

Spring 2017

Clark Memorandum: Spring 2017

J. Reuben Clark Law School

BYU Law School Alumni Association

J. Reuben Clark Law Society of the 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 of the J. Reuben Clark Law School, "Clark Memorandum: Spring 2017" (2017). *The Clark Memorandum*. 61.
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CLARK MEMORANDUM

J. Reuben Clark

Law School

Brigham Young

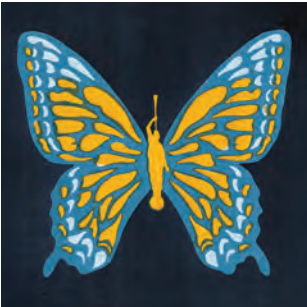
University

Spring 2017



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TO WONDER

DURING A RECENT TRIP to India for the Law School's International Center for Law and Religion Studies, I visited the Taj Mahal, the Amer Fort, the Jagdish Temple, and many other spectacular sites. My travel companions often invoked the word *wonderful*, and after I heard this exclamation for the umpteenth time, my memory transported me back to a book I read for a high school English class.

One of the characters in Kurt Vonnegut's science fiction novel *Cat's Cradle* is Felix Hoenikker, a scientist who received the Nobel Prize in physics for his work on the atomic bomb and who later created a substance called ice-nine, which ultimately was responsible for the destruction of the earth.

Hoenikker is based on a real-life scientist, Irving Langmuir, who won a Nobel Prize in chemistry in 1932. Vonnegut worked with Langmuir at the General Electric Research Laboratory, and Vonnegut viewed Langmuir as a person who was "purely interested in truth" and "indifferent to what became of" his discoveries. Thus, Vonnegut portrayed Hoenikker as having a chilling casualness toward his frightening work.

I still recall as a young teenager reading Hoenikker's Nobel Prize acceptance speech: "Ladies and Gentlemen, I stand before you now because I never stopped dawdling like an eight-year-old on a spring morning on his way to school. Anything can make me stop and look and wonder, and sometimes learn. I am a very happy man. Thank you."

**In a time of great
turmoil, wonder seems
like a useful antidote
to cynicism and despair.**

Although the notion that innocent curiosity could lead to the destruction of the world was intended to be jarring, I found something deeply appealing about an adult who maintained a sense of wonder at the world. Surely one can exhibit this trait without also being indifferent to the fate of humanity.

Indeed, for those of us with a religious bent, wonder is best understood as a way of praising God. We all recall the prophet Isaiah foretelling the "marvellous work and a wonder" (Isaiah 29:14) that is the Restoration of the gospel. The same prophet told us that one of the names of Jesus Christ is "Wonderful" (Isaiah 9:6). After Peter saw the empty sepulchre, he departed, "wondering in himself at that which was come to pass" (Luke 24:12). More recently, Oliver Cowdery—the first Mormon lawyer—said that the experience of hearing the voice of Jesus and receiving the Aaronic priesthood from John the Baptist left him feeling "wonder and thanksgiving" (Joseph Smith—History 1:71, footnote).

The word *wonder* suggests surprise or astonishment. It is, as Vonnegut implied in the words he supplied to Hoenikker, distinct from learning. It is also, as Oliver Cowdery implied, distinct from thanksgiving. It is simply the capacity to marvel. In a time of great turmoil, wonder seems like a useful antidote to cynicism and despair.

Many of us feel the impulse to marvel at the works of God. As implied by Felix Hoenikker, however, wonder should not be confined to grand events. I have often wondered at the chain of small decisions that have taken me from a small farm in west-central Wisconsin to various places around the United States. During my time as dean, I have developed a profound sense of wonder about the Law School. I marvel at the goodness of our students, the wisdom of my colleagues, and the accomplishments of our alumni. As you read this latest edition of the *Clark Memorandum*, I hope you will take a moment to wonder at the magnitude of the work in which we are engaged.



Warm regards,

D. GORDON SMITH

Dean and Glen L. Farr Professor of Law

A
GRAD
UGATE PROGRAM
OF REAL
CONSEQUENCE

*The Role
of the
Law School
at BYU*

KEVIN J WORTHEN

PRESIDENT OF BRIGHAM YOUNG UNIVERSITY

PHOTOGRAPH BY BRADLEY SLADE



W

hat a pleasure it is to be with you this evening. It feels like I am back home. While I value all of our programs at the university, I will openly confess that the Law School holds a special place in my heart. It is a place that has greatly shaped my life, both as a student and as a faculty member.

THE MISSION OF BYU

Those who have followed my tenure as president know that my focus from the outset has been on the mission statement of the university, a foundational document approved by the BYU Board of Trustees in 1981. It sets forth the key principles that guide the university. Many of you will be familiar with the first sentence of the mission statement, which indicates that, in its broadest sense, our mission as a university “is to assist individuals in their quest for perfection and eternal life.”¹ We are to provide what President Spencer W. Kimball called an “education for eternity,”² an education that, in the language of The Aims of a BYU Education, is “(1) spiritually strengthening, (2) intellectually enlarging, and (3) character building, leading to (4) lifelong learning and service.”³

A quick review of the mission statement makes two things very clear:

First, our primary focus is on teaching students. That may seem obvious. You may think that every university focuses on teaching students; that is why they exist. That is true. But at many universities the size of BYU, the focus on teaching students is counterbalanced against an emphasis on faculty research, with students sometimes relegated to coequal or even secondary status in some decisions. While research is an important part of what happens at BYU, various features of the mission statement remind us that students must remain the central priority.

For example, the word *students* appears in the mission statement seven times. The word *faculty* appears twice. The word *administrators* appears only once. Although I am quite confident that the authors of the mission statement did not engage in a careful word count to ensure that the relative importance of each group was precisely represented in the numeric ratio, the relative use of each term serves as a reminder that our mission focuses on the students—and not on the faculty or anyone else.

Second, consistent with the emphasis on students, the vast majority of the mission statement focuses primarily on undergraduates and what they should learn. The description of the type of education students are to receive is geared primarily to undergraduates. According to the mission statement, students are to receive a broad general education with in-depth learning and instruction in a selected major field.⁴ In other words, they are to receive a traditional liberal arts and sciences undergraduate education.

The following is the J. Reuben Clark Law School Founders Day address delivered on September 1, 2016.

OUR MISSION AS A UNIVERSITY

“IS TO ASSIST INDIVIDUALS IN THEIR QUEST

FOR PERFECTION AND ETERNAL LIFE.”

Our enrollment numbers reflect that same undergraduate focus. We have approximately 33,000 full-time students, of which 30,000 are undergraduates; only 3,000 are graduate students. At many major universities the balance is much closer to 50/50 or in some cases is even weighted more heavily in favor of graduate students.

Thus the mission statement makes clear that BYU is primarily an undergraduate teaching institution, not a graduate research institution. The only reference to graduate programs in the mission statement is in a single phrase indicating that research should be encouraged among both faculty and students, “including those in selected graduate programs *of real consequence*.”⁵

Given that undergraduate emphasis, one might ask, What is the role of the Law School in fulfilling the mission of BYU? This is a question I first began to ask myself when, as dean of the Law School, I realized that I was the only dean on campus who had absolutely no undergraduates in my college—not necessarily a comfortable position at a university whose primary focus is on undergraduates. So as I sat in Deans Council, I began to ask myself, How does a purely graduate program like the Law School fit in a place like BYU?

This evening I would like to offer some thoughts on that question. What can—and should—be the role of a law school at a university like BYU, whose clear focus is on



undergraduate learning? Or, to use the terminology of the mission statement, what does it mean to be a graduate program “of real consequence” at BYU, and does the Law School fit that definition?

LAW SCHOOLS IN AMERICA’S HISTORY

The question of how a law school should fit into the larger university is one that has been debated for much of America’s history. Although the early European universities included law as one of the central subjects to be studied,⁶ at the time of the American Revolution most lawyers entered the profession via an apprenticeship.⁷ Legal education was simply not a feature of most universities at the time.⁸

That trend continued through the 19th century as well. Most lawyers in the 1800s began the practice of law without ever attending law school. They became lawyers the way Abraham Lincoln did, by reading the law part-time. Today’s first-year law students may contemplate with envy the scene described by one of Lincoln’s friends: the future lawyer-president learned his craft by sitting under an oak tree reading law books day after day, moving around the tree to keep in the shade.⁹

That sure beats sitting in a sterile classroom, waiting fearfully to hear the sound of your name called by professors who seem to expect you to already know what you thought they would teach you.

By the end of the 19th century there were law programs at a number of universities. Still, an 1891 report found that only one in five lawyers admitted that year had been to law school, and no state required law school attendance as a condition of admission to the bar.¹⁰

Moreover, even where there were law schools, there were serious questions about whether they belonged in a university. Many academics in other fields viewed legal education as vocational training, an endeavor they considered beneath the dignity of institutions dedicated to the lofty ideals of a liberal arts education. The second-class status of early law programs within their universities was demonstrated by the fact that, in 1901, “opponents of Georgetown’s athletics program were irritated to discover [that] a disproportionate number of Georgetown’s athletes [were] enrolled in the law school.”¹¹ In the eyes of many, law school courses were the “underwater basket-weaving classes” of their time.

The relatively low esteem in which law schools were held is further illustrated by the fact that no one thought it odd that future Supreme Court Justice Hugo Black was not accepted into the college of arts and sciences at the University of Alabama in 1904 but was admitted without difficulty to that university’s school of law that same year.¹²



I LIKEWISE FELT THAT THE ATMOSPHERE OF HONOR,
INTEGRITY, PATRIOTISM, AND BENEVOLENCE PREVAILING AT
BRIGHAM YOUNG UNIVERSITY WOULD BE A GOOD
INFLUENCE UPON A LAW SCHOOL AND ITS STUDENT BODY.

—MARION G. ROMNEY

Summarizing the views of many academics at the time, Thorstein Veblen asserted in 1918 that “the law school belongs in the modern university no more than a school of fencing or dancing.”¹³

This thinking slowly changed as legal education moved toward a graduate school model. At the beginning of World War I, only two law schools—at Harvard and the University of Pennsylvania—required undergraduate degrees as a condition of admission.¹⁴ Others began to impose that requirement but essentially provided open enrollment to anyone with a college degree, often failing out a large number of students after admission.¹⁵ Yale led the way toward selectivity by limiting its class size to 100 students in 1926 and, in 1928, becoming the first school to require an aptitude test in addition to a college degree.¹⁶

Over time law schools became more selective and more academic, and as a result they began to gain greater stature within the university system. Today most universities with law schools proudly point to them as examples of excellence within the university. I think few, if any, quibble about whether law schools belong at a university.

One reason the debate ended is that, over time, law schools became profit centers for their universities. Because the faculty-student ratio in law school is so much higher than that of most graduate programs and because legal research does not require expensive labs or equipment, law schools cost much less per student than most graduate programs, and they typically produce excess revenues that they share with the university. It is easy to welcome as a member of the university a program that regularly generates revenue for the university. By that monetary measure, law schools have generally been “of real consequence” to their universities for quite some time. However, the recent dramatic decline in law school applications may alter the way universities think about their law schools. As enrollments, and therefore revenues, decrease, some universities now find themselves in the position of subsidizing their law schools. My guess is that the term “of real consequence” may be used in quite a different way in conversations between those law schools and universities today.

THE LAW SCHOOL’S ROLE AT BYU

Fortunately, because of BYU’s unique funding model—under which basic funding is provided by our sponsoring Church—tuition does not provide the major source of funds for either the Law School or the university. As a result, the Law School’s role at the university has never been defined in financial terms. At BYU we must look for some nonmonetary definition of what it means to be a graduate program of real consequence.

Key insights into what elements might be included in that definition at BYU come from a speech given by President Marion G. Romney at the dedication of the Law Building in 1975. President Romney was one of the prime movers in the establishment of the BYU Law School. Thus it was appropriate, and instructive, for him to explain, in his words, why he “used such influence as [he] had” to establish the Law School.¹⁷ President Romney gave

several reasons, three of which I want to highlight tonight.

First, he said, “I have long felt that no branch of learning is more important to an individual or to society than law.”

Second, he said, “I further felt that the educational base at Brigham Young University—the flagship of our Church educational system—would be and should be broadened by the establishment of a law school.”

Third, he said, “I likewise felt that the atmosphere of honor, integrity, patriotism, and benevolence prevailing at Brigham Young University would be a good influence upon a law school and its student body.”¹⁸

The latter two reasons seem particularly relevant to my topic because they directly address the relationship between the university and the Law School, so I will begin with those. But, as I will explain later, I believe that the first reason also sheds clarifying light on why we could consider this law school a graduate program of real consequence at BYU.

With respect to the second and third reasons identified by President Romney, I note the focus on both the impact the Law School could have on the university and the impact the university could have on the Law School. President Romney seemed to envision a symbiotic relationship in which each entity would be helped by cooperating with the other.

In the interest of time, I will not describe in much detail the things the university can do to enhance the Law School, but let me point out one thing by way of instruction and advice for the law students here. The

language President Romney used to describe the positive impact the university would have on the Law School is interesting. He said it was “*the atmosphere* of honor, integrity, patriotism, and benevolence prevailing at Brigham Young University [that] would be a good influence upon a law school and its student body.”¹⁹ It is the atmosphere—the environment, not some specific university program or service—that would benefit the Law School and its student body.

I don’t know exactly what President Romney had in mind, but when I think about the atmosphere that prevails among the undergraduates at BYU, I picture the thousands of 18- to 20-year-olds in the freshman class I greeted just today. They are extremely optimistic, enthusiastic, and, yes, maybe a little naïve. But they radiate goodness and warmth. And I hope that their optimism and enthusiasm are a bit contagious. The study of law can breed cynicism and pessimism. And although you need to advance beyond the level of the somewhat clueless naïveté that afflicts some of the undergraduates on our campus, I hope you follow Elder Bruce C. Hafen’s important admonition to “view things not only with [your] eyes wide open but with [your] hearts wide open as well”²⁰ and “to be as childlike as [your legal] education has taught [you] to be tough-minded.”²¹ If you find yourself becoming too jaded, too cynical, and too combative—or if others find you that way—I urge you to wander across the rest of campus or attend a student performance or a devotional and soak in the refreshing and rejuvenating atmosphere that these wonderful undergraduates help create on campus. Your life and the lives of your loved ones will be much better in law school if you do.

Helping the University Accomplish Its Mission

With that observation and invitation, let me now turn to the other part of President Romney’s vision: what the Law School can do to help the university accomplish its mission. As I noted, the primary focus of the university is on our undergraduate students. One might think that, as a solely graduate program, the Law School might have little or no impact on that portion of the student body. But that is not the case.

In his most recent annual report to the university, Dean D. Gordon Smith outlined three ways in which the Law School directly enhances the educational experience of our undergraduates. First, in the past few years Law School faculty members have developed and taught undergraduate classes—such as Brigham Daniels’s course on environmental policies and Justin Collings’s course on the history and workings of the U.S. Supreme Court.

Second, some Law School faculty have also responded to the university’s emphasis on undergraduate mentoring by involving undergraduates in their research projects. For example, this last year Dean Smith, David H. Moore, and D. Carolina Núñez employed 13 BYU undergraduates in their Law and Corpus Linguistics Project. Another 24 undergraduates provided more than 1,300 hours of volunteer time on that project.

Third, law faculty have also been increasingly involved in interdisciplinary work with other faculty members on campus. These collaborations are developing into faculty “clusters,” which lie somewhere between completely informal and ad hoc collaborations to more formal ongoing research and curriculum projects. Clusters have developed on such topics as law and entrepreneurship—with professors Curtis Anderson, Clark D. Asay, Stephanie P. Bair, A. Christine Hurt, and Matthew Jennejohn as well as Dean Smith joining faculty from the Marriott School of Management—and there is a cluster on opportunity and development in which David Moore, Carolina Núñez, and Michalyn Steele are working with faculty from Political Science and Sociology to address issues involving economic and other development in underserved areas.

This outreach to undergraduates and undergraduate programs should never become the principal focus of the Law School. The Law School’s primary role is, and needs to remain, to provide an excellent legal education to our law students. But these examples demonstrate that the recent changes to the west entrance of the Law School are symbolic of a larger movement connecting the Law School to the rest of the university.

The Law School has, over the years, also made a disproportionate contribution to university leadership. The 36 full-time faculty members at the Law School constitute less

than 3 percent of the more than 1,400 full-time faculty members at the university. Yet three of the six BYU presidents—50 percent—who have served since the Law School opened its doors 43 years ago have been Law School faculty members. In that same time period, law faculty members have also served in the university administration as provost, associate academic vice president (two of them), assistant to the president, and faculty athletic representatives to the NCAA (again, two of them). Numerous other faculty members have headed up important committees or other endeavors at the university. Kent D. Syverud, the president of Syracuse University and a former law dean at two other law schools, observed that this is because a “law school . . . is genuinely a group of people who are problem solvers, and [they] can be deployed on problems across the university.”²²

Dean James R. Rasband often described a law degree as a degree in leadership.²³ While one may question the quality of the current university leadership, BYU provides ample evidence of the truth of that observation. The Law School has provided extraordinary leadership to the university and will continue to do so.

The Law School also has a positive impact on the university in a number of other less direct but often equally important ways. To cite one example, one of the great challenges currently encountered by religiously affiliated universities, including BYU, is the dramatic increase in regulations that create pressure for those universities to abandon some of their religious norms in order to accommodate other values. In many cases a religious university’s ability to continue to pursue its own distinctive vision of education and life will ultimately depend on the extent to which religious liberty is recognized and enforced as an important legal and cultural norm in American society.

The Law School again has a disproportionate role in helping the university in that regard. The work of the International Center for Law and Religion Studies has an enormous positive impact on the entire university in that respect, not only because of the influence it has on the development of legal norms throughout the world but also because of the relationships it creates with

other scholars and religious liberty advocates, who often become key allies in matters directly affecting the university.

