

Fall 2014

Clark Memorandum: Fall 2014

J. Reuben Clark Law School

BYU Law School Alumni Association

J. Reuben Clark Law Society

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CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

University

Fall >> 2014

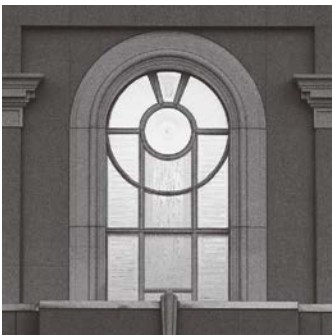


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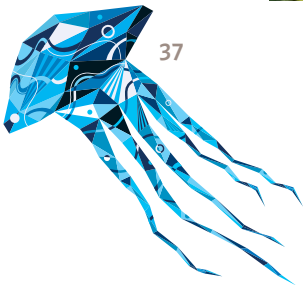
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DEAR ALUMNI AND FRIENDS,

New Year's for the Law School occurs in August—not January—with new students starting, 2Ls and 3Ls returning from summer externships and clerkships, and faculty feeling revitalized after a summer of research, writing, and presenting. We are eager to start the great and ennobling project of legal education anew.

Part of our eagerness is surely a result of another summer full of construction dust and hammering from three major building projects that move us ahead on our campaign to bring light to the Law School. The east entrance of the building now opens into a spacious memorial lounge where the Career Services and Registrar's Offices were. The ceiling has been opened to the third floor, adding views and natural light from east to west. This lounge, which features a central fireplace, will welcome visitors and students and provide reception and conversation spaces. We have also added new classrooms to the library on the second floor and new offices on the fourth floor. I hope you will drop by if you are in Provo.

As we open up the Law School to the beauty of our natural surroundings, we hope to spur more discussion and more gathering, for it is such interactions that are at the heart of legal education. Our hope is that those interactions—along with what transpires in the classroom—will be a prelude and a foundation for a lifetime of learning and of hard and empathetic thinking about difficult problems.

Guido Calabresi, first a professor and then dean at Yale Law School and now a senior judge on the U.S. Court of Appeals for the Second Circuit, visited the Law School in April as our graduation speaker. His convocation address is included in this issue. Although he is one of the nation's most famous legal scholars—the founder, along with Ronald Coase, of the field of law and economics—the real hallmark of his tenure at Yale was his ability to befriend and mentor students. He did so for Professors Brett Scharffs and Justin Collings while they were students there. The respect and gladness I saw in the three of them as they reunited at the Law School was inspiring to me and a reminder of the very best part of being a faculty member.

Teaching at its best means entering into the lives of others. It happens in the classroom, in offices, and informally in many other settings. I am grateful to have faculty colleagues who see interactions with students as a blessing of their profession rather than as a burden. This has been a hallmark of BYU Law School, and I hope it always will be. Our faculty members devote time to our students in ways that many others do not. Those who invest in the Alumni Association and in the Law Society are responding to the same impulse to mentor students and young lawyers. Thank you for the mentoring you do—hiring and training our graduates, teaching them in externship settings, judging competitions, and serving in our mentor program. Your help makes a great difference to the Law School.

In addition to Judge Calabresi's address, the articles, excerpts, and speeches on the pages that follow are, I hope, another reminder of why the project of building a great LDS law school and the lifelong project of learning and study are worth our very best efforts.

Warm regards,



JAMES R. RASBAND



IN PRAISE OF THINKING LIKE A LAWYER

*Thinking like a lawyer
is really a form of leadership
training and, when properly understood,
is a part of education
for eternity.*

DEAN
JAMES R. RASBAND

On behalf
of my faculty colleagues as
well as the rest of the
administration and staff,
I welcome you to
BYU Law School. Of the
many choices and
opportunities you had,
I am convinced
you have chosen well.





As all of you are surely aware, law schools have received plenty of criticism over the last couple years. But I am convinced you made the right decision to attend law school—and particularly to come to law school at BYU. For reasons I will describe at greater length, I believe the study of law is a profoundly valuable endeavor that will pay great dividends for the rest of your life, not just financially but also in terms of your ability to lead and to serve.

I feel even more strongly about the value of your study at BYU Law. This is an extraordinary institution. While many other law schools are retrenching—or even in retreat—we are moving forward on many dimensions: hiring great new faculty, adding clinics, growing our professional skills curriculum, and remodeling our space.

But new programs and remodeling projects are not the real reason I am convinced you have made the right decision to come to BYU Law. What I know is that BYU would be an extraordinary place to learn the law even if we did it in a hut, because you will be learning alongside a great group of students and with faculty who are dedicated to your education in a way that is unique among law schools.

Almost 40 years ago President Spencer W. Kimball suggested that the goal at BYU should be “education for eternity.” He urged faculty to be “bilingual,” speaking “with authority and excellence to your professional colleagues in the language of scholarship” but also being “literate in the language of spiritual things.”¹ The same injunction applies to you as graduate students. I am convinced that the study of law is truly a form of “education for eternity.” Done correctly—with humility, integrity,

and unstinting effort—the study of law will profoundly change the way you think and enable you to lead and serve in powerful ways far beyond your professional role as a lawyer.

You’ve probably heard many times that the goal of the first year of law school is to teach you to “think like a lawyer.” This goal has been under some criticism of late. But today I’d like to defend the nobility of learning to think like a lawyer, at least in its most virtuous forms. So let me try to explain a few ways in which thinking like a lawyer is really a form of leadership training and, when properly understood, is a part of education for eternity.

In Praise of Learning to Apply Appropriate Deference

I’ll start with a seemingly mundane example. In your classes you will soon be introduced to the concept of “the standard of review.” The standard of review is the level of scrutiny that an appellate court is supposed to give to a decision made at the trial-court level. As a simple example, if an appellate court is reviewing a jury’s conclusion that A ran a red light, the standard of review employed by the appellate court is called “clear error.” The idea is that the appellate court will defer to the jury’s finding unless the jury clearly erred in its determination that A ran the red light. Under a clear-error standard, the appellate judge is not supposed to ask herself if she thinks A ran the red light. She is instead supposed to ask if any reasonable jury could have concluded that A ran the red light. The appellate judge is not supposed to substitute her own judgment for that of the jury, even if she might see the facts differently than the jury, unless the jury’s decision was clearly erroneous.

By contrast, consider the standard of review in a case in which the appeal is from a judge’s decision that a citizen is not under an obligation to stop at a red light in an emergency situation—if, for example, A was driving his sick child to the emergency room. I don’t think this is the law, and that’s part of the point. Does the appellate court need to defer to the trial judge’s legal conclusion about the rule on stopping at a red light in an emergency situation? The answer is no.

Instead of using the clear-error standard of review applied to a fact question, a legal question is reviewed under what is called a “*de novo*” standard of review. *De novo* is simply a fancy Latin phrase meaning that the appellate judge decides the issue anew or afresh.

Sometimes as lawyers I fear we love fancy Latin phrases too much. The reality is that thinking like a lawyer is designed to clarify meaning rather than to obscure it. Still, Latin phrases can sound quite impressive at parties. In fact, you may even be tempted to spring a few at Thanksgiving dinner this fall, although I ought to warn you that statistics have shown that more Thanksgiving dinners are ruined by law students trying out their newfound advocacy skills than by any other single cause.

Returning to the hypothetical, when the appellate judge decides *de novo* the appropriate rule on running red lights in an emergency, she does not give any deference to the trial court’s conclusion but instead decides anew or afresh what the legal rule should be.

Why the different standards of review? In the first case, the question is factual: What actually happened? Did A run the red light? For this factual question, it makes sense to defer to the jury. The jury heard all of the evidence, and the jury had a chance to observe the witnesses and get a feel from body language as to the truthfulness of what they were saying. Such observations simply aren’t possible on the paper record viewed on appeal. By contrast, the question about the appropriate rule for red lights in an emergency is one that involves a policy judgment that will apply beyond the facts of this particular case. When it comes to saying what the law is, there isn’t a particular reason why the appellate judge should defer to the trial judge. The trial judge doesn’t have more legal expertise.

So what does any of this have to do with thinking like a lawyer or with how thinking like a lawyer has implications that extend far beyond deciding a particular legal case? Think for a moment about the number of circumstances you will face in your life in which you will be asked to evaluate or judge the actions of another or in which you will need to seek approval from someone with

stewardship over you. It might happen in your family; it might happen in a community or church setting. If you are asked to evaluate an individual’s decision that involved a detailed factual inquiry and unique local circumstances, shouldn’t you be quicker to defer to the individual’s judgment rather than substitute your own?

The basic point is that applying a correct standard of review is a critical leadership question. How do you feel when a leader, without knowledge of particular circumstances, overrules or criticizes your judgment? By contrast, how do you feel when a leader understands that your intimate knowledge of the facts entitles you to deference? Thinking like a lawyer is thinking about this sort of decision.

Of course, when to defer and how much to defer is not always easy, and we won’t always get it right. I certainly don’t. But in my experience, the chance that you get right the appropriate level of deference is greater if you actually think about the question. Studying standards of review, therefore, isn’t just learning a series of rules for what types of trial-court decisions merit what levels of deference on appeal. Studying standards of review is a form of leadership training.

Another facet of thinking like a lawyer on which you will spend a lot of time during your first year of law school is understanding the importance of precedent—prior decisions in similar cases. Again, the idea is not to simply memorize precedents but to have deeply embedded in your thinking the idea that like cases and similarly situated individuals should be treated alike, which is a core principle of fairness. Considering past precedent and the possibility that your decision creates a precedent for future situations is also the trait of a leader. Of course, thinking about precedent is not exclusively a lawyer’s domain—ask any parent who has given a bigger Christmas gift to one of their children, or ask any employer who has considered the implications of providing a particular perk to only one employee. But worry about precedent is something that lawyers should be—and, in my experience, are—quicker to recognize because of their training.

In Praise of Learning to Make Wise Judgments

Learning to think like a lawyer is like changing your perception of an issue from black-and-white TV to color TV, to HD, and then to 3-D. You may be looking at the same thing, but you see the issues so much more clearly. And when we see and understand the issues, the chance that we will wisely balance justice and mercy increases significantly.

The metaphor of vision is useful in explaining another characteristic of the study of law. If you pause to consider the nature of most graduate education, the pur-

*This speech
was given
to BYU
Law School
entering
students on
August 21,
2013.*

pose is to narrow your field of vision, to train you as an expert in a particular field—the classic example of which is the dissertation on a narrow subject on which no one else has written. The study of law, by contrast, is designed to broaden your field of vision and to give you the tools to make judgments across the full range of human experience. This understanding of law is

likewise something that is lately under pressure: there has been a push to develop legal expertise earlier, particularly with the idea of improving employment prospects. I don’t want to criticize expertise. All of us benefit from medical, engineering, and other expertise that are gifts to us from other disciplines. Moreover, there are some benefits of deciding earlier on a legal career path. But movement in that direction should not overtake or devalue the traditional broadening task of legal education. It is precisely that broadening that makes lawyers particularly adept as leaders and problem solvers.

I fear I am like the proverbial carpenter with a hammer, but let me suggest a couple more examples of how thinking like a lawyer is a profoundly important leadership skill and not some technical skill or shiny intellectual bauble. Later this semester in torts, you are likely to encounter cases involving injury to drivers at railroad crossings. You will learn that railroad companies, in an unsurprising effort to avoid liability, claimed that the drivers were at fault for not paying careful attention to whether or not a train was coming. Now, we could spend hours on even this sort of seemingly simple problem with questions like, Should



railroads be liable for any injuries, regardless of the negligence of the driver? or, What would such a rule cause the railroads to do?

THE STUDY OF LAW . . . IS DESIGNED TO

Build fewer railroad crossings, erect expensive signals and gates, or move the rail lines—any of which could increase the cost of rail traffic for consumer goods?

Law teaches us to think about the consequences and incentives created by particular decisions. This too is a trait of wise leadership.

What is critical to understand is that if you think you are learning about the rules for railroad crossings, you are missing the point. Let me take one more example from these railroad cases. In response to the railroad companies' claims of contributory negligence by drivers injured at railroad crossings, two different rules developed. One was a rule that drivers would be considered contributory negligent if they failed to stop, look, and listen before crossing the tracks. This stop, look, and listen rule was what we'd call a "bright-line rule"—it was quite clear and easily administered. As another example, think about a rule prohibiting felons from voting or people under 18 years of age from drinking.

With the bright-line rule—stop, look, and listen—courts and railroad crossers knew quite clearly which rule applied for injuries at rail crossings. The other rule, by contrast, did not insist that a driver stop, look, and listen. The rule simply demanded that a driver act reasonably in the circumstances.

In theory, the rule of reasonableness will produce the fair result more often than a bright-line rule because we can account for specific circumstances in which stopping, looking, and listening doesn't make sense. Imagine the case, for example, in which looking requires exiting one's vehicle to look around a building adjacent to the tracks. In such a case, stopping and looking creates more risks than slowly driving ahead because the time it would take to get out, look, and then walk back might be just enough time for a speeding train to arrive.

On the other hand, a squishier rule of reasonableness has its own costs: greater

uncertainty for drivers about what they should do at crossings; more lawsuits in which drivers and railroads argue about

BROADEN YOUR FIELD OF VISION.

who was really at fault; and inconsistencies in application because of differences among drivers, judges, and juries about exactly what counts as reasonable behavior at a railroad crossing. Thus, understanding the relative merits and risks of bright-line rules is not about railroad-crossing cases; it is instead training in leadership and judgment.

Think outside the law context. For example, what are the risks and benefits in an employment context to a rule limiting employees to one continuing education trip per year? This is easily administrable and seems quite fair in treating all employees the same, but what if some employees need more training? What if some take better advantage of the training available? Is it better, then, to adopt a rule that all employees may travel for continuing education whenever it serves an important purpose? This seems more fair and tailored to individual situations, but it takes more time to judge the merits of each individual request and it's quite hard to say no. Thus, might we decide that given the available administrative resources and the stakes associated with a mistaken application, it's okay to have a bright-line rule that will occasionally produce results that chafe?

Your law training won't give you easy answers to such questions, but it will, I hope, help you recognize the risks and benefits associated with the decision. It also will allow you to communicate any decision you make as one in which you were mindful of the costs and benefits of these two approaches to rule setting.

Again, the point of studying these railroad-crossing cases is not to become an expert in railroad law or even tort law, nor is it the point to simply engage in the fun and intellectual exercise of spotting the flaws and benefits of bright-line rules and rules of reasonableness. If spotting problems is all we learn to do—if issue spotting is all that it means to think like a lawyer—our training will have all the import of a shooting game

at a county fair, in which we busily plink passing rabbits, squirrels, and raccoons just to show our prowess with a BB gun.

