Clark Memorandum: Fall 2017

J. Reuben Clark Law School
BYU Law School Alumni Association
J. Reuben Clark Law Society

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This summer I had the opportunity to meet with an amazing group of young people who were attending the BYU Law School’s first annual Civics, Law, and Leadership Youth Camp. I suggested that they start their leadership journey by selecting one person—perhaps a parent, a sibling, or a friend—and then strive to communicate that person’s worth and potential to them so clearly that that person comes to see it in themselves.1 This idea of leadership has transformed the way I think about the Law School’s mission “to teach the laws of men in the light of the laws of God.” As I have noted before, the tension between these two systems of law is profound, but I believe this tension is best resolved when we serve each other.

We have been discussing leadership in the Law School beyond the youth camp. This past spring our newly constituted board of advisers met for a day in the Law School Conference Center to discuss this question: “If we wanted BYU Law to become a pacesetter among law schools in leadership training, what would we do?” In the coming school year, I will be teaching a course on leadership with my friend Jim Ferrell, managing partner of The Arbinger Institute, and we are working on other initiatives in the leadership space.

As part of the discussion with the board of advisers, I mentioned Maynard Dixon’s poignant painting Forgotten Man. In this painting, Dixon left behind the western landscapes and scenes that characterized his work and attempted to address some of the social issues attendant to the Great Depression. The forgotten man sits alone on a curb, unnoticed by passersby. His gaze is directed downward, his face a study in dejection. He is alone in a crowd, separated by his loss of purpose and the apparent inability or unwillingness of others to look beyond their own concerns.

I first encountered this painting on Judge Thomas Griffith’s wall in his Washington, DC, chambers. The somber painting is a sharp contrast to his majestic view of the Capitol. When I inquired why he chose that particularly sobering scene for his office, Judge Griffith told me that he first encountered the painting in the office of Elder Dallin H. Oaks, LDS apostle and former BYU president. Elder Oaks told Judge Griffith that, during his time in university and Church administration, he has often been drawn into big policy questions, and he never wants to forget that his purpose is to minister to the individual. Similarly, Judge Griffith told me that he always wants to remember that, when writing legal opinions, he is the guardian of the system and that each of his opinions affects individuals.

Forgotten Man now hangs outside the Law School’s moot courtroom as a reminder to all at the Law School to serve. Recently, BYU Law dean of admissions Gayla Sorenson made a similar point: “It is easy to become so caught up in the larger cause that we forget the individuals for whom we are advocating.” She also said, “[The Lord] has placed people in your life whom you are called to love and whose circumstances you are called to support or change. Both will require your advocacy.”2

For those of us working in the legal field, the message of an individual’s worth and potential can often become lost because our profession—with its emphasis on rules, authority, and precedent—may value the coherence of the system over the individual. Nevertheless, we are personally and institutionally committed to the doctrine that every human being has worth and dignity as a child of God, and this doctrine impels us to serve.

The articles that follow address both systemic and individual needs, and it is my hope that as you read you will be motivated to find systems you can improve or individuals you can serve in order to communicate their worth and potential to them and to the community.

NOTES

1 See Stephen R. Covey, The Eighth Habit: From Effectiveness to Greatness (2004).
2 Gayla M. Sorenson, “To Me He Doth Not Stink,” BYU devotional address, 8 August 2017, speeches.byu.edu/talks/sorenson-sorenson_doeth-not-stink-advocacy-love.
In the 1940s, young missionaries—dressed in suits and ties, wearing fedoras, and riding bicycles—from The Church of Jesus Christ of Latter-day Saints arrived on the Cattaraugus Reservation of the Seneca Nation of Indians in western New York, about 120 miles west of Hill Cumorah.
ENDING THE MOUNTAIN

A STORY OF THE PEOPLE OF THE GREAT HILL
Our people are called the Onondowahgah—the People of the Great Hill—and are the westernmost of the allied Indian nations of the Great Iroquois Confederacy. Remarkably, the Seneca people still occupy some of their aboriginal territory in New York state, despite centuries of outside pressure to remove or assimilate them. They are the Keepers of the Western Door in the metaphorical longhouse that overlays the homelands and symbolizes the fraternity of the Iroquois people. From their early days, the tribes of the Iroquois Confederacy were bound by a constitution and practiced a form of representative government.

The missionaries’ arrival was met with curiosity, apprehension, and even opposition. An influential man in the community, Jacob Seneca, who was a member of the tribal council, advocated on their behalf, urging the tribe to allow them to stay and share their message. Among the first and few Seneca to embrace their message and be baptized in the creek running through the reservation were two of my great-grandmothers: Nina Tallchief Seneca (Jacob Seneca’s wife) and Florence Huff Parker. Soon thereafter, my maternal grandmother, Norma Parker Seneca, and her children, including my mother, Carolyn Seneca Steele, were also baptized.

Seneca society is traditionally matrilineal. We take the clan identity of our mothers. Only those whose mothers are Seneca may enroll in the tribe. When we introduce ourselves, we often identify our mother and grandmothers: I am the daughter of Carolyn Seneca Steele and the granddaughter of Norma Parker Seneca. I am the great-granddaughter of Nina Tallchief Seneca and Florence Huff Parker. We belong to the Beaver Clan. My grandmother told me that this means that, like beavers, we are industrious and resourceful.

My Great-Grandmothers: A Legacy of Faith and Determination

My great-grandmothers had few educational opportunities. Nina Tallchief Seneca, whom everyone called Grandma Jake, stood around five feet tall. She appears on the 1890 census as a three-year-old in her household. In 1898, at age 11, she went to the Carlisle Indian School, where she stayed for five years. Her course of study was sewing and laundry. Carlisle was an Indian boarding school founded by Richard Henry Pratt, whose avowed philosophy was to “kill the Indian and save the man.” The aim of the school—and Indian boarding schools like it throughout the country—was to strip the children of Indian identity, language, spiritual practices, and traditions in favor of forced assimilation.

Nina was educated as a domestic servant and earned top marks for penmanship and behavior during her time at Carlisle. Certified as a “domestic,” she worked, like many of her schoolmates, as a maid for non-Indian families after her schooling. Although Richard Henry Pratt’s goal may have been for Carlisle children to abandon all vestiges of tribal and reservation life, Nina returned to the Cattaraugus Reservation to raise a family. She spent
her working life cleaning, laundering, and cooking in large homes in Buffalo, New York, about 20 miles from her home.

Family members recall her scrupulous honesty. She was very troubled one evening when she realized she still had a safety pin belonging to her employer pinned to her apron. Nina was eager to get back early the next day to ensure that the safety pin would be returned to its owner, lest they think she had stolen it.

She also worked as a janitor at a factory, where she sold homemade baked goods to coworkers on her breaks. She faced untold hardships, outliving many of her 12 children, and was married to a man with a cruel streak. But she was quick to laugh. She loved working in her garden. She literally whistled as she worked around the house and was eager to bake for whoever came to her home. She worked hard every day of her life and did so with purpose, joy, and determination.

Florence Huff Parker’s mother died when Florence was young, and as the only girl, she was tasked with caring for her large family of brothers. There was little time or opportunity for her to obtain a formal education. And yet I knew her to be an avid reader. She was instrumental to the movement on the reservation to ensure women could vote in tribal elections. Many times, I came into her room in my grandparents’ home to find her reading. She had an extra-large-print Book of Mormon, which she read from each day through a large magnifying glass. She read the Buffalo Evening News cover-to-cover every evening. She cultivated an interest in fashionable dress and enjoyed going to the mall. In one of my last visits with her, I took her to sacrament meeting at the small congregation she had helped to pioneer, and she arose to bear her testimony, at age 105—physically weak but spiritually strong. She died on her 106th birthday.

