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It Is Given unto You to Judge

Sheila McCleve

For the past eight years, I have been a state trial judge in a court of limited jurisdiction. My court's civil jurisdiction excludes real property, domestic, and probate subjects, with a \$20,000 limitation on damages sought. Criminal jurisdiction excludes felony trials. However, I do conduct everything from high-profile preliminary hearings on capital homicides and other felonies to jury or bench misdemeanor trials.

If one were to draw an analogy between serving as a judge in my court and serving as a doctor or a restaurateur, my work would be comparable to that done in a M.A.S.H. unit or a fast-food chain. In my urban court setting, volume is extremely high, caseload pressing. I see thousands of people a year.

Mine is a people career. What I enjoy most about it is the great diversity and the universal threads I see in people's lives. For instance, there isn't a man or a woman who has come before me who hasn't evidenced some relation to loved ones. The people who face me also recognize that they are agents who have made choices that place themselves before me. And everyone I've seen has expressed to some extent his or her views on the purpose and meaning of this existence through the actions that bring them to court.

Individual examples quickly come to mind. A man in his early 20s negligently shoots to death a young girl by sighting her and then pulling the trigger on what he thought was an unloaded rifle. A streetwalker, having been incarcerated repeatedly, dies from the effects of AIDS. An alcoholic, who had been convicted of driving under the influence of alcohol several times, serves the maximum period of incarceration, becomes physically healthy, reunites with his wife and children, is rehired by his employer, and voluntarily promises me he will not return to court on criminal or alcohol-related charges again. In eight years, he hasn't.

People often ask me how it's possible to judge another human being. In the sense of making an ultimate moral pronouncement, I simply respond that that's not my business—not that doing a little moralizing isn't a temptation with all that one sees from the bench. I see everything from police officers who sincerely regard criminals as less than human to lawyers who anonymously pay restitution for food stolen by transients. There are businessmen who forgive debts to resolve disputes and court employees who help the homeless find shelter.

While it is a temptation on the bench to do a little moralizing about people, one can resist by remembering that “all have sinned and come short of the glory of God” (Romans 3:23). Humans—unlike God, who sees our hearts perfectly—discern the intent of the heart from circumstances and acts of the individual, imperfectly listening to the Spirit. Judges, being human—albeit rumors to the contrary—are therefore in no position to issue moral pronouncements.

On the other hand, part of judging is evaluating people. A judge must appraise a lawyer's reliability, preparedness, and truthfulness. And certainly when judges sit as triers of fact, they weigh the credibility of the witnesses, examine their demeanor, and analyze their truthfulness. Similarly, in sentencing, judges assess not only the defendant but his or her family and associates, the victims, and the effects of the crime on society. Consequently, in the evaluation process, it is critical that judges look at people from the same human level we are all on. Otherwise, “'tis high to be a judge” (“Truth Reflects Upon Our Senses,” *Hymns* [1985] 273).

When lawyers consider judging, their viewpoints often focus on burdens of proof, rules of evidence, and procedure and substantive law. They know that once a case is taken, winning it depends upon meeting the burden or not, following the rules, and arguing the law.

In judging, regard for the rule of law is critical. Natural laws and God's laws are constant and consequential. To the extent human law can be the same, human beings enjoy order, equal treatment, and fair process. Out of that, freedom is born and survives. It is that rule of law lawyers recognize, consciously or not, in preparing their cases for trial or appeal. It is that same rule of law that judges must follow in order to avoid arbitrary, despotic tyranny by the bench.

Perhaps because its purpose is to resolve conflict, judging offers an opportunity to experience how people act in intense life settings. The forum is public. Society's ability to affect lives is nowhere more powerful. Contest, persuasion, and argument are courtroom tools. Property, freedom, and life itself can be taken away from individuals. And the consequences of choices people make are never more focused in society than they can become in trial.

There are those who believe they would enjoy judging because of the power, prestige, and independence it offers. And there are those

who recognize that from a judge's observation point on humankind, the constant inhumanity, conflict, and greed attendant to the office render the position unenticing.

