Restoring Trust: What the Missouri Supreme Court and Andragogy Can Teach the United States Supreme Court

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Our judiciary is crucial to the proper functioning of the rule of law and our democracy. A strong judiciary serves as a check or limitation on the excessive use of power by the executive and legislative branches of government. As courts do not enforce their own decisions, citizens must have trust and confidence in the judiciary and its rulings, for without it, they are more prone to use violence or self-help to settle their differences.[1]

Waning Confidence in the Supreme Court

Confidence in the Supreme Court is at an all-time low. The loss of confidence coincides with the Court's 2022 ruling in *Dobbs v. Jackson Women's Health Organization*, which held that the US Constitution does not provide a right to an abortion—overturning fifty years of precedent—along with a leak of a draft of that decision before the official decision from the Court. According to the General Social Survey, which has measured the public's confidence in the Supreme Court since the *Roe v. Wade* decision legalizing abortion in 1973, confidence is down not only among Democrats but also among Republicans.[2]

The Court's problems do not stop there. Whereas most federal employees, including judges, must abide by codes of ethics, the Supreme Court is not required to follow any such code.[3] Supreme Court justices must abide by certain statutory financial disclosure regulations. It was recently discovered, however, that Justice Clarence Thomas had not disclosed twenty years' worth of gifts in the form of vacations, private air travel, and cruises. Such gifts included purchasing and renovating Justice Thomas's mother's home, where she still resides.

Although Justice Thomas previously disclosed such gifts twenty years earlier, he stopped doing so after receiving negative news attention. Thomas explained his failure to report these gifts was because he did not believe they were required to be reported. This situation has led some to

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[1] George W. Dougherty, Stefanie A. Lindquist, and Mark D. Bradbury, "Evaluating Performance in State Judicial Institutions: Trust and Confidence in the Georgia Judiciary," *State and Local Government Review* 38, no. 3 (September 1, 2006): 176–90, accessed February 17, 2025, https://doi.org/10.1177/0160323x0603800305.

[2] Mark Sherman and Emily Swanson, "Trust in Supreme Court Fell to Lowest Point in 50 Years After Abortion Decision, Poll Shows," *AP News*, May 17, 2023, accessed February 17, 2025, https://apnews.com/article/supreme-court-poll-abortion-confidence-declining-0ff738589bd7815bf0eab804baa5f3d1.

[3] Joycelyn M. Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 11th ed., (Boston, MA: Cengage, 2021), 227.

contend that there appears to be a double standard for those in powerful positions in government as compared to the rank-and-file government workers.[4]

Justice Thomas's actions were not the only ones to bring negative attention to the Supreme Court. Justice Samuel Alito was reported as having accepted a luxury Alaskan fishing vacation without having disclosed receiving the gift. Justice Alito allegedly accepted over $100,000 worth of private air travel from a person who has had several cases before the Supreme Court.[5]

In addition to the two Republican-appointed justices, Democrat-appointed Justice Sonia Sotomayor's conduct has likewise raised ethical issues. Her staff was claimed to have prodded and pushed universities and libraries to purchase copies of her books before her speaking engagements. In addition, she did not recuse herself from sitting on a case involving her book publisher.[6]

Attempts to Regain Confidence

In response to negative news stories, Chief Justice John Roberts acknowledged that the Supreme Court could do more to adhere to rules of ethics. While the Court did not have its own code of ethics, all nine justices signed a statement of ethics provided to the Senate Judiciary Committee. The chief justice indicated that the Court was exploring ways to enforce the justices' commitment to their ethics statement.[7]

Most recently, the Supreme Court adopted a code of conduct. While some consider this a key step in rebuilding trust, many contend that it did not go far enough, as there is no enforcement mechanism.[8] Calls for further reform of the Supreme Court do not appear likely to succeed, particularly given the current political divide in the United States. Assuming this is the case, what can be done to help restore confidence in the Court? Andragogy and the Missouri Supreme Court may help provide answers.

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[4] Domenico Montanaro, "Justice Thomas Gifts Scandal Highlights 'Double Standard' for Ethics in Government," *NPR*, April 24, 2023, accessed February 17, 2025, https://www.npr.org/2023/04/24/1171343472/justice-thomas-gifts-scandal-highlights-double-standard-for-ethics-in-government.

