

Remarks  
by  
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The Miller Center  
The University of Virginia  
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It is a humbling honor to be invited to give the Henry J. Abraham Distinguished Lecture at the University of Virginia's Miller School.

Professor Abraham's friend and admirer, the late Justice Antonin Scalia, told the University's venerated professor that no less an authority than the Supreme Court of the United States "strives to be worthy" of Henry Abraham's "trust and respect." I will strive to be as worthy of Professor Abraham's trust and respect in this lecture today in Professor Abraham's honor.

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"We the People [in 1787] . . . ordain[ed] and establish[ed]" our Constitution "in Order to form a more perfect Union."

Today, just over three years shy of the 250th anniversary of our nation's birth, the Institutions of our Democracy and Law are under vicious, unsustainable, and unendurable attack — from within — and American Democracy and the Rule of Law are in peril.

America and we Americans are at a perilous crossroads. Who is it that we have become and what is it that America has become? Is this who we want to be and what we want America to be? And if not, just who is it that we Americans want to be? And just what is it that we want our America to be?

Speaking in a time of not dissimilar tumult in America nearly two centuries ago, Abraham Lincoln urged a revival to the Constitution and the Rule of Law, a renewed reverence for that Great Charter for our governance and guarantor of our liberty. Lincoln sermonized with the reverence that he urged, "let the Constitution and the Rule of Law "become the political religion of the nation."

America is in desperate need of such a revival to our Constitution and the Rule of Law as our 16th President urged in 1838 — a reawakening and quickening to the reverential imperatives of the Constitution from which, today, we have strayed so very far.

America is adrift. We Americans have lost our moral compass that has pointed us true north since the Founding. And with the loss of our direction, we have lost all perspective. We need to reunite, once again, around the much more that we have always agreed upon and that has

bound and united us since our founding, and we need to find the perspective we have lost as to the much less that we disagree upon and that now divides and disunites us.

Winston Churchill said that “Courage is rightly esteemed the first of human qualities, because . . . courage is the quality which guarantees all others.”

It is going to take the courage, and the courage of the convictions, of all Americans to support, protect, and defend our imperiled Democracy, Constitution, and Rule of Law, in what promises to be the trying years ahead.

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The evidence of the precarious state of our Democracy and Law abounds, and so it is that these perils are the most fundamental issues facing our nation today. This, two hundred and thirty six years since the Founding of ours, the greatest nation in the history of civilization.

Poll after poll after poll over the past few years shows plunging respect and support for the institutions of our democracy and law.

An ominous Quinnipiac Poll in the fall showed that even America’s two political parties — the political guardians of our democracy — believe that, “The nation’s democracy is in danger of collapse.” Mirroring the same concern of our population at large, nearly three quarters of both Republicans and Democrats agreed that our democracy appears to be on the verge of collapse.

The effort to overturn the 2020 presidential election and the attack on the United States Capitol to prevent the Joint Session of Congress from counting the votes for the presidency was a grave and unprecedented offense against our democracy and against our Rule of Law. Yet, according to one recent poll, roughly 1 in 4 Republicans today say they approve of the former president’s supporters taking over the Capitol during the January 6 attacks. This poll found that 27 percent of Republicans “strongly” or “somewhat” approve of the rioters’ attempts on January 6 to prevent the Joint Session of Congress from counting the electoral votes for the presidency. And two and a half years later, Republicans have again circled the wagons around their former president and now presumptive standard bearer in 2024, who attempted to overturn the 2020 presidential election.

Both of these surveys are stunning — and grim — admissions and confessions of what we Americans believe today about our Democracy and Rule of Law.

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Today, still, in the forefront of the nation’s conscience is that fateful day in January 2021. The treacherous plan to overturn the 2020 presidential election at any cost, so that the former president could cling to power that the American People had decided to confer upon the next president of the United States instead, was no less ambitious than to steal America’s Democracy.

And today, two and a half years later, in continued defiance of our Constitution and democracy, the former president and his political party allies still claim that the 2020 presidential election was “stolen” from the former president, despite their knowing that every shred of evidence proves that claim to be false.

All the while, this false and reckless insistence that the former president won the 2020 presidential election has laid waste to Americans’ confidence in their government, their elections, their democracy, and their Constitution.