I don't think I learned this until after law school. My first job after law school was clerking for Judge J. Clifford Wallace on the Ninth Circuit. I remember turning in my first memo and feeling rather proud. I thought I had spotted all of the issues associated with the particular case. If I'd been at the county fair, I would have taken home a large stuffed panda. The judge, however, called me into his office and kindly noted that the role of a court, and indeed the role of a good lawyer, was not issue spotting; it was exercising wise judgment. There would be tough decisions, and there would be tensions between some precedents, but my job, he said, was to use the tools I had been given to offer my best resolution of the case.

I hope you will learn this principle sooner than I did. The real value of a lawyer lies in her judgment and in her ability to give wise counsel. As you study cases every day during this first year of law school, remember that what you are really learning is not a compendium of rules but, by studying example after example, the way to make wise judgments in hard cases.

In Praise of Learning to Act in Humility

Someone who thinks like a lawyer knows that rule choices are serious business and require careful thinking. Perhaps even more important, thinking like a lawyer means understanding that rules are rarely perfect in design or application. Thus, although it may seem paradoxical, being trained to think like a lawyer should mean being trained to think and act with humility. The skill of dissecting arguments and proposals may seem like a handy pin to stick into others' balloons, but if that is primarily what you learn in law school, you haven't really learned to think like a lawyer. Thinking like a lawyer means that you deploy your shiny pin on your own balloon.

Another part of your training to think like a lawyer will be the Socratic method in the classroom, under which you are intended to learn by responding to questions. The Socratic method can feel a bit scary because faculty may persist in asking

you questions, posing counterarguments, and raising additional hypotheticals until your initial position starts to break down under the onslaught of contrary ideas or slightly altered facts. It's no fun to see our arguments shot through with holes and our preferred-policy ship take on water or even sink. (As an aside, let me just say that the Socratic method may feel painful, but please don't worry about making mistakes. If you leave your intellectual ship safely in the dock and never attempt to sail it, it will do you little good. It is the sailing that gives you the experience. Be willing to take risks in class. Be willing to talk to your professors outside of class. It is one of the great privileges of a legal education at BYU, and I hope you take advantage of it.)

The Socratic method is a part of your legal education that many do not understand and that some criticize because it appears designed to teach that every argument has a counterargument and that one argument is just as good as another. Even more discouraging, one can come away thinking that all truth is up for grabs or even, in some cases, that the law is simply what the person or party in power says it is. I am convinced that law is not simply a function of power; it is instead a constraint on power.

But, you might say, what about those most difficult and controversial cases—the ones you have read about in the news and will now study at this law school? Don't they show that law is merely an extension of politics? You will spend plenty of time debating this in your classrooms over the next three years. And you will learn about how language can be interpreted differently by persons of different experiences, backgrounds, and preferences. But even in these most difficult cases in which language is uncertain or the social stakes are so high, I hope you will also learn that law still serves to bank and curb the impulse to make decisions based on power and preference.

The requirement, for example, that judges explain their decisions in writing is a powerful constraint on arbitrary conduct. Likewise, the language of constitutions, statutes, and cases, while occasionally indeterminate, at very least creates boundaries for a reasonable range of potential



IT IS THE SAILING THAT GIVES YOU THE EXPERIENCE.

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meanings. In the same way, the need to justify decisions in terms of past precedent is a constraint on capricious conduct. I could add to this list, but my point is that even on the far margins of interpretive challenges, the rule of law is a powerful bulwark against arbitrary government action.

The law is not perfect, but it is a majestic device for ordering society. As then BYU president and now Elder Dallin H. Oaks said to the very first class to enter this law school:

[Lawyers] *must understand and help others to understand that despite all the imperfections of law and of lawyers, there is no better system for preventing and settling disputes than the rule of law.* . . .

*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.*²

BE WILLING TO TAKE RISKS IN CLASS.

I hope that during your time here you will come both to respect law's power and to reverence its function in our social fabric. I also hope that as you study so many controversial cases and learn about how seemingly simple language can have different meanings, you will remember there are certain fixed stars and immutable truths by which you can guide yourself: God exists and loves His children, the primary manifestation of which is the Atonement of His Son, Jesus Christ.

Although we know there are certain immutable truths, there is, of course, a wide range of social ordering in which we are left to our own devices to learn by hard experience what is the wisest and best policy. It is thus not a cause for panic that, in classroom Socratic dialogue, your argument gets shot with a few holes and takes on some water. Most policies and rules involve trade-offs and have imperfections. When you think like a lawyer, you understand that. This ought to encourage humility about our own ideas and a willingness to consider ideas advanced by others.

In Praise of Learning to Become Influential Leaders

In sum, my hope is that when you hear criticism of thinking like a lawyer, you will not shrink or studiously study your shoelaces. Understood in its fullest sense—and I think I have only scratched the surface—learning to think like a lawyer is the noblest of endeavors, with far-reaching, even eternal consequences. There is no need to apologize for learning to listen empathetically to opposing views, for learning to treat like cases alike, for recognizing that deference to the decisions of another depends upon the nature and circumstances of that person's decision, for understanding that straightforward bright-line rules work better in some situations than in others, and on and on and on. Learning to make wise judgments and to solve challenging problems is desperately needed, and your legal education will give you the ability to share those gifts.

This morning I have focused on learning to think like a lawyer because it will be the project of much of

your first year of law school and because I want to defend what I believe has too often been criticized of late. I'll have to leave for another day the important role of professional skills training, which attempts to pair leadership and judgment with experience exercising those attributes. Like any important trait, exercising judgment and making wise decisions takes a lot of practice to learn to do well.

As I close I want to touch briefly on one idea from the DVD we showed this morning about the life of President J. Reuben Clark, after whom this law school is named. The idea is one that I hope will echo in your minds during your time in law school—partly because I will repeat it—and that is President Clark's plea to remember those in the last wagon.³ When you leave this law school, you will be those riding in the lead wagons of society. It may not feel like that today, and it certainly won't feel like that when you are on the proverbial Socratic hot seat in your classes, but your legal education will give you significant power and influence in society, indeed, in almost any group of which

you are a part. As dean of this law school, that is precisely what I want; I want you to be influential leaders. But as you wield your influence, remember that worthy influence can be maintained “only by persuasion, by long-suffering, by gentleness and meekness, and by love unfeigned.”⁴ This is what thinking like a lawyer ought to mean.

Of course, foregoing the impulse to wield unworthy influence is surely a lesser law. The more ennobling course is that you use your legal training to aid those who need your help, particularly those who cannot pay for legal services. This injunction to help “the least of these”⁵ should not be surprising, but it is easy to forget in the rush and busyness of life.

I'd like to conclude by quoting from what President Marion G. Romney, then a counselor in the First Presidency of the Church, said to the very first class of students at this law school in 1973. His challenge is no less compelling today than it was 40 years ago this month. President Romney said:

*You have been admitted for your superior qualifications. Appreciate your opportunities; make the best of them. Set a high standard for your successors to emulate. You know why you are here, what your school, . . . your own loved ones, and yes, your Father in Heaven expect of you. Don't let any of them nor yourselves down. . . . Be your best. Society needs you, your country needs you, the world needs you.*⁶

To his words of challenge I add my words of welcome. We are excited that you have decided to join us at J. Reuben Clark Law School, and we look forward to playing a part in your education.

NOTES

1. Spencer W. Kimball, “The Second Century of Brigham Young University,” BYU devotional address, 10 October 1975; see also Kimball, “Education for Eternity,” address given at the BYU annual university conference banquet, 12 September 1968.
2. Dallin H. Oaks, in *Addresses at the Ceremony Opening the J. Reuben Clark Law School*, 27 August 1973, 8.
3. See J. Reuben Clark Jr., “To Them of the Last Wagon,” *Conference Report*, October 1974, 154–60.
4. D&C 121:41.
5. Matthew 25:40.
6. Marion G. Romney, in *Addresses at the Ceremony*, 27 August 1973, 27.



Guido Calabresi was born in Milan, Italy, in 1932. He lived there until the age of seven, when his family fled from fascist Italy to the United States. Calabresi's father, a medical doctor and a professor of medicine, was active in an antifascist group and decided to leave with his young family after his associates were murdered in France by Mussolini's henchmen. An opportunity presented itself when he was offered a one-year fellowship at the Yale Medical School. The Calabresi family arrived in New York on September 16, 1939, and 55 years later—to the day—Calabresi was sworn in by Justice David Souter as a judge on the United States Court of Appeals for the Second Circuit.

GUIDO
CALABRESI

CHOICES

Calabresi graduated summa cum laude from Yale College with a degree in economics in 1953. He was afterward a Rhodes Scholar at Magdalen College, Oxford, where he earned a BA with First Class Honors in 1955. He then enrolled at Yale Law School and graduated at the top of his class in 1958. After graduation he clerked for the Honorable Hugo Black of the United States Supreme Court before returning to Yale as a professor. He later became the youngest tenured professor in the law school's history and was one of the founders of the law and economics movement. In 1985 Calabresi was appointed dean of the Yale Law School, a position he filled until his appointment to the federal bench by President Bill Clinton in 1994. He is generally regarded as one of the most influential deans in the history of Yale and in all of American legal academia in the latter part of the 20th century.

ILLUSTRATIONS BY
GIANNI DE CONNO

IT IS A JOY

to be here in this remarkable place and to tell you some stories—because those who know me know that I’m a storyteller and that I always tell stories about myself. I will tell these stories primarily to the graduates seated behind me, even though I’m looking at the rest of the audience. ✦ My stories today are about choices.

THE IMPACT OF A NON-CHOICE

My family left Italy because we were anti-fascists. My father was not simply a quiet antifascist like so many people and most of my relatives who stayed in Italy. He was an activist and a democrat with a small *d*, and he did not belong to any *-ism*, but he was an active antifascist and a danger. I always wondered how he chose to do that. The courage that must have taken! It was easy enough to oppose a government that was evil, but to go out and stake your life on it! How did that happen?

So I asked him, and he told me: “Guido, everybody talks about the banality of evil; very few people talk about the banality of good. How did I become an active antifascist? It was not a choice; it just happened.

“I was 22 years old and at the University of Florence. The fascists had kicked out the president of the university because he was tough and wouldn’t do what they wanted. They replaced him with a perfectly good person—a teacher of anatomy—who was very nice but not as strong. We were his students, and we went to his inaugural because we liked him. He gave a good speech, and we applauded.

“Then the fascist minister of education got up and gave a terrible speech. He said that everybody would do what they were told and that they weren’t allowed to think.

It was an awful speech! In the middle he stopped, as politicians will, for applause.

“I didn’t applaud; there was nothing to applaud. I didn’t hiss or boo—we were all much too polite to do anything like that. I just didn’t applaud. Somebody behind me said that the next time he stopped we had better applaud because there were people in the back who were taking down the names of the people who were not applauding.

“I was 22 years old. If somebody had told me that if I went to this event and didn’t applaud that I’d get into trouble, I would have stayed home—or maybe I would have gone and applauded. But I hadn’t applauded, and now I was being told that I’d get into trouble if I didn’t applaud. I couldn’t do it. So I didn’t applaud, and when I went out they picked me up with three or four others, and they beat us up.”

I asked, “What did you do then?”

He said, “We went to wash in a fountain.”

And I asked, “Why?”

He said, “Well, in Italy one lived at home, and we didn’t want to go home bloody and scare our parents, so we went to wash.”

And I asked, “Why did you pick that public fountain? Did you want to show you had been beaten up?”

He replied, “No, no! I don’t think so. It was just the closest fountain. But the fascists thought that was what we were doing, that

we were showing we had been beaten up. So we were picked up again, beaten again, and tossed in jail. At that point I was a marked man; I was no longer a passive antifascist. I might as well do what was right.”

Fast-forward to 50 years ago and the March on Washington. I wanted to go; I cared passionately about integration, and I was planning to go. And then what we now don’t remember was how frightened we all became. There were bombings in Alabama, little children were killed, and Congress fled town. People got scared that it would become a riot and spawn horrible things. I had been married for just a couple of years and had a baby girl. I thought, “You don’t want to go down and get yourself beaten up or killed or something. There will be thousands of people.” I decided to stay home.

During the week I talked to my dad on the phone, as I did every week, and in the middle of our conversation he said, “Oh, by the way, this weekend I’m going down to Washington.”

I asked, “Why?”

He said, “I’m going to the march.”

I said, “But it may be dangerous!”

He said, “Well, I’m going anyway.”

I thought, “This old man (he was much younger than I am now) is going by himself.” Then I said, “I’ll go with you!”

My dad said, “I thought you would.”

And so we went. And so we marched. At that magnificent Sunday school picnic we marched together with all sorts of people from all over, and we heard Martin Luther King’s speech. And we came home. That non-choice has made a tremendous difference to my life in the same way my father’s non-choice had done to his.

THE IMPACT OF AN ACTIVE CHOICE

The second story is more dramatic. Fifty-two years ago—almost 53—on our wedding trip, my wife and I went to my father's mother's family house in Ferrara, Italy, in the north. The family house is a collection of buildings that date back to the 13th century. There are frescos of the vices and virtues with Christ in the center, painted in the main living room before 1370 by a pupil of Giotto. In the center below that is a 17th-century organ.

We walked in to see my father's cousin who owned the house. His wife was playing Bach on the organ. Can you imagine two young Americans arriving in a setting of that sort? We then went to dinner in the great dining room. There was just my father's cousin, his wife, and their daughter, who still lives in those buildings. Their son was away studying in Germany.

At that point my father's cousin handed me a letter and said, "Guido, you read German better than I; read this letter to us."

I thought that was strange because my German was not that good, and his German I knew to be quite good.

The letter began, "My dear little Minerbi family."

I thought, "That's strange. This is a very self-important group of people to be addressed as 'my dear little Minerbi.'"

The rest of the letter went on in the most patronizing of ways. It said, "I am so glad to have found you after all these years; I have opened up a butcher shop in Germany."

I asked, "Who is this butcher?" I wondered who was speaking to these very self-important, very wealthy people in this way. I looked around, and the people at the table looked as though they were smelling a very bad smell.

The end of the letter said, "I do hope that I may see you again."

My father's cousin said, "Good, we must tell Marco, our son, who is in Germany, to go call on this man and give him all our best." They were still looking as though they were smelling a bad smell. Obviously there was a story behind this, and obviously the reason he had made me read the letter was because he wanted to tell me the story.

So we went for a walk through the medieval parts of Ferrara, and I asked him what was up.

He said: "In 1943, when Italy surrendered, the Nazis moved in, and anyone who was of Jewish ancestry had to hide. Before that, things were not good, but they were all right. And as you know, our family is an ancient Jewish family, although we are now Catholic. But we had to go into hiding. We went to my wife's family's villa, since they were an old Catholic family, and we took assumed names, we faked papers, and we lived there in hiding.

"At a certain point the Germans took the villa over as a headquarters. It was an incredibly difficult situation, and the captain in charge of the German troops there was a dreadful, dreadful person. He would get drunk, and he would steal things. He would try to break the door down to my cousin's wife's sister's room to attack her. We had to do everything to protect ourselves. He was just terrible.

