

Fall 2015

Clark Memorandum: Fall 2015

J. Reuben Clark Law School

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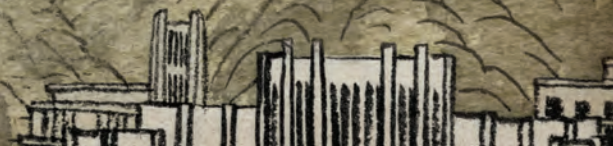
Recommended Citation

J. Reuben Clark Law School, BYU Law School Alumni Association, and J. Reuben Clark Law Society, "Clark Memorandum: Fall 2015" (2015). *The Clark Memorandum*. 58.
<https://digitalcommons.law.byu.edu/clarkmemorandum/58>

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CLARK MEMORANDUM
J. Reuben Clark
Law School
Brigham Young
University
Fall 2015



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The Clark Memorandum is published by
J. Reuben Clark Law School, Brigham
Young University, BYU Law School Alumni
Association, and J. Reuben Clark Law Society.
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DEAR ALUMNI AND FRIENDS,

Although the title page of the *Clark Memorandum* gives me credit as the publisher, the true force behind this extraordinary publication is my colleague Jane Wise. I am grateful for her dedication, as well as the dedication of Lena Harper, David Eliason, Brad Slade, and others to bring the *CM* to fruition. The truth is that many things at the Law School seem to follow this pattern. The work is largely done by others—success depends on their passion and energy—but I receive the credit. Not a bad gig, especially if you work with great colleagues.

Those of you who have read prior dean's messages will know that I am a believer in the value of "thinking like a lawyer" and in the idea that a law degree, at its best, is a degree in leadership. Leaders need to consider almost reflexively issues such as the principle of treating like cases alike, the standard of review by which to judge recommendations, when it is best to use bright-line rules or rules of reason, the importance of reliance interests, the relationship between procedure and substance, why rule design is so challenging and requires a certain humility, and so forth. Learning the law is designed to embed in our thinking precisely those characteristics. Of course, thinking like a lawyer must be paired with action or else legal problems can become little more than entertaining jigsaw puzzles. One of the great and hard things about the practice of law is that it requires the application of theory to practice. Though application can be challenging, it is what gives lawyering the healing and peacemaking dimension that ennobles our analytical efforts and gives richer dimension to leadership.

In the realm of applying theory to practice, I love the talk in this issue by Judge David Campbell, titled "On Justice, Mercy, and the Atonement: A Judge's Perspective." It is an example of how thinking like a lawyer can deepen our insight into the most important of all topics. I have said to the law students that a law degree will change the way they read the news and the scriptures, not just with a critical eye but with, I hope, a fuller understanding of context and meaning. Judge Campbell's insights are an example of what I have in mind when I suggest to students that studying law will have pervasive impacts. But what is also important is that Judge Campbell's insights are not simply a function of theory, they are also a result of application—of the practice of judging and grappling with the sometimes wrenching burden of applying the law when the heart yearns for mercy.

As a law professor I fear that sometimes I am more about theory than application. Perhaps that is why I take such pride in the accomplishments of our graduates and also of the members of the Law Society with whom we at J. Reuben Clark Law School are necessarily yoked by our shared commitments. In truth, I am committed to the idea that the law faculty's focus on theory is critical. Thus, I am grateful

that my faculty colleagues' writing focuses on theory, because principles have the best chance to produce lasting influence. As Elder Oaks, then president of BYU, once remarked: "The half-life of a legal concept, even in these changing times, is measured in centuries, not academic years. . . . A legal training that is predominantly theoretical is best able to equip students with the principles and skills they can apply throughout shifting circumstances of the next half-century." For this same reason, I am hopeful that this and other issues of the *Clark Memorandum* will, over time, create an architecture of theory and principles of how to integrate the ideals of our faith with our professional commitment, which we then each pursue by way of individual application.

I hope you enjoy this issue of the *Clark Memorandum* and that you'll drop by if you are ever in Provo. I'd love to catch up and tell you about some of the great things happening at the Law School.



Warm regards,

JAMES R. RASBAND

"The half-life of a legal concept, even in these changing times, is measured in centuries, not academic years."

BYU PRESIDENT DALLIN H. OAKS'S OPENING REMARKS
TO THE CHARTER CLASS OF J. REUBEN CLARK LAW
SCHOOL, AUGUST 27, 1973



THE STATE OF

RELIGIOUS

FREEDOM

IN THE WORLD



Dr. Katrina Lantos Swett

THANK YOU FOR THAT KIND INTRODUCTION. || IT TRULY IS
AN HONOR AND A PLEASURE TO ADDRESS YOU THIS EVENING
ON AN EXTRAORDINARILY IMPORTANT AND TIMELY TOPIC—
NAMELY THE STATE OF RELIGIOUS FREEDOM IN THE WORLD.

ILLUSTRATION BY DAVID ELIASON



This is an issue that is near and dear to my heart. As a daughter of Holocaust survivors, as a human rights activist, and now as chair of the United States Commission on International Religious Freedom (USCIRF), the fight to secure this bedrock freedom is one I am engaged in on almost a daily basis.

And let me acknowledge with gratitude and appreciation that the J. Reuben Clark Law Society, the International Center for Law and Religion Studies, and, above all, the Church itself have been in the forefront of fighting both to defend and expand religious liberty at home and abroad. Indeed, the central importance of freedom of conscience or belief is at the very heart of Mormon doctrine, so I feel very at home addressing this issue with this audience.

THE IMPORTANCE OF PERSPECTIVE

Before I get into the substance of my remarks today, I would like to say a word about the importance of perspective as we prepare ourselves for battle each day on behalf of this noble cause. In many ways it feels like the cherished value of religious freedom is under unprecedented assault around the globe, and that is not an unreasonable perception. One need only utter the words *ISIS*, *Paris*, and other Rorschach-like phrases to summon up truly terrifying images of assaults on the freedom of conscience and belief and its related rights of freedom of speech, expression, press, and assembly.

But whenever I find myself daunted by the challenges of our day, I am reminded of the words of my remarkable late father, Tom Lantos. As I mentioned earlier, he and my mother were both Holocaust survivors, and my father went on to become the only Holocaust survivor ever elected to the U.S. Congress and one of its most forceful advocates for human rights. Their incredible lives read like a script out of Hollywood, but that is a story for another day.

Because my dad had lived through the very worst that man could inflict on his fellow human beings, he had a strong sense of perspective and even optimism about our world. And whenever I would feel overwhelmed by the challenges around me, in his marvelous Hungarian accent he would reassure me, “Don’t worry, darling. We are just bending a windy corner of history, and just around it there are bright blue skies and wonderful opportunities.”

I was reminded of my father’s important gift of perspective when I recently traveled to Berlin to participate in the OSCE’s (Organization for Security and Cooperation in Europe) very sobering 10-year conference on anti-Semitism in the EU—which, if you were not aware, has seen an alarming rise in recent years. But as discouraging as the conference was, I was also reassured by the knowledge that history is not kind to nor does it ultimately reward those who trample on the religious rights and freedoms of others.

While on a quick bus tour of Berlin, I was struck by a comment from the tour guide that when the Edict of Nantes was revoked in 1685, thousands of persecuted Huguenots fled from France to the city of Berlin, where they started many of the industries and trades that became the backbone of that region’s economy.

You will recall that the Edict of Nantes, signed in 1598 by Henry IV of France, granted the Calvinist Huguenots substantial rights in a nation that was overwhelmingly Catholic. This was a break from the longstanding doctrine that required subjects to follow the religion of their ruler, expressed in the Latin phrase *cuius regio, eius religio*—“whose realm, his religion.”

One might view the Edict of Nantes as an early advancement of the right to freedom of religion and its revocation as a huge step backward, but by driving the Huguenots out of



Representative Tom Lantos

*This
address was
delivered
at the
J. Reuben
Clark Law
Society
annual
fireside on
January
23, 2015.*

their land, it was the French who suffered economically and in other ways from their departure, and it was the land that gave them refuge that benefited.

In other words, protecting religious liberty is not just the right thing to do, it is almost always the smart thing to do as well—a lesson we need to be reminded of again and again. As the French say, “*Plus ça change, plus c’est la même chose.*”

So with that brief background and short historical digression, I would like to turn my attention to tonight’s topic. I would like to begin by painting a picture of what religious freedom abuses look like—this is not an abstract right we are seeking to protect, and I would like to share examples of people who have suffered real losses from having this indispensable right denied. I will go on to highlight the magnitude of humanity’s loss when religious freedom is denied by describing the majesty and scope of this fundamental human right. Religious freedom remains a deeply misunderstood right, and part of what I hope to do tonight is to clear away misconceptions that many people have. And finally, we will try to take a look around the “windy corner” we find ourselves at right now to think about what the future might hold.

There is one point I would like to make that really can’t be stressed enough. It is this: when anyone’s religious freedom is violated, other human rights invariably are abused as well. That is because in the end, human rights are indivisible. All of them are tied together. All of them are based on the premise that every human being has dignity and worth that must be honored and respected. So with that in mind, let me begin.

WIDESPREAD RELIGIOUS PERSECUTION

More than three years ago, in March 2011, Shahbaz Bhatti, a Christian who was Pakistan’s Minister for Minority Affairs, was murdered by the Pakistani Taliban for speaking out against his country’s blasphemy law and the death sentence for blasphemy given to Asia Bibi, a Christian woman.

But Minister Bhatti wasn’t the only Pakistani who forfeited his life that year for those reasons. Two months earlier Salmaan Taseer, the Muslim governor of the Punjab



Salmaan Taseer, right, governor of the Pakistani Punjab province, talks to reporters after meeting with Pakistani Christian woman Asia Bibi, left, at a prison in Sheikhpura, Pakistan, Saturday, November 20, 2010.

province, met the same fate for his own courageous opposition to the same law and the Bibi verdict. As I stand before you this evening, I know of at least 18 other Pakistanis who are on death row for blasphemy and 20 who are serving life sentences.

But religious persecution is hardly limited to one country or one type of violation. In August 2007, a week before the first visit of my predecessors to Turkmenistan, the government of that nation released from jail a national Muslim leader, former grand mufti Nasrullah Ibn Ibadullah. Our commission had repeatedly called for his release ever since he had been sentenced to a 22-year prison term on trumped-up treason charges three years earlier. What was his crime? He courageously refused to display a book of sayings by the country’s dictator next to the Qur’an in mosques across the nation. Again, the mufti thankfully was released from prison on the eve of USCIRF’s visit.

But another noble soul, Gao Zhisheng, one of China’s most respected human rights attorneys, has not been so fortunate. Gao’s brave defense of people of various faiths continues to cost him dearly. After disbaring Gao, China’s government imprisoned him, tortured him, and concealed his whereabouts for more than two years. When they finally released him in August 2014, he had lost nearly 50 pounds and half his teeth were missing or rotting away. As I speak, Gao is confined to a remote village while security agents harass his relatives, monitor his reading material, and prevent him from receiving vitally needed medical treatment.

And who can forget the disturbing story of Iranian pastor Saeed Abedini, a U.S. citizen who has been serving an eight-year sentence since 2012 on the bogus charge of threatening Iran’s national security? His real so-called crime was his involvement in Iran’s persecuted house-church movement.

Many others remain imprisoned in Iran for their religious beliefs or for actions that reflect these beliefs, including the “Baha’i seven,” leaders of Iran’s Baha’i community who have been incarcerated since 2008 for heading a religious movement that Iran’s theocratic leaders seek to crush.

