

The Empathy Standard

A Pentecost 7 Sermon

Mark 6:30-34, 53-56

Sunday, July 19, 2009

by Dr. Frank Trotter

We've been hearing a lot about empathy (or the lack of it) in the news lately. This past week at Vacation Bible School, one of the kids told me the latest "Knock, Knock" joke:

Knock, knock.

Who's there?

Bernie Madoff.

Bernie Madoff who?

Bernie Made off with about, oh, 50 billion dollars...

For the past several months, and particular the last two weeks, we're had an interesting national debate about the role of empathy in matters of the law. The origins of the debate may be traced back to the spring of 2005 when President George W. Bush nominated John Roberts to become the 17th Chief Justice of the Supreme Court.

As then-Senator Barack Obama considered how he would vote on the Roberts nomination to the Court that summer, he commented that he believed that "adherence to legal present and rules of statutory or constitutional construction" would ensure that most justices would end up at the same place on 95 percent of the cases that come before the Supreme Court. He then said that "what matters on the Supreme Court is those 5 percent of cases that are truly difficult. In those cases, adherence to precedent and rules of construction and interpretation will only get you through the 25th mile of the marathon. That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of ones empathy."¹

Mr. Obama went on to describe the kind of cases that fall into this 5% category where the justices are often divided. He said that in these cases,

¹ Barack Obama, quoted in "Obama's Empathy Standard" by Ed Whelen, *National Review Online*, May 12, 2009,

<http://bench.nationalreview.com/post/?q=NTc3ZDJiNjMxNGNkMmRkM2MzN2ExMjUyMWFjMWFzNjI>.

legal precedent and process are not always clear. For example, one's "decisions about whether affirmative action is an appropriate response to the history of discrimination in this country or whether a general right of privacy encompasses a more specific right of women to control their reproductive decisions or whether the commerce clause empowers Congress to speak on those issues of broad national concern that may be only tangentially related to what is easily defined as interstate commerce, whether a person who is disabled has the right to be accommodated so they can work alongside those who are nondisabled — in those difficult cases, the critical ingredient is supplied by what is in the judge's heart."²

Mr. Obama's remarks in 2005 did not receive a lot of attention at the time, but they certainly have since he was elected President and was provided his first opportunity to name an associate justice to the Supreme Court with the recent retirement of Justice David Souter. When President Obama nominated Judge Sonia Sotomayor to replace Justice Souter, everything that had been said about the "the empathy standard" – as it came to be called – surfaced and has been examined over and over again by politicians, members of the legal profession, members of the press, and not a few ordinary citizens watching from the sidelines. When Judge Sotomayor's comments in a speech about a "wise Latina woman" came to light, the empathy standard received even more scrutiny.

The bottom line question is whether or not a judge at any level of the judicial system can put aside the lenses through which they see life as they fulfill their constitutional obligations. Can a judge successfully eliminate personal history, personal points of view, personal values – especially the most strongly held of values whatever they may be, as they interpret the law?

To hear some of the members of the Senate argue it during Judge Sotomayor's hearing, it is indeed possible to do so. For a layman, however, who sees himself as something of an amateur theologian and psychologist, I honestly doubt whether any judge has ever been able to do so. The bottom line is that each of us is a creature of opinion, point of view, and even bias, on occasion. The better question may be, "To what degree do we allow our

² Barack Obama, quoted in "Obama's Empathy Standard" by Ed Whelen, *National Review Online*, May 12, 2009,

<http://bench.nationalreview.com/post/?q=NTc3ZDJiNjMxNGNkMmRkM2MzN2ExMjUyMWFjMWFzNjI=>.

personal biases to shade decisions we make on behalf of ourselves and of others?”

David Brooks, one of our nationally respected conservative columnists, recently wrote that “the American legal system is based on a useful falsehood. It’s based on the falsehood that this is a nation of laws, not men; that in rendering decisions, disembodied, objective judges are able to put aside emotion and unruly passion and issue opinions on the basis of pure reason. Most people know this is untrue. In reality, decisions are made by imperfect minds in ambiguous circumstances. It is incoherent to say that a judge should base an opinion on reason and not emotion because emotions are an inherent part of decision-making. Emotions are the processes we use to assign value to different possibilities. Emotions move us toward things and ideas that produce pleasure and away from things and ideas that produce pain. People without emotions cannot make sensible decisions because they don’t know how much anything is worth. People without social emotions like empathy are not objective decision-makers. They are sociopaths who sometimes end up on death row.”³

Indeed, many have observed that Associate Justice Samuel Alito made very similar remarks when appeared before the same Senate Judiciary Committee two years ago. On those occasions, he gave as much credit to his Italian heritage as Judge Sotomayor has given to her Latina heritage.

Dr. Zack Lynch, an expert in brain science and neurotechnology, believes that “empathy is a hardwired feeling.”⁴ Dr. Lynch believes that “emotions and feelings mediated by distinct neural systems. Whereas emotions are automatic responses to sensory stimuli, feelings are ‘private, subjective experiences’ that emerge from the cognitive processing of an emotion eliciting state.” In other words, empathy is achieved when the feelings part of the brain which is private and subjective processes the emotions which arise as automatic responses to particular sensory stimuli. He writes that “Human survival depends on the ability to function effectively within a social context. Central to successful social interaction is the ability to understand others intentions and beliefs. This capacity to represent mental

³ David Brooks, “The Empathy Issue,” Op-Ed Columnist, May 28, 2009, *The New York Times*, http://www.nytimes.com/2009/05/29/opinion/29brooks.html?_r=1&scp=1&sq=David%20Brooks%20+%20Empathy&st=cse.