"One day my son, Marco, who was then four years old, was playing in the garden, and the German captain called to him by his assumed last name. My little boy had forgotten his assumed last name. So the German captain called him by that name again, and he forgot again. Then the German captain went and grabbed him by the shoulder and said, 'That is not your name!'

"And little Marco said, 'No!'

"The captain said, 'That is not your name because you're Jewish!'

"And little Marco said, 'Yes!' and broke away. He ran into the house, and we expected then to be taken away. But nothing happened. Nothing happened.

"This captain, who was so evil, risked his life in not telling on us, because if any of the other soldiers who were around had heard that exchange and he didn't turn us in, he would have been dead. But he risked his life and did not turn us in."

I'd like to tell you that the captain behaved better in other ways afterward. He didn't. But in that transcendental moment he made a choice—a choice that was saving, dramatic, and in some ways unexplainable. My cousin tried to find out if this captain had a Jewish relative or

*"At that point I was a marked man;
I was no longer a passive antifascist.
I might as well do what was right."*

Jewish friends. None of those! He simply couldn't bring himself to do something that was so deeply wrong, even though he himself was so flawed. Of course, it was the captain who had written that letter, and that's why he was being patronizing. He knew he had saved them. That is why he, a butcher, could speak as he did. That is why my cousin and his family all looked as though they were smelling a smell. And that is why they also sent Marco, now a grown man, to give him their regards, because they knew that he had risked his life to save theirs.

THE IMPACT OF A BAD CHOICE

My last story about choices is one of an opposite choice. Many people, I must say myself included, think of Franklin Roosevelt as an extraordinary and, on a whole, very good person. And they think of Earl Warren in the same way: maybe limited as a legal scholar, but as a person for whom fairness was terribly important—a good person. And I certainly think of the United States Supreme Court Justice I clerked for, Hugo Black, as a person who is very courageous and very good. They were all very good. And yet they are the three people who are responsible as much as anybody for one of the worst choices that was made in our history: ordering Japanese Americans into internment camps during World War II. These men were behind it—Warren, as attorney general of California; Roosevelt, as the president who approved the order; and Black, who wrote the *Korematsu* opinion upholding it.

Now, it would be easy to say these weren't really good people who made such a terrible choice, but I think we would be fooling ourselves. They were good people—they were very good people—who in a dramatic situation made a terribly, terribly bad choice.

THE IMPACT OF YOUR CHOICES

What's the point of these stories? You "kids"—and I call everybody kids, including people who have been presidents of the United States (I'm that old, so I get away with it)—are about to go out into the world, and in the world you're going to be faced with an awful lot of choices. The first thing I would ask of you is to be aware of all the non-choices that may shape you. Be aware of those situations in which you don't even think you are choosing but in which if you decide not to applaud, if you decide to tell your son, "Oh, I'm going to Washington," if you decide to do all those things, then you are making choices that will shape you as you want to be shaped.

The second thing I would say is that no matter how good you feel about yourselves—and I hope you will feel good about yourselves, because I hope you will do many, many good things—beware that there are none so dirty as those who do not wash because they know they are clean. You know? You start to smell. Beware especially of when you feel you are good and are doing good; beware of choices that may face you that are really evil ones.

And then, most important of all, no matter how bad you feel about yourselves sometimes, no matter how much you feel that you are bad and are not living up to what you should, and no matter how much you feel you have failed, remember that you will be offered choices. Perhaps these choices will not be as dramatic as the one the captain was offered, not as transcendently changing, but you will be offered situations in which you can do something unexpectedly and truly good. And when you do that, you will not only do something that is extraordinarily important in itself, but you will also make your family, your friends, your teachers, your school, and your faith profoundly proud. Thank you.

I'd like to tell you that the captain
behaved better in other ways afterward.
He didn't. But in that transcendental
moment he made a choice.





Be Not
Afraid of
Greatness

The Blessings and Responsibilities of a Law Degree

We owe a responsibility to each other and to future generations of women to join the discussion, to contribute our unique experiences and our distinctive perspectives, and to create a fuller and richer society by gaining an understanding of the laws that govern almost all of our day-to-day interactions.

Title from William Shakespeare's *Twelfth Night*, act 2, scene 5, line 159



 ALLISON G. BELNAP

BYU Law School Assistant Dean

Good morning. It is a privilege to stand here and address this group of exceptionally capable, dedicated, and assiduous women. Though I don't know you personally, each of you here today has earned my admiration for resolutely developing your God-given talents and abilities and for accomplishing all that you have.

AN UNLIKELY CANDIDATE

Unlike each of you, I was, apparently, a very unlikely candidate for law school. In fact, I recently had a young man request to connect with me on LinkedIn, and he said, "I am hoping to follow your exact career path."

At which point I thought to myself, "This poor chap has not done his homework. There is no way anyone in their right mind would look at my 'career path' and think to themselves, 'Now *that* is exactly what I want to do!'"

I married very young. I was exactly 19 years and two months old on my wedding day. Fortunately my husband has consistently encouraged me to find the space and time to explore and discover who I am and who I have the potential to become.

Not long after we were married we decided to start a family, as many LDS couples do, and I found myself pregnant with our first child. The timing was excellent. I would finish my last semester of school and graduate with my (exceptionally useful and practical) degree in acting, and then our baby would be born at the end of the summer.

Recounting this story brings to mind a rather famous poem by Robbie Burns called *To a Mouse on Turning Her Up in Her Nest with the Plough*, one stanza of which reads:

*But, Mousie, thou art no thy lane,
In proving foresight may be vain;
The best-laid schemes o' mice an' men
Gang aft agley,
An' lea'e us nought but grief an' pain,
For promis'd joy!*¹

In American English, we translate that most familiar phrase as, "The best-laid schemes of mice and men often go awry."

It was a troubled pregnancy. I was put on bed rest, missed weeks of classes, withdrew from everything that was not absolutely necessary to graduate, and hoped and prayed for the best. We lost that baby on April 1, 20 years ago. April 1 didn't leave much time for me to finish my requirements for graduation. And despite my most valiant efforts, I fell two musical theatre scenes short of graduating that spring. I had to take an incomplete in the class and wait for it to be offered again a year later before I could get my diploma.

After our first rather traumatic experience with pregnancy, it took me some time and some soul-searching to endeavor to venture down that road again. But eventually we embarked again on the adventure of bearing and raising children only to be frustrated by health issues leading to temporary infertility. Finally our eldest daughter was born, and I thought, "Hooray! We've done it! We are now a family." And I somehow supposed in my naïve, hopeful mind that our lives would go perfectly from that point forward.

Like all of you here today, I had been successful at most of the things I tried—except athletics. I was a miserable failure at anything athletic, except perhaps skiing and tackle football (which my high school principal staunchly refused to let me play). Despite being successful in many areas of my life, I was unprepared to face the challenges that parenthood brought. I fell into the trap of comparing myself with some "ideal" that was created in my mind—either by choice or through cultural influence or both—and I fell miserably short of what I imagined a mother should be.

After our second daughter was born, I suffered from a serious episode of undiagnosed postpartum depression. It was incredibly difficult for me to understand why, when

I was doing everything I thought I was supposed to do, I was not happy.

In time my husband and I decided that I would apply for graduate school, and I left the life of a full-time, stay-at-home parent to pursue my education. Two years later I graduated with a master's degree in theatre for young audiences, and I began teaching for the BYU Theatre and Media Arts Department. Just as I completed my thesis, my third daughter was born. I had two more children in the following five years and was very happy with my life. Because I taught in the afternoons and evenings, I homeschooled my girls when they reached school age so that we would still have time together.

Looking back, I am confident that I put a golden hue on everything, but it seemed like an idyllic existence. I had my teaching, directing, performing, and research, which helped me stay grounded and feel I was still nourishing my own soul, and my children spent about half their time with me during the day and the other half with their father. My children and I chose our own school curriculum and projects, took long walks, and went on bike rides, and I actually (really and truly) played a guitar and sang songs with them every single morning.

WHY LAW SCHOOL?

So why law school? Let me state up front that the reasons I came to law school are very different from the reasons I am grateful every day for my legal education. I will not detail what ultimately moved me to embark on a legal education except to say that I firmly believe I was inspired to take that path and that I had that choice confirmed as right for me at multiple times and in multiple ways as I made my way into, through, and out of that great white building just east of us. I imagine that the decision process for each of you will be much the same—you will pray, you will study it out, you will weigh your options, and you will move forward with faith, noting the confirming assurances and evidences as you go along. In attempting to assist in that process, I think the reasons I am grateful every day for my legal education are perhaps much more valuable than the very unique and personal experiences I had while making this life-altering decision.

Gratitude for the Quality, Versatility, and Advantages of a Legal Education

I am grateful every day for the quality of my legal education. Studying law is a unique experience. I appreciate my other postgraduate studies a great deal. But in pursuing a JD, I was not only afforded the opportunity to delve into rigorous academic training but also challenged to expand and cultivate my reasoning, analysis, research, and communication skills. I was given ample opportunity to extemporaneously assert and defend an opinion—*my* opinion—about legal decisions covering a myriad of time periods, fact patterns, and topics. I was trained to think in a completely new way—a way that broadened my perspective, opened doors of possibilities, and over time enveloped me in an eiderdown of aplomb I had not previously



Belnap after the birth of her third daughter, Mandy, with daughters Hollis and Maren, February 4, 2002.

known. And while I was busy receiving the gift of this legal education, I was fortunate to do so in the warmth of burgeoning relationships forged while working through school with my classmates. When you enter law school you quickly recognize that you are in the midst of exceptional peers, who are every bit as gifted, motivated, and accomplished as you are. And those classmates become your friends and colleagues for life. Already that network of exceptional friends has blessed my life in ways I could not foresee when embarking on this step in my formal education.

I am grateful every day for the versatility of a legal education. We have alumni who work across many disciplines—business, media, arts, education, science, government, and of course the more traditional practice of law. Even within more traditional legal positions, there are multiple career paths. You can be a private attorney, government attorney, in-house counsel, judge, clerk, academic, politician, or Supreme Court Justice. A legal education creates options and opens doors you may not now even be aware of. Because your training is not in a single discipline but in learning how to think carefully and critically, problem solve efficiently, and communicate effectively, the skills you learn in law school are transferable to any number of applications post-graduation.

I am grateful every day for the advantages of a legal education. My experience in law school was empowering. We sometimes overuse that word, but I use it carefully and consciously here. Learning the workings of the rule of law and understanding the legal system that undergirds all of our society has made me a better mother, a better member of my communities—both religious and secular—and a stronger, more powerful woman as I navigate this mortal experience. When people find out I am an attorney, it changes how they see me. I immediately have the advantage of being part of a profession that, though regularly joked about, is nevertheless highly respected.

Now, if you'll indulge me—and I guess you don't have much choice on that—I would like to address two reasons I believe women specifically should come to law school: one that looks forward and one that looks back.

Looking Forward

Within my first month of school I had already had multiple experiences sitting in a classroom, wishing that my female friends especially could be there—learning the things I was

learning; getting the training I was receiving; gaining the experience and ability to understand the law and to speak up in mat-

ters that affect women, children, and families. In a society in which we live under the rule of law, women's voices are necessary in the making, interpreting, and enforcing of those laws. As women in the LDS faith, we believe that we are responsible for half of our Father's plan.² To me that means we have a responsibility to contribute to and foster the settings in which our mortal experiences are played out. We owe a responsibility to each other and to future generations of women to join the discus-

sion, to contribute our unique experiences and our distinctive perspectives, and to create a fuller and richer society by gaining an understanding of the laws that govern almost all of our day-to-day interactions and by honing our abilities to contribute to the conversations within our homes, our communities, our nation, and our world.

Looking Back

The second reason I believe women specifically should come to law school looks backward rather than forward, and again I ask your indulgence while I share a couple of demonstrative examples.

Lena Brown Ware. One of my great-great-grandmothers, Orlena Brown Ware—or

Belnap (left) as Sue Bayliss in *All My Sons*, produced by the Provo Theatre Company, 2003.



Lena, as she was called—was born in Kentucky in 1876. Her husband, John Thomas Adams, was reportedly a womanizer and a drunk. He rode around town in a white suit and hat on a large chestnut mount.

At the time of this story, Lena and John Thomas had seven children and Lena was pregnant with the eighth. John Thomas's sister had taken a young woman into her home, and the young woman had caught my great-great-grandfather's wandering eye. One night, after being out drinking, John Thomas rode over to his sister's home, called out, dismounted, and started to stumble his way toward her front door.

His sister appeared from within the house, shotgun in hand. She warned him off, but he kept coming. She warned him again, saying that if he took one more step she would shoot him. He looked at her, laughed, and trudged forward. She shot.

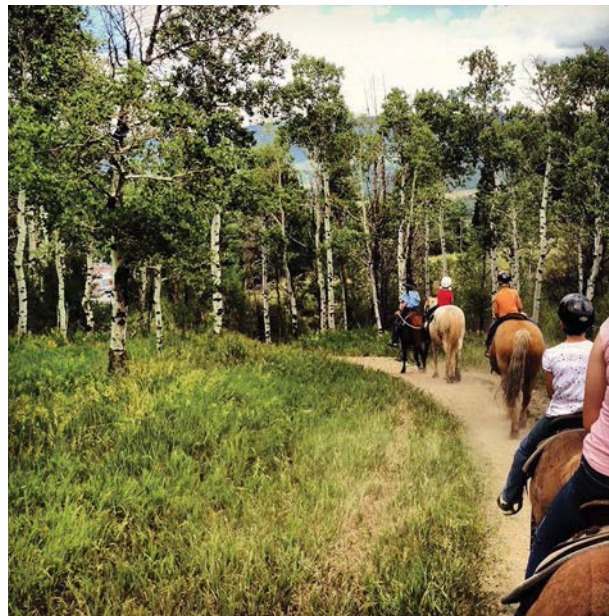
The story goes that as he bled out there in that dirt lot of a front yard that night in Kentucky, his last words were, "Dear Lord, what about Lena and the children?"

Lena was told of her husband's demise and spent the night walking their arbor with at least the oldest of their seven children there with her. Lena had no education, and where she lived, women were not allowed to work. She had no means by which to provide for herself, let alone her soon-to-be eight children. Eventually she made her way to Oklahoma and became a sharecropper. Two of the younger girls—my great-grandmother and her sister—were sent away to work as domestic help at the tender ages of five and six. Both girls were abused in their respective employers' homes and eventually concocted a plan to escape, buy train tickets, and rejoin the rest of their family in the tiny shack they now called home. The older children worked in the fields to provide what they could while Lena raised the babies still at home. It was a difficult existence.

Susan B. Anthony. In 1872, four years before Lena was born, Susan B. Anthony, a woman, voted in a presidential election. For this challenge to women's disenfranchisement, she was arrested, tried, and convicted

of voting without a legal right to vote. After arguments were presented, the court invited comment from Ms. Anthony—a move that the judge apparently regretted, since he constantly interrupted her response, asking her to take a seat.

