

The Rule of Law

The Rev. Edmund Robinson
Unitarian Universalist Meetinghouse in Chatham
October 19, 2008

The “true idea” of a republic, wrote John Adams, “is an empire of laws and not of men.” I want to talk today about this public issue dear to my heart, an issue both religious and political, but first I want to talk about how we talk about public issues in this church. An announcement was made a few Sundays ago about partisan political signs, and several of you were upset about that announcement. You may not be aware that that announcement was prompted by the fact that someone had placed a yard sign for one of the presidential candidates on the church lawn.

All that the Board has said is that we shouldn’t conduct partisan political business in the church. We won’t rip off anyone’s lapel button, but we ask us all to understand what this church is. It is not the Democratic Party at prayer; it is a religious institution where we all come together to try to make sense of life and to touch what is deepest in us. It is open to people of all political stripes, just as it is open to people of all theological opinions.

Neither the IRS regulations nor our own principles keep us from talking about public issues which may be involved in a campaign. A minister faced with a divisive public issue like a war, slavery or equal marriage has the choice of ducking it entirely, but then he or she leaves the congregation without guidance as to what their common religious principles may say on the issue. I think a minister does the congregation a service by saying how he feels religious principles apply to issues arising in the public sphere. And as UUs, you have every right to disagree with anything said from the pulpit.

In the last few weeks, I listened to all three presidential debates and the vice presidential one as well. I heard a lot, but there was one subject I didn’t hear about. I didn’t hear the words Guantanamo, Abu Ghraib, renditions, torture or the rule of law. A computer check reveals that Senator McCain did mention Guantanamo in passing in the second debate, but there certainly was no extended discussion of what to me is the most distressing feature of the current administration, that is, its utter disregard of the rule of law.

What do I mean by the Rule of Law? Let me give you that quote from John Adams again: “The true idea of a republic is an empire of laws and not of men.” This idea is what lawyers and legal philosophers call the rule of law. “Rule,” not in the sense of a code of behavior or a rule that we follow, but in the sense of reign, of regime, of government. If you go back to the Watergate scandal, the rule of law was vindicated most dramatically there by the precept that no person is above the law, even the President of the United States, the most powerful political leader on earth.

I am no legal historian or philosopher, but I would date the idea of the rule of law at least back to the Magna Carta in the year 1215, when a bunch of barons forced the English king to sign a document promising that in the future he would be bound to obey the law. This established the idea that the law was above any particular king.

In the context of the US government with its separation of powers, the Rule of law has implications for all three branches: the legislature must be responsive to the people but free of corrupting special interests; the executive must enforce all laws equally without favor to one person, faction, group or party. And the judiciary must be independent of influence by the executive or legislature and must be the ultimate arbiter of what the law is.

I have two simple concepts that I hold and want to discuss with you here today. The first is that the rule of law is to law what the Golden Rule is to religion – you were waiting to see if I would tie this into religion, weren’t you?. The second is that a global Rule of Law is the best alternative we have to the chaos of war and our best weapon against terrorism.

The Golden Rule: many people think the Golden Rule originated with Jesus. Certainly it is articulated by Jesus in the Sermon on the Mount, where Jesus says “Whatever you wish that men would do to you, do so to them.” Matthew 7.12.

But the same thought had been expressed by the great Rabbi Hillel, who lived a generation before Jesus. Hillel was asked by a gentile if he could sum up the Torah in a teaching that one could say while standing on one foot. He replied, “That which is hateful for someone else to do to you, do not do to them.”

If we look to Islam, we find the following in the Forty Hadith of an-Nawawi: “Not one of you is a believer until he loves for his brother what he loves for himself.”

And the Jains of India say “A man should wander about treating all creatures as he himself would be treated.” Sutakritanga 1.11.33

And in Hinduism the Mahabharata says “One should not behave towards others in a way which is disagreeable to oneself. This is the essence of morality. All other activities are due to selfish desire.”

In the analects of Confucius we see: “Tsekung asked, ‘Is there one word that can serve as a principle of conduct for life?’ Confucius replied, ‘It is the word shu—reciprocity: Do not do to others what you do not want them to do to you.’”

And in Buddhism’s Sutta Nipata we find: “Comparing oneself to others in such terms as ‘Just as I am so are they, just as they are so am I,’ he should neither kill nor cause others to kill.”