Less obvious are the contributions made by the Law School itself in dealing with such sensitive issues. For a variety of reasons, the Law School is often the first unit in the university to face the challenges that arise when our religious values conflict with other norms. And the positive and productive way the Law School has handled those matters provides guidance to the university on how to work through such issues. In those endeavors the Law School has also built relationships of trust with external entities and developed expertise that the university can draw on when it faces those same issues.

There is a good reason why former Law School dean James D. Gordon III heads up the accreditation efforts of the university. I daresay that no one on campus has thought as deeply about or had as much experience with such important and sensitive issues as has Jim. That expertise and experience alone would be of enough value to qualify the Law School as a program of real consequence for the university.

There are other indirect benefits that the Law School provides to the university, some of which are even less obvious. As one example, let me return to President Romney's observation about what impact he hoped the Law School would have on the university.

The language President Romney used to describe that impact might be a bit surprising to those familiar with the nature of most graduate programs. He indicated that "the educational base" of the university "would be and should be *broadened* by the establishment of a law school."²⁴ If asked to describe the purpose of most graduate programs, few academics would use the word *broaden*. *Deepen* maybe—but not *broaden*. Most graduate programs require students to narrow their focus—to become more specialized—so they can study the narrower subject more in depth. There is some truth to the old saying that as one ascends the academic ladder from an associate's degree to bachelor's, master's, and doctoral degrees, students learn more and more about less and less until they know everything about nothing.

Yet President Romney chose the word *broaden*. He may have simply been indicating that by adding another program to the university, the university's educational offerings would be expanded. But I suspect that President Romney, who was very careful in the language he used, intended to convey something more significant than that self-evident truth. I believe he was saying something about a distinctive and extremely valuable aspect of a graduate *legal* education. Dean Rasband articulately made a similar point in his remarks to entering law students, as recorded in the latest edition of the *Clark Memorandum*:

*If you consider the nature of most graduate education, its purpose is to narrow your field of vision and train you as an expert in a particular field, the classic example of which is a dissertation on a narrow subject on which no one else has written. The study of law, by contrast, is designed to broaden your field of vision and equip you with the tools to make judgments across the full range of human experience.*²⁵

Legal education is different from most other graduate programs. It is not a more focused study of topics already covered in the undergraduate years. It is a new way of approaching problems, a new way of thinking about matters, even a new, empathetic way of thinking and feeling about people.



WE ARE
HELPING PREPARE
STUDENTS
FOR A
POSTMORTAL
LIFE IN
WHICH THEY CAN
KNOW ALL
THINGS.

A graduate program that aims to broaden one's horizons, to start anew after finishing college, contributes to the mission of the university by providing a living reaffirmation of BYU's commitment to lifelong learning—learning not just in a particular topic but on every topic.

And at BYU that kind of lifelong learning is especially important. In describing the broad general education we hope to provide our undergraduate students, the mission statement contains an important introductory phrase explaining the reason why a broad education is important to us. It reads, "*Because the gospel encourages the pursuit of all truth*, students at BYU should receive a broad university education."²⁶ We don't provide a broad general education for our students just so they can be well versed enough to be interesting company at dinner parties and receptions. Our educational goals go well beyond that. We are helping prepare students for a postmortal life in which they can know all things.

Having a graduate school that focuses on broadening rather than narrowing things provides a powerful reinforcement of that message. It makes clear that the broadening form of learning that is at the heart of our general education requirements should not, and does not, end with the receipt of a bachelor's degree but extends into one of our most visible graduate programs and even beyond that.

That more amorphous but potentially longer-lasting contribution of the Law School to the university's mission underscores another significant role the Law School can play in helping the university achieve its main goal—the goal of assisting "individuals in their quest for perfection and eternal life."

Assisting in the Quest for Perfection and Eternal Life

In the long run, our primary purpose as a university is to help our students acquire the knowledge, attributes, and character that will enable them to realize their full potential as "a beloved spirit son or daughter of heavenly parents" with "a divine nature and destiny."²⁷ We do not provide all they need to attain that lofty status. Ultimately, the full realization of that goal requires adherence to the key principles of the plan of salvation, including receiving saving ordinances, making and keeping sacred covenants, and adhering to the other commandments that God has given us. Most of all it is dependent on our accessing the enabling, sanctifying, and transforming powers that Christ makes available to us through His great atoning sacrifice.

The university cannot accomplish those things, but I believe there is still a role for it to play in that celestializing process for all our students, including law students. We are to "provide a period of intensive learning,"²⁸ not just in abstract principles of temporal knowledge but also in actual character and skill development.

Earlier in my life I believe I had misconceived the full purpose of our mortal experience. In my undergraduate years I thought of life as a longer version of an academic course—"Earth 101," if you will. The primary purpose of the course was to learn enough from life's experience to pass the final exam. And once that happened—once we graduated to the next level of our existence—we could forget what we had learned in this life, just as I quickly forgot much of what I had learned while cramming for a test once the final was over.

Over the years I have come to appreciate that God effectively and efficiently uses this mortal period of our existence not just to test our ability to survive in this fallen world with all its challenges but also to help us develop the skills and attributes that will enable us to realize our full potential in the next life—to develop what I have come to call celestial skills and attributes, those characteristics that celestial beings possess.

Most of those characteristics are developed by adherence to the commandments with which we are all familiar. But I believe that God in His economy also provides us with opportunities to develop celestial skills in our day-to-day lives and that skills we might think are valuable only in helping us succeed in our temporal affairs are actually celestial skills that we will use in the next life. To use one example, I believe that the ability to counsel with councils not only is a skill set that will help us in our temporal affairs in this mortal existence but is one that we will continue to use—and will need to perfect—if we are to be exalted.

I suggest that some of the skills we learn and develop in law school may be celestial skills. As I mentioned, the skill of lifelong learning is not just an aid in making ourselves interesting

and interested through our retirement years. It is a celestial skill that we will need to acquire if we are to be like God. I don't think Brigham Young was exaggerating when he said, "When shall we cease to learn? I will give you my opinion about it: never, never."²⁹ Brigham Young also observed, "We do not expect to cease learning while we live on earth; and when we pass through the veil, we expect still to continue to learn and increase our fund of information."³⁰ Lifelong learning, an attribute law school helps us develop, is—in my view—a celestial attribute.

I think there are other celestial skills law school can help us develop. For example, it seems to me that the ability to frame and use questions—a skill widely practiced and modeled in law school—is a skill we may readily employ in the next life. Elder Marlin K. Jensen eloquently explained this in a Law School graduation speech a few years ago:

The use of . . . interrogatories by a loving and wise Heavenly Father guides us. The technique enables him to raise relevant issues, to encourage our thoughtful analysis of them, and then to leave us to the exercise of our agency to act. It sounds almost lawyerlike; but I would prefer to describe the process as godlike.³¹

Similarly, legal education should enhance our ability to empathize with others, to see things from their vantage point, and to understand more fully how they think and feel. Those are skills that help lawyers in the practice of law, but they are also skills that have eternal significance. Let me share what I observed in a different setting:

While the traditional study of law emphasizes the utilitarian importance of tolerating the views and differences of others, the laws of God require it as a manifestation of our love for God and His children.³²

The development of empathetic thinking and feeling that a legal education can promote may contribute to the development of our ability to love as the Savior loves and to truly possess charity, a central and essential celestial attribute.³³

My guess is that there are other celestial skills that this law school can help you develop. That may be one of the many

meanings behind President Romney's assertion that "no branch of learning is more important to an individual or to society than law."³⁴ If we follow President Romney's challenge to learn the laws of man "in the light of the 'laws of God,'"³⁵ we might discover that there is more glorifying light in a legal education than we may have supposed.

And so I end where I began, with the university mission statement. Let me suggest that, contrary to what I might have implied or expressed earlier, that document has more application to the Law School and the Law School experience than may appear at first glance. Even though graduate programs are not its main focus, the key components of the mission statement—especially our desire to "provide a period of intensive learning" to assist students "in their quest for perfection and eternal life"—are fully applicable to all BYU students, including—and maybe especially—BYU Law students. In that, if in no other way, the Law School provides a graduate experience of real consequence.

We may not know all the ways in which the Law School contributes to that mission, but I am confident that just as the Lord is "well pleased that there . . . be a school in Zion,"³⁶ He is well pleased that there be a law school in that school. I firmly believe that in the process of time we will come to view with greater appreciation—and maybe even reverence—the role the Law School plays both in influencing a world we wish to improve and in preparing souls for the world to come. May it be so is my prayer, in the name of Jesus Christ, amen. cm

NOTES

- 1 *The Mission of Brigham Young University and The Aims of a BYU Education* (Provo: BYU, 2014), 1.
- 2 See Spencer W. Kimball, "Education for Eternity," pre-school address to BYU faculty and staff, 12 September 1967; see also excerpted text in "Climbing the Hills Just Ahead: Three Addresses," in John W. Welch and Don E. Norton, eds., *Educating Zion* (Provo: BYU Studies, 1996), 43–63.
- 3 *Mission and Aims*, 5.
- 4 See *Mission and Aims*, 2: "Students at BYU should receive a broad university education. . . . In addition . . . , students should also receive instruction in the special fields of their choice."
- 5 *Mission and Aims*, 2; emphasis added.

- 6 Speaking of the University of Bologna, one author noted, "The first university to emerge in Italy after the long centuries of the Dark Ages begins as a law school" (Arthur Lehman Goodhart, "Law and the Universities," *Journal of Legal Education* 5, no. 1 [1952]: 2).
- 7 See Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983), 3.
- 8 A few proprietary law schools, completely separate from any college or university, sprang up in the later part of the 18th century, but these law schools were, in the words of one historian, "generally outgrowths of the law offices of practitioners who had shown themselves to be particularly skilled, or popular, as teachers" (Stevens, *Legal Education*, 3).
- 9 See Henry McHenry, quoted in Michael Burlingame, *Abraham Lincoln: A Life*, vol. 1 (Baltimore: Johns Hopkins University Press, 2008), 91.
- 10 See Stevens, *Legal Education*, 95.
- 11 Stevens, *Legal Education*, 38.
- 12 See Stevens, *Legal Education*, 37.
- 13 Thorstein Veblen, *The Higher Learning in America: A Memorandum on the Conduct of Universities by Business Men* (New York: B. W. Huesch, 1918), 211; quoted in Gilbert Geis, "Thorstein Veblen on Legal Education," *Journal of Legal Education* 10, no. 62 (1957): 62.
- 14 See Stevens, *Legal Education*, 45–46, note 22.
- 15 See Stevens, *Legal Education*, 46, note 22.
- 16 See Stevens, *Legal Education*, 160–61.
- 17 Marion G. Romney, "Why the J. Reuben Clark Law School?" dedicatory address and prayer for the J. Reuben Clark Law Building, 5 September 1975, law2.byu.edu/site/files/info/romneydedicatoryaddress.pdf.
- 18 Romney, "Why the Law School?"
- 19 Romney, "Why the Law School?"; emphasis added.
- 20 Bruce C. Hafen, *The Believing Heart: Nourishing the Seed of Faith*, 2nd ed. (Salt Lake City: Deseret Book, 1990), 69.
- 21 Hafen, *Believing Heart*, 73.
- 22 Kent D. Syverud, in "Higher Ed and Legal Ed: Partnering for Success in Challenging Times," panel sponsored by the Section for the Law School Dean at the 2015 Annual Meeting of the Association of American Law Schools, 3 January 2015, 36:36–48,

youtube.com/watch?v=O6mrzwGzoco&feature=youtu.be.

- 23 See, e.g., James R. Rasband, quoted in "Admitted Student Day," BYU Law School news, law2.byu.edu/news2/admitted-student-day.
- 24 Romney, "Why the Law School?"; emphasis added.
- 25 James R. Rasband, address delivered to entering BYU law students, 19 August 2015, published as "Law and Perspective," *Clark Memorandum*, spring 2016, 6; emphasis added.
- 26 *Mission and Aims*, 2; emphasis added.
- 27 "The Family: A Proclamation to the World," *Ensign*, November 1995.
- 28 *Mission and Aims*, 1.
- 29 Brigham Young, *Journal of Discourses* 3:203.
- 30 Brigham Young, *Journal of Discourses* 6:286.
- 31 Marlin K. Jensen, BYU Law School convocation address, 25 April 1997, published as "Answering God's Interrogatories," in Galen L. Fletcher and Jane H. Wise, eds., *Life in the Law: Answering God's Interrogatories* (Provo: J. Reuben Clark Law Society, BYU Law School, 2002), 7; originally published as "Where Art Thou? Answering God's Interrogatories," *Clark Memorandum*, fall 1997, 2–7.
- 32 Kevin J Worthen, address delivered to entering BYU law students, 18 August 2004, published as "The Essence of Lawyering in an Atmosphere of Faith," in Scott W. Cameron, Galen L. Fletcher, and Jane H. Wise, eds., *Life in the Law: Service and Integrity* (Provo: J. Reuben Clark Law Society, BYU Law School, 2009), 291; originally published in *Clark Memorandum*, fall 2004, 32–40.
- 33 See, e.g., Moroni 10:21; also Moroni 7:47.
- 34 Romney, "Why the Law School?" For other possible meanings of this phrase, see Kevin J Worthen, address delivered at the J. Reuben Clark Law Society Conference at Pepperdine University, Malibu, California, 16 February 2007, published as "Religiously Affiliated Law Schools: An Added Dimension," in *Life in the Law: Service and Integrity*, 56–58; originally published in *Clark Memorandum*, fall 2007, 10–21.
- 35 Marion G. Romney, quoting D&C 93:53, in "Becoming J. Reuben Clark's Law School," address delivered at the opening ceremonies of the first day of classes for the J. Reuben Clark Law School, 27 August 1973, law2.byu.edu/site/files/info/romneybecomingclarksschool.pdf.
- 36 D&C 97:3.

PROMOTING RELIGIOUS FREEDOM IN A SECULAR AGE

Fundamental Principles, Practical Priorities, and Fairness for All

*One of the keynote addresses
delivered at the Religious
Freedom Annual Review on July 7,
2016, in conjunction with
the International Center for
Law and Religion Studies*

HOLY BIBLE



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Elder Lance B. Wickman

GENERAL COUNSEL AND EMERITUS
GENERAL AUTHORITY OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY SAINTS

YOUR ULTIMATE HOTEL



THIS is an important conference. We need to meet together with the common purpose of preserving religious freedom and to discuss and debate both important principles and hard practical choices. We need to be better informed. We need to become more skilled in our ability to explain what religious freedom is and why it is so important. So I applaud you for coming, and I especially applaud those who have organized and nurtured this conference over the years, including Cole Durham, Elizabeth Clark, my beloved colleague and friend Bill Atkin—and too many others to mention. Thank you for all you do to defend religious freedom.

My topic today is the importance of upholding the fundamental right of religious liberty through the clear establishment of religious priorities. I will also speak about the practical and sometimes difficult compromises we make with fellow citizens whose priorities may be different from ours.

A FUNDAMENTAL RIGHT OF PARAMOUNT IMPORTANCE

Any discussion of upholding religious freedom must begin with the truth that religious freedom is a fundamental human right—a right that is essential to mortality’s central purpose of exercising our divinely granted moral agency to make righteous choices, which lead to eternal life. Religious liberty is the cocoon in which that agency is nurtured and thrives. It provides meaning and purpose to our families and relationships. It provides hope and assurance that this mortal sojourn, so often fraught with pain and sorrow, is not the end but only a step toward a glorious hereafter. It defines who and what we are—reaching deep into our very souls, our very identities. These reasons alone justify the protection of religious liberty as a fundamental human right.

Respecting religious freedom as a fundamental right means that law and society should afford sufficient space for people and institutions of faith to live out their deepest beliefs freely and openly. As Elder D. Todd Christofferson taught just a few days ago when he spoke on religious freedom at the Freedom Festival in Provo:

A robust freedom is not merely what political philosophers have referred to as the “negative” freedom to be left alone. . . . Rather, it is a much richer “positive” freedom—the freedom to live one’s religion or belief in a legal, political, and social environment that is tolerant, respectful, and accommodating of diverse beliefs.¹

Of course, religious freedom is not absolute. Limitations are appropriate where necessary to protect life, property, health, and safety or to prevent infringements upon the fundamental rights of others. And—as I’ll discuss later—religious freedom cannot always prevail over the right of democratic institutions to establish the basic framework of society. But any limitations should be truly necessary and not an excuse for abridging religious freedom.

CURRENT THREATS TO RELIGIOUS FREEDOM

It is easy for pundits to dismiss concerns about religious freedom as overblown. After all, no one has repealed the First Amendment. And hasn’t the Supreme Court been ruling in favor of religious liberty even in controversial cases? You have heard similar arguments.

But make no mistake: the current threats to religious freedom are very real and are growing rapidly. Eugene Volokh, a law professor at the University of California, Los Angeles, was quoted in the *New York Times* as saying:

If I were a conservative Christian (which I most certainly am not), I would be very reasonably fearful, not just as to tax exemptions but as to a wide range of other programs—fearful that within a generation or so, my religious beliefs would be treated the same way as racist religious beliefs are.²

Although the vast majority of Americans are willing to let others believe and worship as they choose, the sphere for the free and open exercise of religion is shrinking as society grows more indifferent toward religion and as government enforces secular values in areas once considered private. A major flashpoint, of course, is the ongoing sexual revolution and the increasing use of nondiscrimination laws and other coercive means to force acceptance of secular views of marriage, family, sexuality, and gender that directly conflict with profoundly important religious beliefs and ways of life. And this is occurring not just in public and commercial settings but also with respect to religious organizations and their affiliated nonprofit organizations, such as religious colleges.

For example, a bill introduced in California's legislature sought to deny religious colleges so-called "Cal Grants"—basically, state Pell Grants—for invoking their federal right under Title IX to a religious exemption. The legislature then put the colleges on a shaming list to further pressure them to abandon their religious standards. Vigorous lobbying by religious schools has managed to get the Cal Grant portion of the bill removed for the moment, but the rest of it remains.

