

Dear Class Member,

In recent speeches, three of the Supreme Court justices have declared in various ways that none of the high court justices should be thought of as politicians. That raises for us the matter of impartiality, which is a biblical concept, applying especially to God but also often sought for how we deal with others. So we will use our next class to explore that issue.

If you wish to start thinking about our topic in advance, here is the lesson.



Supreme Court Justices Ask Not to Be Viewed as Politicians

The Wired Word for the Week of October 10, 2021

In the News

Don't view us as politicians.

That's the plea that three Supreme Court justices have delivered in recent days, speaking separately after recent polls show a significant plunge in approval of the high court.

That plea isn't new, but the comments of justices Clarence Thomas, Stephen Breyer and Amy Coney Barrett come after a summer in which the Supreme Court generally decided that the "conservative" case was stronger than the "progressive" case in the ideologically divisive matters of abortion, immigration, voting rights and evictions, and at the start of a term where the court will be called on to decide matters relating to gun control, religion and additional cases about abortion.

Three new polls, all conducted after the court's Texas abortion law vote, show sharp drops in approval of the court. According to the latest Gallup poll, just 40% of Americans approve of the court, a number that is among the lowest it's been since Gallup started asking that question more than 20 years ago. As recently as July, approval was 49%, but now some 53% have said they disapprove of the court.

While we can't say that the comments from these justices were prompted by the poll numbers, their comments do suggest they are aware of how the public regards the court.

In a speech on September 12 at the McConnell Center at the University of Louisville Law School, Justice Amy Coney Barrett said that justices are not a "bunch of partisan hacks," and she denied that they are following their personal beliefs.

A few days later, in a speech at Notre Dame Law School, Justice Clarence Thomas insisted that justices do not act on political ideology or their own beliefs when making decisions. "I think the media makes it sound as though you are just always going right to your personal preference," Thomas said. "So, if they think you are anti-abortion or something personally, they think that's the way you always will come out."

Justice Stephen Breyer has spoken for years about the danger of viewing the court as "junior league politicians." But in a September 13 interview with *The Washington Post*, he acknowledged it can be difficult to counter the perception that judges are acting politically, particularly after cases like the one from Texas in which the court by a 5-4 vote refused to block enforcement of the state's ban on abortions early in pregnancy. Breyer opposed that decision, but he told the *Post*, "It's pretty hard to believe when a case like those come along that we're less divided than you might think," he said.

While not specifically addressing the "politics" label, other members of the high court have also defended their work. On September 30, Justice Samuel Alito, in a speech also at Notre Dame, said the justices are not a "dangerous cabal."

Speaking at a Princeton University event around the time of Justice Kavanaugh's confirmation, Justice Elena Kagan said "Every single one of us needs to realize how precious the court's legitimacy is. You know we don't have an army. We don't have any money. The only way we can get people to do what we think they should do is because people respect us."

A couple of months later, Chief Justice Roberts said: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them."

More on this story can be found at these links:

Poll Numbers Down, Justices Say They Aren't Politicians. *The Associated Press*
(<https://apnews.com/article/religion-amy-coney-barrett-courts-us-supreme-court-judiciary-208d93c503545713964fe8f171a2679a>)

Guns, God and Abortion Are on the Supreme Court's Docket This Term. *CNBC*
(<https://www.cnbc.com/2021/10/01/supreme-court-new-term-major-cases.html>)

Applying the News Story

One judge who has not delivered a plea to consider the Supreme Court justices apolitical is Justice Sonia Sotomayor, who often dissents on court decisions. But in a September 29 speech at an event hosted by the American Bar Association, she said, "There is going to be a lot of disappointment in the law, a huge amount," (<https://www.cnn.com/2021/09/29/politics/sonia-sotomayor/index.html>) regarding the decisions to come this term. Some liberal pundits have interpreted her comment to mean that she considered her fellow justices partisan. Some conservative pundits have interpreted her comment to mean that she herself is partisan.