As we now understand, false claims that our elections have been stolen from us corrupt our democracy, as they corrupt the Nation, as they corrupt us.

So . . . as we gather here this afternoon, our democracy still remains in harm’s way, if not in the way of even greater harm today than yesterday.

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At the same time that our democracy is imperiled, the American public’s faith in the Constitution, the Supreme Court, and the Rule of Law is in spiraling decline, too.

The January 6 Select Committee to Investigate the Attack on the United States Capitol recommended that those responsible for that attack and for the obstruction of the proceedings of the Joint Session be prosecuted. And two and half years after January 6, the nation awaits the decision by the Attorney General and others as to whether those responsible will be held accountable under the Constitution and laws of the United States for their offenses. With the passage of time, the American public has understandably begun to sigh and shrug in hopeless resignation that the law perhaps does not apply equally to all, after all.

Confidence in the Supreme Court, the guardian of the Constitution and the Rule of Law, is on the wane. The most recent polling on the Supreme Court shows that not even a majority of the American public views our nation’s highest court favorably, with a near majority viewing it unfavorably — the largest percentage of the public to view the Court unfavorably in the past three decades.

The tragic and unprecedented breach of the Supreme Court’s confidential deliberative process represented by the leak of the draft opinion in Dobbs — the opinion that only months later overruled Roe v. Wade — only added self-inflicted insult to the High Court’s already, and still continuing, self-inflicted injuries.

And most recently, the Supreme Court has come under withering attack for ethical lapses, if not more, and for the Court’s hypocritical, reasonless, and institutionally damaging refusal to subject itself to standards of ethical conduct like those to which all other federal judges have long been bound.

As we speak, because the Court has stubbornly refused to act, Congress is debating whether it should prescribe ethical standards of conduct for the Court. I was recently asked to testify before the Senate Judiciary Committee at its hearing to consider this question.

I told the Judiciary Committee that the day should never come when the Congress of the United States is obligated to enact laws prescribing the ethical standards applicable to the non-judicial conduct and activities of the Supreme Court of the United States, even though it indisputably has the power under the Constitution to do so. Neither should the Congress want, or want to have, to prescribe ethical standards of conduct for the Supreme Court.

By the same token, I explained, the Supreme Court should not want Congress to prescribe ethical standards for the Court, either. Rather, the Supreme Court should want to subject itself to the highest possible professional and ethical standards without quibble, such that the Court is beyond reproach. Indeed, such that it is beyond all reproach.

At least as of today, there is no reason to believe that the Court will yield from its senseless defiance.

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Our Institutions of Government, which are preeminently — and constitutionally — responsible for the protection and preservation of the Rule of Law, have for years waged relentless war on the Rule of Law, themselves, all the while professing lament at law's nearing politicization and bewilderment as to its cause.

For years, our Presidents collectively have cynically appointed to judicial position not those who they are assured will uphold the law and are possessed of the constitutional view of the proper role of the Judiciary but, rather, those who they are assured share their own political, social, and policy views, and will enshrine those views in the Constitution, once appointed. This, in surrender to their respective partisan political party's demands, and of course in abdication of their constitutional obligation. Faithful adherence to the law and to the Rule of Law has been relegated to a lesser qualification for the Office, if, one must wonder, it remains a qualification at all.

Our Congress must accept equal, if not greater, responsibility for the politicization of our law. As we have seen repeatedly — up to and including the most recent partisan confirmation spectacles, Congress routinely demands that candidates for Judicial Office declare their views, social and political, issue by issue. And it attempts to withhold confirmation from those who do not share its own social policy and political views and pledge to constitutionalize those views as a condition of confirmation to the Federal Bench.

There is scarcely a pretense of concern for law or, for that matter, even the Rule of Law. Far from that, these politicians are breathtakingly explicit as to their partisan political objectives. Depending on the person and his or her party allegiance, the call is that the High Court must remain, or be made so if it is not, either more Republican or more Democrat.

Is it any wonder that appointments to the courts resemble more political campaigns than judicial confirmations.

That this naked politicization of the Judicial Office inevitably leads to the naked politicization of the courts, and in turn to the naked politicization of law itself, cannot be gainsaid. And of course it has done just that.