Florence lost her first family—a husband and two small daughters—in a flu epidemic in the 1910s. She told me that the profound pain of the loss of her husband Clayton, whom she had married at age 16, and her daughters, 3-month-old Rosabell and 16-month-old Hattie, stayed with her and weighed on her soul even as she remarried and had seven additional children, including my grandmother, Norma Parker Seneca. She said she ultimately found peace about that loss as she read the Book of Mormon, and she pored over its pages to the end of her long life.

Florence also held out hope that her second husband, William Parker, would one day join the Church. She pressed clothes each Saturday night for him to wear to church the next day and hung them on the door. Week after week, year after year, they hung there, untouched. Finally, at about age 78 and at the invitation of a particular missionary, he put on the church clothes and went with her. He was baptized and ordained a deacon. He had a full head of white hair. My mother remembers him joining the other deacons to do his duty, passing the sacrament and concentrating to try to overcome the palsy pulsing through his hands as he grasped the trays.

My two great-grandmothers offered their faith and their gifts to build up the Church in their community. They baked pies and sold them from the back of a wagon. They made a traditional Seneca corn soup to raise money to help the Church acquire property on the reservation. Their efforts helped build a chapel in the 1950s. In an extraordinary agreement—because land is a scarce and precious resource on the small reservation—the Seneca Nation agreed to allow the Church to use a parcel in perpetuity for its building, for a cemetery, and for farming. In subsequent years, the congregation planted potatoes, corn, and an apple orchard behind the church for the Church’s welfare program.

Like my grandmothers and mother before me, I worked in the field behind the church as a child harvesting potatoes and corn. In the 1970s we worked to raise funds for an expansion to the chapel by selling corn soup. We also staged a music-and-dance variety show (it was the 1970s after all)—in which I performed a very amateurish stand-up comedy
My grandmother Norma Parker Seneca remembers many times when the bus that was supposed to transport the children from the reservation to the local public schools passed them by without stopping. Eventually she went to a Quaker boarding school. There she was punished for speaking the Seneca language, but she was a lady with a resolute will, and she retained the language despite the school’s efforts to eradicate it.

She taught me that being resolute was a Seneca trait. She would observe, with some trace of defiance, that we, the Seneca people, were supposed to have been eliminated, or at least pushed out of New York and off our homelands. “But we are still here,” she would say and then smile.

Norma worked as an aide at a New York state hospital for the mentally ill. She observed the work of the nurses and decided that she would like to do the kind of work they were doing. In her 50s she got her GED and applied to a local community college. She graduated as an RN and was a skilled and dedicated nurse into her 70s, when cancer forced her to retire.

She was particularly sophisticated and savvy about money. She worked multiple jobs and built stellar credit so that she could finance the college education of her children. She cosigned with me to buy my first car and was eager for the salesman to do a credit check on her.

“Solid gold?” she asked with a big smile when he returned from doing the credit check. “Solid gold!” he replied, and she beamed.

My grandfather Martin Seneca Sr. approached the local Baptist minister, Reverend Owl, and asked him to help arrange for his education when he was 12 years old. Reverend Owl enrolled Martin in Bacone College in Muskogee, Oklahoma, and put him on a train. Bacone served Indian students from around the country. Martin stayed there, not returning home to Cattaraugus until he had completed an associate’s degree.

My great-grandmothers now lie buried in the cemetery behind the chapel.
Martin was a man devoted to family and civic engagement. He volunteered to serve in World War II and was trained as a pilot. He served as the president of the Seneca Nation during an especially perilous time when the United States was seeking a policy of termination of tribes. He navigated the tribe through those difficult waters as well as through assaults on tribal sovereignty and territory. He served on the local school board, advocating for equality of educational opportunity for the reservation children served by the local schools.

My grandparents were determined advocates of education, seeking opportunities for themselves and insisting on opportunities for their children. They multiplied the opportunities they found and worked and saved to ensure that their children and grandchildren would have even greater opportunities.

My mother, Carolyn Seneca Steele, remembers walking home from her one-room schoolhouse with a friend during the first grade.

“I’m going to college!” she announced confidently to her friend.

“What’s that?” her friend asked.

“I don’t know. But my dad says I’m going,” she answered.

And so it was. My grandparents set the vision and expectation early that their children would go to college. As People of the Great Hill, they pointed the way their three children would need to climb, working to provide the means and then modeling the ideals and values that would allow their children to succeed. They instilled in their children the confident belief that they could do and be anything they wanted to do and be. And they understood that their heritage as Seneca people provided the strength and background to enable that journey.

MY MOTHER: THE JOURNEY UP THE MOUNTAIN

In 1957 my grandfather borrowed his uncle’s car so that the family, including my two great-grandmothers, could travel across the country to deliver my aunt Loretta Seneca Crane to the mountains of BYU. While they were in Utah, my two great-grandmothers attended the Salt Lake Temple, received their endowments, and were sealed to their deceased spouses.

Later, my uncle Martin Seneca Jr. and my mother followed to the mountains of BYU, where my mother met my father, Lynn Hoagland Steele. All my grandparents’ children graduated from BYU and went on to graduate from law school.

After they were married, my parents moved to the Cattaraugus Reservation, where I spent my childhood. When I was about 10 years old, in 1977, my mother applied to and was accepted to the BYU Law School. The circumstances of my father’s job meant that he could not move with us to Utah right away. But my mother, brother, sister, and I said goodbye to everyone in our home community and moved to Utah for my mother’s schooling.

My mother met with Professor Reese Hansen upon her arrival as a highly nontraditional student, and she remembers him being especially warm and welcoming. But within a few days, she decided that it was not optimal for our family to live in Utah without our dad and that the Lord was directing her to change course. She returned a few days later to meet with Professor Hansen to tell him that she would not be attending after all. She found him to be a wise counselor, and he advised her to come back when she was ready.

Shortly after I turned 12 years old, in the fall of 1979, our whole family set off for the mountains of BYU, and my mother enrolled again at the BYU Law School.

My mother spent many evenings at the kitchen table reading her assignments, wearing big, blue, plastic ear muffs, and working amid the chaos of three children. She had a way of absorbing the burdens of her education so that we never shared them. I have often reflected on the courage and self-possession it took for her to turn around and go home, postponing her educational goals until the timing was right. I marvel at her courage to dream the dream in the first place and to have the strength to overcome the obstacles that could have derailed her endeavor. But she kept moving forward, even when the path was not just as she had envisioned it. In 1982 she became the first Native American woman to graduate from the BYU Law School.

My mother’s legal education has been immeasurably transformative and empowering for our family and has been a blessing to the lives of many others. Though she is now retired, she had a distinguished legal career serving not only many individuals but many Native American communities throughout...
Idaho, Nevada, and the Northwest. She has been a builder of institutions and an advocate for the rule of law and indigenous justice systems, serving as a tribal advocate, tribal prosecutor, and tribal judge. She has helped draft tribal codes and establish procedures to ensure due process in tribal institutions. She lived out the model envisioned by her parents to ascend the mountain of education to broaden the reach of her gifts.

Shortly before my mother’s admission to the Law School, President Spencer W. Kimball set forth his prophetic view of the second century of Brigham Young University, urging all those engaged with BYU to lift their vision and lengthen their strides as they climb “the hill just before us” to gain “a glimpse of what lies beyond.” President Kimball cautioned that the hills we must climb to become what he envisioned—the “educational Everest”—are “higher than we think” but worthy of the effort.

Kevin J Worthen elaborated on the prophet’s admonition in his inaugural address as BYU president, noting the ancient tradition of mountains as both literal and figurative places of learning, transformation, and revelation. President Worthen urged us to see the beautiful mountains surrounding the campus as perpetual symbols of the high aspirations attendant not only to the university endeavor and the special mission of BYU but to our individual hopes for growth and transformation.

THE GIFTS OF MY DOUBLE HERITAGE

Many years and many miles later, I followed in my mother’s footsteps by becoming an attorney. I worked in Washington, DC, with a law firm dedicated to representing Indian tribal clients and for the Department of Justice enforcing civil rights laws. I was also able to work on the staff of the assistant secretary for the Bureau of Indian Affairs, Larry Echo Hawk, at the Department of the Interior until his call as a General Authority Seventy.