This Buddhist formulation makes clear that the Golden Rule is founded on a particular awareness of the other, a realization that the other person is a person like me. We now know that the brain is hard-wired for empathy. They can show on PET scans that certain neurons fire when a person is stressed, and that those same neurons fire when the person witnesses someone else being stressed, the so-called mirror neurons. In other words, our brains instinctively understand another person’s experience in terms of our own.

Now Jesus goes a bit further than the principles I just mentioned. There is a striking passage in the Gospel of Matthew, a passage about judgment day.

31 "When the Son of man comes in his glory, and all the angels with him, and then he will sit on his glorious throne.

32: Before him will be gathered all the nations, and he will separate them one from another as a shepherd separates the sheep from the goats,

33: and he will place the sheep at his right hand, but the goats at the left.

34: Then the King will say to those at his right hand, ‘Come, O blessed of my Father, inherit the kingdom prepared for you from the foundation of the world;

35: for I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me,

36: I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me.’

37: Then the righteous will answer him, ‘Lord, when did we see thee hungry and feed thee, or thirsty and give thee drink?’

38: And when did we see thee a stranger and welcome thee, or naked and clothe thee?’

39: And when did we see thee sick or in prison and visit thee?’

40: And the King will answer them, ‘Truly, I say to you, as you did it to one of the least of these my brethren, you did it to me.’¹

This puts the Golden Rule on a different ethical footing: I should treat the other person as I would be treated not just because that person is like me, but because that person is like God.

¹Matthew 25: 31-41

When we can see God in the other, we are likely to treat the other with respect and love.

Whether the Golden Rule is founded on enlightened self-interest or a profound recognition of divinity in the other, I see the concept of rule of law as taking this principle of reciprocity to a more abstract plane. If society through its legislature sees fit to make a law, that law should be applied even-handedly to all people. If it is against the law to drive when your blood-alcohol level is more than .05%, it is just as much against the law for me to drive that way as for you. Therefore I do not drive under the influence because I don't want you to drive under the influence and injure me. And a corollary of that is if I get caught driving under the influence I should be punished the same as anyone else who gets caught. It should not matter that I am poor or wealthy, black or white, a nobody or the wife of the chief judge. From the principle "do unto others as you would have them do unto you" it is but a short step to "everyone should be treated equally before the law."

Note that this does not mean that the law must be applied harshly in all instances; mercy is possible under the Rule of Law, but it must be mercy dispensed on a fair basis.

The Rule of Law used to be the finest export of the United States. Developing nations copied the US Bill of Rights as they wrote their constitutions. Courts around the world used to cite constitutional decisions of American courts as definitive statements of human rights. But in the last seven years, those citations have declined. A recent story in the New York Times confirms that the influence of US Courts in the world of law has waned, and the way I read this, it is in large part because of the current administration's utter contempt for the rule of law².

The current era started, let us remember, with the disgraceful decision in Bush vs. Gore. In January of 2001, more than 500 law professors of every political stripe from 136 law schools signed an advertisement in the New York Times protesting the United States Supreme Court's halt to the recount of the Florida election ballots, saying that the court's decision undercut the rule of law. A judicial decision which is partisan to the party in power or the party which appointed the judges represents a government of men, not a government of laws.

In the early days of the new administration, they renounced America's endorsement of the International Criminal Court, an international tribunal set up to try violations of international law.

It proceeded from there to a declaration of war on terrorism. Let us recall a little history. The attacks of Sept. 11, 2001 on the World Trade Center were not the first attempt by a radical Islamist group to blow up that symbol of globalism. In 1993, a different radical Islamist group led by Sheik Omar Abdel-Rahman exploded a truck in the underground garage of one of the World Trade Center towers to try to weaken the supporting structures and cause that tower to collapse into the other. Had the plot succeeded, the loss of life would probably have been as great as in the attacks of 2001. As it was, six people were killed.

The US Government did not declare war on terrorism in that instance; we did not mobilize the army or the National Guard; we simply went to court, and under existing laws, procured indictments and convictions against the plotters, who are all serving time in federal penitentiaries. They were terrorists, they got due process of law, and they are no longer a threat to our safety.

