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### American Democracy in Peril

J. Michael Luttig

**The  
John A. Sibley Lecture  
University of Georgia School of Law  
by  
The Honorable J. Michael Luttig  
Athens, Georgia  
March 22, 2023**

**Thank you, Dean Rutledge. It is a high honor to be invited to give the John A. Sibley Lecture at the University of Georgia Law School. If it's possible, it is an even higher honor to be invited to give the distinguished Sibley Lecture by you, Dean Rutledge. I am humbled by your invitation.**

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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. American Democracy and the Rule of Law are in peril.**

**America and 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 for the nation 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 once again to reunite 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 courage, and the courage of the convictions of the American citizenry and patriots like yourselves, for all of us Americans to**

**support, protect, and defend, our imperiled  
Democracy, Constitution, and Rule of Law in  
what promises to be the trying years ahead.**

**\* \* \* \* \***

**The evidence of the precarious state of our  
Democracy and Law abounds all around us, 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 (69%) of both Republicans and Democrats agreed that our democracy appears to be on the verge of collapse. 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 an unprecedented and grave offense against the Rule of Law. Yet, according to one recent poll, roughly 1 in 4 Republicans say today that they approve of**

**the former president’s supporters taking over the Capitol during the January 6, 2021, attacks.**

**Published just last week, 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 years later, Republicans have again circled the wagons around their 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 over two 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.**

**False claims that our elections have been stolen from us corrupt our democracy, as they corrupt the Nation, and as they corrupt us. To continue to insist and persist in the false claim that the 2020 presidential election was stolen is an affront to the Constitution and to our democracy — an affront that is without precedent in our**

**history and that we must ensure will be without precedent in our future.**

**As we gather here this afternoon, our democracy 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 Rule of Law is in spiraling decline.**

**The January 6 Select Committee to Investigate the Attack on the United States Capitol has recommended that those responsible for that attack and for the obstruction of the**

**proceedings of the Joint Session be prosecuted.  
And the nation awaits the decision by the  
Attorney General as to whether those responsible  
will be held accountable for their offenses under  
the Constitution and laws of the United States.**

**January 6 constituted the single gravest  
offense against the Rule of Law in American  
history, as an incumbent president incited an  
insurrection at the United States Capitol to  
prevent Congress from counting the electoral  
votes for the Presidency of the United States.  
Two years later, those responsible for that offense  
against our Constitution and laws have yet to  
suffer any consequence whatsoever for their  
offenses. Instead, they wear their role in the  
events of that day as a badge of honor, taunting**

**America's Democracy and her Rule of Law.**

**With the passage of time, the American public sighs and shrugs in hopeless resignation that the law does not apply equally to all.**

**Confidence in the Supreme Court, the constitutional guardian of the Rule of Law, is on the wane. The most recent polling on the Supreme Court shows that not even a majority of the 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.**

**In the fall, as the Court was about to begin its October 2022 Term after its tempestuous**

**previous Term, the Chief Justice felt the need to comment upon the mounting sentiment questioning the very legitimacy of the Supreme Court of the United States. One of the Chief Justice's colleagues, Justice Kagan, felt the same need — but commented differently than the Chief Justice as to the causes for this mounting sentiment. These unprecedented conflicting public statements by the Justices only served to fuel the growing public sense that the Supreme Court has, itself, yielded to the politicization that has overcome the country, and that politics rather than adherence to the objective law now infuses the Court's work, too.**

**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 self-inflicted injury.**

**Indeed, it might not be much overstatement, if any, to say that during your lifetime, 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.**

**The assault on the Rule of Law has long been underway by persons and forces outside our profession, but if we are honest with ourselves, we must acknowledge that the assault is being waged, as well, from within our ranks — and even by ourselves.**

**Though not so much here in Athens at this great Law School, but elsewhere, our law faculties have all but forsaken the teaching of law, for the teaching of politics and social policy. They teach not law, but what they believe the law should be. They champion a vision of law and the Rule of Law as merely something to be manipulated to accomplish the asserted higher ends of their own political and policy objectives.**



**We practitioners of the law, too, more and more pursue our clients' and even our own interests, less and less in pursuit and furtherance of the law, and more and more in undermine of the law, and in pursuit of their and our own political and social policy ends. And the courts have opened wide their doors to these essentially political and social policy claims, freely meting out their political and policy judgments first to the one and then to the other to their alternating delight and disappointment.**

**But today I want to focus not on these, but on our Institutions of Government, which are preeminently — and constitutionally — responsible for the protection and preservation of the Rule of Law.**