In 2012 I traveled back to the Wasatch Mountains to join the faculty of the BYU Law School. My mother and I have both been fortunate that our journey from our small home reservation has brought us to BYU and BYU Law. We have both been blessed by wise mentors here; we not only have found the blessings of education here but have also been lifted to spiritual and intellectual vistas unique to BYU.

I have been sometimes dismayed by the suggestion—both implied and express, intended no doubt in good faith—that my educational and professional achievements have come in
spite of my background as a Native American woman and whatever obstacles that may represent in observers’ minds. In truth, my Seneca heritage, like my Latter-day Saint pioneer heritage through my father, is the source of any personal and professional successes that have come my way. In particular, my foremothers marked the path. My experience with Seneca culture, as observed in my mother and grandmothers and others in the community, has fitted me to meet the opportunities that have come to me and has empowered me to address the challenges that still come.

I am also sometimes asked, by both those within and without the Church, how it is that I “reconcile” my identity as a Native American woman—a Seneca—with my identity as a Latter-day Saint. The question really fails to apprehend the complexity of identity. We are all many things at once. For example, I am an American, a woman, an attorney, a daughter, a friend, an aunt, a Seneca, a Latter-day Saint, a descendant of pioneers, and many other things too. These component parts all meet in me, just as we each play many roles and integrate backgrounds and identities. But, in particular, my faith and my identity as a member of the Church is in no small part a gift of my Seneca heritage from those who came before.

The faith, labors, and attributes of my Seneca foremothers cultivated seeds whose fruits I continue to harvest. One attribute most prominent for me in each of those who came before is generosity. They were individuals with extraordinary generosity of heart and mind. My grandmother Norma was especially generous with sincere praise and with goodwill and cheer. She delighted in the good things that happened to others, multiplying her own joys by the joys of others. In her, I see the need that to truly be prepared to “mourn with those that mourn” (Mosiah 18:9), we must also be prepared to rejoice with those who rejoice—to enjoy their triumphs and good fortune without reserve. To be one of the People of the Great Hill, in my experience, is to be a person of great generosity. This includes a willingness to forgive generously and to offer to others the grace we seek for ourselves. It is an essential attribute within families and communities that I have seen modeled in those who came before me.

My grandmother Norma told me often of how her father, William Parker, was determined to let offenses go. She said when she went to him with complaints of injustices she had suffered, he would say mildly, “Just never mind about it.”

In my own experience, I have at times gone to my mother seeking her empathy and outrage about slights and injustices I perceived myself to have suffered. Her counsel has consistently been to choose grace, advising me to “throw a blanket of mercy” over the situation.

Another attribute I seek to cultivate from these women is resilience. They each faced unimaginable hardship and loss without ever losing faith, hope, or charity. Rather than allowing the tragedies and injustices of their lives to rob them of joy, they chose grace. They also each modeled lives of work. They found dignity and purpose in working hard—like beavers—to arrange for comfortable homes and to provide for the needs of their families. As much as anything else, that commitment to work hard has laid the foundation for those of us who have followed.

Finally, I seek to emulate the courage of these women, who never let life’s difficulties frighten them away from learning, growing, and living fully. They suffered setbacks. They suffered great loss. But they did not shy away from the risks of leaving familiar valleys to make the tough climbs for new vistas.

The vision and impulse to look to the mountains, to ascend great hills, to overcome obstacles, and to develop one's gifts and seek education as preparation for service are all gifts from both my association with BYU and Seneca tradition. These gifts from the Seneca tradition are part of what I seek to offer in my current service to BYU. At least for me, the dual identities of being a member of the Seneca Nation and of the Church have not only peacefully coexisted, they are a kind of double heritage.

President Kimball identified part of the BYU mission as claiming our double heritage, by which he meant seeking excellence in secular learning while seeking literacy “in the language of spiritual things.” BYU has helped me to claim that double heritage while multiplying the gifts of my cultural inheritance and has taught me to be receptive to the abundance and diversity of gifts each student and colleague brings.

Now a member of the BYU Law faculty, I have the opportunity, hard won by those who came before me, to divide those gifts with my students and my colleagues. As I look to the mountains surrounding BYU, I seek for an elevated vision and the aspiration to excellence described by President Worthen and President Kimball and embodied at BYU Law. I do so uplifted and empowered by the dreams and determination of the People of the Great Hill.

Notes


3 Id.

4 John W. Sanborn, Hymnal in the Seneca Language (1892), at 23.

5 Parley P. Pratt, and Ziba Peterson. Parley P. Pratt recorded in his autobiography: “After traveling for some days we called on an Indian nation at or near Buffalo; and spent part of a day with them, instructing them in the knowledge of the record of their forefathers. We were kindly received, and much interest was manifested by them on hearing this news. We made a present of two copies of the Book of Mormon to certain of them who could read, and repaired to Buffalo” (The Autobiography of Parley Parker Pratt, ed., at 47).


7 See id.

8 Id. at 455.

9 Id. at 445.


11 Kimball, supra note 6, at 446.
HOW A LAW DEGREE AMPLIFIES YOUR ABILITY TO BLESS THE WORLD

Jane Mitchell
Cofounder and CEO of the Reset Foundation

PHOTOGRAPHY BY BRADLEY SLADE
Crystal grew up in the foster care system, living in seven different homes by age 17. Her youth had been one of neglect, abuse, abandonment, and instability. Despite the obstacles, she was on track to graduate from high school—the first in her family—and was planning to attend college.

Shortly after her 17th birthday, Crystal discovered that her birth mother had been fraudulently using Crystal’s Social Security number to file fake tax returns without Crystal’s knowing. Crystal’s credit was in tatters and was linked with serious fraud claims. Just steps away from graduating, she had no way of opening a bank account, getting a job, or securing college financial aid.

I met Crystal when I was a 2L at Columbia Law School participating in our school’s foster care clinic. I had been assigned to work on her case and spent the next several months calling the IRS, working with government agencies, filling out paperwork to clear her Social Security number, and helping her move forward. It was a sacred opportunity to work with Crystal during what was a very dark time for her.

As I found with Crystal, even simple legal skills can be a benefit to others. Tonight I would like to discuss three ways a law degree can amplify your ability to bless the world. First, the profession itself offers needed services that impact lives. Second, a law degree will change the way you think, which can be a real gift to others. Third, and most important, a law degree will significantly expand your capacity to build the kingdom of God.

I. YOUR ABILITY TO SERVE

If you were to make a list of service-oriented professionals, chances are you would include doctors, nurses, teachers, and social workers—but not attorneys. Why? One reason we don’t think of law as a do-good profession is simply because most of us have never desperately needed a lawyer, whereas we all know how it feels to need a doctor or to be influenced by a great teacher. But those of us who have desperately needed legal help (whether as a result of our actions or through no fault of our own) know it to be an incredibly intense, frightening, and uncertain experience.

Many law jobs are service-oriented on their very face—“public-interest” jobs. Other “private-practice” legal careers are not typically considered public service but still make a significant impact in clients’ lives and are vital to advancing critical causes. Whether your profession makes the world a better place—having less to do with its label and much more to do with your heart and mind—or you’re focused on making life better for others and delivering an excellent work product, both can be part of a law degree.

I would like to share a metaphor I heard in college to illustrate my next point. Imagine walking down a path. You arrive at the base of a cliff. Looking up to the top of the cliff, you see a never-ending line of people walking right up to the edge and then falling off, severely injuring themselves. To your surprise, the line of people walking off the cliff doesn’t stop. You are faced with a choice: either go to the bottom of the cliff and help those crying out in agony or go to the top of the cliff and build a fence to prevent more people from walking off the cliff.
This metaphor illustrates the difference between direct-service work (helping the injured who have already fallen) and policy work (fence building). Law school prepares you for both. And while many professions focus on bottom-of-the-cliff work, a law degree is nearly always focused on fence building. And that is why I went to law school.

