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Love, Justice, and Power

by David Forte, Professor of Law

It's that client on the telephone again. She's complaining again. There goes a half hour of unbillable time again. You could, this time, listen to her — really listen to her. You could at least be courteous to her and give her her due — after all, you did say she could call any time. Or you could admit you don't want to be bothered, and hang up.

In every human interaction, in anything I do between you and me, there are three — and only three — ways of behaving: with love, with justice, or with power. I can treat you with love. I can act towards you out of justice. Or I can control you with power.

The essence of love is that it seeks the good of the other.

The essence of justice is that it respects the rights of the other.

The essence of power is that it seeks the control of the other.

For centuries, philosophers and moral teachers have counseled us that love and justice were the essential attributes of being human. But now, the will to power has priority. Where humans were once taught that love and justice must constrain our impulse to control, today, the individual's desires are the standard.

In love, one finds charity, magnanimity, mercy, forgiveness, friendship. Generally speaking, love relationships are involved with those we know personally.

Justice includes the rules of law and custom and morality by which we recognize and defend the rights of others and of ourselves. It regulates relationships of both those we know and those who are strangers to us. It can be summed up in the classical phrase: do no harm.

Power includes coercion for the sake of control or harm. We use power against enemies.

It is not true, however, that all forms of force or coercion are unjustifiable uses of power. To be loving or to respect justice does not mean we sit around like symps with beatific smiles

on our faces.

Discipline can be a part of love. I give my son a time out when he fails to respect his mother. That's coercion. But it is designed as an aspect of love, to seek his own good. It would not be an act of love if I spoiled him in everything he wants.

The most basic good is life. Without life, no other goods can exist. It was not an act of love for a mother to plot the death of her daughter's competitor to be cheer leader. No one who intentionally kills is acting out of love.

Of course, justice requires that the



discipline I use on my son to induce good behavior is proportionate. No matter how much I love him and want to keep him out of harm's way, I may not invade his dignity or inflict a punishment out of proportion to his offense. That is his right and justice demands I observe that right, no matter how "loving" my motivation may be.

Justice respects the rights of others, and the most basic right is life. Without life, no other rights can be enjoyed. When an innocent person is intentionally killed, an act of supreme injustice is inflicted.

Now, when an unborn child is carried into an abortion clinic to die, what has brought him there? Is it love? Is it justice? Or is it power?

Think for a moment. There is no greater power than to determine whether a person shall live or die. In-

deed, there is no greater power on earth than being able to control whether the offspring of another person shall survive. Abortion is the quintessential act of power.

The notion of power as driving the human personality is the great moral error of our time, and it defines being human in a most impoverished way: A person is only a person to the extent he can exercise his will. What he wants is what we must respect, and we are supposed to look no further.

But the human spirit is such that the lingering impulses of love and justice cannot be totally ignored. We used to see masks placed on abortion, often placed there by well meaning people. But masks they were.

Mask #1: Love. "No child should grow up unwanted, or handicapped, or poor" (as if one can predict what a person's life will be). But as we saw, life is the most basic good. One cannot say one loves a child and kill it at the same time.

Mask #2: Justice. "The child will destroy my family, or my relationship with my spouse, or will embarrass my parents, or ruin my education, or derail my career. The child is the aggressor and I am only defending myself." But the first rule of justice is to do no harm. Life can only be taken when it constitutes a lethal threat. Justice demands that one's reaction be proportionate to the threat. If a career can be threatened by a mere child, then it is logical to shoot one's boss in order to advance.

But today the masks are put aside. The slogan we hear is honest and without pretense: "Abortion on demand with no apologies." It means what it says. The supreme act of will — to end another person's life, to destroy another person's progeny — must be respected without any notions of justice and certainly without any notions of love to bar the way. One would think that if one were ending the life of another human being, some justification, some excuse, some reason might be required. But to those who champion the right to abortion and see it for what it really is, the act itself is its own justification.

