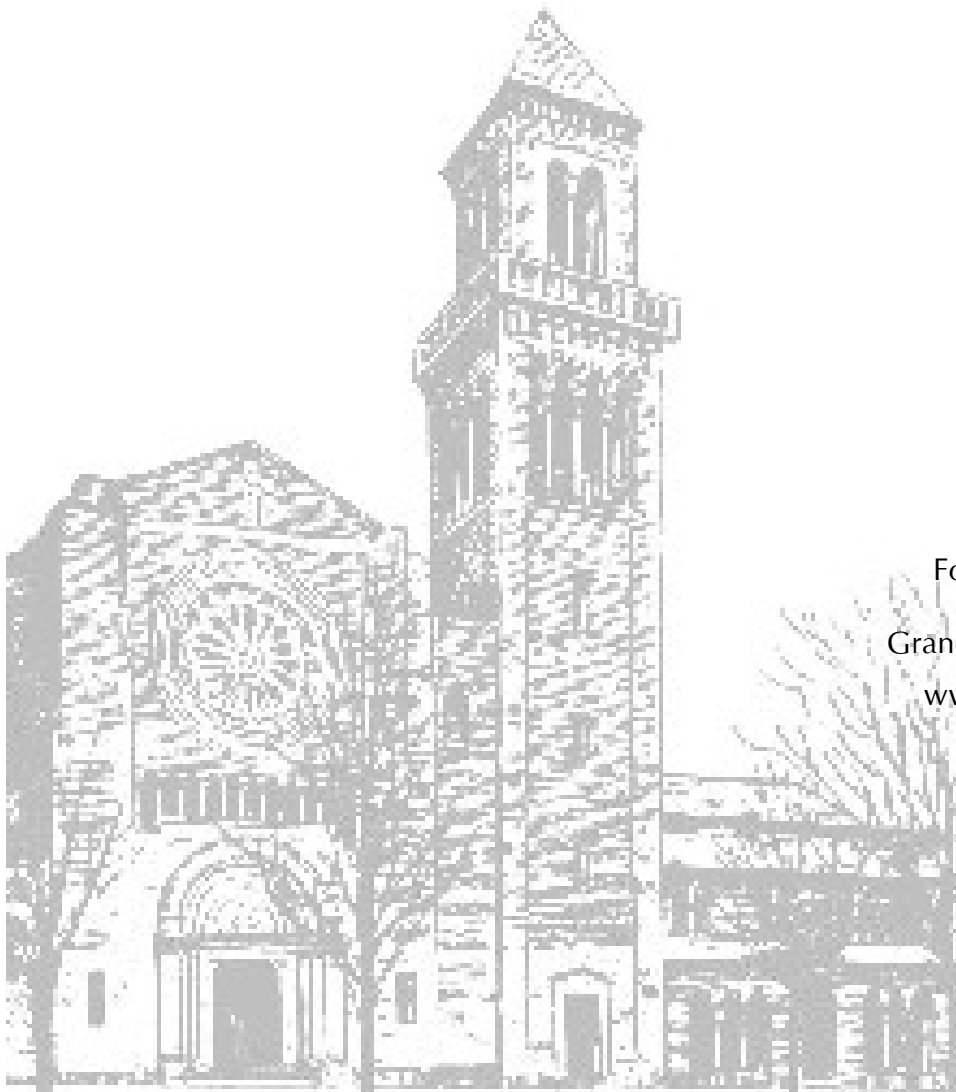


“Rules Rule!”

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To the reader: This sermon was only part of a service of worship with many components working together, all of which were designed to be experienced in a community context. In our "free pulpit" tradition, its concepts are intended not as truths to receive, but as spurs to your own thought and faith.

“Rules Rule!”

STORY

Once a year the police captain would come to our clergy meeting. We were an interfaith group, defined by geography not theology, and that meant we were all in the 84th precinct. One of our members even held an annual service to honor them, an African-American colleague mind you. We were on good terms.

This particular year I asked a question. “Captain, why is it that so often I see patrol cars running red lights? “Well,” he replied, “officers need to be able to see all parts of the intersection, and so they might roll into a clear intersection before the light turns green.”