I had the privilege of attending BYU my junior year as a visiting student. (Most Stanford undergrads spend their junior year abroad; in my case, I came to Provo.) While here at the Y, I taught classes part-time to men and women locked up in the Utah County Jail. My students' stories proved that our country has never-ending lines of people walking off cliffs every day: One man had been in jail 67 times. I had three sets of mothers and daughters in my classes—all in jail at the same time for totally unrelated offenses. In one case, the daughter gave birth while incarcerated, making it three generations in the same jail at the same time.

Prison may have been intended for “bad people,” but that is not who we are incarcerating in our country today. In reality, we are locking up an entire segment of the population—low-income men of color—for long, repeated periods of time in a counterproductive, dehumanizing environment that actually encourages them to re-offend. One in three black men in America will spend time in prison—one in two in some urban centers. Two-thirds of those leaving prison will re-offend within three years of being home. We have constructed a veritable “cradle to prison” pipeline, an intergenerational cycle sentencing some from birth based on zip code alone.

It was clear to me that we needed new fences. I applied to law school hoping to find solutions to these systemic, seemingly intractable issues. I wrote my personal statement when applying to law school about wanting to start a charter school model for criminal justice—a crude version of what the Reset Foundation is today. Once in law school I built out Reset’s model on paper. The idea was simple: instead of serving time in prison, someone would serve his or her sentence at a 24/7 campus focused entirely on building lives and bettering communities. The government would redirect funding from corrections budgets to support this education-based alternative, holding the program accountable for results while making a 7:1 return on investment.

I had felt impressed by the Holy Ghost to develop and write about the idea in law school, but then I felt equally impressed to take a law firm job after graduating. I ended up loving transactional legal work. To my amazement, the firm supported me in starting Reset a year later. My department head gave me permission to launch the organization while still working at the firm, and several attorneys offered critical support to help Reset get off the ground. When we eventually secured sufficient seed funding, I transitioned from that firm, Kaye Scholer, and moved to the Bay Area to open our pilot campus.

We have now launched our full 24/7 campus in Berkeley. It is an alternative to a prison model designed to dramatically transform the criminal justice system by creating a results-oriented, education-focused approach to justice. We work with judges and attorneys to divert young men ages 18 to 24 to live at our campus instead of being sent to prison. Students live on-site for one to two years, in which their entire time is immersed in a learning environment focused on education, career readiness, leadership, and healthy living. As students finish our program, we carefully transition each one home, providing an additional year of career, mental health, and education support to ensure they succeed in the next phase of life.

Like many legal professions, my work at Reset straddles both policy and direct-service work. Regardless of where on the cliff you find yourself, the legal profession will equip you with concrete skills that bless lives.
II. YOUR ABILITY TO THINK

Law school will also change the way you think in a manner that can bless the world. Legal education is based on the Socratic method, a form of dialogue and questioning designed to encourage critical thinking and identify underlying assumptions. This education sharpens thinking and hones reasoning skills: students learn to pick apart faulty logic, break down arguments into component parts, and explore the contours of challenging legal questions.

A legal education also prepares students to accept and work with oppositional truths. Our doctrine teaches that “there is an opposition in all things” (2 Nephi 2:11), and that applies to truth as well. Examples in the law abound.

Take a classic criminal case, for example: a male defendant has killed a young girl. Imagine the perspective of the victim’s mother: she is shocked, overpowered by grief, likely enraged at the murderer, and filled with the pain of losing her little girl. Now imagine the perspective of the defendant’s mother: she also is overcome with emotion and is aching for her schizophrenic son; she knows of his battle with violent dreams caused by recent medications, his years of being bullied, and his absent father. And while both mothers stand at opposite ends of the spectrum, there is truth in both perspectives.

How do you handle these challenging situations? In the words of President Howard W. Hunter (himself an attorney), “With God our Heavenly Father, all truth, wherever found or however apprehended, is circumscribed into one great whole. Ultimately, there are no contradictions, no quarrels, no inscrutable paradoxes, no mysteries” (“President’s Formal Charge of Responsibility,” Church News, November 26, 1994; see also D&C 93:30).

Law school taught me to see truth as a circle, with all truth circumscribed within that circle. The defendant’s mother may be at one endpoint of the circle’s diameter, and the victim’s mother at the opposite endpoint. And though no points in the circle could be farther apart than those two, both contain truth and both fall on the circle of truth.

We see this same pattern in our doctrine, in which true principles are juxtaposed by opposite, complementary principles. We emphasize the importance of work—and the importance of leisure. We preach self-reliance—and our total dependence on God. And so on. Like the color wheel, gospel principles exist in relation to other complementary principles; a fulness of truth encompasses the entire wheel, composed of the full range of colors.

It is a gift to the world to recognize these opposing truths and to let go of the defensiveness, contention, and judgment that arise when opposing principles are at play. Too often we struggle to accept a stance opposite ours, although it too is often based on valid lived experience and true principles. Even in Church settings—or is it just my Sunday School?—we sometimes cling to a single point along the circle, defensively speaking out when an opposing truth is raised.

Christ, of course, experienced each of the infinite points along the circle and possesses a fulness of truth. It is His perspective that enables there to be no contradictions, no inscrutable paradoxes. If you let it, law school will teach you to hold both truths at once, to seek out complementary but opposing perspectives, to embrace the yin and the yang—all from a place of acceptance and nonjudgment.
III. YOUR ABILITY TO BUILD THE KINGDOM OF GOD

School will also expand your ability to build the kingdom of God—the most powerful way to bless the world.

They say that serving a mission is one of the best ways to prepare for a lifetime of service in the kingdom. Missions are intense skill-building experiences in which missionaries learn to study, teach, serve, work with others, and follow the Spirit.

Law school had a similar effect on me. It proved to be an intense skill-building experience, developing in me abilities that apply to lifelong work in the Church. Here are several examples:

Law school dramatically improved my scripture study. I had always been a diligent scripture reader, but I found my studies vastly improved during law school as a result of new intellectual skills: the ability to formulate more precise questions, to search and analyze texts more purposefully, and to look for patterns in new ways. When asked shortly after graduation what the biggest benefit of law school had been for me, I responded that it hugely influenced my daily scripture study.

Law school strengthened my ability to articulate. In 1979, President Spencer W. Kimball stated that the articulateness of LDS women, combined with righteousness, would greatly grow the kingdom:

much of the major growth that is coming to the Church in the last days will come because many of the good women of the world . . . will be drawn to the Church in large numbers. This will happen to the degree that the women of the Church reflect righteousness and articulateness in their lives and to the degree that the women of the Church are seen as distinct and different—in happy ways—from the women of the world. [“The Role of Righteous Women,” Ensign, November 1979; emphasis added]

Several Church leaders have recently reiterated this quote, including President Russell M. Nelson in 2015:

The day that President Kimball foresaw is today . . .

We . . . need your strength, . . . your conviction, your ability to lead, your wisdom, and your voices . . .

“We need women . . . who can speak out . . . .”

. . . We need women . . . who are courageous defenders . . .

. . . We need women who know how to . . . express their beliefs with confidence and charity.


The Lord needs an articulate people. He likely won’t have that by simply sending an army of Elder Hollands to earth. More likely, He’ll provide training opportunities for Saints to develop their communication skills. I never considered myself articulate growing up, but I felt much greater confidence in expressing myself after enduring three years of law school. What better way to train a generation of articulate defenders than to send them to law school!

Law school increased my capacity to understand and defend doctrine. Church members also need to grapple with and deeply understand their doctrine, not just be articulate. Sister Julie B. Beck stated, “This generation will be called upon to defend the doctrine of the family as never before. If they don’t know it, they can’t defend it” (“Teaching the Doctrine of the Family,” Ensign, March 2011).