We at *The Wired Word* are not in a position to declare that Justice Sotomayor meant any more than she said, but the comments of her colleagues on the high court do lead us to consider what it means to be *impartial*. Because TWW is widely used by churches across the denominational spectrum, we try very hard not to let our weekly discussion guides (lessons) "lean" politically one way or the other. At the same time, however, the individual members of the TWW team have their own viewpoints -- and we are not all of one mind. We are constantly aware of the difficulty of being truly impartial. The very minute we look at the news and choose story A over story B for our lesson we have made a decision that might be considered partisan. (We do admit to a bias toward the Christian faith.)

What's more, the online sources we use for those news stories have their own biases. Some quite plainly admit it, often seeking to gain subscribers wanting "conservative journalism" or a "progressive viewpoint." Even the media that aim for the "middle of the road" and seek to be "balanced," cannot altogether avoid the bias that comes from preconceptions and from choosing which news to cover heavily and which to treat as a minor story. Many media sources, but not all, now label their articles either "news" or "opinion," which is helpful. However, even stories claiming to be pure news often insert opinions, if by nothing else than the choice of adjectives and verbs. Some of these have even reached the level of cliches ("unexpectedly," "mostly peaceful," "pounced"). Thus, when we select sources for our links list in a TWW lesson, we assume there may be some partiality present even in the news stories, and read them with that in mind.

People who study human motivation say that our capacity for self-deception is strong, making it easy to convince ourselves we're being impartial when we are not.

As noted in the "In the News" section above, Chief Justice Roberts described the justices as "an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them." Perhaps "level best" is the highest step we can attain, but as followers of Jesus, we should strive nothing less.

The Big Questions

1. What effect, if any, do the "we are not politicians" comments from some of the Supreme Court justices have on your view of the high court? Might these comments be "protesting too much"? Do you expect judges to be impartial? Why or why not?
2. How can we avoid letting the difficulty of being truly impartial be an excuse for not trying our "level best"?
3. What are some good biases? One way to think about this is to consider what are your "default" inclinations, such as an impulse to help those in need or a willingness to relieve the pain of others.
4. Do you view God as impartial? If so, in what ways does that affect us in the present? How might that affect us in the future? If not, what is the impact on us of that?
5. Is it possible or even likely that if we adopt an "impartial" stance we may end up using it as an excuse not to use our prophetic voice to call out wrongdoing or injustice? Or may we use the idea of being a "prophetic voice" to excuse the yielding to our own biases and to avoid objectiveness in cases where we should be impartial? How might we avoid these problems and still do our best?

Confronting the News With Scripture and Hope

Here are some Bible verses to guide your discussion:

Deuteronomy 1:17

You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God's. Any case that is too hard for you, bring to me, and I will hear it. (For context, read Deuteronomy 1:9-18 (<https://www.biblegateway.com/passage/?search=Deuteronomy+1%3A9-18&version=NRSV>).

Moses here narrates for the present generation of Israelites how God had previously instructed him to appoint judges throughout the tribes of Israel to judge disputes among the people. In the second part of the verse above, Moses had told the judges that he would hear any cases that they found too hard to handle, thus making Moses a kind of "supreme court."

But his key instruction to the judges is stated in the first part of the verse: "You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God's."

Questions: In what way might judges be "intimidated"? In what sense were their judgments related to God's judgments? What parts of this passage from Deuteronomy can be applied to the U.S. jurisprudence system? to church life?

Leviticus 19:15

You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbor. (For context, read Leviticus 19:1-37 (<https://www.biblegateway.com/passage/?search=Leviticus+19:1-37&version=NRSV>).

search=Leviticus+19%3A1-37&version=NRSV).)

Unlike the instruction above in the Deuteronomy passage, which was intended specifically for Israel's designated judges, this instruction appears to be directed at the Israelites in general (see v. 2a). This verse is from Leviticus 19, which as a whole is about how to live a holy life. It includes ordinances on several areas of behavior and importantly, it contains the Bible's first statement of "you shall love your neighbor as yourself" (v. 18).

What's more, Leviticus 19 begins by telling the Israelites *why* they should follow the ordinances: "You shall be holy, for I the LORD your God am holy" (v. 2b). Thus behaving impartially is a part of moral holiness and a way of being godly.

Questions: Is a determination to act impartially a good bias? Is it a moral value in today's world? Both? Neither? How about loving one's neighbor as oneself? Is that a good bias or something more than that, and if so, what?

