleague Brett Scharffs in an article entitled “Law as Craft,” published several years ago in the *Vanderbilt Law Review*, the idea of experienced masters imparting their knowledge to beginners is alive in the law. It is also alive and well at J. Reuben Clark Law School.



Our faculty continues to enjoy a reputation as remarkable classroom teachers, but their influence and training extends well beyond the classroom to taking students to lunch, to our “Fridays” (the Friday noon hour spent with students in the new student commons), and to the hundreds of office and hallway discussions with students each semester. Faculty mentoring, of course, is not limited to the academic or the social. It also takes the form of quiet, faith-filled conversations in faculty offices and unspoken examples that deep religious faith is fully compatible with rigorous analytical inquiry. My view has been that the relationship between faculty and students is at the heart of what makes J. Reuben Clark Law School distinctive.

Once students leave law school, the mentoring continues. In good law firms new lawyers work with more experienced lawyers, usually partners. The partners supervise, guide, and correct—with both words and actions—working closely with new lawyers and teaching them how to be true professionals.

Spurred on by the energy and ideas of one of our alumni, BYU Alumni Association Board of Directors member Jon Hafen has designed a new mentoring program for our students. Replacing our prior program that matched entering 1Ls with a mentor, this new program, focused on 2L and 3L students, allows a student to select a mentor based upon practice area and geographic location. Our hope is that, paired with our extraordinary externship program, this new Alumni Mentor Program will help students in the critical goal of finding employment within their target legal community and also begin a process of lifelong apprenticeship and mentoring. Within our alumni and our friends in the Law Society there are leaders in the public and private sectors throughout the world. Your generous support and mentoring of our students can make a real difference in their lives and careers. If you would like to learn more about the Alumni Mentor Program, please feel free to contact Beth Hansen at [hansenb@law.byu.edu](mailto:hansenb@law.byu.edu).

I am truly grateful for all that the readers of the *Clark Memorandum* do to mentor, teach, and train our students. I hope you enjoy this issue of the magazine, which has an abundance of thoughtful material. Please make the Law School one of your stops if you happen to be in Provo.

Warm regards,

A stylized, handwritten signature in dark ink, appearing to read "Jim".

JAMES R. RASBAND



# Becoming a Fruitful Tree

CHRIST AND THE  
LIMITS OF  
LEGAL THINKING

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ELIZABETH A. CLARK

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OVER THE YEARS I have struggled with myself and have counseled with others as they have grappled with issues of compartmentalization, integrity, balance, choice of career, finding meaning in work, why we come to law school, and why we do what we do after we leave law school. Students ask whether they should pursue lofty goals or seek a job in which they can better support their family.

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TREE ILLUSTRATIONS BY MCRAY MAGLEBY





Others wonder what it means to have a life of integrity while practicing law. Women and, increasingly, men ask how they can find an appropriate balance between competing demands of family and profession. We all attempt to make sense of our lives in the law.

I will return to some of these concerns about integrity, balance, and career choice, but I want to approach the issue through discussing idolatry and law. In a remarkable article in 1976 entitled “The False Gods We Worship,” President Spencer W. Kimball called us to repent from trusting in the arm of flesh: “In spite of our delight in defining ourselves as modern, and our tendency to think we possess a sophistication that no people in the past ever had—in spite of these things, we are, on the whole, an idolatrous people.”<sup>1</sup> He explained, “I use the word *idolatry* intentionally. . . . Whatever thing a man sets his heart and his trust in most is his god; and if his god doesn’t also happen to be the true and living God of Israel, that man is laboring in idolatry.”<sup>2</sup> If pressed to see how this would apply to us as lawyers, perhaps our initial response might be to see our false gods as vanity, power, wealth, or recognition. While I do not mean to underrate the allure of these false gods, today I mean to focus on two perhaps less obvious false gods that we as lawyers are also prone to worship: principles and goals.

In the first section of the Doctrine and Covenants, we are told that “every man walketh in his own way, and after the image of his own god, whose image is in the likeness of the world.”<sup>3</sup> What is the image of our god, whose image is in the likeness of our legal world? In contrast to the physical creations of engineers or artists, lawyers create primarily a world of ideas. We balance, structure, restructure, categorize, recategorize, interpret, and apply ideas and concepts. “Preemption,” “501(c)(3) organization,” “illegal alien,” and “Fair Labor Standards Act violation” are all ultimately abstract conceptions in an equally abstract world

of legal structures and norms. Law students are taught early to “think like a lawyer” in order to access this abstract legal world. Students quickly learn legal ways of thinking and arguing, chief among which are principles and goals.

We use both principles and goals in legal analysis: principles include black letter law, *prima facie* cases, or outlines of course material. Goals appear in balancing tests, arguments for public policy, and theories of legal realism or justice. We also often use principles and goals in how we think about the legal profession. Principle-based approaches see law as devotion to principle over emotion, as ensuring principles such as due process, or as a set of universal principles. Goal-oriented approaches see law as instrumental, such as pursuit of justice, equity, or social stability. My argument today

is that we often create a god in the image of our legal world: we worship the god of correct principles or the god of worthwhile goals. These false gods are not exclusive to lawyers (to some extent they can be seen as occurring throughout Western thinking since the Enlightenment) but are endemic and patterned after the likeness of our legal world. Worship of these false gods has very practical implications. Let me illustrate this by looking at how they affect our understandings of integrity, balance, and career choice.

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#### *Worship of Principles and Goals*

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One form of idolatry borrowed from legal thinking is the worship of principles. We see the gospel as a set of principles to be learned and applied—a master outline to learn and follow. In this view the gospel can be reduced to a group of principles, such as justice, mercy, faith, tithing, and provident living. Our job is to learn and live each principle. We may understand that these principles have a hierarchy of importance or multiple elements, but we ultimately see the gospel as a set of principles to be understood and lived. With this mind-set there usually isn’t an obvious connection between the gospel and lawyering, except in seeing the gospel as a source of ultimate moral principles and ethical guidelines for our work as lawyers. In fact, it seems sort of silly to those



worshipping abstract principles to suggest that there is more connection between the legal world and the gospel. While there may be some larger moral principles underlying bankruptcy, tort law, or tax law, as well as some morally based ethical rules, these fields each operate primarily under their own set of very secular rules. Fencing-in and fencing-out rules, for example, seem completely unconnected to the gospel. In a similar way, from this vantage point our work in the legal world is also largely separate from the gospel. When we act in the world, we act on the world's terms: billable hours, academic rank and status, cases won, IPOs handled. For the worshipper of correct principles, life is primarily a set of separate boxes governed by separate principles.

What does worship of principles mean for questions of integrity, balance, and career choice? In the worship of correct principles, integrity means accepting gospel limits on the box of our legal profession. The box of work as a lawyer must fit in the overall box of the gospel. Integrity here means that gospel principles provide ethical boundaries for our work and also that we drill some holes in the box of work, allowing gospel principles in to inspire high ethical and personal standards. Balance means trying to squeeze in all the needed boxes in our lives: professional obligations, Church work, family time, and personal spiritual development. If we're honest, we're often left a bit uncomfortable because the box of time spent on our legal work is usually larger than the boxes for family and the Church, which we know are higher in the ultimate hierarchy of principles. But the boxes often just seem to come that way. Career choice from this approach is equally problematic: we are torn between the worthwhile principles of supporting a family, having time for family, and contributing to society.

Principles, however, are not the only objects of worship we borrow from our legal world. Many law students are drawn to the practice of law because of goal-based approaches. Students want to make a difference, serve an underrepresented population, or improve access to justice. Legal norms themselves can be seen to embody the pursuit of worthwhile goals in public policy or reflect multiple goals, such as in balancing







tests. We may begin to see the gospel as a set of goals or aspirations, following the likeness of our legal world. We see the goal of getting to the celestial kingdom, the goal of building an eternal family, and the goal of building the kingdom here on earth. We have multiple smaller goals, such as giving significant professional service, building the kingdom by faithfully fulfilling callings, and creating a spiritual home environment.

So what do integrity, balance, and career choice look like here? I suggest that when we

worship worthwhile goals, integrity means spending all of one's life dedicated to what matters most. A person with integrity in this view is one who stays focused on the big picture, who constantly remembers their eternal goals. Balance, theoretically at least, shouldn't be a problem, because one is supposed to be focusing on what's most important. The problem, of course, is balancing subsidiary goals such as professional service, Church service, and family time. This can become a nightmare

balancing test in which everything is the most important. Elder Bruce C. Hafen told the story of a young mother with "a large family, a responsible Church calling, and a busy husband. She was bewildered about what should come first in her life and when. Someone told her, 'Well, just be sure you put the Lord's work first.' Her reply: 'But what if it is all the Lord's work?'"<sup>4</sup>

Choosing a profession also seems simple—at least at the outset. Worshipping goals suggests that we should find a profession in which we can actively do the most good: we should defend the defenseless, build the Church and kingdom, or teach the gospel. If we can't find work doing this, we feel discouraged and a bit guilty. Even if we do find deeply meaningful work, worship of goals can result in discouragement and burnout when we realize the inevitable amount of time spent in less meaningful aspects of our work or if we see limited success in accomplishing our goals.

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#### *Does Salvation Come by Principles or Goals?*

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At this point (or perhaps considerably earlier), some of you may respond that I am setting up straw men. "These aren't false gods," you might say. "If we really had a true understanding of all gospel principles, we would be humble, patient, kind, and long-suffering, and we would be celestial material." Or, "Teaching the gospel is about teaching correct principles," you might say. The most basic gospel manual is titled *Gospel Principles*, after all. We can use principles of revelation or priesthood blessings to help us resolve apparent conflicts among principles we are asked to meet. If one principle cannot resolve a situation, another, such as faith, humility, or patience, might be what is required.

Or you might argue that the gospel does require us to focus on worthy goals. We are regularly encouraged to focus on what matters most and to align our lives with celestial priorities. Issues of discouragement or burnout are merely a lack of vision. Balance itself or being in tune with revelation can be goals that we pursue, reconciling otherwise competing demands.

In response, let me diverge for a moment. When preaching to the unrighteous King



Noah and his court, Abinadi posed this question: “Doth salvation come by the law of Moses? What say ye? And they answered and said that salvation did come by the law of Moses.”<sup>5</sup> But here comes the telling part. Abinadi said, “I know if ye keep the commandments of God ye shall be saved.”<sup>6</sup> And then, after reminding Noah and the priests that they weren’t quite living up to the Ten Commandments that were the core of the law of Moses, he gave a fuller answer: “And moreover, I say unto you, that salvation doth not come by the law alone; and were it not for the atonement, which God himself shall make for the sins and iniquities of his people, that they must unavoidably perish, notwithstanding the law of Moses.”<sup>7</sup>

Abinadi taught that if we could keep all the commandments we could be saved—“if ye keep the commandments of God ye shall be saved”—but explained that salvation does not come by the law alone: “[W]ere it not for the atonement, [his people] must unavoidably perish, notwithstanding the law of Moses.”

Our salvation will not come through our perfection. If we want to worship what will save us, we shouldn’t set up the law of Moses as our idol. In a similar vein, I would suggest that salvation does not come through the worship of correct principles or worthwhile goals. Of course, if our lives truly reflected a perfect understanding of gospel principles and goals, we would be saved, but our salvation will not come through principles and goals alone.

It may seem unduly harsh to suggest that we are tempted to actually worship principles and goals. But, as President Kimball explained, “Whatever thing a man sets his heart and his trust in most is his god.” Ultimately, we worship what we think will save us. We worship where we put our time, attention, focus, trust, and love. Do we devote time, attention, and love to marshaling and following gospel principles or seeking eternal goals? Do we trust these principles or goals to see us through difficult decisions? While correct principles and worthy

goals are not bad in themselves, they are ultimately insufficient. We are saved only by the true and living God, not by principles or goals—however useful these may be. To repeat President Kimball, “Whatever thing a man sets his heart and his trust in most is his god; and if his god doesn’t also happen to be the true and living God of Israel, that man is laboring in idolatry.”

Please don’t misunderstand me. I recognize that principles can help us to understand and teach doctrine clearly and that goals can help us to exercise our agency wisely, but my point is that neither can save and that we should not use these to order our thinking about our lives. When our conceptions of integrity, balance, and career choice stem from beliefs in principles or goals instead of from worship of a living God, then principles and goals become the way we order our thinking and living. If we let principles and goals order our paths and define our lives, I suggest that we do indeed make these the focus of our worship. The practices and ordinances of the law of Moses were helpful as reminders, types, and teaching patterns, just as principles and goals can be in our world. The temptation for us, as it was for those under the law of Moses, is to see and worship the stepping-stone and to lose sight of what it points us to.



WORSHIP OF  
CHRIST  
BUILDS  
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INTO  
ORGANIC,  
LIVING  
WHOLES.

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*Worshipping a Living God: Insights on Integrity, Balance, and Career Choice*

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So what should we worship? How does this look different from a worship of principles or goals? At one point in the Doctrine and Covenants the Lord stated: “I give unto you these sayings that you may understand and know how to worship, and know what you worship.”<sup>8</sup> To what sayings was the Lord referring? The verses immediately prior to this contain a passage similar to that in the first chapter of the Gospel of John, which describes Christ as Creator, the Only Begotten of the Father, growing from grace to grace, being baptized, and receiving the Father’s glory.<sup>9</sup> What do we worship? We worship a living God. We worship Christ. If we see Christ as the center of our worship, so many scriptures and so much in life fall into place.

For example, Christ teaches in the book of 3 Nephi that “this is the gospel which I have given unto you—that I came into the world to do the will of my Father, because my Father sent me.”<sup>10</sup> The gospel there is not defined as a set of principles or goals but as Christ doing the will of the Father. Or look at Nephi’s vision, also in the Book of Mormon. What was the tree, the purpose of our quest in life? When Nephi asked for an interpretation of the tree for which the righteous are seeking, he was shown the birth and life of Christ.<sup>11</sup>

Maybe most or all of this was already obvious to you. To me, however, a clear understanding that we worship a living God rather than principles or goals gives illumination to hard questions of balance, integrity, and life as a lawyer. Let me illustrate this first visually

with a scriptural image that I love. Christ and eternal life (which is a life like Christ's), are often compared to trees in scripture, such as the tree of life in the Garden of Eden, the tree of Nephi's vision, and the tree "springing up in you unto everlasting life"<sup>12</sup> in chapters 32 and 33 of the book of Alma. To me this points toward the living power of Christ as opposed to the deadness of principles, goals, or other false gods.<sup>13</sup> Worship of Christ builds our lives into organic, living wholes.

What does worship of a living God mean for difficult questions of integrity, balance, and career choice? If we worship principles, then it is easy to segregate work as a lawyer and the gospel. At most, integrity merely brings good principles, such as compassion or honesty, into the basically self-contained world of work. The rest of work is a matter of competing on the world's terms, or figuring out and applying the laws and principles of that realm. But in the worship of Christ there is ultimately no distinction between secular and spiritual, no limits on what we must give to the Lord. All our lives are to be holy and consecrated, not just the parts when we attend the temple or prepare and teach our Sunday School lessons. Through the Holy Spirit we can have guidance in our lawyerly work and careers and can be led to be instruments in the Lord's hands. We serve Him when we serve "the least of these"<sup>14</sup> through writing their wills, resolving their disputes, and helping them keep plans and decisions within the law. We serve the same Christ whether we serve in the home, in a general counsel's office, or in Primary. Consecrated service knows no boundaries and has no boxes. Our legal work becomes an extension of our worship, wherever and however we are led to serve.