**For decades now, these Institutions have, themselves, waged a relentless war on that precious object of their responsibility, 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 withholds 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 campaign than judicial confirmation.**

**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, its judicial decisions are transparently more political result in search of legal reason, than legal reason in support of legal and constitutional result.**

**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.**

**So far down the path toward politicization are we, that from the High Court, the institution that, by constitutional design, is to be the ultimate guardian of the Rule of Law, we now hear only an occasional, faint protest that the Court is not a mere partisan political institution, as many have begun to believe it is. Of late, we have been**

**scolded by the Court that we must not think of Justices as Republican or Democrat, for they are not mere politicians in black robes.**

**But these protests of attempted assurance from the Court are being met with a skepticism that has been earned by the Court. "Perhaps it doth protest too much," has come the withering response.**

**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 these three institutions 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 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.**

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

**\* \* \* \* \***

**America can withstand attacks on her Democracy and on her Rule of Law from**

**without. 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 — of which January 6 is the most heinous example — 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 kinds of attacks from within our own country 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.**

**With the former president's and his Republican Party's determined denial of January 6, their refusal to acknowledge that the former president lost the 2020 presidential election fair and square, and their promise that the 2024 election will not be "stolen" from them again as they maintain it was in 2020, America's Democracy and the Rule of Law are in constitutional peril — still. And there is no end to the threat in sight.**

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**Nor is there any reason that should expect there to be end 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 each other and 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 institutional guardians of our democracy and freedom 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 even 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, duty, obligation, responsibility, 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 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, and shamelessly, failed us. As of this particular moment, our Republican leaders have especially failed us — and reprehensibly so.**

**The politicians in today’s America only sponsor partisan incitement and traffic in the same, rather than sponsor bi-partisan reason and lead in thoughtful deliberation. 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.**

**For years now, taking the lead from these politicians, we Americans have spoken only**

**coarse, desensitizing, dehumanizing political vile at each other, which enables us to speak to each other without guilt or regret. For too many years now, we ourselves have spoken to each other as charlatanic political gladiators in an arena that yesterday was, and today still is, annihilative of America's future, not promising of that future.**

**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 — thereby knowingly choosing their bitter partisanship over our beloved country.**

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

**It is obvious that we cannot hobble along much longer, politically and governmentally paralyzed, hopelessly divided, 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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**Yet, still, all it would take to begin to turn America around is a consensus among some relatively small number of our political leaders who possess the necessary moral authority and who would agree to be bound together by patriotic covenant, to step forward and acknowledge to the American People that America is in peril.**

**But for two long years now, while the nation has languished, not one of these has stood up, stepped forward, and extended his hand to the other, if for no other reason than that none today have the commanding moral authority necessary to lead America out of the wilderness in which it finds itself.**

**The blame for this failure of leadership rests squarely on the Republicans, whose enabling silence has been deafening and whose dishonorable intransigence is unforgivable. The Republican Party has made its decision that the war against America's Democracy and the Rule of Law it instigated on January 6 will go on, prosecuted to its catastrophic end.**

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**In the meantime, 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.” Perhaps fittingly, we ourselves must come to the aid of our struggling America.**

**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 our political leaders 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. We need to listen to one another again, as human beings and fellow citizens who share the same destiny, the same belief in America and the same hope for her future.**

**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 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 the Rule of Law. It is not our politics that defines Americans, but rather, “our constitution and our national story,” David French reminds us.**

**It is not all of that, we are being told falsely, that will make America great again. Rather, it is all of this that is needed to make America great again.**

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**Students of the University of Georgia Law School, one of your moments of calling has come. Perhaps it is the first, but if it is, it certainly will not be the last.**

**We in the legal profession are the stewards and guardians of the Constitution and the Rule of Law, the foundations of civilized society and the guarantors of liberty. If this sounds as if the lawyer holds a special place in the constitutional order that is our democracy and that we are weighted by an almost-sacred responsibility, it is because we do and we are. We have a high appointment and a high charge.**

**You, as are all Americans, are being summoned, to stand, bear witness, and affirm,**

**that you believe in America's democracy, that you believe in the Constitution, and that you believe in the Rule of Law.**

**You are being summoned to affirm and take oath that you will preserve, protect, and defend the Constitution of the United States.**

**If you do this, you will rise to your high calling.**

**Thank you for inviting me to give the John A. Sibley Lecture today. I am honored by your invitation.**

**Godspeed!**