But judging, like anything involving people, is an opportunity to serve. Judging is service when it restores some measure of hope, enforces consequences of actions taken, or resolves disputes. If it's no more than locking people up and awarding people money, it is of little value to humanity and worthy of little regard.

When one renders judgment in any given case, one renders service in at least two ways. One decides the particular issues in the lives of the people present in court—a very specific and immediate act of service. And simultaneously, one defines rules, which can be known and used by all people affected by that court. Service is less direct when it defines rules, but it is still service because it makes a difference in people's lives.

Both appellate and trial courts perform these simultaneous functions. At the appellate level, a judge works with words. At the trial level, a judge sees the faces. At whatever level a judge works, however, experiencing the problems in people's lives will unveil the Christian imperative to serve. Further, the only way to be a judge and not be destroyed by the power, prestige, inhumanity, and conflict attendant to the office is in remembering that judging is serving.

Our Lord, the Creator of the universe, who dwells among us, who redeemed and sustains us, says that His work and His glory is to serve us by bringing to pass our immortality and eternal life. Who are we not to be serving?

Whatever one does professionally makes little difference. I assume that if the gospel is true, it is true seven days a week. It can meet any challenge, withstand any opposition. Therefore, it is not only applicable to but also infused in all that we who espouse it do and are. And I suggest that we ought to be seeing our experiences and life choices in this context, or we have no business holding ourselves out as disciples of Christ.

Because we all share that universe of discipleship, I hope to make some observations about the nature of judging that might strike a universal resonant chord in all our lives.

There are, at this point in my life's observations, three universal issues upon which we constantly state our positions by our living. Over time we will have made our positions clear. Those issues are faith, love, and agency.

Faith involves what one sees as the purpose of life, whether there is a higher power and any meaning beyond this existence. It involves hope and the ability to trust. It makes love possible. It gives us patience with agency and our own limitations. It is the power of the universe.

I see statements on faith in the anguish of alcoholics whose names I know because of their frequent appearances in my court on public intoxication charges. I see statements on faith in cocaine addicts and dealers, in

streetwalkers, forgers, thieves, and murderers. I see statements on faith in lawyers who prepare their cases with dedication and thoroughness and in lawyers who push beyond the edge of representing their cases in a light most favorable to their clients.

And I make statements on faith when I walk into the courtroom and try to disregard community or bar approval, to see all the people I serve as children of God, and to allow or reject the Spirit's ability to make up, after all I can do, the difference in what I cannot discern in people before me. Every day in our lives, in all contexts, we each decide our positions on the issue of faith.

Similarly, each day we state our understandings of love. Love is charity, the greatest of all gifts, the pure love of Christ given without condition to endure forever. Charity is that love which the Lord has for us and that love which we are trying to learn to have for Him and for each other. With it, we are able to give and forgive. Because of it, we obey, repent, have faith, and respect agency. It never fails.

I see statements on love in the family who sits watching at the back of the courtroom and exchanges glances with a handcuffed, shackled, convicted defendant. I see statements on love in the tenant who refuses to pay rent, believing the landlord must allow her to remain on the premises because she has children and no job. I see statements on love when a mother appears to have suggested damning testimony to a child about the child's father.

And I make statements on love when I react to mistaken representations or intentional misrepresentations of my rulings from the bench by colleagues or others. I make statements on love in how I treat people who lie to me, try to curry favor with me, or use my reputation or name. I make statements on love in how I sentence, award, or deny judgment, run my courtroom, and determine my availability to lawyers, police, and others. The statements we make are subtle, sometimes not even known to us as statements on love, but they are our statements.

We choose every day, more times than we know, to make statements on these universal issues. That is why agency, which is the forum or context of the other issues, and which, at first, may seem inappropriately paralleled with faith and love, is a universal issue. Because no matter how dim the faith nor absent the feeling, we all understand consequences. We think in terms of cause and effect. We cherish independence and believe liberty a human right. We say we want freedom. Hence, through our choices, we evidence our true desires.

I see statements on agency in the father—also a lawyer—who wants to negate the consequences of his son's negligent traffic collision by "taking care of it" for him. I see statements on agency by all the coke-sniffers and other addicts who daily drag into court. I see statements on agency in

lawyers as they confer with one another and with their clients regarding settlement options and outcomes.