Integrity stemming from a worship of Christ means not merely consecration to a goal but consecration to an omnipotent, divine, omniscient, and loving Being who has our ultimate welfare at heart. We may not see how something we are doing contributes to His purposes, but we can trust that He does when we submit our agency and goals to His will. As President Ezra Taft Benson taught, "When we put God first, all other things fall into their proper place or drop out of our lives. Our love of the Lord will govern the claims for our affection, the demands on our time, the interests we pursue, and the order of our priorities."<sup>15</sup> I have found that when I am motivated by the love of the Lord rather than by my own goals, however righteous, I am less prone to discouragement or burnout. I ask and listen more for guidance in my daily life. I can submit to disappointments and the less fulfilling or enjoyable aspects of righteous service because I trust Christ, His timing, and His purposes. People with the integrity that flows from a life consecrated to God exude peace and inspire those around them. As Elder D. Todd Christofferson explained, "A consecrated life is a beautiful thing. Its strength and serenity are 'as a very fruitful tree which is planted in a goodly land, by a pure stream, that yieldeth much precious fruit.'"<sup>16</sup>

In a similar way, worshipping Christ brings balance to life. If life is merely a set of competing principles or goals, we can never be confident that we have hit the right balance. If I spend time with my family—a worthy principle—I may be ignoring the principles of fulfilling responsibilities at work or taking care of my health, which are also important principles. Or if I have one overriding goal, it's hard to know how to divide my time among lesser goals or how to avoid burnout.

When I think of balance and worshipping Christ, I think of a wonderful allegory that Chieko N. Okazaki (a former counselor in the general Relief Society presidency) taught, also based on the image of a tree. She contrasted the image of a tree to more common images of balance, such as a fiddler on the roof; a gymnast on a balance beam; or "the traditional statue of Justice, blindfolded and [weighing] truth and error, justice and injustice."<sup>17</sup> As she described it:

*[M]ost trees are naturally symmetrical, if they're allowed to grow with access on all sides to the same amount of sun, wind, and soil. But sometimes a tree is close to a house, so it has lots of branches on one side but not very many on the other. Sometimes, like on the windward side of Hawaii, the wind blows steadily for most of the year from one direction, so the tree bends under that wind, pointing inland. Sometimes a tree is too close to another tree, so that it grows in a curve, seeking an open space where it can get more sunlight.*

*We don't think of these trees as sick or handicapped or dysfunctional. We don't even think of them as out of balance, even though they are no longer symmetrical. They're healthy and functional and will do just fine for years. Why? Because it's not the branches on the right that have to balance the branches on the left. The point of balance is between the branches and the roots. If the roots are sturdy and run deep into the soil, then the tree as a whole is strong and healthy and in balance. . . .*

*What are the roots in our lives that give us this kind of health and stability? It's our relationship with the Savior.<sup>18</sup>*

We are to be "rooted and grounded in . . . the love of Christ, which passeth knowledge, that [we] might be filled with all the fulness of God."<sup>19</sup>

Sister Okazaki wrote:

*If you felt "rooted and grounded in love," wouldn't it be easier to feel balance in yourself? Wouldn't you be able to put out new branches in areas where you need them? Wouldn't you feel a stronger ability to stay focused on the important parts of your life? Wouldn't it be easier to set priorities and make decisions?<sup>20</sup>*

Worship of a true and living and loving God gives balance. The nightmare balancing test of too many all-important goals subsides as we trust in God and make our daily focus simply doing what He asks at any given moment. In contrast, worship of principles and goals ultimately leaves us like the heroes in a Greek epic, constantly trying to please one fickle god without upsetting another, caught between competing righteous goals and principles.

What about worship of a living God and career choices? I am reminded again of President Benson's teaching: "When we put God first, all other things fall into their proper place or drop out of our lives. Our love of the Lord will govern the claims for our affection, the demands on our time, the interests we pursue, and the order of our priorities." What does that mean for our careers? Just as for the question of balance, the answer may be that this will not be the same for all of us or the same at all seasons of our lives. We are all given gifts to discover, develop, and share and have ways, both personal and



professional, that we can use those gifts to serve God's children.

Professor Jeffery Thompson of the BYU Marriott School of Management—who researches career choice and satisfaction issues—spoke at a BYU devotional and reminded us that we have all been given gifts and talents that can be expressed in one or many professional callings.<sup>21</sup> He said:

*[F]inding your calling in life may not be a matter of finding the one right job. Instead, it may be that your calling is to bring your unique spiritual gifts to whatever position the Lord blesses you with.*

*If you exercise faith in the Lord, follow His spirit, and seek to amplify your gifts, you will be led gradually to a place where you are well equipped to serve.*<sup>22</sup>

He summarized his points about a professional calling, saying, “[A]s with all important questions, when it comes to asking what our calling in life is, Jesus Christ is in the answer. . . . You can call upon the grace of Christ to help you with your professional calling.”<sup>23</sup> While we do have to use our agency and think through options and consequences, we don’t have to balance competing principles and desires alone as we work through career options.

In our attempts to live a consecrated life, we recognize that “[w]ork is simply one stage upon which we can act out our service to God and our fellowmen.”<sup>24</sup> In contrast to the worship of goals, when worshipping a living God we don’t necessarily need to be pursuing a professional calling that others or even we see as ultimately important. If we want to serve, and if we pray and work for opportunities to do so, we can trust that an omnipotent, omniscient, and loving God can lead us to where we can serve best in all aspects of our lives, including our careers. Our own agency, desires, and plans still play an important role, but these take their proper place as merely stewardship decisions over time, talents, and lives that are not truly ours. We plan, organize, and balance the best we can but do so in the light of guidance from a Master who consecrates our efforts, at times overrides our plans, and always lovingly corrects and improves our paths as we let Him.



If we trust in Christ and seek His guidance in career decisions, we come to realize that the perhaps seemingly unrelated parts of our professional ministries and lives come together in one organic whole of service to God. At this point we may see ourselves as disciple-lawyers or disciple-scholars, but, as Elder Neal A. Maxwell stated, “in the end all the hyphenated words come off. We are finally disciples—men and women of Christ.”<sup>25</sup> As disciples of Christ we can look back or look forward with an eye of faith and see our life, including our professional service, as something that continues to grow, progress, and shoot off new branches and is sometimes pruned for our own good.<sup>26</sup> As we plant the word of Christ in our heart and nourish it with our faith, our consecrated life of worship becomes as “a tree, springing up in [us] unto everlasting life.”<sup>27</sup>

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*Worship, Salvation, and Burdens*

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Worship is at its essence a question of salvation. We worship what we think will save us. If we worship wealth and power, at some level that is because we think that money and influence will smooth our path, resolve our problems, and save us from our greatest difficulties. If we worship principles, we think that we are saved by a correct understanding of true principles. Understanding true principles will solve challenges, open doors, and free us from unpleasant consequences in this life and the next. If we worship goals, we see salvation as the accomplishment of something eternally worthwhile, such as entering into the highest degree of glory or having an eternal family. Accomplishing these goals will save us from mistakes, regrets, and ultimate failure.

I would suggest that worshipping a living God involves a measurably different vision of salvation than that found in a worship of principles or goals. At its heart, a worship of principles relies on the power of knowing and understanding. However, “[i]n contrast to the institutions of the world, which teach us to *know* something,” taught Elder Dallin H. Oaks, “the gospel of Jesus Christ challenges us to *become* something.”<sup>28</sup> Instead of just a set of correct principles, “[t]he gospel of Jesus Christ is the plan by which we can become what children

of God are supposed to become.”<sup>29</sup> This is a difference in nature, not of emphasis. Some might argue that correct principles include the Atonement of Christ and that we cannot learn principles without living them. I would suggest, however, that worshipping principles and worshipping a living God are as different as a dead piece of lumber is to a living tree. Worship of a living God transforms us: we plant the seed of faith in the living Christ and it becomes “a tree, springing up in [us] unto everlasting life.” Christ’s Atonement provides us the cleansing and enabling power to save us from our own limitations and change our natures in a way that mere knowledge of principles cannot. Worshipping a living, powerful being means trusting in Him for our salvation from fear, fault, sin, and death.

In a similar way, worshipping a living God is sharply distinct from a worship of goals. One who worships goals sees them as the objects of our existence and sees salvation as checking off the boxes on a most eternally important to-do list. Salvation here is static—it means not being condemned, not missing out, and having some accomplishment completed. President Dieter F. Uchtdorf has repeatedly challenged this approach:

*In our diligent efforts to fulfill all of the duties and obligations we take on as members of the Church, we sometimes see the gospel as a long list of tasks that we must add to our already impossibly long to-do list, as a block of time that we must somehow fit into our busy schedules. We focus on what the Lord wants us to do and how we might do it, but we sometimes forget why.*

*My dear sisters [and brothers], the gospel of Jesus Christ is not an obligation; it is a pathway, marked by our loving Father in Heaven, leading to happiness and peace in this life and glory and inexpressible fulfillment in the life to come.*<sup>30</sup>

In contrast to a worship of goals, which sees salvation as accomplishment and completion, worshipping Christ involves a salvation of continued development, a “pathway” to peace, glory, and inexpressible fulfillment. Salvation is understood as transformational becoming, not accomplishing a set of objectives. We worship a living God who has the

power to overcome the limitations of our mortality and failures and help us be “alive in Christ,”<sup>31</sup> bearing fruit and becoming increasingly like Him.

In the end, the problem with false gods is not that they are always wholly evil but that they prove more of a burden than a blessing. In an extended passage in chapter 46, Isaiah sets up a powerful and moving contrast between the power of false gods and that of the true and living God. He describes the Israelites carrying their idols on their cattle and in their carts as they go into bondage in Babylon: “[T]heir idols were upon the beasts, and upon the cattle: your carriages were heavy loaden; they are a burden to the weary beast. They stoop, they bow down together, they could not deliver the burden, but themselves are gone into captivity.”<sup>32</sup>

Isaiah continues, posing the Lord’s question to those worshipping false gods:

*To whom will ye liken me, and make me equal, and compare me, that we may be like?*

*They lavish gold out of the bag, and weigh silver in the balance, and hire a goldsmith; and he maketh it a god: they fall down, yea, they worship.*

*They bear him upon the shoulder, they carry him, and set him in his place, and he standeth; from his place shall he not remove: yea, one shall cry unto him, yet can he not answer, nor save him out of his trouble.*<sup>33</sup>

The idols of ancient Israel, like our modern false gods, are powerless. We build them and carry them, even as we are going into bondage, yet they cannot save us out of our troubles. They cannot carry our burdens, ease our pains, or answer our deepest longings. Instead, we carry them and are worn down by the burdens they place on us.

In contrast, the true and living God carries and delivers us. In this same chapter Isaiah proclaims the Lord’s encompassing promise of deliverance:

*Hearken unto me, O house of Jacob, and all the remnant of the house of Israel, which are borne by me from the belly, which are carried from the womb:*

*And even to your old age I am he; and even to hoar hairs will I carry you: I have made, and I will bear; even I will carry, and will deliver you.*<sup>34</sup>



Jesus Christ is the true and living God of Israel who is mighty to save. From our birth through old age He has promised to carry, bear, and deliver us if we choose to worship Him. He alone is worthy of worship; He alone possesses the power to redeem and transform us and those we love. Our false gods burden us and leave us feeling overwhelmed and inadequate, but Christ's "yoke is easy, and [his] burden is light."<sup>35</sup>

I echo Amulek, who taught that "the word is in Christ unto salvation."<sup>36</sup> As we plant and nourish this word of "the Son of God, that he will come to redeem his people, and that he shall suffer and die to atone for their sins; and that he shall rise again from the dead,"<sup>37</sup> as Alma promises, "it will become a tree, springing up in [us] unto everlasting life. And then may God grant unto [us] that [our] burdens may be light, through the joy of his Son."<sup>38</sup> As we nourish the word, Christ in turn nourishes us:

*And because of your diligence and your faith and your patience with the word in nourishing it, that it may take root in you, behold, by and by ye shall pluck the fruit thereof, which is most precious, which is sweet above all that is sweet . . . ; and ye shall feast upon this fruit even until ye are filled, that ye hunger not, neither shall ye thirst.*<sup>39</sup>

As we worship Christ, we are fed, we are carried, and we are changed to become increasingly like Him.<sup>40</sup> We become fruitful trees.

I am grateful for a living, loving God and for the reality of His saving power. I have felt His transformative power in my life and know that He has carried me and made my burdens light. May we all ever worship Him. In the name of Jesus Christ, amen.

*This essay is adapted from a Spirit of the Law address given at BYU Law School on March 5, 2002.*

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#### NOTES

- 1 Spencer W. Kimball, *The False Gods We Worship*, ENSIGN, June 1976, at 6.
- 2 *Id.* at 4.
- 3 D&C 1:16.
- 4 Bruce C. Hafen, *Ambiguity in Law and in Life*, CLARK MEMORANDUM, spring 2011, at 16.
- 5 Mosiah 12:31–32.
- 6 Mosiah 12:33.
- 7 Mosiah 13:28.
- 8 D&C 93:19.
- 9 *See* D&C 93:1–17.
- 10 3 Nephi 27:13.
- 11 *See* 1 Nephi 11.
- 12 Alma 33:23.
- 13 *See* 2 Nephi 25:27: "Wherefore, we speak concerning the law that our children may know the deadness of the law; and they, by knowing the deadness of the law, may look forward unto that life which is in Christ, and know for what end the law was given."
- 14 Matthew 25:40.
- 15 Ezra Taft Benson, *The Great Commandment—Love the Lord*, ENSIGN, May 1988, at 4.
- 16 D. Todd Christofferson, *Reflections on a Consecrated Life*, ENSIGN, Nov. 2010, at 19; *quoting* D&C 97:9.
- 17 CHIEKO N. OKAZAKI, ALOHA! 64 (1995); *see also id.* at 64–79.
- 18 *Id.* at 65–66.
- 19 Ephesians 3:17, 19.
- 20 OKAZAKI, *supra* note 17, at 66.
- 21 *See* Jeffery A. Thompson, *What Is Your Calling in Life?* in BRIGHAM YOUNG UNIVERSITY SPEECHES 2010–2011 (2011), at 41.
- 22 *Id.* at 46–47.
- 23 *Id.* at 52.
- 24 *Id.* at 50.
- 25 Neal A. Maxwell, *The Disciple-Scholar*, in ON BECOMING A DISCIPLE-SCHOLAR: LECTURES PRESENTED AT THE BRIGHAM YOUNG UNIVERSITY HONORS PROGRAM DISCIPLINE AND DISCIPLESHIP LECTURE SERIES 1, 21 (Henry B. Eyring, ed., 1995).
- 26 Hugh B. Brown's wonderful story of pruning and career disappointments is a perfect example of this. *See* Hugh B. Brown, *The Currant Bush*, NEW ERA, Jan. 1973, at 14–15; *see also* D. Todd Christofferson, "As Many as I Love, I Rebuke and Chasten," ENSIGN, May 2011, at 98–99.
- 27 Alma 33:23.
- 28 Dallin H. Oaks, *The Challenge to Become*, ENSIGN, Nov. 2000, at 32.
- 29 *Id.* at 33.
- 30 Dieter F. Uchtdorf, *Forget Me Not*, ENSIGN, Nov. 2011, at 122 (emphasis in original); *see also* Dieter F. Uchtdorf, *Of Regrets and Resolutions*, ENSIGN, Nov. 2012, at 21; Dieter F. Uchtdorf, *Of Things That Matter Most*, ENSIGN, Nov. 2010, at 19.
- 31 2 Nephi 25:25.
- 32 Isaiah 46:1–2.
- 33 Isaiah 46:5–7.
- 34 Isaiah 46:3–4.
- 35 Matthew 11:30.
- 36 Alma 34:6.
- 37 Alma 33:22.
- 38 Alma 33:23.
- 39 Alma 32:42; *see also* Revelation 2:7 and 7:16–17.
- 40 *See, e.g.,* Alma 5:14; 1 John 3:2; and Moroni 7:48.









