

Gorsuch's textualism promoted justice for LGBTQ people—this time

Why we can't rely on this or any other hermeneutical principle

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Multiple recent Supreme Court rulings are worthy of celebration. One is *Bostock v. Clayton County*, which protects LGBTQ people from employment discrimination under Title VII of the 1964 Civil Rights Act. It prevents Gerald Bostock and countless others from being fired for their sexual orientation or gender identity without recourse. It's a tangible step toward the goal of securing fundamental rights equally for all—an ideal to which the judicial system aspires and a necessary condition for justice.

Many observers were surprised that Neil Gorsuch authored the *Bostock* opinion. The conservative justice's vote in favor of LGBTQ rights in this case was rooted in a theory of legal interpretation called *textualism*. Textualism locates authority in the plain meaning of a text's words, rather than making claims about authorial intent or importing personal views.

Gorsuch's hermeneutic is similar to the one Martin Luther and other reformers used in biblical exegesis. After being trained in the medieval church's methods for reading scripture through Christian ideas about God, salvation, and eschatology, Luther insisted on recovering the plain meaning of the text. Freed from multiple layers of allegorical meaning, readers could identify more closely with the biblical characters and their struggles.

In many cases, this strategy led Luther to reject traditional supersessionist Christian readings of the Old Testament and instead emphasize a sense of kinship between Jewish writers and Christian readers. But there were also many cases in which Luther's appeal to the plain meaning of the text led him to espouse anti-Jewish readings that did real harm to people. Luther's approach to scripture was not itself a path to interpretations that served justice.

In the case of *Bostock*, Gorsuch's textualism worked in favor of equality: it secured a set of fundamental rights for LGBTQ people in the US. But the plain meaning of the law doesn't always serve justice, and there have been plenty of cases in which Gorsuch's judicial decisions have contributed to losses rather than wins for equal rights. A single hermeneutical strategy can't undo the prejudices that are written into the heart of a tradition, a text, an interpreter, or a culture.

That's why texts that carry great authority are best read in community. In government, that community might look like a system of coequal branches, each composed of people with diverse commitments. In the church, it might look like people putting themselves in the vulnerable position of listening to new voices, entertaining criticism, and allowing prior certainties to be unsettled. In each case, it takes hard work and humility.

The *Bostock* decision shows how important this work is. Millions of living, breathing, loving people are now far less likely to face discrimination in their workplaces than they were before the ruling. That outcome serves justice. Gorsuch's commitment to textualism won't always, nor will any single hermeneutic—and so the work continues.

A version of this article appears in the print edition under the title "The Gorsuch surprise."