Where our Supreme Court itself, followed in lock-step by our lower Federal Courts, has not led the politicization of law, it has obliged those who have, with decisions that are, anymore, barely disguised acts of raw political will. Increasingly, the Court's judicial decisions are transparently more political results in search of legal reason, than legal reason in support of legal and constitutional results.

It escapes no one's notice that what are supposed to be decisions of law, which under a Rule of Law should more often than not be opinions of unanimity, are, today, more often than not, opinions of fractious dissent. Fractious dissent not just along the partisan party lines of the Presidents who appointed them, but even along the partisan political party lines of the individual Justices themselves.

What are the odds of such, let alone the consistent odds of such, under a Rule of Law, we ask.

Commenting on the mutually reinforcing effects of the politicization of the appointment process and the ever-increasing politicization of the Judiciary and the Rule of Law, the late Justice Scalia lamented, in almost resignation, that perhaps the confirmation process has become what it ought to be — that is, if the courts in the end are to be more instruments of politics, than, as constitutionally intended, mere interpreters of the law.

As for our three institutions of government and their contemptible roles in the politicization of our law, I would leave you with this today: If the triumph of politics over law is to be, the cause of that triumph will have been the constitutional failure of these three Institutions of our Government, in whom "We, the People" have entrusted the protection and preservation of the Constitution and the Rule of Law.

And the proximate cause of that triumph? That there will be none left with the moral authority needed to stem the tide of the law's politicization. Those with the moral authority (and the primary constitutional obligation) to protect and preserve will have long ago lost that authority — a battlefield casualty of the partisan political war that they themselves have waged on the Rule of Law.

And so it is that it might not be much overstatement, if any, to say that during our lifetimes, this great Nation of Laws in which we are privileged to live will effectively decide whether it will live by the Rule of Law or whether it will live by the Rule of Politics, so all-consuming has become the politicization of our Country, our Institutions of Democracy — and now, even our Institutions of Law.

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Such, I am afraid, is the imperiled state of our Democracy and our Rule of Law in the year 2023.

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America can withstand attacks on her Democracy and on her Rule of Law from without. But she is helpless to withstand them from within.

The relentless assaults and attacks on our Democracy and the Rule of Law from within that we have witnessed and experienced over the past years are leveled for the purpose and with the objective of drawing into question the very legitimacy of the institutions and instrumentalities of our democracy and law.

These attacks from within our own country, by our own selves, are not contemplated by the Constitution of the United States, and are therefore neither accommodated nor accommodatable by that Great Charter for our governance.

And make no mistake. These assaults and attacks have accomplished their assailants' objectives. The pillars of our Democracy and of the Rule of Law are faltering from these attacks as we speak today.

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Nor is there any reason we should expect the end to be in sight.

It has been years now that we have borne witness to, if we have not ourselves participated in, these vicious partisan attacks on these bulwarks of our democracy and law.

For years, we have been told by the very people we trust, and entrust, to protect and preserve these institutions of our democracy and freedom, that these institutions are no longer to be trusted, no longer to be believed in, no longer deserving of cherish and protection.

If that is true, then it is because those with whom we have entrusted these institutions have themselves betrayed our sacred trust.

And it does seem at the moment that we no longer agree on our Democracy or on the Rule of Law. Nor do we any longer seem to agree on the other ideals, values, and principles, upon which America was founded and that were so faithfully nurtured and protected by the generations and generations of Americans that came before us.

Yet, we agree on no other foundational ideals, values, and principles, either.

All of a sudden, it seems that we are in violent disagreement over what has made America great in the past and over what will make her great in the future. In poetic tragedy, political campaign slogan has become divisive political truth.

And there is no reason to believe that agreement about America by we Americans is anywhere on the horizon, if for no other reason than that none of our leaders, and so therefore none of us, is interested in agreement — at least for the time being. In the moral catatonic stupor America finds itself in today, it is only disagreement that we seek, and the more virulent that disagreement, the better.

We are a house divided and our poisonous politics is fast eating away at the fabric of our society.

This is not who we Americans are or who we want to be. Nor is this America or what we want America to be.

American thinker, writer, and now New York Times columnist, David French, wrote a marvelous article, exquisitely titled “Queen Elizabeth and Power That Transcends Politics,” on the occasion of Queen Elizabeth’s passing. There, he wrote: “[t]he politicization of everything is a threat to any nation, but it’s especially a threat to our nation.”