THE FOUNDING AND  
MISSION OF J. REUBEN  
CLARK LAW SCHOOL

ELDER DALLIN H. OAKS OF THE QUORUM OF THE TWELVE APOSTLES

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**I**t hardly seems possible that it has been 13 years since I last spoke at this annual Founders Day dinner. I am glad to be invited again. Dean Rasband suggested that I might speak about the founding of the Law School. I welcome that opportunity. Most of the leading figures in that effort are now gone, so it is timely for me to record my memories. I also welcome this opportunity to share my current impressions on how the graduates and faculty of J. Reuben Clark Law School are achieving the bold expectations with which this law school was initiated over 40 years ago.    PHOTOGRAPHS BY BRADLEY SLADE

## I. Church Leaders' Attitudes Toward Lawyers

I see the decision to have Brigham Young University establish a law school as the fourth phase in our Church leaders' evolving attitude toward lawyers.

In the beginning Joseph Smith's personal interaction with lawyers was apparently mixed. He consulted lawyers and they represented him in important contested matters, but, as Joe Bentley and I described in an early article in the *BYU Law Review*, it appeared after the Prophet's death that he had received very bad legal advice on how to hold title to Church properties under Illinois law. As a result, the Church experienced severe financial losses during the transition from the trusteeship of Joseph Smith to that of Brigham Young.<sup>1</sup>

The second phase was Brigham Young's well-known hostility toward lawyers. In the early years of his presidency he called the actions of lawyers "an outrage upon the feelings of every honest, law abiding man" and referred to them as "a stink . . . in the nostrils of every Latter-day Saint in this Territory."<sup>2</sup>

In the third phase Brigham Young softened his attitude toward lawyers and in 1873 even encouraged young Latter-day Saints "to turn their attention to the study of law" as a way of defending the Saints from their persecutors and obtaining righteous advice in legal matters.<sup>3</sup> A decade later Elder Franklin D. Richards reaffirmed that attitude in a statement that sounds remarkably modern:

*We do not want men to become lawyers, turn infidels, and live for nothing but the little money they can make. We want to raise up a corps of young men armed with the Spirit of the Gospel, clothed with the Holy Priesthood, who can tell the judges in high places what the law is, and what equity is, and can plead for the cause of Zion, and help maintain the rights of God's people.*<sup>4</sup>

This favorable attitude toward lawyers is reflected in the fact that 13 of the 97 apostles called thus far in this dispensation have been lawyers. The first was Stephen L Richards, ordained an apostle in 1917 at age 37. J. Reuben Clark Jr. was the second, in 1934. I was the eleventh, in 1984.

## II. The Founding of the Law School

The culmination of our Church leaders' increasing acceptance of lawyers came with the founding of the Law School at BYU. One could say that the increasing number of lawyers in prominent Church leadership made this founding inevitable. However, this decision came at a time when it was hardly obvious that such an endeavor could be successfully accomplished.

As I begin these recollections on the founding of BYU's law school, I must caution that what I say is only one view of the matter. Other important recollections need to be considered before a definitive history of the Law School is written. A key resource that has been vital for me and will be for others is Carl S. Hawkins's important history.<sup>5</sup> Others will be forthcoming.

The prime movers of the idea to establish J. Reuben Clark Law School were Elder Marion G. Romney and BYU president Ernest L. Wilkinson. The board of trustees approved their proposal in December 1970. That decision was announced March 9, 1971, simultaneously with the announcement that Ernest L. Wilkinson would be stepping down as BYU president.

In the meantime, President Wilkinson had begun preliminary investigations of what needed to be known to establish a law school. With his assistant, Jay W. Butler, he sought the advice of consultants (I was one of these), prepared dossiers on potential faculty members—mostly prominent LDS practitioners—investigated accrediting requirements, and assembled information on such essentials as a building, law library, and budgets.

When I was called as BYU president on March 27, 1971, and especially when my appointment was announced on May 4, I began serious consideration of these same matters. Having spent 10 years as a professor at the University of Chicago Law School, including over six months as acting dean, I had more experience with what would be necessary to establish a first-class law school than anything else for which I would be responsible when I became president on August 1.

From the beginning I was deeply concerned with the small number of active, experienced LDS law professors who could be recruited for the nucleus of the faculty. I knew of only three who had at least 10 years of experience at top-ranking law schools: Carl Hawkins at Michigan, Edward Kimball at Wisconsin, and Dallin Oaks at Chicago. I came to know that this count had overlooked a few, like Doug Parker at Colorado and Ray Jay Davis at Arizona. Also, I did not consider any at the University of Utah because I assumed that Church leaders would not want BYU to do any recruiting that could weaken the LDS representation there.

When President Harold B. Lee interviewed me as the prospective BYU president, he asked me what I thought of the recently announced decision to have a law school at BYU. I am embarrassed to recall the bluntness of my reply: "I think it's a bad idea." Surprisingly, that answer did not eliminate me from consideration. When Ed Kimball was first approached about the Law School, he had the same reaction: BYU didn't need one. Carl Hawkins's similar skepticism is evident from his year of declining offers to

join the new faculty—a matter I will mention later. When Rex E. Lee was chosen as dean, he also doubted that "there were enough LDS academics and practitioners who could make good academics to fill up a decent faculty."<sup>6</sup>

Early on I repeated my concerns to the BYU Board of Trustees in a way that I hoped would be helpful in preparing them to think realistically about the difficulties and costs of establishing a first-class law school. I shared my doubts that there were enough active, experienced LDS law professors in the entire country to provide the needed nucleus for a first-class law school. I gave my expert advice that establishing such

a law school would be extremely expensive. And I made the obvious point that it would be a big mistake to have a law school at BYU that was second class. Was this really the right time to try to establish a first-class law school at BYU?

Fortunately, the BYU Board of Trustees and its officers, the First Presidency, were

*This address was given at the J. Reuben Clark Law School Founders Day commemoration at Little America Hotel in Salt Lake City, Utah, on August 23, 2012.*





firm in their decision. To me and to my fellow leaders in the university, the decision to establish a law school had been made by men we sustained as prophets, seers, and revelators. We assured the First Presidency and the board that we would seek the inspiration and expend the efforts to make J. Reuben Clark Law School the best law school it could be.

Establishing a new law school was a daunting task. We had to appoint a dean, recruit a faculty, assemble a library, construct suitable quarters, and attract an entering class. Two years later, in my August 1973 address to that entering class, I expressed what we were seeking to achieve:

*The J. Reuben Clark Law School must in all respects be worthy of the name it bears. It cannot be satisfied with its assured standing among members of The Church of Jesus Christ of Latter-day Saints but must attain a greatness that transcends religious lines and establishes itself in the eyes of legal educators, scholars, the judiciary, the legal profession, the business world, officials of local, state, and federal government, and citizens at large.<sup>7</sup>*

The university administrators who directed the earliest planning were Dallin H. Oaks, Robert K. Thomas (academic vice president), and Bruce C. Hafen (my assistant). Ernest L. Wilkinson was also an important advisor. As we began, we followed three principles, which Carl Hawkins later described:

*Oaks decided that planning for the new law school should be governed by three principles that he followed himself and enjoined upon others subject to his authority: (1) that further decisions pertaining to the law school should not be made until a dean was appointed; (2) that until a dean was appointed, faculty members should not be appointed nor commitments made to prospective faculty members; and (3) that they should seek for appointment of a strong and independent dean who would report to the president of the university (through the academic vice president) and not to anyone else.<sup>8</sup>*

Hawkins's summary is accurate as far as it goes, but in modesty he omitted an important fourth principle: we had to have Carl Hawkins as the senior member of the law faculty. This was essential because of his great reputation in legal education; because his advice and experience would be a key factor in the necessary decisions of establishing a first-class law school; and most particularly because the influence of his personal example, along with Ed Kimball's, would be essential as we recruited and acculturated new faculty members with relatively little experience in legal education.

The account of how 36-year-old Rex E. Lee was chosen as dean and the events that led to Carl Hawkins's delayed but inspired decision to join the J. Reuben Clark Law School faculty are well known, so I will mention them only briefly.

Soon after my appointment as president, the board of trustees appointed a

six-member search committee to recommend the dean of the new law school. This was unprecedented. I know of no other instance in which the board followed this practice to identify a dean at BYU. All but one of the committee were legally trained: Elders Marion G. Romney, Howard W. Hunter, and Boyd K. Packer of the Quorum of the Twelve; Marion D. Hanks of the Quorum of the Seventy; Ernest L. Wilkinson; and me. Elder Romney, the chairman of the search committee, later described the committee's work as being "just like you find stake presidents," declaring that "[Dean Rex E. Lee was] chosen by inspiration just as [are] our stake presidents."<sup>9</sup>

Bruce Hafen gave this description of the concluding moment in our yearlong recruitment of Carl Hawkins:

*I remember the day that Rex and I were in [Dallin's] office. . . . Bob Thomas was there. We were talking about the law school. . . . It was a tense time. [Why? We had only one faculty member—Ed Kimball—and in one year we would welcome the first class.] The phone rang and the secretary said, "I think it's Professor Hawkins from Michigan on the phone."*

*Dallin said, "I think I had better take this call." He went to his desk and picked up the phone. He talked too softly for us to hear him, but we waited while he talked, chatting among ourselves. When Dallin came back he was touched. . . . He looked out the window at Timpanogos and then back at us. I saw tears in his eyes as he said, . . . "I guess the Lord really*



wants this law school.” Then he started to smile and said, “I guess he really wants it to be a good one. Carl’s coming.”<sup>10</sup>

Rex Lee later shared his private thought at that dramatic moment: “If that’s the case, couldn’t he have said it four months earlier?”<sup>11</sup>

### III. Accreditation

With the appointment of Dean Lee and with the participation of the initial faculty, especially Carl Hawkins, my personal role in the founding of the Law School was materially reduced. In the second year of planning, the dean, faculty, and staff went forward with recruitment of the entering class, with vital additions to the faculty, and with needed fundraising for student aid. Apart from the major policy matters that came to the president’s office, my personal role was concentrated on using my knowledge and influence to obtain accreditation for the new law school.

As I look back on our accreditation efforts, I see several miracles.

First, I marvel that more than a hundred extraordinarily well-qualified young men and women who could have been admitted to many first-class established law schools took the breathtaking risk of enrolling at this new one, thereby committing their careers before they began. We had to justify that faith.

Second, I marvel at our overcoming the accrediting authorities’ reservations about approving a new law school (1) whose

sponsoring Church did not yet extend the blessings of holding its priesthood to all worthy male Church members and (2) whose university would charge 50 percent higher tuition to persons not members of the sponsoring Church. Logically, those doubts were eventually overridden by the undeniable quality of the faculty, student body, library, financial resources, and university affiliation, but to me the true explanation is the blessings of the Lord. A miracle occurred.

A third miracle was the timing. I have already described the timing doubts of some of the best-informed participants. As I look back I marvel at the inspired wisdom that impelled us to go forward in 1971. Since that time the forces opposing religion in public life have strengthened to the point that it is providential that we were accredited and could establish the record we have established in a friendly time. If we had waited until we thought we were ready by objective standards, we might not have been able to be accredited or would have been faced with requirements that might have caused us to forego our attempt.

### IV. The Unfolding Mission of the Law School

This concluding portion of my talk is introduced by something I said in the 1973 ceremony in which we welcomed the first class. Noting that we were frequently asked why BYU was establishing a law school, I suggested that “the special mission of this law school and its graduates will unfold in

time.”<sup>12</sup> Now, more than a third of a century later, Dean Rasband has invited me to update that expectation. What have we done that begins to define that mission?

I am grateful to Dean Jim Rasband and to former deans Bruce Hafen, Reese Hansen, Kevin Worthen, and Jim Gordon for their review of an earlier draft of this talk. While the conclusions are mine, my expressions have been sharpened by their comments.

I will refer to six accomplishments of the Law School that, directly or indirectly, are helping to define its mission.

#### A. Quality of Legal Education

The establishment of a law school at BYU has doubled the number of men and women given a legal education in Utah. But this *quantity* increase is insignificant because most of these additional students would have been admitted and educated in other states and more than half of BYU’s law graduates leave Utah for other states.

What is significant is the *quality* increase. Just as the quality of BYU’s new law school was enhanced by the example of the University of Utah’s College of Law, so the U has used the example of BYU to persuade Utah legislature and donors to increase the quality of its physical plan and educational offerings. Competition has benefited the quality of law study at both universities in this state—so has the increased number of fine legal scholars interacting with one another. As I note this undeniable increase





in the overall quality of legal education in the state of Utah, I also affirm my satisfaction at the cordial, professional relationship between these two law schools.

#### B. Accomplishments of Graduates

The accomplishments of BYU law graduates are impressive for any law school but especially for one that has been graduating students for only a third of a century. Here are a few objective measures: Our BYU law alumni include nearly 100 state and federal judges and many, many local, state, and federal political leaders. Twelve graduates have served as law clerks in the United States Supreme Court. Few law schools have such a total in the last 40 years.

We who value Church leadership are impressed that 72 of our BYU Law School graduates have been called as mission presidents and 18 have been called to leadership as Seventies, eight of these as General Authorities. Hundreds of our stakes and wards have been blessed by the leadership of BYU-trained lawyers, both men and women.

Law School records show that 5,570 men and women have now graduated from J. Reuben Clark Law School. We believe that these graduates, whether in the legal profession or elsewhere, are using their law degrees and the critical and analytical skills they honed in law school in a multitude of ways that make us proud of their impact on the lives of their clients and families and on the legal and moral environment of their

communities and in their areas of influence. We believe (though we cannot prove) that these lawyers are better off and that our communities are better off because of their legal education at BYU.

We must also express gratitude for the J. Reuben Clark Law Society. This group of LDS and non-LDS lawyers has been a great blessing, serving as surrogate alumni when the Law School had relatively few; proving to be a wonderful and giving network of attorneys who have helped our students find externship opportunities and employment; and, in many instances, providing the Law School with vital financial support.

#### C. Accomplishments of Faculty

In terms of the scholarly work expected of faculty members in a first-class law school, the J. Reuben Clark Law School faculty's professional and public impact is worthy of high praise. This is a source of great pride to me. Granted, some of this work would have been done by these productive scholars if there were no law school at BYU and if they were working in other law schools for which they are well qualified. But I am sure you will share my conviction that much of the faculty scholarship in which we take such great pride is properly attributed to the fact that these men and women are working in a law school sponsored by The Church of Jesus Christ of Latter-day Saints. In that setting these scholars are enjoying the blessings that come from religious as well as

intellectual commitment and from the special reinforcement that comes from working with others similarly committed.