Romans 2:11

For God shows no partiality. (For context, read Romans 2:1-11 (<https://www.biblegateway.com/passage/?search=Romans+2%3A1-11&version=NRSV>)).

Clearly this statement from the apostle Paul is about God, but it's the concluding verse of a passage that is not just about God but also about the behavior of some of Jesus' followers within the Roman church, which was a mix of Jewish and Gentile converts: being judgmental of others for doing the very same thing that one is doing oneself. In verse 3, Paul said, "Do you imagine, whoever you are, that when you judge those who do such things and yet do them yourself, you will escape the judgment of God?"

The statement about God's impartiality is Paul's reminder that God is a just judge who will see through our attempts to hold others to standards we ourselves ignore.

Questions: Given that the Roman church's congregation was a mix of people from differing ethnic and religious backgrounds, what kind of tensions might have been present that caused the members to judge one another harshly?

What specific kinds of judgment might Paul be warning against in verse 3? What kinds of judgment might still be acceptable and even warranted?

Matthew 5:43-48

43 You have heard that it was said, "You shall love your neighbor and hate your enemy." 44 But I say to you, Love your enemies and pray for those who persecute you, 45 so that you may be children of your Father in heaven; for he makes his sun rise on the evil and on the good, and sends rain on the righteous and on the unrighteous. 46 For if you love those who love you, what reward do you have? Do not even the tax collectors do the same? 47 And if you greet only your brothers and sisters, what more are you doing than others? Do not even the Gentiles do the same? 48 Be perfect, therefore, as your heavenly Father is perfect. (No context needed.)

This is from Jesus in the Sermon on the Mount, and we have left the verse numbers in place intentionally.

Questions: What is Jesus saying here about God's character? When Jesus, in verse 43, refers to what his audience have heard said, he is quoting Leviticus 19:18 for the "love your neighbor" part, but where do you suppose the "hate your enemy" part came from (it's not in scripture)? Who is to be the object of love and prayers in verse 44? In verses 45-47? Why the shift? What is the perfection Jesus asks of us in verse 48?

For Further Discussion

1. What matters currently roiling our society do you hope the Supreme Court will deal with soon? How do you hope they will decide? Why?
2. Read and discuss this article from *Psychology Today*: "The Persistent Illusion of Impartiality." (<https://www.psychologytoday.com/us/blog/alternative-truths/201006/the-persistent-illusion-impartiality>)"
3. Respond to this: 1 Peter 1:17 says, "If you invoke as Father the one who judges all people impartially according to their deeds, live in reverent fear during the time of your exile." The Greek word rendered as "impartially" in modern English translations is *aprosopolempatos*, which literally means "not a lifter of the face."

In the Old Testament, the idea of 'lifting the face' often meant to be favored. It denotes, says Ian Paul, adjunct professor at Fuller Theological Seminary (<https://www.psephizo.com/biblical-studies/is-impartiality-the-heart-of-the-gospel/>), "the situation of subjects who bow before their king, faces looking to the ground in humility and servitude; as the king comes to his favorite, he lifts the subject's face so that he or she can look at the king and sense his pleasure and approval." The point of 1 Peter 1:17 is that God does *not* do this face lifting -- that is, he does not show favoritism, or, as the King James Version of Bible translates the verse: "... the Father, who *without respect of persons* judgeth according to every man's work ..." (italics added).

4. One of the Supreme Court's primary duties is to be the guardian and interpreter of the Constitution. However, one of the major schools of thought concerning the interpretation of the Constitution is expressly political. "Living Constitution" advocates believe that current political trends should guide the interpretation; "originalists" believe that the meaning of the Constitution when written should govern law, and that changes should be made by elected legislatures, not by unelected judges. How does this distinction affect what the justices might mean by declaring that they are "not political"?

Responding to the News

Think about moral areas where you have not attained your "level best," and decide what, if anything, you should do about that.

This is a good time to investigate the biases, both those stated and those not stated, in the media sources you rely on.

Prayer

Grant our judges, Lord, as much impartiality as is humanly possible, along with wisdom and good judgment, that they might treat fairly any who come before them and might set precedents and make rulings that work for the common good. In Jesus' name. Amen.