Over the past months we all have seen the horrifying news coming out of Iraq and Syria, where ISIS has seized wide sections of both countries and has launched a reign of terror against non-Muslim religious minorities, from Yazidis to Christians, while also persecuting Shi’a and Sunni Muslims who dare to dissent from its perverse interpretations of Islam.

In recent days we have watched in horror as home-grown Islamist terrorists in France gunned down the journalists and satirists of *Charlie Hebdo* and shoppers at the Hyper Cacher kosher market, seeking to terrorize a great city in the heart of Europe into submission to their perverted vision of Islam.

And, finally, in Saudi Arabia the liberal blogger and human rights activist Raif Badawi has been sentenced to 1,000 lashes and 10 years in prison for daring to criticize the nation’s

clerics. This man is due to be lashed each week for 20 weeks until this brutal and barbaric sentence is complete or he is dead.

Based on these and so many other cases, two points are abundantly clear. First, when religious freedom and other human rights are violated, real people suffer. Whether their names are etched on gravestones or their faces stare at us from behind prison bars, we must never forget them. Second, the right of religious freedom is far broader, far more inclusive, and far more sweeping in scope than most people realize. It embraces a full range of thought, belief, and behavior.

THE RIGHT TO BELIEVE

Religious freedom is equally as deep as it is broad, honoring and upholding the claims of conscience. How broad and inclusive is religious freedom as a human right? Support for it means opposing every form of coercion or restraint on people's ability to choose and practice their beliefs peacefully.

Contrary to prevailing notions in some circles, promoting religious freedom does not mean imposing beliefs on other people. Quite the contrary. It is about protecting everyone's right to believe and remain true to their deepest convictions. Religious freedom applies to the holders of all religious beliefs, bar none.

Thus the commission on which I serve fights diligently for the right of members of every religious group—from Muslims to Christians, Jews to Buddhists, Hindus to Baha'is, Yazidis to Falun Gong—to practice their faith nonviolently.

But this critical human right is even broader than that. Not only does it apply to those who hold religious beliefs, it also extends to those who reject religious beliefs altogether. When atheists or agnostics are targeted for expressing their convictions, they too are victims of religious persecution. They too merit our steadfast support and protection.

Besides protecting every belief—religious or otherwise—freedom of religion or belief is itself a conviction that is unbounded by geography or nation. It is not the exclusive preserve of any one country. It is a universal value endorsed by a *majority* of countries in Article 18 of the 1948 Universal Declaration of Human Rights as well as in subsequent agreements. Like every other human right, religious freedom is the birthright of humanity.

Religious freedom is broad and deep enough to merit a seat at the table with economic or security concerns in any nation as it conducts its affairs with the world.

In short, religious freedom is a pivotal human right that is relevant to literally every person in the world. It means nothing less than the right of every one of us to think as we please, believe or not believe as our conscience leads, and live out our beliefs openly, peacefully, and without fear.

Understanding all of this is essential to spurring our country to do more to advance this freedom around the world. Such advocacy in support of religious freedom is especially crucial today, when religious freedom is under serious pressure in so many places. According to a recent study, 76 percent of the world's population—five billion people—live in countries in which this freedom is restricted in serious ways, either by the government or by societal actors.

Clearly, abuses of religious freedom must never go unchallenged. This is not just the opinion of the United States; it is a fundamental principle of international human rights law. As I mentioned, in 1948 the world community created and adopted the Universal Declaration of Human Rights, including Article 18, which deals specifically with freedom of religion or belief. Since 1966 the governments of 167 countries have signed the International Covenant on Civil and Political Rights, a binding treaty that includes protections similar to those of Article 18. The United States' commitment to this foundational human right reflects our own history of people fleeing persecution in Europe and coming to these shores so they could live out their convictions. Later, the First Amendment to our Constitution included firm protection for religious freedom.



Lisa Peng, left, holding a photo of her father, Peng Ming, and Grace Ge Geng, right, holding a photo of her father, Gao Zhisheng, are introduced prior to testifying on Capitol Hill in Washington, DC, Thursday, December 5, 2013, before the House Foreign Affairs Committee hearing entitled "Their Daughters Appeal to Beijing: 'Let Our Fathers Go!'"

RELIGIOUS
FREEDOM
IS THE
BIRTHRIGHT
OF HUMANITY

But Americans always have been concerned about other people's freedom as well, and so in 1998 the International Religious Freedom Act (IRFA) was signed into law. The IRFA created a special office in the State Department to defend this right abroad. It also created USCIRF—the commission on which I serve. USCIRF is an independent, bipartisan, federal government body charged with using the same international standards I have just mentioned to measure how governments abroad handle religious freedom. USCIRF also issues reports that highlight abuses and make recommendations about how our country can best respond to these violations.

THE CONSEQUENCES OF VIOLATING
RELIGIOUS FREEDOM

In the course of our efforts, USCIRF has found at least four kinds of violations of which governments are culpable: state *hostility*, state *sponsorship*, state *enforcement*, and state *failure*. State hostility involves the government actively *persecuting* people due to their beliefs. State sponsorship refers to the government actively *promoting*—and sometimes even exporting—ideas and propaganda, often of a violent and extremist nature, that include hostility to the religious freedom of others. State enforcement refers to the government actively *applying* laws and statutes such as antiblasphemy codes to individuals, often members of religious minorities. State failure means that the government is *neglecting* to take action to protect those whom others are targeting due to their beliefs.

When it comes to state hostility toward religions, some of these governments, like North Korea or China, are *secular* tyrannies, which consider all religious beliefs to be potential rivals of state secularist ideology, such as communism. Others like Iran, Saudi Arabia, and Sudan are *religious* tyrannies, which enthrone one religion or religious interpretation over all others, which they see as rivals to the one they favor. Still others, like Russia, are a hybrid of secular and religious tyrannies.

In North Korea the government severely represses religious activity, and individuals who defy that repression are arrested,

imprisoned, tortured, or executed. In China the government continues its persecution of Tibetan Buddhists and Uyghur Muslims. To stem the growth of independent Catholic and Protestant groups, Beijing has arrested leaders and shut down churches. There have even been reports of officials going after registered churches and tearing down crosses and church steeples. Members of Falun Gong, as well as those of other groups deemed “evil cults,” face long jail terms, forced renunciations of faith, and torture in detention.

In Iran the government has executed people for “waging war against God” while relentlessly targeting reformers among the Shi'a Muslim majority as well as religious minorities, including Sunni and Sufi Muslims, Baha'is, and Christians. Pastor Abedini remains in prison, and the regime has stirred up anti-Semitism and promoted Holocaust denial.

Saudi Arabia completely bans the public expression of all religions other than Islam. Not a single church or other non-Muslim house of worship exists in the country. In addition, the Kingdom enthrones its own interpretation of Sunni Islam over all others and has detained individuals for apostasy, blasphemy, and sorcery. Sudan continues its policy of Islamization and Arabization, imposing Shari'ah law on Muslims and non-Muslims alike, using amputations and floggings for acts of so-called indecency and immorality, and arresting Christians for proselytizing.

And, finally, Russia has a secular government but favors the Moscow Patriarchate of the Russian Orthodox Church while persecuting competitors, such as Jehovah's Witnesses or those it deems a threat to the state, such as Muslims.

Regarding state sponsorship of radical ideology, which targets others' religious freedom, Saudi Arabia continues to export its own extremist interpretation of Sunni Islam through textbooks and other literature that teach hatred and even violence toward other religious groups. Regarding state enforcement, Egypt and Pakistan enforce antiblasphemy or anti-defamation codes, with religious minorities bearing the brunt of the enforcement. Finally, regarding state failure to protect religious freedom, the abysmal record of the governments of Myanmar (Burma), Egypt, Iraq, Nigeria, Pakistan, and Syria exemplifies those nations that do *not* protect their citizens against religion-related violence.

In Burma, sectarian violence and severe abuses against Christians and Muslims continue with impunity. The plight of the Rohingya Muslims is especially alarming and heartbreaking, as countless numbers are stateless, homeless, and endangered. In Egypt, Cairo has failed repeatedly over time to protect religious minorities—including Coptic Orthodox and other Christians, Baha'is, Shi'a Muslims, and dissident Sunni Muslims—from violence or to bring perpetrators to justice. In Iraq, the rise of ISIS is a major consequence of the government's continued failure to protect the lives and freedoms of non-Muslim minorities, such as Christians and Yazidis, as well as Shi'a Muslims and dissenting Sunni Muslims. In Nigeria, Boko Haram attacks Christians as well as fellow Muslims. The government has failed to prosecute perpetrators of religious violence, and that violence has killed more than 14,000 Nigerians, both Christian and Muslim, since the turn of the century. In Pakistan, the government's continued failure to protect Christians, Ahmadis, Shi'as, and Hindus has created a climate of impunity resulting in further vigilante violence. And in Syria, a three-year civil war triggered

by the Assad regime's refusal to respect human rights and embrace reform has devolved into a sectarian religious conflict, combining the worst aspects of state tyranny with state failure to protect life and freedom. While the regime continues to target Sunni Muslims, terrorist opponents like ISIS target those on all sides who oppose their dictates, from Sunnis and Alawites to Christians.

These four types of violations suggest a strong correlation between the lack of religious freedom and the lack of social harmony and stability. Indeed, a number of studies show that while countries that honor and protect religious freedom and related rights are more peaceful, stable, and prosperous than those that do not, nations that trample on this freedom provide fertile ground for poverty and insecurity, war and terror, and violent radical movements and activity.

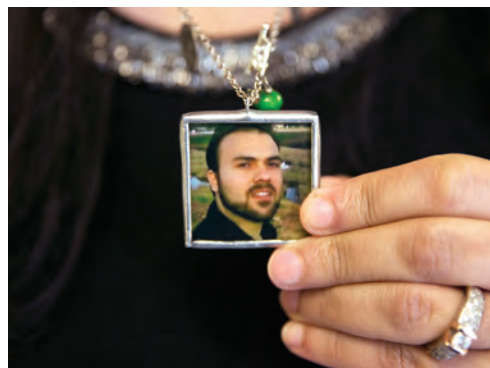
We see the negative consequences of not promoting freedom of religion or belief when looking at nations USCIRF has recommended that the State Department designate as "countries of particular concern," or CPCs, marking them as the world's top religious-freedom abusers. These countries are Burma, China, Egypt, Eritrea, Iraq, Iran, Nigeria, North Korea, Pakistan, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, Vietnam, and Uzbekistan. A striking number of these nations continue to have serious issues with stability and security.

Thus it is essential that we promote religious freedom not only because it reflects our values and international human rights standards but because it can enhance the security of our own country and that of the world, especially in the struggle against violent religious extremism.

AROUND THE WINDY CORNER

Let me close by asking a fundamental question: What does the future hold for religious freedom and related human rights?

As of today, the landscape around the world looks admittedly bleak. But does the future have to be like the present? I can answer that question with an emphatic *no*. Yes, the struggle for these rights remains an uphill one. But in our time, the calls for protection of religious freedom and related rights are being amplified as never before in



Naghme Abedini holds a necklace with a photograph of her husband, Saeed Abedini, while on Capitol Hill in Washington, DC, Tuesday, June 2, 2015, during a House Foreign Affairs Committee hearing with three other people whose family members are being held in Iran.

history. Thanks to an unprecedented information revolution and the enormous power of the Internet and social media, the calls for freedom are being heard across countries and continents, demanding an end to the status quo of repression and extremism.

