

“Humility and Justice”

Chief Justice Rush’s Remarks at Lafayette 2016 after Red Mass

It is a great privilege to address you all this evening at the first Red Mass in the Lafayette Diocese. The Red Mass is something I look forward to every year. It is an opportunity to invoke God’s blessing upon our judiciary and the legal profession—and specifically, that God would cause Justice to be served.

And that is what I want to talk about tonight: Justice.

I. Administering the Promise of Justice

The Open Courts provision is one of the most important provisions of our Indiana Constitution. It explains the very purpose of the Judiciary. It says

- “All courts shall be open: and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. **Justice** shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.”

Ultimately, this provision is about one thing: Justice. Our courts exist to fulfil the constitutional promise of Justice. We are more than referees of the business community, or the tie-breakers in family feuds. Our constitution says that citizens enter our courtrooms to receive more than the “due course of law”: they come for Justice. Not just a fair process, but a Just outcome.

Our Indiana Constitution implements the vision of what our Founding Father’s hoped to accomplish. The very preamble of the Federal Constitution says that one of the purposes of the new constitution was to “establish Justice.”

But what is Justice? Is it simply the fair and impartial administration of our laws? Is Justice the same as the Rule of Law?

II. Justice and the Rule of Law

We can’t have Justice without the Rule of Law, but the Rule of Law is not the same as administering Justice. Justice is fundamentally a moral issue, and we know that law and morality don’t always overlap. Oliver Wendell Holmes, Jr., that brilliant Massachusetts and US Supreme

Court Justice, has done much to shape our understanding of that distinction. In his famous article, “The Path of the Law,” In 1897 he explained:

- “The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race. The practice of it, in spite of popular jests, tends to make good citizens and good men.” ([The Path of the Law](#), 10 Harv. L. Rev. 457, 459 (1897)).

Though morality informs the law, it is not the law itself. And the same is true for Justice. The law itself is simply, as Justice Holmes remarked, “what the courts will do in fact, and nothing more pretentious.” Adhering to the Rule of Law for Holmes was simply adhering to what judges will do.

Holmes’s pragmatism is the foundation of the legal training that all of us received in law school. We studied cases and statutes, not legal commentary or political treatises or the philosophical works of Locke, Mill or Bentham, because we were taught that the most important thing to know is “what the courts will do in fact, and nothing more pretentious.” This is the very essence of what we mean when we say “thinking like a lawyer”—putting aside our upbringing, our prejudices, our personal opinions, and our policy preferences, and conforming to the Rule of Law.

The Rule of Law is our **method**. But it is not our ultimate **goal**. Administering Justice is more than simply being an impartial legal technician.

Justice is more than the Rule of Law. Otherwise, I would have to say that from 1850 to 1865, enforcing the Fugitive Slave Act was Justice. Or I would have to concede that from 1896 until 1954, judges who said African-Americans were “separate but equal” were dispensing Justice. Or I would have to say that when Justice Holmes himself codified the eugenics movement in 1927 by enforcing forced sterilization of the unfit because “three generations of imbeciles are enough,” he established Justice.

No, Justice is bigger than the human laws that our Legislatures draft or what our legal opinions dictate.

When a mother calls for Justice to be served for the murder of her child, she is asking for more than a fair trial for the accused. When Dr. Martin Luther King, Jr., quoted Amos 5:24 and preached that “we will not be satisfied until ‘justice rolls down like waters, and righteousness like a mighty stream,’” he wanted something more than the Civil Rights Act.

Justice is much bigger than our rules and procedures. Which is why the first step to understanding Justice is humility. “The fear of the LORD is the beginning of wisdom,” the Proverbs say. Similarly, humility is the beginning of true Justice. (slow or repeat)

III. Humility is the Beginning of Justice

We are all familiar with Solomon’s wisdom, and it was his great wisdom that led him to administer Justice in his kingdom. But we forget why he received wisdom. It wasn't because he was the smartest, or the most qualified, or because of his royal pedigree. It was because he was humble. When we remember Solomon’s wisdom, we need to remember his heart when he prayed
1 Kings 3:9

- “Lord my God, you have made your servant king in place of David my father, although I am but a little child. . . . Give your servant therefore an understanding mind to govern your people, that I may discern between good and evil, for who is able to govern this your great people?”

Solomon’s humility should be our example that humility is the beginning of Justice.

And for the remainder of our time, I want to discuss the relationship between humility and Justice.

A. We Can Get It Wrong

First, humility allows us to acknowledge that we can get it wrong. As Judges and Lawyers, we are human. And that means we make mistakes. Even our highest courts are not exempt from that reality. We have the tremendous potential to do great things for the people of Indiana. But we also have the potential to do great harm. Unfortunately, it's not a question of if we will fall short, but when.

We can get it wrong because we judge too quickly—without due diligence and reflection; because we can be blinded **by** appearances instead of blind **to** them; because we can let sophistication and eloquence speak louder than common sense; and because we can assume that everyone is exactly like us.

And even if we follow every legal precedent and apply every canon of construction, future generations will still look back and point to our mistakes.

The Dred Scotts, the Plessy v. Fergusons, and the Buck v. Bells will be eternal reminders that we consistently fall short of administering true Justice. How many of the decisions that now stand today will our children utter in the same breath as Plessy? Admitting we are imperfect allows to begin moving toward true Justice.

B. Justice is Not Something We Invent, But Something We Receive

Second, humility allows us to understand that Justice is not something we invent, but something we receive. It's not enough to simply admit our imperfection. That's only half the battle. When we recognize that we are imperfect at administering Justice, we are implicitly acknowledging that there is such a thing as Justice. That it's real. That we didn't create it. And that it's something that's judging us, instead of the other way around.