⁴ Zach Lynch, “Empathy is a Hardwired Feeling,” *Brain Waves*, February 22, 2004, http://brainwaves.corante.com/archives/2004/02/22/empathy_is_a_hardwired_feeling.php.

states is referred to as ‘theory of mind’ or the ability to ‘mentalize’. Empathy, by contrast, broadly refers to being able to understand what others feel, be it an emotion or a sensory state. Accordingly, empathic experience enables us to understand what it feels like when someone else experiences sadness or happiness, and also pain, touch, or tickling.”⁵

One researcher who worked with Dr. Lynch argues that “our brain’s ability to intuit the emotional response of others could have been strongly selected during evolution. ‘If I do something, [the researcher writes] it tells me will it make you smash me, will you kill me or will you like it? Being able to predict how others feel might have been necessary for human survival.’”⁶ Whether one believes in evolution or in a six-day creation theory, many of us would agree with Dr. Lynch when he argues that “empathy is critical to human survival.”⁷

* * *

In the middle of the afternoon, the disciples gather around Jesus reporting all that they had done that day. Realizing that all of them are exhausted, he says, “Come away to a desert place all by yourself and rest a while.” So the Lord and the disciples get in a boat to sail up the coast of the Sea of Galilee. Before they can even get there, the crowd on the shore sees the direction they are going and hurries along the shore to get there first. When Jesus goes ashore, the crowd waiting for him is so large that he has compassion on them because they seem to him to be like sheep without a shepherd.

By the time the day is finished, Jesus will have worked a great sign to show that God is the source of all of our blessings. After the miracle, he sends them ahead of him by boat to the other side of the Sea. They come ashore at Gennesaret where another large crowd has gathered in eager anticipation of his presence. As he arrives, the crowd, as if in a frenzy, brings all who are sick to him on mats and litters; in fact, they lay the sick beside the road wherever he goes, in villages, cities, or farms, and beg him that they might touch the fringe of his cloak. The story tells us that all who touched his clothing are healed.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

Theologian Pheme Perkins says, “People today find it difficult to balance these two aspects of Christian responsibility. Some think that the social ministries of the church are all that is necessary to make Christ present in the world. Others think that the church should have nothing to do with feeding and healing except when it is necessary to help someone in the local community. The church’s ministry, so the argument goes, is to preach the gospel and provide for public worship.”⁸

Dr. Perkins says, “Both sides are wrong. There is no Christianity without proclaiming the Gospel... A community that has the same compassion for the suffering that Jesus exhibited cannot be content with only preaching the gospel to the already converted. Christians must also attempt to meet the pressing social and material needs of others, even if few of those who receive such services ever become members of the church.”

If Dr. Zack Lynch is correct in his belief that the capability for empathy is hard-wired into the brain, it was certainly latent in the brains of the disciples for much of Jesus’ ministry. The process we watch going on in the stories is how Jesus pushes the buttons that activate the empathic hard wiring – a capability that I believe God puts within each of us.

In her novel, *The Nice and the Good* (1968), British novelist Iris Murdoch wrote: “Happiness is a matter of one’s most ordinary everyday mode of consciousness being busy and lively and unconcerned with self. To be damned is for one’s ordinary everyday mode of consciousness to be unremitting agonising preoccupation with self.”⁹

There have always been those who believe that law can be understood without the benefit of grace or empathy. Jesus, in fact, encountered that mind set in his own ministry – into the black and white interpretation of Hebrew law, he introduced the vibrant concept of a loving and compassionate God over and over again.

As disciples follow Jesus – then and now, they discover that faithful living is always a mysterious combination of God’s expectations (the law) and God’s

⁸ Pheme Perkins, “The Gospel of Mark: Introduction, Commentary, and Reflections, *The New Interpreter’s Bible, Vol. VIII* (Nashville: Abingdon Press, 1995), 602. Dr. Perkins is Professor of New Testament at Boston College, Chestnut Hill, Massachusetts.

⁹ Iris Murdoch, quoted at “The Writer’s Almanac with Garrison Keillor,” July 15, 2009, http://www.elabs7.com/functions/message_view.html?mid=805308&mlid=499&siteid=20130&uid=c789941005.

grace (the empathy). This is the same for all of us, whether or not we are justices on the Supreme Court or ordinary citizens figuring out how we might best follow the Lord Jesus Christ.

When we think we have it all figured out, it is good to recall a famous prayer entitled “Disturb Us, Lord”¹⁰ that was written by Sir Francis Drake in 1577.

Disturb us, Lord, when
we are too well pleased with ourselves,
when our dreams have come true
because we dreamed too little,
when we arrived safely
because we sailed too close to the shore.

Disturb us, Lord, when
with the abundance of things we possess
we have lost our thirst
for the Waters of Life;
having fallen in love with life,
we have ceased to dream of eternity
and in our efforts to build a new earth,
we have allowed our vision
of the new Heaven to dim.

Disturb us, Lord, to dare more boldly,
to venture on wider seas
where storms will show your mastery:
where losing sight of land
we shall find the stars.

We ask you to push back
the horizons of our hopes;
and to push us in the future
in strength, courage, hope, and love.

Thanks be to God. Amen.

¹⁰ Sir Francis Drake, “Disturb Us, Lord” (1577), <http://www.laughingredhead.com/page/page/4138927.htm>.