The message they send is unmistakable: religious freedom matters and must be upheld. It is time for governments around the world to hear and heed this message. For the dictators of China and North Korea and the terrorists of ISIS and the Pakistani Taliban, there is nothing they fear more than the cause of religious freedom. Yes, I know: when Yazidis and Christians, Tibetan Buddhists and Rohingya Muslims, Baha'is and Jews, Hindus and Falun Gong are oppressed, it is hard to see the fear in their oppressors' eyes. But the fear is there. We can see it in their actions—in their repeated use of brute force to silence and intimidate others. Clearly they fear thought and debate. They fear deliberation and discussion. They fear sunlight and scrutiny. They fear transparency and truth. And so, of course, they fear the Internet. They fear Facebook. They fear iPhones. They fear us. They fear their own people. They probably fear each other. And, most of all, they fear the future.

Yes, the enemies of freedom remain formidable and the fight for freedom remains uphill and can be exhausting at times. The struggle against injustice is long and arduous. But let us take comfort in the wise words of the late Robert F. Kennedy:

Each time [we strike] out against injustice, [we send] forth a tiny ripple of hope, and crossing each other . . . , those ripples build a current which can sweep down the mightiest walls of oppression and resistance.

I would like to close with a story that I think beautifully illustrates the profound connection between religious freedom and all the other precious constitutional and human rights that we cherish. John Wycliffe—the English philosopher, theologian, reformer, and preacher—undertook to translate the Bible from the Latin vulgate into the common vernacular in the late 1300s, and he did so in the face of enormous opposition and even persecution from the ecclesiastical authorities of his day. Despite all, he persisted in this mission, and when his work was done he wrote the following words in the flyleaf of that first Bible: "The translation is complete and shall make possible government of the people, by the people, and for the people."

Now, we cannot know precisely what he meant when he wrote those words, but I believe he was illuminating for all of us the profound insight that when men and women are free to pursue and understand truth for themselves, they become empowered to build societies that honor the claims of conscience and the fundamental liberties and rights of all people.

Thank you. 

KATRINA LANTOS SWETT: A GUARDIAN OF FREEDOM

Six years ago this week I spoke at a moving memorial service in Washington, DC, honoring the late U.S. congressman Tom Lantos, the only Jewish survivor of the Holocaust ever elected to that distinguished body. The story of Tom's harrowing youthful years in Nazi-invaded Hungary is as riveting and wrenching as it is essentially indescribable. It would be a prelude to his becoming one of the most powerful voices on this planet for human rights, for universal justice, and for meeting the needs of the downtrodden and the forgotten, the bereft and the abused. The sad fact in all of this is that seeing virtually all of his loved ones annihilated by wholesale genocide robbed him of not only his entire family but also much of his religious faith. But the redeeming fact is that Tom later made his unparalleled love for his wife, Annette Tillemann; his two daughters, Annette and Katrina; and his grandchildren, all 18 of them, the divinity of his life—his lost family reborn, if you will. Of almost no other person I know could I say more emphatically that family meant everything.

In that memorial service I said, "Tom Lantos must have vowed somewhere in that strong heart and iron will of his that although he could not change the past, he most assuredly could shape the future. And that meant, among other things, cherishing his family in an absolutely consummate way and preparing them to give significant service to the world." Well, those words about his children's service to the world were prophetic. After her father's passing, and to guarantee that his work and his legacy would not falter, Katrina and her family established a foundation to promote and protect human rights, declare its fundamental privileges, and decry any abuses anywhere they might be found. Katrina currently serves as president of that foundation, the Lantos Foundation for Human Rights and Justice. She also chairs the U.S. Commission on International Religious Freedom. A friend of Katrina's and mine, Professor Robert George, who is the McCormick Professor of Jurisprudence and Moral Philosophy at Princeton and a member and former chair of the commission, told me just a few months ago that Katrina was absolutely perfect in this role—"stunning," he said, "without peer." He wanted her to be the chair for life. Actually, the by-laws do not allow that, but if Robby has his way, she will be the chair every other term for as long as she lives.



But Katrina has pretty much been stunning and without peer all her life. From her early years in the Bay Area, she exceeded every remotely reasonable and virtually all unreasonable expectations in a family where high expectations were the norm. It was the Lantos way; it was the Lantos heritage. Just as though everyone else did so, she blithely skipped high school and entered college at 14. One year later she transferred to Yale, where her sister, Annette, was already enrolled and where I had the blessing to come to know her.

At Yale the Lantos girls broke all the stereotypes: that smart women are arrogant, that smart young women are insufferably arrogant, that if you are beautiful you surely must not have brains, and, above all, if you were an Age-of-Aquarius Ivy Leaguer, you certainly were not going to profess any religious devotion, at least not the institutional kind. After all, Woodstock was only 90 miles away and eight months ago. But because of the goodness of her soul and her intuitive love for truth when she heard it and for the Holy Spirit when she felt it, Katrina joined The Church of Jesus Christ of Latter-day Saints during her Yale years. From that day to this, and in every conceivable way, she, her husband, Dick, whom she helped convert to the Church, and their mission-going children have been undeviatingly faithful to the Church. Our association with them in their journey of conspicuous devotion and unstinting service has been one of the true joys in the lives of Jeff and Pat Holland and Quentin and Mary Cook.

After graduating from Yale, Katrina attended the University of California, Hastings College of Law. By age 21 she was working with Senator Joe Biden in her role as lawyer for the U.S. Senate Committee on the Judiciary. She went on to manage several political campaigns, including her father's, her husband's, and her own. In 2002 she was the Democratic nominee for Congress in New Hampshire's second district, a seat her husband had held prior to his appointment as ambassador to Denmark. In 2006 Katrina earned a PhD from the University of Southern Denmark in history with an emphasis on human rights and U.S. foreign policy.

When you hear this woman speak about human rights, you realize that this work is not a career for her; it is her passion. Like her father before her, she has become a guardian of freedom, that paper-thin veneer protecting civilization. She protects the rights of the faceless, the nameless, the persecuted, and all others whose God-given rights have been violated. Best of all, she is my warm and wonderful friend and a devoted Latter-day Saint at all times and in all places. I am immensely proud of her. Dr. Katrina Lantos Swett, we are very honored to have you speak to us tonight.



A M E S S A G E S
M F R O M
Y T H E
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Dean Rasband, distinguished faculty, proud parents, family, friends, and members of the Class of 2015, it is a tremendous honor for me to address you today. Thank you for inviting me to join you in this wonderful celebration.

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My memoir, *Battle Hymn of the Tiger Mother*, was published four years ago, and since then my life has never been the same. Things have happened to me, both good and bad, that I couldn't have imagined for a million years.

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On the not-so-good front, the day my book came out, the now-infamous *Wall Street Journal* excerpt had appeared three days earlier, under the headline "Why Chinese Mothers Are Superior" (which I didn't write), and I was

ILLUSTRATIONS BY YUKO SHIMIZU

suddenly receiving hundreds of furious emails every hour. I was invited onto the *Today* show, and, in front of two million people, the host, Meredith Vieira, opened her first question by reading aloud “just some of the things people are saying about you: ‘She’s a *monster*.’” A week and 500,000 Internet hits later, my family would be called “the most notorious household in the Western world.”

On the more positive side, I have had some amazing experiences. For example, I have had two live tigers in my house as part of a photo shoot for *Time* magazine. I was told beforehand that they would be baby tigers and just like big, cute kittens. “We’re going to rehabilitate your image,” they told me. “Everyone in America hates you; they think you’re mean and horrible. We’re going to show you hugging these cute tiger cubs, and everyone will realize that you are actually warm and nurturing.” Well, apparently there was a miscommunication, because the tigers were not babies but humongous, roaring adult tigers that arrived in cross chains with two trainers wearing protective astronaut gear, holding the tigers back and throwing them whole chickens!

But here’s the serious point I want to make: During the whole tiger-mother firestorm, things felt pretty terrible. The Internet was filled with horrific remarks. My daughters were 14 and 17 at the time, and reporters swarmed their school, looking for dirt. It was also the start of a new semester at Yale Law School, so on Mondays and Wednesdays I would lecture about international business transactions, and then on Thursdays and Fridays I would fly around the country trying to clarify misunderstandings.

I remember many dark moments, sitting alone in some hotel room thinking, “What have I done? I don’t know if I can make it through this.” But through the support of friends, community, and, most important, family, I did make it through, and one of my themes today is that adversity and struggle can lead to growth and can make you not just stronger but wiser, with a better sense of who you are and what’s important in life.

ADVERSITY AND STRUGGLE CAN LEAD TO GROWTH

The first point I would like to make has to do with being an outsider in America.

I was born in Champaign, Illinois, but my parents were Chinese immigrants who arrived in the United States in 1960 to be graduate students at MIT. When they first got here, my parents didn’t know a soul in this country, and my mom could barely speak English. They were so poor they couldn’t afford heat during their first two winters in Boston and wore blankets around to keep warm.

Growing up in the Midwest and later in California, my three younger sisters and I always knew we were different from everyone else. Back then there were many fewer Asians in this country, and my family stuck out. We were the ones with the funny clothes, funny accents, and funny haircuts. (To save money, my mom cut all our hair herself with a home barber kit. She always gave us extra-short bangs—I don’t know why.) And this is something this audience will relate to: we had more rules than everyone else. We had to be extremely respectful to our parents and to all adults. After school, when everyone else would get to hang out or go to the mall, we had to come straight home, do chores, do homework, drill extra math, practice music—no boyfriends. We were required to speak only Chinese at home and practice writing Chinese calligraphy to preserve our heritage. And of course there were very high academic expectations. We had to be top students. If I got a 99 on a test, my mother would sit me down and say, “Okay, let’s look at what happened to that one point,” and we’d drill it.

When I tell my Western friends these stories, they always feel so sorry for me and assume that I was miserable. But that’s not true at all. I had a wonderful, joyous childhood. The message I always got from my parents was not “If you don’t do well in school, we won’t love you”—which would be a terrible message. Rather, it was always “We love you unconditionally; we believe in you, even more than you believe in yourself; we believe in our values, and it doesn’t matter what other people think.” Looking at this group of extraordinary graduates today, I have a feeling that a similar message of love and strength was conveyed by many parents in this audience.

But still, while I was growing up, my family was definitely different, and I want to share one anecdote.

When I was in fourth grade, there was a boy named Jeremy who wouldn’t stop making fun of me. I was a chubby kid with glasses, braces, headgear, and a Chinese accent. Every day when I got to school, this kid would run around making slanty-eyed gestures, imitating the way I spoke. Finally I told my mom about this, and I’ll never forget her reaction. She was mad at *me*. She said, “Amy, we come from the most ancient, most magnificent civilization—we invented everything! If this stupid boy can’t even see that, why would you waste one second thinking about him?” Now, maybe my mom was being a little ethnocentric, but for me, an eight-year-old and the only Asian kid in my class, the sense of cultural pride and distinctiveness she gave me provided me with a kind of psychological armor and was strengthening.

I thought this might resonate for some of you. I think these powerful words by Thomas S. Monson, president of The Church of Jesus Christ of Latter-day Saints, strike a similar chord: “Let us have the courage to *defy the consensus*, the courage to stand for principle. . . . A moral coward is one who is afraid to do what he thinks is right because others will disapprove or laugh” (“The Call for Courage,” *Ensign*, May 2004; emphasis added). In fact, in the book *The Triple Package*, which I coauthored last year with my husband, we show that this is part of a much broader phenomenon. It turns out that this combination of a sense of *exceptionalism* coupled with a feeling of not quite being accepted—and even of being made fun of—can be a powerful motivator, creating a mentality of “I need to work harder; I need to prove myself.”