The ability of religious colleges with honor codes to participate on equal terms with secular colleges in federal research contracts will soon be challenged, and threats are arising to their accreditation. A school district in Lynn, Massachusetts, banned the *students* of a local religious college from teaching in its public schools, merely because the *college* opposed a new executive order from the White House favoring LGBT employees. Recent debates in Congress over religious liberty protections in the federal contracting sphere have included arguments that would justify outright repeal of longstanding exemptions under Title VII and the Americans with Disabilities Act for faith-based hiring by religious organizations—exemptions that previously enjoyed nearly unquestioned support.

The big fight over the HHS contraceptive mandate could easily have been avoided with a modicum of sensitivity by government officials for the needs of religious colleges and groups, such as the Little Sisters of

MAKE NO MISTAKE: THE CURRENT THREATS TO RELIGIOUS FREEDOM ARE VERY REAL AND ARE GROWING RAPIDLY.

the Poor. In fact, the Justices on the Supreme Court quickly came up with a practical solution that would protect the interests of all involved—one that federal officials could have adopted years ago but chose not to.

On other fronts, ethics and licensing bodies are already seeking to discipline professionals who espouse traditional sexual mores. It may soon be hard to be a faithful Church member who openly believes in the

family proclamation and is a psychologist or a social worker—or even a lawyer. Openly holding such beliefs is already difficult socially within professional circles, but it may soon be difficult as a matter of ethics and licensing. I am aware of a recent situation in which a state occupational board opened a formal investigation into a Latter-day Saint counselor for things he said as a member of his stake high council.

Then there are all the clashes that can arise in the context of expansive public accommodations laws, for both faith-based organizations and private owners. And, as Professor Volokh suggested, it is now virtually certain that theories once used to deny tax-exempt status to racist organizations eventually will be invoked to challenge the tax-exempt status of churches that, as a matter of doctrine, reject same-sex marriage or have sexual worthiness standards.

And I could go on.

At its broadest level, the biggest risk may not be legal but social. Powerful cultural forces seek to characterize those with traditional beliefs as bigots. The risk is that traditional believers and their religious institutions may eventually be relegated to pariah status, officially recognized as "equal citizens" while in practical reality being marginalized and penalized for their faith.

THE FIRST AMENDMENT AND RELIGIOUS FREEDOM QUESTIONS

The First Amendment protects core elements of the fundamental right to religious freedom but does not answer all religious freedom questions. Now in saying all this, I don't want to be alarmist. It is not time to head for the hills with your food storage strapped to your back! The First Amendment remains a bulwark against outright oppression. It prevents the legal establishment of a national religion. It protects an absolute right to believe any religion your conscience dictates and to belong to any church that will have you. It strongly protects the right of individuals to worship "how, where, or what they may."³ It protects the right to express religious beliefs in speech and writing and to pass your faith on to your children. It protects the right to form a church, to determine its doctrines, and to establish its membership and leadership criteria without interferences from the government. The Constitution bans religious tests for public office, enshrining an ideal that influences public policy even in the private realm. There is unanimous support in the Supreme Court for the principle that, absent the most compelling reasons, government cannot target a religious practice, no matter how unpopular it may be.

So there is no question that the First Amendment protects *core* elements of the fundamental right to religious freedom. But the First Amendment's broad language leaves unclear how the fundamental right to religious freedom applies to numerous other areas of life. For example:

❑ Does the First Amendment afford a church the right to build a much-needed meetinghouse in a neighborhood, despite restrictive zoning laws, even if it will increase traffic?

❑ Does it afford religious doctors the right not to perform a medical procedure that violates their conscience?

❑ Does it afford religious schools and colleges the right to receive governmental assistance, contracts, and grants on equal terms with secular schools and colleges?

❑ Does it afford religious business owners the right to hire only people of their own faith, to choose the health benefits they provide to their employees, or to refuse some services despite nondiscrimination laws?

❑ Does it afford parents the right to homeschool their children with little or no government oversight?

❑ Does it guarantee the tax deductibility of contributions to churches and other religious organizations?

The truth is that we don't know the answers to these and numerous other questions about religious freedom. And if you asked James Madison, who basically wrote the First Amendment, he wouldn't know either. What he and the other Framers thought they were doing when they proposed the First Amendment to their new constitution—which of course applied only to the federal government—was preventing a national church and more or less maintaining the existing state of religious affairs. But I can imagine Madison saying something along the lines of what Justice Antonin Scalia wrote in *Employment Division v. Smith*:

*Just as a society that believes in the negative protection accorded to the press by the First Amendment is likely to enact laws that affirmatively foster the dissemination of the printed word, so also a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well.*⁴

In other words, Justice Scalia was saying that even though the First Amendment may not protect every right that is important to religious people, a nation and culture that respects religious freedom should naturally be willing to do more than the bare minimum the Constitution requires. It should be willing to enact laws and create compromises that afford believers and religious institutions the space they need to live according to their deepest beliefs.

AMBIGUITY IN THE MEANING OF THE FIRST AMENDMENT

The ambiguity in the meaning of the First Amendment is not a defect but rather part of the constitutional design that establishes a framework for citizens to resolve disputes. In his famous dissent in *Lochner v. New York*, Justice Oliver Wendell Holmes reminded the Court's majority that, while the Constitution certainly protects property and contract rights, it does not embody an all-encompassing economic theory. Rather, Justice Holmes said, the Constitution "is made for people of fundamentally differing views."⁵

Just as the property and contract provisions of the Constitution do not answer all questions about property and contract rights, so too the religion clauses of the First Amendment do not resolve many difficult religious freedom conflicts.

One thing getting lost in all the talk on both sides about absolute rights is an understanding that in this setting, the United States Constitution does two things: first, it secures the core of our most basic rights, and second, it establishes a democratic process for resolving difficult issues of rights and social policy so that, as Justice Holmes said, "people of fundamentally differing views" can live together in peace. Sometimes we seem to think that the Supreme Court ought to decide all of the really important issues by turning everything into a "right" and then balancing competing rights in the way it thinks best. But such thinking only cheapens our democracy and our citizenship. The Founding Fathers intended our system of representative democracy to be a framework for resolving fundamental clashes of opinions about matters of vital importance, not just about where to locate the town post office.

In its better moments, the Supreme Court has endorsed this Constitutional vision. Our constitutional "system," the Court wrote in 1986, "was deliberately so structured to assure full, vigorous, and open debate on the *great issues* affecting the people."⁶

Justice Anthony Kennedy, writing for the Supreme Court, recently affirmed much of the same vision:

*Our constitutional system embraces, too, the right of citizens to debate so they can learn and decide and then, through the political process, act in concert to try to shape the course of their own times and the course of a nation that must strive always to make freedom ever greater and more secure. . . . The idea of democracy is that it can, and must, mature. Freedom embraces the right, indeed the duty, to engage in a rational, civic discourse in order to determine how best to form a consensus to shape the destiny of the Nation and its people.*⁷

So while the right to religious freedom is certainly fundamental, its application to many controversial issues is often unclear and thus often left to the political process. I don't agree with the holding of the *Smith* decision, but Justice Scalia was surely right when he wrote, "Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process."⁸

I sometimes fear that we have relied too much on the Constitution to do the hard work of citizenship for us. The Constitution—including the First Amendment—was never intended to make us lazy citizens, to absolve us from the duty and imperative to be vigilant in defense of our religious rights and interests. Rather, the Constitution's fundamental purpose was to establish a system of government for finding sustainable compromises that allow us to live within the broader society. As citizens of this nation, we have a duty to work with our fellow countrymen to find workable solutions to vexing problems—including clashes of rights and fundamentally competing interests. The Lord said, "Blessed are the peacemakers."⁹ It is our

Christian duty to find ways to make peace. And making peace sometimes requires that we make compromises—not compromises of our doctrines, beliefs, or moral standards, of course, but compromises in the application of religious freedom to the practical realities of life in this diverse nation.

SETTING PRIORITIES AND SEEKING PEACE

In my view, those of us who care deeply about religious freedom have two important responsibilities if we want to also be peacemakers. First, we must set priorities so that we are clear about what is core to religious freedom and what is less vital. Only then can we understand where compromises can be struck. Second, we must learn how to get involved politically, socially, and professionally to both defend religious freedom as a fundamental right and to make appropriate compromises in the interest of fairness to others and peace. I want to touch on both these responsibilities.

First, regarding setting religious freedom priorities, some may be shocked to hear that not all religious freedoms are equally important. This is an obvious point, but it is an important one for clear thinking. If you had to make a choice, for example, between the freedom to pray with your family in your home and the freedom to hire only people of your own faith in your big business, I think it is obvious which one you would choose. While both involve religious liberty, one is more essential than the other. Although it can limit the free exercise of religion, barring big business owners from hiring only people of their own faith has been the law for decades. But barring someone from praying in his or her own home would be an intolerable act of tyranny.

So in a pluralistic nation in which religious people and institutions find themselves competing for influence with others who have different priorities and interests, sometimes we have to make hard choices. We have to prioritize. Defenders of religious freedom have to decide what is closer to the essential core of religious freedom and what is more peripheral. To do otherwise risks weakening our defense of what is essential. If everything that could even loosely be considered religious is treated as equally important, then effectively nothing religious is important.

**THE UNITED STATES
CONSTITUTION
ESTABLISHES A
DEMOCRATIC PROCESS
FOR RESOLVING
DIFFICULT ISSUES
OF RIGHTS AND
SOCIAL POLICY
SO THAT “PEOPLE OF
FUNDAMENTALLY
DIFFERING VIEWS”
CAN LIVE TOGETHER
IN PEACE.**



THE INNERMOST CORE

Let us talk, then, about what rights are at the innermost core of religious freedom. Here our constitutional and legal traditions provide some guidance. Courts have long recognized the need for greater protections for private and intimate matters than for public or commercial ones. That makes sense, and it provides a starting point for thinking about religious freedom priorities. As a general matter, religious liberty claims are more compelling the more closely they relate to purely private, family, and ecclesiastical matters and, conversely, are less compelling the closer they get to public and governmental functions. There may be exceptions, but that is a good starting point when thinking about religious freedom priorities and potential compromises.

Certain freedoms are at the core of religious liberty because they lie within a fundamentally private sphere. On these freedoms, there is not much room for compromise. They include freedom of belief; freedoms related to family, gospel teaching, and worship; freedom to express your beliefs to another willing listener, such as in missionary work; and freedom related to the internal affairs of churches, including the establishment of church doctrine, the selection and regulation of priesthood leadership, and the determination of membership criteria. These religious freedoms fall within a zone of personal and institutional autonomy and thus are subject to little, if any, regulation by government. They are basically non-negotiable.

The inner core includes more than just private matters. Believers are entitled to the same rights of free speech and expression in the public square as nonbelievers. That means they have the same First Amendment right as any other citizen to express their views on public streets and sidewalks; to publish their beliefs via print, radio, the Internet, and social media; to participate fully in democratic debates over matters of public policy, including controversial matters; and to petition the government for protection of their interests. These are basic freedoms inherent in American citizenship and are likewise non-negotiable.

The inner core also includes the right not to be punished, retaliated against, or discriminated against by government based on religion. No believer should be excluded from public office or employment based solely on his or her faith. America doesn't have religious tests for governmental positions. Similarly, there should be no religious tests for working in the various professions regulated by government. For example, those with traditional beliefs regarding marriage, family, gender, and sexuality should not be excluded from being professional counselors, teachers, lawyers, doctors, and any other category of occupation in which the government grants licenses. Nor should it be more difficult to establish a nonprofit religious organization than a secular nonprofit. And religious organizations should not be denied nonprofit status based on their doctrines and religious practices. Again, these basic rights to equal treatment are fundamental American freedoms and should not be open for discussion or compromise.

What I have just described may be called the inner core of religious freedom. Unless that core is strongly protected, there is no religious freedom as Americans have known it. These freedoms are essential to individual believers and their families in their private lives. They are also essential to preventing official persecution and to ensuring that members of particular faith communities are not rendered legal and social outcasts, as Jews once were in Europe.

NEAR THE CORE

Close to this innermost core are freedoms that pertain to religiously important nonprofit functions carried on by religious organizations. These include the freedom of religious nonprofits to have employment policies that reflect their religious beliefs, including the freedom to hire based on religious criteria. This is the freedom, enshrined in Title VII, that allows the Church to have a temple recommend standard for Church employment. Without this freedom, the ability of religious organizations to carry out their missions would be severely impaired.

Also in this category is the right to establish religious schools, colleges, and universities. Such institutions should have the freedom to establish student honor codes that reflect their religious teachings, including standards governing sexually appropriate conduct. And government should not use its ability to fund education to coerce or pressure religious schools into abandoning their religious standards.

Likewise, religious charities should have the right to conduct their good works according to the dictates of their respective faiths—without substantial interference by government and without being forced to engage in activities that are fundamentally contrary to their beliefs.

These freedoms are vitally important to the Church and other religious organizations. But as you can tell, they already get us into areas that are increasingly controversial because sometimes they can extend beyond the purely private or religious.

MOVING BEYOND THE CORE

As we move to more commercial settings, our expectations of unfettered religious freedom must be tempered. This is not because commerce is unimportant but because it is now heavily regulated and overlaps with what for decades have been considered civil rights—such as the right not to be discriminated against in employment or not to be denied service at a public accommodation based on certain characteristics.

Claims by business owners for religious freedom are strongest in small, intimate, and family business settings and are correspondingly weaker in large and impersonal corporate settings. Still, businesses should not be forced to produce products or types of services that fundamentally conflict with their religious beliefs. For instance, no one could seriously contend that a business should be required to print or distribute pornography; that principle can also apply in less obvious circumstances as well. Similarly, businesses should be able to use symbols and messages that reflect their beliefs. I understand that In-N-Out Burger prints “John 3:16” on the bottom of every drink cup. But the ability of secular businesses to deny employment or services to those whose lifestyles they consider immoral will often be

**BUSINESSES
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limited. While In-N-Out Burger should have the right to put scriptural messages on its cups, it cannot expect to refuse service to non-Christians or LGBT persons.

Hence, the commercial setting is an area in which defenders of religious freedom must sometimes be willing to make prudential compromises. Not every aspect of your business will be able to reflect your religious beliefs in the same way your home or religious congregation can. Preserving the ability of business owners to conduct every aspect of their businesses according to their religious beliefs will be impossible. The Church itself is not in a position to fight that fight if doing so comes at the expense of more-core religious freedoms. Protecting those core freedoms must remain the priority, or we risk losing even them.

THE OUTER CIRCLE

Finally, there are zones in which claims for religious freedom are much weaker and will be very difficult to defend. Some of these pertain to government services, in which officials are required by law to perform certain functions. In these areas, religious beliefs should be reasonably accommodated, but other governmental interests may significantly limit the degree of accommodation. For instance, if it is your job to perform marriages for the county clerk's office and no one else can easily take your place, then your freedom to refuse to perform marriages that are contrary to your religious beliefs may be very limited.

Still, a government that respects religious liberty should accommodate the religious needs of its civil servants to the greatest extent reasonable. Appropriate accommodations should also be made for religious dress and, when possible, Sabbath observance.

In summary, as I see things, there is a hierarchy of religious freedoms, and we have no choice but to set priorities. Those that relate to private and ecclesiastical contexts or that are part of the basic rights of all citizens are the most essential and the least subject to compromise, while those that relate to commercial and governmental settings will of necessity require greater pragmatism and compromise. Please understand that in labeling some freedoms as part of the core of religious liberty, I am *not* suggesting that freedoms outside that core are unimportant or not worth defending. What I *am* suggesting is that if we want to preserve religious freedom and live in peace in a society that is increasingly intolerant of faith, then we will have to be very clear about what matters most and make wise compromises in areas that matter less. Because if we don't, we risk losing essential rights that we simply cannot live without.

**PROTECTING
CORE FREEDOMS
MUST REMAIN
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EVEN THEM.**

DEFENDING RELIGIOUS FREEDOM: "LIFT WHERE YOU STAND"

I said earlier that those who care about religious freedom must first set priorities and then second learn how to get involved to defend religious freedom and make appropriate compromises in the interest of fairness and peace. I turn now to this second imperative—learning how to get involved in the defense of religious freedom.

Recently, Elder Christofferson spoke at the Freedom Festival about how ordinary citizens can defend religious freedom. He outlined a simple four-part approach that applies to all of us.¹⁰

First, become informed. You are doing that today and throughout this conference. To defend religious freedom we need wisdom—indeed, inspired wisdom. And that requires knowledge. So it is vital that we become informed about what religious freedom means; what freedoms are most essential; what competing social interests exist; how society and our friends, neighbors, and children view religious freedom; what challenges religious freedom faces; and how those challenges will affect real people living real lives. We must become informed.

Second, learn to speak up with courage and civility. This is a fine line. On the one hand, we cannot be intimidated into silence by intolerant voices that claim to represent progress

and open-mindedness. That tired bromide is getting old; such voices do not represent progress; and we cannot allow them to silence us. But by the same token, we must state our views with genuine civility. This is not the time for anger, so when you speak up, speak calmly. Smile a bit. Seek true understanding. Acknowledge legitimate points. And explain why the freedoms you defend are so important to you, your family, and your church. Make it personal. Stand firmly for principle while understanding that in some areas we will have to compromise to protect our most vital freedoms.

Third, as President Uchtdorf would say, “lift where you stand.”¹¹ You don’t need to run for the legislature to make a difference, and the Church doesn’t need you to undertake lawsuits on its behalf. What is needed is for you to get involved in the political, professional, business, and community organizations around you and to express your concern and support for religious freedom. The time for an insular focus on our own families and congregations is gone. We have to get involved in the community organizations around us and encourage them to be respectful and supportive of religious freedom, even when that means that we accommodate, to some extent, beliefs and practices we don’t like.