And I make statements on agency when I send someone to jail, order parties to appear before me, and respect or reject appellate decisions and legislative actions. I make statements on agency in my conduct with my colleagues on the bench regarding caseload administration, in my treatment of staff personnel, and in my willingness to accept such extra court assignments as speaking at schools or hearing cases for other judges who become unavailable.

These universal issues are always before us because this life is the day we are performing our labors. This life is the time for us to prepare to meet God, who will exercise both judgment and mercy upon us.

Law requires justice. In the broad scheme of things nothing short of an infinite sacrifice could satisfy the whole law and the demands of justice. Not any one of us, save Christ only, could make such a sacrifice. He made the great, infinite sacrifice in order to extend mercy to us, to overpower (as it says in Alma) justice, and to bring about the means for us to have faith unto repentance. God requires that we lean on His arm only, not because He needs our adoration, but because the act of worship draws us to Him and makes His love available to us. Faith, love, and agency seem to me linked not only as the universal issues of life, but as keys to our relationship with God. Because He *loves* us, He offers us the chance in this mortal probation to choose to become like Him, but He doesn't want to lose us. He lets us *choose*, but He beseeches us to come to Him, to have *faith* in Him, because there is no other way we can avoid perishing. Without Him the perils of mortality are insurmountable.

Nor is it possible fully to love His children—each other or ourselves—without first loving Him. It is not possible because we, alone or all together, are incapable of charity without faith in Him. Not any one or all of us could make that infinite sacrifice that restores the repentant person who has done the harm and repairs the harm done to the innocent sufferer. Only He is capable of that everlasting love. And we, therefore, are capable of it only through Him.

At the same time, if we love Him, we love His children because we know by His sacrifice how infinitely priceless His children are to Him. Hence, He tells us if we don't have charity—that is, if we turn away the needy, don't visit the sick and afflicted, don't impart of our substance—then we are as hypocrites who deny the faith. Seeing how we are loved, seeing how to love, we witness our belief in Him and love for Him by treating what is priceless to Him with the same value He perceives in us.

Christ's whole purpose is to bring to pass our immortality and eternal life. His guiding us is His service to us. He, more than we can comprehend, does not want to lose us. Yet we cannot dwell with Him finally—we cannot know as we are known—unless we are like Him. And, to be like Him is

something only we can choose for ourselves. This kind of choosing is part of who He is and who we can become.

Underlying the Savior's Atonement for us, agency, as a context or forum for choice, is our Lord's constant expression of His love for us. Only in having the choice to do that which takes us away from Him or alternatively to do that which brings us to Him can we become like Him, preferring good to evil. Out of His great love, He respects our agency. He pleads with us to accept His grace. He tells us that by our life choices we can be subjected and sealed to the devil or have our garments made white by the blood of the lamb. He lets us choose line upon line, step by ever-so-slow step. He exhorts us to choose to come to Him and to help one another choose to come to Him. And if we ask Him, He helps us in this process. That is essentially how we serve, no matter what our life's work.

For me, my life's work thus far has been judging. What I hope I am trying to do, not explicitly but implicitly in the way I live and treat others every day, is to help people better understand the issues of faith, love, and agency so that we all can choose to be with Him and be like Him and not be forever lost from Him. Salvation is social. And then comes His grace.

I will be ever grateful to have held the office of judge. But in a very critical sense, we are all judges.

For behold, my brethren, it is given unto you to judge, that ye may know good from evil; and the way to judge is as plain, that ye may know with a perfect knowledge, as the daylight is from the dark night. . . .

And now, my brethren, seeing that ye know the light by which ye may judge, which light is the light of Christ, see that ye do not judge wrongfully.
[Moroni 7:15, 18]

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Sheila K. McCleve received her JD from BYU Law School in 1976, studied at Oxford University 1983, and was named BYU Honored Alumnus by J. Reuben Clark Law School 1986. She served as a judge on the Utah Circuit Court Third Judicial District 1984–1996, and judge for the Utah District Court Third Judicial District 1996–2009. She is currently an adjunct law professor at J. Reuben Clark Law School.