In many cases our faculty's scholarly work and outreach have been of immediate benefit to the Church—sometimes requested by the Church in a way that would not have been possible if these scholars were not working in a Church-sponsored institution. Prominent examples are the International Center for Law and Religion Studies' work to promote and protect religious liberty and the Marriage and Family Law Research Project's work on laws to strengthen the traditional family. Other scholarly work is of less direct but still important value to the Church by enhancing the rule and suitability of laws in the nations and communities in which our members reside.

Law journals and other publications sponsored by the Law School, including, particularly, the *Clark Memorandum*, have disseminated scholarly work and value positions in a way that would not have been possible if they were not based in a respected law school. The same is true of the many Law School-sponsored conferences, which have brought judges and scholars to BYU who have become acquainted with LDS leaders, thinkers, and values in a way that would not have been possible otherwise. And the value of such exposure is two-way, as our teachers and students learn from these important visitors. All of this strengthens the legal and moral culture of our nation and our church. Our students are greatly benefited by being



in the mainstream of such important intellectual and cultural currents.

The quality of our national and state government has been enhanced by J. Reuben Clark Law School faculty who have taken leaves of absence or left BYU to serve in high-level positions. Examples include Rex Lee as an assistant U.S. attorney general and later as solicitor general, Monroe McKay as a judge on the U.S. Court of Appeals, Larry Echo Hawk as assistant secretary for Indian Affairs, and Tom Lee as a justice on the Utah Supreme Court.

Brigham Young University has also drawn on its law faculty for leadership. Once it drafted a university president, once a provost, and four times a vice president, associate vice president, or assistant to the president—the draftees being Rex Lee, Bruce Hafen, Kevin Worthen, Jim Rasband, and Jim Gordon.

Reese Hansen was also drafted for academic leadership as president of the influential Association of American Law Schools. Having national peers elect a BYU law scholar and former dean to that prestigious position was an astonishing culmination to a journey that began with BYU leaders craving enough visibility and respect to qualify for accreditation.

#### D. Women in the Law

I am proud that BYU's law school has been actively engaged in welcoming women into the study, practice, and teaching of

law. About one-third of this law school's current students and full-time faculty are women. What a contrast to my 1957 class at the University of Chicago, in which there was only one woman in the class and one on the faculty!

One of my granddaughters graduated from this law school several years ago. During her law studies she had her first child, and she was pregnant with her second when she graduated. Through her experiences I know how women, including pregnant women and mothers, are encouraged as they study here. Her later exposure to a prominent law school community in the Midwest confirmed that J. Reuben Clark Law School is unusual and perhaps unique in the support system, care, and assistance it provides for the special needs of its female law students.

I am persuaded that law is a very appropriate study for women, married or single, and—at least at BYU—it can be readily harmonized with the parental responsibilities we consider so important. Among other characteristics, law is a profession that can be practiced from home and on a part-time basis. That surely is not true of many occupations women might choose or be compelled to pursue for support in the world in which we live.

To this list of accomplishments I must also add an expression of gratitude for the thousands—both members and nonmembers—who have demonstrated their belief in the mission of this law school with generous

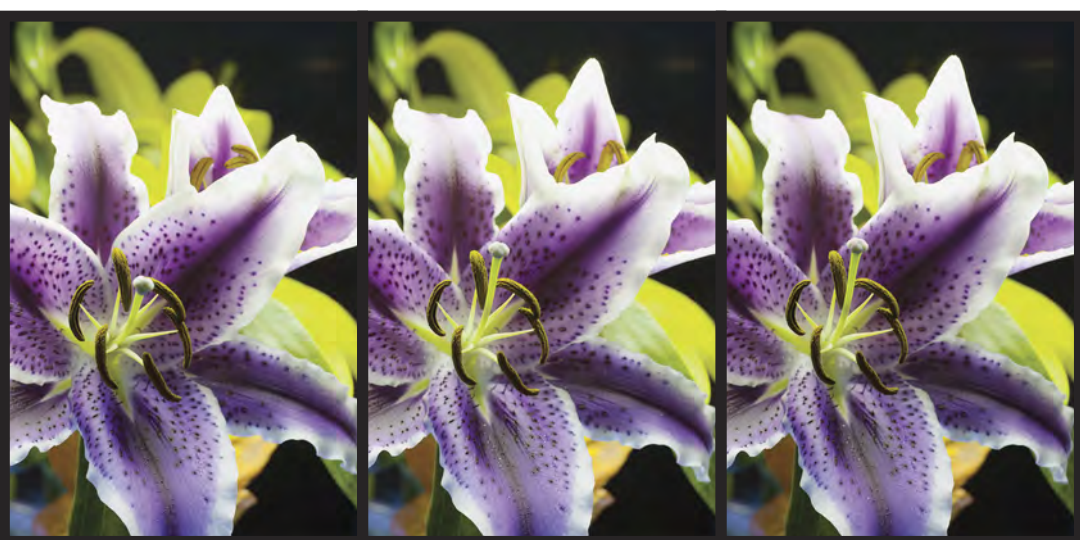
financial contributions. These contributions have enhanced the Law School's ability to accomplish its mission and have benefited many students who could not otherwise have studied law.

#### E. What Didn't Happen

From my earlier service in higher education, I evaluate university administration partly by what does *not* happen. Many things can go wrong or be a distraction to students, faculty, or the administration, and if they don't happen, that is a credit to the enterprise. Considering all of the things that could have gone wrong with this law school and its students and faculty, from the time of its founding to the present, I give J. Reuben Clark Law School very high marks. For the past 39 years the loyalty and performance of this unique community have been such that there has been relatively little need for damage control or mopping up. As a result, the efforts of its participants have been almost entirely concentrated on furthering personal and institutional missions.

I also have special appreciation for the fact that there has been no realization of the fears that this law school would have an overriding political orientation. That was a serious concern when we were assembling faculty and setting other directions. The efforts and wisdom and tolerance of many have forestalled those fears. Politics cannot be ignored in legal study because politics are pervasive in lawmaking and administration.





But what is called “political correctness”—on either the extreme left or the extreme right—has been resisted, personal choices have been honored, and reasonable discourse and concentration on legal scholarship have prevailed in this corner of legal education.

#### F. Effect of Comparatively Low Tuition

Finally, I endorse another accomplishment of J. Reuben Clark Law School that had not occurred to me. Dean Rasband described it as follows:

*Because the board of trustees has kept tuition so low, BYU law students can still afford to value a legal education for more than what it will produce in the marketplace. I believe this is a wonderful thing. It frees all of our graduates to pursue career and family choices that may be best for reasons other than the ability to produce an income and pay off large student loans.*<sup>13</sup>

Of course! And in this time of great concern with the personal and public impact of student loan indebtedness, this advantage also applies to students in other large BYU graduate programs, such as business and public administration.

#### V. Conclusion

It is time for me to conclude. I do so by repeating some fundamental principles I have previously expressed to the members of this legal community:

*The rule of law stands as a wall to protect civilization from the barbarians who would conduct public affairs and settle private disputes by power, position, or corruption rather than by recourse to the impartiality of settled rules of law. Lawyers are the watchmen on that wall.*

*Devotion to the rule of law means that . . . a lawyer’s predominant professional loyalty should be to the principles of the law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.*<sup>14</sup>

*The gospel incorporates the most important ideas in time and in all eternity. Its commandments, its covenants, and its teachings were established and shared by God our Heavenly Father, the Creator of us all. He desires that we be happy in this life and exalted in the life to come. . . .*

*The most important idea for any of us is that this life, with all its advantages and disadvantages, is only temporary. It is part of a larger whole. Our challenge is to develop the perspectives to realize and the strength to act upon the realization that the really important achievements of this life are those that carry enduring, favorable consequences for the eternities to come.*<sup>15</sup>

One of those mortal achievements of eternal significance is to contribute to the success of an endeavor established by the Lord to bless His children. As I said to the

first entering class and faculty of J. Reuben Clark Law School 39 years ago this month:

*We are privileged to participate in this great venture. It is our duty to make it great. He who builds anything unto the Lord must build in quality and flinch at no sacrifice toward that end.*<sup>16</sup>

You have done so over the years that have followed, and for this I thank you and invoke upon you the blessings of Him whom you have served, in the name of Jesus Christ, amen.

#### NOTES

- 1 See Dallin H. Oaks and Joseph I. Bentley, “Joseph Smith and Legal Process: In the Wake of the Steamboat Nauvoo,” *BYU Law Review* (1976): 735, 776–82.
- 2 *JD* 3:240; quoted in Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A History of the Church of Jesus Christ of Latter-day Saints 1830–1900* (Urbana: University of Illinois, 1988), 17.
- 3 *JD* 16:9; quoted in Firmage and Mangrum, *Zion*, 17.
- 4 *JD* 26:103; quoted in Firmage and Mangrum, *Zion*, 18.
- 5 See Carl S. Hawkins, *The Founding of the J. Reuben Clark Law School* (Provo, UT: BYU Studies, 1999).
- 6 Rex E. Lee, remarks at a Law School fireside, September 18, 1988; quoted in Hawkins, *The Founding*, 10.
- 7 Dallin H. Oaks, *Addresses at the Ceremony Opening the J. Reuben Clark Law School*, August 27, 1973, 7.
- 8 Hawkins, *The Founding*, 9.
- 9 Marion G. Romney, quoted in F. Burton Howard, “Keeper of the Flame,” *Clark Memorandum*, fall 1994, at 25.
- 10 Bruce C. Hafen, remarks at the retirement dinner for Carl Hawkins and Douglas Parker, April 27, 1991; quoted in Hawkins, *The Founding*, 20.
- 11 Rex E. Lee, remarks at Founders Day program, August 27, 1993; quoted in Hawkins, *The Founding*, 22, n. 10.
- 12 Oaks, *Addresses at the Ceremony*, 4–5.
- 13 James R. Rasband memo to Dallin H. Oaks, June 28, 2012, 2.
- 14 Oaks, *Addresses at the Ceremony*, 8–9.
- 15 Dallin H. Oaks, “Values,” *Clark Memorandum*, spring 1991, at 15.
- 16 Oaks, *Addresses at the Ceremony*, 5.

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JAMES R. RASBAND

FAITH ACCEPTING  
TO THE  
FORGIVE ATONEMENT  
GRIEVOUS AS  
HARMS RESTITUTION



ood morning. I must say I never imagined myself at this podium. But I have imagined myself on this playing floor—and *imagined* is the right word. I've wondered what it would have been like to be Danny Ainge, who, during my freshman year at BYU, went coast-to-coast in the closing seconds of a Sweet Sixteen game against Notre Dame and scored over Orlando Woolridge. I've dreamed what it would be like to drain a three from just inside half-court, like Jimmer Fredette did against Utah. Unfortunately, my actual skill set wasn't a match for such imagined heroics. I'm quite sure it's not a match for this podium either. Still, I consider it a great honor to have this opportunity to speak to you this morning.

ILLUSTRATIONS BY ANDREW WRIGHT

# I LOVE

This  
devotional  
address  
was given to  
the BYU  
student  
body on  
October 23,  
2012.

this university. I love the cool, crisp air of a late fall football game and the soft, golden light that falls on Y Mountain and Rock Canyon just before sunset. I even love wandering the stacks in the Harold B. Lee Library. BYU has had a great impact on my life.

My first experiences at BYU were in the late 1960s. Each summer my mother, my brother, and I came to BYU from our home in Pebble Beach, California, for spring or summer term so that my mom could work on completing her degree. We lived in Heritage Halls, or, to be more precise, we lived in what is now called “Classic Heritage” when it was almost new Heritage.

My mother ended up completing her English degree, and our home was forever enriched by what she learned at BYU. I mention my mom’s education at BYU partly because important parts of my thinking on today’s topic are derived from her thinking and writing on this topic.<sup>1</sup>

## THE DOCTRINE OF FORGIVENESS

The title of my remarks is “Faith to Forgive Grievous Harms: Accepting the Atonement as Restitution.” Now, to some, any talk from a lawyer that focuses on forgiveness may seem odd. Don’t lawyers depend upon a lack of forgiveness to function? In lawyer-speak, is a talk on the necessity of forgiveness an admission against interest?

I am convinced that practicing law with civility and integrity is a noble endeavor and fully compatible with a forgiving heart, and I’ll have a bit more to say about this later. Indeed, before you become too critical of lawyers, listen to the words of my good friend Jim Gordon: “It is true that some lawyers are dishonest, arrogant, greedy, venal,

amoral, ruthless buckets of toxic slime. On the other hand, it is unfair to judge the *entire* profession by a few hundred thousand bad apples.”<sup>2</sup> Such quips can be a bit tough for those of us who are attorneys, but how much worse can it get, given the number of us whose parents, when we decided to go to law school, made sure to scrape off their car the “Ask me about my children” bumper sticker?<sup>3</sup>

Turning to the concept of forgiveness, let me start with a familiar scripture. Matthew 18:21–22 reads:

*Then came Peter to him, and said, Lord, how oft shall my brother sin against me, and I forgive him? till seven times?*

*Jesus saith unto him, I say not unto thee, Until seven times: but, Until seventy times seven.*

Have you or a family member or a friend ever been terribly hurt by someone and found it difficult to forgive even once, let alone “until seventy times seven”? In such cases, do we say to ourselves, “The Lord can’t really mean that I should forgive that sort of sin or abuse”?

Yet it seems clear that the Lord really does mean it. Our very salvation depends upon us being willing to forgive others. As Christ taught:

*For if ye forgive men their trespasses, your heavenly Father will also forgive you:*

*But if ye forgive not men their trespasses, neither will your Father forgive your trespasses.* [Matthew 6:14–15]

That our own forgiveness should be conditioned on forgiving others can be a hard doctrine, particularly if the sin against us is horribly wrong and out of all proportion to any harm we’ve ever committed. Even harder, the Lord has indicated in modern revelation that “he that forgiveth not his brother his trespasses standeth condemned before the Lord; for there remaineth in him the greater sin” (D&C 64:9). This is a very strong statement: if we refuse to forgive, there remaineth in us the greater sin. How can this be? As I hope to explain, our salvation is conditioned on forgiving others because when we refuse to forgive, what we are really saying is that we reject, or don’t



quite trust, the Atonement. And it is our acceptance of the Atonement that ultimately saves us.

Why is it that we sometimes have trouble accepting the Atonement as recompense for the harms we suffer at others' hands? My experience is that we can sometimes forget that the Atonement has two sides. Usually, when we think about the Atonement we focus on how mercy can satisfy the demands that justice would impose upon us.<sup>4</sup> We are typically quicker to accept the idea that when we sin and make mistakes the Atonement is available to pay our debts.

Forgiveness requires us to consider the other side of the Atonement—a side that we don't think about as often but that is equally critical. That side is the Atonement's power to satisfy our demands of justice against others, to fulfill our rights to restitution and being made whole. We often don't quite see how the Atonement satisfies our own demands for justice. Yet it does so. It heals us not only from the guilt we suffer when we sin, but it also heals us from the sins and hurts of others.

#### THE ANALOGY OF THE FORGIVING LANDLORD

To help explain the two sides of the Atonement, let me try a rather homely analogy. Like most analogies and metaphors, it is not perfect in all respects. I hope, though, that it can aid understanding.

Suppose I find myself in a home built for me by a very generous landlord. It is a nice home. He encourages me to maintain and improve the home and gives me a number of instructions for making the home a nice place to live.