Finally, at all times “be . . . an example of the believers”¹² “so that others . . . will see your good works, experience your genuine . . . friendship,”¹³ and be sympathetic toward your concerns about religious freedom. As Elder Christofferson said:

Americans tend to respect and protect what they believe is good. So let us show them the highest and best in our faiths—our willingness to love and serve others, to build strong families, to live honorable lives, and to be good citizens. As our fellow citizens see the goodness of your faith, “they will want to listen to you and understand when you say your religious freedom is being abridged. They may not agree with you or even understand entirely the issue that is so important to you. But if they know you and respect you because you are a true [example of the believers], they will be far more inclined to work toward a solution that respects [essential] religious freedoms.”¹⁴


COMPROMISES

Finally, as we face difficult social and legal issues in which other interests are competing with religious freedom, we need to be prepared to make wise compromises in areas that, although important, may not be core to religious freedom. Frankly, we have no choice. When such conflicts arise, we should think in terms of “fairness for all”—a phrase the Church has used in a number of settings.

What does fairness for all mean? At bottom, it means that every person—including people of faith and their religious communities—should have enough space to live according to their core beliefs so long as those beliefs don’t harm the fundamental rights of others. It means pluralism. It means a fair opportunity for each person to participate in society, professions, the job market, and commerce. It means looking for less-burdensome alternatives when accomplishing important objectives. It means balancing competing interests so that as many people as possible can live as equal citizens according to their deepest values and needs.

Such balancing is not a precise science. No one can have all they want. It requires dialogue, understanding, goodwill, principled stances, hard compromises, and a willingness to adjust so that our laws and communities make space for everyone. It requires—as the Savior required—that we be peacemakers.

CONCLUSION

This is a tall order, to be sure. I know some believe religious freedom should never have to compromise. I know some believe we should stand and fight on every front. Such feelings are visceral and emotional, and I understand them. But if we do that—if we merely give vent to our emotions—in the current cultural environment, we risk losing everything. And we risk failing to follow the example of Christ. Wisdom, fairness, and love for our religious freedoms require that we engage with our fellow citizens, reaching across serious cultural divides to find common ground so that everyone can live together in freedom and peace. I hope we will all do our part to achieve this lofty goal. Thank you. 

NOTES

- 1 Elder D. Todd Christofferson, “A Celebration of Religious Freedom,” address given at an interfaith conference in São Paulo, Brazil, April 29, 2015, available at mormonnewsroom.org/article/a-celebration-of-religious-freedom; quoted in D. Todd Christofferson, “Religious Freedom—A Cherished Heritage to Defend,” address given at the Provo Freedom Festival Patriotic Service, June 26, 2016, available at speeches.byu.edu/talks/d-todd-christofferson_religious-freedom-cherished-heritage-defend.
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RELIGIOUS LIBERTY — VERSUS — SECULARITY

IS THE AMERICAN FOUNDING STILL USEFUL?

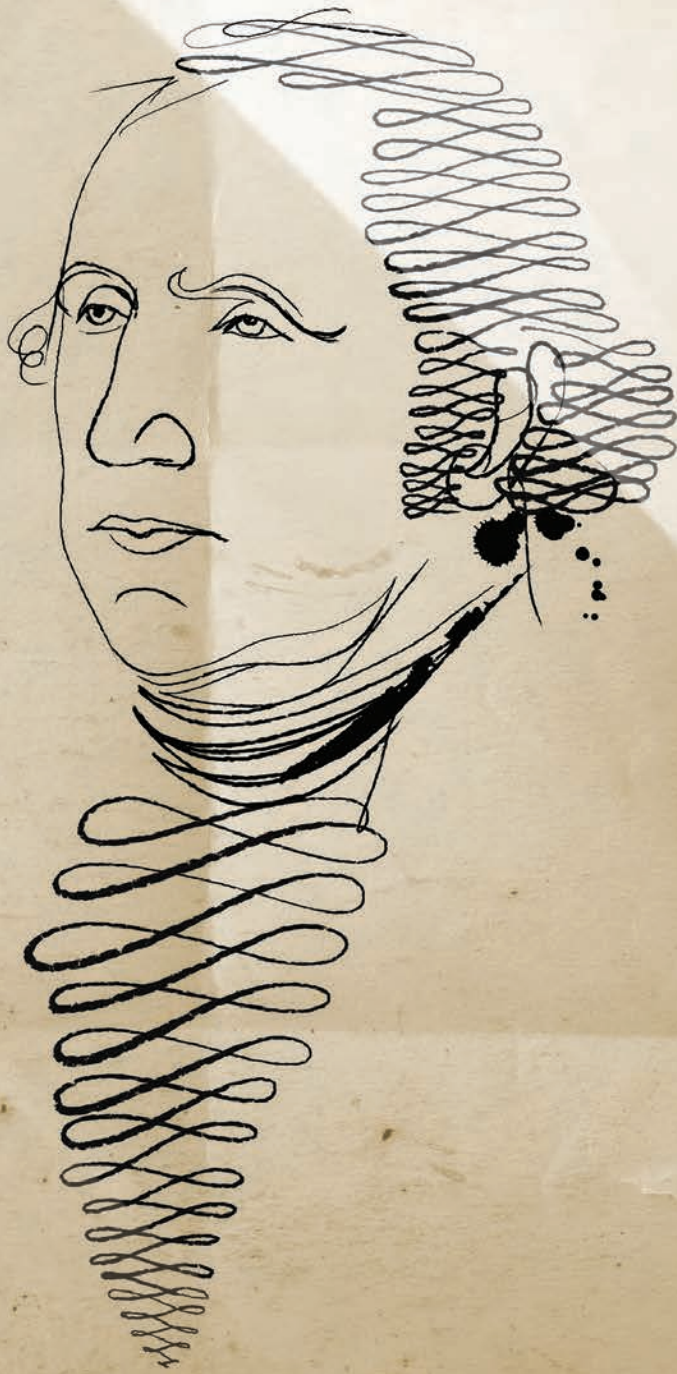
Matthew S. Holland
President of Utah Valley University

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LET ME BEGIN by expressing my appreciation for this invitation and my great admiration for the work of the International Center for Law and Religion Studies. The Center's global efforts to increase religious understanding and freedom in general and to promote the rights of religious conscience in particular have magnificent impact. I commend you for your excellent work and am very honored to be part of your proceedings today. ~ Of course I cannot miss this moment to celebrate a complementary operation at Utah Valley University. Several years ago we launched the Center for Constitutional Studies, which is dedicated to a nonpartisan, multidisciplinary study of the development, nature, and continuing operation of American constitutionalism. It is the only center of its kind in the constellation of state schools that make up the Utah System of Higher Education and has already hosted numerous leading scholars and practitioners from around the country and the world to discuss a variety of topics of timely interest, including for what has become an annual spring symposium on religious liberty. ~~~~~

ILLUSTRATIONS BY ELVIS SWIFT

George Washington



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The role of religion seems to be changing—and changing rapidly. Two schools of thought here are worth considering. One is the subtraction school, in which religion is simply falling away and being steadily replaced with modern rationalism and science. Recent findings from the Pew Forum on Religion and Public Life show that in recent years there are marked increases in those who count themselves as unaffiliated, a group that ranges from self-described atheists to those who consider themselves spiritual but who do not formally engage with an institutional church. These trends are especially pronounced in the under-30 crowd, one-third of whom tend to identify as religiously unaffiliated.¹

Contemporary philosopher Charles Taylor offers another school of thought that minimizes, or sees limits to, the decrease of religiosity per se but does chart our march “from a society in which it was virtually impossible not to believe in God, to one in which faith, even for the staunchest believer, is [only] one human possibility among others. . . . Belief in God is no longer axiomatic.”²

It seems most reasonable to me to conclude that, at least for now, both things are happening, and the actual and potential shifts for our public life are tectonic.

My assignment today was to say something about the American Founding as it may relate to the preservation of religious liberty in the contemporary situation of a rapidly changing society. I have titled my remarks “Religious Liberty Versus Secularity: Is the American Founding Still Useful?” At some level, the question about whether the Founding can still be useful is a genuine one. Just as parts of America are changing so rapidly on the religious front, so too the veneration we have for and the attention we pay to the Founding are not what they once were.

One small, sad, and very personal anecdote in evidence of this comes from a recent talk I gave at the business school at the University of Southern California. After lecturing roughly 80 students in a senior seminar on management about some of the leadership traits of the Founders, a student came up to thank me and said that in four years of attending classes at that venerable school, he could not recall a single instance in which a faculty member had spoken favorably of the Founders and the Founding at any length. Some had taken the time to be quite critical; most others had just not bothered to say anything at all, presumably even in general education courses that at one point in our history would surely have included—somewhere, somehow—discussions of our national underpinnings.

That said, I think the clear answer to the question of whether the Founding remains useful is a resounding *yes!* From my personal perspective, the Founding is not more important than religion, but it is more difficult to get rid of from a broader public perspective. It is an insight as old as Socrates and Plato that foundings matter a great deal and can never quite be escaped. At a minimum, cultural recollection of such moments always shapes—at least to some degree—a contemporary society’s moral vision, sense of purpose, and capacity to act. And this is especially true in the American case, in which the Founding was so extensively documented and so filled with drama and intelligence in what proved to be a crucial turning point in the development of self-rule in the West. Even this very day you can recast the Founding as a multiracial hip-hop experience, and it becomes one of the hottest tickets in Broadway history.³ Foundings can be reimagined and reinterpreted, but, for good or for evil, they tend to remain a force. Certainly ours has.

Part of its continuing force is that each side of the religious-secular divide today still looks (if in differing degrees and ways) to the Founding as holding the early thinking and impulses of the world as they think it ought to be. And, in some ways, each side is justified. For starters, the Founding and the Founders provided a more complicated stew of competing opinions and ideas than many would care to admit. I still get a chuckle from the reaction of John Adams—one of the more religiously minded Founders—to the wildly popular essay for independence called *Common Sense*, by Thomas Paine—one of the more secular-minded Founders. Despite the essay’s importance in marshalling an entire nation in a cause Adams cared about passionately, namely separation from Great Britain, Adams publicly blasted Paine’s work as “a poor, ignorant, malicious, short-sighted, crapulous mass.”⁴ Little wonder, then, that when Adams had to follow George Washington as president and began to suffer greatly in comparison, Paine famously said, “Some people talk of impeaching John Adams;

but I am for softer measures. I would keep him to make fun of.”⁵

In this sense, the Founding has rather understandably become something of a national Rorschach test, with folks finding in it what they want to see, perhaps especially when it comes to issues in which religion, law, and politics intersect.

With that in mind, I can hardly recommend the Founding as a simple panacea for the increasingly dramatic and disconcerting conflicts erupting now over religious liberty, as well as those that sit more ominously on the horizon. But is it still useful? Absolutely. And given that parts of this country, and especially our elite leaders of education and culture, have now largely rejected religion, or otherwise neutered it of any real substance and significance, the Founding writ large may provide the last common shreds of a heritage that can still be woven together to provide a fabric strong enough to protect robust religiosity, especially those forms still audacious enough to believe that for thousands of years of human history—and even an eternity beyond that—God has actually had an opinion about how one ought to worship, live, and love.

To say how the Founding might help us decide a particular case today is neither my area of expertise nor really quite possible in this setting this morning. Do not get me wrong: the Founding can and should inform positions on cases, but that work requires more time and far more consideration of far more things for any one case, let alone several of them, than could possibly be shared at the moment. Rather, what I would like to suggest is that embodied in the Founding are several general resources that are still useful, perhaps even powerful, for those who have the mind to glean and the heart to employ them. In particular, I recognize the remarkable gifts of context, text, and character that the Founding still offers us today.

C O N T E X T

There is much the Founding has to tell us about the context in which our tradition of religious liberty was developed and therefore might be preserved. Among the most important considerations is the narrative that shows that religion did more than negotiate a commitment to principles of “free exercise”

of faith-based conscience. It is also the case that principles of nonestablishment and separationism, as well as some of the most basic practices of what we now generally refer to as liberal democracies, were established by and for the sake of religion, perhaps as much as they were established by and for, say, schools of Enlightenment-style reason that worried about (or even opposed) religion.

For exhibit A, I turn to Puritan New England. That's right, I want to take us to what many consider the "land of witches and witch hunters, of kill-joys in tall-crowned hats, whose main occupation was to prevent each other from having any fun and whose sole virtue lay in their furniture."⁶ You might think that turning to the ultimate bogeyman is, for many secularists, a strange start for any discussion of religious liberty—or any kind of liberty. But the fact is that arguably the world's most trenchant and far-sighted commentator of American democracy, Alexis de Tocqueville, considered the Puritans the first, and in some ways the most important, of this nation's founders. Explaining that Puritanism was "almost as much a political theory as a religious

doctrine,"⁷ de Tocqueville reckoned that there was "not an opinion, custom, or law, nor, one might add, an event, which the [Puritan genesis did] not easily explain,"⁸ at least for the 19th-century America he was observing.

No doubt he overstates the point. But he does show, as have others, that by grounding their civil and ecclesiastical powers in a religiously held doctrine of "mutual consent," the Puritans made the state and even the church answerable to the people, not vice versa. To that end, one of the first moves of John Winthrop, the inaugural governor of the Massachusetts Bay Colony, was to expand the franchise and establish and actively encourage the participation of the people in all public affairs, the free voting of taxes, and the trial by jury of peers. Out of a sense of religious mandate to understand scripture on an individual basis and follow its preeminent teachings on a communal basis, robust provisions for public education and for taking care of the poor were established that went well beyond anything in England at the time.

On Winthrop's watch, Massachusetts developed a ruling, bicameral, legislative body of rudimentary checks and balances between a larger popular assembly of deputies and a smaller aristocratic assembly of assistants, anchored by a written body of fundamental liberties, making it one of the most democratic entities in the world at the time. Furthermore, spurred on by certain Calvinist teachings and the kind of persecution that Puritans experienced from England's near-complete fusion of civil and ecclesiastical power, Massachusetts, under Winthrop's leadership, laid out a remarkably well-defined separation of church and state. Church discipline could not impose corporal or civil punishment. Not a single clergyman held office (despite the fact that no actual law forbade the practice). Civil government took exclusive jurisdiction over wills, divorces, and marriage ceremonies. No ecclesiastical courts even existed.

Additionally, it is Winthrop's Massachusetts that first drew—then peacefully expelled—Roger Williams, whose determination to establish in Rhode Island a "hedge or wall of separation between the garden of the church and the wilderness of the world"⁹ even more closely prefigured the church-state position of Thomas Jefferson a century and a half later. And all of this was wrought by religious covenant in a completely isolated, undeveloped, and threatening state of nature more than 50 years before John Locke would publish his Second Treatise and a decade before Thomas Hobbes would publish *Leviathan*, which recommended, at best, a secular social contract enforced by a centralized authoritarianism. All of this led de Tocqueville to conclude that "in America, it is religion which leads the way to enlightenment; it is the observance of divine laws which leads man to liberty."¹⁰

Now, we should not romanticize the Puritans, as de Tocqueville did to some degree. Important corrections needed to be made to the Puritan approach. By looking at them fairly, though, we can recover a fuller understanding of the Founding that explodes the myth that the Founding was simply a sometimes hidden (and a sometimes not so hidden) reaction against any kind of religion with teeth in it. The Puritan influence is just one example of many that could be marshalled to show how religiously inspired visions of what was morally right established a rich and fertile context for individual liberty to flourish in early America. The same could be said with respect to the elimination of the transatlantic slave trade, the development of the Emancipation Proclamation, and much of the best success of the civil rights movement of the 1960s.

This is to say nothing of the kind of illuminating work that could be done on a comparative basis, whereby America's Founding and explicit commitment to rights, grounded in something divine, something higher and transcendent, is shown to be far more stable and conducive to reliable self-rule than, say, the practically contemporaneous effort of the French to ground their rights in modern reason alone. Helping non- or less-religious audiences see things like this hardly solves all problems, but it does make it more difficult to simply dismiss religion as either too pointless or too dangerous to be given any special status in the law, as some would like to do.

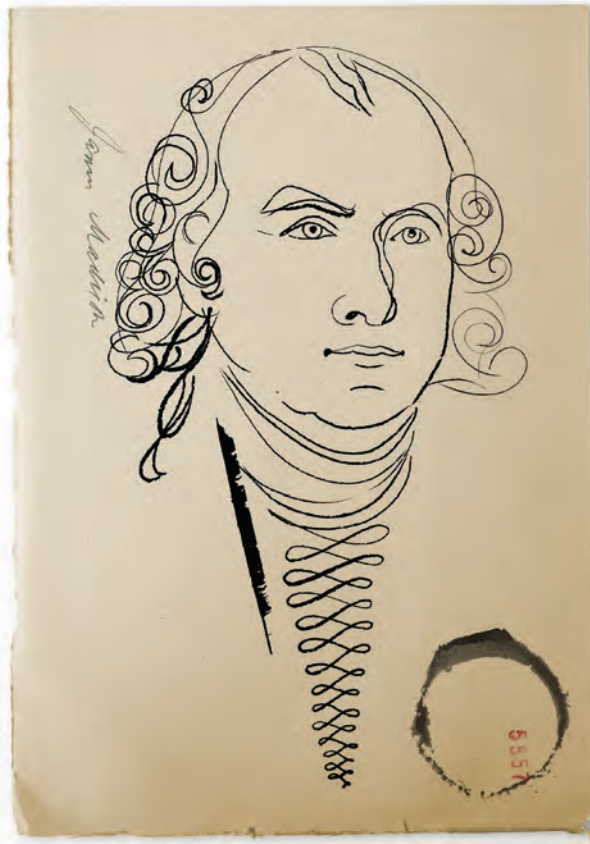
T E X T

Speaking of the law, it is simply impossible to calculate the debt we owe to the Founders, who slowly and pragmatically concluded that, in addition to creating a unique federal system of government with checks and balances across the divisions (all of which was designed to ensure a rule favorable to individual liberty), the Constitution needed to spell out, and thereby enshrine, a concrete protection of religious liberty.

