

## Breaking the Law

Presbyterian Church of New Rochelle

August 21, 2016

But you have come to Mount Zion and to the city of the living God,  
the heavenly Jerusalem, (Hebrews 12:22)

I saw a two-panel cartoon this week that made me smile and think. It was about three young boys perhaps brothers who were different ages and different heights. All three were trying to see over a fence to watch a baseball game. The panel on the left showed all three boys standing on identical milk crates trying to peer over the fence. The tallest boy could see everything. The middle lad could see the outfield and the youngest had a great view of the fence. The panel on the right showed the eldest standing atop a single crate; the middle lad on two milk crates and the youngest solidly atop three milk crates. All three could see the entire field. The panel on the left was captioned equality; the panel on the right was titled justice.

But justice as a concept is surprisingly elusive. Wikipedia's introduction to the topic helps explain why: "Justice is the legal or philosophical theory by which fairness is administered. The concept of justice differs in every culture." Is justice then completely subjective and not the least bit objective? Does justice exist only in the eye of the beholder? The law, on the other hand, says Wikipedia, "is a system of rules that shapes politics, economics, history and society in various ways and serves as a *mediator of relations between people*." Justice then would be the theory that shapes the law. Justice according to this definition is about fairness in mediating the relations between people. The question then becomes whose sense of fairness? And that is what we will wrestle with this morning. It is a pretty important topic as this morning's quote from Aristotle reminds us: "At his best, man is the noblest of all animals; separated from law and justice, he is the worst." Did the problem first become evident in the Garden, O tree of the knowledge of good and evil?!

What, you might ask, does this chatter about law and justice have to do with Jesus healing a crippled woman as our Gospel reading is often subtitled? In the strictest sense nothing, I suppose. But if Jesus had adhered to the letter of the commandments brought down from Sinai by Moses, there is virtually no chance we would ever have heard the story. If the healing had been done on a Monday or Tuesday it would have been unremarkable like so many other healings. But it wasn't. Jesus healed the woman on the Sabbath: "Woman, you are set free from your ailment." In so doing, Jesus was chided by the leader of the synagogue – think Book of Order – because work ought not be done on the Sabbath day. Is it fair to say that Jesus breaks the law in favor of justice? If you answer yes, is that a good thing?

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In focusing on justice and the law, we can also point to the wisdom of the lectionary. This morning's Epistle reading from Hebrews points directly at this most challenging topic: justice v the law; Mt. Sinai v Mt. Zion, the new Jerusalem. It seems to beg a question we have asked before: Does justice trump the law? If justice is subjective, who gets to decide?

Our constant news feed provides a steady stream of examples where in adhering to the letter of the law, justice appears to have been tossed out the window. Often this is due to a procedural error in which case the suit is often thrown out. But sometimes procedure can be used to accomplish a hidden objective. In our increasingly polarized political

environment, it seems lawmakers have been using the back door to accomplish what could not be achieved by addressing the issue head on. One current example might be the surge in voter ID laws that have popped up since the Supreme Court invalidated large portions of the 1965 Voter Rights Act. These new laws have been justified as a means of safeguarding against fraudulent voting. The problem is, there is absolutely no evidence to suggest a real problem exists. There may be a handful of cases but nothing that rises to the level of a problem that needs fixing. If these laws are allowed to stand it will become significantly more difficult – not impossible, but significantly more expensive or difficult – for tens of thousands to cast their ballots. Is that justice? Who gets to decide? Sinai or Zion.

In preparation for my trip to Scotland I am re-reading *How the Scots Invented the Modern World*, by Arthur Herman. It takes a cultural approach to understanding Scottish history and does a good job summarizing the Scottish Enlightenment which to this day provides a framework and undergirding for our understanding of history, science, the social sciences, and economics. But I was surprised to read that there were distinct differences between Scottish and English law at least in the 18<sup>th</sup> and 19<sup>th</sup> centuries – that's as far as I have gotten! As Herman writes: "A Scottish judge's decision in a civil or criminal case looks beyond the facts to the underlying principles of fairness and equity that the case involves. His guide is not precedent but reason – hence the importance of Roman law. Unlike his English and American counterpart, the Scottish magistrate does not just ask about what the evidence proves. He dares to pose the crucial question: What really happened?" Are you thinking Solomon or Jesus who dared to heal a woman on the Sabbath?

We'll return to the Scots but in the meantime, I emailed an article from the New York Times titled [The Court Begins to Call Out Lawmakers](#) (Linda Greenhouse, NYT, Aug 18, 2016, Op-Ed). Here's the opening paragraph: "In 1962, in the midst of the civil rights movement, African-American residents of Jackson, Mississippi went to court to challenge the

racial segregation of the city's five municipal swimming pools, four of which were set aside for whites and one for Blacks. When the plaintiffs won, the Jackson City Council responded by closing all the pools. At first it claimed a "minor water difficulty" and later explained that integrated pools would present a safety problem and would be too expensive to operate. No pools, evidently, were preferable to integrated pools."