May it please the Court . . . this is the first time that either myself or any person of my disfranchised class has been allowed a word of defense before judge or jury—All my prosecutors, from the 8th Ward corner grocery politician, who entered the complaint, to the United States Marshal, Commissioner, District Attorney, District Judge, your honor on the bench,



The Belnap family horseback riding in Steamboat Springs, Colorado, 2012.

not one is my peer, but each and all are my political sovereigns; and had your honor submitted my case to the jury, as was clearly your duty, even then I should have had just cause of protest, for not one of those men was my peer; but, native or foreign, white or black, rich or poor, educated or ignorant, awake or asleep, sober or drunk, each and every man of them was my political superior; hence, in no sense, my peer. . . . Precisely as no disfranchised person is entitled to sit upon a jury, and no woman is entitled to the franchise, so, none but a regularly admitted lawyer is allowed to practice in the courts, and no woman can gain admission to the bar—hence, jury, judge, counsel, must

*all be of the superior class. [Thus, I have] been tried according to the established forms of law all made by men, interpreted by men, administered by men, in favor of men, and against women; and hence, your honor's ordered verdict of guilty, against a United States citizen for the exercise of "that citizen's right to vote," simply because that citizen was a woman and not a man.*³

The Seneca Falls Convention—the traditional mark of the beginning of the suffrage movement in the United States—had been held almost a quarter of a century earlier. And still women in the United

States were denied a basic right of citizens under the constitution: the right to vote. Though several states gave women the right to vote toward the end of the 19th and beginning of the 20th centuries, the Nineteenth Amendment to the Constitution, prohibiting states from denying U.S. citizens the right to vote based on sex, was not ratified until 1920—less than a century ago, 14 years after Susan B. Anthony passed away and 18 years after the death of her friend and confidante Elizabeth Cady Stanton. In 1920 my paternal grandmother was already 13 years old.

For millennia, with the exception of a few matriarchal societies, women's voices have been effectively silenced by disenfranchisement, limited educational opportunities, and societal restrictions on employment choices. We live at an exceptionally rare period of time in history. We are not just presented with the opportunity to become educated and to engage in the civil discourse, we are encouraged to gain *all* the education we can.⁴ And if I can do law school with five children in tow and a husband working full-time, then any one of you can do it. There is no question of if it is possible for you to obtain a legal degree; it is only a question of if you will reach out and take the opportunity in front of you—an opportunity that millions of women over the history of the world never dreamed would be an option for their granddaughters, or great-granddaughters, or great-great-granddaughters. Our

foremothers suffered, worked, toiled, and paved the way for us to be able to do remarkable things.

I hope we will each individually take advantage of the sacrifices and struggles born for our benefit by those women in generations past—whether that means coming to law school or something else for you personally.

WHY BYU LAW?

I think there is one more question to ask in this setting, and that is, Why BYU Law? A woman close to me is a PhD candidate at one of the top schools in the country for her academic specialty. She is divorced and is raising a son on her own. Recently one of her PhD committee members warned her to keep her priorities straight. He essentially told her that if she ever decided to put her son ahead of her work, she would effectively end her career.

That is not something you will ever hear here. We understand the values and priorities that men and women of faith—and I am inclusive of multiple faiths here—have in terms of families. We have people and systems in place to support women going through life experiences that will come whether you are in law school or not—deaths, births, illnesses, marriages, divorces. We “get it.” We provide a safe place to question priorities, to set priorities, and to examine, try, and nurture your faith and spirituality just as you increase your wisdom and intellect.

Fortunately, that safety net—that support—does not come at the expense of a superior-quality legal education. We are often quick to tout the benefits of our low tuition, but I would have paid top dollar for the education I gained, the experiences I had, and the relationships I built at J. Reuben Clark Law School. I would hold up the experience and education available here against other top law schools all across the country.

Additionally, when you join BYU Law, you are automatically a part of an amazing and diverse network of women—some who choose to be stay-at-home parents, some who are employed full- or part-time outside

of their home, some who are strong in their faith, and others who struggle through doubts—who will understand your journey and challenges in unique ways. Regardless of our different paths, we are all part of a great amalgamation of diverse backgrounds, experiences, and perspectives. We are a remarkable group of women who support one another and who have the skills and courage to contribute in meaningful ways to the civil discourse in a multitude of settings.

In conclusion, as I prepared to speak with you today, someone mentioned the idea of “never regretting” their legal education. I want to build on that idea just a bit. In all honesty, I have never regretted a single



The Belnap family, 2009: (standing, left to right) Hollis, Dean, Allison, and Maren; (seated, left to right) Mandy, Hattie, and Maeve.

educational experience I have had. My acting degree may not have been particularly practical, but it was my passion; it gave me an education in humanity for which I will be eternally grateful, and it informed a very large measure of who I am today. I don’t regret one second or one penny spent gaining that education. I don’t think it is enough to merely say that I don’t regret the decision to attend law school. I want to leave you with the message that I, and almost all of the women I know who are also legally educated, don’t just “not regret” the choice to attend law school but that I see it as a life-altering blessing of the highest order. I believe it could be that kind of blessing for each of you as well. And to the extent that you agree, you will find an army of us here to assist you and cheer you on.

NOTES

- 1 ROBERT BURNS, *To a Mouse*, POEMS AND SONGS, 6 THE HARVARD CLASSICS (Charles William Elliot ed.), available at <http://www.bartleby.com/6/76.html>.
- 2 Julie B. Beck, *quoted in* Visiting Teaching Message, *Understand the Divine Roles of Women*, ENSIGN, Feb. 2009, at 67.
- 3 *Against an Aristocracy of Sex, 1866 to 1873*, reprinted in 2 SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY 613–616 (Ann D. Gordon ed., 2000).
- 4 Gordon B. Hinckley, *In the Arms of His Love*, ENSIGN, Oct. 2006, at 116.

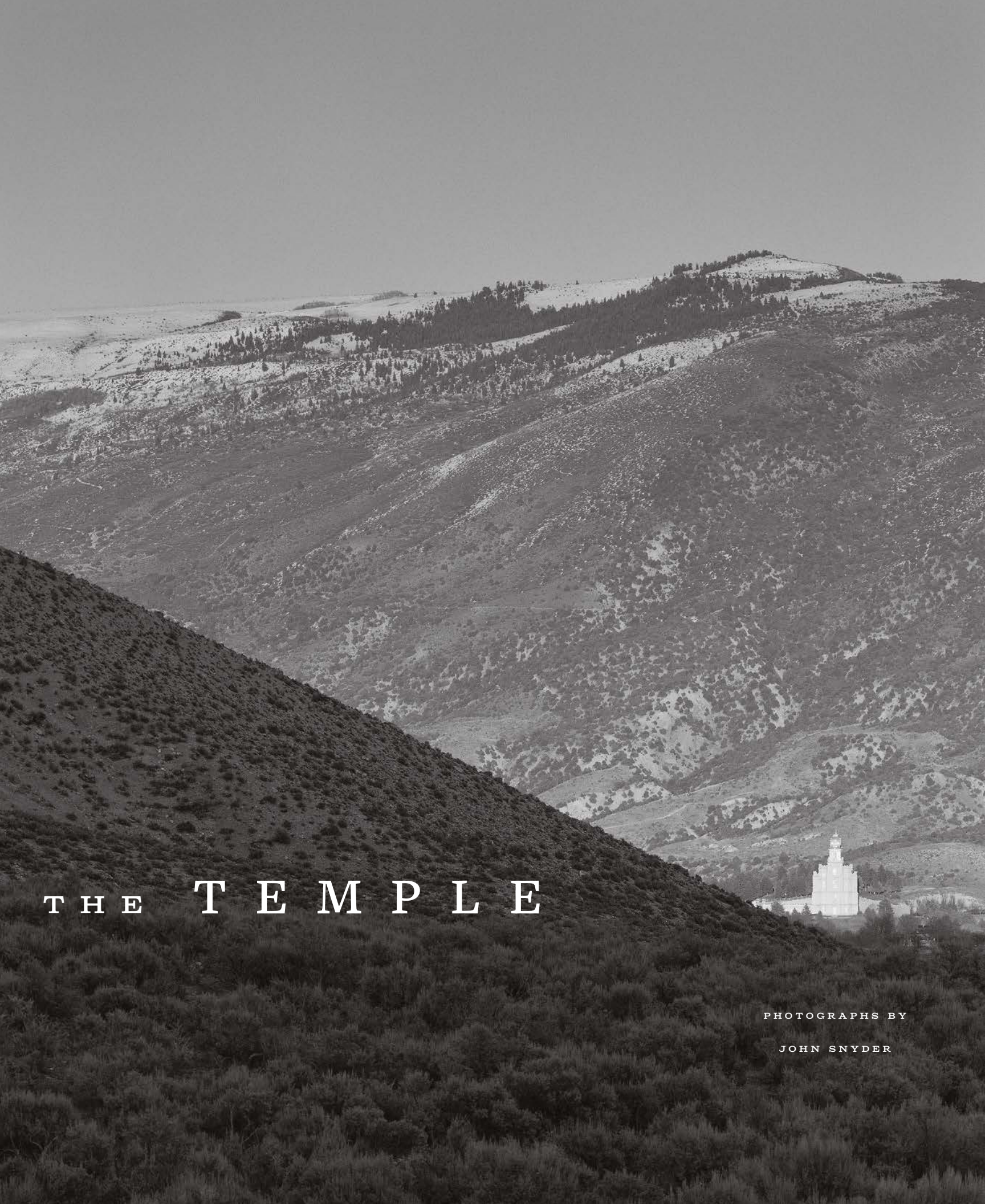


ART NOTES

- Page 18 : Hand-lettering by Shayne Eliason.
 Page 18–19, 23: Still-life photography by Bradley Slade.
 Page 23: Belnap family photo by Bryant Livingston.
 All other photos courtesy of Allison Belnap.

MARRIAGE,
FAMILY LAW, AND

ELDER BRUCE C. HAFEN,
EMERITUS MEMBER OF THE SEVENTY



THE TEMPLE

PHOTOGRAPHS BY

JOHN SNYDER

I am honored to be here tonight with all of you. I understand that the J. Reuben Clark Law Society now has more than 10,000 members in more than 100 chapters—plus 135 student chapters—and that a third of the chapters are located outside the United States. That international dimension reminds me of a young man I met recently in the St. George Temple. He was about to leave on a mission to Argentina.

I asked him, “Do you speak any Spanish yet?”

With utmost sincerity he replied, “I only know one word in Spanish: *aloha!*”

Well, even though *aloha* isn’t a Spanish word, it works tonight, because it somehow says “hello” and “welcome” in most any tongue.

The J. Reuben Clark Law Society didn’t exist when I became the dean of BYU Law School in 1985. Having graduated its first class in 1976, the Law School was still too new to have senior alumni to mentor our young students and graduates. I expressed concern about that problem to Ralph Hardy, a seasoned partner in a fine Washington, DC, firm.

Although Ralph had never attended BYU, he said, “Because of BYU’s visibility and my membership in the Church, the attitudes of my law partners tell me that my professional reputation is linked to the reputation of that law school. How can I help?”

As we discussed what experienced lawyers could do for younger practitioners, Ralph said that when he first came to DC from law school in Berkeley, California, he was overwhelmed by his inability to balance the heavy demands of his law practice, family, and Church commitments. Then he began watching his stake president, a lawyer named Robert W. Barker, who managed all three of those commitments superbly. He said to himself, “If Bob Barker can do that, maybe I can too.”

So Robert Barker became Ralph Hardy’s mentor, and the inspiration Ralph had drawn from that relationship inspired his next idea: “Why don’t we organize a society of LDS lawyers and their friends? That would give many young LDS lawyers a Bob Barker in their own community.”

Ralph’s high ideals and creative energy were contagious. As we talked, ideas exploded between us like popcorn in a microwave: What about a professional directory? Maybe organize chapters in several U.S. cities—someday as many as 10? How about a high-quality publication? And why not name the society for J. Reuben Clark, who personified the spiritual and professional qualities we would try to foster in both the Law Society and the Law School?

That really was the founding moment for this law society, and I am very grateful to Ralph Hardy and to the many men and women like him—from people at BYU and at Church headquarters to dozens more scattered across the world. They sifted through these ideas to find the ones that worked, and over the next 20 years they helped to create the bonds of mutual respect and support that now draw us together.

I have two related purposes tonight. First, I’d like to tell you how I got into the once-boring but now almost too-dramatic field of family law and what I found there. In this first part I’ll be talking as one lawyer to another, but I hope my footnotes will also suggest some more-general perspectives.¹

Second, against that background I’d like to talk about marriage—including our own marriages and marriage as taught in the temple. I realize that many devoted people do not now live in the kind of family situation they either desire or deserve. Of course Church doctrine encourages marriage and discourages divorce, but marrying is not always under our control, and there are times when divorce is the better choice.² Our Church leaders have long taught that despite divorce or being single, no eternal blessing, even celestial glory, will be denied to those who are true and faithful.

FAMILY LAW

Let me take you back to the Law School’s early years and to the conversation that launched me into family law. Rex E. Lee and I were meeting to discuss something he was writing. Rex was then the founding dean of BYU Law School and would later become solicitor general of the United States. He would also later become president of BYU, but for Rex, university administration would never be as interesting as constitutional law.

As we talked about recent constitutional developments, we both cheered that the powerful idea of individual rights had energized the civil rights movement, which was helping the United States overcome its embarrassing history of racial discrimination. We also applauded how those same ideas had begun to help the country eradicate discrimination against women.

At one point I said to Rex, “The liberation and equality movements are gaining such a head of steam. Do you think the very idea of individual rights will ever develop so much momentum that it could overpower the principles that should be balanced against it?”

His brow furrowed. “What do you mean? Give me an example.”

I shrugged spontaneously. “What about children? The law ‘discriminates’ against children on the basis of age—they can’t vote, drive a car, or sign a binding contract. But is that discrimination bad for children or is it good for them?” Then I wondered aloud if a children’s rights movement might follow the civil rights and women’s movements. Spurred by that question, I did some research and found that a sometimes-reckless children’s rights movement was indeed underway—illustrated then by a state court decision that, in effect, let a teenager divorce her parents.³

I soon found other examples of excessive individualism. For instance, one law professor argued for a constitutional “right of intimate association,” urging that the law give the same legal rights to people in *any* intimate relationship that it then gave to those in relationships based on marriage and kinship.⁴ Some scholars also attacked marriage as a source of oppression against women. Advocates of sexual privacy argued that unmarried cohabitation should be constitutionally equated with marriage. Allowing me to respond to such issues, in 1983 the *Michigan Law Review* published my article “The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests.”⁵

Note two terms in that title: *social interests* and *individual interests*. I ran across these terms in what has been called “the best known essay in the history of family law,”⁶ written by Harvard Law School dean Roscoe Pound.⁷ Pound defined the “social interests” in family law as society’s interest

in maintaining marriage as a stable social institution in which parents protect, nurture, and teach their children the qualities of character that maintain a stable society. He distinguished this social interest from what he called “the individual interests in domestic relations,” noting that “when the legal system recognizes certain individual rights, it does so because . . . society as a whole will benefit” thereby. In a key insight, Pound warned that lawyers and judges must compare individual and social interests on what he called “the same [analytical] plane,” lest the very decision to categorize one claim as “individual” and the other as “social” cause us to “decide the question in advance in our very way of putting it.”⁸

During the last half century, U.S. courts and legislatures have increasingly neglected what was obvious to Roscoe Pound about the social interests in marriage and parenting. Primarily through the use of constitutional law categories, many courts and legal scholars have come to assume that individual interests are somehow more “fundamental” or “compelling” than social interests. As a result, just as Pound feared, our system has decided many difficult issues of family policy in advance, simply by the way we put the question. Individual interests have thus been carried on such a tidal wave of constitutional law that the contemporary mind now sees hardly any social interests in our legal and cultural understanding of marriage and parenting.