The Constitutional Convention completed its draft of the Constitution on September 17, 1787. It was approved by the Continental Congress by unanimous vote on September 28 and sent to the states for ratification. Article VII of the proposed Constitution required ratification by the "Conventions of nine States." The Constitution was ratified on July 2, 1788.

Only four states ratified the document without a federal bill of rights. One of the chiefest concerns was a lack of a specific guarantee of religious liberty. The remaining states ratified the Constitution only on the condition that the first session of Congress prepare a

This was one of the keynote addresses delivered at the Religious Freedom Annual Review on July 7, 2016, in conjunction with the International Center for Law and Religion Studies.



*It is the duty of every man to render
to the Creator such homage, and such only,
as he believes to be acceptable to him.*

JAMES MADISON

bill of rights to amend the Constitution to explicitly protect, among other things, freedom of religion and conscience. These states discussed and proposed provisions for a federal bill of rights, including various religious liberty clauses.

Once Congress completed its work on September 25, 1791, it sent the draft of the Bill of Rights, including the religion clause, to President Washington the following day. After Washington signed it, it was sent to the states for ratification. The final vote needed for ratification was made by Virginia, recorded on December 15, 1791, making the amendments effective from that day forward.

As this group well knows, the opening line of those key additional amendments reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹¹ There it sits—America’s first liberty and the linchpin for finally ratifying the Constitution itself. It is America’s first liberty, both numerically and substantively.

James Madison explained in his 1785 “Memorial and Remonstrance Against Religious Assessments”:

*It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent, both in order of time and degree of obligation, to the claims of Civil Society.*¹²

The fact that the First Amendment is there, that it has special status as key to passage of the larger Constitution itself, and that it was drafted with the conviction that it has ordinal priority over the constellation of all other rights gives it tremendous heft. At a minimum it means that—as much as some might wish it otherwise—short of some truly disastrous event, those words will remain there as long as the Constitution lasts, and they will have to be dealt with, even by those who do not share the suppositions.

Now, a primarily Latter-day Saint audience will be quick to recognize that simply having the right stated as words on paper does not always guarantee that it will carry out its intended effect. At the end of the day, it is simply what Madison called a “parchment barrier,”¹³ thus explaining why at first he did not even support a bill of rights. But whether out of political necessity or reflection or both, Madison relented and helped architect the language that we now venerate and that has proved such a crucial resource, time and time again, for buttressing claims of redress against religious tyranny.

If I might paraphrase something Lincoln once said of Jefferson’s key second sentence of the Declaration of Independence:

*All honor to [the Founders], who, in the concrete pressure [to establish an entirely new form of government] had the coolness, forecast, and capacity to introduce into a merely [operational] document [a fundamental right of religious liberty] . . . and so to embalm it there, that to-day, and in all coming days, it shall be a rebuke and a stumbling-block to the very harbingers of reappearing tyranny and oppression.*¹⁴

All of this does raise the question of what exactly those two clauses mean and protect. Congress actually considered 25 separate drafts of the religion clause. Of these, 10 were submitted by the states, 10 were debated in the House, 5 more were debated in the Senate, and the final version came out of a joint committee of the House and the Senate. There is little definitive evidence in the record against any of the drafts and few clues as to why the words were chosen for the final version. Fortunately, you have a full conference in front of you and

a gathering of geniuses here to figure all of this out in its entirety.

Let me make a couple of very cursory observations. Notably absent from all 25 drafts considered is any principle of strict, absolute separation of church and state. Certainly there is no talk of some high and impregnable wall of separation—an image that means so much today but that even Jefferson himself undermined in his own inaugural address. At the time of the drafting of the First Amendment, Congress had already passed laws supporting paid chaplains for Congress from different denominations as well as the Northwest Ordinance, which contained two religion clauses: one analogous to the First Amendment’s Free Exercise Clause and another expressly acknowledging that “religion, morality, and knowledge [are] necessary to good government.”¹⁵ Further evidence from this first generation of national legislative activity under the Constitution that the Founders did not intend an absolute and impermeable boundary between church and state are the funding of chaplains in the military, various religion clauses in treaties, and passage of patently religious Thanksgiving Day proclamations.

What does seem to be meant by non-establishment, at least, is that rather than a complete emptying of the public square of anything religious—à la French-style secularism—public conditions foster religious equality and pluralism. Instead of trying to brush religion away entirely from anything with a public purpose, the aim was to make the country a safe place for genuinely religious voices of all stripes and varieties. This is sometimes easier said than done, but it does seem that that was the intention of those who established the right. On the other hand, as far as free exercise goes, it is clear that the intention was to create enough separation between church and state so that people could do more than just think and believe what they wanted. They could also actively live out their own religious commitments without penalty and partiality from the government to which they gave their consent and support.

The following statement from Michael McConnell, director of the Stanford Constitutional Law Center and a former judge of the U.S. Court of Appeals for the 10th Circuit,

succinctly sums up the nature of these two clauses and, more important, why they still stand as America’s “first liberty” and must be defended as such today—even by those who do not share a religious worldview. As he put it:

The framers of our Bill of Rights thought that religious freedom deserved double-barreled protection. Americans would have the right of “free exercise” of their chosen faith, and government was forbidden to foster or control religion by means of an “establishment of religion.” Today, an increasing number of scholars and activists say that religion is not so special after all. Churches are just another charity, faith is just another ideology and worship is just another weekend activity.

All Americans—believers and nonbelievers alike—should resist this argument. . . .

The religion clauses of the Constitution were the culmination of centuries of theological and political debate over the proper relationship between spiritual and temporal authority. . . .

Religion is an institution, a worldview, a set of personal loyalties and a locus of community, an aspect of identity and a connection to the transcendent. Other parts of human life may serve one or more of these functions, but none other serves them all.

*To believers, the right to worship God in accordance with conscience is the most important of our rights. To nonbelievers, it is scarcely less important to be free of governmental imposition of a religion they do not accept.*¹⁶

The text of the First Amendment is a grand gift from those who went before us. Understanding the nature of that gift and the context of its creation is just the starting point of enjoying it and preserving it, for in the changing age in which we live, its preservation will require more than that. It will require a certain character. Once again we might profitably look to our Founders.

CHARACTER

The Founders thought and spoke often about the character of a free people. Even as they established brilliant constitutional mechanisms of counterpoise that would productively channel the inevitably self-interested ways of virtually all human beings, they knew and taught us that law and structure alone could not save us. The life of a free people requires and only flourishes with an extraordinary amount of individual goodness, decency, and initiative. The Founders recognized that the single best source for fostering such a morality of freedom was found in the broadly Judeo-Christian traditions of their day.

In his justly famous farewell address, George Washington declared:

*Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable. . . . And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.*¹⁷

In speaking to some officers of the Massachusetts militia, John Adams echoed the exact same sentiment:

*We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.*¹⁸

Interestingly, this thesis has recently, if grudgingly, been acknowledged by a prominent atheist who admitted:

*One does not have to be a religious believer to grasp that the core values of Western civilization are grounded in religion, and to be concerned that the erosion of religious observance therefore undermines those values.*¹⁹



*Our Constitution was made only
for a moral and religious people. It is wholly
inadequate to the government of any other.*

J O H N A D A M S

Two years ago Elder Dallin H. Oaks gave a landmark address at a major event at UVU organized by our Center for Constitutional Studies. Despite reason for much pessimism about the future state of religious liberty in this country, he gave a talk titled “Hope for the Years Ahead.” Toward the conclusion of that talk he spoke in the exact vein of Washington and Adams, as quoted here. To be explicit, he said:

Another way to move forward is to encourage a more general understanding of the reality that our society is not held together primarily by law and its enforcement but most importantly by those who voluntarily obey the unenforceable because of their internalized norms of righteous or correct behavior. We all have a vital interest in religion because religious belief in right and wrong is fundamental to producing the needed voluntary compliance by a large number of our citizens.²⁰

Ladies and gentlemen, as interested as we may be in politics and law, especially constitutional law, and as vital as it is to constantly and concretely deal with the political and legal issues before us, these are not the most important things. To those of us who genuinely worry about the conditions of religious liberty in the world today and want to do something about them, we must first serve our cause by rising up and living our religion—LDS or otherwise—the very best we can.

There was a time—frankly a very recent time—when the larger culture was such that spiritual “summer soldier[s] and sunshine patriot[s]”²¹ might have helped carry the day. But I believe those days are over. Victory will only rest in the hands of sufficient numbers of believers of all stripes who act as believers first and foremost and live their beliefs with all

their “heart, might, mind and strength.”²² We must do all we can to make sure that our children and our grandchildren do the same. We must confidently spread the good news of gospel faith and good living to neighbors and friends alike. Together we must try to do what the best of the Founding generation did. They were not perfect, and we will not be either. But surely we can try, as they seemed to try, to live with honesty and integrity, to take personal responsibility to provide for ourselves and our families, to cherish life in all its stages, to marry and stay married, to care for the poor, to establish bonds of affection even with those who disagree with us, and to always reverence the Divine as the source of our rights and all that is good in the world.

If nothing else, let such behavior start and proliferate right here, with this little band of 300. Such ranks worked for Gideon against overwhelming odds,²³ and they just might work for us. This country has had more than one great religious awakening. Why not another? The residue of religion runs more broadly in this country than in any other in the advanced Western world. If you think this is Matt Holland being “pie in the sky,” at least consider that the most provocative passage of Elder Oaks’s talk at UVU holds out the possibility of just such a turn.

Elder Oaks quoted Professor Pitirim Sorokin of Harvard University (described as one of the most creative social thinkers of the last century), who “hypothesized that major social events viewed as calamities can set in motion movements that produce exactly the opposite of the expected result.” Applying that hypothesis to religious movements, Sorokin wrote:

Calamities generate two opposite movements in different sections of the population: one is a trend toward unreligiousness and demoralization; the other is a trend toward extreme religious, spiritual, and moral exaltation. . . .

. . . The principal steps in the progress of mankind toward a spiritual religion and a noble code of ethics have been taken primarily under the impact of great catastrophes.²⁴


Increasingly, we seem to be facing spiritual, political, social, economic, and geological calamities. Maybe the day of calamity is

here. Maybe it is still ahead. Either way, it may be that such a day of calamity holds the seeds of the very success that seems to be so quickly slipping from our grasp. Regardless, if we are content to live by the fruits of the Founding, let us not shrink from the kind of character that brought the Founding forward. Let us not be surprised if a moment has come in which the demands of preserving the Founding are equal to or even greater than the demands it took to erect it.

With that in mind, perhaps the best closing words I can share with you come from John Jay, who was president of the Continental Congress, the first Chief Justice of the Supreme Court, the first Minister of Foreign Affairs, and governor of New York. He was a man who knew plenty about troubles, opposition, and overwhelming odds yet still practiced a faith, optimism, and hope for the future that helped him prevail in the present.

In an autographed letter to his wife, Sarah, he wrote in 1797:

By all means . . . dismiss from your mind all useless apprehensions as well as all vain hopes. Let us calmly do our duty, and refer events to Providence. They who expect a gentle course of tranquility and happiness in this world, do not know the world. They expect what they will never find. Our business here is to do our duty, to be grateful for benefits, to be patient under adversity, to be resigned to the will of heaven and to console and comfort ourselves with the prospect of being placed after a few years more in a situation from which every kind of evil is excluded. Let us forever be mindful that God governs the world, that all events are under His control, and that nothing comes to pass but by His permission or appointment. These are unquestionable truths and facts, and not philosophical reveries. Be composed therefore. Take the air, take exercise, be cheerful, strengthen your nerves, and be prepared for whatever may occur.²⁵

I am with John Jay, and I am for all of you. The work to which you are committed is among the weightiest of our day. But remember, it is ultimately God's work. Calmly do your duty, take the air, be cheerful, and prepare for whatever may occur. There could be no finer way to honor the Founders and preserve the sacred gifts they have bestowed to us. 

*Of all the dispositions and habits
which lead to political prosperity, religion
and morality are indispensable.*

G E O R G E W A S H I N G T O N

NOTES

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DAUDACIOUS FAITH

***APPRECIATING THE UNIQUE POWER AND
SINGULAR APPEAL OF LDS DOCTRINE***

BRETT G. SCHARFFS

ILLUSTRATIONS BY ALEX NABAUM



THE INTERNATIONAL CENTER FOR LAW AND RELIGION STUDIES

officially began on January 1, 2000. The choice of date was purposeful, coinciding with the beginning of a new millennium. It also makes it easy for us to remember the answer when we are asked how long the center has been operating.

In my role as associate director and now director of the center, I interact on an almost daily basis with people from around the world of almost every imaginable religious background—and with many who are not religious at all. Occasionally, usually at a reception or dinner toward the end of a conference, I am asked to explain something about what Mormons believe. Usually someone will want to know what is unique and distinctive about the Church or how it fits with other Christian denominations.

I have come to welcome opportunities like these because they give me a chance to talk about not only similarities between The Church of Jesus Christ of Latter-day Saints and other faiths but also some of the things that make us different. It is these differences—as well as a few of the similarities—that I would like to speak of today.

AUDACIOUS FAITH

I have titled my remarks “Audacious Faith: Appreciating the Unique Power and Singular Appeal of LDS Doctrine.” The *Oxford English Dictionary* defines the word *audacious* as “daring, bold, confident, intrepid.”¹ I have come to believe that many basic LDS doctrines are audacious in this sense.

A PECULIAR PEOPLE

I remember when I was a boy being taught to take pride in the things that make us different. We were taught that Mormons are and should be “a peculiar people”² and that we were to be in the world but not of it.³

But in the second half of my life, which coincides with the entire life of most in this room, it seems to me that we as a church have become better at explaining and are more inclined to emphasize our similarities with other Christian churches. This is an understandable part of an effort of the Church and its people to be viewed as less odd and more like others. As recently as Mitt Romney’s presidential campaigns, the Church and its members were still expected to address the tired, old question of whether Mormons are Christians.

We have sometimes found ourselves in exasperation repeating the name of the Church: The Church of *Jesus Christ* of Latter-day Saints. The Church has even changed its logo to emphasize the centrality of Jesus Christ. I, for one, welcome this renewed emphasis on Jesus Christ and His Atonement.

But it is also true that some of our understandings of even basic doctrines are quite distinctive.

THE PREMORTAL EXISTENCE

I learned this fact as a freshman at Georgetown University. I was assigned to a dormitory called Darnall Hall and a roommate named Tom Warner, who was a good Catholic boy from Queens, New York. His father was a police officer, and Tom was the first person in his family to go to college. He and I became fast friends, and soon I felt that perhaps it was no accident that we had found ourselves as roommates.

One night while we were lying on our cots, I asked him, “Tom, do you think we knew each other in the premortal existence?”

His bedside light snapped on, and he looked at me incredulously: “The premortal existence—what’s that?”

I answered casually, “You know, the pre-earth life, where we lived as spirit children of our Heavenly Father.”

Now he was looking at me like I was from another planet or, perhaps more likely, as if I were a member of a strange religious cult, as others on our dormitory floor had already warned him.

“There is no such thing as a premortal existence,” he said, “and if there is, I wasn’t there.” His life, he explained, began at conception. Then the light snapped off.

I was stunned. I thought of myself as a reasonably sophisticated and well-educated

person, but I had no idea how unique and unusual the doctrine of the premortal existence is. I had thought it was a shared part of Christian heritage, and although I believe the doctrine has a power and appeal that is very strong, and although there is scriptural and other evidence that many early Christians embraced the doctrine of the premortal existence,⁴ it is not a part of orthodox Christian or Protestant theology.⁵

My law school colleague Dean D. Gordon Smith joined the Church as a student here at BYU. The premortal existence, he says, is one of the doctrines that first gripped him.

As he explained it:

Even when I was a very young man, questions about cosmic justice occupied my mind, and the teachings about the plan of salvation made sense of a world that seemed unjust and inequitable. Equipped with even a basic understanding of the premortal existence, I can view the varied circumstances of the people in this world neither as a product of chance nor as a reward or punishment for prior behavior but instead as part of a grand plan of learning designed by a loving God. This understanding helps me to remain optimistic that even our deepest trials and most profound struggles have meaning and purpose.

Brett G. Scharffs, a professor at the BYU Law School and director of the International Center for Law and Religion Studies, delivered this address at BYU on October 18, 2016.

If you think about it, it is an audacious claim that we as human beings are coeternal with God,⁶ that we existed with Him through the eternities, and that this earth life is but the middle act in a three-act play,⁷ with premortal and postmortal life bookending and giving meaning to mortal life.

THE GODHEAD

Consider another very basic Mormon doctrine: the nature of the Godhead. A few years ago at the BYU Law School, we were hosting a conference on religious iconography. An orthodox Christian priest from Oxford University had been invited to participate. He was an imposing fellow who wore dark robes, had a long beard, and wore a heavy cross around his neck. He explained that as part of his preparation for coming to Provo, he had decided to do some homework about what Mormons believe. He didn't want a dry academic account, so he called the Mormon missionaries and invited them over. Can you imagine how nervous they must have been?

He described them as earnest and polite and a little naïve—a description with which many of us can probably relate. He explained:

I asked them to tell me what was unique and different about the Mormon Church, and they began to tell me about how Joseph Smith as a teenager was visited by God the Father and Jesus Christ. Then they showed me a truly remarkable piece of religious iconography. It was a picture of God and Jesus, depicted as two men in white robes and with white hair, standing in the air, with Joseph on the ground leaning back in astonishment.

Like me, you can probably picture the exact illustration from the Gospel Art Kit. Then he projected it onto the screen.

“What a remarkable piece of religious iconography,” he said, “depicting God and Jesus Christ as two men with bodies.” This, he explained, was a complete recalculation of the Christian doctrine of the Trinity.

