

Why seeking justice for Trump could backfire

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Some things are good only up to a point. There's a limit beyond which even healthy food becomes unhealthy. There's a threshold past which the body is more hurt than helped by exercise.

But that justice should be such a thing seems strange. Isn't justice so important that we can never have enough of it? Isn't justice so necessary that we should seek it, come what may?

I teach political philosophy at the University of Maine and this time every summer, as I prepare for the fall semester, I revisit these questions. One thing on which most of the classic texts of the subject agree is that, when it comes to justice, people are naturally prone to absolutism. Human nature being what it is, we have a powerful intuition that we should brook no compromise in seeing justice done

Yet as is typical with absolutism, such an attitude is often self defeating. In the name of serving justice, we do justice a disservice. By insisting on what is right, we unwittingly do wrong. In defense of fairness, we cause others to be treated unfairly. After all, what is justice if not the fairness that redounds to the public interest? "Let justice be done, though the world perish" is destructive of the common good that justice seeks.

The self-defeating character of our moral intransigence is a problem as old as humanity. And it is one that we appear to be repeating in our desire to see former President Donald Trump get what's coming to him. There are of course millions of Americans who believe that Trump's never-ending legal jeopardy is part of a cynical partisan takedown. His supporters argue that breathless opposition to the former president reflects the radicalization of the Left. Trump's policies, they say, are (or were) well within the mainstream of American politics; it is merely his brash personality that solicits such hostile reaction.

But whatever one thinks of Trump's policies, we do need to be clear eyed about his behavior. It's not just that Trump says and does things that offend over-sensitive liberals hell bent on enforcing a stultifying moral orthodoxy. It's that he consistently shows a disdain for the rules and norms that make democratic politics possible. His refusal to concede the 2020 election, and his attacks on the integrity of the American political system itself, are the

most egregious of a litany of corrupt acts that should disqualify the man from holding public office.

Trump's alleged possession of classified documents is now part of an investigation by the Department of Justice, which has itself inspired a debate about the prudence of holding him legally accountable. If Trump can be prosecuted for (among other things) obstructing the lawful transfer of power, then why shouldn't the DoJ pursue a conviction? Isn't that necessary to prove that no one in America is above the law? That justice will in the end prevail, no matter how many Americans believe in a pernicious delusion?

As gratifying as it would be to see Trump legally punished, there are compelling reasons for thinking such punishment would backfire, so much so that the rule of law in whose name it would be meted would be left still weaker than it already is. As Damon Linker has lately argued, the rule of law isn't some part of justice handed down from on high; it depends on popular buy-in, lest a mendacious demagogue turn the people against the law in pursuit of some allegedly more urgent goal.

The problem is that using the Merrick Garland-led DoJ to prosecute Trump would make it even easier for Trump or fellow travelers to sow the cynicism that is anathema to constitutional government. Trumpian populism builds distrust in institutions in order to transfer that trust to itself.

The unprecedented spectacle of an attorney general prosecuting a former (and possibly future) president of the other party, who in all likelihood will run again, even or especially under threat of legal action by a Democratic administration, would play right into this phenomenon. As terrible as it is to accept, it is likely now impossible to use the law to hold Trump accountable, at least in a way that would vindicate the rule of law itself.

So long as half the country trusts a demagogue before the institutions that would normally stop him, the law must seem to millions a partisan cudgel. With Trump, the justice that law affords can only be a pyrrhic victory. A resounding electoral repudiation is all that will rid us finally of this menace.