We can refuse to accept power as
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Heroes and Heroines

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ment viable for all Americans. That case made the 1964 civil rights act, which focuses on race, sex, national origin, possible."

I grew up during the civil rights era in this city. I was taught that the law could be noble, and that lawyers were the champions of freedom. I thought that if you sent the right people to the courts, chaos would cease, justice would prevail, and oppression would end, because people had respect for and would honor just laws. I'm just a little older now and I know that our laws and their implementation are only as good as we are.

Although I sometimes worry about whether freedoms once gained may be chiseled away, in my heart of hearts I believe, as Martin Luther King, Jr. once stated, that the arc of the moral universal is long but it bends toward justice.

The law and the lawyer are the agents that help to insure that justice is for all. Louis Schwartz, former Professor of Law at the University of Pennsylvania, described his concept of what a lawyer is in the passage which follows:

The lawyer is a planner, a negotiator, a peacemaker. Despite the popular stereotype of the lawyer as contentious adversary, the peaceful ordering of human relations overwhelmingly predominates in his activities. In the drafting of commercial and labor contracts, treaties, wills, constitutions, he or she is concerned with achieving orderly arrangements and with avoiding or settling controversy. This requires imaginative anticipation of contingencies, changes of fortune, tragedies, betrayals and social change.

The lawyer is a counselor, advising individuals in their varied and complex relationships with one another and the state. Similarly the lawyer advises groups, corporations, unions, ethnic communities, cities, states, federal departments and agencies, international organizations. In giving ad-

vice he or she brings into play the lawyer's specialized understanding of the formal structure of society and of law as an instrument of social control and betterment.

The lawyer is an advocate, representing the views, needs and aspirations of others more effectively than they, uncounseled, could do by themselves.

The lawyer is a defender of the rights of the individual against the conformist pressures of society.

The lawyer is a social scientist, drawing upon economics, history, sociology, psychology, political science, and anthropology to deal with the problems of individuals, organizations, and communities.

The lawyer is an educator, especially a self-educator. The process of educating a lawyer never ends. In every controversy he or she must refresh expertise or acquire expertise in a new factual domain.

The lawyer is a humanist. To study law is to look through the greatest window of life. Here one sees the passions, the frailties, the aspirations, the baseness, and the nobility of the human condition.

The lawyer is a leader. All other qualifications converge in thrusting upon the lawyer leadership and responsibility in community life.

My heroes and heroines may not be yours, and your background and beliefs may also differ, but something has brought you to this place at such a time as this. It may be for the BMW and Rolex watches. Just be careful of firms, particularly from the Memphis area, that sound too good to be true. Whatever your reason for being here, remember it. In closing, let me offer just a little advice.

1. During this first year, when you feel that you can not read another page or brief another case, try to recapture your purpose that brought you here.

2. Take each day, a day at a time. That's all that you are given anyway.

3. Do the best you can, and then move on. There will be times when someone else's best is better than yours, but you cannot do better than your best.

4. Remember and take time to participate in the things that make you, you.

5. Ask your family for forgiveness in advance—you will definitely need their support.

6. Celebrate your decision.

In this room are some of the finest minds in the world. Over the next few years you will be taught the skill of legal analysis as well as many substantive areas of law. You've already made the first step. With diligence and hard work each successive step can place you closer to achieving your ultimate goal. Welcome to Cleveland-Marshall College of Law. ■

Point of View

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our human grounding. We can acknowledge that it is our connectedness to one another, not our separateness, that makes us human. But if we do so, we must also rip away the masks that power covers itself with. Only when we remove those masks can we and this country begin to harken back to its moral roots.

We must ever insist that love means the good of the other person, not just what I want. That justice demands we respect the basic right to life, not just what I want. And that power does not mark the limit of what it is to be human. ■

Editor's Note: Professor Forte is on professional leave for the 1993-94 academic year, serving as Salvatori Fellow for The Free Congress Foundation in Washington, D.C.