Over the years I sometimes improve the home, but other times, through my negligence, I make it worse. One time I flood the home when I fail to set the faucets to drip during a freeze. Another time my kitchen catches fire because I fail to turn off a burner on the stove. A couple of times I lose my temper and put my fist through a wall.

In each instance the landlord forgives me and encourages me to pay a little closer attention to my home and to his instructions for making the home a joyful place to live. He does not charge me for the damage caused by my mistakes. Instead, sometimes



he is patient while I figure out how to fix things on my own; sometimes he sends someone over to fix the problem; and sometimes I wake up and things are fixed in ways I don't quite understand.

This same landlord happens to have a son who is quite wayward. The son is always up to no good, and I don't particularly like or respect him. One night the landlord's son, as a prank, sets fire to the shed attached to the back of my house. The fire gets out of control, and the entire house burns down. I lose the home. I lose all of my possessions, including some particularly valuable possessions that I can't replace, such as photos and heirlooms.

I'm angry and distraught. I want the no-good son to pay. I want him to fix things and to make me whole. A part of me knows he can't really make it better. He may not have the resources to rebuild the house, and, even if he could rebuild the house, he can't retrieve the photos and heirlooms. And that makes me even angrier.

As I sit in anger, the landlord comes to visit me. He reminds me that he has promised to take care of me. He promises me that he is willing to rebuild my house. In fact, he says that he will do more than that: he will replace my house with a castle and then give me all that he himself has. He says that this might take a while, but he promises it will happen.

“What’s the catch?” I say.

“Here are the conditions,” he says. “First, you need to put your faith in me and trust that I really will build you that castle and restore all that you have lost. Second, you need to continue to work on implementing the instructions I gave you about keeping up your house. Finally, you need to forgive my arsonist son, just as I have forgiven you all these many years.”

That sounds easy enough and seems like an obviously great deal, but why might it be hard for the tenant to accept the landlord’s offer? Or, to move away from the analogy, why is it sometimes so hard for us to forgive others? Let me suggest some reasons:

First, we are probably angry. We want the arsonist to pay. But if we harbor this sort of anger, we may spend so much time pursuing the person who burned down our house that we don’t get around to rebuilding our house. As someone once said: “Resentment is like taking poison and hoping the other person dies.”<sup>5</sup>

It might also be hard to forgive because we can’t quite believe that the landlord will fulfill his promise. He’s never failed us when we’ve messed up the house before, but what about this time? Besides, it is usually easier for us to believe that the Lord will forgive our mistakes. This time it is someone else’s mistake.

Trust can be particularly difficult if the rebuilding project will take time. We want things fixed now, not later. Trust may also be hard in the case of losses and hurts that do not seem easily fixable. Perhaps the landlord can rebuild the home, but can he really replace the photos and heirlooms? What if we lost a child in the fire? Can he really take away that pain?

My testimony is that the Atonement really can make us completely whole, even for those things that seem like they can’t be fixed or repaired. As Isaiah foretold of the Savior: “The Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, . . . to comfort all that mourn; . . . to give unto them beauty for ashes, the oil of joy for mourning” (Isaiah 61:1–3).

I recognize that this doctrine—that the Atonement can heal us from the hurts of

others—is well established.<sup>6</sup> Yet, in my experience, it remains difficult to trust and accept that the Atonement serves this purpose. My hope is that I can add to what has previously been said on this topic and help remove some barriers to forgiveness by offering some reasons why we should trust the Lord’s promise.

#### THE ATONEMENT FULFILLS THE MOSAIC LAW’S RESTITUTION REQUIREMENT

I turn first to the Mosaic law and to an insight I owe to my mother.<sup>7</sup> Remember that Paul taught that the Mosaic law “was our schoolmaster to bring us unto Christ” (Galatians 3:24). Remember also Christ’s statement to His disciples in the Sermon on the Mount:

*Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil. For verily I say unto you, Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled.* [Matthew 5:17–18]

Think about Christ’s statement for a minute. Christ was comforting His faithful disciples—those who loved and revered the law of Moses. He was making sure they knew that His plan was to fulfill all the terms of the Mosaic law. But what exactly were those terms that He would fulfill?

Our answer to this question typically focuses on the portion of the Mosaic law that addressed Israel’s obligation to make sacrifices.<sup>8</sup> We tend to emphasize the Savior’s admonition that “your sacrifices and your burnt offerings shall be done away” and that instead we should “offer for a sacrifice . . . a broken heart and a contrite spirit” (3 Nephi 9:19–20). Our usual focus on the law of sacrifice is again on ourselves—what sacrifices we need to offer up to access the power of the Atonement and heal our feelings of guilt and remorse.

But the law of sacrifice was just one component of the Mosaic law. The Mosaic law also included dietary laws and criminal laws—remember the *lex talionis* of an eye for an eye and a tooth for a tooth.<sup>9</sup> It also included family law and various civil laws that we today might recognize as tort or contract law.

Isn’t it plausible that when the Savior said He came to fulfill the law, He was talking about more than just the law of sacrifice? Shouldn’t we take Him at His word that “one jot or one tittle shall in no wise pass from the law, till all be fulfilled”? Although I am not an expert on the Mosaic law and surely do not understand exactly how Christ fulfilled the law in all its dimensions, let me suggest that the Atonement did, in fact, answer other demands of the Mosaic law.

Specifically, I want to focus on the civil law component of the Mosaic law and its requirement that restitution be made to persons harmed by the wrongful actions of another. I do so because the restitution requirement is so important to understanding the doctrine of forgiveness. Exodus 21 and 22 set forth several such restitution requirements. Consider two of many examples: If a person caused a fire to break out so that “the standing corn, or the field, be consumed therewith; he that kindled the fire” was required to “make restitution” (Exodus 22:6). Similarly, if someone caused his livestock to graze in the field or vineyard of another, he was obligated to “make restitution” out “of the best of his own field, and of the best of his own vineyard” (Exodus 22:5).

This concept of restitution remains a key part of our law today. Under tort law, which is just another word for personal injury law, courts can award damages to persons injured by the negligence of another; similarly, under contract law, damages may be awarded to those harmed by a breach of contract. In the criminal context, many states allow crime victims and their families to prepare victim impact statements that describe the way in which they have been harmed.

The basic point is that, just like current law, the Mosaic law was not designed only to punish the wrongdoer. The Mosaic law also existed to protect, compensate, and make whole those harmed by others, whether intentionally or negligently. If Christ came to fulfill all the terms of the law, this part of the Mosaic law should also be fulfilled by the Atonement.



If the Mosaic law schools us that Christ intended to make full restitution for the harms we suffer, it does not indicate how that could happen. Just as it is difficult to understand exactly how the Atonement satisfies the demands of justice for our sins, it is challenging to grasp how the Atonement works to make restitution to us for the sins of others. As is the case with most such “how” questions in the gospel, we must ultimately fall back on our faith and trust the Lord that His promises are true even if the mechanism is uncertain. But as an aid to our faith, let me suggest a couple of ways in which the Atonement can be understood as making restitution.

First, even for something as horrible as losing a child because of another’s sin, the Atonement ensures significant restitution through the Resurrection. We are promised that “every thing shall be restored to its perfect frame” (Alma 11:44). In addition, just like the wealthy landlord in my analogy promised not only that he would build the tenant a castle but also give the tenant all that he had, in scripture after scripture the Lord promises us all that He has.

D&C 88:107 states: “And then shall the angels be crowned with the glory of his might, and the saints shall be filled with his glory, and receive their inheritance and be made equal with him.”

D&C 84:37–38 provides: “He that receiveth me receiveth my Father; And he that receiveth my Father receiveth my Father’s kingdom; therefore all that my Father hath shall be given unto him.”

If we can inherit all the Father has and if all will be restored to its perfect frame, is there a reason we should insist that the person who hurt us pay us back? Hasn’t justice been satisfied?

#### **FORGIVENESS: MAXIMIZING FAITH RATHER THAN MINIMIZING HARM**

It is critical to understand that forgiving others is not just a practical virtue. It is a profound act of faith in the Atonement and the promise that the Savior’s sacrifice repays not just our debts to others but also the debts of others to us.

In our live-and-let-live society, we may believe that being forgiving is just etiquette and good manners. It is not. We may think that forgiveness requires us to let mercy rob justice. It does not. Forgiveness does not require us to give up our right to restitution. It simply requires that we look to a different source. The non-judgmental worldly phrases “don’t worry about it” and “it’s no big deal” are not illustrations of the doctrine of forgiveness. On the contrary, when a person sins against us, it can be a very big deal.<sup>10</sup> The point is that the Atonement is very big compensation that can take care of very big harms. Forgiveness doesn’t mean minimizing the sin; it means maximizing our faith in the Atonement.

My greatest concern is that if we wrongly believe forgiveness requires us to minimize the harms we suffer, this mistaken belief will be a barrier to developing a forgiving heart. It is okay to recognize how grave a sin is and to demand our right to justice—if our recognition triggers gratitude for the Atonement. Indeed, the greater the sin against us—the greater the harm we suffer—the more we should value the Atonement. Consider Christ’s parable of the two debtors from Luke 7:41–43:

*There was a certain creditor which had two debtors: the one owed five hundred pence, and the other fifty.*

*And when they had nothing to pay, he frankly forgave them both. Tell me therefore, which of them will love him most?*

*Simon answered and said, I suppose that he, to whom he forgave most. And he said unto him, Thou hast rightly judged.*

If Simon is correct that the greater sinner will love the Lord even more, doesn’t the same reasoning suggest that our love for the Savior will increase when He pays a particularly large debt owed to us? There is little value in claiming that a wrong against us is slight. Instead, if we give the wrong its full weight, we are better able to give the Lord a full measure of gratitude for making us whole.<sup>11</sup> And when we understand that the Lord promises us restitution, we can recognize that our anger at our victimizer is ultimately unnecessary. This in turn

**FORGIVENESS  
DOESN'T  
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IN THE  
ATONEMENT.**

helps free us to love our enemy as the Savior commanded (see Matthew 5:43–44).

In sum, the principle of forgiveness does not require that we give up our right to justice or that we give up our right to restitution. Christ answers the demands of the law for our sins and for the sins of others. We just have to be willing to accept that He has the power to do so.

#### **FORGIVENESS AND THE LAWYER**

Now, let me return briefly to the subject I raised at the beginning of my remarks. Specifically, some may still be wondering whether focusing on the commandment of forgiveness is an admission against interest for a lawyer. To place the question squarely, does the commandment that we forgive all men mean that litigation and lawsuits are



OUR OWN  
RECEIPT  
OF THE  
ATONEMENT IS  
CONDITIONAL  
ON FORGIVING  
OTHERS.

inherently wrong? I believe the answer to this question is no. But it is an important question that every lawyer must ask herself and that every client should also confront. Indeed, it is often a question with which those who have been grievously harmed must wrestle.

One of the best explorations of this issue is contained in a book by Elder Dallin H. Oaks entitled *The Lord's Way*. Elder Oaks begins by rejecting what he describes as two “extreme” views: first, that a Christian should “never use courts to resolve disputes,” and second, that there are “no religious restraints on participating in litigation.”<sup>12</sup>

As an aside, isn't it interesting how such tough questions often cannot be reduced to easy all-or-nothing answers? I hope it is not just the lawyer in me, but I have always found it simultaneously comforting and stressful that the restored gospel frequently requires us to wrestle with understanding principles in apparent tension. Thus, both faith and works are necessary



for salvation; both faith and reason are the work of this university; both the body and the spirit constitute the soul of man; both personal inspiration and priesthood authority are important to understanding God's will. Whereas the world often suggests that the answer must be either/or, the restored gospel finds a way to say both/and. It seems that a core principle of the restored gospel is that we must learn by our experience to understand, obey, and navigate eternal truths that may appear to be in some tension. Perhaps, more accurately, we are expected to embrace both sides of such apparently opposing principles.

Although one might be able to categorize some lawsuits as clearly inbounds or out of bounds, Elder Oaks, unsurprisingly, largely eschews categorization and instead focuses on principles or preconditions that should govern whether to file a lawsuit. For example, he emphasizes that we must begin by forgiving our adversary and removing revenge as a motive.<sup>13</sup> We should then pursue settlement as a manifestation of the principle articulated by the Savior in Matthew 18:15: "If thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother."<sup>14</sup> Elder Oaks also identifies another precondition—that a litigant should consider the impact a lawsuit will have on others. Again, this is simply a manifestation of the Savior's teaching of the Golden Rule: "All things whatsoever ye would that men should do to you, do ye even so to them" (Matthew 7:12).<sup>15</sup>

Today let me suggest one additional set of criteria by which the conduct of a lawyer should be judged. Those criteria come from section 121 of the Doctrine and Covenants and its teachings on exercising power in the priesthood. Now, I recognize that a license to practice law is quite different from holding the priesthood of God. Passing the bar doesn't give someone the authority to act in God's name, although critics may occasionally wonder if that's what some lawyers believe.

Still, if one stops and thinks about it, a legal education and a license to practice law are instruments of power. The power flows not just, or even primarily, from the state's exclusive license to give legal advice but

also from the refined critical- and analytical-thinking skills and problem-solving skills that cause others to look to lawyers for help with their most vexing problems.

If, as lawyers, we have power, the question is how we should use it, or, for non-lawyers, how you should expect your lawyer to use his or her power. In that regard, let me paraphrase a few familiar verses from section 121:

*The [power of a lawyer] cannot be controlled nor handled only upon the principles of righteousness.*

*That [a license to practice] may be conferred upon us, it is true; but when we undertake to cover our sins, or to gratify our pride, our vain ambition, or to exercise control or dominion or compulsion upon the souls of the children of men, in any degree of unrighteousness, . . . Amen to . . . the authority of that [lawyer]. . . .*

*No power or influence can or ought to be maintained by virtue of [a lawyer's status], only by persuasion, by long-suffering, by gentleness and meekness, and by love unfeigned;*

*By kindness, and pure knowledge, which shall greatly enlarge the soul without hypocrisy, and without guile. [D&C 121:36–37, 41–42]*

Much more could be said on this topic, but today I simply want to emphasize that if lawyers use their power and authority consistent with the principles of section 121 and if clients, who may have been victimized, likewise adhere to these eternal yet challenging standards, litigation need not stand in opposition to the principle of forgiveness.

#### ACCEPTING BOTH SIDES OF THE ATONEMENT

As I finish, let me return to the heart of my message, which is the Savior's promise in Matthew that He will "forgive us our debts, as we forgive our debtors" (Matthew 6:12). These are two sides of the same coin. We can't have faith in only one side of the Atonement. To be efficacious—to have saving power—our faith in Christ and His Atonement must include both His power to pay for our sins and His power to pay for the sins of others.

Harking back to my landlord-tenant analogy, sometimes we burn the house

down through our own carelessness—we play with fire. Sometimes the house burns down through no fault of our own—lightning strikes and there is nothing we can do about it. Sometimes our house burns down because of the sins of others—such as with the landlord's arsonist son in my analogy. The wonder of the Atonement is that it works for all three cases. But our own receipt of the Atonement is conditional on forgiving others. If we do that, accept Christ, and strive to keep His commandments, we will receive the castle and all else the Father has. In the name of Jesus Christ, amen.

