

# **“And Justice for All”**

**a reflection**

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We are young, and old, together. We are gay and straight, together. We are a land of many, many colors – and we are a justice-seeking people. Today, I want to talk about *all* of these things – and in particular, about justice, *for all*.

Every one of us is shaped – in ways both profound, and subtle – by our own, childhood experiences. The culture in which we are raised, the times in which we come of age ... the influences of parents and peers, media and history – each play a pivotal role in how we see the world – whether we believe that world is already fair, and just; or whether we feel called to bring change, to that world.

For my own part, I am acutely aware of how my upbringing, and certain childhood experiences, have shaped who I am and what I believe about – to use the words of our second UU principle – “justice, equity, and compassion, in human relations.” In fact, I suspect it is in no small part *because* of that upbringing, and those experiences, that I grew up to become, first a passionate Unitarian Universalist, and later, an ordained Unitarian Universalist minister.

It is only right, as I reflect on my own understanding of justice today, that I offer the caveat of my own background, experiences, and upbringing. So let me begin by saying that it is my opinion that, as Judge Learned Hand implied in the passage I read a moment ago, which is also reprinted at the top of your order of service, that justice in America has, for far too many generations, been *rationed* – rationed out – reserved, too frequently, for themselves, by those in power (translation: the white, the male, the wealthy). Far too commonly, justice has been available only to the privileged, not the oppressed. How short, we have historically fallen, of that ideal which is our great calling as a nation: To live, together, “with liberty and justice for all.”

Most of you know – and those who don't, will certainly by now have inferred, from my accent – that I grew up in the South. Tennessee, to be exact, in a small town, in the 1960's – a time when cultures were starting to clash; civil rights were being denied, and fought for; and change was in the air as at few other times in American history.

To give you some idea of how rapidly things were changing, in the world of my early childhood, I can tell you that my sister – who is a little more than a decade older than I – did not share a classroom with a single African-American student, until she went away to college. I, on the other hand, cannot *remember* a school experience that was not shared with black classmates, and black friends.

What makes this all the more relevant, in my own life story, is the fact that my father was an education administrator in our small-town school district, who served as Assistant Superintendent of Schools during the turbulent era of desegregation. Dad was a liberal, an outspoken advocate of the right of *all people* – regardless of the color of their skin – to an equal, high-quality education. A decade after the landmark Supreme Court decision in *Brown vs. Board of Education*, in most parts of the South, “little black boys, and little white boys,” to paraphrase Martin Luther King, still could not sit down side by side at the desk of education – much less at the table of brotherhood.

But I was one little white boy, who got that chance. In my hometown, the year before I was to enter first grade, my father and those like him who had fought for integration, at last won the day – and so, I was part of the very first integrated class at my neighborhood elementary school. As such, at least for a brief time, I remained naïve about the racism that continued to exist, in the world all around me. I had black playmates. We socialized with families. Many in our neighborhood did not approve – yet I was blissfully unaware.

But it was not too long before the nightly news brought into my living room visible, visceral evidence of the age-old injustice that was ripping our society apart. I can still see, as if it were only yesterday, the televised images of water cannons turned on African-Americans in the streets of the South. Of police dogs snarling and policemen beating youth who looked just like my friends. And I can recall, as if it were only yesterday, my horror upon realizing – when visiting my aunt and uncle in Alabama one Christmas – that the man pictured in the framed photo in their den, the one who was smiling and shaking my uncle's hand – was the same man who had recently stood, dripping defiant public prejudice, in the doorway of the University of Alabama, to prevent black students from enrolling there.

Yes, by the time I was my son's age, and "All in the Family" premiered on network TV, I had run across more than my share of Archie Bunkers in this world – and my life was not to be the same, because of it.

Fast-forward four decades or so. It seems – these days – that to admit having been shaped, even profoundly so, by one's childhood experiences of prejudice and injustice, brings into question one's objectivity. It seems, these days, that compassion for the marginalized, the poor, the outcast and the oppressed (you know, all those things that Jesus taught us) makes one suspect. Empathy, it appears, has become a bad word – especially in the halls of justice. How sad. How very sad.

One of the enduring legacies of my own upbringing is a deeply rooted belief that it is my *duty* to share the blessings I have received in this life, and from this land, with those less fortunate than I. My family was not the kind to patiently await divine justice, in the afterlife. No, both my parents, as well as my older sister, taught me that justice was something to be fought for, here and now, in this life, in this imperfect nation where equality may not yet be reality, but where it is, at least, wonderfully ... achingly ... *possible*.

But equality does not mean blindness. It does not mean turning a blind eye to inequalities, and wishing they would go away, making of them an inconvenient truth. Equality, and justice, must be actively, pro-actively, sought, and fought for.