You can hear this in the words of some prominent Mormon business leaders. For example, Dave Checketts, former CEO of Madison Square Garden (and a BYU graduate), has said: “As somebody who grew up in Utah, . . . I always felt like there was a little bit of a chip on the shoulder. We feel like we’re really good citizens, good people, and misunderstood.” He also said, “A big part of my drive is this sense of needing to prove myself.”

What’s interesting is that this mindset of “I need to work harder, to prove myself, to try to be a better person” is quintessentially

ABOUT THE SPEAKER

Amy Chua is the John M. Duff Professor of Law at Yale Law School. She received both her AB and her JD from Harvard. While at Harvard Law School, Professor Chua was executive editor of the *Harvard Law Review*. Prior to entering academics in 1994, she practiced with the Wall Street firm of Cleary Gottlieb Steen & Hamilton. She joined the Yale Law School faculty in 2001. Her first book, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability*, was a *New York Times* bestseller and was selected by both the *Economist* and the UK's *Guardian* as a best book of 2003. She is also the author of the critically acclaimed *Day of Empire: How Hyperpowers Rise to Global Dominance—and Why They Fall* and the 2011 memoir *Battle Hymn of the Tiger Mother*, a runaway international bestseller translated into 30 languages. Her latest *New York Times* bestseller, *The Triple Package: How Three Unlikely Traits Explain the Rise and Fall of Cultural Groups*, is coauthored with her husband, Jed Rubenfeld.

This address was delivered at the J. Reuben Clark Law School convocation on April 24, 2015.

American. It's the opposite of complacency and is part of the value system on which this country was built. Our Founding Fathers had a deep sense of American exceptionalism, but they were also very insecure vis-à-vis the more powerful aristocratic countries of Europe, who looked down on the ragtag American colonies. This is in part what motivated early Americans to strive, to save, to become the hardest-working nation in the world, and to make America a shining light to other nations, a city on a hill. But in the last 50 years or so America as a whole has lost something of this—maybe because of the 1960s, maybe because we got too successful—but, for whatever reason, as a country we've moved more toward a kind of feel-good, self-indulgent, immediate-gratification society.

Which is why, ironically, outsider groups in America—groups like the Mormons and many immigrant communities—sometimes seem to embody traditional American values more than the rest of the country. In fact, this idea of Mormons actually embodying the core values of America more than many mainstream Americans was captured by President John F. Kennedy in his 1963 address at the Mormon Tabernacle:

Of all the stories of American pioneers and settlers, none is more inspiring than the Mormon trail. The qualities of the founders of this community are the qualities that we seek in America, the qualities which we like to feel this country has, courage, patience, faith, self-reliance, perseverance, and, above all, an unflagging determination to see the right prevail. . . .

As the Mormons succeeded, so America can succeed, if we will not give up.

Similarly, the Pulitzer Prize-winning author Wallace Stegner wrote in *The Gathering of Zion: The Story of the Mormon Trail*:

Fleeing America, they fled it by that most American of acts, migration into the West.

. . . Where Oregon emigrants and argonauts bound for the gold fields lost practically all their social cohesion en route, the Mormons moved like the Host of Israel they thought themselves. . . .

. . . They were literally villages on the march, villages of a sobriety, solidarity, and discipline unheard of anywhere else on the Western trails.

So the first point I want to leave you with is that being an outsider—being a little “peculiar” relative to the mainstream—can be a source of strength if you hold true to your beliefs and who you are. This was certainly true for me.

SUCCESS COMES FROM DOING SOMETHING YOU CARE ABOUT

Now, this is not to say that the path will be easy. And this brings me to the second thing I'd like to tell you about, which is my own search to find a place in the law. This might surprise you, but when I was in your shoes 30 years ago, about to graduate, I was a little lost, not sure what I wanted to do.

Unlike (I'm guessing) most of you, I was not a natural at the law. This is partly because I was raised with traditional Confucian values, which place a huge premium on respect for elders. Growing up I was always taught, “Listen to your teachers, never talk back, always obey your parents, do what they tell you, make them proud.” These are wonderful values that I still cherish, but, as I discovered, they can also be a problem for independent thinking and pursuing your own passions.

When I went off to Harvard College, I did what my parents wanted me to do: I started off pre-med, majoring in applied math. (My parents wanted me to be a scientist or a doctor.) The only problem was that I hated it and was awful at it. I eventually switched my major to economics, not because I was interested in it but because I thought I could persuade my dad that it was sort of a science. I was so bored by my senior thesis, which had something to do with commuting patterns, that I could never remember which way I was coming out. The only reason I applied to law school was because I didn't want to go to medical school. And when I got to law school, I had a really tough time. Because I had always been taught to defer

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to authority, I looked up to all my professors and just wanted to write down and memorize everything they said. Whenever they asked me, “Miss Chua, do you think this opinion is rightly decided?” I would have no view. I would think, “A judge wrote it; it must be right.”

But hard work, discipline, and perseverance can make up for a lot, and I will always be grateful that my parents instilled those values in me, because it was those values that allowed me to not give up and to keep trying. It took me some time to adjust, but I ended up doing well at Harvard Law School—although honestly I had to put in 10 times as much work as everyone else.

After graduating from law school I clerked on the DC Circuit Court of Appeals, and then I joined a Wall Street firm called Cleary Gottlieb Steen & Hamilton, which specializes in international transactions. I learned a lot in the three years I was there, and I made great friends, but the entire time I knew in my heart that staying in a corporate law firm wasn't for me. But I didn't know what to do. I thought about applying to graduate schools, and I also tried to write a novel, which totally failed. Then I got incredibly lucky. I found my place in the law—my passion—almost by accident.

At Cleary we represented the Mexican government, and for three years I worked on the privatization of Mexico's telephone company. As a lowly associate, I was assigned to write the section in the prospectus on Mexican history. While doing research, I noticed a striking pattern. For almost a century, Mexico had oscillated between very open, pro-market, pro-

foreign-investment periods on the one hand and revolutionary, anti-market, xenophobic periods on the other. I wrote this all up, but when I showed the draft to the partner in charge, he said, “Oh my gosh, that's much too negative! No one will buy the stock if we put it like that. Rework it.” So I did, but I also didn't want to throw out all the work I'd done, so I decided to turn it into a law review article that I called “The Privatization-Nationalization Cycle in Developing Countries.”

Now, this was the early 1990s. The Soviet Union had just collapsed, and the whole world was in a kind of “end of history” euphoria. Everyone assumed that Western-style free market democracy would spread everywhere. In my article I challenged that conventional wisdom. I warned that if history was any guide, the current pro-market period would eventually give way to an anti-market backlash. I pointed out that not every country is like America and that most developing countries have ethnic and religious structures very different from our own.

Armed with this draft article, I decided to go on the academic job market. So I applied to 100 law schools around the country—and I got 100 rejections, 10 of them on the merits after a full-day interview, which really hurt. I remember calling my dad and telling him that maybe I wasn't cut out for academics; after all, I had been rejected by 100 schools. I'll never forget what my dad's response was: “Wait, you got 100 rejections—and you want to *give up*?” He thought 100 was a low number! Remember, this is a man who had endured so much more, who had crossed an ocean to come to a totally foreign country with no money, not knowing anyone. (Think about your pioneer ancestors.)

I applied to more law schools and got dozens more rejections. And then I got one offer—and let me say, one offer is all you need. It was from the University at Buffalo Law School, and I was ecstatic. Then, at the last minute, because someone else withdrew, Duke Law School gave me an offer, and I ended up going there.

Even when I got to Duke it wasn't easy. I'll never forget my first faculty workshop. I presented a paper, and Professor Donald Horowitz, the leading expert in my field, asked me a



really mean question that began with, “This paper is totally flawed,” and he went on for 15 minutes—and then he walked out before I could respond. I was devastated. I thought, “I’ve failed before I’ve even started.” But when I picked myself up off the floor and processed what he had said, I realized that his criticisms were totally right. I redid everything, and Professor Horowitz became my main mentor; we remain close friends to this day. More than that, Professor Horowitz helped me realize that what I was really interested in was the place of *groups* in the law—the power of groups to motivate, to pass on values, to mobilize people for good or evil. That was what I cared about, and this is really the second point I want to leave you with: It may take you awhile to find your calling—it took me more than 30 years—but the only way you can be really successful is if you’re doing something you believe in and care about.

By successful I don’t just mean material success. And this is one of the things that I find most admirable about Mormonism. As some of you may know, the book we published last year was a study of the most economically and professionally successful groups in America today, and it turns out that Mormons are one of those groups. But more than any of the other groups we looked at, Mormons devote an enormous amount of time and commitment to—and indeed put first—their families, their community, and their Church. What we say in *The Triple Package* is that the rest of America should be trying to learn lessons from the Mormon example—their attitudes, values, practices, and especially the way they raise their children, which is where it all starts.

CHANGE COURSE WHEN NECESSARY

Speaking of raising children, this brings me to my final topic: my own struggles as a parent and the importance of being open to change. Because of all the media sensationalism, most people don’t know that *Battle Hymn of the Tiger Mother* was never intended to be a parenting manifesto or how-to guide. On the contrary, I wrote it in a moment of crisis.

To explain this, I need to go back to my own upbringing. Even though my mom and dad were so strict when we were little, today my sisters and I adore my parents. If anything goes wrong, they are the first people I call. We voluntarily vacation together with them. I am also just deeply grateful to them; I know I wouldn’t be where I am now if they hadn’t believed in me and held me to such a high standard.

That’s why, even though my husband is not Chinese, I wanted to raise my own two daughters, Sophia and Lulu, the same way my parents raised me. With my first daughter, Sophia, things went smoothly. She was an easy kid, self-motivated, and I never had to force her to do anything. But then my second daughter came along, and boy did I get my comeuppance! I feel like she was born saying “no” to everything. Part of the problem is that we have really similar temperaments—we’re both stubborn and quick tempered, and we locked horns from the beginning.

I remember once when Lulu was about six and we were practicing violin. At one point Lulu burst out, “Stop it, Mommy, just stop it!”

I responded: “Lulu! I didn’t say anything. I didn’t say one word.”

Lulu then said, “Your *brain* is annoying me—I know what you’re thinking!”

And she was right. I had been thinking that her right elbow was too high and that her dynamics were all wrong.

So the first two-thirds of my memoir is supposed to be funny, filled with zany showdowns between me and my daughters—and my dogs, who can’t do anything. But the last third of the book is very different. When Lulu turned 13, she rebelled in a not funny way. Before, when she was little, we’d argue but then always make up by the end of the day, and at night she’d always crawl into my bed and we’d snuggle and laugh at ourselves. But when she turned 13, everything changed. She suddenly became angry, rude, and alienated. Around the same time, my younger sister, Katrin, got leukemia and had to have a bone marrow transplant. She had two young kids, and it was the darkest period of my life.

In one of the culminating scenes of *Battle Hymn*, Lulu and I had a huge, terrible fight—believe it or not, in Red Square, Moscow—in which Lulu said some of the most painful things

that anyone has ever said to me. And at that point it suddenly hit me: I could lose my daughter. And when it hit me like that, I realized I didn’t care about school, grades, or the violin; I just wanted to keep my daughter. So I changed, pretty much cold turkey. It took a couple of hard years to work things out, but today I feel incredibly lucky that both my daughters are strong, kind, thriving young women and that I am close to both of them.

That said, I remain a firm believer in strict parenting and high expectations. Given the background of American society today, in which there is so much temptation, entitlement, vulgarity, and vice, it makes no sense to tell your children, “Do whatever you want.” That’s the easy way out; that’s abnegating responsibility. It’s always a struggle to find the right balance. The best any of us can do is to try to be self-reflective, to be aware of our own weaknesses, to listen to our children, to adjust, and to keep trying to improve.