For example, one researcher found that the Supreme Court’s cases about marriage prior to about 1970 “turned on the importance of marriage to society,” but its later cases began to “turn on the importance of the relationship to the individual.”⁹ And we may never know how much of this change was the result of truly serious policy analysis and how much of it was because constitutional law simply began to preempt family law. It’s often hard to tell when the law *causes* social change and when the law simply *reflects* social change.

One obvious but huge historical factor is that, since the 1960s, our culture has experienced colossal changes in the attitudes and values that affect family life. Indeed, Mary Ann Glendon of the Harvard Law School calls this development “the transformation of American family law”—the biggest cultural shift in 500 years in attitudes about family life.

The Transformation of American Family Law

To illustrate this transformation, I will share a few headlines from an altitude of about 40,000 feet—without attempting to draw the fine distinctions we would identify closer to the ground. Also, I will speak mostly about U.S. law, although the laws of most developed countries have followed these same trends.

In a nutshell, advocates began using the constitutionally charged language of individual rights to challenge laws that were intended to support the interests of children and society in stable family structures. And courts began to accept these arguments, despite the fact that the individual rights protections in the U.S. Constitution were originally enacted to protect individuals from invasions by the state, not to protect them from people who are not state actors, such as those in their own families.

For instance, the courts expanded the parental rights of unwed fathers and began to give child custody and adoption rights to unmarried individuals. This uprooted the long-established preference that family law had given, whenever possible, to the formal two-parent biological family. Both experience and social science research clearly showed—and still show—that a home led by married, biological parents almost always provides the best child-rearing environment.¹⁰ But over time the unwed parent cases both contributed to and were influenced by skyrocketing rates of illegitimacy and unmarried cohabitation. In fact, the word *illegitimate* essentially became illegitimate in legal discourse.

Further, in *Roe v. Wade* in 1973 the Supreme Court granted individual women the right to choose an abortion, thereby rejecting long-held beliefs in our culture about not only the social interests held by unborn children but also the social purposes served by allowing elected legislators to decide collectively about a question as value laden and sensitive as when life begins.¹¹

Also, no-fault divorce was first adopted in California in 1968, and then, with some variations, over the next 20 years it became the law in every state.¹² No-fault significantly changed the way people thought about marriage. Under the old divorce laws, married people couldn’t just choose to end their marriage; rather, they had to prove spousal misconduct—like adultery or mental cruelty. In those days people perceived the state as a party to the marriage—remember the social interests in family law. Therefore, only a judge representing society’s interests could determine when a divorce was justified.

As originally conceived, no-fault divorce had worthy goals. It added irretrievable marriage breakdown, regardless of personal fault, as an additional basis for divorce, which simplified divorce actions and reduced messy personal litigation. No-fault also improved how the law saw the economic interests of women. And in theory, only a judge, who represented society’s interests, could decide whether a marriage was indeed beyond repair. But in practice, family court judges began to defer to the personal preference of a couple, and eventually they deferred to whichever partner wanted to end the marriage.¹³

So, as one Canadian lawyer put it, no-fault divorce no longer “looked at marriage . . . as a [social] institution.” Rather, no-fault saw marriage as “an essentially private relationship between adults terminable at the will of either”¹⁴ without regard to the consequences for children, let alone the effect of divorce on society. Before long, judges’ doubts about society’s right to enforce wedding vows gave married couples the false impression that their personal promises held no great social or moral value.

As these new legal assumptions have blended with larger cultural swings, most Americans no longer see marriage as a relatively permanent social institution; rather, they see it as a temporary, private source of personal fulfillment. So when marriage commitments intrude on personal preferences, people are more likely to walk away. Thus today is the age of what has been called the “nonbinding commitment”—whatever that oxymoron means.

Talking about no-fault divorce actually leads us quite logically to a brief comment on gay marriage. Now isn’t the time for an extended discussion of this very difficult and poignant

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was given
at the J. Reuben
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Fireside in
Salt Lake City
on January
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topic, but I do note that only 15 years ago no country in the world had legally recognized same-gender marriage. So how could the very idea of gay marriage burst upon the international scene precisely when the historic concept of marriage had lost so much public value during the previous four decades?

Well, the “personal autonomy” theory of the first U.S. pro-gay marriage case in 2001¹⁵ simply extended the same individualistic legal concept that had created no-fault divorce: When a court upholds an individual’s right to *end* a marriage, regardless of social consequences (as can happen with no-fault divorce), that principle may also seem to support an individual’s right to *start* a marriage, regardless of social consequences (as can happen with same-gender marriage).¹⁶

In other words, if man-woman marriage is no longer a big deal for society but just a matter of individual preference, it’s little wonder that many people would now say of gay marriage, “It’s no big deal—let people do whatever they want.” That’s what can happen when we lose track of society’s interest in marriage and children. We know that God loves all of His children and that we must treat one another with compassion and tolerance—regardless of private conduct that we may or may not understand. But it is a very different matter to *endorse* or *promote* that conduct by allowing the appropriation of a legal concept—marriage—whose primary and historic purpose is to further social interests.

The Consequences of Changing Marriage

Consider briefly the stunning effect of these changes on marriage and children during the last 50 years.

In the United States the divorce rate has more than doubled, although it has dipped slightly in recent years.¹⁷ Today about half of all first marriages end in divorce and about 60 percent of second marriages do.¹⁸ The United States is the world’s most divorce-prone country.

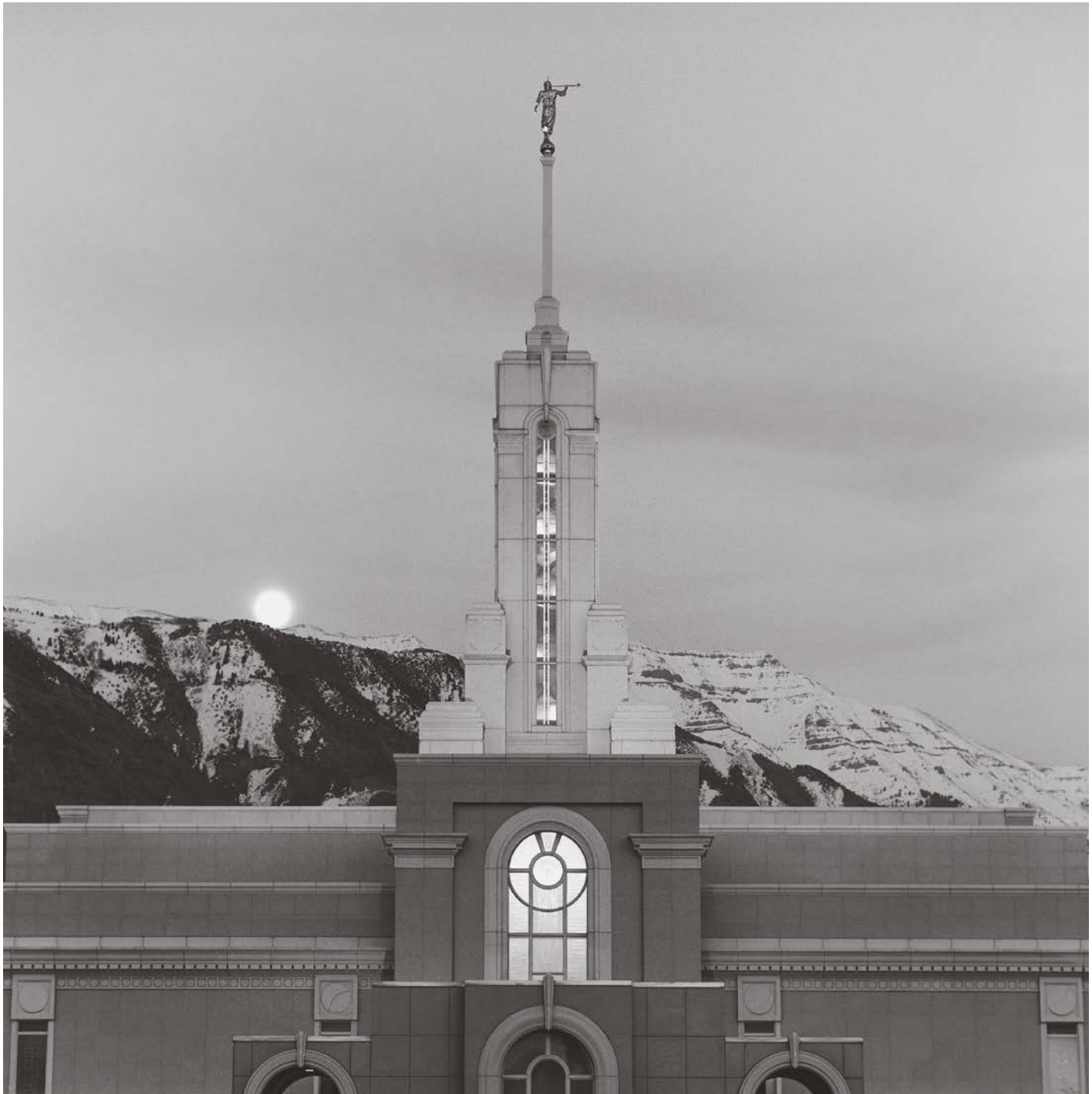
Today more than 40 percent of U.S. births are to unmarried parents.¹⁹ In 1960 that number was about 5 percent. And as Elder Dallin H. Oaks recently noted, 50 percent of today’s teens consider out-of-wedlock childbearing a “worthwhile lifestyle.”²⁰ The percentage of children in single-parent families has increased threefold, from 9 percent to 26 percent. The number of unmarried couples has increased by about 15 times. As Elder Oaks also noted, more than half of today’s U.S. marriages are preceded by unmarried cohabitation. What was abnormal 50 years ago is the new normal.

In Europe 80 percent of the population now approve of unmarried cohabitation. In Scandinavia 82 percent of firstborn children are born outside of marriage.²¹ When we lived in Germany recently, we sensed among Europeans that in many ways, it seems, marriage is no more. Marriage has gone away. As a French writer put it, marriage has “lost its magic for young people,” who increasingly feel that “love is essentially a private matter which leaves no room” for the larger society to say anything about their marriage or their children.²²

Nonetheless, the children of divorced or unwed parents have about *three times* as many serious behavioral, emotional, and developmental problems as children in two-parent families.²³ By every measure of child well-being, these children are far worse off. And when children are dysfunctional, society will become dysfunctional. Here are some examples of that dysfunction, shared in only headline form, acknowledging that some elements in such general trends may have multiple causes.

Since about 1960 in the United States,²⁴

- › juvenile crime has increased sixfold.
- › child neglect and all forms of child abuse have quintupled.
- › psychological disorders among children have all worsened, from drug abuse to eating disorders; depression among children has increased 1,000 percent.
- › domestic violence against women has increased.
- › poverty has shifted increasingly to children.



These trends are still very current. The *New York Times* recently reported a major study showing that the children of single parents have less upward economic mobility than the children in two-parent families. In this day of heightened concern with economic equality, it turns out that the marital status of a child's parents is the single biggest predictor of that child's economic mobility.²⁵

How serious are these problems? A few years ago President Gordon B. Hinckley said, "In my judgment, the greatest challenge facing this nation is the problem of the family, brought on by misguided parents and resulting in misguided children." He also said, "The family is falling apart. Not only in America, but now across the world. This is a matter of serious concern. *I think it is my most serious concern.*"²⁶ Shortly after President Hinckley said these

words, the First Presidency and the Quorum of the Twelve Apostles gave us “The Family: A Proclamation to the World.”

For a nonreligious viewpoint, consider this indictment from a recent *Time* magazine article about infidelity among political leaders:

*There is no other single force causing as much measurable hardship and human misery in this country as the collapse of marriage. It hurts children, it reduces mothers’ financial security, and it has landed with particular devastation on those who can bear it least: the nation’s underclass. . . . The poor [have uncoupled] parenthood from marriage, and the financially secure [blast] apart their [own] unions if [they] aren’t having fun any more.*²⁷

These complex problems did not result solely from changes in the law. In many ways legal changes simply reflect a larger cultural upheaval. However, *the inability of our legal and political system to contain the force of individual rights ideas injected into family law has allowed many cultural dikes to break that in better days might have held.*

And these developments have international implications. A Japanese family law scholar told me that the influence of American legal ideas about individual rights—along with American movies and TV—is a major cause of the recent destabilization of Japanese attitudes about kinship and family. Then he said, “You won the Second World War. Did you have to do this to us as well?”²⁸

Can anything be done to reverse this tide? I don’t know. But if anyone can answer that question, it might be those who understand the prophecies that unless the hearts of the parents and the hearts of the children turn toward one another, the earth will be smitten with a curse.²⁹ Are we already living in the time of that curse? On some days I think we could be. But even if we are, the gospel’s principles provide the long-term remedy.

Years ago when I was on a family law panel at a big eastern law school, someone said to me, “Aren’t you from BYU—the Mormons? You’re the people who still believe in marriage! Will you please help the rest of us?”

To be clear, I am not asking to return to the family laws of yesteryear. Many of those laws needed reforms, but we could have done that without resorting to the individualistic extremes that have inflicted so much damage on both children and society. The self-celebrating hedonism of today’s paradigm can also distort the assumptions and attitudes of young Latter-day Saints ere they are aware—especially about sex and marriage. And how *do* we explain to our children and grandchildren why traditional marriage must be preserved and even revered as we feel the earth move under our feet and as even the mainstream threatens to leave the banks of its riverbed?³⁰

Well, I hope this brief look at legal history might whet your appetite to think more deeply about such family-related questions. And for the sake of our families, our friends, and our own marriages, I also hope this historical context will help explain why today’s culture no longer understands marriage in the way God intended it. Building a good marriage isn’t easy. It isn’t supposed to be easy. But when a confused culture confuses us about what marriage means, we may give up on ourselves and on each other much too soon. Yet the gospel’s eternal perspective, as taught in the scriptures and in the temple, can help us transcend the modern chaos until our marriages become the most satisfying and sanctifying—even if also the most demanding—experiences of our lives.

