
Guest Column: Criminalizing Politics

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The indispensable line between politics and criminal justice in America is disintegrating. Politicians, pundits, and everyday people—from both sides of the tribal divide—increasingly want their political opponents prosecuted. Winning elections, legislative victories, and hearts and minds is no longer enough. Americans now long to see their fellow citizens behind bars. More and more, prosecutors oblige—bringing cases because of one’s political affiliation rather than one’s guilt or innocence.

This undermines not just the rule of law, but the nation as a whole.

President Joe Biden’s son Hunter is embroiled in numerous criminal matters. And Republicans are doing their utmost to shoehorn Joe into the fray. Donald Trump, meanwhile, faces four separate indictments. And numerous politicians have been found guilty of committing crimes this century, including Scooter Libbey, Ted Stevens, Robert Coughlin, William Jefferson, Jesse Jackson Jr., David Petraeus, Michael Flynn, and Steve Bannon.

Some of these cases represent legitimate law-enforcement work. Some don’t. But the problem is much bigger than just actual cases. Trump’s 2016 campaign rallies saw thundering chants from the crowd to “lock her up,” referring to his Democratic opponent Hillary Clinton. While president, Trump openly pressured the DOJ to prosecute his political rivals, including Hillary Clinton, Biden, Barack Obama, James Comey, and Andrew McCabe. Calls from Democrats to prosecute Trump and his loyalists, meanwhile, have been ubiquitous since 2016 (as have giddy celebrations when prosecutors do so).

While some cases are necessary to bring, the pervasive tribal lust to prosecute political rivals is very dangerous. First, mixing the criminal law with tribal passions makes defendants’ politics the focus, not their guilt or innocence. The political obsession with the messenger (as opposed to the message) and the actor (as opposed to the action) is the opposite of the rule of law’s central tenet—that everyone is inherently equal under the law and only a defendant’s specific alleged misdeeds are relevant.

Second, criminalizing politics turbo-charges tribalism. Polarization’s knife has already penetrated deep inside the body politic. Criminalizing politics twists it violently. Instead of treating political opponents like competitive rivals, they’re treated like sworn enemies. America’s political energy should be channeled into winning elections, governing effectively, and addressing the country’s numerous public-policy failures—not sending political rivals to jail.

Finally, criminalizing politics deters talented people from serving the country. American government already has a serious personnel problem. Just look at the presidency. Donald Trump was grossly unfit to hold

America's highest office. His successor, Joe Biden, is a welcome reversion toward (but not quite to) the mean. Now in his eighties, Biden is neither what he once was nor the best American for the job. The House of Representatives, moreover, is throbbing with underqualified mediocrities. Americans shouldn't further dissuade quality people from serving because imperfections or ambiguities in their past might be shoehorned into politically motivated criminal accusations.

It's also true, of course, that entering the government should neither absolve someone from past crimes nor authorize them to commit new ones.

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