This past general conference Sister Bonnie L. Oscarson said, “We need to be . . . women who study the essential doctrines . . . [and who are] bold and straightforward” (“Rise Up in Strength, Sisters in Zion,” Ensign, November 2016).

Law school explicitly teaches the skill of understanding and defending an argument; this is drilled into students through three years straight of reading cases, wrestling with arguments, spotting holes, and defending positions. All these same skills apply to approaching
When my sister Mariah was in town for five weeks during an important juncture in her life, leaders so that we wouldn’t lose our youth in a decade. It was for a positive reason: the Lord was at work, building His next generation of teachers and leaders who knew how to face the rulers of the darkness of this world, against spiritual wickedness in high places” (Ephesians 6:12). What do children actually need today? They need parents who can prepare them against these things. In my case, I didn’t feel equipped to arm my children against those things until after I went to law school and contended with those sophistries myself.

**COMMON CONCERNS**

I conclude by addressing a frequent concern that many Latter-day Saint women have about law school: it’s a time-intensive experience, and how will that impact my availability for Church service, dating, and family life?

I learned quickly that if something is “right” for you professionally, it is also “right” for you personally. If it is God’s will for you to be in law school for professional reasons, it will also be the best place for you to be for personal reasons. I also saw this repeatedly while practicing law. I had felt very strongly impressed to take a job at Kaye Scholer, a typical big law firm in Manhattan, but, as a single woman, I was nervous about the unpredictable, atrocious work hours that came with it. When I began working, I watched in awe at how gracefully the Lord balanced my work and personal activities. Of course there were weeks I worked until 2:00 a.m. every day—and yet God graciously provided means for me to keep social commitments. God is in control even in fast-paced mergers and acquisitions departments. When my sister Mariah was in town for five weeks during an important juncture in her life, my workload suddenly and unexpectedly dried up, and I had hours to spend with her each day. Naturally, the day Mariah left, I was immediately put on a demanding new deal. (Now, work didn’t always disappear when I wanted it to, and I certainly learned to set limits with school and firm work, but that’s a topic for another day.)

I also learned to see my being single as a positive—as God’s intention for me. It is unfortunate that much of Church discourse about being single is framed negatively: “Oh, I’m so sorry for you” or “How can you be single?” You’ve heard them. I don’t think the Lord sees it that way at all, though surely there are some people who need reminders to date. But let’s not let negative rhetoric obscure the fact that, for many of us, God explicitly wanted us in law school for His purposes: this was plan A for our life, not plan B. The Lord wasn’t just providing something for us to do with our time because we were single; this was exactly where He needed us to be.

This became clear to me as I served in the Manhattan Stake Young Women organization while in law school. Our stake was grappling with a 75 percent inactivity rate among youth. From my perspective, we were simply unprepared; we hadn’t equipped our youth with the tools to handle the social pressures, questions, and challenges they faced. We needed a different generation of parenting and a different generation of teaching.

A reason so many in my peer group were single may have been so that God could raise a generation of parents, teachers, and leaders who knew how to face the rulers of the darkness of this world. We weren’t single just to learn patience or because we had failed in some way. It was for a positive reason: the Lord was at work, building His next generation of teachers and leaders so that we wouldn’t lose our youth in a decade.

If law school is in your future, I am so excited for you. And, like a mission, if you let it, law school promises to unlock your potential to be a blessing in the world. 

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**NOTES**

1. Public-interest jobs include work in foster care, criminal defense, healthcare, prisoner rights, arbitration, education, homelessness, Native American / tribal law, ethnic rights, family law, criminal prosecution, domestic violence, poverty, mediation, special education, environmental law, legal assistance for indigent clients, juvenile defense, disability law, human rights, accountability, election law, religious liberties, refugee issues, and Fifth Amendment issues.

2. For example, in the past three years alone, while working at the Reset Foundation, I have worked with a number of attorneys who have made a big difference for us, making our work possible—including attorneys practicing in the fields of tax, finance, government and regulatory affairs, intellectual property, corporate, zoning and land use, property and real estate, human resources, entertainment, labor, and employment.
INTRODUCTION  Under the present U.S. Internal Revenue Code, a U.S. corporation that owns a foreign subsidiary corporation generally pays no U.S. tax on the active business income of the foreign subsidiary until the foreign subsidiary pays dividends to the U.S. corporation. Thus, foreign business income that Apple packs into an Irish subsidiary bears no U.S. tax except to the extent that the subsidiary pays dividends to Apple. Such dividends rarely occur.
The diagram on the next page is a significantly simplified version of Apple’s multinational structure. For example, the Irish Sub box represents three separate Apple subsidiaries rather than one. The simplifications allow for a considerably more understandable presentation without obscuring any significant concerns of either EU law or U.S. income tax law.

As indicated in the diagram, Irish Sub owned economic rights to all intellectual property relevant to the sale of Apple products outside the Americas. Those products were manufactured to Apple’s specifications by Foxconn, an independent contract manufacturer in the People’s Republic of China. Irish Sub purchased those products from Foxconn and sold them to Foreign Reseller Subs, which resold them to end customers outside the Americas.

The prices that Irish Sub charged were toward the high end of what is permissible under transfer pricing law and generated large profits. Because the sales were structured to occur in Ireland for tax purposes, those profits were income of Irish Sub. Also, Foreign Reseller Subs paid dividends to Irish Sub as well as royalties for the use of IP related to the Apple products being sold. The sales transactions, dividends, and royalties effectively moved much of Foreign Reseller Subs’ income to Irish Sub, even though Foreign Reseller Subs did the real marketing work.
This arrangement concentrated Apple’s non-American foreign income in Irish Sub, which appeared to be the beneficiary of Ireland’s 12.5 percent corporate income tax rate. However, the actual result was much better. This was because Apple had negotiated generous rulings from the Irish revenue authority. Those rulings seem to take the view that since Irish Sub did little in Ireland to produce the income it received, only a small portion of that income should be allocated to Ireland for Irish tax purposes, with the remainder being apportioned to Irish Sub’s non-Irish headquarters. Because Ireland taxes resident corporations on their worldwide income, that income division would have been irrelevant had Irish Sub been a resident of Ireland for Irish tax purposes. However, the fact that Irish Sub was managed from Apple’s headquarters in California made it a foreign corporation for Irish tax purposes even though it was incorporated under Irish law. Thus, Irish income tax did not apply to the income allocated away from Ireland. Still, for U.S. tax purposes, the Irish rulings were ignored, and incorporation in Ireland made Irish Sub a non-resident in the United States. As a result, U.S. tax did not apply to Irish Sub’s foreign sales profits, and the only income tax imposed on Irish Sub’s sales profits was the Irish corporate tax that applied to the portion of its income allocated to Ireland under the generous Irish tax rulings. That portion was so small that the 12.5 percent Irish tax thereon was less than 2 percent of Irish Sub’s total income. In other words, the tax rulings reduced Irish Sub’s effective tax rate from an attractive 12.5 percent to a super-attractive rate of less than 2 percent.

On August 30, 2016, the European Commission ruled that because Irish Sub’s non-Irish headquarters did less to produce Irish Sub’s income than did Irish Sub’s Irish operations, the income allocation endorsed by the Irish tax rulings “depart[s] from a market-based outcome in line with the arm’s-length principle.” The commission therefore concluded that Ireland’s favorable treatment of Apple violated EU law and that more than €100 billion of income must be reallocated from Irish Sub’s non-Irish headquarters to Ireland. Thus, Ireland must collect about €13 billion of tax (at 12.5 percent) on that amount, plus interest. The legal basis of the commission’s ruling is controversial. The EU treaties do not give the EU government a general power to enact income tax legislation. EU income tax legislation requires the unanimous consent of all 28 member countries, and that consent has never been given. Stated differently, there is no EU income tax legislation that imposes any restrictions on the multinational structure that resulted in profits from the sales of Apple products outside the Americas being allocated away from Irish Sub. Any possible tax law restrictions would have to arise from the national laws of member countries, and Apple contends that its multinational structure fully complied with those laws. That contention has not been seriously challenged.