THE TEMPLE AND THE NATURAL ORDER OF MARRIAGE

What does all of this have to do with the temple? Every time we go to the temple, the ordinances reorient us to the natural order of the universe, including the natural order of marriage. Like the ancient mariner, we look to the heavens to get our bearings—and we do that through the temple. Hugh Nibley wrote:

*The temple is built so as to represent the organizing principles of the universe. It is the school where mortals learn about these things. . . . [T]he earth temple [is] in the middle of everything, . . . around which all heavenly motions revolve, the knot that ties heaven and earth together.*³¹

Thus the temple has the power to write God’s natural laws of marriage and family life into our hearts.

The Marriage of Adam and Eve

We first learn the temple’s teachings about marriage in the story of Adam and Eve—the primal story of the temple. A friend once asked me, “If Christ is at the center of the gospel and the temple, why doesn’t the temple endowment teach the story of Christ’s life? What’s all this about Adam and Eve?”

As I have thought about his question, I have come to believe that the life of Christ is the story of *giving* the Atonement. The story of Adam and Eve is the story of *receiving* the Atonement—because they were the first people to receive it—amid the sometimes formidable oppositions of mortality. I’d like to invite my wife, Marie, to share some thoughts about Eve’s perspective on that opposition.

[Marie:] Adam and Eve were the first people to receive the Atonement. They were

also the first parents to know the love a new child brings, the soul-stretching sacrifices of raising a child, and the agony of watching children unwisely use their agency.

What I have to share with you will feel like an abrupt change in tone, but this poem by Arta Romney Ballif (a sister, by the way, of President Marion G. Romney, one of the founding fathers of BYU Law School) takes us into the heart of marriage and family life as they began on this earth. Take a deep breath and come with me into Eve’s world as she probably saw it. The poem is called “Lamentation.”

“YOU’RE THE
PEOPLE WHO STILL
BELIEVE IN
MARRIAGE! WILL
YOU PLEASE
HELP THE REST
OF US?”

L A M E N T A T I O N , by Arta Romney Ballif

And God said, "BE FRUITFUL, AND MULTIPLY—"
Multiply, multiply—echoes multiply

God said, "I WILL GREATLY MULTIPLY THY SORROW—"
Thy sorrow, sorrow, sorrow—

I have gotten a man from the Lord
I have traded the fruit of the garden for the fruit of my body
For a laughing bundle of humanity.

And now another one who looks like Adam.
We shall call this one "Abel."
It is a lovely name, "Abel."

Cain, Abel, the world is yours.
God set the sun in the heavens to light your days,
To warm the flocks, to kernel the grain.
He illuminated your nights with stars.
He made the trees and the fruit thereof yielding seed.
He made every living thing, the wheat, the sheep, the cattle,
For your enjoyment.
And, behold, it is very good.

Adam? Adam
Where art thou?

Where are the boys?
The sky darkens with clouds.
Adam, is that you?
Where is Abel?
He is long caring for his flocks.
The sky is black and the rain hammers.
Are the ewes lambing
In this storm?

Why your troubled face, Adam?
Are you ill?
Why so pale, so agitated?
The wind will pass
The lambs will birth
With Abel's help.

Dead?
What is dead?

Merciful God!

Hurry, bring warm water
I'll bathe his wounds
Bring clean clothes
Bring herbs.
I'll heal him.

I am trying to understand.
You said, "Abel is dead."
But I am skilled with herbs
Remember when he was seven
The fever? Remember how—

Herbs will not heal?
Dead?

And Cain? Where is Cain?
Listen to that thunder.

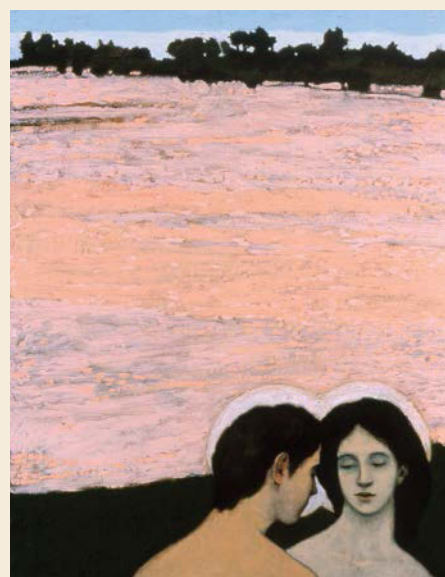
Cain cursed?
What has happened to him?
God said, "A FUGITIVE AND A VAGABOND"?

But God can't do that.
They are my sons, too.
I gave them birth
In the valley of pain.

Adam, try to understand
In the valley of pain
I bore them
fugitive?
vagabond?

This is his home
This the soil he loved
Where he toiled for golden wheat
For tasseled corn.

To the hill country?
There are rocks in the hill country



Adam & Eve
Brian Kershisnik

Cain can't work in the hill country
The nights are cold
Cold and lonely, and the wind gales.

Quick, we must find him
A basket of bread and his coat
I worry, thinking of him wandering
With no place to lay his head.
Cain cursed?
A wanderer, a roamer?
Who will bake his bread and mend his coat?

Abel, my son, dead?
And Cain, my son, a fugitive?
Two sons
Adam, we had two sons
Both—Oh, Adam—
multiply
sorrow

Dear God, Why?
Tell me again about the fruit
Why?
Please, tell me again
Why?





[Bruce:] Eve. Mother Eve. Your sorrow and your faithful questions bring a hush across my heart.

Father Lehi gives us the doctrinal context for understanding Eve's experience. He tells us that if Adam and Eve had not eaten from the tree of knowledge they "would have remained in the garden of Eden" and "they would have had no children; wherefore they would have remained in a state of innocence, having no joy, for they knew no misery"—experienced parents will see a little connection here: no children, no misery!—and further, "doing no good, for they knew no sin. . . . Adam fell that men might be [mortal]; and men are [mortal] that they might have joy."³² So, paradoxically, sin, misery, and children create the context for learning what joy means—a process made possible by the Atonement of Jesus Christ.

Because of that Atonement we can learn from our experiences without being condemned by them. And receiving the Atonement, as Adam and Eve did, is not just a doctrine about erasing black marks; it is the core doctrine that allows human development. That is why Adam and Eve didn't return to the Garden of Eden after they were forgiven. Rather, they held onto each other and moved forward, together, into the world in which we now live. And there they kept growing, together, as a couple. The temple's primal story is quite consciously the story of a married couple who help one another face continuous mortal opposition. For only in that sometimes-miserable opposition could they learn to comprehend true joy.

Now consider two implications from the Adam and Eve story about our understanding of marriage. First is the Restoration's positive view about the Fall. We know that Adam and Eve chose wisely in the garden, because only mortality could provide the experience needed to fulfil God's plan for them—and for us. In contrast, traditional Christianity teaches that Eve's choice was a tragic—some would say stupid—mistake, bringing down the wrath of God on all mankind. Some Christian churches still teach that because women are the daughters of foolish Eve, wives should be *dependent* on their husbands.

Reacting strongly against this idea, most people today would say that a wife should be *independent* of her husband. And, in fairness, they would add, a husband should also be independent of his wife. When both spouses are independent of each other, we get today's "nonbinding commitment," and people leave when the fun stops.

So which is correct: dependence or independence? Neither one. The restored gospel—unlike the rest of Christianity—teaches that Eve and Adam's choice in the garden was not a mistake at all. It was actually a heroic choice. Thus the Restoration sees Eve—and all women—as noble beings who are complete equals of men. So Eve is not dependent on Adam, nor is she independent from him. Rather, Eve and Adam are *interdependent* with each other. And, as "A Proclamation to the World" teaches, they are "equal partners" who "help one another" in everything they do.³³

Bringing a Broken Heart to the Altar

We find a second significant implication for marriage in a later scene from the Adam and Eve story. When they left the garden, the Lord directed them to build an altar and offer animal sacrifices. After many days an angel asked Adam why he offered sacrifices.

He said, "I know not, save the Lord commanded me."

So the angel told him, "This thing is a similitude of the sacrifice of the Only Begotten."³⁴ The lambs they sacrificed symbolized and pointed them toward the Father's future redemptive sacrifice of His Son. The angel then taught Adam and Eve that Christ's sacrifice and the plan of redemption gave meaning and purpose to all of their opposition—from leaving Eden to Eve's lamentation over her sons.

Many of us go to the temple today the way Adam and Eve did at first—simply because we are commanded, without knowing why. And simple obedience is certainly better than not performing the ordinances at all. But the Lord, who sent that angel, must have wanted them to know why—and I believe He wants *us* to know why.

THE ORDER
OF MARRIAGE
THAT GOD
GAVE TO
ADAM AND EVE
IS WORTH
WHATEVER
IT TAKES—
TO FIND IT,
TO BUILD IT,
AND TO
KEEP IT IN
OUR LIVES.

Are today's temple ordinances also "a similitude . . . of the Only Begotten"? Think of how the temple's altars are, like the altar of Adam and Eve, altars of prayer, sacrifice, and covenants. Think of the dimensions of sacrifice in all the covenants of the endowment. Since Christ completed His atoning mission, we no longer offer animal sacrifices, but we do covenant to sacrifice. In what way? Christ taught the Nephites, "Ye shall offer for a sacrifice unto me a broken heart and a contrite spirit."³⁵

Animal sacrifices symbolized the Father's sacrifice of the Son, but the sacrifice of a broken heart and a contrite spirit symbolizes the Son's sacrifice of Himself. James E. Talmage wrote that Jesus "died of a broken heart."³⁶ In similitude, we now offer ourselves—our own broken hearts—as a personal sacrifice.³⁷ As Elder Neal A. Maxwell said, "Real, personal sacrifice never was placing an animal on the altar. Instead, it is a willingness to put the animal *in us* upon the altar and letting it be consumed!"³⁸

With these ideas on my mind, some months ago I was about to seal a young couple in the St. George Temple. As I invited them to the altar, he took her by the hand, and I realized that they were about to place upon that altar of sacrifice their own broken hearts and contrite spirits—a selfless offering of themselves to each other and to God in emulation of Christ's sacrifice for them. And for what purpose? So that through a lifetime of sacrificing for each other—that is, living as He did—they might become ever more as He is. By trying to live that way every day, they would each come closer to God, which would also bring them closer to each other. Thus, living the covenants of the sealing ordinance would sanctify not only their marriage but also their hearts and their very lives.

This understanding of marriage differs starkly and powerfully from the prevailing view of marriage in today's culture. In His parable of the Good Shepherd, Jesus described a hireling—someone who is paid to care for the sheep. When the wolf comes, He said, the hireling "leaveth the sheep, and fleeth." Why does the hireling run away? Because, Jesus said, his "own the sheep are not." By contrast, Jesus said of Himself, "I am the good shepherd. . . . I lay down my life for the sheep."³⁹ Most people in today's society think of marriage as an informal arrangement between two hirelings, and when a hireling feels threatened by some wolf of trouble, he will simply flee. If trouble is coming, why should he risk his comfort or convenience, let alone his life?

But when we offer in our marriage a broken heart and a contrite spirit in similitude of the Good Shepherd, we will give our lives for the sheep of our covenant, a day or even an hour at a time. That process invites us to take selflessly upon ourselves both the afflictions and the joys of our companion, emulating in our own limited way how the Savior takes upon Himself our afflictions. "Be you afflicted in all his afflictions,"⁴⁰ said the Lord to Peter Whitmer about his missionary companion Oliver Cowdery. Isaiah echoed that phrase in describing Christ and those He redeems: "In all their affliction he was afflicted, . . . and he . . . carried them all the days of old."⁴¹

Not long ago I asked some temple workers what they thought it would mean to live the life of a broken heart and a contrite spirit in marriage, to treat one's spouse as Christ Himself would treat us.

One of them said, "It means choosing to be kind—all the time."

Another said, "It is placing our own broken hearts on the altar as we sacrifice enough so the Savior can heal us."

Another, "Trying to care more about someone else's needs than you do your own."

And another, "I will offer not only my heart but also arms and my hands."

And, "It's the sacrifice of learning to give up the natural man within me."

And finally, "It takes a broken heart and a contrite spirit for me to overcome my pride and forgive enough to receive the Atonement."

Another temple worker lost his wife after she had suffered a debilitating illness for several years. After her funeral he told me, "I thought I knew what love was—we'd had over 50 blessed years together. But only in trying to care for her in these last few years did I discover what love is." By going where he had to go, in being afflicted in her afflictions, this man discovered wellsprings of compassion deep in his own heart that a hireling will never know

exist. The accumulation of such discoveries produces the sanctifying process of becoming like the Good Shepherd—by living and giving as He does. Not incidentally, that kind of living breathes irreplaceable strength into the social interests of our culture.

MARRIAGE AND THE ABUNDANT LIFE OF AUTHENTIC JOY

Before we conclude, I'd like to respond to the question a friend asked recently: How close to perfection must we live to receive the exalted promises of a temple sealing? Husbands and wives know each other so well, especially those who seek for eternal blessings, that on some days we can honestly wonder if we are living close enough to perfection—or if our spouse is. Whichever one of us we wonder about, the question can be a hard one.

I like the answer given in Moroni's farewell words: "[I]f ye shall [1] deny yourselves of all ungodliness, and [2] love God with all your might, mind and strength, *then* is his grace sufficient for you, that . . . ye may be perfect[ed] in Christ."⁴² One way to rid ourselves of ungodliness is to stay close to the temple, because in its ordinances "the power of godliness is manifest."⁴³ Further, Moroni invited us to "love God with all *your* might." That means loving to the extent of our own unique personal capacity, not to the extent of some abstract and unreachable scale of perfection.

As we deny ourselves of ungodliness and honestly love God as fully as we are able to, Christ's perfecting grace can complete the process of making us whole. I recently ran across a letter about marriage written in 1902 by the First Presidency that suggests what this combination of Christ's total sacrifice and our own total sacrifice will look like:

*After reaching the perfected state of life, people will have no other desire than to live in harmony with [righteousness], including that which united them as husband and wife. . . . Those who attain to the first or celestial resurrection must necessarily be pure and holy, and they will be perfect in body as well. . . . Every man and woman that reaches this unspeakable condition of life will be as beautiful as the angels that surround the throne of God; . . . for the weakness of the flesh will then have been overcome and forgotten; and both [husband and wife] will be in harmony with the laws that united them.*⁴⁴

A woman I know was married about 50 years ago in the temple. After she and her husband had had several children, his turbulent life led both to their divorce and to his excommunication from the Church. Then she gave up her own Church membership and chose some thorny paths. Later on he passed away. I met her when her 45-year-old daughter brought her to my office in the temple to explore if the mother could ever return to the temple—something the mother was convinced could never happen. After a mellow, peaceful conversation about learning from experience without being condemned by it, we discussed the processes of repentance, rebaptism, and the restoration of temple blessings. Then I said that the restoration ordinance would also restore her temple sealing. Was she ready for that?