#### NOTES

- 1 See Ester Rasband, *The Promise of the Atonement: Cure for Broken Dreams* (Springville, Utah: Cedar Fort, 2005).
- 2 James D. Gordon III, "How Not to Succeed in Law School," *Yale Law Journal* 100, no. 6 (April 1991): 1680; emphasis in original.
- 3 See Gordon, "How Not to Succeed in Law School," 1680: "Your grandparents will immediately scrape off their bumper sticker that says, 'ASK ME ABOUT MY GRANDCHILDREN.'"
- 4 See Alma 34:16.
- 5 The origin of this quote is uncertain, but it is sometimes attributed to St. Augustine of Hippo.
- 6 One of my favorite discussions is Elder Bruce C. Hafen's classic talk "Beauty for Ashes: The Atonement of Jesus Christ," *Ensign*, April 1990, 7–13.
- 7 My mother is the one who first focused me on the idea that the Mosaic law and its requirements regarding restitution was a schoolmaster to help those hurt by the sins of another to trust in the justice and fairness of the Atonement. She later published some of her thinking. See Rasband, *The Promise of the Atonement*, 3, 6–7, 9–12, 18–19.
- 8 See Leviticus 1–8.
- 9 See Exodus 21:23–25: "And if any mischief follow, then thou shalt give life for life, Eye for eye, tooth for tooth, hand for hand, foot for foot, Burning for burning, wound for wound, stripe for stripe."
- 10 See Rasband, *The Promise of the Atonement*, 26–27 (discussing this concept).
- 11 See Rasband, *The Promise of the Atonement*, 30–31 (discussing the parable of the two debtors).
- 12 Dallin H. Oaks, *The Lord's Way* (Salt Lake City: Deseret Book, 1991), 155–56.
- 13 See Oaks, *The Lord's Way*, 170–75, 181–82.
- 14 See Oaks, *The Lord's Way*, 175–80.
- 15 See Oaks, *The Lord's Way*, 181–85.

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JOHN W. WELCH

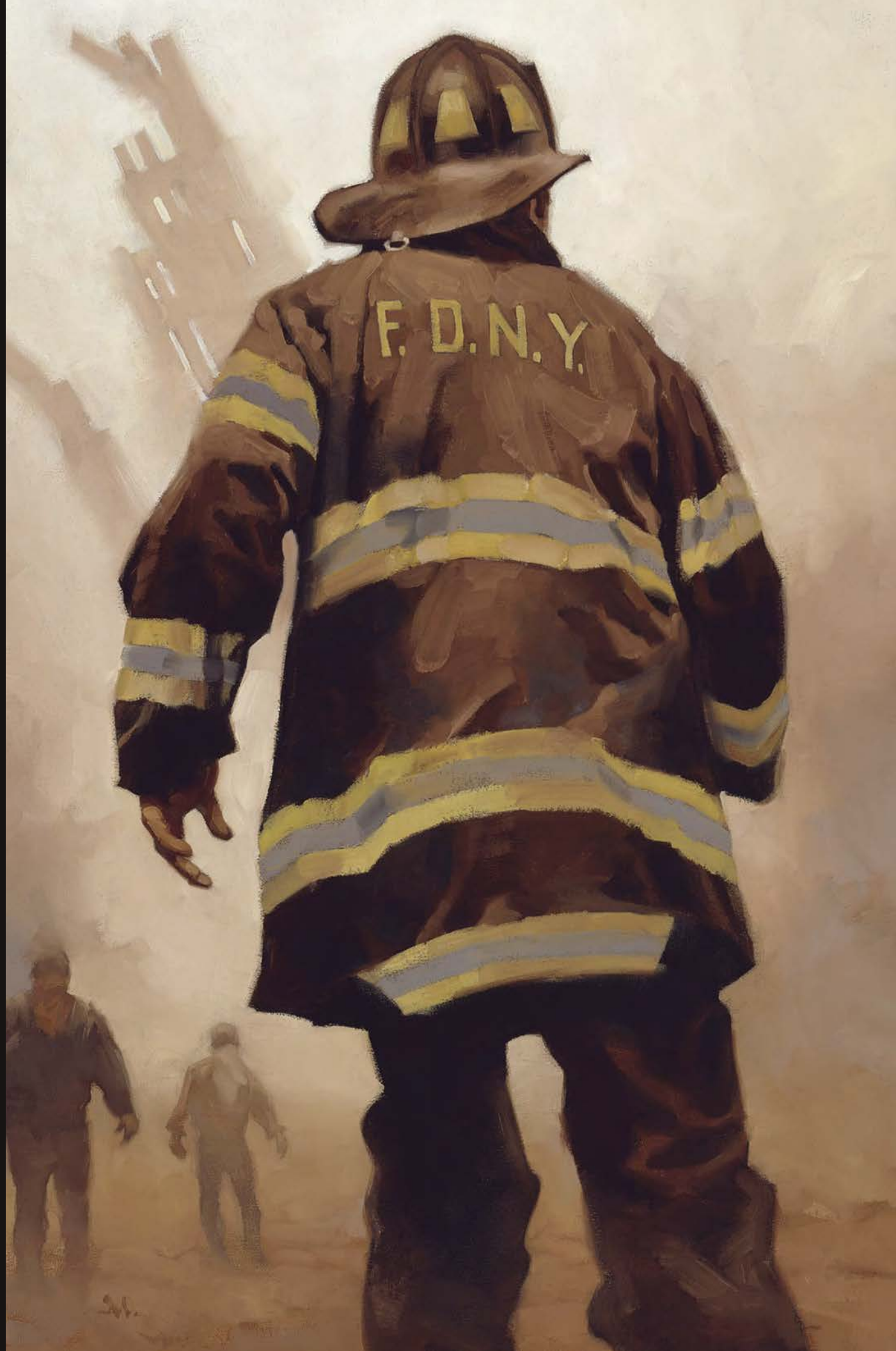
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THE 21<sup>ST</sup> CENTURY AS THE CENTURY OF

# 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.

## ART CREDITS

Page 31: *Fireman*, by Gregory Manchess. Page 33: *America in the Making Series: George Washington at Yorktown*, 1939, by Newell Convers Wyeth (American, 1882-1945). In the permanent collection, Brunnier Art Museum, University Museums, Iowa State University, Ames, Iowa. Accession number: UM83.17. Page 34: *Jessie Field Shambaugh*, by Gary Kelley.



## “Go, and Sin No More”

APPLYING THE LORD’S MODEL IN MAN’S CRIMINAL JUSTICE DECISION MAKING

*Keith N. Hamilton, '86, received the 2012 BYU Alumni Achievement Award for J. Reuben Clark Law School. Admitted to BYU Law School in 1981 after his baptism in 1980, Keith's place was deferred until 1983 so he could serve a mission. He practices law in Salt Lake City and has served as a member and chair of the Utah Board of Pardons and Parole and as a member of the governor's cabinet. He has served as a branch president, bishop, and temple worker. Keith is the author of the book Last Laborer: Thoughts and Reflections of a Black Mormon. Following are excerpts from his talk given to law students on October 16, 2012.*

I love Brigham Young University, its alumni association, and J. Reuben Clark Law School with all my heart, and I cherish my associations with so many great and wonderful people related to each entity. After delaying matriculation into the Law School to serve a mission, I attended classes in this building from 1983 until 1986. For the most part it was a very lonely and difficult experience for me as the first and only black student at the Law School during my three-year tenure. I never let on to others how difficult it was for me, because I knew it wasn't their

fault. The faculty, the staff, and my fellow students were wonderful in their attempts to make me feel as comfortable as possible while I underwent the difficult and grueling course of study that is the law. I express my sincere gratitude and appreciation to them for all that they did for me in making a very demanding and challenging time much more enjoyable and considerably less burdensome. I particularly wish to publicly express my love and gratitude to Reese and Kathryn Hansen, who loved, fed, sheltered, guided, and mentored me through my law school years and since.

When I graduated from this law school and entered into active-duty service with the U.S. Navy JAG, I did not have much desire to return to Provo beyond coming back for the occasional visit with the Hansens and for special occurrences at the Law School, such as class reunions. But at the urging of then BYU president Rex E. Lee, who, as former dean of the Law School, was instrumental in my admittance here, in 1993 I returned to BYU with my young family to accept a position within the university's alumni association. From 1993 to 1996 I worked for the Alumni Association, which



While retribution has been long accepted by the general public as a key punishment oriented for public safety, many criminal justice thinkers and practitioners and most social scientists and theorists have long regarded it as the “least accepted” theory of punishment.

allowed me to establish lasting relationships with many more people associated with the university beyond my Law School associations.

I now will share a few thoughts about something for which I have more passion than even BYU or the Law School: the administration of criminal justice and particularly the way punishment is meted out against criminally convicted persons in the United States. Since my initial foray into the world of criminal justice some 35 years ago, our criminal justice system has become increasingly punitive and harsh toward adult criminal

offenders. Of the various purposes for punishment—general deterrence, specific or particular deterrence, incapacitation or restraint, rehabilitation or reformation, and retribution—retribution has become the primary purpose for sentencing, law making, and decision making within the United States. “Retribution . . . is the oldest theory of punishment, and the one which still commands considerable respect from the general public.”<sup>1</sup> Its roots stem from the Mosaic practice of “an eye for an eye, and a tooth for a tooth” (3 Nephi 12:38; see Exodus 21:24).

While retribution has been long accepted by the general public as a key punishment oriented for public safety, many criminal justice thinkers and practitioners and most social scientists and theorists have long regarded it as the “least accepted” theory of punishment. However, “[retribution] is suddenly being seen by thinkers of all political persuasions as perhaps the strongest ground, after all, upon which to base a system of punishment.”<sup>2</sup>

There is no doubt that retribution is now the predominant theory of punishment utilized in the decision-making process of those who make, enforce, and carry out the laws regarding punishment within the criminal justice systems of the United States. I have gathered the following statistics from various sources as evidence:

» “The United States is the world’s leader in incarceration with [2.3] million people currently in the nation’s prisons or jails—a 500% increase over the past thirty years.”<sup>3</sup>

» “China, which is four times more populous than the United States, is a distant second, with 1.6 million people in prison. (That number excludes hundreds of thousands of people held in administrative detention, most of them in China’s extrajudicial system of re-education through labor, which often singles out political activists who have not committed crimes.)”<sup>4</sup>

» “The United States has less than 5 percent of the world’s population. But it has almost a quarter of the world’s prisoners.”<sup>5</sup>

» “Since 1980, the federal prison population has grown almost 800 percent.”<sup>6</sup>

» “Since 2002, the United States has had the highest incarceration rate in the world. Although prison populations are increasing in some parts of the world, the natural rate of incarceration for countries comparable to the United States tends to stay around 100 prisoners per 100,000 population.”<sup>7</sup> Experts tend to agree that, based upon the method of calculation, the U.S. rate is somewhere between 500 and 755 prisoners per 100,000 residents.<sup>8</sup>

» Huffington Post writers Nike M. Kamrany and Ryan J. Boyd note that the United States “incarcerates 753 per 100,000” and that “comparable European figures include 153 for England, 96 for France, 92 for Italy, 66 for Denmark and 90 for Germany. . . . Over the past forty years the number of incarcerated people [in the United States] has increased 350 percent while population increased 33 percent, violent crimes rose 3 percent higher than 1980 while property crimes dropped from 496.1 per 1,000 in 1980 to 134.7 in 2008, according to the Bureau of Justice Statistics.”<sup>9</sup>

» “According to data maintained by the International Center for Prison Studies at King’s College London, [the United States] has 751 people in prison or jail for every 100,000 in population. (If you count only adults, one in 100 Americans is locked up.) The only other major industrialized nation that even comes close is Russia, with 627 prisoners for

America's current practice of retributive justice and its exorbitant rates of incarceration are throwing away too many of those lives precious in the sight of God.

every 100,000 people. The others have much lower rates. England's rate is 151; Germany's is 88; and Japan's is 63. The median among all nations is about 125, roughly a sixth of the American rate."<sup>10</sup>

» "In addition to overall incarceration rates, the United States is also leading in rates of female incarceration. In the United States, women make up more than one-tenth of the whole prison population. In most countries, the proportion of female inmates to the larger population is closer to one in twenty."<sup>11</sup>

» "The United States has striking statistics when observing the racial [and age] dimension[s] of mass incarceration."<sup>12</sup> United States prison populations are overwhelmingly comprised of young ethnic men.<sup>13</sup> For all men, "incarceration rates are highest

for those in their 20s and early 30s. Prisoners also tend to be less educated: The average state prisoner has a 10th-grade education, and about 70 percent have not completed high school."<sup>14</sup>

All these statistics boil down to the fact that because of its sentencing policies, "the United States is the world's leader in incarceration," resulting "in prison overcrowding and state governments being overwhelmed by the burden of funding a rapidly expanding penal system, despite increasing evidence that large-scale incarceration is not the most effective means of achieving public safety."<sup>15</sup>

Here's another statistic: in 2010 state incarceration rates in the United States ranged from the high being 867 per 100,000 in Louisiana and the low at 151 per 100,000 in Maine. Utah ranked 45th at 232

per 100,000 and is the state with the lowest incarceration rate of all Mountain West and western states.<sup>16</sup>

Since I began practicing law in Utah I have pondered why Utah's incarceration rate is so much lower than its neighboring states and than many other states in which the majority of the electorate share similar political views, particularly the Southern states, whose incarceration rates are among the highest in the United States. I have concluded that it is, in large part, because of the influence of the gospel of Jesus Christ—especially the restored gospel as taught by The Church of Jesus Christ of Latter-day Saints—in the lives of a great number of its citizens. I do not have any empirical evidence to support my conclusion, but I truly believe that it is the efforts of the simple and average citizen to be Christlike that

translates into the low incarceration rate within Utah.

As far as criminal justice decision making in Utah goes, I am becoming alarmed at what I believe is a departure from Christlike attributes by many criminal justice law makers and decision makers in favor of more punitive laws and other decisions that result in the destruction of lives and costly burdens placed upon our governments and communities. It's easy to ask and answer the question "What would Jesus do?" I believe the much more pertinent question to ask is "What would Jesus have us do?"—an even harder question to answer on an individual basis.

In His appearance to the Nephites following His Resurrection and ascension to heaven, Jesus taught that He had fulfilled the law of Moses, including the law's "an eye for an eye, and a tooth for a tooth" requirement, saying, "Behold, I am he that gave the law, and I am he who covenanted with my people Israel; therefore, the law in me is fulfilled, for I have come to fulfil the law; therefore it hath an end" (3 Nephi 15:5). He taught His disciples that "whosoever shall smite thee on thy right cheek, turn to him the other also" (3 Nephi 12:39) and that we should love our enemies, bless them that curse us, do good to them that hate us, and pray for them who despitefully use us and persecute us (*see* 3 Nephi 12:44), "that ye may be the children of your Father who is in heaven; for he maketh his sun to rise on the evil and on the good" (3 Nephi 12:45).

President Thomas S. Monson recently spoke of our need to develop the capacity to see people not as they are at present



but as they may become—in essence, as the Lord sees them. He said:

*There is absolutely nothing in this world that will provide more comfort and happiness than a testimony of the truth. . . .*

*My message tonight, brethren, is that there are countless individuals who have little or no testimony right now, those who could and would receive such a testimony if we would be willing to make the effort to share ours and to help them change. In some instances we can provide the incentive for change. . . .*

*. . . We need to bear in mind that people can change. They can put behind them bad habits. They can repent from transgressions. They can bear the priesthood worthily. And they can serve the Lord diligently.<sup>17</sup>*

Like so many graduates of this great law school, I know one particular graduate who fully embodies what President Monson taught at the priesthood session. Through this graduate's support of college and professional athletic teams in Utah, most people know him as part of the law firm Siegfried & Jensen. But I know Ned Siegfried, '83, as an institute teacher who takes two days each week to teach the gospel to men and women at the Utah State Prison Draper facility. His efforts go beyond the prison walls, and he has been very instrumental in the lives of many toward their successful reentry into society. Ned is one who lives the Savior's doctrine "I was in prison, and ye came unto me. . . . Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me" (Matthew 25:36, 40).

