

Opening Remarks

President Oaks

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August 27, 1973

We gratefully acknowledge the presence of President Marion G. Romney, counselor in The First Presidency of The Church of Jesus Christ of Latter-day Saints and a vice-president of the Board of Trustees of Brigham Young University, who will address us this morning. Also present with us on this occasion are Elder Ezra Taft Benson and Elder Marion D. Hanks, trustees of the University; Commissioner Neal A. Maxwell of the Church Educational System; the vice-presidents of the University; the members of the law faculty; and Congressman Gunn McKay. Seated before me in the first few rows are the 156 members of the charter class of the J. Reuben Clark Law School. In the audience are other officers and faculty of the University, friends of the law school, and other dignitaries too numerous to mention.

The Board of Trustees' decision to have a law school at Brigham Young University was announced on March 9, 1971. It is just short of two-and-one-half years since that announcement. We are grateful to all whose extraordinary efforts have made it possible for me to announce that we are ready. The understandable pride I feel in my fellow workers and the thrill I have experienced personally in participating in this great venture could easily lead me away from a modest course, so I will try to temper my descriptions. Please be assured that more could be said.

We have a dean and a law librarian whose professional skills and performance in the establishment of this law school have already won them wide acclaim in the world of legal education. We have assembled a first-year faculty of superior professional experience, scholarly attainment, and potential—soon to be joined by others of comparable qualifications—who will stand with pride among the great law faculties of the nation. We have assembled and placed in operation a law library of just over 100,000 volumes. The law school already claims a group of loyal friends whose generousities have permitted us to establish scholarships, loan funds, and other funds for future development. A loyal and generous Board of Trustees has made possible the construction of a beautiful new building. Construction is already underway on a site immediately east of the building in which we meet today. The first accrediting visit to our law school has already been scheduled for this fall.

Most important of all, we have brought together this superior group of young men and women who comprise the charter class of the J. Reuben Clark Law School. In their intellectual qualifications they are well above the student body of most law schools, and they compare favorably with the best. In their spiritual preparation and motivation they are without peer. Our charter class consists of ten women and one hundred forty-six men. One-third of the entering students are from Utah, and the remaining two-thirds are from twenty-four other states.

We are frequently asked why Brigham Young University is establishing a law school at this time. We have all heard reasons suggested, and many of us have contributed a few. Some of these suggestions are speculative, some reasoned, and some have the ring

of authority. But the most important fact to be noted on this subject is that the trustees of Brigham Young University, whom we sustain as inspired leaders, have decided that Brigham Young University should have a law school at this time. I have received a confirmation of the divine wisdom of that decision, and I am quite content with that. The special mission of this law school and its graduates will unfold in time.

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

Persons who knew President J. Reuben Clark, Jr. need not ask why this law school carries his name. But few who knew him personally will study here. Members of this entering class were ten to fifteen years old at the time of his death. We must therefore introduce successive generations of students to the great man whose name will be associated with their professional qualifications, so that his ideals and accomplishments can influence their lives.

We are doing this at the outset. In one of those providential circumstances that mark the progress of ventures destined for greatness, a comprehensive biography of the life of J. Reuben Clark, Jr. was in preparation at the time the law school was announced. Through special arrangements with its author, Dr. David H. Yarn, Jr., we have just published the first nine chapters of that biography. Under the title *Young Reuben*, these chapters describe the first third of J. Reuben Clark, Jr.'s life, through his graduation from Columbia University School of Law at age thirty-five. The book also contains a selected list of achievements in the career of J. Reuben Clark.

Copies of this book have already been given to all of the entering students. As a memento of this occasion we are also presenting a copy to each person or couple attending this opening exercise.

You should also be familiar with a collection of essays on the legal scholarship, political thought, and professional accomplishments of J. Reuben Clark, edited by Dr. Ray C. Hiram, and published by the Brigham Young University Press under the title *J. Reuben Clark, Jr., Diplomat and Statesman*. Both publications are available in our bookstore.

J. Reuben Clark was a widely acclaimed authority in international and constitutional law, a distinguished public servant, an eminent author, a wise counselor, and a servant of the Lord. His coherent philosophy of law and government was born of brilliance and nurtured by superior education, experience, love of country, and devotion to God. Men with his combination of brilliance, wisdom, and faith are all too rare, and we do well to seek their acquaintance.

The life of J. Reuben Clark exemplifies the excellence of mind and character we seek to foster in the law school that now bears his name. Every person—and especially every young student of the law—can identify with the life of this great man and appropriately aspire to the greatness he attained.

On the occasion of the opening of the J. Reuben Clark Law School it is appropriate for us to describe our expectations for the dean, the faculty, and the student body of this new school. In a few minutes we will hear from President Marion G. Romney about the expectations of the officers and members of our Board of Trustees. It is my privilege to describe the expectations of the administration of the University.

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First, the law school should be part of Brigham Young University in all respects, with the law faculty and students fully participating and contributing in the intellectual and spiritual life of the University.