Contrast that approach with the approach of the current administration. They reacted to the attacks of Sept. 11 by declaring war on terrorism. As someone said, to attack terrorism by declaring war on it is like attacking the flu by declaring war on sneezing. They pushed through the Patriot Act, expanding executive powers beyond recognition. In the course of military operations, they seized a bunch of suspected terrorists, but because they were not

²"U.S. Court Is Now Guiding Fewer Nations" by Adam Liptak September 17, 2008

operating in a criminal law enforcement context, they couldn't figure out what to do with them. They didn't want to try them in U.S. Courts, so they put them in Guantanamo, and made the claim that they didn't have to observe the Geneva conventions because, though they were being held by the U.S. Government, they weren't being held on U.S. soil. It has taken six years, but the U.S. Supreme Court has finally rejected this position.

And just the other day, a federal judge finally ordered some of the detainees released. These were the Uighurs, members of an ethnic minority within China who had fled China to escape persecution and were picked up in Afghanistan. There is no evidence that any of them ever participated in terrorist actions, and it looks like they have been locked up for six years because the government just couldn't figure out what to do with them.

The administration's posturing over Guantanamo has made it clear why they have opposed the International Criminal Court: they don't want any court with jurisdiction over their actions. They are willing for Slobodan Milosovic to be held accountable for war crimes, but they want American decision makers to be able to violate international law with impunity. The world sees this position for the hypocrisy it represents, and our ability to provide moral leadership plummets.

For my money, international cooperation in law enforcement is the best guarantee against future acts of terrorism, and an American administration which wants to really act in the long-term interests of protecting us from terrorism will endorse the International Criminal Court rather than trying to undermine it. It is the institutional embodiment of the Rule of Law. Internationally, the Rule of Law is expressed in our Sixth Principle: The goal of world community, with peace, liberty and justice for all. This is not justice for some, justice for those who can afford it, justice for those with the guns. It is justice for all. I am sorry that this is not being discussed in the Presidential campaigns, for I think more Americans need to think about it.

Perhaps it is not being discussed because both candidates want to repudiate the stand of the current administration and restore respect for the rule of law. That would be a hopeful sign. But it is also possible that neither side sees advantage in talking about anything but the economy. And supporting the rule of law might open one to the charge of being soft on terrorism.

In "A Man for All Seasons," Thomas More says he would give the devil the benefit of law for his own safety sake. Thomas More was not an American politician. American politicians can't give the devil the benefit of law because they are too busy exploiting the devil for political gain. They get elected to office for being against the devil. Those who get elected with the devil's help are not about to turn around and grant him the protection of the laws.

But now the very scenario that Thomas More warns against has happened: we have cut down all the laws to get at the devil.

However, there *are* hopeful signs in the wind. It has become apparent that the only way any of us will weather the current worldwide financial crisis is by international cooperation on an unprecedented level. Because capital moves so freely across international borders, and companies, banks and brokerages operate on an international stage, it is clear that solutions which are restricted to one nation won't get the whole fo the problem. The most isolationist of governments will be irresistibly drawn into cooperation in forging a new set of rules, and submit to a mechanism to enforcing them. Capital will require this as a cost of doing business. In my constitutional law class more than thirty years ago, I learned about why the commerce clause is in the constitution: the banks and national companies had required that Congress have the power to make laws which would be uniform from state to state, because business did not want to comply with dozens of state laws.

So today on the international level, the economic crisis may do what the terrorist threat could not: forge new supra-national institutions, laws and law enforcement mechanisms. It is clear that investment practices need to be subject to new regulations. The Rule of Law may yet

rebound.

Jesus said, “inasmuch as you have done it unto one of the least of these, my brethren, you have done it unto me.” The Rule of Law amounts to saying, “if they can do it unto one of the least of these, they can do it unto you.” We give the devil the benefit of law for our own safety’s sake. If the Uighurs can be held indefinitely without charges, so can any of us. If you are moved by anything I have said, let me urge you to do what you can, not only by researching the positions of the candidates, campaigning and voting in the current political races, but also by letting your elected officials know where you stand, and by supporting organizations committed to reestablishing the Rule of Law and restoring our standing in the international community. Amen.

Reading: From A Man for All Seasons, by Robert Bolt

Narrator: Sir Thomas More has declined to employ Richard Rich, who has just left the room.

Wife Arrest him!

More For what?

Wife He's dangerous!

Roper For all we know he's a spy!

Daughter Father, that man's bad!

More There's no law against that!

Roper There is God's law!

More Then let God arrest him!

Wife While you talk he's gone!

More And go he should, if he were the Devil himself, until he broke the law!

Roper So, now you give the Devil the benefit of law!

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

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

More Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat?

This country is 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!