So here’s the third point I want to leave you with: Be strong enough to hold to your values, but also be strong enough to change if your heart tells you that you need to.

FIVE PARTING SUGGESTIONS

In closing, I’d like to give you five tips as you prepare to take on the world.

- 1 *Go for it.* Never don’t do something because you’re afraid to fail. Everything in my life that has been valuable and precious is something I was almost too afraid to do, that I almost chickened out of.
- 2 *Don’t make excuses.* If something goes wrong, don’t blame others. Start with yourself.
- 3 *Find your comparative advantage.* I believe that every one of you has a slightly different gift to offer the world. Embrace it and play to your strengths.
- 4 *Reject pettiness and bitterness.* They are a total waste of valuable energy.
- 5 *Be generous.* It will always make everything better. It will lighten your burdens and help you see the way.

Congratulations, Class of 2015! Thank you, good luck, and God bless. 

JUSTIN COLLINGS

GRATITUDE



FOR OUR RIGHTS



I AM GRATEFUL

to speak as part of this wonderful series on a Thanksgiving theme. I am grateful to be speaking about gratitude, a topic regarding which I have ample room for personal improvement and to which members of the First Presidency have given pointed and repeated emphasis.

My assigned topic is “gratitude for our rights.” Like any good lawyer, I will begin by defining my terms. I will focus, naturally, on the two nouns: *gratitude* and *rights*. But I pause at the outset to express some gentle cautions about the preposition and the possessive adjective.

The preposition *for* seems innocuous enough—or at least it did until President Dieter F. Uchtdorf’s recent general conference message. He said:

Perhaps focusing on what we are grateful for is the wrong approach. It is difficult to develop a spirit of gratitude if our thankfulness is only proportional to the number of blessings we can count. True, it is important to frequently “count our blessings”—and anyone who has tried this knows there are many—but I don’t believe the Lord expects us to be less thankful in times of trial than in times of abundance and ease. In fact, most of the scriptural references do not speak of gratitude for things but rather suggest an overall spirit or attitude of gratitude.

President Uchtdorf also said:

Could I suggest that we see gratitude as a disposition, a way of life that stands independent of our current situation? In other words, I’m suggesting that instead of being thankful for things, we focus on being thankful in our circumstances—whatever they may be.¹

I endorse President Uchtdorf’s suggestion. We should be grateful in all circumstances—a point I’ll return to later on. But particular blessings can augment, intensify, and sweeten that basic, unconditional gratitude.

Now for the adjective: The theme “gratitude for *our* rights” raises the question of who we are. Humans? Americans? Law students? Citizens of liberal democracies? Furthermore, does this mean individual rights—that is, my rights and yours—or collective rights that we hold and exercise together? I will be speaking today as an American, and I will have something to say about both individual and group rights. I am not sure how much that perspective will actually shape what I have to say, but I wish to warn that implicit in any talk of “our” rights must be some notion of “their” rights. For every “we” there is a “they,” and talk of “our” rights must never be exclusive or complacent. Our gratitude must center in the rights themselves, not in the fact that we enjoy them and others do not. Comparative gratitude is not gratitude at all. It is a form of pride. It partakes of the smugness of the Pharisee who “prayed thus with himself, God, I thank thee, that I am not as other men are” (Luke 18:11). True gratitude reaches a different, humbler conclusion—a conclusion beautifully articulated by Elder Jeffrey R. Holland, who declared himself to be the recipient of “unearned, undeserved, unending blessings . . . , both temporal and spiritual.”

He confessed:

I do not know all the reasons why the circumstances of birth, health, education, and economic opportunities [and we could surely add legal and constitutional rights] vary so widely here in mortality, but when I see the want among so many, I do know that “there but for the grace of God go I.” I also know that although I may not be my brother’s keeper, I am my brother’s brother, and “because I have been given much, I too must give.”²

A DEFINITION OF RIGHTS

So much for preliminaries. What do we mean by *rights*? Let me propose three basic categories of rights and then say something about our gratitude for them.

Category I: Natural, or Human, Rights

These are rights that are antecedent to government or social organization, rights enjoyed by all persons by virtue of a shared humanity. One needn’t be particularly religious to believe in such rights. They can be deduced from a number of perspectives—rationalist or humanist, Kantian or Christian. The point is that the rights precede, and therefore trump, the particulars of the social contract. Americans think of such rights in the ringing terms of the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Category I rights are a form of higher law not produced by human intervention.

Category II: Fundamental, or Constitutional, Rights

These are a form of higher law rooted in a given polity’s fundamental law. Their source is not natural or divine but human. In the modern setting, their source is constitutional. We the People, exercising *constituent* authority (what the French call *le pouvoir constituant*) establish fundamental norms to which all *constituted* authority (what the French call *le pouvoir constitué*) is subordinate. Rights established by the constituent authority may not be infringed by the constituted authority. The German term for such rights is *Grundrechte*—basic or foundational rights. In states with constitutional judicial review, such rights are enforced by constitutional judges against legislative, executive, administrative, and, in some cases, ordinary judicial infringement.

The classical understanding of fundamental rights is negative. They are conceived as defenses of the individual against state power. This remains the dominant perspective in the United States. Think of the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or

abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” In many countries, however, the modern understanding goes further. The German Federal Constitutional Court, for instance, has characterized basic rights as objective values—values that impose affirmative duties on the state and even, through a doctrine called “horizontal indirect effect,” regulate interactions between private parties.

Theorists of fundamental rights have described them with a diverse and conflicting array of metaphors. The late Ronald Dworkin called them “trumps.” Frederick Schauer suggests they are more like a shield. Robert Alexy, the great German theorist, described them as optimization requirements. What all of these theories have in common is that they view fundamental rights as enshrining individual values and constraining state power.

Category III: Positive, or Statutory, Rights

These are entitlements created by state actors—by the constituted rather than the constituent authority. Most of the rights you learn about in law school are of this sort. Think, for instance, of common-law property or contractual rights, or of the great statutory enactments of the 20th century—statutes protecting individuals against discrimination on the basis of race, gender, religion, ethnicity, disability, etc. Such rights are tremendously important, but, at least in theory, the government that gave them can also take them away.

Perhaps more important than any individual positive right is the notion that all of them together constitute a broader system of rights—what we call the rule of law. In many modern languages, the word for *right* and the word for *law* are one and the same. This is so in German (*das Recht*), French (*le droit*), Italian (*il diritto*), Spanish (*el derecho*), and other languages. The notion that English speakers suggest by “the rule of law” is captured in these languages by combining the word for *law* or *right* with the word for *state*: *der Rechtsstaat*, *l’état du droit*, *lo stato di diritto*, *el estado de derecho*, and so on. The terms are equivalent among themselves but

untranslatable into English. Each connotes a state characterized by robust rights and the rule of law. It is a point of citizen pride to belong to such a state.

Rights and Agency

Now, having bored you with this very general taxonomy of rights, let me propose a way in which Latter-day Saints might think

This address was delivered November 19, 2014, as part of the Law School’s Spirit in the Law lecture series.

about all of them together. In 1833 the Lord directed the persecuted Saints of Jackson County to petition the constituted authorities for redress of their grievances “according to the laws and constitution of the people, which I have suffered to be established, and should be maintained for the rights and protection of all flesh”—not just Americans; the whole world is involved—“according to just and holy principles” (D&C 101:77). This is a passage about

comparative constitutional law, which you all ought to study with me next semester but which none of you will because you will be too busy learning how to make money. But back to our text.

Why? So “[t]hat every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment.” From this the Lord drew a lesson that pointed to the United States Constitution’s greatest failure. “Therefore,” He continued, “it is not right that any man should be in bondage one to another. And for this purpose”—that is, to secure the principles of agency and accountability and, in the fulness of time, to banish slavery and its epigones from the face of the earth—“have I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood” (D&C 101:78–80).

Now there is a lot to unpack in those four verses from the Doctrine and Covenants. Let me highlight just one overarching theme. The central principle of constitutional government—the core purpose of human, constitutional, and positive rights—is agency, along with its inseparable attendant, accountability. A constitution worthy of the

name must enshrine and empower human agency, both individual and collective. It must allow each citizen—and all citizens together—to plan and act for the future in a principled way, to deliberate and discuss the shape and substance of their dearest designs, and to forge and follow a destiny of their own choosing. Gratitude for our rights is a form of gratitude for the sovereign gift of agency.

Agency, as you know, is not an end in itself—or at least not *only* an end in itself. Neither are rights. The glory and the limitation of our rights is that their purpose is penultimate—second to last. They place us in a position to determine what the state must not and cannot determine for us, and that is the meaning of life.

Wherefore, men are free according to the flesh; and all things are given them which are expedient unto man. And they are free to choose liberty and eternal life, through the great Mediator of all men, or to choose captivity and death, according to the captivity and power of the devil. [2 Nephi 2:27]

Our rights empower us to make that choice, but the choice remains our own.

A SPIRIT OF GRATITUDE

Now, at long last, on to the theme of gratitude for our rights. President Uchtdorf asked, “Why does God command us to be grateful?” He then answered:

All of [God’s] commandments are given to make blessings available to us. Commandments are opportunities to exercise our agency and to receive blessings. Our loving Heavenly Father knows that choosing to develop a spirit of gratitude will bring us true joy and great happiness.³

This is true, I submit, of gratitude for our rights.

Now, I don’t know of any direct command that we be grateful for our rights. But the apostle Paul did exhort Christians to “[s]tand fast . . . in the liberty wherewith Christ hath made us free” (Galatians 5:1), and the revelations confirm, “Abide ye in the liberty wherewith ye are made free” (D&C 88:86). In the Book of Mormon,



Captain Moroni is praised as “a man whose soul did joy in the liberty and the freedom of his country, and [of] his brethren from bondage and slavery” (Alma 48:11). More categorically, the revelations command:

Thou shalt thank the Lord thy God in all things. . . .

And in nothing doth man offend God, or against none is his wrath kindled, save those who confess not his hand in all things. [D&C 59:7, 21]

Amulek urged that we “live in thanksgiving daily, for the many mercies and blessings which [God] doth bestow upon you” (Alma 34:38). Among those blessings are our rights and liberties—the sovereign gift of agency and the earthly laws that protect it. If we are grateful for our rights, we will exercise those rights more joyfully and more completely. Gratitude for our liberty helps us stand fast

The only glass that ultimately matters is neither half-full nor half-empty. It is filled to overflowing.

in that liberty—the liberty wherewith Christ hath made us free. Gratitude for our rights draws us closer to the ultimate Author of those rights.

How can we cultivate and express gratitude for our rights? First and most obviously we can thank God in prayer for them. We can also learn of them and teach of them. We can seek as citizens to uphold them and support leaders who advance them. We can show special solicitude for those whose rights are most vulnerable, taking as our mantra the Savior’s promise and warning: “Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me” (Matthew 25:40). We can remember that agency cannot be fully realized on the basis of rights alone. Its full flowering has material and educational preconditions. And so if we care about rights, we must care for the poor. We should be forever unsettled by Anatole France’s famous barb: “The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, beg in the streets and

steal loaves of bread.”⁴ We can express gratitude for our rights by using our agency to do good, to love God and our neighbor, to build God’s kingdom, and to bless God’s children. We can “press forward with a steadfastness in Christ, having a perfect brightness of hope, and a love of God and of all men . . . , feasting upon the word of Christ, and endur[ing] to the end” (2 Nephi 31:20).