[5] Kelsey Reichman, "Alito Kicks Up Ethics Questions with New Undisclosed Gifts from Billionaire Donors," *Courthouse News Service*, June 21, 2023, accessed February 17, 2025, https://www.courthousenews.com/alito-kicks-up-ethics-questions-with-new-undisclosed-gifts-from-billionaire-donors/.

[6] Zeeshan Aleem, "Don't Downplay Sonia Sotomayor's Poor Conduct. Fix it," *MSNBC*, July 13, 2023, accessed February 17, 2025, https://www.msnbc.com/opinion/msnbc-opinion/sonia-sotomayor-ethics-book-supreme-court-rcna93864.

[7] Mark Sherman, "Chief Justice Roberts Says Supreme Court Can Do More on Ethics, but Offers No Specifics," *AP News*, May 24, 2023, accessed February 17, 2025, https://apnews.com/article/supreme-court-john-roberts-ethics-5a3a356831e418140a7da78624718ef6.

[8] Lawrence Hurley, "Supreme Court Adopts Historic Code of Conduct After Ethics Scrutiny," *NBC News*, November 13, 2023, accessed February 17, 2025, https://www.nbcnews.com/politics/supreme-court/supreme-court-code-of-conduct-rcna124951.

Andragogy

Andragogy has several meanings. It can refer to the study of adult learning: the theory and approach to adult learning and education promoted by Malcolm Knowles.[9] To study andragogy, it is often helpful to begin with an examination of pedagogy—teaching children, which dates to seventh-century Europe. Like andragogy, several assumptions about learners form its basis. Pedagogy makes four assumptions about child learners. First, it assumes that the child learner depends on the teacher because they do not know what they need to know. Second, it assumes that child learners learn best when the material is arranged by subject matter. Hence, the typical K-12 curriculum is broken down by subject matter, such as math, science, social studies, etc. Third, it assumes that learners are externally motivated through punishments and rewards. Fourth, it assumes that life experiences do not factor into the learning process.[10]

The essence of andragogy, like pedagogy, lies in its assumptions about learners. Andragogy assumes: (1) the adult learner has a clear, developed self-concept; (2) life experience plays a significant role in how the adult learner learns; (3) the adult learner's readiness to learn influences their learning; (4) the applicability and immediacy of the material's application to the adult will influence learning; (5) the adult learner's motivation for learning will impact the learning outcome; and (6) the adult learner's reason for wanting to learn will likewise influence the learning outcomes.[11] As adults mature, andragogy explains that they become more self-directed in their learning. Naturally following this, adults tend to see themselves as responsible for their actions and learning. With additional personal responsibility, adults likewise accept more responsibility for their education.

The second assumption concerning adult learners' readiness to learn involves the social roles of adults and their impact upon their readiness to learn. As a person matures and develops, their social roles begin to change. An adult's role as an employee, spouse, or parent requires different knowledge bases. Not surprisingly, a single person without any children would not be interested in learning parenting skills, while a new parent would.[12] Likewise, an adult's life experiences inform how they learn. Learning new information is viewed through the lens of life experiences and serves as a guide to help facilitate learning. It is assumed that information that has an immediate application for the learner will be more effectively internalized than that which does not. Not surprisingly, most adult learners want to learn things they may immediately use. Similarly, motivation to learn for the adult learner is internal. For instance, a small business owner who wants to increase client referrals undertakes the study of marketing to do so. Lastly, the final assumption provides that adult learners want or need to know why they are learning something. An adult who knows why the material is essential is more likely to retain that information.[13]

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[9] Malcolm Knowles, "Andragogy, Not Pedagogy," *Adult Leadership* 16, no.10 (1968): 350-352, 386; Malcolm Shepherd Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*, 1970.
[10] Philip O. Ozuah, "First, There was Pedagogy, and Then Came Andragogy," *Einstein Journal of Biology & Medicine* 21, no. 2 (2005): 83, accessed February 17, 2025, https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=4db2e75eff490cc7d0ce6f6a62b0045319d06e3c.
[11] Sharan B. Merriam and Laura L. Bierema, *Adult Learning: Linking Theory and Practice* (San Francisco, CA: John Wiley & Sons, 2014).
[12] Ibid.
[13] Ibid.