The case worked its way to the Supreme Court where the plaintiffs lost. The article doesn't say if the pools remained closed. The court wrote: "closing the public pools to black and white alike didn't on its face look like a denial of equal protection. It is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators". The article goes on to suggest however, that attitudes are changing in the highest court in the land. Linda Greenhouse believes: "judges and justices are abandoning the traditional diffidence of the judicial role in expressing a new willingness to call out legislatures for what they are really doing, not just what they say they are doing." She cites several cases involving abortion and voter rights. In forwarding the article I suggested to my daughters and siblings I thought this was hopeful. Zion over Sinai.

But then I read a report on the increased violence against minorities resulting from what the media are generally calling a rise in populism or extreme nationalism spurred by the current election cycle. The same report talks about a group that calls themselves the Constitutional Sheriffs and Peace Officers Association. This Association claims more than 400 members of the law enforcement community and openly states they will not follow or enforce Federal laws they do not support or agree with. It isn't that they want what the founding fathers wanted; in many cases the laws are decades if not hundreds of years old. In part it's because they resent being told they can't do whatever it is they want to do. They have little regard for the common good or of society at large. Similarly, Arkansas, Alabama, and Kentucky among others, have refused in one way or another to comply with the recent

Supreme Court ruling on gay marriage. And in Oregon earlier this year a group that avows to honor the Constitution, armed themselves and occupied the Malheur National Wildlife Refuge. According to Wikipedia, "the leader of a group calling themselves Citizens for Constitutional Freedom, said he began leading the occupation after receiving a divine message ordering him to do so. The militant group demanded that the federal government of the United States give up ownership of the refuge. They went so far as to express a willingness to engage in armed conflict. Who makes the law? Who gets to decide; your god or my God?"

My Scottish "history" book says it was the Scottish Enlightenment that first presented humankind as the product of history; of nurture more than nature. Our most fundamental character as human beings, they argue, even our moral character, is constantly evolving and developing, shaped by a variety of forces over which we as individuals have little or no control. Physicists have proved that God created a cosmos that is constantly changing. In the same way this ecosystem we call Earth continues to evolve and exert influence on its most complex creature – human beings. Our God is a God of change. God remains unchanging only in his love of humankind.

The Scottish Enlightenment "invented" those developmental stages we learned about in school – you know, hunter-gatherers, pastoral-nomads, farmer-peasants, etc. As each stage evolved to the next higher stage new laws and institutions were required. It has occurred to me that the current commercial-mercantile stage is well past the midpoint toward its next identifiable configuration that will ultimately be known as the age of artificial intelligence. I raise this possibility – not to watch your eyes glaze over – but to offer a possible explanation for the dizzying change that is making the world barely recognizable to so many of us. It is of little benefit to pray for a return to the good old days. That approach has never yet provided the long term solution. Rather we need to understand the nature of this change – how it impacts the old; how it will shape the new. If we are entering a new age, we need to understand as best we can so we can

help shape the laws and institutions that will determine who we are to become in this new age. Current trends are disturbing so the question is as urgent as ever: "Who gets to decide?"

I'd love to end by simply saying that God decides "let us pray". And ultimately I think that is true. But God created us in his image to be his co-creators. There is a sense in which God cannot do it without us, although I much prefer the way St. Augustine put it: God without us will not; we without God cannot. Disturbingly, we've already heard that the Citizen's for Constitutional Freedom believe God is on their side. So I hope it doesn't sound impertinent to ask "Whose god decides?" Voices as radically different as Ralph Reed, Martin Luther King, Jr., Westboro Baptist Church, and Pope Francis all speak in God's name but with widely | wildly different messages. Whose God?

There are voices aplenty with national microphones who purport to know exactly what God is thinking and doing in this world. Most of them won't hesitate a moment to tell you exactly what you should believe. But God has already written the law on your heart. God's still small voice can be heard if you take the time to listen. It is probable that like the leader of the synagogue we will all be guilty at some point of hypocrisy for protecting the rules of the church rather than attending to the needs of the oppressed. But we don't have to stay there. If in listening for God's word to us we see the error, we must move on – change is challenging! But there is only one voice we should be listening to, that of Christ Jesus who put it so plainly: You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the greatest and first commandment. And a second is like it: 'You shall love your neighbor as yourself. On these two commandments hang all the law and the prophets.' (Matthew 22:37-40) If the person telling you what to do or how to think doesn't embody those two commandments, look for the off button.

Amen