GRATITUDE BORN OF CHRIST

In closing, let me say something about gratitude more broadly. Sometimes we think of gratitude in terms of the old saw about seeing the glass as half-full rather than as half-empty. I once sat in a priesthood class in which gratitude was discussed in precisely these terms. I wondered, as I listened, whether gratitude was just a psychological trick. As a factual matter, the glass is *both* half-empty *and* half-full. It does *not* depend on how you look at it. How you *feel* might depend on how you look at it. But the objective reality does not depend on how you feel. I could see, of course, the practical benefits of viewing the glass as half-full. But it troubled me to think of gratitude as a merely pragmatic act of will. By willfully focusing on the portion half-full, are we not willfully blind to the portion half-empty?

As I sat there thinking along these lines—thinking, you might say, like a lawyer—it hit me with the force of revelation that the only glass that ultimately matters is neither half-full nor half-empty. It is filled to overflowing.

The Lord is my shepherd; I shall not want. . . . Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me; thy rod and thy staff they comfort me.

Thou preparest a table before me in the presence of mine enemies: thou anointest my head with oil; my cup runneth over. [Psalm 23:1, 4–5]

The apostle Paul wrote:

If in this life only we have hope in Christ, we are of all men most miserable.

But now is Christ risen from the dead, and become the firstfruits of them that slept. . . .

O death, where is thy sting? O grave, where is thy victory? . . .

. . . [T]hanks be to God, which giveth us the victory through our Lord Jesus Christ. [1 Corinthians 15:19–20, 55, 57]

The cup is not half-empty because the tomb is empty indeed.

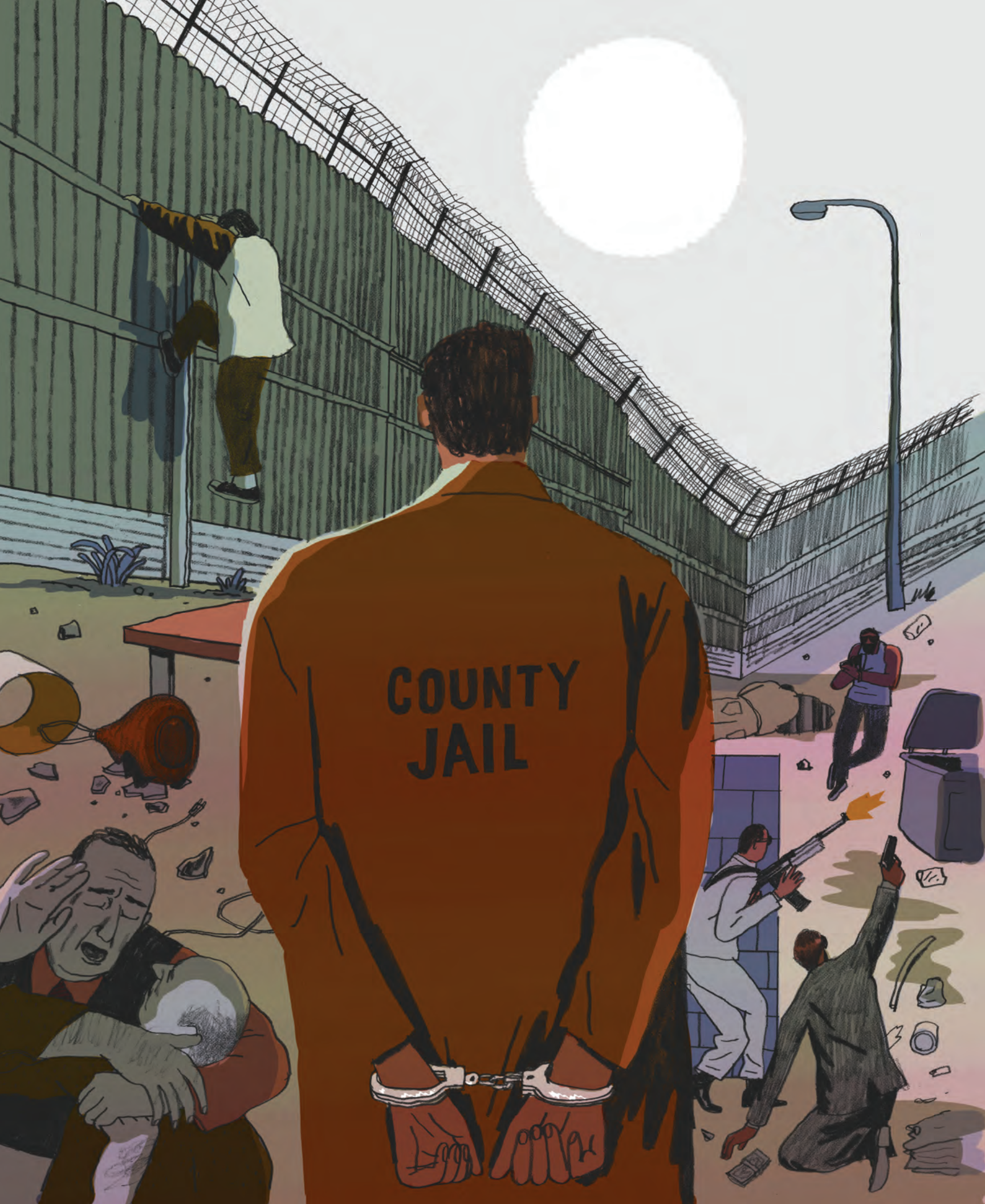
Earlier I referenced Ronald Dworkin’s notion of rights as trumps. For me the Resurrection is the ultimate trump. In cosmic terms, the singular fact of Christ’s redeeming sacrifice and glorious Resurrection overwhelms all other considerations. In the end, all mortal adversity is swallowed up, with death, in Christ’s victory over death. All mortal graces unite in the ultimate grace of Christ’s universal gift of immortality and universal proffer of eternal life. Gratitude flows from that recognition into all circumstances. But that gratitude is the product, not of willful blindness but of infinite vision. As President Uchtdorf said, “[T]he best path for healing [is] to understand and accept that darkness exists—but not to dwell there. For . . . light also exists—and that is where [the grateful choose] to dwell.”⁵ Because they dwell in the light, it is the grateful, and the grateful only, who see things as they really are (see Jacob 4:13).

The revelations promise that those “who [receive] all things with thankfulness shall be made glorious; and the things of this earth shall be added unto [them], even an hundred fold, yea, more” (D&C 78:19). May we, in word and deed, lay claim to that great promise. We have so much to be grateful for—including our rights; including, in my case, the blessing of learning and teaching at this special school with remarkable students like you. God bless you all. [cm](#)

NOTES

- 1 Dieter F. Uchtdorf, “Grateful in Any Circumstances,” *Ensign*, May 2014; emphasis in original.
- 2 Jeffrey R. Holland, “Are We Not All Beggars?” *Ensign*, November 2014.
- 3 *Supra* note 1.
- 4 Anatole France, *THE RED LILY* ch. 7 (1894).
- 5 Dieter F. Uchtdorf, “The Hope of God’s Light,” *Ensign*, May 2013.

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JUDGE DAVID G. CAMPBELL

ON JUSTICE
MERCY AND
THE ATONEMENT

A JUDGE'S PERSPECTIVE

ILLUSTRATIONS BY JOSH COCHRAN

have chosen to speak tonight on a trial judge's perspective of justice, mercy, and the Atonement. I am not able to be definitive on these challenging subjects; I simply hope to share some experiences that have increased my understanding of justice and have greatly increased my appreciation of the Savior's mercy. I speak as a believer and on the basis of LDS theology and scripture.

I have been a federal district court judge for more than 11 years. During that time I have sentenced more than 2,000 criminal defendants. This is by far the hardest part of my job.

Before I took the bench, I believed in justice as a concept and in the system of criminal justice we have developed in this country. I believed that those who commit federal felonies should pay the price justice demands. I viewed justice as something favorable to me and to law-abiding citizens generally, and I spoke rather easily of justice and mercy as gospel principles. Perhaps because I was trying to be good and fair in my personal life, I assumed that eternal justice would one day work to my benefit.

I still believe in justice and in our criminal justice system. You and I in particular appreciate this nation's justice, when we see so much injustice in the world around us, whether caused by individuals or by governments. But my perception of justice has changed during my years on the bench. I have learned that for those who have transgressed the law, justice can be fearsome, ominous, and inescapable.

I will share four experiences that have influenced my perception of justice. They are actual events, and they typify scenes that have played out many times in my courtroom. These experiences illustrate four aspects of justice that I have labeled (1) the unyielding demands of the law, (2) the unpaid debt, (3) the day of reckoning, and (4) the great divide. I will explain why I believe each of these aspects has a spiritual counterpart for you and me, and then I will describe the increased gratitude I feel for several aspects of the Savior's Atonement.

*This
address was
delivered at
the annual
J. Reuben
Clark Law
Society
Conference
at Arizona
State
University
on February
12, 2015.*

FOUR EXPERIENCES WITH JUSTICE

1. *The Unyielding Demands of the Law*

I will never forget the first guilty plea I took as a judge. The young man standing before me in the courtroom in Yuma, Arizona, was about 20 years old. He had been born in Mexico, but his parents had brought him to the United States as a baby. The family had gained legal residency in the United States and had no intention of returning to Mexico. This young man grew up in Yuma, attending grade school, middle school, and high school there, and was a star on the Yuma High School football team.

Sadly, this young man made the mistake of trying drugs while in high school, which eventually led to his being arrested and convicted of a drug crime. Because of that crime, his status as a legal resident was revoked, and he was deported to Mexico. He had no memory of living in Mexico; the culture there was strange and unfamiliar and he spoke imperfect Spanish. I have learned through my years as a judge in a

border state that Hispanics raised in America stand out conspicuously in Mexico and often are the victims of crime and abuse.

The young man told me of his unsuccessful struggle to make a life for himself in Mexico after his deportation. He told me that he could stand on the Mexican side of the border fence and see the housing development where his family lived near Yuma. One day, after much frustration and depression, he jumped the fence and ran for home. The Border Patrol caught him, and he was charged with the federal felony of reentry of a deported alien. He stood before me in court to plead guilty to that crime. Under the plea agreement he would serve time in federal prison and then would be deported again to Mexico. His criminal record likely meant that he could never legally return to this country.

As I looked at that tearful young man, the demands of the law seemed very harsh. True, he had been convicted of a drug offense for which the law allowed his legal residency to be revoked. True, he had been lawfully deported from the United States. And true, Title 8 of the United States Code, section 1326(a), made it a felony for him to return to this country without legal authorization. The consequences he was facing were all required by the law.

And yet I desperately wanted to extend mercy to that young man. I understood why he had jumped the fence and run for home. I would have done the same thing were I in his shoes. It seemed harsh and unyielding to send him to federal prison for trying to come home. But the law allowed for no mercy. The federal sentencing guidelines that required prison time were then mandatory,¹ and I had no power as a federal district court judge to prevent his deportation to Mexico after he finished his sentence.

2. *The Unpaid Debt*

There are cases in which the law grants me discretion in sentencing—in which I have the power to impose a lenient prison term or even grant probation. A federal statute governs these sentencing decisions. It directs me to consider the “nature and circumstances of the offense and the history and characteristics of the defendant” and to impose a sentence that is “sufficient, but not greater than necessary,” in order to “reflect the seriousness of the offense,” “promote respect for the law,” “provide a just punishment,” afford “adequate deterrence to criminal conduct,” “protect the public from further crimes of the defendant,” and “avoid unwarranted sentencing disparities.”²

Showing mercy is not one of the factors listed in the statute. Some of the factors require me to look beyond the defendant I am sentencing and ask the broader question of what effect my sentence will have on the public’s respect for law and the general deterrence of criminal conduct.