I have to admit I had never thought of this illustration as noteworthy religious iconography. But think about it: it depicts, in an illustration a child can understand, something profound about the nature of God and Jesus Christ.

God is not a distant, abstract being without body parts or passions; He is a perfect and exalted and embodied man. The implications of this doctrine are rather stunning. When Mormons quote from Genesis that man is created “in the image of God,”⁸ that we are His children, it is not a metaphor; it is a rather audacious claim about the nature of God and the nature of man.

THE NATURE OF GOD

Joseph Smith often taught that the most important thing for us to understand is the true nature of God. Only then, he taught, can we understand the true nature of man. Doctrine and Covenants 130:22 states:

The Father has a body of flesh and bones as tangible as man's; the Son also; but the Holy Ghost has not a body of flesh and bones, but is a personage of Spirit. Were it not so, the Holy Ghost could not dwell in us.

In the King Follett Sermon, recorded in April 1844, only a few months before he died, Joseph said:

God himself was once as we are now, and is an exalted man, and sits enthroned in yonder heavens! . . .

These are incomprehensible ideas to some, but they are simple. It is the first principle of the gospel to know for a certainty the character of God, and to know that we may converse with Him as one man converses with another.⁹

This view of God is so audacious that it is dismissed as blasphemous by some and as unbelievable by others. But it is one of the most simple, elegant, and brilliant truths of the restored gospel. God is our Father, and His work and His glory is to bring us home to Him.¹⁰

Brigham Young put it this way:

When you . . . see our Father, you will see a being with whom you have long been acquainted, and He will receive you into His arms, and you will be ready to fall into His embrace and kiss Him . . . , you will be so glad and joyful.¹¹

MORMON DOCTRINE PROPOUNDS UNDERSTANDINGS OF RELIGIOUS OR

HUMAN NATURE

Along with its remarkable teachings about the nature of God, Mormon doctrine propounds one of the most optimistic and progressive understandings of human nature that exists in any religious or philosophical account of what it means to be human. This understanding requires us to think positively about ourselves and each other.

In Joseph Smith's understanding, not only is God more like us, but we are more like God and are oriented to become even more like God than in many other Christian understandings. Thus for Mormons it is more than metaphor when Christ appealed in His Intercessory Prayer: "That they all may be one; as thou, Father, art in me, and I in thee, that they also may be one in us: that the world may believe that thou hast sent me."¹²

For those, like me, who may be inclined as a matter of disposition toward melancholy, the account of who we are as human beings and who we may become, which we are taught in the restored gospel, is a powerful antidote to pessimism or discouragement.¹³ It is audacious to believe that God uses the simple things of the world (us) to confound the wise. It is audacious to believe that God loves broken things (including us and, in particular, our hearts) and that it is from the crooked timber of humanity (again us) that God accomplishes His ends. It is audacious to believe that when we come unto Him, God gives and shows us our weaknesses that we may be humble and that then, through our faith in Him, He will make weak things strong.¹⁴ It is audacious to believe that we are His children.

THE RESTORATION

When I am asked how Mormons fit in with other Christians, I usually emphasize the idea of restoration. I explain that we believe that when Christ was on the earth, He established His Church and gave priesthood authority to the apostles to continue His work after He was gone. In time the doctrines were changed and the priesthood authority was lost. When Joseph Smith received priesthood authority from John the Baptist and Peter, James, and John, it was a restoration of the priesthood authority that existed when Christ had established His Church on the earth. Today the Church is led by apostles and prophets, just as it was when Jesus set up His Church. To be sure, these are audacious claims.

A few years ago I was sitting in a café in Istanbul overlooking the great Hagia Sophia, now a museum and before that a mosque and before that a Christian church dating back to the year 537.

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I was explaining to a Muslim friend that Mormons are “restoration Christians.” He is a law professor and is translating one of my books into Turkish. After listening to my explanation, he looked at me and said, “I like that. I think I’m a restoration Muslim; I’m just waiting for the restoration.”

THE STANDARD OF TRUTH

The Prophet Joseph understood that what he claimed to have experienced was almost unbelievable. Near the end of his life he said, “I don’t blame any one for not believing my history. If I had not experienced what I have, I would not have believed it myself.”¹⁵ But Joseph had no choice but to believe what he had seen. As he put it, “For I had seen a vision; I knew it, and I knew that God knew it, and I could not deny it, neither dared I do it.”¹⁶

Elder Jeffrey R. Holland reminded us that it is remarkable that Joseph never once in his life wavered in his testimony, even when he was facing death.¹⁷

But let us recognize the audacity of Joseph’s claims and the confidence with which he made them. In the Wentworth Letter, in which Joseph was asked to provide a sketch of the basic history and beliefs of The Church of Jesus Christ of Latter-day Saints, Joseph wrote, in addition to the Articles of Faith, what has come to be known as the Standard of Truth.

Consider the audacity of what he wrote, keeping in mind that this was written in the year 1842, two years before his death at a time when the Church probably had fewer than 25,000 members:

*The standard of truth has been erected: no unhallowed hand can stop the work from progressing, persecutions may rage, mobs may combine, armies may assemble, calumny may defame, but the truth of God will go forth boldly, nobly, and independent till it has penetrated every continent, visited every clime, swept every country, and sounded in every ear, till the purposes of God shall be accomplished and the great Jehovah shall say the work is done.*¹⁸

We should not be surprised when self-righteous evangelical atheists reserve a special chapter in their book of contempt for the Church. If the very idea and existence of God is ridiculous and irrational, then the testimony of an embodied God who is the Father of our spirits, whose heart beats in sympathy with ours, and who cries over our suffering and weeps with us must be rejected as especially ludicrous.¹⁹

CRITICS

Lehi’s dream of the tree of life includes the powerful image of the “great and spacious building” floating as if it were in the air.²⁰ I sometimes think of the Internet, with its capacity for scorning and flaming others, as the modern equivalent. What I don’t understand is why we would think that those who point fingers of scoffing derision and mocking contempt are our friends or have our best interests at heart. Derision and contempt, scoffing and scorn, may have been the stock-in-trade of the cool kids in high school, but aren’t we ready to be done with such immature attitudes toward others and the things they hold sacred? There are plenty of religious beliefs held by others with which I do not agree, but it would not occur to me that I am helping someone to the truth by blaspheming, mocking, scorning, or ridiculing their beliefs. Let scoffers scoff, but don’t mistake them for friends or for seekers of truth and understanding.

NONCREEDAL CHRISTIANITY

I also sometimes emphasize that Mormons are noncreedal Christians. Joseph often distinguished The Church of Jesus Christ of Latter-day Saints from other Christian faiths by noting that the Church rejected Christian creeds. The most influential creeds during Joseph’s lifetime included the Westminster Confession of Faith, which declared that God “is infinite in being and perfection, a most pure spirit, invisible, without body, parts, or passions.”²¹ From the First Vision, Joseph knew this to be mistaken. He thought creeds were too limiting of our search and recognition of truth. Indeed, in his expansive imagination, he asserted that the Church embraced all truth, from whatever source. As Joseph Smith put it:

*Mormonism is truth; and every man who embraced it felt himself at liberty to embrace every truth: consequently the shackles of superstition, bigotry, ignorance, and priestcraft, falls at once from his neck; and his eyes are opened to see the truth.*²²

This is truly audacious. The heavens were opened to Joseph, and he received visions and the gift of translation. Yet he studied German so that he could read Martin Luther's translation of the Bible, Hebrew so that he could better comprehend the Old Testament, and Egyptian because it was related to the language of the Nephites. Virtually everywhere he settled during his ministry, the Prophet Joseph built or planned to build a temple, and next to it he built or planned to build a university.

CONGREGATIONALISM

Another audacious component of Mormon doctrine is the idea that there is no professional clergy in the Church. We are all expected to be ready and worthy to receive a call to serve in whatever position. Sometimes church seems like what Elder Neal A. Maxwell described as a "laboratory of life,"²³ and sometimes, like when I was asked to play the piano as a missionary in Japan, it feels more like "amateur hour." The Holy Spirit does not necessarily make us a competent organist or bishop.

I love that there is no corporate ladder that we are climbing in the Church. I am grateful that my daughter Ella had a nursery leader who was a former stake president and who adored her and taught her in powerful and simple ways that she is a child of God. I am grateful that another daughter, Sophie, was loved by another member of our ward, a former regional representative, who often asked to hold her during church and who would tell her parents that this little baby was an old soul with incredible wisdom and depth. And you know what? He was right. And I am grateful that our son, Elliot, had Young Men leaders who were very successful in their professional lives but who showed in word and especially in deed that it is possible to put Heavenly Father and our Savior first.

When we moved to Utah and I began teaching at BYU, my calling was to teach the five-year-olds, and I still have a vivid image of Max, who had stripped down to his underwear in the chapel where we were rehearsing for the Primary program and had flailed furiously as I carried him out to find his parents, screaming at the top of his lungs, "Bishop, save me!" Max, if you are here, I am sorry I was not a better Primary teacher.

Then I was called to be the bishop of a BYU student ward, and I felt a confidence and a success that had utterly eluded me as a teacher in the Primary. When I was released, I was called to teach the teachers quorum in our home ward, and I went back to feeling like an abject failure, as the boys shot spit wads at me while I was writing on the blackboard. Now those boys are returned missionaries, and a few of them are probably trying to teach Primary kids or young men in the teachers quorum.

THE PRICE OF MORTALITY

Mormon doctrine also provides a unique perspective on the purpose of mortality, human suffering, and what is sometimes called "the problem of evil" by theologians: How is it that an all-powerful and all-loving God can permit so much evil and suffering in the world?

Let me share a story with you about the powerful and attractive answer that Latter-day Saint doctrine provides to this question.

My wife, Deirdre, and I were a two-tuition family at Yale, which is to say that it was not inexpensive. She completed her MBA on the same day I finished my law degree. In fact, we missed each other's college convocations because they were held at the same time. Then we moved to Washington, DC, where Deirdre was working for Paul Mellon and his private art collection and I was clerking for a judge on the DC Circuit Court of Appeals.

My calling in our ward was Cub Scout leader, and there were two young brothers in my Webelos group. That summer their family was in a terrible car accident. One of the brothers

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was in critical condition for weeks, and I visited him in the hospital, where he was wrapped nearly head to toe in bandages. This was the early 1990s, when AIDS was not well understood, and this young boy contracted the HIV virus from a blood transfusion. It took many months, but he eventually recovered from most of his injuries, yet at that time being infected with the HIV virus was akin to a death sentence.

He was asked to speak in Church about what he had learned from his experience. Although he was only 12, he gave what I think is the most profound and insightful address on the problem of evil that I have ever heard. He said:

Some people have asked me what I did wrong to deserve what happened to me. I'm not perfect, but I'm a good boy, and I know this is not something I deserved.

Others have said, "You must be a really strong person for God to give you such a difficult trial."

I don't feel strong, and anyway, I don't believe God did this as a reward for my being particularly righteous.

No, I don't think this happened because I'm particularly bad or particularly good. I believe it happened because I'm mortal, and this is part of the price of mortality. We come to earth, we exercise our agency, and other people exercise theirs, and sometimes we hurt each other, and sometimes accidents happen.

Think about that—"the price of mortality."

Let us return to the great Council in Heaven, when Heavenly Father laid out His plan for us and explained that a Savior would be necessary. Lucifer came forward with his own plan that he claimed would save everyone. We often emphasize the distinction between moral agency, which was the defining feature of Heavenly Father's plan, and coercion, which was the defining feature of Lucifer's plan. But as Terryl and Fiona Givens have reminded us, it may not have been the prospect of agency that led a third of the host of heaven to follow Lucifer; perhaps it was the clear and vivid understanding of the pains and suffering that are an inevitable part of exercising that agency in mortal life. Perhaps it was not freedom to choose that was so daunting but a full appreciation of the consequences that follow from moral agency—our own and that of others.²⁴

THE CLOSENESS AND DISTANCE OF GOD

In the doctrine of the premortal existence we learn something profound about the character of God. He wants us to experience the full range of human life, including the extremes of human suffering that mortality entails, not because He wants or wills our suffering but because He wants and wills our growth and development. He has provided a blueprint and road map—involving the Savior, His Atonement, the ordinances of the gospel, obedience, and repentance—for us to return to Him.

One of the audacious things Joseph Smith taught was that God is close, not far, and that the heavens are open, not closed, but that did not mean that Joseph had easy access to God at every moment. In a way, and to an extent that might seem paradoxical, there were times when Joseph felt alone, confused, and uncertain about what God's intentions or desires were.²⁵ God did not save Joseph from the pains of mortality: Joseph lost children, was unjustly imprisoned, saw his people persecuted and driven from their homes as he watched powerlessly from prison, and was ultimately murdered by a mob that likely included people whom he had counted as friends.



But Joseph taught that God is with us—by our side—and that His love and sympathy are fully extended to us in all our extremities. He does not leave us alone or comfortless, even when we feel alone and in need of comfort. As disciples of Christ, we must be prepared to stand alone, although we are never really alone.²⁶ God is powerful and “mighty to save,”²⁷ but He also refrains from intervening too much in human affairs, lest we forfeit the full impact of the lessons of mortality.²⁸

RELIGIOUS FREEDOM

The mission of the International Center for Law and Religion Studies is to promote freedom of religion and belief for all people in all places. This comes naturally because for Mormons, religious freedom is, quite literally, an article of faith.²⁹ It is also one of our most basic doctrines.³⁰

Religious freedom has powerful appeal even to those from religious traditions that are often thought of as being suspicious of religious freedom. A friend of mine, Lena Larsen, is a Muslim from Norway.³¹ Recently Lena told me she reads the Koran every year during Ramadan, the Islamic month of fasting.

“Each time I find something different,” she said, echoing my own view about the value of rereading the Book of Mormon.

During one recent reading she noticed a powerful defense of religious freedom in the story of Noah. We are familiar with Noah and the ark from the Old Testament and Sunday School, but there is a version in the Koran as well. In that telling of the story, Noah had a rebellious son who wouldn’t get on the ark. Even when the rain was falling, his son scrambled up a mountain as the ark floated by, and Noah pled with his son to get on board.

Noah said, “O my son, come aboard with us and be not with the disbelievers.”³²

The exchange involved an Arabic term that is intimate and endearing: *yabunayya*, which is a very sweet and caring way of saying “O my son.”

Noah’s son replied, “I will take refuge on a mountain to protect me from the water.”³³

Noah, Lena said to me sadly, let his son go. “When I read these verses,” she said, “I feel Noah’s pain. As a caring father, he wants the best for his son, but he has to accept that the son chooses his own destiny.” On a personal level, Lena told me, this means that “religious freedom includes the right for every individual to choose freely.”

SIMILARITIES WITH OTHER RELIGIONS

Many of the truths of the restored gospel find interesting expression in the beliefs of other people.

For example, my daughter Ella and I were visiting the sacred Daoist mountain of Wudang in China. As we climbed up the mountain toward the Dayue celestial palace, we noticed the railings were covered in padlocks. One interesting feature of these padlocks was that they did not have a keyhole or a combination. Once you locked them, they could not be unlocked. Our guide explained in halting English, “Honeymoon lovers will carve their names on the lock and then lock it to the railing so that their love will last forever. Or someone will engrave the name of a grandparent who has died so that they can be locked together for eternity.” This, of course, reflects the deep desire for belonging and connection that we see realized in the sealing ordinances of the temple.

A few weeks ago at a conference at Oxford University, a distinguished Jewish professor from Israel, Asher Maoz, expressed the amazement he felt when visiting Temple Square and seeing a depiction of the temple’s baptismal font. He noted the similarities with the Jewish *mikveh* bath, which is a washing and immersion ritual in the Jewish faith that is used in the ceremony for when someone converts to Judaism.³⁴

I have been helping organize programs in Myanmar (also known as Burma) in partnership with a leading Buddhist monk, a Catholic cardinal, and the Myanmar Council of Churches. In August I was at a Buddhist pagoda in Bagan, Myanmar, where there was a large statue of the Buddha. When I was looking up at him from close range, his facial expression was stern; at 30 feet back he had a slight smile; and further back still, from the very back of

the large room, he appeared to be smiling broadly.

My Buddhist friend explained, “The rich and powerful would pray in front, and Buddha looks down at them sternly; the shopkeepers and professionals (including the professors, she said pointedly) were in the middle, and Buddha has a slight smile for them; and the poorest farmers and peasants would pray from the back, and Buddha felt closest and most warmly toward them.”

I couldn’t help recalling the scriptural injunction that the first will be last and the last will be first in the kingdom of heaven.³⁵

Recently I was at the magnificent Shwedagon Pagoda in Yangon, Myanmar, with Anshin Thondara, who is a Buddhist monk I admire greatly. I asked him what he thinks about when he prays. He told me he reflects on the character traits of Buddha—his compassion, his wisdom, his patience, and his love—and tries to implant them in his heart. This has affected my prayers and my meditation, as I now pray to inculcate specific traits of the Savior.³⁶

WITH FULL PURPOSE OF HEART

Recently I was watching carpool karaoke on YouTube from an episode of *The Late Late Show with James Corden* that featured the Red Hot Chili Peppers. Corden complimented Flea for his skill as a bass player, saying that he admired how committed he was to his playing.

Flea brightened noticeably and said that it was something he had learned from reggae artist Bob Marley. He quoted from a book Marley had written, saying, “The only thing that really mattered when you’re playing music was the motivation and the intensity and commitment to what you were doing in the moment.” This was the key, Flea said, to his success as a rock musician.³⁷

I have been thinking about being fully committed. In the gospel context, being fully committed is often expressed as being engaged “with full purpose of heart.” The Book of Mormon speaks of the importance of following the Savior “with full purpose of heart, acting no hypocrisy and no deception before God, but with real intent.”³⁸

I love the verse in 3 Nephi in which the Savior said:

*O ye house of Israel whom I have spared, how oft will I gather you as a hen gathereth her chickens under her wings, if ye will repent and return unto me with full purpose of heart.*³⁹

JUDGE WALLACE

Not long ago I participated in a two-week training program on religion and the rule of law in China. The students in the class were professors, graduate students, religious leaders, judges, and government officials from all over China. The faculty members consisted of about a dozen law professors and judges from 8 or 10 different countries. We had invited Judge Clifford Wallace, an emeritus chief judge of the U.S. Ninth Circuit Court of Appeals, to participate.