“Captain,” I said. “Even if that’s true, it still looks like they are too important to follow the rules. And when the police do not observe the laws that sends a mixed message, don’t you think? What’s more, that does not explain why they are so often double-parked outside the bagel store.”

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SCRIPTURE *Exodus 24:3-7*

“Moses came and told the people all the words of the Lord and all the ordinances; and all the people answered with one voice, and said, ‘All the words that the Lord has spoken we will do.’ And Moses wrote down all the words of the Lord. He rose early in the morning, and built an altar at the foot of the mountain, and set up twelve pillars, corresponding to the twelve tribes of Israel. He sent young men of the people of Israel, who offered burnt-offerings and sacrificed oxen as offerings of well-being to the Lord. Moses took half of the blood and put it in basins, and half of the blood he dashed against the altar. Then he took the book of the covenant, and read it in the hearing of the people; and they said, ‘All that the Lord has spoken we will do, and we will be obedient.’ ”

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READING *Massachusetts Constitution, art. XXX (1780). (drafted by John Adams)*

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

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SERMON

Winter is making Lent truly penitential, if that means a season of suffering. It began with a major storm that cancelled our first ever Ash Wednesday service. Today, arctic cold has come to cement the snow and ice to the ground and make those who come to church regret their faith. And we're the lucky ones. Half of Indiana and Ohio are dealing with floods from ice-choked rivers, and those further south were assaulted with tornados while we got merely buried in snow.

I can be forgiven, then, if my essays on the state of the national soul share in the ashen coloring of the season. This is the third of seven sermons, each on an issue that is shaping the coming election. Most preachers use this season to contemplate the inner path of Lent, pondering the state of the personal soul. With primary season in full swing, it seemed equally important to ponder the national soul, which I am doing by taking an issue people have told me is important and measuring it against what I believe is our national mission statement, the Preamble to the Constitution. To me, this is the purpose of our form of government and therefore the test and measure of it across time. I said so in the first of these, back on January 20th, when I imagined a future inaugural speech. Last week I looked into the first clause of that famous sentence, "to form a more perfect union," and found that we are not united - about what we mean by freedom and by how we should get there. This week, I am taking up the next clause, "establish justice."

What does this phrase mean? We have tolerated vast injustices in the course of our nation's history, notably African slavery which was written into the Constitution itself. Unwritten but just as firm was withholding the franchise from women. Redressing these required amendments to the Constitution itself. And even now we are wrestling with the rights of immigrants, gay and lesbian citizens, privacy rights, religious freedom, and more. As simple as justice seems to be, making it happen is hard.

One theory, that of the late John Rawls, is that contained in his famous and famously difficult book, "Justice As Fairness." His notion was that a just society would be one where everyone felt they were treated fairly. This would require a system where everyone could expect to enjoy comparable liberties and opportunities; not identical, but similar enough for each person to trust the system itself. Last week I spoke of trust as being the essential ingredient in a free society. Establishing justice means creating rules – laws - that protect and enable that trust. And the first rule of such laws is the rule of law itself.

"For much of human history, rulers and law were synonymous," says the US Department of State website. "Law was simply the will of the ruler. A first step away from such tyranny was the notion of rule *by* law ... that even the ruler is under the law." This idea is quite old, with roots in Plato and Aristotle and even Thomas Aquinas. The Magna Carta is evidence that people in the 13th century believed there were principles higher than the will of the king. "Democracies went further by establishing the rule *of* law," the State Department continues and then describes what that means.

"Rule of law means that no individual, president or private citizen, stands above

law.... Law should express the will of the people, not the whims of kings, dictators, military officials, religious leaders or self-appointed political parties." There is more, but I will stop here because rule of law is at risk these days because this first notion is at risk.

This past year Charles Savage, reporter for *The Boston Globe*, won a Pulitzer Prize for articles detailing the current administration's use of power in the wake of September 11, 2001. Edited into a book titled "Takeover," it details how "a perfect storm of political pressures" combined to bring a nascent idea into full bloom an idea long nurtured by the Vice President who, since at least 1987, had argued that Congress had no authority to limit presidential power as it affected national security, which in modern times requires speed and secrecy and decisiveness to be able to respond to global crises.

