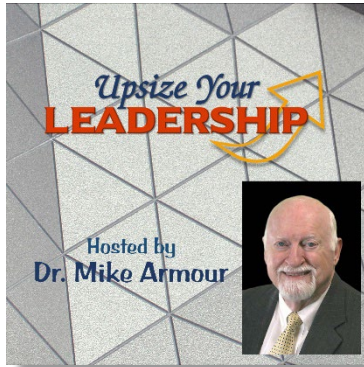


Is the American Experiment in Danger? Troublesome Trends

Hosted by Dr. Mike Armour

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Today I'm taking a departure from talking about leadership per se to talk about the socio-political climate in which we currently function as leaders. And I apologize to my listeners outside of the U.S, because my topic for this episode relates to a uniquely American challenge. Nevertheless, my topic is one which is relevant to leadership in any nation which strives to be democratic.

In the early 1920s, the humorist Will Rogers was one of the first Americans to visit the Soviet Union following the Communist Revolution. On his return to the U.S., the press asked him about his impression of the USSR. He answered, "They are the greatest experiment on earth – besides us."

Rogers fully grasped that this place called the United States is one of the greatest experiments in human history. Benjamin Franklin himself said as much when a woman on the streets of Philadelphia asked him what kind of government would result from the Constitutional Convention. Franklin replied, "A republic, madam, if you can keep it."

For several years now I've been concerned that we may not be able to keep it. And my concerns are steadily increasing, especially of late. Signs are everywhere that the experiment is flirting with disaster.

I want to discuss one of those indicators today, one which, in my judgment, points to a particularly serious threat to the American experiment. Yet, it's a danger which we rarely discuss. That's why I'm putting the issue on the table today. We all need to be alert to the threat that it poses. And perhaps, by raising your awareness, I can motivate you to Upsize Your Leadership in the effort to perpetuate the American experiment.

The anchor of political governance in America is the concept of constitutionality. The nation itself and every state in the Union has a constitution. Cities do, too, although we normally refer to these local constitutions as "charters."

Governing by means of a constitution is not new. The Greek city-states pioneered this approach 2500 years ago. In the history of constitutional governance, however, the American Constitution is unique. It embodies a revolutionary idea which was also inspired the American Revolution. In fact, this idea was the *true* American revolution.

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The significance of this idea is only understood when viewed against the complete sweep of human history. For our entire existence on this planet, mankind has been forced to contend with conflict. Over that period of time, we have found only two ways to settle our differences. One is to resort to power, a “winner take all” approach in which the struggle ends when the winning party is able to impose its will on the other party.

The second approach is to settle differences by appealing to principles. That is, the parties in conflict submit their differences to an impartial arbiter whose decision they agree to respect. The arbiter then decides between the disputants on the basis of principles to which they both subscribe.

At first glance, it might appear that I’ve not accounted for other ways to settle differences, such as compromise, persuasion, or mediation. But these mechanisms for settling differences all presume that the parties in dispute are committed to a shared set of principles.

Throughout history, the prevailing pattern has been that appeals to principles are subservient to power. That is, the winner in a power struggle gets to set the rules, and these rules then become the principles by which further differences are settled.

Historically, as a result, most experiments in constitutionalism have had a short lifespan. Constitutions were freely set aside or their provisions thoroughly ignored by those in ultimate positions of power. The person who held the reins of political power established rules and principles to be enforced in the realm. But for all practical purposes, rulers themselves were exempt from these principles. Power trumped principle.

Then came the American Revolution. It was based on the idea that all power – including the power of the highest political authority in the land – was answerable to principles agreed on by all. From its very beginning, the American experiment was based on an effort to institutionalize principle so that power was always answerable to it – even the power of the highest officials in the land. No other government had ever been founded on such a notion. That’s why I call this idea the true American revolution.

Now, for principle is to reign supreme, it’s imperative for society to have some means of arbitrating disputes. Even when people are agreed on their governing principles, they often disagree on how to apply these principles. The role of the arbitrating authority is to find an equitable application of the governing principles to settle such disputes.

In the American Constitution, this arbitrating authority is the court system. As delegates to the Continental Congress drafted the Constitution, they did their utmost to protect the courts from being a mere arm of whatever partisan element might hold political power. Federal judges were to be nominated by the President, but confirmed by the Senate. No one person could control their appointment. Moreover, judges were to be appointed for life and could only be removed by extraordinary means. This provision was intended to shield them from political pressure as the winds of partisan politics shifted across the landscape.

The U.S. Constitution assumes a populace which is universally committed to the principles enshrined in the document, so that people take their differences before the courts rather than settling them with duels or outright violence. The strength of the American experiment was thus inexorably linked to respect for the courts. And that respect must be maintained, whether we agree with the court’s decision or not. And as evidence of this respect, courts must be treated as sacrosanct and inviolate.