Growing up, as I did, in a state, and a part of the country, where the laws were written, and the power was held, by a small group of – let's be honest, here – narrow-minded, prejudiced men ... raised as, I was, in a culture where injustice – injustice for the African-American, to be sure, but more subtly also for women, for non-Christians, and certainly for gays and lesbians – was the law, nonetheless I was amazed to watch as, time and again, the various branches of the federal government stepped in and said, "No!," you cannot treat people that way.

Is it any wonder that this little liberal boy, himself a non-conformist and unbeliever, himself the victim of various bullies at school, came to see that federal government, and in particular the Supreme Court, as a kind of knight in shining armor? Is it any wonder that I grew up believing – *believing* with faith and conviction – that if only a case, or a law, or an injustice, could find its way through the legal system all the way up to the Supreme Court, that justice would eventually be served?

I can tell you, this was a very comforting belief to a child growing up in what he saw as an otherwise cruel and unjust world. And the truth is, I had very good reason for my faith in the Supreme Court.

Many of the personal and collective rights we now take for granted, in America today – many of the freedoms we assume as givens – we enjoy only because the Supreme Court of the 1950's, 60's, and 70's issued an unprecedented series of rulings overturning restrictive, exclusionary, and anachronistic laws.

Here is just a sampling of the kind of decisions that led me to have faith, in my childhood, in the ultimate justice of the Supreme Court:

Unanimously – just think of it, *unanimously* (and remember, at the time this was a group of nine elderly, Ivy League educated, white men) – it unanimously declared that racial segregation in public schools was unconstitutional. It overturned a statute in Virginia (a state that was literally just a few hundred feet from my house) outlawing marriage between blacks and whites. It ruled that public schools could not force children to participate in prayer or Bible readings (a case, by the way, brought by a young Unitarian and his parents). It assured publishers the free-speech right to print material that was politically controversial (without that particular decision, it is unlikely the Unitarian Universalist Association's Beacon Press would have taken the risk of publishing The Pentagon Papers – and it is scary to think of the course our national history might have taken, had that information not become public).

The Court declared that state laws banning the sale of contraception – even to married couples – were unconstitutional. It declared that, in order to arrest someone, police had to inform that person what crime they were being charged with.

The list goes on and on. It is chilling for me to imagine what life must have been like in a time *before* such decisions, but it behooves us to remember – and there are people in this sanctuary who can testify to it – that were it not for a bold, visionary, *justice-seeking* Supreme Court – what certain talk show hosts and bloggers sometimes call, with more than a hint of contempt in their voice, an “activist” court, but which I, in eternal gratitude for the freedoms they have assured us, call a “justice-seeking” Supreme Court – without such a Court, there would still be states in America today where a black man couldn't drink from the same water fountain as a white woman, much less marry her. And, even if they *were* married, there would still be places where someone could refuse to sell them a house to live in. Where the local government could force their child to go to a school with only African-American children.

In short, it is thanks to the Supreme Court of the United States – not national or *certainly* state legislatures, not the Founding Fathers or even the Bill of Rights – but because of the way a group of nine people seated on the highest court in the land interpreted the intentions of those Founders, and interpreted the meaning of

that Bill of Rights – that we have as much liberty as we do, individually, and collectively, here in the sanctuary this morning.

According to Professor Rebecca Zietlow, the Supreme Court of that era expanded the “*rights of belonging ... that promote an inclusive vision of who belongs to the national community.*”

That is the Supreme Court I grew up with. That is the Supreme Court I came to believe in – have faith in – one that stood up to individual states like the one I lived in, states filled with hatred and prejudice, and made justice roll down like waters, in service of the dream that liberty and justice are not just for the few, or even the many, but for all.

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Needless to say, *I no longer have that kind of faith in the Supreme Court.* The Court of my adult years, and in particular, the Court of the 21<sup>st</sup> century, to date, has become, at best, a sad reflection of the politics of our day – deeply divided into two entrenched camps that roughly cancel each other out; looking backward, more often than forward, fighting tooth-and-nail over the vote of one or two swing justices in any given case – a far cry from the visionary arbiters of justice who held the lofty *ideals* of our Founding Fathers to be more relevant to us than the literal *words* and *deeds* of those all-too-fallible Founders.

In its worst moments, today’s Supreme Court has become an almost reactionary force that threatens to slowly strip away most of the progress made during the past half century in America, toward justice, for all.

The dichotomy between these two Supreme Courts – what is commonly referred to as “The Warren Court” of my youth, named after the remarkable Chief Justice, Earl Warren – and the Rehnquist and Roberts Courts of recent years – is a difference that has troubled me for some time – and not just because I believe things are headed in the decidedly wrong direction.