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We Americans seem no longer to recognize, in either sense of the term “recognize,” the virtues that have been taught, instilled, and celebrated in our society and in all civilized societies since the beginning of time, such as honor, integrity, truthfulness, honesty, humility, selflessness, responsibility, duty, obligation, courage — and country. What would James Madison think of America today? It was he, our Fourth President and the Father of our Constitution, who declared it “a chimerical idea” the “[supposition] that any form of government will secure liberty or happiness without any virtue in [its] people.”

Much less do we Americans any longer agree on what is right and what is wrong, what is moral and what is immoral, what is to be valued and what is not.

We no longer agree even on what is and is not acceptable conduct and discourse in our supposed civilized society or, for that matter, even on the outer limits of tolerable conduct and discourse in our society.

We cannot agree on what is fact and what is fiction or on what is truth and what is falsity.

We disagree on what ought to be the law, and what ought not to be the law. We do not even agree on what of the law that we agree is law binds us all, and what of it binds only some of us all.



Let alone do we agree on how we want to be governed or by whom, or where we go from here and with what shared national ideals, values, beliefs, purposes, goals, and objectives — if any at all.

No society, and certainly no democratic society, can long endure with such polarized disagreement over these most fundamental of matters that are essential to any union.

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America is in need of help. And help is not going to come from whence it should. Our elected leaders on both sides of the political aisle have shamefully failed us. As of this particular moment, our Republican leaders have especially failed us — and reprehensibly so.

In today’s America, the politicians only sponsor partisan incitement and traffic in the same. They have purposely led us down the road not toward the bridging of our differences, but in the opposite direction, away from the bridging of those differences.

By constitutional order, We the People of this great Nation confer upon our elected representatives the power that they are then, by solemn constitutional obligation, directed to wield on our behalf — *and on America’s behalf*. But today, our politicians live in a different world from the rest of us, a different world than that ordained by the Constitution. They live in a fictional world of divided loyalties between party and country, a world of their own unfaithful making.

Today’s politicians believe that they never have to choose between their partisan party politics and their country, when in fact they are obliged by oath to choose between the two every day, and every day they defiantly refuse to choose — knowingly choosing their bitter, selfish partisanship over our beloved country.

In a word, our polarized political leaders have proven themselves unwilling and incapable of leading us, and as a consequence, we are leaderless and rudderless.

It is obvious that we cannot hobble along much longer, hopelessly divided, politically and governmentally paralyzed, directionless and undecided as to what we want, what we want to be, and what we must do in order to become the America we want to be.

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To whom do we turn, our political leaders having failed us? The answer lies in the first seven words of the Constitution written by the prophets of our nation’s founding. We turn to ourselves, to “We the People of the United States.”

We are the ones constitutionally possessed of the power over our governance and thus over our destiny. “Governments are instituted among men, deriving their just powers from the consent of the governed,” we wrote in our Declaration of Independence. Just as we vest and



entrust our power in our leaders, so also can we divest them of that entrusted power — or at least divest the demagogues and charlatans among them who have betrayed us.

We began in the midterm elections of 2022 to purge the ranks of our political leaders who have betrayed us, and we must continue that purge in the next election, and in the next, and in the next.

Then, as we rid ourselves of those who have betrayed us, we need to ensure that those in whom we place our trust tomorrow understand better than their predecessors do today that they serve us as our leaders and are obligated by no lesser authority than the Constitution to represent our interests and our Nation's interests at the seat of government.

Once we have reclaimed our country, our democracy, and our Constitution from the political demagogues and charlatans, then we Americans need to resolve to decide again, as our forefathers and foremothers decided for us before, who it is that we want to be and what it is that we want America to be.

“As our case is new . . . we must think anew, and act anew,” Abraham Lincoln would urge us. We must “disenthrall” ourselves, Lincoln would say, from the bondages of our political demagogues and then map our own way forward, as did our forefathers and foremothers before us.

To begin this task of redefining who we Americans are and what we want America to be, we need to begin talking with each other again as allies and friends, not as mortal enemies, which our politicians have made us out to be, but which we have never been.

We need to find our lost perspective, refocus more on the much that matters that we agree upon and that unites us, and focus less on the comparatively little of importance that we disagree upon and that separates and disunites us today. John F. Kennedy said, “Let both sides explore what problems unite us instead of belaboring those problems which divide us.” We must look beyond our partisan self-centeredness today, to the all that unites us, and focus on the shared values, aspirations, and hopes for the future that bind us together into this one nation we call America.