In adult education, an educator helps or assists adults in learning, whether in content matter or skills. Therefore, "adult educator" is a term that encompasses a broad category of roles, including executives, supervisors, administrators, leaders, and people in formal educational fields. People who help adults learn can be considered adult educators.[14]

To teach adults, simply possessing subject matter knowledge is usually considered sufficient to be hired as an adult educator.[15] According to educator John A. Henschke, however, the lack of formal training in teaching methods and approaches for adult educators is not a good practice, as most adults pursuing their education do so voluntarily and may leave or stop attending if their needs are not being met. Therefore, it is important for teachers of adults to have gained some understanding of the needs of adult learners.[16]

The Supreme Court as an Educator of Adults

The Court, while deciding cases and controversies before it, instructs not only the litigants but also the citizens of the United States as to the law. The Court does so through its orders and decisions, which are written and often contain the rationale for the Court's decisions. These decisions then become precedent for all future cases appearing in the Supreme Court and lower courts. This principle forms one of the foundations of the United States legal system: *stare decisis*, which is the practice of deferring to previous decisions on cases involving similar facts and legal issues.[17] Lawyers and the public may then use these decisions and the rationale behind them to help predict how future issues may be decided and to conform behavior to comply with the law.

The Supreme Court is the final word on what the law is in the United States. Taking a broad view, the Court has a primary mission of deciding and determining the law in the United States. It is within this context that the Court and justices may be seen as educators of adults.

Applying Andragogy to the Supreme Court

An argument can be made that the justices have violated one of the bedrock principles of teaching adults. According to Henschke, modeling, setting an example for the learner, is the lynchpin of teaching adults.[18] History is replete with examples of individuals who serve as models for others, ranging all the way from the biblical figure Moses to Presidents Abraham Lincoln and Harry Truman, to Dr. Martin Luther King, Jr., and so on. In their study of leaders, authors James M. Kouzes and Barry Z. Posner [19] found that the most desired qualities in a leader included, among other things, that their actions matched their words. They found that leaders

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[14] John A. Henschke, "Modeling the Preparation of Adult Educators," *Adult Learning* 9, no. 3 (March 1, 1998): 11–13, accessed February 17, 2025, https://doi.org/10.1177/104515959800900307.
[15] Ibid.
[16] John A. Henschke, "Training Teachers of Adults," in *Materials and Methods of Adult and Continuing Education,* 2nd ed., ed. Chester Klevens (Los Angeles: Klevens Publications in Adult and Continuing Education, Inc., 1987).
[17] John L. Worrall, *Criminal Procedure,* 3rd ed. (New York: Pearson, 2018).
[18] Henschke, "Modeling the Preparation of Adult Educators."
[19] James M. Kouzes and Barry Z. Posner, *The Leadership Challenge: How to Make Extraordinary Things Happen in Organizations*, 1st ed. (San Francisco: Jossey-Bass, 1987).

build credibility when their actions are consistent with their words. Similarly, Henschke advocated that adult educators should make the theory of adult education and the practice of adult education congruent.[20] Accordingly, the teacher's behavior is integral to the learning process.

According to Henschke, modeling is what drives the quality of an educator's performance.[21] In other words, effective instruction depends on the teacher's ability to provide instruction that models what is being taught. Students not only learn from what is said but also by observing what is done. Teachers are models to their students. According to Henschke, a teacher must be willing to be their true selves, modeling active involvement with an enthusiasm for the material to students. Andragogy is dependent upon the adult educator being themselves and sharing their passion for the content matter.[22]

One way to build credibility is to lead by example through modeling.[23] Modeling is comprised of four factors: andragogy, attitude, congruence, and trust.[24] Having already discussed andragogy, we turn next to attitude, congruence, and trust. Attitude, as a part of andragogy, is transformational.[25] A caring and trusting attitude that values the learner is essential for the best learning experience. Similar to Henschke's belief that andragogy is something of an attitude,[26] authors Ian. R. Patterson and Shane A. Pegg contend that andragogy is premised upon the mutual respect between the students and the teacher.[27]

Incorporating a caring and respectful attitude in the actions of the justices and court, within the confines of the judicial setting, will improve the learning experience. Author Patricia McLagan posits that being fair and trustworthy is particularly important when changes negatively impact people.[28] As all cases decided by our Supreme Court, simply by the nature of the process, involve one party winning and one party losing, the court must be mindful of this directive. Accordingly, the court should fully address the arguments of the parties before it that are