Thus, the European Commission needed a basis other than tax law to allocate income away from Irish Sub’s non-Irish headquarters and into Ireland. The commission asserted that the necessary basis was provided by article 107.1 of the Treaty on the Functioning of the European Union, which states:

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

The commission ruled that by effectively applying a corporate tax rate of less than 2 percent instead of 12.5 percent to Irish Sub’s income, Ireland violated article 107.1 by providing state aid to Apple that gave the company a significant advantage over businesses subject to the regular 12.5 percent Irish rate. In article 107.1 violation cases, the offending member government can be required to recover 10 years’ worth of illegal state aid plus interest. Consequently, the commission directed Ireland to recover from Apple the income tax that would have been due for 2003 to 2014 if the misallocated profits had borne the 12.5 percent Irish tax plus interest thereon. The commission calculated that the tax portion of the recovery could be as much as €13 billion.

Apple is furious and has appealed to the EU judiciary; Ireland has also appealed. Moreover, the U.S. Treasury is engaged in a very public dispute with the European Commission in which the agency vigorously supports the Irish and Apple positions. This article is an attempt to understand the uproar by examining the stakes of the parties—that is, who has dogs in the fight, and what are their natures?
THE REDUCTIONIST DIAGRAM

The figure shows a highly simplified diagram of the multinational structure involved in the European Commission’s case against Apple Inc.

APPLE INC.
(U.S. corporation headquartered in California and employing worldwide consolidated financial statements)

FOXCONN
(unrelated Taiwanese contract manufacturer operating in China)

INDEPENDENT
(Component manufacturers who manufacture to Apple’s specifications)

NUMEROUS FOREIGN RESELLER SUBS
(Covering the entire world outside North and South America (all are disregarded entities under U.S. law))

IRISH SUB
(100 percent owned by Apple, managed in California; resident nowhere; owns rights to all IP relevant to sales outside the Americas; income substantially held in U.S. without repatriation tax per section 956 exceptions)

Cost sharing payments not taxable in U.S.* but deductible in Ireland**

Less than 2 percent Irish effective tax rate because Irish APA allocates most of Irish Sub’s income to non-Irish headquarters, apparently per theory that Irish Sub’s Irish operations played a minimal role in earning the income. European Commission ruled that because Irish Sub’s Irish operations played a larger role than its non-Irish headquarters, more than €100 billion of income should be allocated back to Ireland, and that Ireland must collect a 12.5 percent tax (about €13 billion) plus interest from Irish Sub with respect to that allocation.


At the end of the day, the Irish dog seems to be named “Tax Competition,” but its size is uncertain.

THE UNCERTAIN IRISH DOG

Initially, it would seem that Ireland has no interest in challenging a commission decision that awards it a windfall of up to €13 billion plus interest. Yet, Ireland has indeed decided to appeal. The Irish government’s officially stated reasons for doing so are to (1) defend the integrity of the Irish tax system, (2) provide tax certainty to businesses, and (3) challenge the use of state aid rules to curtail national sovereignty over income tax matters. The first and third reasons seem mostly symbolic, and the second reason seems like a concern of multinational corporations rather than the Irish government. Are the preceding reasons truly adequate explanations for Ireland’s refusal to accept a huge windfall? An Irish parliamentary leader as well as Ireland’s finance minister have suggested that Ireland is actually motivated by a different consideration: a concern that if the commission’s decision is allowed to stand, it will greatly impair Ireland’s ability to attract foreign multinationals. But because Ireland will continue to have the lowest corporate income tax rate of any major developed country—plus sound infrastructure and security, a healthy and educated labor force, and ready access to the EU market—this fear seems exaggerated. At the end of the day, the Irish dog seems to be named “Tax Competition,” but its size is uncertain.

THE IGNORED SOURCE-COUNTRY DOGS

The biggest European dogs belong to the comparatively high-tax source countries, such as Germany and France, where the end sales of Apple’s products occur. This is because the transfer prices that Irish Sub charges Foreign Reseller Subs, plus the deductible royalties that Foreign Reseller Subs pay to Irish Sub, effectively move most of the profit inherent in Apple products out of the tax bases of the countries where the end sales occur and into the hands of Irish Sub. The commission’s decision does nothing to address this matter. It leaves Apple’s profits concentrated in low-tax Ireland, although Ireland is required to apply its 12.5 percent tax rate instead of an effective rate of less than 2 percent.
Is there a U.S. dog in the fight? A superficial examination yields a negative answer. Because Irish Sub is incorporated under Irish law, it is a foreign corporation for U.S. tax purposes even though its U.S. headquarters makes it a U.S. corporation for Irish tax purposes. Thus, as long as the foreign income that is concentrated in Irish Sub by means of the diagrammed structure is not repatriated to the United States, it is not subject to U.S. taxation, unless it is subpart F income.

Apple’s tax planners skillfully avoided the subpart F problem, however. The profits that Irish Sub earns from selling Apple products at high prices to Foreign Reseller Subs are not subpart F income because Foreign Reseller Subs are disregarded entities under the check-the-box rules. Thus, Irish Sub is viewed as making the sales of Apple products directly to the unrelated end customers and as having bought those products from an unrelated manufacturer (Foxconn). This means that the sales profits are not subpart F income. Moreover, because the Foreign Reseller Subs are disregarded, they are treated as part of Irish Sub, and the royalties and dividends they pay to it are treated as internal transfers within Irish Sub instead of “real” dividends and royalties. Therefore, those payments are not subpart F income either. Consequently, all the income concentrated in Irish Sub is covered by the default rule that no U.S. tax applies until that income is repatriated to the United States.

The foregoing suggests that the United States should be indifferent to how much of Irish Sub’s income is allocated to the Irish tax base over Apple’s objections. Stated differently, the United States does not appear to have a dog in that fight. This is an oversimplification, however. Because Irish Sub was incorporated under Irish law, the United States regards it as a foreign corporation that pays U.S. tax only on U.S.-source income. Although the Irish tax ruling allocated most of Irish Sub’s income away from Ireland, that allocation did not give the income a U.S. source for U.S. tax purposes. Thus, U.S. tax did not apply to the income allocated to Irish Sub’s non-Irish headquarters by the Irish tax ruling, and subpart F does not reverse that conclusion. Moreover, as previously noted, Irish tax did not apply, either. Therefore, most of Irish Sub’s income was not taxed anywhere—that is, it bore a zero rate. This means that when the European Commission reallocated more than €100 billion of that income from the non-Irish headquarters to Ireland over Apple’s objections, that income swung from a zero tax rate to a 12.5 percent rate. But should the United States care?

There is a somewhat exaggerated argument that the United States has a significant revenue interest that is prejudiced by the Apple decision. The argument goes this way: When Apple repatriates zero-foreign-taxed income from Irish Sub to the United States, it will bear a 35 percent U.S. residual tax. However, because the commission’s decision results in more than €100 billion of Irish Sub’s income moving from a zero foreign tax to a 12.5 percent Irish tax, which is creditable against U.S. income tax when the income is repatriated to the United States, the U.S. residual tax will drop to 22.5 percent (35 percent minus 12.5 percent). Thus, the approach taken in the Apple decision shifts 12.5 percentage points of tax revenue from the United States to Ireland. To protect against that loss, Treasury should, so the argument goes, use its “soft” powers to oppose the decision.

As previously suggested, this view seems exaggerated for several reasons. First, a significant amount of Irish Sub’s foreign income (as well as the foreign income of other U.S. multinationals’ foreign subsidiaries) is likely to already be in the United States in the form of investments that are freed from U.S. repatriation tax by loopholes in section 956. In the future, some of that income may be moved to uses not covered by the section 956 loopholes, and a U.S. repatriation tax (net of foreign tax credits) would then be triggered. But if Apple is pleased with the results of its U.S. “loophole” investments, there will be no repatriation tax and therefore no U.S. revenue lost on account of FTCs.