If you have heard me preach for any time at all, you know that *fundamentalism* – that is, the literal, inflexible adherence to a set of previously written words or laws, and the lifting of those words or laws to some sort of mythical or transcendent power over our life today – is a worldview I find both incredibly frustrating, and incredibly dangerous. For me, it basically comes down to this: What do you *refer to* when making moral and ethical decisions in your life? What factors do you consider when you must make a difficult choice?

The fundamentalist has a very clear, very narrow and circumscribed, set of referents and authority documents when making those decisions. The liberal – and here I use the term liberal not in its political sense, but as it is used in the phrase

“liberal religion,” to connote where and how one locates one’s authority in decision-making – the religious liberal has a belief in both the ability, and the *responsibility*, of the individual to make informed decisions about important questions, and to work out his or her own relationship with the divine, without the intercession of religious authority figures or limited source texts. A liberal in this sense is much more comfortable living in the gray areas of life, and perhaps as a result she or he has a much wider array of resources upon which to call when making important ethical decisions. Some of those resources, to use Unitarian Universalists language, might include “wisdom from [all] the world’s religions, which inspire us in our ethical and spiritual life,” and “words and deeds of prophetic women and men which challenge us to confront powers and structures of evil with justice [and] compassion.”

In short, what matters to us is not so much the letter of the law, but the *spirit* of the law. This is the basic difference between the fundamentalist and the liberal.

It is a distinction played out in the culture wars of the past generation, and as the debate over this or that Supreme Court nominee periodically heats up – as now – in the political arena. Perhaps you have noticed the phrase “strict constructionist” cropping up again in our national conversation. Here is how I translate “strict constructionist”: “*Constitutional fundamentalist*.”

I can credit Jeffrey Toobin, author of the best-selling book “The Nine: Inside the Secret World of the Supreme Court,” with the insight that led me to come up with that phrase. Reading his book over my sabbatical, I had one of those “ah-ha moments” where you suddenly see something that has been staring you in the face all along.

As I read the following quote from Judge Robert Bork – the kind of statement that, during his 1987 Senate confirmation hearings, doomed Bork’s nomination to the Supreme Court – I was struck (stunned might be a better word) by the eerie similarities between Bork’s legal worldview, and the religious worldview of the fundamentalist:

“The [Constitutional] framers’ intents with respect to freedoms are the *sole legitimate premises* from which Constitutional analysis may proceed.”

Substitute the word “Bible” for “Constitution,” and it becomes crystal clear: what today is called “strict constructionism” – what Bork, its first major proponent, called “originalism” – is nothing more than *constitutional fundamentalism*.

Here is how author Toobin analyzed Bork’s position: “According to Bork, the meaning of the words [in the Constitution] did not evolve over time. This was an unprecedented view of the Constitution in modern times. Even before the

Warren Court,” and here I am still quoting Toobin, “most justices thought that the words of the Constitution were to be interpreted in light of a variety of [contemporary] factors, beyond just the intention of the Framers.”

Thankfully, Bork did not have the opportunity to bring these views with him to a lifetime appointment to the Supreme Court – but in the past twenty years, several of his protégés have.

It is clear where I stand, when it comes to justice – and when it comes to the person who would be the next justice of the Supreme Court. No doubt, my outlook is colored by the times, and the way, in which I was raised. How could it be otherwise?

Yet when I see the forces of constitutional fundamentalism waging their disingenuous fight against Sonya Sotomayor – on the grounds of supposed “racism,” no less – I return to the words of my 19<sup>th</sup> century Unitarian predecessor Anna Garlin Spencer, whom I quoted earlier: “The earth is ready, the time is ripe, for the authoritative expression of the feminine as well as the masculine interpretation of that common social conscience which is slowly writing justice.”

I take heart, too, from the words of Justice William Brennan, who said in 1985, as constitutional fundamentalism was just beginning to become a factor on the American judicial landscape: “The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the *adaptability* of its great principles to cope with current problems and current needs.”

In these days when terrorists kill abortion doctors in church lobbies, when states are creating a patchwork of diametrically opposed marriage laws that resemble nothing so much as the racially discriminatory anti-miscegenation laws of the early 20<sup>th</sup> century South – in these days when decisions about the right to privacy, the right to access to medical care, the right to die, the right to live our lives in the way we each, individually, see fit – in times like these, we could *use* a little more empathy on the bench of the highest court in the land.

Robert Bork said, “The judge who looks outside the Constitution, always looks inside himself.”

I say, may we always – you, and me, and even the nine people who hold so much power over the kind of life each of us can and will lead – may we *always* look inside ourselves. And may we find there, in our hearts, compassion – and the genuine will to *seek justice, for all*.

May it be so. Amen.