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[20] John A. Henschke, "Andragogy Around the World in K-20 Education: It Is All About Trust," in *Handbook of Research on Teaching and Learning in K-20 Education*, ed. Victor Wang (2013), accessed February 17, 2025, https://digitalcommons.lindenwood.edu/faculty-research-papers/195/.
[21] Henschke, "Modeling the Preparation of Adult Educators."
[22] Ibid.
[23] Kouzes and Posner, *The Leadership Challenge*.
[24] Henschke, "Modeling the Preparation of Adult Educators."
[25] Ibid.
[26] Henschke, "Training Teachers of Adults;" Henschke, "Modeling the Preparation of Adult Educators;" Henschke, "Andragogy Around the World in K-20 Education;" John A. Henschke, "Identifying Appropriate Adult Educator Practice: Beliefs, Feelings and Behaviors," *IACE Hall of Fame Repository* (1989), accessed February 17, 2025, https://trace.tennessee.edu/utk_IACE-browseall/452/; John A. Henschke, "Thinking about Andragogy: The International Foundation for Its Research, Theory, and Practice Linkage in Adult Education and Human Resource Development," *IACE Hall of Fame Repository* (2004), accessed February 17, 2025, https://trace.tennessee.edu/cgi/viewcontent.cgi?article=1445&context=utk_IACE-browseall.
[27] Ian. R. Patterson and Shane A. Pegg, "Adult Learning on the Increase: The Need for Leisure Studies Programs to Respond Accordingly," *Journal of Physical Education, Recreation & Dance* 70, no. 5 (1999): 45-49, accessed February 17, 2025, https://www.researchgate.net/publication/43491121_Adult_Learning_on_the_Increase_The_Need_for_Leisure_Studies_Programs_to_Respond_Accordingly.
[28] Patricia McLagan, *Change Is Everybody's Business* (Oakland, CA: Berrett-Koehler Publishers, 2002).

necessary to reach the decision and be particularly mindful of its tone and demeanor so as not to unnecessarily ridicule or chastise the parties or their arguments.

In the education of adults, congruence means that the adult educator must apply both the theory and practice of adult education; in other words, they must do as they teach.[29] Scholar Warren Bennis, in his study of leaders, describes this quality as congruity—being true to one's values and not shifting positions frequently.[30] Demonstrating the concept of congruity, one successful CEO of a major retailer described this as creating a climate where certain values are espoused and then letting the employees see those values carried out.[31] In the context of the Supreme Court, this would mean applying the law in a uniform and predictable manner. In addition, it would mean abiding by the very ethical rules that guide the actions of all other lawyers and judges. In other words, to build trust, the justices must hold themselves to the same rules of law that they set out in their own decisions. To do that, they must do as they say.

Trust is essential for survival. All of us depend upon trust to survive. Trust affects our success and satisfaction in our learning and life. Trust is essential to leadership.[32] Andragogy teaches that the adult educator must trust the ability of the learners to navigate their way through the learning process and make appropriate decisions along the way.[33] Trust is a two-way street; all parties must work cooperatively for trust to grow.[34] To be trusted, a person must demonstrate trust in others.[35] To do so, adult educators must model the principles of andragogy in their teaching. A lack of trust hampers the learning experience.[36] Similarly, in this case, a lack of trust hampers the operation and perceived legitimacy of the Supreme Court.

Missouri Supreme Court Leading by Example

To see the andragogical concepts applied in a judicial setting, the United States Supreme Court need only look at the Missouri Supreme Court and its judges. Just as the United States Supreme Court may be seen as an educator of adults, so too can the Missouri Supreme Court. Simply looking back over the last two decades, we can see that the Missouri Supreme Court has striven to conform its own actions to its judicial decisions. In 2007, former Missouri Supreme Chief Judge Michael Wolff stressed the importance of judicial accountability to the public.[37]

While the surveys of public confidence in the United States Supreme Court were much higher in the early 2000s than they are today, Judge Wolff, during his tenure, stressed that the way to combat attacks against the judiciary is to provide mechanisms to hold judges—all judges—accountable for their actions. Judge Wolff pointed out that all judges in Missouri are not only bound by the ethical rules that apply to all Missouri lawyers but also to rules specifically geared