We all believe in a standard of Justice, even if we can't articulate it eloquently. Some of us only know it when we see it. But we don't doubt it. All you have to do is ask our son Luke what he thinks about not having a smart phone and he'll respond with "that's not fair!"

And yet many stumble at this point. Many are ready to acknowledge their imperfections—that our system fails at times. But they don't take humility far enough. They think that we are the solution. That we simply need to do better. They assume that because we all believe in Justice, we should be able to codify it eventually.

Unfortunately, imperfect people don't make perfect things.

I've witnessed this mindset many times before as a trial court judge in my beloved courthouse just the street. When talking with troubled children walking the road to destruction, I've heard many express their resolve to change—to be different, to start walking the straight and

narrow. But a year or two later, I see them walk back into my court room, standing before my bench in worse trouble than before.

We do the same thing as a society—relying on our collective resolve to change, but returning to the scales of Justice with more failures.

It is our lack of humility that explains why so many theories of Justice begin with ourselves: our freedom, our rights, our privileges, and our liberties. If we start with ourselves, we forget where our freedoms, rights, and liberties really come from.

Humility allows us to look outside of ourselves to find Justice. This is why the Bible has been a foundation of our legal system since the beginning. Justice does not begin with a hypothetical state of nature, or original position, but in the heart and mind of God and under the rule and reign of our Lord.

For example, our Founders believed that freedom of religion was not a product of the Enlightenment, but of God Himself. Thomas Jefferson made this point in his "Bill for Establishing Religious Freedom" passed by the Virginia General Assembly in 1786. He said that

- "the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that **Almighty God hath created the mind free**, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint." ([Bill No. 82](#)---Presented in the Virginia General Assembly).

And the same is true of the many other rights and freedoms that we enjoy. We protect life, because all are made in God's image. We protect property, because God is the source of all our blessings, and has commanded "do not covet." And we enforce contracts, because God is Truth, and He keeps His promises. And governments have the authority to enforce these rights and freedoms because the Lord Jesus Christ has instituted government as His servant for good to the people (St. Paul's Epistle to the [Romans 13:1-7](#)).

C. Human Justice is Not Divine Justice

And it is the divine origin of Justice that leads us to our third and final point on humility. Humility allows us to accept that human Justice is never ultimate. Nor should we ever want it to

be. As I noted earlier, we can get it wrong. And the Justice that we do administer can never fully heal the wounds and scars inflicted in the tragedies of this life.

Human Justice requires that we ensure a substantial recovery for the surviving widow of a husband wrongfully killed in a car accident. But Human Justice will not truly heal her grief. Human Justice requires stiff penalties for those who abuse and molest innocent children. But it cannot erase those children's scars.

But Divine Justice offers true hope.

One of the most compelling examples of the hope of Divine Justice comes from the book of Second Maccabaeus [Mac a bees], which records the persecution and oppression of the Jews at the hands of the King Antiochus. Antiochus committed unspeakable atrocities against the Jews in an attempt to force them to forsake their religion and observe Greek practices. Most resisted, and the nation was eventually saved through the revolts led by Judas Maccabaeus. They had won back their freedom. But the hope of earthly freedom was not what sustained them during their tribulation.

At the height of persecution, the book records the testimony of seven brothers and their mother. The mother is forced to witness the beating and torture of her seven sons, as each of them is eventually executed one by one for refusing to eat pork. After the Greeks executed the first six sons, one by one, they begin brutally torturing the youngest. And in the midst of his suffering, his mother tells him:

- “Do not fear this butcher, but prove worthy of your brothers. Accept death, so that in God’s mercy I may get you back again with your brothers.” (2 Maccabaeus 7:29)

It was the promise of Divine Justice, and also of Divine Reward, that allowed this mother and her seven sons to endure the atrocities of human injustice with resolve and hope.

The same was true for St. Thomas More—our patron saint of lawyers. A faithful statesman and attorney, St. Thomas More faithfully served King Henry VIII for several years. But when the King ordered all subjects to pledge loyalty to himself as the head of the Church of England, More refused. The King thought highly of More, and that was enough to preserve his

freedom for a time. But More was eventually arrested and tried for treason. He could have gone free if he simply took the oath, renounced the Catholic Church and swore allegiance to the King as head of the Church. His daughter Meg encouraged him to do so. But his convictions before God wouldn't allow it. In one of the letters to his daughter Margaret he said, I "leave every man to his own conscience," and so "every man should leave me to mine." ([Letter of Thomas More to Margaret](#), April 17, 1534). And in another letter a year later, he said, "I pray you . . . pray for me, and take no thought whatsoever shall happen [to] me. For I verily trust in the goodness of God, seem it [every] so evil to this world, it shall indeed **in another world** be for the best." ([Letter of Thomas More to Margaret](#), May 2 or 3, 1535).

He was found guilty of treason and sentenced to death by beheading. His final words on the gallows were, "I am the King's good servant, but God's first."

But even though Human Justice is not ultimate, we still have a job to do. We must do the good we know to do, recognizing our God-given role to be the Constitution's "good servants, but God's first." Our understanding of the limits of Justice is no basis to give up our constitutional mandate, but rather it reminds us of why our Justice should always be tempered with mercy.

The limits of our Human Justice also explains why the call of Justice extends beyond the courtroom and into our communities. Justice is far more than the cases we decide and the pro bono hours we donate. It includes the service to our families, our communities--the vulnerable who need help, and who offer nothing in return.

Conclusion

So in closing, we are called to be more than legal practitioners. We are called to pursue and administer Justice. But we need humility to get there. Humility to acknowledge our faults, to look outside ourselves, and to be "the Kings good servants, but God's first." Thank you.