After a pause, the daughter spoke first. She said, "I have bipolar disorder. My son is bipolar. We know far more about that disorder than we used to, and we take medications that help. Looking back, I believe my father was bipolar, and that probably influenced many of the hard things in our family's life. I don't judge him now."

Soon her mother said softly, "If I really can return to the temple someday, I will be ready for my sealing to be restored."

As I watched them walk down the hall, I realized that the temple and Elijah's sealing power are sources of reconciliation, turning not only the hearts of children to their fathers and mothers but turning the hearts of wives and husbands toward one another. I later received a message telling me that the mother was being rebaptized.

Brothers and sisters, I bear witness that the order of marriage that God gave to Adam and Eve is worth whatever it takes—to find it, to build it, and to keep it in our lives. I also testify that husbands and wives who try to live like the Good Shepherd will discover and will give to each other the abundant life of authentic joy. In the name of Jesus Christ, amen.

NOTES

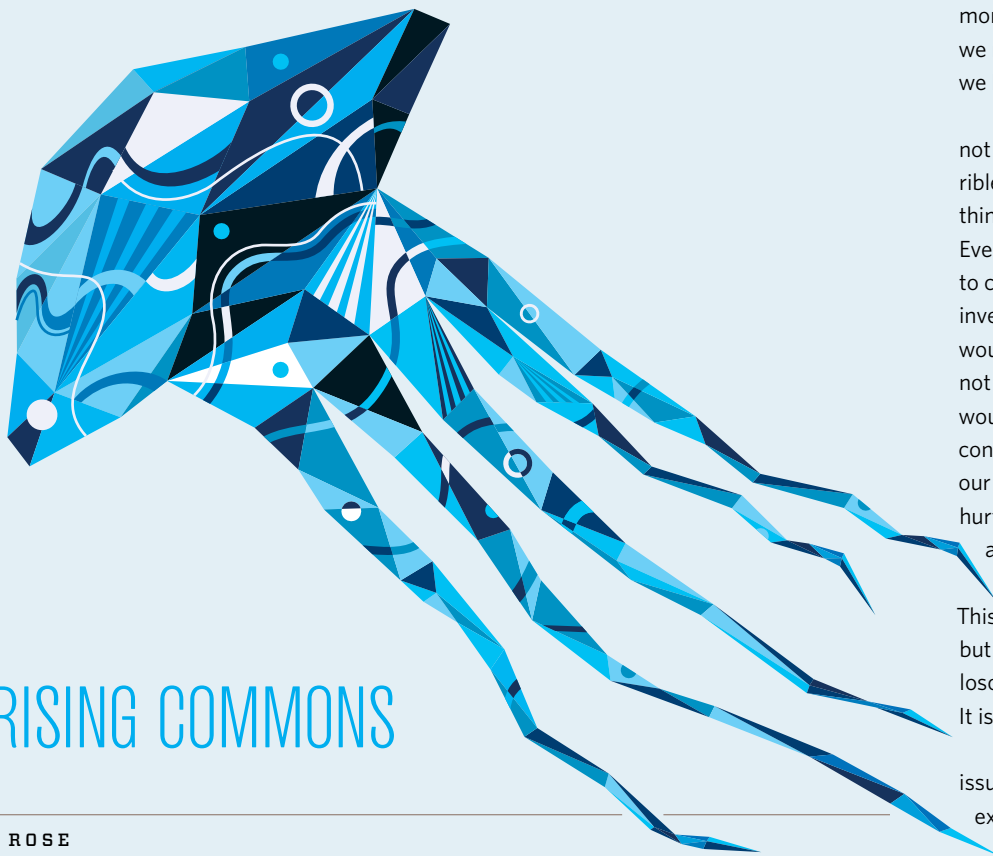
- 1 For a more generalized treatment of some themes in these remarks, see BRUCE C. HAFEN, COVENANT HEARTS: WHY MARRIAGE MATTERS AND HOW TO MAKE IT LAST (2005).
- 2 For some thoughtful counsel about divorce among Latter-day Saints, see the general conference talk by President James E. Faust, *Father Come Home*, ENSIGN, May 1993.
- 3 See Bruce C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their "Rights,"* 1976 BYU L. REV. 605 (cited by the U.S. Supreme Court in *Bellotti v. Baird*, 443 U.S. 622 (1979)).
- 4 Kenneth L. Karst, *The Freedom of Intimate Association*, 89 YALE L. J. 624 (1980).
- 5 Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests*, 81 MICHIGAN L. REV. 463 (1983) (cited by the U.S. Supreme Court in *Lehr v. Robertson*, 463 U.S. 248 (1983)).
- 6 Henry H. Foster Jr., *Relational Interests of the Family*, 1962 U. ILL. L. F. 493, 493.
- 7 Roscoe Pound, *Individual Interests in Domestic Relations*, 14 MICH. L. REV. 177 (1916).
- 8 Roscoe Pound, *A Survey of Social Interests*, 57 HARV. L. REV. 1, 2 (1943); emphasis added.
- 9 *Developments in the Law—The Constitution and the Family*, 93 HARV. L. REV. 1156, 1248 (1980).
- 10 In 2001, for example, the *New York Times* reported a "powerful consensus" among social scientists that "from a child's point of view . . . the most supportive household is one with two biological parents in a low-conflict marriage" (Hardin, *2-Parent Families Rise After Change in Welfare Laws*, NY TIMES, Aug. 12, 2001). More time and more research are needed to resolve clearly if children raised by gay or lesbian parents experience the same or worse outcomes than children raised by heterosexual parents, with or without gay marriage. The research to date has substantial methodological weaknesses and does not yield a strong answer on this question. See Loren Marks, *Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting*, 41 SOCIAL SCIENCE RESEARCH 735-751 (2012). Experts on both sides of the gay-marriage debate often claim that the other side is biased in conducting and/or interpreting research about the effects of gay parenting on children. The available research on children in divorced and unwed families is "not exactly comparable" to children with same-sex parents. However, social scientists do know "that no

- other family structure produces quite the positive benefits for children as does the biological, stable, two-parent family. Even adopted children in stable two-parent families do not fare as well as biological children. Even stable stepfamilies do not produce equivalent outcomes for children.” It would therefore be surprising “if research eventually shows that children raised in some other form, such as same-sex families, were equivalent to the married two-parent family.” (Email from Alan J. Hawkins, professor of family life at Brigham Young University, to Bruce C. Hafen, Mar. 10, 2014).
- 11 410 U.S. 113 (1973).
- 12 One source states that in 1987 Utah and Arkansas were the last two states to adopt no-fault (*Salt Lake Tribune* online edition, Dec. 12, 2013), although New York didn’t fully adopt no-fault until 2010. (See email from Alan J. Hawkins to Bruce C. Hafen, Jan. 3, 2014.)
- 13 For a brief discussion of no-fault divorce, see HAFEN, *supra* note 1, at 37–39.
- 14 Donald S. Moir, *A New Class of Disadvantaged Children*, in IT TAKES TWO: THE FAMILY IN LAW AND FINANCE 63 (D. Allen and J. Richards eds., C.D. Howe Institute, 1999).
- 15 See paragraph 4 of majority opinion in Goodridge et al. v. Department of Public Health et al., Supreme Court of Massachusetts (2003).
- 16 Supreme Court Justice Harry Blackmun wrote in 1986 that he would constitutionally protect homosexual behavior not because it furthers any social interests but precisely because it dissents from the established social order: “We protect these rights not because they contribute . . . to the general public welfare, but because they form so central a part of an individual’s life.” *Bowers v. Hardwick*, 478 U.S. 186, 204, 211 (Blackmun, J., dissenting) (1986).
- 17 Factors contributing to the recent and slight decline in the divorce rate include an increased age at first marriage and a significant increase in the number of cohabiting couples, whose break-ups aren’t included in the U.S. divorce rate. These couples terminate their relationships at an unusually high rate in the United States. See note 21.
- 18 ALAN J. HAWKINS, THE FOREVER INITIATIVE: A FEASIBLE PUBLIC POLICY AGENDA TO HELP COUPLES FORM AND SUSTAIN HEALTHY MARRIAGES AND RELATIONSHIPS 19 (CreateSpace Independent Publishing Platform, 2013).
- 19 See sources cited in Dallin H. Oaks, *No Other Gods*, ENSIGN, Nov. 2013. About half the births to mothers under age 30 are nonmarital. See Hawkins, *supra* note 12.
- 20 *Id.*
- 21 Noelle Knox, *Nordic Family Ties Don’t Mean Tying the Knot*, USA TODAY, Dec. 16, 2004, at 15, www.usatoday.com/news/world. At the same time, unmarried couples in Scandinavia have somewhat more stable relationships than unmarried U.S. couples, whose cohabiting relationships are shorter than in any other country. Sociologist Andrew Cherlin has found that even a child born to married parents in the United States is statistically more likely to see his parents break up than is the child of an unmarried couple in Sweden. See CHERLIN, THE MARRIAGE GO ROUND (Random House, 2009); this statement is from Cherlin’s “about the book” summary on RandomHouse.com.
- 22 *Report of the Mission of Inquiry on the Family and the Rights of Children*, a study commission appointed by the National Assembly of France, Jan. 25, 2006, 32 (English translation of commission report).
- 23 See sources and data cited in HAFEN, *supra* note 1, at 227–229. For example, “The most important causal factor of declining child well-being is the remarkable collapse of marriage, leading to growing family instability and decreasing parental investment in children” (*Marriage in America: A Report to the Nation*, Institute for American Values (1995), 8).
- 24 For sources and more specific information, see HAFEN, *supra* note 1, at 226–227.
- 25 New research by a team of Harvard and Berkeley economists found that “a major predictor of poverty [in the United States] is family instability” (Douthat, *More Imperfect Unions*, NY TIMES, Jan. 25, 2014). More specifically, the research found that children of single parents have less upward economic mobility than other children: “The strongest and most robust predictor” of economic mobility for U.S. children is “the fraction of children with single parents” (University of Virginia sociologist Bradford Wilcox, in a source cited by Douthat). Douthat also describes the negative effects of both abortion and no-fault divorce in undermining “marriages across a social network” and reducing “the value of the institution [of marriage] and the sacrifices embraced on its behalf.” For further discussion of the tie between single-parent families and income equality, see Robert Maranto and Michael Crouch, *Ignoring an Inequality Culprit: Single Parent Families*, WALL STREET JOURNAL, April 20, 2014, online edition, opinion page.
- 26 Citations in HAFEN, *supra* note 1, at x; emphasis added.
- 27 Caitlin Flanagan, *Why Marriage Matters*, TIME, July 13, 2009, at 45.
- 28 Conversation with Akira Morita, professor of law at Toyo University, Japan, in Provo, Utah, 1995.
- 29 See Malachi 4:5–6; D&C 2.
- 30 For a discussion of how gay marriage weakens what marriage means, see HAFEN, *supra* note 1, at chapter 24. Regarding hedonism, social interests, and river banks, Will and Ariel Durant wrote: “No man [or woman], however brilliant or well-informed, can . . . safely . . . dismiss . . . the wisdom of [lessons learned] in the laboratory of history. A youth boiling with hormones will wonder why he should not give full freedom to his sexual desires; [but] if he is unchecked by custom, morals, or laws, he may ruin his life before he . . . understand[s] that sex is a river of fire that must be banked and cooled by a hundred restraints if it is not to consume in chaos both the individual and the group” (THE LESSONS OF HISTORY 35–36 (1968)).
- 31 *Meanings and Functions of Temples*, from Hugh Nibley’s *Encyclopedia of Mormonism* article on temples, in vol. 17 COLLECTED WORKS OF HUGH NIBLEY 312–313.
- 32 2 Nephi 2:22–25.
- 33 *The Family: A Proclamation to the World*, ENSIGN, Nov. 1995, at 102.
- 34 Moses 5:6–7.
- 35 3 Nephi 9:20.
- 36 JAMES E. TALMAGE, JESUS THE CHRIST, 669 (1915).
- 37 “And there were gathered together . . . an innumerable company of the spirits of the just, who had been faithful in the testimony of Jesus while they lived in mortality; And who had offered sacrifice in the similitude of the great sacrifice of the Son of God, and had suffered tribulation in their Redeemer’s name” (D&C 138:12–13).
- 38 Neal A. Maxwell, *Deny Yourselves of All Ungodliness*, ENSIGN, May 1995; emphasis added.
- 39 John 10:11–15.
- 40 D&C 30:6.
- 41 Isaiah 63:9; see also D&C 133:53.
- 42 Moroni 10:32; emphasis added.
- 43 D&C 84:20.
- 44 Joseph F. Smith, John R. Winder, and Anthon H. Lund to Christine Eggleston, Jan. 28, 1902, First Presidency letterpress copybooks, LDS Church History Library.

ART CREDITS

Temple photographs by John Snyder. Pages 24–25: Manti Utah Temple. Page 29: Mt. Timpanogos Utah Temple. Pages 32–33: Manti Utah Temple.

Page 31: *Adam & Eve*, painting by Brian Kershishnik, 2002, 30" x 22", oil/panel.



SURPRISING COMMONS

CAROL M. ROSE

Carol M. Rose, chaired professor at Yale Law School and the University of Arizona College of Law, was the keynote speaker on January 26, 2014, at BYU Law School's annual Law Review Symposium, cosponsored by the Nature Conservancy of Utah. Following are excerpts from her address.

Some years ago I wrote an article called "The Comedy of the Commons." It was about the surprising pattern in which some kinds of physical resources seem to wind up systematically resistant to privatization. Instead the public's access to them gets protected in various ways in a pattern that has repeated itself over many, many years—indeed centuries, even millennia. Today I'd like to talk about the "surprising commons," focusing on the idea that even though events in the realm of the commons might be logical in hindsight, they sometimes still surprise us as they occur.

I suppose one surprise about the commons is that we have a phrase like "the commons" at all. Garret Harden tacked the fateful word *tragedy* onto the front of the commons, and when he did, he shot the commons into a public discussion that has lasted decades. His phrase got people to think systematically about what might happen to resources that are open to everybody. In the absence of constraints, human beings are very likely to overuse resources that are open to everyone's use. Why is that? It is because people take too much of what is readily available. As a result, we decimate grasslands,

we overfish open fisheries, and we pour junk into the air and more junk into the water. In short, we ruin the resources to which we have unfettered open access.

So why do we do this? It is not so much because we are terrible people; we do it because we think everybody else is doing it. Even if we wanted to go lightly—to conserve resources and to invest in them—we think we would lose out to those who are not conserving or investing. They would just take what we had conserved or invested in so that our conservation would simply hurt us and not do the resource any good anyway. So, we think, better take while we can.

This is a well-known caricature, but what it illustrates is the philosophy of "the way things are." It is not surprising at all.