"The worth of souls is great in the [eyes] of [the Lord]" (D&C 18:10), and America's current practice of retributive justice and its exorbitant rates of incarceration are throwing away too many of those lives precious in the sight of God. Many of those being damaged most are not the perpetrators themselves whom our systems seek to punish but the innocents, such as the children and loved ones of the offenders. Our decision makers' thirst for governmental vengeance is creating a new set of victims at a high cost to our societies and communities.

God's model of restorative, healing, and merciful decision making provides "a more excellent way" (1 Corinthians 12:31) to accomplish the demands of our criminal justice system. It reclaims lives and allows the offender to overcome his weaknesses and shortcomings and become productive again. I have seen this occur in the lives of many throughout my years in criminal justice. I have seen it happen in my own life. People can and do and have changed. God has always known that truth. We, His children, need to learn and understand that truth better.

In dealing with our sins and transgressions, the Lord does not seek to punish us; He only seeks that we "go, and sin no more" (John 8:11). Repentance and change are the endgame with God. Making us pay is not part of His justice equation. Sure, one must suffer the consequences of his or her actions, but there is a difference between penitently submitting to a consequence and being forced to pay a punitive price for an error or crime one has committed. One action is

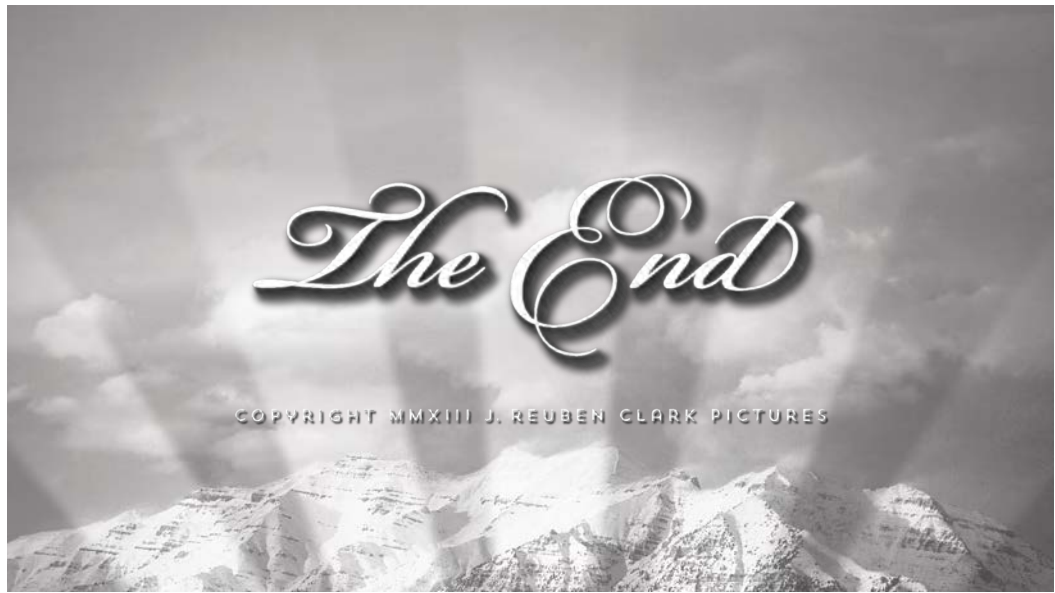
to reclaim the lost; the other is to avenge a wrong.

It is my prayer that we will learn to love and forgive our neighbors, especially those who have criminally offended us and our society, and that we can be a friend to them and as a society replace our punitive and vengeful sentiments toward them with feelings that heal and encourage and give hope. May we see them not as they are now or have been but as they can become when touched and influenced by the true gospel of Jesus Christ. May we show Christlike compassion, tolerance, and love toward them and all God's children, I humbly pray, in the name of our beloved Savior and Redeemer, even Jesus the Christ, amen.

#### NOTES

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- 2 Branham and Hamden, *Cases and Materials*, 7.
- 3 The Sentencing Project: Research and Advocacy for Reform, "Incarceration"; [sentencingproject.org/template/page.cfm?id=107](http://sentencingproject.org/template/page.cfm?id=107); *see* Marc Mauer, "Rising Prison Costs: Restricting Budgets and Crime Prevention Options," testimony prepared for The Sentencing Project for Senate Judiciary Committee Hearing, 1 August 2012, 1; [www.sentencingproject.org/doc/publications/Mauer%20Testimony%20on%20Prison%20Costs.pdf](http://www.sentencingproject.org/doc/publications/Mauer%20Testimony%20on%20Prison%20Costs.pdf).
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- 8 *See, e.g.*, The Sentencing Project, "Incarceration"; Tsai and Scommegna, "U.S. Has World's Highest"; and Liptak, "U.S. Prison Population."
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- 10 Liptak, "U.S. Prison Population."
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- 12 Wikipedia, "List of U.S. states."
- 13 *See* Tsai and Scommegna, "U.S. Has World's Highest"; Wikipedia, "List of U.S. states"; and "Racial Disparity," The Sentencing Project, [sentencingproject.org/template/page.cfm?id=122](http://sentencingproject.org/template/page.cfm?id=122).
- 14 Tsai and Scommegna, "U.S. Has World's Highest."
- 15 The Sentencing Project, "Incarceration"; Mauer, "Rising Prison Costs," 1.
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- 17 Thomas S. Monson, "See Others as They May Become," *Ensign*, November 2012, 68; emphasis in original.



# When It Is All Over

A FEW THOUGHTS FOR THE CHRISTIAN LAWYER



*Marlin K. Jensen, a member of the Quorum of the Seventy of The Church of Jesus Christ of Latter-day Saints since 1989, spoke to law students on October 30, 2012. Elder Jensen served as the official Church Historian and Recorder from 2005 to 2012 and was made an emeritus General Authority in October 2012. Before his call to full-time Church service, he was an attorney in private practice in Ogden, Utah, specializing in business and estate planning. He and his family have a ranching enterprise in Huntsville, Utah—the place where he was born and raised and has always loved.*

**T**his is not a coherent sermon that I want to preach this morning—I am probably not capable of a coherent sermon—but random thoughts on a theme, and if you have read the article in volume 1 of the book *Life in the Law*, the talk I gave about God’s interrogatories as our son Matt graduated from here was probably my best thought on what you are learning (see Marlin K. Jensen, “Answering God’s Interrogatories,” in *Life in the Law: Answering God’s Interrogatories*, vol. 1, ed. Galen L. Fletcher and Jane H. Wise [Provo, Utah: Brigham Young University Press, 2002], 1–7).

A scripture I cherish is in 3 Nephi 19, when the apostles pray for that which they most desire: the Holy Ghost (see 3 Nephi 19:8–9). If I could have one desire for you—as law

students, as lawyers, as husbands and wives, and as children—it would be that this would be your prayer: that you practice law and live your lives under the influence of the Spirit.

## Know the Code

I make another plea to you as you grow in your knowledge of legal codes: know them. I remember that the first time I went to court as a young lawyer was to handle an adoption. In this case the woman was divorced and had met a man and married him, and he now wanted to adopt her two children. So I did all the filings and got the hearings set and took the woman and the man to court. I put her on, and she talked about how her new husband would make a very good adopted father to her children. I put him on, and he said he was willing to support them. I

then moved for the adoption to be granted.

The judge, in a room full of lawyers on a law-in-motion day, mercifully said, “Mr. Jensen, will you approach the bench?”

He then whispered to me, “Where the heck are the children?”

And I said, “Well, I didn’t know that they were to come, Your Honor.”

He said, “Don’t you read your code?”

I said I always would in the future.

Then he said, “Go get the children.”

To the court he said, “This court will be in recess for 15 minutes.”

I walked back to the parents and, with a little half-truth that you will probably get good at as a lawyer, said, “For some reason the judge is requiring the children to be here this morning. Let’s go get them.”



Luckily they were in a school nearby, and when court resumed, the judge said, “I see the children here, don’t I, Mr. Jensen?”

“Yes, Your Honor, you do.”

“And I find them proper subjects for adoption and hereby grant the adoption.”

Well, that was a lesson I never forgot. Do you know what that episode made out of me? It made me what I would call a “code lawyer.” I never went anywhere—especially to court—without checking the code, making sure I was legally secure in what the written law said.

I would like to make that same plea for the scriptures. If you practice for the next 50 years, then you’ll know code sections backward and forward. But if you neglect the word of the Lord, then, when you are age 70, which is what I am now, you will have missed the better part. You have got to have equal doses as you go along. And I know that is challenging because you are all overextended with your education and your family and church and other responsibilities that you have, but try to get in a daily dose of the scriptures every day. Make learning the Doctrine and Covenants, the Book of Mormon, the New and Old Testaments, and the Pearl of Great Price part of your daily regimen.

#### Find Value in Mentors

I wanted to say something about the value of mentors in seeking to have the Spirit and balance in your lives. As I have been at Church headquarters the last 25 years I have noticed that almost all of the senior General Authorities have had mentors. Not that those relationships were ever formally

constituted or even talked about, but, in the course of their associations, those who are now the senior Brethren all came under the influence of the older General Authorities. In almost every case one of those senior Brethren over time became a mentor.

President Thomas S. Monson often speaks of his relationship with J. Reuben Clark. A lot of their interaction came when J. Reuben Clark was writing his books—*Our Lord of the Gospels*, for instance—and President Monson was working for the Deseret Press as his publisher. He would have long discussions with J. Reuben Clark. President Monson has talked often about the effect of those conversations on his thinking, his life, and his ideals as a person. I know a little bit about some of these men and women you associate with every day at the Law School, and every one of them that I know is completely worthy of emulation.

In your efforts to figure life out, there is great value in mentors and in being humble enough to take the correction and input that people around us can give. I remember an encounter that my wife and I observed. We were with President and Sister Hinckley on the Huntsman jet, and we were trying to be inconspicuous and let them be, but they were just across the aisle and there were only a few other people on the plane. They were involved in a discussion we couldn’t help overhearing. President Hinckley made an assertion about something, and then Sister Hinckley made a counter assertion. Then he reasserted and then she reasserted, and then he came back the third time. We heard her say very sweetly

but very firmly, “Okay, Gordon, have it your way.” It showed us that this was one wonderful woman who had her own identity, her own strengths, and her own views and perspectives and who was giving her husband tremendous input.

Every week for a long time President Hinckley brought his wife and his four adult children to lunch in the General Authority cafeteria in the Administration Building. They would go to a corner table away from the rest of the General Authorities, but I used to catch glimpses of what was going on over there. This family was giving their dad good, honest feedback about the way things really are, and I think that resulted in a president who was so connected, so contemporary, and so aware of how things really are that it blessed the entire Church. That wouldn’t have been possible if he was not willing to seek that kind of review and input that honest and good people around him were willing to give.

#### Live the Lord’s Program

I remember as a young lawyer coming home very uptight. I was called as a bishop just out of law school when I was 28. My wife went into labor the day I was to be sustained and had to be taken to the hospital by my brother. Thankfully I arrived in time for the baby’s birth, but it was right as sacrament meeting began. We had a lot of things going on, and I was crazy enough to think I could be a farmer and a lawyer at the same time. When I would come home at night from my law office, early on the Spirit said to me, “Stop at the front door and just ask the Lord to help you bless your family tonight.

Don’t go in thinking you are an advocate or a lawyer; don’t be a raging maniac for sure; just get a grip on yourself and go in there and be charitable and give your attention to your wife and your children and put your own cares aside.” In those years when I was first a bishop and eventually a stake president, I always had a rule: if the Spirit indicated that things at home needed me more, I would miss whatever was scheduled at that time. Sure there are some things that you can’t possibly miss, but most things can go along fine without you.

Living the Lord’s program has been such a security to me. We got behind once in paying our tithing when I was in law school, and Kathy and I borrowed to pay our tithing one year—which is a really poor thing to do. The next year we had a loan to pay off plus that year’s tithing, and I have never ever done that again. But even in these recent years when the economy has pinched everybody, I have always had in mind the assurance that as a tithe payer, faithful and solid all these years, I have a claim on God’s help and His blessings.

I feel the same way about the Sabbath. I remember wondering in my first year of law school if I would study on Sunday, especially if I had a test on Monday. My wife and I made the decision that I would study half of Saturday but always have the other half of Saturday to spend time with her and my little family, but I would never study on Sunday. I remember being in exams, trying to see the issues and bowing my head in a quiet prayer, saying, “Heavenly Father, I am doing the best I know how. I am trying to honor the covenants I

have made and keep Thy commandments. Please help me to remember what I know and record it in these blue books in some kind of understandable way." I always felt such a security knowing that I would be able to do the best I could do in that kind of situation.

I commend to you the program of the Church. If you are centered in it and find time to read the scriptures and have good prayers and go to the temple when you can and observe the Sabbath and pay your tithing, you are going to have a spirit that will envelop you and produce happiness in your life.

#### Of Time, Relationships, and Happiness

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Lastly, what do you have when it is all over—or nearly over—as in my case at age 70? Well, the dearest things to me are the relationships I have and the relationships I am finding again. So, take time. I've sort of been an absentee grandpa for 25 years, and now I have 25 grandchildren who know me sort of as a figure, and yet I want them to know me as a grandpa. We have an interesting phrase called "quality time" that I think is a scab for those of us who don't have time at all or not much time, and I guess the biggest lesson I have learned is that good relationships take time. They really do take time, and if we really love people—our wife, our husband, our children, our parents, our grandchildren, and our neighbors—we will give them time. It is the greatest gift we can give. And we are all selfish in that way. We want to exercise, we want to read, we want to do the things that we enjoy, but if we are going to have relationships, if that

same sociality that exists here will exist there—only it will be coupled with glory—there is a real need to work on sociality. That is what is going to give us lasting happiness.

To be a Christian and a lawyer is to be conscious each day of our Savior and His role in our life, of our commitment to Him through covenants, and of the tremendous joy and fulfillment that can come when we live our lives as He wants us to. We should try to emulate His perspective, being as obedient to His Father as He is. Don't let law school do anything but reinforce your desire to do that. Don't let law school do anything but show you that everything you are learning here fits the eternal plan beautifully. With your training you will have a heightened sense of all of this. I think the greatest thing to me about law school was that I read the scriptures more critically, being able to understand them more and to see the relationship, the consistency, of the Lord's word. That was well worth the three years of torture.

#### Questions and Answers

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*Looking back at your experiences in your life and as a General Authority, what advice would you give? What would you do differently knowing what you now know?*

I would be completely obedient. Someone asked me my biggest regret, and I said that I haven't always been exactly obedient. I see now just how important it is to obey all of God's commandments all the time and to not fudge or neglect them or outright break them. I feel grateful for the Atonement so that we don't have to be defined by our mistakes forever

and so that we can be forgiven. Learn the gospel and all its covenants and commandments. It is designed to liberate us and to make us happy and productive and useful in this life.