Judge Wallace has visited China at least once a year since 1974 and is well known throughout the country. He joined the Church as a young adult and has served as a stake president and temple president in San Diego.

One of the students asked Judge Wallace what his religious beliefs were and how they affected his work as a judge.

Judge Wallace answered with the textbook answer I have heard from many U.S. judges—that his religious beliefs do not affect his work as a judge because he has taken an oath to uphold and follow the Constitution and the laws of the United States.

The student pressed, asking, “But what are your personal religious beliefs?”

Judge Wallace answered in a way that made a deep impression on me. “I’m a Mormon,” he said, “a member of The Church of Jesus Christ of Latter-day Saints.” He paused for a moment and then continued: “And I’m a believing and faithful member of my church. I really believe it. I don’t just believe part of it or believe it some of the time. I believe all of it all of the time. It teaches me that we are all created in the image of God and that we are all His children. It teaches me that I have to love and show respect to everyone.”

IRONIC DISTANCE AND SKEPTICAL DETACHMENT

I think our era is often marked by those who hold something back, who maintain “ironic distance” or “skeptical detachment.” Some of us are like little chicks, running hither and fro. But I believe that what Flea said about being a rock musician is just as true of us when we are trying to live the gospel: If we are not fully committed, we will be overcome with doubt or performance anxiety. We can’t be too worried about how we look. If we are fully committed, we will live fully, joyfully, and audaciously. We can dance as if no one is watching.

Earlier this month, after spending the better part of a week at BYU, a scholar from Lebanon told me why he thought Mormons were going to be so successful in the coming century: “Young Mormons are going to get educations, get married, and have children, while the rest of America is going in a different direction.”

He probably has an exaggerated sense of how different we are from the rest of the culture, but in the world in which we live, it is actually quite radically countercultural to do these rather ordinary-seeming things. In a country in which almost half of all children are born to single mothers,⁴⁰ we can be peculiar people by getting an education, getting and staying married, and having and raising responsible and respectful children.

AUDACIOUS FAITH


Like Judge Wallace, I too count myself as a believer—someone fully committed and someone who strives to live the gospel with full purpose of heart. Everything I think and everything I believe is probably in some way affected by my faith. I believe in the power of love because of my faith in a Heavenly Father who loves His children. I believe in truth because I believe in a God who is beholden to truth. I believe in goodness and beauty and in light and right because I believe that God is the Creator of this universe and that He radiates these characteristics.⁴¹

I believe Joseph Smith when he said that LDS doctrine embraces all truth and that there are great and marvelous things yet to be revealed. I believe we should strive to be a peculiar people. I love the truths that can be found in other religions, but I believe in the unique and singular restoration of Christ’s Church, with living apostles and prophets and with priesthood

authority, which authorizes those agents to act with the authority of God.

Joseph Smith revealed a tremendous volume of holy writ. Recently I have been reading the same chapter of scripture, preferably out loud, each day for a month as I have tried to really internalize the scriptures. Each month I choose a new chapter. This month I have been reading section 93 of the Doctrine and Covenants. If you want to know what I mean by audacious faith, try reading section 93 every day for a month.

It is audacious to believe that God has a tangible, perfected body, that He communicates with His children today, and that His Church has been restored and is led by prophets and apostles. It is audacious to believe that we can receive personal revelation pertinent to our own lives and that of our family; that the priesthood has been restored to the earth; and that families can be sealed and bound together in cords that tie past, present, and future generations into eternal relationships. It is audacious to believe that God is our Father—really our Father—and that we are His children—really His children. We have every reason to be fearless and bold, confident and courageous in our audacious faith.

In the name of Jesus Christ, amen. 

NOTES

- ¹ *Oxford English Dictionary*, s.v. “audacious” (definition 1a), oed.com/view/Entry/13010?redirectedFrom=audacious#eid. There is a secondary meaning of the word *audacious*: that which is “unrestrained by, or setting at defiance, the principles of decorum and morality” or even being “presumptuously wicked, impudent, [and] shameless” (see *OED*, s.v. “audacious” [definition 2]). Occasionally Mormons, especially in the Prophet Joseph’s day, were accused of being audacious in this sense as well. But the audacity I want to discuss is a trait that reflects being fearless and bold, confident and courageous.
- ² Deuteronomy 14:2; see also Psalm 135:4.
- ³ See John 17:15–16, 18.
- ⁴ The apostles assumed there was a premortal existence when they questioned Jesus in John 9:2 about the possibility that it was due to his own sin that a man was born blind: “And his disciples asked him, saying, Master, who did sin, this man, or his parents, that he was born blind?” Terry L. Givens explained:

Of all the Christian doctrines Mormonism purported to restore, few have been so thoroughly eclipsed in Christian history as the soul's pre-mortal existence. Both Semitic and Greek sources fed into early church traditions of ante-mortal humans that were widespread though not universal. The pseudepigraphal Prayer of Joseph (first century CE) refers, as do other Jewish sources, to the pre-mortal existence of Israel's patriarchs. From the same era, the Apocalypse of Abraham (70–150 CE) describes "a multitude of tribes who existed previously" along with "the ones I have prepared to be born of [Abraham] and to be called my people." Even more authoritative—especially in the early Christian centuries—was the Wisdom of Solomon, dating from the first or second century BCE, and included in the first known listing of Christian canonical writings, the Muratorian Canon of the second century. The author notes that "As a child I was naturally gifted, and a good soul fell to my lot; or rather, being good, I entered an undefiled body." [Wrestling the Angel: The Foundations of Mormon Thought: Cosmos, God, Humanity (Oxford: Oxford University Press, 2015), 147–48 (internal footnotes omitted)]

- 5 A few years later, when I told Deirdre, the Catholic girl I was falling in love with, about the premortal existence, I took it even worse when she laughed out loud at me. But Deirdre, who joined the Church three years later and is now my eternal partner, will tell you that the doctrine of the premortal existence was one of the things that took hold of her heart and would not let her go.
- 6 See D&C 93:29.
- 7 See Boyd K. Packer, "The Play and the Plan," CES fireside for young adults, Kirkland, Washington, 7 May 1995.
- 8 Genesis 1:27.
- 9 Joseph Smith, in *History of the Church* 6:305; also in "The King Follett Sermon," *Ensign*, April 1971.
- 10 See Moses 1:39; see also the Church's explanatory essay on eternal life, Gospel Topics, s.v. "eternal life," lds.org/topics/eternal-life.
- 11 *Journal of Discourses* 4:54–55.
- 12 John 17:21.
- 13 See, for example, Mormon's words to his son Moroni, encouraging him to have hope even in the face of Nephite atrocities (Moroni 9:25).
- 14 See Ether 12:27.
- 15 Joseph Smith also said in the King Follett Sermon:

You don't know me; you never knew my heart. No man knows my history. I cannot tell it: I shall never undertake it. I don't blame any one for not believing my history. If I had not experienced what I have, I would not have believed it myself. I never did harm any man since I was born in the world. My voice is always for peace. [HC 6:317; quoted in *Teachings of*

Presidents of the Church: Joseph Smith (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 2007), 525]

- 16 Joseph Smith—History 1:25.
 - 17 See Jeffrey R. Holland, "Safety for the Soul," *Ensign*, November 2009.
 - 18 Joseph Smith, "Church History," *Times and Seasons* 3, no. 9 (1 March 1842): 709; see also "The Wentworth Letter," HC 4:540; and "The Wentworth Letter," *Ensign*, July 2002.
 - 19 But what if we are wrong and LDS doctrine is untrue, or what if we are wrong and God does not exist? I am willing to be wrong in this way if it means believing and treating others as though they are children of God, created in His image with the potential to become beings like unto a perfect and perfectly loving God. I would rather make the mistake of attributing meaning and love to a universe that is meaningless and indifferent than vice versa. And besides, I do not think we are wrong. I believe love is the most powerful force in the universe, and I am not sure we have any reason to believe love is real if we reject the existence of God.
 - 20 1 Nephi 8:26.
 - 21 Westminster Assembly, "Of God, and of the Holy Trinity," chapter 2 in the Westminster Confession of Faith (1646).
 - 22 Letter from Joseph Smith to Isaac Galland, 22 March 1839, "Communications," *Times and Seasons* 1, no. 4 (February 1840): 53; quoted in Givens, *Wrestling*, 38.
- Joseph Smith also said, "The Latter-day Saints have no creed, but are ready to believe all true principles that exist, as they are made manifest from time to time" (HC 5:215; quoted in Givens, *Wrestling*, 38).
- And, as paraphrased by Terryl L. Givens, the Prophet stated: "If the Presbyterians have any truth, embrace that. If the Baptists and Methodists have truth, embrace that too. Get all the good in the world if you want to come out a pure Mormon" (sermon given 23 July 1843; in Givens, *Wrestling*, 38; see HC 5:517 and *The Words of Joseph Smith: The Contemporary Accounts of the Nauvoo Discourses of the Prophet Joseph*, comp. and ed. Andrew F. Ehat and Lyndon W. Cook [Provo: BYU Religious Studies Center, 1980], 234).
- On another occasion Joseph said, "The first and fundamental principle of our holy religion is" to be free "to embrace all, and every item of truth, without limitation or without being circumscribed or prohibited by the creeds or superstitious notions of men, or by the dominations of one another" (letter from Joseph Smith to Isaac Galland, *Times and Seasons*, 54; quoted in Givens, *Wrestling*, 38).

Givens noted that Joseph pushed "in the direction of expansive addition rather than contracting

- reduction: 'we don't ask any people to throw away any good they have got we only ask them to Come & get more'" (*Wrestling*, 38; quoting Joseph Smith, 22 January 1843; see HC 5:259; see also *Words of Joseph*, 159).
- 23 Neal A. Maxwell, *All These Things Shall Give Thee Experience* (Salt Lake City: Deseret Book, 1979), 44.
 - 24 Terryl and Fiona Givens wrote:

The Mormon conception of the war in heaven has ill served us in the simplistic, caricatured forms it so often takes. More must have been involved than simple choice between freedom and coercion. Depriving the human family of agency and accountability could only have been tempting to sons and daughters of God if the alternative were unthinkable terrible. The most reasonable explanation of heavenly division was not over some vague risk of failure that we bravely accepted while others cravenly retreated. More likely, as [Congregationalist minister Edward] Beecher argued, was the very real, vivid, inevitable pageant of warfare, genocide, infant mortality, an almost universal anguish for sin and personal bereavement that, once unfolded to our eyes in celestial councils, threatened to derail the entire plan, drawing away a third of the heavenly hosts. [*The Crucible of Doubt: Reflections on the Quest for Faith* (Salt Lake City: Deseret Book, 2014), 112–13]

- 25 See, for example, D&C 121:1–3.
- 26 See, for example, John 14:18.
- 27 2 Nephi 31:19.
- 28 One of the most audacious beliefs of the Church is its understanding of heaven and the afterlife. Joseph Smith was ridiculed for rejecting the Christian conception of hell as a fire of brimstone. His vision of heaven, with its three degrees of glory, is a much sunnier place.

I was recently having a conversation with my Protestant friend Seng Mai Aung in Myanmar. I asked her what she thought heaven would be like, and she said there would be no families or relationships like we have on earth, but those who were saved would be subsumed into God's love. The idea of being swallowed up into God's love is in a way an attractive and comforting idea, especially in contrast with the pains and suffering of earthly life, but Joseph's vision of heaven was very different. Human beings will retain their identities, and human relationships may endure. Heaven is not so much a place as a way of being and a set of relationships, familial and congregational. Every kingdom of glory is far superior to earth life, but even celestial life will be recognizably human: we will live in families, maintain relationships, and progress together.

This idea of being together with our families in eternal relationships is one of the audacious

and appealing aspects of Mormon doctrine, but it is rather overwhelming. As a young missionary serving in Japan, my companion and I were teaching a beautiful family—a mother, a father, and two young children. Everything was going well. They were accepting gospel principles and were especially drawn to the idea of family home evening. They invited us over nearly every Monday so that we could have family home evening with them.

I thought it would be a good idea to prepare a lesson about eternal families. “Wouldn’t it be wonderful to know that you can be together with your family forever?” I said. Then, looking at the father, I asked, “What would you think if it were possible that your marriage could last forever, not just until death?”

Something completely unexpected happened. He became uncomfortable and gave an equivocal answer. Having never been married, and seeing his apparently happy home life, I had assumed that he would want that relationship to last forever. But forever is a long time, and if our relationships are broken or unhealthy, the idea of them being eternal may not seem like such a good thing.

From the beginning Joseph was ridiculed for his doctrine that human beings are coeternal with God and have the capacity and destiny to become beings like unto our Father in Heaven. Some critics have ridiculed Mormons as “god makers.” But Jesus Himself was a god maker: He urged His disciples to be one, as He and His Father are one (see 3 Nephi 28:10 and D&C 35:2), and to become perfect (meaning complete) as He and His Father are perfect (see Matthew 5:48 and 3 Nephi 12:48); and He taught that we are “joint-heirs with Christ” of the kingdom of God (Romans 8:17). Joseph had the audacity and vision to understand that these promises are not metaphors or gestures but are to be taken literally.

29 See Articles of Faith 1:11.

30 Joseph Smith said:

The Saints can testify whether I am willing to lay down my life for my brethren. If it has been demonstrated that I have been willing to die for a “Mormon.” I am bold to declare before Heaven that I am just as ready to die in defending the rights of a Presbyterian, a Baptist, or a good man of any other denomination; for the same principle which would trample upon the rights of the Latter-day Saints would trample upon the rights of the Roman Catholics, or of any other denomination who may be unpopular and too weak to defend themselves.

It is a love of liberty which inspires my soul—civil and religious liberty to the whole of the human race. [HC 5:498; see also Teachings of Presidents: Joseph Smith, 345]

Elder Bruce R. McConkie said:

Freedom of worship is one of the basic doctrines of the gospel. Indeed, in one manner of speaking it is the most basic of all doctrines, even taking precedence over the nature and kind of being that God is, or the atoning sacrifice of the Son of God, or the vesting of priesthood and keys and saving power in the one true church. By this we mean that if there were no freedom of worship, there would be no God, no redemption, and no salvation in the kingdom of God. [A New Witness for the Articles of Faith (Salt Lake City: Deseret Book, 1985), 655; quoted in W. Cole Durham Jr., “The Doctrine of Religious Freedom,” BYU devotional address, 3 April 2001]

Religious freedom has a powerful appeal. Katrina Lantos Swett, an LDS member of the U.S. Commission on Religious Freedom, noted, “History is not kind to nor does it ultimately reward those who trample on the religious rights and freedoms of others” (“The State of Religious Freedom in the World,” *Clark Memorandum*, fall 2015, 6).

Elder Jeffrey R. Holland praised Swett’s “conspicuous devotion and unstinting service” in living the gospel (“Katrina Lantos Swett: A Guardian of Freedom,” *Clark Memorandum*, fall 2015, 11).

Joseph Smith said:

If I esteem mankind to be in error, shall I bear them down? No. I will lift them up, and in their own way too, if I cannot persuade them my way is better; and I will not seek to compel any man to believe as I do, only by the force of reasoning, for truth will cut its own way. [HC 5:499; quoted in Teachings of Presidents: Joseph Smith, 345]

31 Lena Larsen and I have worked together with a Lutheran colleague of hers, Tore Lindholm, for years on a program on sharia and human rights in Indonesia, or, as Tore said his skeptical colleagues described it, “fire and water.” This program, by the way, has just been expanded into a two-year master’s degree program at Muhammadiyah University in Indonesia.

32 Koran 11:42 (Saheeh International Translation).

33 Koran 11:43.

34 See Judith Baskin, Shimon Gibson, and David Kotlar, s.v. “mikveh,” in *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 14 (Detroit: Macmillan Reference, 2007), 225, go.galegroup.com/ps/retrieve.do?resultListType=RELATED_DOCUMENT&userGroupName=byuprovo&inPS=true&contentSegment=9780028660974&prodId=GVRL&isBOBIndex=true&docId=GALE|CX2587513881#225.

35 See Matthew 20:16.

36 We can learn much from other religious traditions. When I heard Anshin’s answer, I thought about my

own prayers, which often resemble a laundry list of things I am thankful for and an even longer list of petitions or requests. I was a little embarrassed that I didn’t spend time in my prayers thinking about and praying to be imbued with the character traits of our Heavenly Father and Savior. Recently in my prayers and as I meditate I have tried to focus on specific characteristics of Heavenly Father and Jesus Christ, and I pray that I may be endowed with a greater measure of these characteristics. Not surprisingly, when I looked into it, this was something Joseph Smith had understood.

37 “Red Hot Chili Peppers Carpool Karaoke,” *The Late Late Show with James Corden*, YouTube video, 13 June 2016, 6:45–7:23, youtube.com/watch?v=cfudXO_vzWk.

38 2 Nephi 31:13.

39 3 Nephi 10:6.

40 Live births to unmarried women account for 40.2 percent of all births in the United States (see Brady E. Hamilton, Joyce A. Martin, and Michelle J. K. Osterman, “Births: Preliminary Data for 2015,” *National Vital Statistics Reports* 65, no. 3 [2 June 2016]: 10, cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_03.pdf).

41 I have a friend, Neville Rochow, who is a successful barrister from Australia and who joined the Church as a young adult. He told me that what initially grabbed him and would not let him go was the concept expressed in D&C 93:36 that “the glory of God is intelligence, or, in other words, light and truth.”