A few weeks ago a 24-year-old man appeared before me to be sentenced. He was a citizen of the United States and a high school graduate. He had been steadily employed since graduating, was engaged, and had two young daughters with his fiancée. Through his work in an auto repair shop, he met a fellow who clearly was a bad influence. This fellow persuaded the defendant to participate in the straw purchases of 20 firearms. The fellow would provide the defendant with cash and specify the guns he wanted, and the defendant would then go into gun stores and, using his own identification, buy the guns and later give them to this fellow. That is a violation of federal law. When purchasing a gun from a gun store, you are required to declare that you are purchasing it for your own use. You commit a federal felony if you are in fact purchasing it for someone else.³ The defendant was paid a few hundred dollars for his purchases and even recruited two of his friends to participate. The guns purchased by the defendant and his friends ultimately were transported to a violent drug cartel in Mexico. During the time he was purchasing guns, the defendant was also persuaded to participate in transporting a large load of marijuana.

The defendant was arrested for the gun crimes and the marijuana shipment in August 2013. Based on his complete lack of criminal history, his stable residence and family, and his employment, a federal magistrate judge released him on his own recognizance while awaiting trial. He performed well during the 17 months before he was sentenced. Regular testing showed he was not using drugs or alcohol, he maintained full-time employment and supported his fiancée and their children, and he had no further brushes with the law—not even a traffic ticket.

I read this young man’s history in the presentence report, including a thoughtful letter he had written to me, and I looked into his eyes at the sentencing hearing. It was clear he had



learned a painful lesson from his arrest and indictment. He expressed deep remorse for his crimes, told me that he was a changed man, and begged me to place him on probation so he could remain free and continue providing for his fiancée and children. His supportive family attended the hearing and told me that his criminal actions were entirely out of character.

I genuinely believed that the young man had learned his lesson. I was confident he would not be involved in criminal activity again. I wanted to extend mercy, but there was an unpaid debt. This young man had committed very serious weapons offenses. One of the guns he had purchased—an AK-47—had been found in Mexico at the scene of a drug-cartel shootout where 21 people had died. And he had committed a serious drug-trafficking crime. I had to consider whether a lenient sentence for such crimes would promote respect for law and deter criminal conduct by others, as the sentencing statute requires.

I ultimately imposed a sentence that will result in this young man spending about seven years in federal prison. He broke down and began to sob, as did his family and friends in the courtroom. His two small daughters on the fourth row buried their faces in their hands.

I believe the sentence I imposed was just, and it certainly was consistent with federal sentencing law. But it also hurt my heart to send a genuinely repentant young man to federal prison for seven years, particularly when it would leave his young daughters without a father at home and his family with scant means of support.

Because of the gospel, I believe in repentance, forgiveness, and second chances. As a result, I often feel the urge to extend mercy to the person standing before me or to his family. But there is an unpaid debt, a wrong that has not been righted. In such cases I feel keenly the difference between me as a judge and the Savior as a judge: I have not paid the debt for the person I am sentencing; I have not satisfied the demands of justice in his case. Therefore, I often cannot extend mercy without robbing justice.



3. *The Day of Reckoning*

Criminal defendants enter my courtroom in an orange prison jumpsuit, their hands shackled to their waist, their feet in chains, escorted by two armed deputy marshals. They enter through a side door from the steel holding cell next to my courtroom, and they shuffle to the lectern to receive their sentence. When the proceeding is done, they are led by the deputy marshals from the courtroom and are returned to the holding cell. From there they are taken in a secure elevator to larger cells on a lower floor of the courthouse and then to a heavily fortified bus to be transported to prison.

I try to treat these people with respect and dignity, to look into their eyes, to listen carefully to their words. But the scene is one of complete control over another human being. The day of reckoning has arrived, the imposition of justice is sure, and the defendants stand virtually powerless before the law. It is a very sobering thing to see.

4. *The Great Divide*

Our court tries violent felonies from Indian reservations in Arizona. On some of those reservations, alcohol abuse often results in violence. I have had many cases in

ONE OF THE GUNS HE HAD PURCHASED—AN AK-47— HAD BEEN FOUND IN MEXICO AT THE SCENE OF A DRUG- CARTEL SHOOTOUT WHERE 21 PEOPLE HAD DIED.

which the victim and the defendant were drinking together and both became highly intoxicated. A violent fight ensued and the defendant killed the victim, often without any awareness of what he had done. When the sentencing date arrives, my courtroom is filled with two families sitting on opposite sides of the aisle. The family of the deceased victim sits to my left, behind the prosecution table. The family of the defendant sits to my right, behind the defense table.

Members of the victim's family plead with me in tears for a long and harsh prison sentence for the loss of their loved one. They describe the goodness of the deceased, their pain, and the permanency of their loss. They invariably believe that the range of penalties permitted under the federal sentencing guidelines is too narrow.

Members of the defendant's family also plead with me in tears. They describe the many good characteristics of the defendant and how he is loved by his family. They express sympathy for the victim and his family but plead for mercy, noting that the defendant is a good person who—with the victim—made the bad decision to become intoxicated. They argue that it was a mistake,

not an intentional crime, and that it does not warrant years in prison when the defendant is a loving man at heart who is greatly needed by his family.

During these hearings I feel as though I am gazing at the Grand Canyon. A gulf miles wide separates the two families. One family demands justice, the other mercy, and I cannot bridge the chasm. I am incapable of fashioning a sentence that serves both justice and mercy.

SPIRITUAL COUNTERPARTS

Experiences like these have opened my eyes. Whereas I once viewed justice in only one dimension—as a bedrock principle of the law, the foundation of a stable society, and a friend to the law-abiding—I now also see it from the perspective of the men and women who are sentenced in my courtroom. To them, justice is terrifying, overpowering, and something to be dreaded. As I have become more familiar with this perspective, I have realized that it applies to eternal justice as well—the justice you and I would face without the Savior or will face if we disregard the Savior.

In the Grasp of Justice

The Book of Mormon refers to “the demands of justice” six times.⁴ It also refers to “the power of justice,”⁵ “the sword of . . . justice,”⁶ and “the grasp of justice.”⁷ Like the young man in Yuma who faced the unyielding demands of federal law, without the Savior we face the unyielding demands of eternal law. In the words of Alma, “justice claimeth the creature and executeth the law, and the law inflicteth the punishment.”⁸

There is also a spiritual counterpart to the unpaid debt. In his great talk on the Mediator, President Boyd K. Packer said:

Each of us lives on a kind of spiritual credit. One day the account will be closed, a settlement demanded. However casually we may view it now, when that day comes and the foreclosure is imminent, we will look around in restless agony for someone, anyone, to help us. . . .

Unless there is a mediator, unless we have a friend [who is willing to pay the debt], the full weight of justice untempered, unsympathetic, must, positively must, fall on us. The full recompense for every transgression, however minor or however deep, will be exacted from us to the uttermost farthing.⁹

Without the Savior, our day of reckoning would be as ominous and inescapable as the reckoning that confronts the men and women who enter my courtroom in shackles. Doctrine and Covenants 107 says, “[N]one shall be exempted from the justice and the laws of God.”¹⁰ Abinadi stated that God Himself “cannot deny justice when it has its claim.”¹¹ Alma explained that “the work of justice could not be destroyed; if so, God would cease to be God.”¹² It appears that justice is not a requirement God can waive out of sympathy for our plight.

Finally, the scriptures also recognize what I have called the great divide. Justice and mercy cannot be reconciled without an intermediary. As Alma said, mercy cannot rob justice.¹³

My courtroom experience has helped me appreciate that without the Savior, I am in the grasp of justice—someplace I clearly do not want to be. King Benjamin pointedly reminded us that we are all beggars before God.¹⁴ My view from the bench has pointedly reminded me that we are all transgressors before justice. Shakespeare got it right when he had the wise Portia say to the merciless Shylock:

*Though justice be thy plea, consider this,
That in the course of justice none of us
Should see salvation. We do pray for mercy.¹⁵*

Inspector Javert

I believe that we mortals, in our daily dealings and judgments, can focus too much on justice and too little on mercy. The figure of justice unrestrained is personified by the character Inspector Javert in Victor Hugo’s classic novel *Les Misérables*. Javert, you will recall, is the tormentor of Jean Valjean and the unyielding force of the law that imprisoned Valjean for stealing a loaf of bread. Javert haunts and pursues Valjean, ever seeking to enforce the law in the strictest manner possible. In Javert’s black-and-white worldview, law and justice are the only virtues.



The effect of Javert’s relentless pursuit of justice is, ironically, to create injustice in the life of Jean Valjean. Untempered by mercy, Javert’s justice fails to account for Valjean’s goodness and his efforts to improve his life and the lives of others.

This all changes when Valjean extends mercy to Javert by sparing his life at the barricade. To his great horror, Javert begins to see both the goodness in Valjean and the injustice of his own actions. Hugo provides this remarkable description of the dawning of mercy in Javert’s heart:

An entire new world appeared to his soul; favour accepted and returned, devotion, compassion, . . . respect of persons, no more final condemnation, no more damnation, the possibility of a tear in the eye of the law, a mysterious justice according to God going counter to justice according to men. [Javert] perceived in the darkness the fearful rising of an unknown moral sun; he was horrified and blinded by it. An owl compelled to an eagle’s gaze.¹⁶

With mercy now a part of his being, Javert is confronted with an impossible dilemma: does he impose justice and arrest Valjean for violating his parole, or does he extend mercy and disregard his duty under the law? Hugo writes:

[Javert] saw before him two roads, both equally straight; but he saw two; and that terrified him—him, who had never in his life known but one straight line. And, bitter anguish, these two roads were contradictory. One of these two straight lines excluded the other. Which of the two was the true one?¹⁷

THE DAY OF RECKONING HAS ARRIVED, THE IMPOSITION OF JUSTICE IS SURE, AND THE DEFENDANTS STAND VIRTUALLY POWERLESS BEFORE THE LAW. IT IS A VERY SOBERING THING TO SEE.

Javert ultimately cannot reconcile justice and mercy. He cannot be true to the compassion he now feels in his heart and the duty he owes to the law, so he takes his own life. It is a sad ending for Javert, but it reflects a very real dichotomy. Without an intermediary, justice and mercy cannot be reconciled. Without an intermediary, justice always wins. For, as Abinadi said, even God “cannot deny justice when it has its claim.”¹⁸

GRATITUDE FOR THE SAVIOR

This brings me to the renewed gratitude I feel for the Savior. I will mention four aspects of that gratitude.

1. Rescued from Justice

The Atonement not only rescues us from death and hell, but it rescues us from justice. One of my favorite descriptions of the Savior in the Book of Mormon describes Him as “being filled with compassion towards the children of men; *standing betwixt them and justice.*”¹⁹ Having seen the workings of justice up close, I am profoundly grateful that Jesus stands between me and justice.

Alma’s description is apt:

And thus we see that all mankind were fallen, and they were in the grasp of justice; yea, the justice of God, which consigned them forever to be cut off from his presence.

And now, the plan of mercy could not be brought about except an atonement should be made; therefore God himself atoneth for the sins of the world, to bring about the plan of mercy, to appease the demands of justice, that God might be a perfect, just God, and a merciful God also.”²⁰

Amulek similarly explained:

And thus mercy can satisfy the demands of justice, and encircles them in the arms of safety, while he that exercises no faith unto repentance is exposed to the whole law of the demands of justice.”²¹

What beautiful imagery: the Savior’s mercy satisfies justice and encircles us in the arms of safety.