*Reading Mormon history has been a jarring experience for me. Is there a way to make it so that is not a trying experience?*

Thank you for your honesty. That is a great question. I work with Rick Turley, who is a graduate of this law school. He practiced law for a few months and then was called to work in the Church History Department as managing director. He has a very profound saying: "Don't study Church history too little." There is much wisdom in that. There is great danger, I think, in picking out just one piece of that puzzle and looking at it in isolation. When we enjoy a perfect knowledge of Church history, many of the things that are jarring won't be jarring at all. The new curriculum for the Young Men and the Young Women includes a more complete view of the Church's history. In this information age there is nothing that is hidden. It would be the most counterproductive thing the Church could do to try to keep something hidden. There will always be a need to believe. There will always be reasons to doubt, and there will always be reasons to believe. All I can say is that I stake my life in the truthfulness of the gospel. This Church is historically and doctrinally true, so I urge you to keep putting your puzzle together. I promise you that out of that will emerge greater faith in the Church and in its history.

*I was reading information about you yesterday, and it sounds like*

*your political views are a little different than the majority of the members of the Church. Especially at this time with politics being big, how do you state your political views without going against Church doctrines?*

That's an excellent question. I'll give you a brief answer. I've actually had fun being one of the few Democrats among the Brethren, and I probably should have been a lot quieter about it. In 1998 I was asked to make a statement in favor of political diversity. There is a concern on the part of the Brethren that we have become a one-party Church. There's concern that in the public conception of us you have to be a conservative Republican to become a Latter-day Saint, and that can be a very detrimental thought to the Church's growth. So there is a desire to have a more balanced approach to politics. In part, at least in recent years, the Democratic Party platform has had planks in it that did run counter to the Church's view—on gay marriage, for instance, and on abortion. When that has happened, I've been able to say I'm a Utah Democrat. I believe in a lot of the ideas of the Democratic Party, but I don't believe its ideas if they run counter to the Church's moral issues. All this is really about being able to pick and choose. I think we can all be very thoughtful about how we exercise our franchise and work out our own private political philosophies. I have to say that overall—and I'm from a rural Utah farm town and I've stayed there all my life, so I'm not a flaming eastern liberal by any sense—I've resonated more with the principles of the Democratic Party. So there I have stayed, and I think it is a healthy thing.



*D. Gordon Smith,  
associate dean of BYU  
Law School and  
Glen L. Farr Professor of  
Law, gave this BYU  
devotional address on  
June 26, 2012,  
about the importance  
of names and what  
they represent.  
Following are excerpts  
from his talk.*



# What's in a Name?

**D. GORDON SMITH**

**T**oday is my father's birthday. He is 87 years old. He and my mother are in Wisconsin watching this devotional, and if the volume on the television is turned all the way up, they are listening to it too.

My father's name is Gordon Smith. My mother told me recently—and she reminds me often—that my father never wanted a son named Gordon, but he agreed to give me his first name as my middle name. This is the story about why I took that name upon myself and why I have come to believe that the names we call each other are important.

## **Why I Took My Father's Name**

To understand why I took my father's name as my own, you need to know a bit about my relationship with my father. My father and several generations before him had been dairy farmers in Wisconsin, but in the wake of the Japanese attack on Pearl Harbor, my father, only seventeen years old at the time, joined the navy and was assigned to serve in the South Pacific. He eventually made a career of the military, and I was born in a naval hospital in Bremerton, Washington. Shortly after my birth he was transferred to San Diego,

California, where he taught Teletype repair for five years. Following his retirement our family returned to his childhood home of Wisconsin, and that's where I grew up. Many of my earliest memories involve feeding and caring for cows, pigs, and chickens on our small farm, though I was temperamentally not well suited to farming.

Despite our humble and remote circumstances, I managed to cultivate big dreams on that farm, in no small part because of my dad. During his last year of service in the navy he traveled the world and sent us souvenirs from Europe,

Asia, and Africa. He was gone for a year, and I remember that when he returned, I didn't know what he looked like because I was only four years old when he left and five when he returned. But I treasured those souvenirs that he sent me, and I spent many hours in my room in Wisconsin looking at photos of Rome or pounding on a drum from Africa or playing with toys from the Philippines, imagining what it would be like to visit those faraway lands.

Some of my most treasured memories from childhood involve sitting in the living room or in the backyard listening to stories about my father's childhood or about his adventures in the navy. Like Aesop's fables, these stories almost always came with some moral that we were supposed to take from them. My son Drew and I were recently in Wisconsin for a family reunion, and we again heard stories about the importance of hard work, competence, and integrity.

My father also taught me—more through his reaction to war than through his words—to despise war. Although he could never speak of combat—and he still can't to this day—one navy story inevitably connected to another, and he often found himself led to memories that he would rather suppress. We could discern when he had reached this point because he swallowed hard, his eyes welled with tears, and he looked off into the distance. My mother recently observed, “They don't give Purple Hearts for those wounds.”

Another significant lesson—never stated explicitly but reinforced repeatedly in his stories—was that one person

could change the world. As far as I know, my dad never changed the course of the war through his naval service, but his stories showed me why the navy always valued one more good man. During the war he was only an enlisted radioman, but I was convinced as a young boy that, aside from Admiral Nimitz, my father was the most important person in the Pacific Fleet. To me he was—and he remains—a great man.

As President Joseph F. Smith wrote over 100 years ago:

*Those things which we call extraordinary, remarkable, or unusual may make history, but they do not make real life.*

I was clothing myself  
in his name, and I felt obliged  
to wear it honorably.

*After all, to do well those things which God ordained to be the common lot of all mankind, is the truest greatness. To be a successful father or a successful mother is greater than to be a successful general or a successful statesman.* [“Common-Place Things,” *Juvenile Instructor*, 15 December 1905, 752]

### Changing My Name

During those growing-up years in Osseo, Wisconsin, everyone called me by my first name, Doug. Strangely, my group of friends went through a phase in which we decided to call each other by our fathers' names. Some of those names

stuck, but “Gordon Smith” did not seem like a good fit for me at that time.

I was still Doug Smith when I arrived at BYU in August 1980. I was not a member of The Church of Jesus Christ of Latter-day Saints, but my first class in college was Religion 121: The Book of Mormon. My best friend in high school, who had convinced me to attend BYU with him, told me I shouldn't worry about this class. He said the Book of Mormon was just a history of South America, and that was all I knew about the course.

So I showed up on the first day, and the professor introduced the course by saying we would be covering the first half

That guy is cool!” Everybody laughed, and I completely missed the joke. Then another person said something, and by this point in the class I was starting to panic.

I wasn't in the habit of praying at the time—I didn't really pray much at all—but I just decided that since I was at BYU, I would bow my head and say a little prayer: “Please, God, make them stop.”

Well, it did eventually stop, and at the end of class I approached the teacher and asked, “Did you post an assignment for the first class?”

“No, why do you ask?”

“Well, it just seems like everybody's read ahead.”

He looked me up and down and said, “You aren't a member, are you?”

I thought about that for a second, and I responded, “A member of what?”

So we had a nice long talk about the class, and I read the Book of Mormon in my first year at BYU.

The transition from that first day of college to my baptism in the fall semester of my sophomore year did not require a dramatic change in my lifestyle, but my worldview was completely upended. Embracing the gospel impelled me to look outward in a way that I never had before, to place others before myself: “Whosoever will save his life shall lose it: and whosoever will lose his life for my sake shall find it” (Matthew 16:25).

I decided to serve a mission, and one year after my baptism I was called to serve in Vienna, Austria. I became Elder Smith. Over the past few weeks I have read my missionary journals. I don't know if any of you have done that, but it is a horrifying



experience. I'm not a great journal writer, but I was impressed by the effort I expended in trying to create a new identity for myself as Elder Smith. I wanted to become a powerful missionary. I knew that Austria was not a high-baptizing mission, but, I thought, England wasn't a high-baptizing mission before Wilford Woodruff got there either. Unfortunately my motives were entirely self-interested: I felt like I had a debt to pay, and I wanted to pay it. I hadn't internalized the lesson taught by King Benjamin that even if we serve God with our "whole souls," we remain "unprofitable servants" (Mosiah 2:21).

I worked hard in Austria, and I was frustrated at my inability to reduce my debt. Every sacrifice that I made, every extra effort that I made, was repaid many times over, and early in my mission I wrote about my frustration in my journal:

*I have been so blessed by the Lord . . . , and I wanted to go on a mission, in part, to show the Lord how much I love Him. To think of my mission as just something else by which I can make myself better is offensive to me. That implies that the biggest attempt I've made in my life to be selfish endeavor that I have ever undertaken.*

By the end of my mission I had come to terms with God over my indebtedness, and I had learned that the most valuable lesson of my mission was to love the people. As King Benjamin said, "When ye are in the service of your fellow beings ye are only in the service of your God" (Mosiah 2:17).

When I returned to Osseo, I shed the title of Elder Smith, and, like many returned missionaries, including my son Drew, who just came home from Ukraine, I went through that awkward phase of adjusting to being called by my first name. In my case, however, my pre-mission name evoked thoughts about a confused young boy who had arrived at BYU three years before. "Doug" just didn't seem to fit anymore, but I didn't do anything about it until I met a young woman at BYU the following year who was changing her name. She just decided one day to ask people to call her by her middle name. And they did!

This was a revelation to me. I didn't have to be Doug Smith anymore. I could be anything I wanted! After much contemplation I decided that using my middle name would not only be the simplest change—after all, I wouldn't have to make a legal change to my name—but it would also honor my father. What I did not fully comprehend was how that change would affect me.

Changing my name was a tremendous hassle. My wife, Sue, was supportive, and I didn't ask our families to call me Gordon, so when we visit relatives I'm still Doug. But the real challenge was among my friends. In my first accounting class of the fall semester, legendary accounting professor Jay Smith called on me by my first name, and I asked, "Would you mind calling me Gordon?"

By that time I was well into my major, and both he and my classmates looked at me quizzically, wondering, "What's the punch line?"

But I didn't have a punch line. "Um . . . I changed my name to Gordon."

In another class so many people knew me by the name Doug that they simply wouldn't allow me to change my name to Gordon. They insisted, over my protests, that I was joking. My coworkers and supervisors in the Reading and Writing Center split about evenly between those who made the adjustment and those who couldn't, and that just caused confusion. It was hard on people.

At the same time I was surprised to discover that when people called me Gordon, it felt different than being called Doug. In the beginning, each reference to Gordon caused me to think about my father. I was clothing myself in his name, and I felt obliged to wear it honorably. I didn't want to become my father, but I wanted to become a person who would make him proud. Over time I came to associate the name Gordon with my Mormon identity and the name Doug with my pre-Mormon life.

### Taking Christ's Name Upon Us

I have sometimes thought of the experience of changing my name in relation to my baptism—an ordinance in which I took upon myself the name of Jesus Christ. In both instances the name was given to me by another but I was asked to embrace the name as my own. Now each week in taking the sacrament I reaffirm my willingness to take upon myself the name of Jesus Christ (see D&C 20:77). What is the significance of this representation?

When I took upon myself the name of my father, I was not using his name as a description of my character. I was not saying, "I am my

father." Rather, I was using the name to honor him and to inspire myself to develop attributes like him. Similarly, taking upon ourselves the name of Christ is not a recognition of an achievement but rather a nudge toward improved behavior.

King Benjamin gave his people the name of Christ only after the Spirit had changed their hearts, but he gave them the name not because they had reached some threshold and not because they had "no more disposition to do evil, but to do good continually" (Mosiah 5:2). Rather, he gave them the name so that they could remember that moment and remain "steadfast and immovable, always abounding in good works" (Mosiah 5:15).

When faithful people take upon themselves the name of Jesus Christ, they assume a name that is imbued with meaning. President Spencer W. Kimball once said, "The name Jesus Christ and what it represents has been plowed deep into the history of the world, never to be uprooted" ("Why Call Me Lord, Lord, and Do Not the Things Which I Say?" *Ensign*, May 1975, 4). This feature of the name is useful in transmitting large quantities of information. Rather than saying that we should have "faith, virtue, knowledge, temperance, patience, brotherly kindness, godliness, charity, humility, diligence" (D&C 4:6)—or any of the other myriad of attributes that we associate with Jesus Christ—we can say more simply that we take upon ourselves the name of Christ.

I pray that we may all come closer to that ideal, in the name of Jesus Christ, amen.

## Jerry's Boys: Leaving a Christlike Legacy

by David W. Magnusson, '79

♦ ♦ ♦ ♦ ♦

I had been called back for a second interview by two of the Brethren who came to reorganize the Santa Barbara California Stake presidency in 2000. After a few assessing questions, I was asked, “How do you manage balancing the demands of zealously representing clients with being a Christian and a member of the Church?”

The same question had been posed by President Marion G. Romney at the 1981 BYU Law School convocation: “But how, you may ask, can concern, respect, and even love for other people be reconciled with a lawyer’s duty to vigorously represent his client?”<sup>1</sup>

I thought for a second and then recounted my first solo court appearance after passing the bar. It was a routine law and motion matter in the local state trial court across the street from the office. When the case was called, I arose, approached the counsel table, and announced my name, firm, and representation. The seemingly aged judge paused, peered at me over his half-frame reading glasses, and asked, “You one of Jerry’s boys?”

Surprised at the familiarity, I realized he was referring to E. Jerald Haws, my firm’s founder and senior partner. I replied that I was. To me it seemed he snorted, and then he returned to the papers before him and ruled on my matter.

I returned to the office, looked in on Jerry, and recounted the event. “What was that all about?” I asked.

He leaned back in his chair and laughed out loud. “Don’t you know? It was because you are now one of the Mormons. You can’t ever lie, cheat, or steal. Better remember that,” he added as he dismissed me. There were other LDS attorneys in town, but Jerry Haws had assembled the only all-LDS firm.

From that day forward, I explained to the visiting authorities, being one of “Jerry’s boys” was a badge I knew I wore each day. Jerry had assembled as nice a crew as I could have known—and I was now of them. They had set a standard of honesty, integrity, ethics, and competency for a fair price.

That was the last question the Brethren asked before I was called to serve as stake president.

President Romney’s answer to his own question mirrored the standards my partners portrayed:

*First, neither your obligation to your client nor any other professional obligation should ever require you to be dishonest or in any other respect to compromise your integrity. . . .*

*Second, even beyond the requirements of truth-telling, service to the client and his interests seldom requires the lawyer to sacrifice the kind of civility that is consistent with the Savior’s instruction that we should love all people. . . .*

*Third, integrity means being prepared to say or do what must be said or done, regardless of the consequences.<sup>2</sup>*

Three of the seven permanent attorneys of that firm were BYU Law School graduates. The good of this school will continue to be felt through its graduates’ contributions. They build upon a foundation of equally honest, competent, and exemplary graduates of other schools who, in the words of Elder Neal A. Maxwell, have their “citizenship in the kingdom, but [carry their] passport into the professional world—not the other way around.”<sup>3</sup>

While each of us benefits from legacies of example and goodwill left to us, we must leave a similar legacy of a Christlike person, as President Romney challenged us to be.

### NOTES

1. Marion G. Romney, “A Christlike Attitude,” in *Life in the Law: Answering God’s Interrogatories*, ed. Galen L. Fletcher and Jane H. Wise (Provo: BYU Press, 2002), 246.
2. *Id.* 246–47.
3. Neal A. Maxwell, “Speaking Today: Some Thoughts on the Gospel and the Behavioral Sciences,” *Ensign*, July 1976, 70.

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