More important, much of Apple’s unrepatriated foreign income (and the unrepatriated foreign income of other U.S. multinationals) has been designated as indefinitely reinvested abroad for financial accounting purposes. Thus, taxable repatriation of that income, and the loss of U.S. revenue because of FTCs, is unlikely to occur in the foreseeable future, if ever. Moreover, if taxable repatriation does occur, the liberal cross-crediting of non-Irish foreign taxes that is permitted under the U.S. FTC limitations means that U.S. tax on repatriations of Apple’s Irish income would suffer a substantial reduction even if the Irish tax on that income was zero. Finally, Apple and other U.S. multinationals eventually may be able to repatriate foreign income at a low U.S. rate as occurred with the 2004 U.S. tax holiday. For these reasons, the amount of U.S. revenue jeopardized by the increased Irish tax resulting from the Apple decision is subject to meaningful limitations, and from this standpoint, the U.S. dog in the fight is smaller than initially thought.

Nevertheless, if the United States international income tax system did not include the deferral privilege, the United States would benefit if the EU judiciary reversed the commission’s Apple decision. This is because the United States would collect an immediate 35 percent tax on Apple’s profits
instead of the 22.5 percent tax (35 percent U.S. tax minus 12.5 percent Irish tax) that results from the commission’s approach. The reality, however, is that both U.S. tax amounts are deferred until repatriation. This means that although the deferred U.S. tax collection is potentially greater if the commission’s ruling is reversed, the deferral benefit and its distortive impact on the business location decisions of Apple and similarly situated U.S. multinationals is also greater if the commission’s decision is overturned. Thus, when assessing the impact of the commission’s Apple decision on the United States, Treasury must balance the greater deferred tax that it might collect if the decision is overturned against the efficiency loss to the U.S. economy if the decision is not upheld on appeal. The efficiency loss would seem to be small if the taxpayer expects a short deferral period and would seem to increase as the anticipated deferral period lengthens. Treasury’s assessment of the U.S. interest will therefore be affected by data regarding the average time that U.S. multinationals in Apple’s position defer repatriation of the foreign income of foreign subsidiaries.

The balancing does not end there, however. Treasury must also recognize that if the commission’s decision is reversed, Apple and similarly situated U.S. multinationals will be free to continue the Apple-type tax planning that strips income out of the tax bases of the source countries. This undermines the social welfare systems of those countries when, particularly in Europe, they are under stress. If those countries become less stable, they will be less effective allies of the United States at a time when cooperative allies are needed. All of the foregoing suggests that the U.S. dog should be named “Uncertain.”

Without mentioning the preceding revenue and efficiency issues, Treasury has joined in other criticisms of the commission’s Apple approach. To this extent, Treasury may be moving beyond the uncertain U.S. dog in the fight and onto arguments of pure principle. Some of its criticisms involve arguments based on interpretations of EU law—that is, that the Apple decision is wrong as a matter of state aid law and that even if it is correct, it is a novel interpretation that should be applied prospectively only. The EU judiciary will sort out these points when it adjudicates Ireland’s and Apple’s appeals, and Americans should feel reticent to express an opinion with any degree of confidence.

Treasury has also joined in a policy-based criticism of the commission approach reflected in the Apple decision. It is that Apple and Ireland followed the orthodox arm’s-length principle of transfer pricing law in allocating most of Irish Sub’s income to nontaxable, non-Irish headquarters and that the commission invented a new arm’s-length principle for purposes of state aid law that seems to differ from the familiar tax law arm’s-length principle. Thus, so the argument goes, this new approach to the arm’s-length concept, which is innovative and lacks clearly delineated content, will make the international tax planning of multinational groups highly uncertain. The European Commission rejects that criticism and insists that it applied the traditional arm’s-length approach. The critics are not persuaded, however. Resolving this dispute will require adjudication of more Apple-type cases.

**THE STRAIGHTFORWARD APPLE DOG**

As noted earlier, if Apple has to substitute a 12.5 percent Irish tax for a zero tax on income allocated to Ireland by the commission’s decision, a U.S. FTC for the Irish tax will arise and reduce U.S. tax protant when the affected income is repatriated to the United States. Conversely, if Apple does not pay the 12.5 percent Irish tax, its 35 percent U.S. tax will not be reduced by a U.S. FTC. Regardless, Apple faces a potential 35 percent tax that is either paid entirely to the United States or paid 12.5 percent to Ireland and 22.5 percent to the United States. If so, why does Apple object to paying the 12.5 percent portion to Ireland instead of to the United States? Patriotism? Hardly.

Apple understands the time value of money and therefore appreciates that it is better off deferring tax until income is repatriated to the United States instead of currently paying tax to Ireland. In other words, Apple’s dog is named “Deferral,” and Apple’s objection to the commission’s decision is all about the resulting loss of the opportunity to defer 12.5 percentage points of tax, or to avoid that amount of tax to the extent there is no income repatriation to the United States or there is another U.S. tax holiday. Obviously, Apple’s dog exists because of the deferral feature of the U.S. international income tax regime, and that pooh would vanish if deferral were repealed. It hangs around only because the United States cannot achieve real international tax reform.
**CONCLUSION**

The objective of this article is to assess the stakes of the interested parties in the controversy over the European Commission’s Apple decision. Ireland seems to be primarily concerned about its position as a tax competitor, but the seriousness of its concern is speculative. As to the market countries where Apple’s products are put to end use, Apple’s tax planning inflicts earnings stripping losses, but that earnings stripping is unaffected by the commission’s decision. Thus, it is not surprising that those countries seem to have mostly ignored the Apple ruling. The motivation behind the United States’ disapproval of the Apple decision is unclear. Any revenue concern seems small and would be eliminated by the repeal of deferral. For Apple, however, preserving deferral is clearly the essence of the fight.40

J. Clifton Fleming Jr. is the Ernest L. Wilkinson Chair and Professor of Law at the J. Reuben Clark Law School. In this article, Fleming provides a simplified diagram and explanation of Apple’s foreign tax planning and assesses the stakes of the interested parties in the controversy over the European Commission’s Apple decision. Fleming also explains that the Apple case would not have happened but for the deferral feature of U.S. international income tax law.

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**NOTES**


2. See id. at 177.

3. See id. at 176–177.


5. See Apple hearing, supra note 1, at 191.

6. See id. at 177–178.


8. The rulings referred to the non-Irish headquarters as a “head office.” See id. Although the management of Apple Sub occurred primarily at Apple’s California headquarters, the Irish rulings did not ascribe any physical location to Irish Sub’s head office other than to indicate that the location was outside Ireland. Nevertheless, California is the only realistic candidate for the location of Irish Sub’s headquarters or head office. See Commission Decision, supra note 4, at 30–31.

9. See Apple hearing, supra note 1, at 174.

10. See Commission Decision, supra note 4, at 9 n. 12.

11. See section 7701(a)(4) and (j).

12. See Apple hearing, supra note 1, at 191.


15. See id. at 1; and Shavirno, supra note 13, at 1686 n. 30.


19. See id. at 3.


25. The commission’s decision did not affect Ireland’s 12.5 percent corporate income tax rate. See release, supra note 4, at 2.

26. See Apple hearing, supra note 1, at 191.


28. See reg. section 301.7701–2(a).

29. See section 954(d)(1); Apple hearing, supra note 1, at 184–185.

30. See Apple hearing, supra note 1, at 187.

31. See section 7701(a)(4) and (j).

32. See sections 881(a) and 882(a).

33. See Apple hearing, supra note 1, at 174. For an argument by David Rosenbloom asserting that this is incorrect and that taxable income should be attributed to the United States, see Athanasiou, Failing, supra note 7, at 632.