[29] Henschke, "Modeling the Preparation of Adult Educators."
[30] Warren Bennis, *On Becoming a Leader* (Reading, MA: Addison-Wesley Pub. Co, 2009).
[31] Ibid.
[32] Henschke, "Andragogy Around the World in K-20 Education."
[33] Henschke, "Modeling the Preparation of Adult Educators."
[34] Henschke, "Andragogy Around the World in K-20 Education."
[35] Kouzes and Posner, *The Leadership Challenge*.
[36] Henschke, "Training Teachers of Adults."
[37] Michael A. Wolff, "Ensuring Judges' Ethics and Accountability," *Missouri Courts*, March 30, 2007, February 17, 2025, https://www.courts.mo.gov/page.jsp?id=5322.

toward judicial conduct, both on the bench and off. According to Judge Wolff, such rules ensure that Missouri judges act in a way that promotes the highest level of ethical conduct and avoids the appearance of impropriety.[38]

Seventeen years after Chief Judge Wolff emphasized the importance of judicial accountability to the operation of law, Missouri Supreme Court Chief Judge Mary Russell raised the alarm concerning the public's loss of trust in our judicial system. She recounted not only verbal attacks on Missouri judges, but physical ones as well. To help rebuild trust in the Missouri judiciary, she reminded members of the bar of their obligations to show respect to the judiciary and justice system. Beyond just words, Chief Judge Russell discussed the importance of the principle that no one, not even a Missouri judge, is above the law. Missouri judges are bound not only by criminal law, but by financial disclosure requirements and codes of ethics.[39] Unlike the United States Supreme Court, all Missouri judges, even Missouri Supreme Court judges, are bound by professional rules of conduct and may be subject to discipline for violating them.[40]

The Missouri Code of Judicial Conduct applies to all full-time judges who apply to become members of the Missouri Supreme Court (MO Sup. Ct. Rule 2). The code stresses the critical role a fair and impartial judiciary plays in the administration of justice in our legal system. Given that critical role, the code provides that all judges must work to ensure confidence in our legal system by upholding and promoting the independence, integrity, and impartiality of the office. Rather than just espousing a set of conduct ideals, the Missouri Constitution provides a mechanism for enforcing the rules of conduct against all Missouri judges. Article V, Section 24 of the Missouri Constitution created a commission for investigating and recommending appropriate action to the Missouri Supreme Court. Unlike the United States Supreme Court's statement of ethics adopted by the justices, the Missouri Supreme Court judges, just like any other Missouri judge, are bound by ethical rules, and there are mechanisms in place to enforce those rules.

Chief Judge Russell also emphasized the role of transparency in building trust. It is one thing to say that Missouri judges are working to fairly decide cases, but another thing to show Missourians that the judges are in fact doing just that. As such, the Missouri Supreme Court now provides live streaming of oral arguments so that the public can see the arguments before the court from the comfort of their home. Given the increased role social media plays in today's society, particularly with respect to providing news information, Chief Judge Russell indicated that the Missouri Supreme Court was in the processing of developing social media pages for the Missouri Supreme Court to help show the public the important work that the court does and to help provide ready access to important information.[41]

Demonstrating its commitment to accountability, the Missouri Supreme Court created a process for the evaluation of its members and other Missouri judges to determine whether they are

[38] Ibid.
[39] Mary R. Russell, "Chief Justice: Navigating Public Trust, AI in Legal Profession," *The Missouri Bar* 80, no.6 (November-December 2024), February 17, 2025, https://news.mobar.org/chief-justice-navigating-public-trust-ai-in-legal-profession/.
[40] Ibid.
[41] Ibid.

meeting appropriate judicial standards, and for these evaluations to be made available to the public. This report is published by the Missouri Bar biennially. Chief among the evaluations of the Missouri Supreme Court judges is the assessment of their impartiality and fairness.[42] Without expressly saying it, the Missouri Supreme Court and its judges are applying andragogical concepts to better improve their performance and to promote trust in its operations.

Conclusion

For our democratic institutions to survive, the citizens must trust them. As such, the United States Supreme Court requires the trust of the citizens to abide by its decisions. Just like any teacher of adults, the Supreme Court can benefit from the teachings of andragogy to rebuild public faith, even if the court is not required to follow any formal code of ethics such as those expected of the attorneys and judges in courts below it. Just as the teacher becomes the lesson, so do the justices. Rebuilding trust begins with modeling the behaviors the court wishes to see from the rest of us. The Missouri Supreme Court provides such a model for the United States Supreme Court to build public trust and carry out its judicial functions in a way that promotes its independence, integrity, and impartiality.

[42] Missouri Judicial Review Committee, *Your Missouri Judges*, February 17, 2025, https://yourmissourijudges.org/about/.