Neville told me:

This harmonized with an eternity that articulates the highest in this life into an unending exploration of perfection: family and love. There is a beautiful coalition of absolutes: light, truth, intelligence, and love. Nothing had touched me in heart and mind with such power or wonderment. It captivated me in a way that I could not deny. All fused into the power of an eternal Atonement. It left indelible impressions on the soul and the heart. In short, once I understood this in the context of the Restoration, the result was conversion. That is why I have remained even when it was unfashionable, inconvenient, and unpopular.

I believe we are eternal beings, intelligences without beginning or end (see D&C 93:29), and also spirit children of our Heavenly Father created in His image, and that as His children our divine destiny is to become beings like unto Him. This does not mean we will ever supplant or become equal to God; He will always be our God and our Father. But the eternal pattern of parents and children is more like the mortal pattern of parents and children than many religious doctrines would have us believe.

I would like to begin by saying how grateful I am to receive this incredible honor. If there is one lesson I have learned in my career that I would like to share with you, it is this: it is impossible to say thank you too many times. There are so many people here today and in this Law School to whom I owe a real thank you.

For me, tax law was the right thing to go into, and Professor Cliff Fleming was the person who persuaded me that tax law was interesting and that I could

but I would like to tell you one thing that does indeed make me very proud. When I joined Kirkland & Ellis in Chicago in 1988, there were three Latter-day Saint attorneys there. I have now been there for 28 years, and I have tried hard during that time to be a good example. Today there are 34 LDS attorneys at Kirkland. We didn't have a Houston office until two years ago. Today we have 90 lawyers in Houston, and nine of the 90 are BYU graduates. That is an unbelievable percentage at a national

staff to ask them how the candidate treated staff members. And if I'm told, "Oh, they were a bit condescending" or "They were demeaning to the staff," then the candidate has very little chance of being hired.

RULE NUMBER TWO

Avoid Contention

As an attorney, your assignment is to resolve conflicts, not to create conflicts where they don't exist. I tell young lawyers that it is okay to disagree but that it is not okay to be contentious. And there is a meaningful difference between the two.

To illustrate my point, I would like to share a few scriptures that are particularly important to me. I have always paid a lot of attention to what the Savior did and said just before His Crucifixion and just after His Resurrection. What He said on those occasions was surely very important to Him. Before His Crucifixion, He gave His great Intercessory Prayer in the garden, wanting His people to be one, like He and the Father are one. After the Savior's Resurrection, when He appeared on the American continent, He told the people how to baptize and gave them the power to baptize and then immediately thereafter He gave them some profound advice:

For verily, verily I say unto you, he that hath the spirit of contention is not of me, but is of the devil, who is the father of contention, and he stirrith up the hearts of men to contend with anger, one with another.

Behold, this is not my doctrine, to stir up the hearts of men with anger, one against another; but this is my doctrine, that such things should be done away.

[3 Nephi 11:29–30]

There is absolutely no exception nor exclusion in that verse for lawyers. Nothing says you can ignore that scripture in any circumstance. So you have to defend your client; you have to be bold. But you are not to be contentious. I would like to tell you how that has worked out in my life.

I had a tipping point in my life in 2003. I was a tax lawyer, and I was doing well, though I certainly wasn't a prominent lawyer. But I had one really great client: United Airlines. United Airlines went bankrupt, and I represented them during that bankruptcy. At the time, there were very contentious discussions between the airline and the labor unions. The heads of the pilots' and the flight attendants' unions were argumentative, and management was frequently the same way. My job was to join those negotiations and figure out how to deliver literally billions of dollars of stock to employee groups without triggering too much tax.

Things at that point were very acrimonious, but I refused to do it that way. I certainly told the unions what I thought we should do, but I always tried as hard as I could to avoid acrimony and sarcasm—and, most important, I tried to show them respect.

We resolved it, and I believe we did so without creating too many enemies. Then, about a year later, something strange happened. I got a phone call from the chief financial officer of Delta Airlines. He said, "Hey, I want to hire you for our bankruptcy."

And I said, "Wait a minute. You have a law firm and really good tax lawyers. Why do you want to hire me?"

Three Rules to Live By

FINDING SUCCESS IN YOUR LEGAL CAREER

TODD F. MAYNES

do it. Thank you, Cliff. I had Professor Lynn Wardle for Civil Procedure, and he absolutely terrorized me for the first month until somebody told me, "You can't look at him."

I said, "What do you mean?"

He said, "If you look at him, he's going to call on you, and if you look away, he won't."

That was great advice! Then, in my third year, Lynn came to me and said, "I received a letter from a judge in the Seventh Circuit Court of Appeals who is looking for a clerk, and I think you'd be a really good candidate."

I applied and got that clerkship, and that experience made a meaningful difference in my life. Thank you, Lynn. There are a bunch of other people here—family and friends—who have meant so much to me in my life. Thank you.

Dean Smith's introduction a few minutes ago was very kind,

firm. Those many colleagues from BYU bless my life every day.

I would like to give some suggestions for having a successful legal career. Not everyone may agree with these ideas, but they have certainly worked for me.

RULE NUMBER ONE

Live Your Standards

If you are from this university, you have to live your standards. People know what BYU stands for, and they expect BYU graduates to live at a high level of integrity, honesty, and professionalism. And if you don't, you will be held accountable. The way you treat people—especially people who are in no position to help your career—provides a clear insight into your character. When I recruit people to the firm, I take them out to dinner or to lunch. I like to see how they treat the servers. I always call the firm's recruiting



He answered, “Well, I don’t really have a choice. I’ve been told by my pilots’ union that I have to hire you because they said they trust you.”

A few more months went by and the phone rang again, and this time it was the chief tax officer at Northwest Airlines. She said, “Hey, we want to hire you for our bankruptcy. The pilots’ union said you’re our guy.”

I ended up working on these bankruptcies because the unions trusted me and I had treated them with respect.

My career took off. All of a sudden I was known as the guy who did the bankruptcies. Every time there was a big bankruptcy in this country, I got a call from either the debtor or the creditor. And all I had done was try to be respectful to the pilots’ union.

I urge you as you go forth and practice law to remember to be forceful and strong but to also remember that you don’t need to call people names or be contentious. I can’t believe it when I see a lawyer in court get sarcastic with his or her opponent. If you think judges are impressed by that, you are sadly mistaken. They do not like it. You can be forceful and clever and creative, but sarcasm and contentiousness do not work. It’s in the scriptures, and I would urge you to remember that.

RULE NUMBER THREE

Be Entreatable

One scripture that I am particularly fond of is Alma 7:23: “And now I would that ye should be humble, and be submissive and gentle; easy to be entreated; full of patience and long-suffering.” The phrase “easy to be entreated” is an interesting one to me.

Entreated means to be asked or implored. As lawyers, you will be asked a lot of stuff by a lot of people. People in your firms or companies will look for your counsel. People in your wards will come over to your house at night and say, “I need your advice on this.” They will come to you feeling a lot of anxiety. You could say, “I don’t know anything about that area of law,” but that is not a satisfactory answer. These people will come to you for help, and you need to be responsive when that happens.

As Dean Smith mentioned, I am president of the Lawyers’ Committee for Better Housing (LCBH). We do work for homeless people and people who are being foreclosed on. The way I became associated with that organization is a good example of what it means to be “easy to be entreated.”

I was in an airport in Honolulu. My flight back to the mainland was delayed, and sitting behind me were 12 college students playing a game of Trivial Pursuit. As they were playing, there was one particular question that they could not answer. I turned around and whispered the answer to one of the students, and they invited me to play with them. So for the next two and a half hours I played Trivial Pursuit with 12 wonderful students from St. Olaf College in Minnesota.

One of the students was an intern at LCBH in Chicago. When

she got back to Chicago, she told her supervisor that she had met a Kirkland & Ellis lawyer while playing Trivial Pursuit in Hawaii. I got a call from the president of LCBH, who said, “Hey, we’d really like to have someone who is good at Trivial Pursuit be a participant in our organization. Can we meet with you?” I met with them, and I have been involved with LCBH ever since. And I have been blessed richly because of that association.

You can learn so much from other people if you allow them to entreat you. On planes I always try to talk to people sitting near me. On one flight, the man sitting next to me said that he was a part-time ski instructor and a part-time developer of low-income senior housing. For 90 minutes we talked about low-income senior housing. I learned that 80 percent of the people in senior housing facilities are females. Why? Because they live longer and women don’t do as well as men do in divorce.

Then, near the end of the flight, I asked him about his being a part-time ski instructor and if he taught lessons locally.

He said no. He said, quite matter-of-factly, that he was the head coach of the Canadian Olympic ski team.

I thought, “We have been on this plane for an hour and a half talking about low-income senior housing, and now you tell me you’re the head coach of the Canadian Olympic team?!” He was a humble man, and I learned a lot from his humility.

With that, now is a good place to end. But back to where I began, I repeat that it is impossible to say thank you too many times. So, to Dean Smith and the Law School, thank you so much for this incredible honor.

Todd F. Maynes (’87) is the 2016 recipient of the J. Reuben Clark Law School’s Alumni Achievement Award. A tax partner in the Chicago office of Kirkland & Ellis LLP, he teaches bankruptcy taxation at the Northwestern University Pritzker School of Law and the University of Chicago Law School and frequently lectures at the University of Michigan Law School. He is the only practicing tax attorney who is a member of the National Bankruptcy Conference, an organization created by Congress to provide advice and counsel in connection with federal bankruptcy laws. Since 2013 he has served as president of the Lawyers’ Committee for Better Housing and has led its efforts to provide safe and affordable housing for all Chicagoans.

Maynes has been a lead tax advisor in some of the largest bankruptcies and restructurings of all time. In nominating him for this award, Brigham Cannon, also a partner at Kirkland, wrote, “I would be very surprised to learn if any other BYU Law graduate has had a more successful career in law than Todd. He has achieved that success while serving as a great ambassador for the Church, BYU, and the Law School. I have never heard anyone mention Todd’s name without also stating something like, ‘He is really smart’ or ‘Just do whatever Todd says.’ He has set a high bar both personally and professionally for all BYU graduates and all LDS lawyers at the firm.”

This article contains excerpts from Maynes’s remarks given to the Law School on October 13, 2016.



After 23 years at BYU—first as director of Career Services, then as assistant dean of Career Services and alumni relations, and finally as assistant dean over external relations—Mary Hales Hoagland retired at the end of 2016.

Hoagland grew up in a family that valued education. Both her father and grandfather were physics professors at BYU, and her three Hales uncles accrued another PhD and two medical degrees among them. She received a BA from BYU, but further education was interrupted by marriage, a move to California, and the births of her three sons. When the youngest was three, she attended law school and then clerked at a bankruptcy court and later practiced in a large firm in Fresno.

When the family moved to Provo for her husband's work, Hoagland sat for the Utah Bar exam and applied for the Career Services director position at BYU Law. She was offered the job and agreed to stay for two years, intending to return to private practice. But Hoagland fell in love with the students—whom she characterized as “amazing”—and stayed.

“Although I didn’t attend law school at BYU, I developed a love for the school and the students

and graduates that has continued,” she said.

Hoagland began the Professional Development Lecture and Skills classes and developed the Private Sector Externship Program. She put together a task force to educate employers about the Law School, encouraging them to hire BYU Law students. “My goal was to get them talking about the caliber and professionalism of our law students,” she said. Part of her strategy was to institute an early interviewing program that took BYU Law students to cities throughout the country and placed them in firms, public interest and corporate offices, and judicial chambers. She was instrumental in developing the Pathway Mentoring Program and the Public Service Fellowship Program. Meanwhile, she helped BYU partner with the Church’s Office of the General Counsel to place many BYU Law students in international externships. She gives credit to the many people who also helped develop these programs.

When Hoagland was named assistant dean for the Law School’s external relations, she made a seamless transition. She said, “I had been working with the students for 20 years; now I was working with alumni I had known as students.”

Hoagland has a picture hanging in her office of her father and uncles dressed in their doctoral robes. “Perhaps that was the inspiration for me to pursue the educational leadership PhD degree at BYU,” she said. “I needed an intellectual challenge, and that program gave it to me for the 10 years it took to complete it while working full-time at the Law School.”

Former Law School dean Jim Rasband commented on Hoagland’s retirement. “Mary Hoagland is leaving an impressive legacy of service at the Law School,” he said. “She elevated the work of our Career Services and Professional Development Office. . . . She also led out in growing the BYU Law School Alumni Association, including its

mentoring program. We can all be grateful for her tireless organizational and leadership efforts with so many alumni events.” Dean Rasband concluded on a personal note: “I am grateful not only for her service but for her friendship. Mary was cheerfully supportive of my vision for the Law School and willing to go the extra mile to make the Law School successful.”

Hoagland has touched generations of students who count her as a friend. Dean Gordon Smith stated, “During my recent travels, I have heard frequent expressions of love and admiration for Mary from our alumni and friends.” Many of these friends are the leaders and members of the J. Reuben Clark Law Society whom she met and worked with over the past 23 years as a director and board member. Hoagland was honored for her distinguished service at the Law Society’s annual fireside with a tribute by Virginia Isaacson, the society’s international chair.

A Farewell to Mary Hoagland



A Call to Russia

The First Presidency has called **Eileen Doyle Crane** ('07) as a legal specialist to work in the Moscow office of the Church's Office of the General Counsel. She will be under the direction of the area legal counsel for the Europe East Area—a region covering 16 countries and 14 missions. With the help of the Church's local outside counsel, she will work to resolve a range of

issues for various Church legal entities throughout the area. Such legal issues include real estate projects, immigration matters, and corporate maintenance, among others.

At the time of her call, Crane was employed by Utah Valley University as the prelaw counselor in the Academic Counseling Center and as the coordinator for the uvu Center for Prestigious Scholars.

A Distinguished Honor for John W. Welch

University of Southern California's Office of Religious Life and the John A. Widtsoe Foundation named **BYU** Law professor John W. Welch as Distinguished Scholar in Residence beginning in January for the spring 2017 semester.

The designation recognizes Welch's prolific scholarship—spanning 40 years—in law, classical languages, biblical and scriptural commentary, and contributions to Mormon studies and Mormon history. Welch will be a guest lecturer in the classroom, participate in interfaith conversations with campus-based religious leaders,

engage in research and writing, direct foundation initiatives, and be a featured speaker at **LDS** fire-sides and community gatherings in Southern California.

Varun Soni, dean of religious life at **usc**, said, "Welch's training in law at Duke, his classical studies at Oxford, as well as his scholarly work within the **LDS** faith will bring a unique perspective to our religious-life forums. I also anticipate many rich and rewarding dialogues will take place with interfaith council members, faculty, and students, generating thoughtful exchanges and learning moments. We are honored to



have a scholar of Professor Welch's stature at **usc**."

Larry L. Eastland, PhD, chair and president of the Widtsoe Foundation, said that Welch "is one of the leading Mormon scholars of the 21st century. When you look at the breadth and depth of Jack's prolific writings on scriptural and Mormon theological topics, his pioneering work in establishing renowned global foundations, his academic coursework, and his appointments to prestigious and well-known national and international societies, conferences, and institutes, the Widtsoe Foundation is

honored to name him our first Distinguished Scholar in Residence."

Professor Welch is the Robert K. Thomas Professor of Law at the **BYU** Law School. He grew up in Southern California. As an undergraduate at **BYU** he majored in history and minored in mathematics, and he earned a master's degree in classical Greek and Latin languages. He was named a Woodrow Wilson Fellow and studied Greek philosophy at Oxford University. After graduating from Duke Law School, he practiced law in Los Angeles with O'Melveny & Meyers. He founded the Foundation for Ancient Research and Mormon Studies (**FARMS**) in 1979 and joined the **BYU** Law faculty in 1980. Professor Welch has served as an editor for Macmillan's *Encyclopedia of Mormonism*, has authored 18 books, and has written hundreds of book chapters and journal articles. He is currently editor of *BYU Studies* and is a member of the editorial board of **BYU**'s New Testament Commentary Series.



BRADLEY SLADE

Calendar of Events

2017

January 20	JRCLS Annual Fireside Conference Center Little Theater Salt Lake City
February 5-12	BYU Law Alumni and Friends CLE at Sea Western Caribbean
February 23	Speed-Networking Lunch Salt Lake City
April 1	General Conference Reception Joseph Smith Memorial Building Salt Lake City
April 28	BYU Law School Graduation de Jong Concert Hall BYU 5:00 p.m. BYU Law School Graduation Reception BYU Law School
July 27	Utah State Bar Convention and Law School Reception Sun Valley, Idaho
July 31-August 4	Civics, Law, and Leadership Youth Camp BYU
August 24	BYU Education Week CLE, Reception, and Lunch BYU Law School
August 25	BYU Law Alumni 1L Welcome Breakfast West Patio BYU Law School
August 31	Founders Day Dinner Little America Hotel Salt Lake City
September 1	Dean's Circle Meetings BYU Law School
BYU LAW REUNION WEEKEND	
September 7	BYU Law Alumni and Friends Golf Tournament Thanksgiving Point
September 8	CLE Symposium Room 205 BYU Law School
September TBA	Dean's Reception Burns Memorial Lounge BYU Law School
September TBA	BYU Law Alumni Class Reunion Dinners: 1977, 1982, 1987, 1992, 1997, 2002, 2007, 2012 BYU
September 9	BYU Law Tailgate BBQ West Patio BYU Law School BYU vs. U of U Football Game BYU
September 30	General Conference Reception Joseph Smith Memorial Building Salt Lake City
October TBA	BYU Law Alumni Achievement Award Lecture Room 205 BYU Law School
October TBA	BYU Law Alumni Association Board Meeting BYU Law School

2018

January TBA	JRCLS Annual Fireside Conference Center Little Theater Salt Lake City
April 17	Washington Weekend Supreme Court Swearing-In Washington, DC

Clark Memorandum

J. Reuben Clark Law School
Brigham Young University