Nevertheless, commons issues *are* surprising as we experience them. We have one example after another of how surprised we are about commons problems. Late in the 1880s eastern hunters got themselves all outfitted, and then they boarded the new railroads and came out west onto the plains, thinking they were going to shoot bison. What did they find? An empty plain. The bison had been hunted out and were all gone. These folks didn't even know they had a problem before they arrived out west, much less what the sources of the problem were.

Fifty years later, in the early 1940s, residents of Los Angeles noticed that their valley was filling with an acrid, fummy smoke. These people, unlike the bison hunters, knew they had a problem, but they didn't know what the source of the problem was. They thought the smog must have come from a wartime synthetic rubber plant, so they closed the plant down, but that

had no effect whatsoever. They couldn't imagine that all that bad air came from their own trucks and cars; that is to say, they didn't realize they had a commons problem, caused by a lot of people pouring their automobile exhaust into the air.

Here is another surprise that some of you might not know: jellyfish are taking over the oceans. There are so many jellyfish out there that when one Japanese fishing vessel dropped a net overboard, it pulled up a mass of jellyfish heavier than the boat, which caused the boat to tip over. The jellyfish are also going to have a major impact on other marine life.

Unlike other fish, they can live in severely deoxygenated waters. They don't mind

pollution the way other fish do. They love all the pieces of plastic that drop in the water; they use them as a base for reproduction, attaching to the plastic when they are in a larval state. And of course these jellyfish are getting sucked up into ships' ballast water and hitching rides all over the world, so poisonous jellyfish from the west coast of Australia are showing up in the Caribbean waters.

Our global overfishing, our common pollution of ocean waters, and even our navigation patterns very much contribute to the jellyfish problem. Given Hardin's analysis of the tragedy of the commons, one would think that we would have been expecting nasty outcomes from this and other commons situations. But instead these nasty outcomes take us by surprise. Sometimes it's a surprise that we have a problem at all; sometimes we know we have a problem, but it's a surprise that there are multiple contributors.

I think the most ordinary reason for our surprise is that commons problems are often an accumulation of small events, none of which seem very significant in themselves. So, in the Los Angeles basin we have smog that is caused by millions of automobiles. All those autos are emitting what are actually quite small amounts of gasses that are then transformed by sunlight into smog.

A closely related source of surprise is what I would call the unexpected environmental byproduct. This comes from something that is done for one purpose and one set of reasons but that then generates unexpected consequences in an entirely different domain. A classic example occurred with lead additives to gasoline, a chemical innovation dating back to the 1920s. Lead additives in gasoline reduce engine "knock," and that is good. But the same lead can be vaporized. It gets into the air; kids breathe the air; the lead gets into kids' bloodstreams; then it impairs kids' neurological development. Once again, who knew? Certainly the damage to children was not intentional. The whole point of the lead additive was something else altogether—to make cars work better. But that effort wound up creating an unexpected environmental byproduct, and a very serious one too.

Technology is a major source of these kinds of commons problems. Once again, no one invented the automobile in order to pollute Los Angeles' air. That was not the idea at all. The idea was to be able to get around, and pollution was a byproduct. Who knew about it? By the same token, nobody wanted to kill birds when they were building gleaming new skyscrapers. Who knew migrating

birds would fly into them? But they do. Actually, they fly into them considerably more than they fly into wind turbines. Wind turbines kill 500,000 birds a year. Hunters kill some tens of millions more every year. But skyscrapers kill about a billion a year. That is a whole lot more mortality than wind turbines cause. People knew that wind turbines were going to be placed where there were flyways, because birds have always used wind currents to move around over long distances. But buildings? Who was thinking about buildings and bird mortality? Now, of course, we do know something about this, and there is considerable talk about how and where buildings might be built so that they don't cause such massive bird destruction.

Another generic reason for surprise about commons issues again relates to technology, but in a different way. Technological developments often do have unexpected negative consequences for environmental resources, but they also sometimes have unexpected positive consequences, especially for getting information. Sometimes technological developments thrust commons issues to our attention—issues that we didn't notice at all before.

The most obvious example is satellite technology. It was through satellite technology that we found out about the hole in the ozone layer. Also through satellite technology we are now able to see rainforest combustion in different parts of the world. But discovering these problems wasn't the idea behind satellite technology at all. It was developed for military purposes, for telecommunications, and maybe for conventional weather forecasting; but

now we can also see environmental issues that surprise us.

There's a classic hypothetical that a butterfly flaps its wings in Southeast Asia and sets in motion a chain of events that ends with a hurricane in the Caribbean. As of now, we don't see these kinds of events in the great commons of the atmosphere, except in broad generalities or in short-term predictions. In the broad generality category, we know we are going to have a hurricane season, and we know that we are likely to have a certain number of hurricanes in certain locations in the world every year. We don't know exactly how many or when or where they are going to hit, but we know we will have some. Alternatively, we know in the short-term that a tornado is forming this afternoon in a town in Kansas. But then it happens, and we see the results of these wildly disproportional weather events in the news. We see people walking around dazed in the Philippine city of Tacloban after Typhoon Haiyan. A few years before that we saw people thrown together in the Superdome in New Orleans after Hurricane Katrina.

Those kinds of events are different from some other unpleasant commons surprises in that they are perfect storms of improbable coalescing causes. In other commons issues we have been cheerily reenacting the tragedy of the commons without paying much attention because we are aloof from it. When disparate events come together all at once, though, we suddenly realize we have a problem. All of a sudden everything that we had is gone. And the surprise is not that we have devastated the commons but rather that the commons has devastated us.



ON LOVE, FAITH, KNOWLEDGE, AND LAW

WISDOM FROM KEVIN J WORTHEN, BYU'S NEW PRESIDENT



Kevin J Worthen, '82, former dean of the Law School, became Brigham Young University's 13th president on May 1, 2014, and was inaugurated on September 9. Prior to this appointment, he served as the university's advancement vice president. He is the *Byu Hugh W. Colton Professor of Law*, with particular expertise in federal Indian law, and a former Fulbright scholar. President Worthen clerked for Justice Byron R. White of the U.S. Supreme Court and Judge Malcolm R. Wilkey of the U.S. Court of Appeals for the DC Circuit Court, and he was also an associate attorney for Jennings, Strouss & Salmon in Phoenix.

What might President Worthen's administration be like? Following are excerpts from three of his published addresses, which present carefully thought-out ideas that will certainly shape his time in office.

On Knowing and Caring

BYU DEVOTIONAL ADDRESS
JULY 21, 1998

I suggest that there is some kind of symbiotic relationship between knowledge and charity,

that they feed one another, that the possession of knowledge helps us be more charitable, and that the attribute of charity helps us be more knowledgeable. . . .

. . . Knowledge can make our charitable acts more productive and fruitful. Although all our hearts may go out to a person who has been deprived of sight, an ophthalmologist with knowledge of the workings of the human eye is in a much better position to do something about it. Jesus's charitable compassion for the blind was made all the more powerful and productive because of his knowledge of the principles concerning how such defects could be cured.¹ Knowledge can therefore both deepen charity and make it more productive.

Conversely, charity can both deepen knowledge and make it more productive. This is demonstrated by the story of Bartolomé de Las Casas, who in 1514 was a rather ordinary 40-year-old Catholic priest living what was the typical gentlemanly life of a Spaniard on his estate in Cuba. Like many of his fellow countrymen in the Americas at the time, he owned ample land and numerous Indian slaves. Although he

was a university graduate, he had not, up until that time, shown much interest in, or aptitude for, scholarly things. Fifty-two years later, when he died at the age of 92, Las Casas had become one of the greatest scholars of the Spanish empire, producing thousands of pages of materials, including works on law, history, anthropology, political theory, and theology.² Moreover, Las Casas's scholarship was as productive as it was extensive, and he became a vocal advocate of the Native American people. His scholarly reputation was such that when the king of Spain convened a conference in 1550 to consider the most pressing issue of the day—the manner in which the Spanish should deal with the indigenous population of the New World—Las Casas was one of only two scholars invited to debate the matter.³

What triggered this sudden outburst of scholarly productivity, this seemingly unquenchable search for knowledge? It was Las Casas's arrival at the conclusion that the indigenous people of the New World were being treated unjustly and that they, of all people, were in need of the love of Christ. The way in which Las Casas arrived at that conclusion demonstrates how charity can transform awareness of factual information into the kind of deep and productive knowledge that only a lifetime of dedicated searching can produce.

The Essence of Lawyering in an Atmosphere of Faith

CLARK MEMORANDUM
FALL 2004, 32-40

I envision—and ask you to help create—a community that is both intellectually and spiritually invigorating. On the intellectual level, I envision . . . a place where

the classrooms, carrels, and hallways are filled with lively discussion about important topics, involving a wide variety of informed viewpoints. . . . It will require that you seek out and respect the views of others who disagree with you. It will also require that you be willing to not assume that you already know everything. For some, that may be a real challenge. However, experience has shown that you are more likely to advance in knowledge if you approach topics with a good deal of humility. Justice Byron White, for whom I had the opportunity to clerk, noted on more than one occasion that the law clerks were "rarely in doubt and often in error," while the justices were "often in doubt and rarely in error." There is a great deal of wisdom in that observation, wisdom that can hold the key to a truly invigorating intellectual climate.

On the spiritual level, I envision—and invite each of you to contribute to—a community in which we can help one another work through and consider fully the very real spiritual challenges that the study and practice of law bring to the surface, a community in which we can help one another discover the soul-satisfying aspects of the study and practice of law, aspects whose absence in the modern bar causes so much disillusionment among lawyers today. More specifically, I . . . urge you to find ways to be of real service to others around you, both inside and outside the Law School and both inside and outside your faith. . . .

Most of all, I envision—and ask you to contribute to—a community in which faith is an integral part of all we do. I have pondered much President [Marion G.] Romney's charge that we create an environment

in which the laws of man can be learned in light of the laws of God. Just how does the light of the laws of God help us as we study the laws of men? The full answer to that question will take years to discover, but I encourage you to begin that process now. Let me suggest two simple initial responses, by way of example of what President Romney may have had in mind.

First, the laws of God teach us that we are all children of heavenly parents and that each has divine potential within. That one truth ought to alter fundamentally the way in which you approach the study of law. It ought to provide more incentive to study earnestly so that you might be prepared to truly help those sons and daughters of God. It also ought to shape the way you interact with others both inside and outside the Law School as you engage in what is often a stressful process. . . .

Second, understanding the laws of God can help us see that the study of law is even more intellectually engaging and profoundly important than we might have ever imagined. Consider, for example, this provocative statement in Doctrine and Covenants, section 88, verse 34: "That which is governed by law is also preserved by law and perfected and sanctified by the same." I suggest that the unpacking of that statement could involve years of intellectual struggle and produce a plethora of soul-satisfying insights.

"It Was as If a Blanket of Love Was Flowing over Me"

BYU WOMEN'S CONFERENCE
ADDRESS, MAY 2, 2013

My message today is simple. God loves us. God loves each one of us. He loves us whoever

we are and wherever we are. He wants us to feel that love more fully. And He wants us to be changed by that love. Indeed, God commands us to be changed by His love. "A new commandment I give unto you," Christ said. "That ye love one another; as I have loved you."⁴ God wants His love to be such a part of our lives that we love others with that same perfect love.

That standard is so high that I believe we won't fully comply with this commandment in this life. But, emboldened by Nephi's testimony that "the Lord giveth no commandments unto the children of men, save he shall prepare a way for them that they may accomplish the thing which he commandeth them,"⁵ let me suggest four things we can do to enhance both our ability to more fully feel God's love for us and our ability to allow that love to increase our love for others.

First, in order to feel more fully God's love for us, we need to understand more fully the purpose of His love—His plan of salvation for His children. . . . The commandment is for our love to become like God's. But if we do not understand God's plan for us, we can too easily believe that God's love has become like ours. As strange as that statement may sound, there are some who, not understanding God's purposes, measure His love for us by the standards of the less-than-perfect and less-demanding love we feel for our fellow beings, thereby figuratively dragging God's celestial love down to the telestial level at which our love operates.

This reversal manifests itself in the mistaken belief that if God really loved us, our lives would be free from much of the turmoil we experience—or in the

related erroneous belief that our struggles in life are a sign that either God's love for us is diminished or that we have failed to merit it. . . . To these skeptics, the existence of pain, sorrow, and injustice in the world conclusively establishes that not only does God not love us, He does not exist at all.

C. S. Lewis's response to this assertion is instructive. Said he: "The problem of reconciling human suffering with the existence of a God who loves us, is only insoluble so long as we attach a trivial meaning to the word 'love.'"⁶ Too often we confuse God's love with human kindness. To quote Lewis again: "There is kindness in love, but love and kindness are not coterminous. . . . Kindness merely as such, cares not whether its object becomes good or bad, provided only that it escapes suffering."⁷ . . .

But that is not God's plan for us. He wants us to become like Him. He wants us to experience the fullness of joy He enjoys—eternal joy, not merely temporary contentedness. And He loves us enough that He will do whatever it takes for us to reach that goal, including allowing us to experience things that are difficult and soul-stretching. . . .

Second, we can enhance our ability to feel God's love for us if we strive daily to draw closer to Him through simple acts that focus our minds on Him. . . .

[Third,] when we find it difficult to love those around us, we might focus not on loving them, but on loving God. . . .

Fourth, when faced with difficult situations involving other people, I suggest that we consider ways in which love can solve our problems, especially problems for which there seem to be no solutions.

NOTES

- 1 See, e.g., Mark 8:22–25, Mark 10:46–52, John 9:1–7.
- 2 As one scholar noted, "Bartolomé de Las Casas was one of the most prolific writers who ever lived, and his writings are as notable for their variety as for their total bulk" (HENRY RAUP WAGNER, *THE LIFE AND WRITINGS OF BARTOLOMÉ DE LAS CASAS* 253 (Helen Rand Parish collab. 1967)).
- 3 See *id.* at 176–177.
- 4 John 13:34. See also John 15:12. Because both have perfect love for us, references to Christ's love apply equally to the love of His Father for us. See John 15:9: "As the Father hath loved me, so have I loved you."
- 5 1 Nephi 3:7.
- 6 C. S. LEWIS, *THE PROBLEM OF PAIN* 40 (Harper/San Francisco 2001).
- 7 *Id.* at 32.

Scott W. Cameron Presented With Public Service Award

Scott W. Cameron, '76, was presented with the ninth annual Franklin S. Richards Public Service Award at the J. Reuben Clark Law Society Annual Fireside on January 31, 2014.

A member of the BYU Law School charter class and associate dean over external relations since 1990, Cameron was also executive director of the Law Society from its inception until 2013, when he and his wife, Christine Cannon Cameron, left to serve missions at the Mesa Arizona Temple Visitors' Center.

The Richards award honors those whose service epitomizes the virtues the Law Society espouses: serving the poor and disadvantaged, fostering understanding of and compliance with the rule of law, and working to improve the legal community's ability to provide justice for all.

Clark Memorandum

J. Reuben Clark Law School

Brigham Young University