Lest we think this is a new thing, let me mention four things: the Louisiana Purchase, the Emancipation Proclamation, Panama, and Korea. Four major events in American history, and all of them "illegal." Congress, the constitutional seat of law did not authorize Jefferson to buy Louisiana, Lincoln to free the slaves, Roosevelt to assist the Panamanian Revolution, or Truman to send troops to Korea. Later laws recognized these acts, but when they happened, they were illegal. Almost as soon as the Constitution was constituted its limits were apparent, and one of them was vesting foreign policy in the executive. In granting the president responsibility for external relations, the Constitution opened a door to the arrogation of power, gradually, toward what Arthur Schlesinger called "The Imperial Presidency."

That book, written following the fall of Richard Nixon, intended to show that even his actions were not unprecedented. Both Lincoln and Franklin Roosevelt, for example, declared national states of emergency, each in response to military threats, that gave them vast powers to manage the economy, impose martial law, control communications and transportation, and more. Congress sustained them and for good reason, but at a cost to the future. Savage's book cites Supreme Court Justice Robert Jackson who once warned that any claim of executive power, once validated, "lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.... Sooner or later, there will always be another urgent need."

We all know the story. The children of Israel, literally the descendents of Jacob called Israel, left Egypt after a series of signs and wonders that revealed the power of God. At the foot of Mt. Sinai they heard the Ten Commandments and gave assent. Then while Moses was on the mountain getting the details - the devil is always in the details isn't it? - the people gave in to idolatry and made the golden calf. God punished Israel by making them wander in the desert until almost all of those who left Egypt had died and only those who did not violate the law survived. Even Moses, for when they needed water at Meribah, God said to command the rock to yield water but Moses struck the rock instead and for this God condemned Moses to die before entering the Promised Land.

The children of Israel were desperate. The wilderness was uncertain and full of unknown dangers. They felt an urgent need to do something. Moses was desperate

at Meribah, surrounded by thirsty people in a wilderness he did not know. He felt the urgency of the moment. And both paid for sacrificing principle to expedience.

We always regret it. Whenever we set aside principle – virtue, honor, law – to deal with something urgent, we court tyranny. Whether we become tyrants or are tyrannized, the result is a weakening of the system. I feel it when I am late and waiting for the light to change. I could just go sometimes. But it is wrong. My lateness is my fault, not the law's. When those who represent the law ignore it, put themselves above it, they tell the rest of us that might makes right. "I can run the red light because I am a police officer. Who's going to stop me?" they essentially say. The police go from enforcing the law to making it, to being the law. And at that moment, the rule of law dies. And with it the belief that justice is possible.

The current administration, wrapping itself in urgency and emergency, shrouding itself in secrecy, and bullying those who question it, has mocked the very idea of the rule of law. It has committed the ultimate idolatry of putting itself above the law, signing laws that it does not intend to enforce and ignoring the legitimacy of 1100 pieces of legislation created by Congress. It has dissolved the border between foreign policy and domestic by saying national security justifies any action the president sees fit to take and that no one, Congress or court or the people themselves, are entitled to call him to account. He is, for all intents and purposes, an emperor, a title applied to Octavius Augustus, originally to designate his foreign policy powers in ancient Rome but through which he came to exert complete control over the entire state.

Sound familiar? The Roman senate could have stopped him. It didn't. The American Congress could and still can stop the president. Will it? In all our attention to the presidential contest in November, are we overlooking the real guarantor of liberty and justice, Congress? Who else stands between the president and the imperial temptations that office cannot escape?

East of Windsor Castle, in a copse of trees off a little meadow split by a simple two lane road, is a small marker where King John may have signed then Magna Carta. Thousands pass it daily, most unaware that their rights were born there. Ours were too. Justice does not reside at 1600 Pennsylvania Avenue or even at on Capitol Hill. It lives here, on our streets, at our stop lights, on our roads, and in our daily acts of decency and fairness. Shall we not demand as much respect for law in the halls of power as on the common streets? If so, only we can make it so. Come November it is we who stand at the foot of the mountain, we who must pledge allegiance, and we who must establish justice.