We need to rediscover the truths that we once believed to be self-evident. We need to rediscover — and reexamine if need be, as we have always reexamined — the ideals, the truths, the values, and the principles upon which our country was founded and has flourished for almost two and a half centuries. We need to reawaken ourselves to the vision, truths, values, principles, beliefs, hopes, and dreams upon which the country was founded, which have bound our nation together into the more perfect union that “We the People” ordained and established and made America the greatest nation on earth. We must “turn this government back into the channel in which the framers of the Constitution originally placed it,” as Abraham Lincoln said.

We need to shore up and reinforce the bulwark of our faltering Democracy and Rule of Law and refortify the Institutions of our Democracy and of our Law. “Preserving virtuous institutions is its own noble purpose,” David French put it so well. David went on to say, “[w]e

Americans can and should grasp . . . [that] nations and cultures need people and institutions who transcend politics.”

And as we refortify and restrengthen the sacred institutions of our democracy and law, we need to inspire among our citizenry a reverential revival to the Constitution and to the Rule of Law. Above all else, America is “[a] government of laws, and not of men.” We are desperately in need of a revival that will renew and revitalize the flagging faith of the American People in our Constitution and in the Rule of Law.

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It is all of this, and only all of this — not all of that we are being told falsely — that will make America great again.

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To no surprise, all of this will require the leadership of leaders, and in today’s America, there are precious few leaders to be found.

Why are there so few leaders? There are so few leaders because we no longer prize the virtues and the disciplines that comprise leadership. Indeed, today, we disparage those virtues and prize their polar opposites.

Virtue is the sine qua non of leadership, that without which there is not leadership.

I recently spoke at Yale University Law School and I addressed three of the most important virtues that are essential to the leadership America needs: Honor, Humility, and Courage. Today, these virtues sound in a distant past, from another day and time. But of course we know that these virtues are ageless and timeless. And these virtues are more needed in our country today than ever before in our history. But far more do not know this than know it.

Leadership is honor. It is always doing and saying the honorable thing, the truthful thing, the honest thing — the hard thing, but the right thing. It is doing and saying the right thing especially when the temptation is greatest to do or say the easy thing, but the wrong thing.

Followers can follow one who lacks honor, integrity, and honesty — and we see that that is what they often do — if not increasingly do. But the one who lacks honor, integrity, and honesty is not leading his followers. He is misleading them. He misleads them not to the places his followers should go and should want to go, and to success and victory, but instead, to the places his followers should not want to go and should not go, and to failure and defeat.

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Leadership is also humility. Humility that understands that one can do nothing alone, that success depends almost entirely on others and comparatively little on oneself.

Humility that one does not know all, even if he knows much.

Humility that understands that one may be wrong, even that one may well be wrong.

Leadership is the humility that wants to know what others think and what others think should be done.

It is the humility that understands that one can learn something important — even something invaluable — from every single other.

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And leadership is courage. The courage of conscience and conviction, the courage to step forward from the crowd and affirm what one believes and what one does not believe — when the crowd believes differently, does not believe, fears to affirm what it believes, or fears to believe at all.

Leadership is the courage of decision and action, the courage to decide and decide rightly — to make the right decisions, not the wrong decisions — and the determined courage to act on those right decisions.

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To be reminded of these virtues of leadership this morning is, at the same time, to understand why there are precious few leaders today.

Would that we had the time to cultivate in our leaders today these virtues of leadership that they need, but lack, to lead this great nation this day, when America is so desperately in need of leaders and leadership, and has neither.

Would that we would have thought more about — or better about — these virtues that are essential to leadership yesterday, and the day before, and the day before that, when instead we were disparaging, belittling, and squandering the virtuousness of America.

Would that so many of us had not forgotten, and so many others of us had not failed to understand, that it is America's virtuousness that made her great in the first place, that it was her virtuousness that was responsible for her greatness for two and a quarter centuries.

Would that we would understand today, even if belatedly, that it is only America's virtuousness that will make her great again.

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Thank you, University of Virginia, and thank you, Miller Center. It is a high honor to have been invited to deliver the Henry J. Abraham Distinguished Lecture today.