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

Third, the law school must always promote loyalty and understanding of the Constitution of the United States. Speaking through a prophet, God has declared that he “established the Constitution . . . by the hands of wise men” whom he raised up for that purpose. He has also declared that this Constitution “should be maintained for the rights and protection of all flesh, according to just and holy principles” (D&C 101:77, 80). President J. Reuben Clark said, “The Constitution is a part of my religion” (“America—A Chosen Land of the Lord,” YMMIA and YWMIA Annual Conference, Salt Lake City, June 9, 1940, printed in *Stand Fast by Our Constitution*, p. 172). Loyalty and devotion to the Constitution of the United States must be a hallmark of this law school.

Fourth, the J. Reuben Clark Law School must always foster an enlightened devotion to the rule of law. A principal function of law, and thus a principal occupation of lawyers, is the prevention and settlement of disputes. Men of law must understand and help others to understand that despite all the imperfections of law and of lawyers, there is no better system for preventing and settling disputes than the rule of law. Consider the alternatives: Trial by combat was once an accepted means of settling private disputes. This method, where the party with the greatest strength can impose his will, survives for public disputes in the barbarity of war and for private disputes continues to be used by those whose violent means lie outside the law. Disputes can also be settled by authority, where the government official, the aristocrat, or other person in “high position” is able to impose his will on a person of lesser rank. That system travels incognito through the regular processes of the law, but public servants and members of the legal profession are responsible to root it out wherever it appears. A third alternative for settling disputes is the sleazy system of corruption, where justice is for sale and the person with the largest resources prevails. We must likewise be diligent to eradicate that evil.

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

Devotion to the rule of law means that our preeminent political allegiance is to the law and the offices of government, not to the persons who occupy those offices. President J. Reuben Clark said it best:

God provided that in this land of liberty, our political allegiance shall run not to individuals, that is, to government officials, no matter how great or how small they may be. Under His plan our allegiance and the only allegiance we owe as citizens or denizens of the United States runs to our inspired Constitution which God Himself set up. So runs the oath of office of those who participate in government. A certain loyalty we do owe to the office which a man holds, but even here we owe, just by reason of our citizenship, no loyalty to the man himself. In other countries it is to the individual that allegiance runs. This principle of allegiance to the Constitution is basic to our freedom. It is one of the great principles that

distinguishes this “land of liberty” from other countries. [“America—A Chosen Land of the Lord.” YMMIA and YWMIA Annual Conference, Salt Lake City, June 9, 1940, printed in *Stand Fast by Our Constitution*, p. 189]

By the same token, a lawyer’s predominant professional loyalty should be to the principles of the law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.

Another important ingredient of the rule of law, with special application to the legal rules enacted by legislatures and declared by courts, is that different rules stand on different footings. There is no democracy among legal rules. Some are more important than others. Thus, some rules are based on eternal principles of right and wrong or on basic tenets of our Constitution. Others are rooted in the soil of men’s reasoning, soil that may be washed away by the torrent of human custom or the current of advancing thought, leaving the rule without support or justification. One who studies law through the lens of the Gospel should surely be realistic about the limited longevity of men’s ideas and the consequent short duration of rules and reasons grounded on the shifting sands of current facts and opinions. Of even less standing are those judicial rules based solely on precedents already adrift from the anchorage of reason.

In furtherance of their devotion to the rule of law the graduates of this law school should have minds sufficiently bright and consciences sufficiently sensitive to distinguish between rules grounded on morality and those grounded solely on precedent or tradition. Rules based on tradition may be assailed when their supporting reasons have lost touch with the soil of human need, but rules based on morality must be defended at all costs, since they are rooted in the eternal principles of right revealed by God our Father. For example, this is the unstated but vital distinction between the rules that forbid a lawyer from advertising or from forming a law partnership with a non-lawyer and the rules that forbid a lawyer from knowingly using false evidence or assisting his client in conduct he knows to be illegal. (Refer to *Code of Professional Responsibility, DR 2-101, DR 3-103, DR7-102.*)

Another aspect of the rule of law, sometimes misunderstood, is the principle that the law stands for the protection of the man who is evil as well as the man who is good, just as the Lord “maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust” (Matt. 5:45). The results of this impartial protection are not ideal, but history shows this principle to be the best available alternative until our legal processes are perfected by the great lawgiver and judge to whom one day we all will bow in allegiance. So long as our lawmakers and judges are fallible men, we need rules that will not bend one way for the man or the cause that someone deems to be good and yet another way for the man or cause that some men judge to be evil.

We have a persuasive explanation of the wisdom of this principle in Robert Bolt’s drama, *A Man For All Seasons*. Here the just Sir Thomas More refuses to order the arrest of an evil man because he has broken no law. In contrast, his self-righteous and impetuous son-in-law, William Roper, is so sure of his own judgment about the wickedness of the man that he would set aside all requirements of the law to punish him. Sir Thomas patiently insists that the man should go free “if he was the devil himself until he broke the law!”