2. An Act of Pure Love

The passages I have read from the Book of Mormon, and others like them, suggest that justice has some form of independent existence, a standing even God respects. The same is not said of mercy. Mercy, it appears, is a gift, an act of pure love. But it is a very deliberate, carefully planned gift—so much so that Alma referred to the plan of salvation as “the plan of mercy.”²² Jacob called it “the merciful plan of the great Creator.”²³ The plan reflects the Savior’s character. President

J. Reuben Clark said, “He’s all love, all mercy, all charity, all understanding.”²⁴

Another of my favorite descriptions of the Savior was provided by Mormon and illustrates, I believe, the Savior’s feelings about mercy and about us:

Christ hath ascended into heaven, and hath sat down on the right hand of God, to claim of the Father his rights of mercy which he hath upon the children of men[.]

*For he hath answered the ends of the law, and he claimeth all those who have faith in him.*²⁵

Jesus *claims* from the Father the right to extend mercy to you and me. He wants to do it. And I believe He would want to do it if you or I were the only person on earth to be saved. The Book of Mormon says that the Savior’s work of salvation will continue “so long as time shall last, or the earth shall stand, or there shall be *one man* [or *woman*] upon the face thereof to be saved[.]”²⁶ President Clark said:

I believe that our Heavenly Father wants to save every one of his children. . . .

*I believe that his juridical concept of his dealings with his children could be expressed in this way: . . . that in his justice and mercy he will give us the maximum reward for our acts, give us all that he can give, and, in the reverse, I believe that he will impose upon us the minimum penalty which it is possible for him to impose.*²⁷

We should also remember that God’s mercy involves more than helping us avoid the suffering imposed by justice. It also extends to us the opportunity to become like the Savior. The conditions Christ sets for receiving the blessings of His Atonement do not simply involve our repaying a debt for our sins; they involve our doing the very things that will make us like Him. That is what He asks in exchange for His mercy—that we become glorious. His objective is not to save us from the pain of justice but to exalt us. Owls invited to the gaze of eagles.

3. An Omniscient Judge

I have learned that it can be very hard to determine reality. Two honest people can have the same experience and come away with very different memories. Two jurors



can listen to the same person testify and come away with opposite opinions about his or her honesty. Recently I tried an excessive force case in which the plaintiffs claimed that a police officer used excessive force in causing the death of their father. The incident was captured on a video camera the officer wore on his chest. And yet, even with the incident captured on videotape and clear jury instructions as to what constitutes excessive force, the jury split five to three on whether the officer’s force was excessive. It can be very hard to determine the truth.

Although our legal system is, in my opinion, the best ever designed for finding the truth, it is not perfect. Javert came to such a realization as he stood on the bridge over the River Seine. In the human pursuit of justice, he saw that

*infallibility is not infallible, there may be an error in the dogma, all is not said when a code has spoken, society is not perfect, authority is complicate[d] with vacillation, a cracking is possible in the immutable, judges are men, the law may be deceived, the tribunals may be mistaken!*²⁸

I have had to impose sentences in cases in which I did not know the whole truth. I have had my view of a criminal defendant greatly changed when I have read the heart-wrenching history of his or her life. I have learned that our prisons contain many basically good people—people whose life’s circumstances have caused, in significant degree, the course that led them to my courtroom. More than once I have left the bench saying to myself that if I had been born in the circumstances in which that person was born, I would have been the one sentenced that day.

I am grateful to know, therefore, that we will have an Eternal Judge who is not only merciful but also omniscient. The Lord told Samuel that He “seeth not as man seeth; for man looketh on the outward appearance, but the Lord looketh on the heart.”²⁹ In modern revelation He has said, “I, the Lord, will judge all men according to their works, according to the desire of their hearts.”³⁰ I suspect we will be surprised on the Day of Judgment when the Lord judges some people very differently than we have judged them.

I have also come to realize that God’s omniscience works both ways. Looking closely into the lives of the people I sentence has caused me to wonder how much credit I can take for the supposed goodness in my own life. Could it be that I, like many of those who appear in my courtroom, am largely a product of my circumstances? Now, I am not doubting the importance of agency. But I was born and raised in a good home, with loving parents and wonderful siblings; I was taught the gospel in my youth and was afforded the privilege of an education; I was raised in a strong, prosperous, and free country and was blessed to marry a wonderful woman. I worry that I may pat myself on the back for so-called accomplishments that are more the product of my circumstances than my volition. An omniscient judge will

GOD'S MERCY INVOLVES MORE THAN HELPING US AVOID THE SUFFERING IMPOSED BY JUSTICE. IT ALSO EXTENDS TO US THE OPPORTUNITY TO BECOME LIKE THE SAVIOR.

understand that. I should focus very carefully, therefore, on being “anxiously engaged in a good cause, . . . do[ing] many things of [my] own free will, and bring[ing] to pass much righteousness.”³¹

4. Our Advocate

Finally, I am grateful that Jesus is our advocate. Paul tells us that Christ will plead our cause before the Father.³² From modern revelation we know what He will say. Listen carefully:

Father, behold the sufferings and death of him who did no sin, in whom thou wast well pleased; behold the blood of thy Son which was shed, the blood of him whom thou gavest that thyself might be glorified;

*Wherefore, Father, spare these my brethren that believe on my name, that they may come unto me and have everlasting life.*³³

Jesus as our advocate before the Father will not be talking about our merits or our actions—He will be talking about His. In another scripture the Lord says, “[B]y the virtue of the blood which I have spilt, have I pleaded before the Father for [you].”³⁴ Mercy will be extended to you and to me not because of what we have done but because of what He has done. Lehi said, “[T]here is no flesh that can dwell in the presence of God, save it be through the merits, and mercy, and grace of the Holy Messiah.”³⁵ We are entirely—completely—dependent upon Him.

CONCLUSION

Alma taught his son Corianton about justice and mercy to help Corianton repent and draw closer to the Lord. Alma closed his words to Corianton with this appeal:

*O my son, I desire that ye should deny the justice of God no more . . . but do . . . let the justice of God, and his mercy, and his long-suffering have full sway in your heart; and let it bring you down to the dust in humility.*³⁶

The Lord has given us very precise teachings about justice and mercy in the Book of Mormon. They run throughout the entire book. These teachings have come to life as I have been called upon to don the robe and pass judgment on my fellow men and women. What I do on the bench is but a dim whisper of the role Jesus will play as our Eternal Judge, but it is real enough to bring home the searing demands of justice and the saving sweetness of mercy. It is my hope that we will do as Alma counseled and let justice and mercy and the Lord’s long-suffering have

“full sway” in our hearts. If we do so now, I believe we will qualify for mercy then. In the name of Jesus Christ, amen. [cm](#)

NOTES

- 1 The federal sentencing guidelines were originally mandatory but were made advisory by the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005).
- 2 18 U.S.C. § 3553(a).
- 3 See 18 U.S.C. § 924(a)(1)(A).
- 4 2 Nephi 9:26; Mosiah 2:38, 15:9; Alma 34:16, 42:15, 42:24.
- 5 Jacob 6:10.
- 6 3 Nephi 29:4.
- 7 Alma 42:14.
- 8 Alma 42:22.
- 9 Boyd K. Packer, “The Mediator,” *Ensign*, May 1977.
- 10 D&C 107:84.
- 11 Mosiah 15:27. This, of course, is because God is just. See 2 Nephi 1:10, 26:7; Mosiah 16:1, 27:31, 29:12; Revelation 15:3.
- 12 Alma 42:13; see also 2 Nephi 2:13; Alma 12:32, 42:22, 42:25; Mormon 9:19.
- 13 See Alma 42:25.
- 14 See Mosiah 4:19.
- 15 William Shakespeare, *The Comedies of William Shakespeare, The Merchant of Venice*, 597, 660 (The Easton Press 1980).
- 16 Victor Hugo, *Les Misérables*, 1108 (Barnes & Noble 1996).
- 17 *Id.* at 1106.
- 18 Mosiah 15:27.
- 19 Mosiah 15:9; emphasis added.
- 20 Alma 42:14–15.
- 21 Alma 34:16.
- 22 Alma 42:15.
- 23 2 Nephi 9:6.
- 24 J. Reuben Clark, “As Ye Sow,” BYU devotional address, May 3, 1955 (audio).
- 25 Moroni 7:27–28.
- 26 Moroni 7:36; emphasis added.
- 27 J. Reuben Clark, *Conference Report*, October 1953, at 84.
- 28 Hugo, *supra* note 16, at 1110.
- 29 1 Samuel 16:7.
- 30 D&C 137:9.
- 31 D&C 58:27.
- 32 See Hebrews 9:24; see also 1 John 2:1.
- 33 D&C 45:4–5.
- 34 D&C 38:4.
- 35 2 Nephi 2:8; see also Titus 3:5.
- 36 Alma 42:30; emphasis added.

CALENDAR OF EVENTS

BYU LAW SCHOOL, BYU LAW ALUMNI, AND J. REUBEN CLARK LAW SOCIETY

2015

October 20

Founders Day Dinner | Grand America Hotel | Salt Lake City | 6:00 p.m.
An Evening with Justice Clarence Thomas

2016

January 22

J. Reuben Clark Law Society Annual Fireside | Conference Center Little Theater | Salt Lake City | 6:00 p.m.

February 11-13

J. Reuben Clark Law Society Annual Conference | University of San Diego School of Law | San Diego

April 2

General Conference Reception | Joseph Smith Memorial Building, 10th Floor | Salt Lake City | Noon

May 28

Washington Weekend | Supreme Court Swearing-In

August 15-19

J. Reuben Clark Law Society Education Week Attorney CLE | BYU

August 19

Alumni 1L Welcome Breakfast | BYU

August 25

Founders Day Dinner | Little America Hotel | Salt Lake City | 6:00 p.m.

September 28

JRCLS Women in Law Pre-Law Event | BYU

September 29-30

J. Reuben Clark Law Society Leadership Conference | BYU and Aspen Grove

October 1

General Conference Reception | Joseph Smith Memorial Building, 10th Floor | Salt Lake City | Noon

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For more information visit lawalumni.byu.edu or jrcls.org.





BYU LAW JUDICIAL CLERKSHIP PLACEMENTS

BYU Law School has an excellent record of producing graduates who secure judicial clerkships at the state and federal levels as well as students who participate in judicial externships. The Law School assists students and alumni seeking judicial clerkships and externships in many ways—namely by providing a clerkship faculty committee, trained Career Services personnel who can help navigate the application process, and an annual visiting jurist program in which students meet with judges to explore clerkship opportunities.

2010–2014 JUDICIAL CLERKSHIPS

	SCOTUS	FEDERAL APPELLATE	FEDERAL DISTRICT	STATE APPELLATE	OTHER	TOTAL
2010		3	3	3	11	20
2011		3	3	6	11	23
2012		11	5	5	12	33
2013		3	3	9	8	23
2014	1	5	3	2	9	20
Total	1	25	17	25	51	119

“Other” includes other federal courts (such as International Trade, Tax, and Federal Claims), state trial courts, and foreign courts.

2012–2014 JUDICIAL EXTERNSHIPS

	SCOTUS	FEDERAL APPELLATE	FEDERAL DISTRICT	STATE APPELLATE	OTHER	TOTAL
2012		6	16	14	44	80
2013		6	23	21	45	95
2014		6	23	22	28	79

“Other” includes the U.S. Bankruptcy Court, state district courts, and the Navajo Nation.



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