I've worked in cultures around the world where it's assumed that the court system is as corrupt as everything else in government. I've been in places where it's not unusual for a disgruntled disputant to have a judge assassinated. There's no commitment to an inviolate judiciary.

From the beginning, the American people have been intolerant of any effort to corrupt judges or to intimidate them with threats or acts of violence. In a world which has come to view few things as truly abhorrent, acts of violence against judges or efforts to bribe them have long been viewed as disgraceful.

Against that backdrop, let me outline a conversation which I've had at various times and at various places around the world. As I've conducted leadership trainings in Europe, Asia, and Africa, more than once, people have asked, "What's the real secret to America's success?" One person who put that question to me was the Minister of Justice in an East African country and a former chief justice of its supreme court.

The answer which I gave him, and the one which I've given to all others who have asked, was not at all what he expected. He presumed that I would list things like the American economic system or the quality of corporate management and leadership or America's abundance of natural resources.

Instead, I replied, "Respect for our courts." I then followed with this explanation. "Two of the most powerful driving forces in American culture are individualism and competition, both of which are certain to engender conflict. So long as we have respect for our courts, these inevitable conflicts can be settled in court rather than becoming a pretext for violence."

"Our commitment to the integrity of the courts is so strong," I added, "that we may disagree with a court's opinion when it rules against us. But we accept the ruling rather than strike out against the courts. That's because Americans universally believe that preserving our judiciary and its integrity is more important than any loss which we suffer because the court rules against us. Our grievance never has a higher societal priority than maintaining the judicial system itself."

And then I added, "But if we lose respect for the courts as the ultimate arbiter of our differences, we are in genuine trouble. While individualism and competition have fueled our success, left unchecked they become a centrifugal force which tears us apart as a society. If the tempering influence of the courts is removed, we have no other institution to arbitrate disputes in a manner that all parties to the dispute will respect. In that event, the very individualism and competition which led to greatness will rip us apart by returning us once more to the raw exercise of power to settle our differences."

Having made that statement repeatedly for years and years, I'm now increasingly concerned about eroding respect for the courts. Fifteen years ago, when I wrote my book *Leadership and the Power of Trust*, I studied the public's level of trust in various organizations and institutions. The courts were among the most highly trusted bodies in our society. Now, a mere decade and a half later, polls indicate that trust in the courts is lower than it has ever been in our history. Our courts no longer stand head and shoulders above other branches of government in terms of trust.

Several factors account for this. Not the least of these is the expanding politicization of the Supreme Court over the past 50 years. Ideally, and in the eyes of the founding fathers, appointees to the Court should be selected entirely on the basis of their ability to be impartial arbiters – in much the same way that we look for people who can be impartial to serve on juries.

Until fairly recent decades, the prime concern in confirming judges was their proven prudence as a jurist. Their political affiliations were largely irrelevant. Most confirmations were therefore by broad, bi-partisan margins.

With Robert Bork's nomination to the Supreme Court in 1987, the entire confirmation scenario changed. From that point forward, the confirmation process has been anything but bi-partisan and the nominee's political views are subjected to exhausting scrutiny and speculation. Gradually the public has come to presume that Supreme Court decisions will be made along party lines. Once the Court is seen as partisan, trust in its impartiality is automatically diminished. And with diminished trust comes lowered respect.

The reason for this podcast is that I'm particularly concerned that respect for the Court has recently taken a turn for the worst. In reaction to a leaked document from the Supreme Court, partisans have taken to the streets in what has all the earmarks of an effort to intimidate judges. They have gathered in huge throngs and marched to homes of certain Supreme Court judges, noisily shouting hostile messages in complete violation of Federal statutes forbidding such conduct.

Sadly, the Department of Justice and local police officials have taken a "hands-off" attitude toward these gatherings. And equally concerning, certain elected officials have actually urged this conduct and have applauded it. Twenty years ago, who could have anticipated a day when elected officials would encourage mobs to intimidate judges?

If such trends continue, regard for the courts is sure to suffer. Not just the Supreme Court. But all courts. How low can regard for the courts sink before people start taking matters into their own hands? What happens to the rule of principle when people no longer trust the courts as honest arbiters? Those are not promising prospects for the American experiment.

I've hesitated to deal with this topic, because I can so easily be accused of taking a partisan position on the pending Roe v. Wade decision. But my concern is not any particular decision, but respect for the decision-making process itself. Democratic societies are only as strong as their respect for their courts. We must never sit idly by, therefore, when the courts themselves are being assailed.

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