Roper: So now you'd give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake. [Robert Bolt, *Three Plays*, p. 147]

Our fifth expectation of this new law school relates to the manner of instruction. This expectation is addressed to the attention of the faculty, but it is also given for the understanding of all who watch the school with interest and support. The curriculum and manner of instruction in the J. Reuben Clark Law School should approach the law from a scholarly and objective point of view, with the largest latitude in the matters being considered. The law is an adversary profession. That is not true of medicine, engineering, or other professions we could name. We would be shocked if students of these disciplines were taught physical laws that we know to be wrong, except as a contrasting reference. But law is an adversary profession. It is uniquely important that its students be exposed to all rational points of view on every question worthy of study. Failure to provide this kind of training would put our graduates at a significant disadvantage when they meet the opposing arguments—as they will—in the crucible of the adversary process of negotiation, litigation, and the formulation of legislative and administrative policy. Students of the J. Reuben Clark Law School must therefore be expected to study and master what they may well choose never to advocate. If that principle is clearly understood, it will save a great deal of misunderstanding on the part of our students and those who anxiously watch their instruction.

Yet despite the latitude that must be allowed for instruction in this law school, there are fundamental principles on which there is no latitude. We expect to have a vigorous examination of the legal principles governing the relationship between church and state under the Constitution, but no time for debate over the existence of God or man's ultimate accountability to Him. There is ample latitude for examination of the responsibilities of a lawyer who is prosecuting or defending one of crime, but no room for debate over the wrongfulness of taking a life, stealing, or bearing false witness.

Sixth, the J. Reuben Clark Law School should concentrate on teaching fundamental principles of law. Its approach should be predominantly theoretical, with appropriate attention to the basic skills involved in lawyering. The law school should resist the inevitable pressure to be too fashionable in curriculum or instruction. The half-life of a legal concept, even in these changing times, is measured in centuries, not academic years. As legal historians can testify, many of the important problems and controversies of our day are just recreations under different labels of problems encountered by successive generations for centuries into the past. A legal training that is predominantly theoretical is best able to equip students with the principles and skills they can apply throughout the shifting circumstances of the next half-century. Such training should make illustrative application of those theoretical principles to some current situations, and it may also give students some well-supervised practical or clinical experience. But training that concentrates too heavily on the "practical" problems of real clients or the topical issues of greatest current concern in the practice of law may pique the interest of students, but it

stands in danger of neglecting the fundamental theoretical training that should be of paramount concern.

And now some final words of advice to these law students. The study of law is difficult. Learning to think like a lawyer is rigorous and frustrating. But the objective is worth the effort. The study of law has few equals in disciplining the intellect. Properly conceived and executed, there is nothing mechanical or repetitious about it. It teaches its students a new way to think, and that skill is serviceable beyond the limits of the practice of law. That is one reason why a legal education is a readily adaptable preparation for a multitude of vocations.

A lawyer is a student of meaningful differences among apparently similar situations, and meaningful similarities among situations of no apparent connection. A person who is keen at spotting differences or similarities, discarding the unimportant ones, fastening upon the important ones, and being prepared to explain the reasons for their importance, is well along toward thinking like a lawyer. That skill is demanded in many fields of endeavor. So is the good lawyer's hesitancy to accept easy assumptions about the facts, and his instinctive reach for verifiable truth.

The study of law forces a student to confront the realities of communication. For example, we are all against "treason," "obscenity," and "fraud," but put those words into a law for official action and lawyers must grapple with how the words are to be defined, measure the consequences of ambiguity, specify the procedural requirements that are essential, and weigh the unintended side effects of the attempt. That whole effort requires a depth of inquiry and a level of understanding that is hardly glimpsed when we use these words in casual discourse.

Law students would also do well to remember that they are training for a profession that cannot function effectively unless its practitioners preserve some detachment from those they serve. The lawyer whose commitment to his client or his cause becomes predominantly emotional or personal has lost or diluted the rational powers that alone give value to his services. The public may assume that a lawyer has a total community of interest with his client, but neither the lawyer nor the client should slip into that error.

My final word of advice concerns the use of time. Someone has spoken disparagingly of "checkbox Christians," who seek to buy off their religious responsibilities by the donation of money. Just as you would reject the checkbox as the measure of a successful religious life, so you should reject the timeclock as a measure of a successful intellectual life. Your goal should be insight, not memorization or longevity. If you don't put in the time, you are unlikely ever to understand, but your goal should be to get understanding, not to get done. You will never be done with your study of the law or with your application of the principles and skills you will learn at this law school.

And now it will be our privilege to hear from a close associate of President J. Reuben Clark, a fellow lawyer, a stalwart teacher, a well-loved servant of the Lord, and a man whose vision and efforts have been instrumental in the founding of this law school: President Marion G. Romney.