39. Collection of deferred tax is subject to the uncertainties of permanent reinvestment and cross-crediting.

In August 2017, BYU Law School and the Federal Bar Association launched an innovative Civics, Law, and Leadership Youth Camp. When asked why a law school would focus its resources on high school students, D. Gordon Smith, dean of the Law School, explained that “this pilot program nicely aligns with BYU Law’s goals and objectives to increase knowledge of civics, law, and leadership among young people. Today’s youth are tomorrow’s attorneys, judges, jurists, and elected officials. We hope the camp inspires and facilitates informed and civil discourse among young people from all backgrounds and circumstances.”

The Los Angeles Chapter of the J. Reuben Clark Law Society caught and acted on that vision of bringing together young people from all backgrounds and circumstances. BYU Law professor Jack Welch, who was in LA as the Distinguished Scholar in Residence at the University of Southern California, told the current and past presidents of the chapter about the Law School’s new camp and its call to members of the Alumni Association and the Law Society to refer and, in situations of need, sponsor young people from around the country to attend.

The LA Chapter took up the challenge and started raising money and spreading the word. Embracing the vision of encouraging discourse among young people from all backgrounds, the chapter turned to Larry Eastland, who works with many faith groups throughout LA. Eastland connected the Law Society with the Pilgrim Baptist Church, and its pastor helped chapter members identify three young people from his congregation to attend the camp.

In addition to raising $3,000 to cover transportation and camp fees (which included room and board for a week), the chapter committed to mentor the students when they returned, having the students report on their experiences to the chapter and then spend a day shadowing volunteer attorneys. According to Steven Adams, the pro bono committee chair who led the fundraising effort, continuing these mentoring relationships is key to the chapter’s vision of supporting these young people as they become tomorrow’s leaders.

According to these future leaders, the camp met its goal of teaching young people how
to have meaningful discussions. Aaron Tapia, one of the campers from Pilgrim Baptist, discussed how his new friendships impacted him. “Meeting people from different cultures showed me how to see another way of life and how other people experience the same things as you but interpret them differently,” he said.

Kayla Davenport, also from Pilgrim Baptist, added, “The debates were my favorite things. I did my best debate on the use of force [in an excessive force case]. . . . Hearing some of the other people explain why they supported [the police] helped me understand their viewpoint, even though I disagreed. It’s when you can’t talk to each other that you can’t have a good discussion.”

Stephen Bradford, an LA Chapter member and local Lds bishop, not only contributed financially but also sought out a first-generation American member of his congregation and enabled him to attend the camp. Speaking of this young man, Bradford stated, “It was important to me that he have the opportunity to learn more about U.S. history and constitutional democracy. I also wanted him and the others to gain a greater appreciation for the rule of law at the same time that we promoted their ability to have discussions across the aisles that divide us, be they political, religious, or cultural.”

According to Adams, local Law Society members are looking forward to the next byu Law camp. “Now that we are seeing the outcomes and know what is involved, we are committed to the program,” he said. “Hopefully we will be able to sponsor six kids next year.”

Until then, the chapter is busy mentoring and planning a religious freedom conference that the Law Society will host at the Jonathan Club in LA on November 3. As with the byu Law camp, they are looking for sponsorships to enable law students and those with limited means to attend.

In Los Angeles, the Law Society continues to fulfill its mission to strive “through public service and professional excellence to promote fairness and virtue founded upon the rule of law.”

For more information about the Civics, Law, and Leadership Youth Camp, contact byu Law dean of admissions Gayla Sorenson at sorensong@law.byu.edu.
A Hearty Hallelujah! Words from Ruth Lybbert Renlund

The J. Reuben Clark Law Society’s annual fireside, held in Salt Lake City on January 20, 2017, featured Ruth Lybbert Renlund as the speaker. The Law Society’s Distinguished Public Service Award was presented to former Nevada senator Harry M. Reid by Elder Lance Wickman, general counsel for The Church of Jesus Christ of Latter-day Saints and an emeritus General Authority Seventy. Elder Wickman described Reid as “one of the most influential people in the nation, a force to be reckoned with.” Reid served five terms in the U.S. Senate, including eight years as majority leader, before retiring in 2016. Elder Wickman went on to say that throughout Reid’s “years at the pinnacle of government, he has been a loyal, constant source of wisdom and timely assistance on many matters of vital interest to the Church.”

D. Gordon Smith, dean of the BYU Law School, presented the Exemplary Leadership Award to Ruth Lybbert Renlund. Renlund has held several leadership positions, ranging from president of Dewsnup, King & Olsen to president of the Utah Trial Lawyers Association and to chair of the Utah Judicial Conduct Commission. She has served on the board of directors for Deseret Book, Murdock Travel, and the Workers Compensation Fund for Utah. Ralph Dewsnup, who practiced law with Renlund for 20 years, said of her: “Ruth is civil, cultured, classy, smart, organized, loyal, creative, and fun. People wanted her to lead because she led. In a crisp, compassionate, thoughtful way she waded into problems to solve them.”

Renlund’s address focused on life lessons, drawing connections between the law, her father, and the gospel. She began by explaining how she left her law practice to serve with her husband, Elder Dale G. Renlund, in Africa.

“In 2009 my husband was called to be a General Authority and was assigned to serve in the Africa Southeast Area Presidency,” she said. “Many of my non-LDS colleagues told me that they considered it noble that I would take time away from my profession to help the poor in Africa. LDS lawyers, having a better idea of what I was doing, just wished me luck. . . . Many people I met in Africa could not understand why I had given up a well-paying job to come serve with my church.”

One of those people was a journalist who interviewed her on national television in the Democratic Republic of the Congo. He said, “You are a lawyer. Why would you leave your profession to serve with your husband to the Democratic Republic of the Congo?”

Renlund responded that although her work as a lawyer was important, “there is nothing more important than preaching the gospel of Jesus Christ.”
Her answer was met with “a hearty ‘hallelujah!’” from the journalist.

“Our five years in Africa were full of adventures and daily appreciation for the luxuries we all take for granted: water, electricity, good roads, plenty of food, Internet connection, and the rule of law,” she said. “I have discovered that no education or experience is wasted. The Lord uses all we have learned and experienced to further His work.”

Renlund then told of how she had become interested in the law when she was younger by watching her father. “I was about nine years old, she said. “And her father “drove together to Vernal, Utah, where he took a deposition at the front of an old courtroom while [she] sat in the back and soaked it all in.” Noting that her father “was a practical man with common sense that served him well in law and life,” Renlund shared three law and life lessons that he both taught and practiced.

**LIFE LESSON 1: Learn to Disagree Without Being Disagreeable**
Renlund’s initial impression of lawyers right out of law school was that they argued and that arguments, by definition, are disagreeable. “Then I remembered watching my father in action, walking down the street, in the courtroom, in the neighborhood. He greeted with warmth attorneys who were routinely on the other side of the bar. He told me who they were and how he knew them.

“They are my friends—friends with different opinions,” he said. He told me, ‘If you want to enjoy the practice of law, you have to learn to disagree without being disagreeable.’”

Renlund acknowledged, “This has been a great life lesson as well. Often we interact with people who disagree with us. Some may live in the same house. . . . The ability to have a conversation—a real discussion—with someone who disagrees with you is becoming rare.” She then invited listeners to remember the golden rule: “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets” (Matthew 7:12).

**LIFE LESSON 2: When You’re in a Hole, Stop Digging**
“‘When I got my first job as a lawyer, my dad said to me, ‘Ruth, you have a chance now that you will never have again: to create a reputation as a lawyer. Work hard, always be prepared, and follow the rules.’ That was it—the fundamentals of a reputation. . . . I can hear Jesus’s voice in those few words as well: ‘Wherefore, settle this in your hearts, that ye will do the things which I shall teach, and command you’ (1st Luke 14:28). When we settle our minds on becoming a disciple of Jesus Christ, we will naturally build good character and the reputation that follows.”

Renlund concluded with gratitude to her father for teaching her these principles that have guided her not only in the law but in life. She said, “As I told the Congolese journalist, although my work as a lawyer was important, there is nothing more important than preaching the gospel of Jesus Christ. Hallelujah!”