

Harvard Law School Professors Politicize the Rule of Law

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A camp counselor picks favorites by lauding some campers regardless of how ordinary or even counterproductive their conduct while ignoring or disparaging other campers' valuable contributions. A referee takes sides by giving all benefits of the doubt to one team. And a human rights activist flouts the rights shared by all persons by expressing outrage at and even exaggerating or outright fabricating abuses perpetrated by one set of combatants while turning a blind eye to atrocities executed by the opposing combatants.

The same goes for the rule of law in America – that is, a system in which individuals are subject to well established, general, and publicly promulgated rules that are equally enforced and impartially adjudicated. A group that defends law's integrity against threats from one party but remains silent while the rival party repeatedly abuses the law over the course of many years to consolidate power and harm political opponents politicizes an essential principle that transcends the differences between partisans.

In this way, 96 voting members of the Harvard Law School faculty (active or emeritus) have called attention to their dubious dedication to the rule of law.

On March 29, this HLS faculty supermajority published online "[A Letter to Harvard Law School Students](#)." Writing in their "individual capacities," the professors explain that they took this extraordinary step because "American legal precepts and the institutions designed to uphold them are being severely tested, and many of you have expressed to us your concerns and fears about the present moment." Despite their best efforts to demonstrate that they were not speaking for Harvard Law School – the professors declined to use the law school's stationery and website, and they did not include their faculty titles in their signatures – the sheer number of signatories attested to the professors' espousal of HLS orthodoxy.

A widely shared respect for the rule of law at Harvard Law School would be welcome. For decades, HLS has served as a premier platform for a variety of fashionable perspectives including critical legal studies, critical race theory, identity politics, and woke progressivism. In one way or another, all attack the rule of law's claim to stand above politics. Some cutting-edge professors at HLS insist that in practice the rule of law is a fraud perpetrated by the powerful, a tool by which oppressors justify their power and lull the oppressed to accept their subordination.

The supermajority's March 29 letter might suggest that the pendulum has shifted, inasmuch as the signatories say that they "share, and take seriously, a commitment to the rule of law: for people to be equal before it, and for its administration to be impartial." This commitment,

they stress, “is foundational to the whole legal profession, and to the special role that lawyers play in our society.”

The supermajority’s selective apprehensions, however, suggest that they are friends of convenience to the rule of law.

The HLS faculty do not explicitly mention President Trump or the Trump administration. But the professors highlight in four bullet points steps that “government leaders” are taking that imperil the rule of law:

- single out lawyers and law firms for retribution based on their lawful and ethical representation of clients disfavored by the government, undermining the Sixth Amendment;
- threaten law firms and legal clinics for their lawyers’ pro bono work or prior government service;
- relent on those arbitrary threats based on public acts of submission and outlays of funds for favored causes; and
- punish people for lawfully speaking out on matters of public concern.

The HLS professors acknowledge that “reasonable people can disagree about the characterization of particular incidents.” But they do not explain why their genuinely concerning allegations endanger the rule of law itself. Not every unlawful action threatens the foundations of equal liberty under settled and fairly administered law. Indeed, America’s separation of powers system anticipates executive overreach, and the Constitution gives Congress and the courts ample power to rein in the president.

Furthermore, over the last 15 years or so, Democrats, federal bureaucrats, and the D.C. power elite have repeatedly abused power to advance progressive priorities: For example:

- In 2010, President Barack Obama’s IRS targeted conservative organizations to deny them tax-exempt status.
- In 2012, Obama effectively legislated from the White House by creating through executive order the Deferred Action for Childhood Arrivals program (DACA) which eliminated the administration’s responsibility to enforce elements of immigration law.
- In 2016, Obama administration FBI Director James Comey usurped the attorney general’s authority by publicly declaring that presumptive Democratic presidential nominee Hillary Clinton could not be reasonably prosecuted for conducting as secretary of state her email correspondence on her private server, including many chains containing classified information, several of which chains contained emails deemed “Top Secret.”

- Also in 2016, Comey launched, on the flimsiest of pretexts, an investigation – fueled in part by Clinton campaign opposition research – into Republican nominee Donald Trump’s alleged collusion with Russia. The successor investigation led by Special Counsel Robert Mueller hamstrung the Trump administration for two years while concluding that the evidence did not show that candidate Trump collaborated with Moscow.
- From 2021-2024, the Biden administration furtively maneuvered to protect Hunter Biden from prosecution for tax evasion, making false statements on a firearm purchase, and unlawful possession of a gun.
- In 2022, President Joe Biden sought to usurp congressional authority by erasing through executive order approximately \$400 billion in federal student-loan debt.
- In 2023, the Biden Justice Department declined to prosecute President Biden for retaining classified documents for many years and in several locations, and for disclosing their contents to at least one individual who lacked clearance.
- In 2023, as primary season approached, Democratic prosecutors filed against Trump four criminal indictments – some of which were based on novel and farfetched legal theories – in four jurisdictions for alleged unlawful conduct stretching back to 2016.
- In 2025, federal district courts have promiscuously issued nationwide injunctions that go beyond the parties before them to prohibit the Trump administration from implementing its policies anywhere in the country.

Reasonable people can disagree about the characterization of these events. But the larger question remains: Where were the collective statements of the supermajority of HLS professors – or majority, or even a small minority – about the sanctity of the rule of law when a long train of abuses of law over many years benefited the Democratic Party?

The HLS professors also highlight perils to the rule of law stemming from Trump administration efforts to terminate green cards and visas of international students whose presence in the United States, according to a memorandum from Secretary of State Marco Rubio, creates “potentially serious adverse foreign policy consequences for the United States.” At Harvard “and many other universities, international students have reported fear of imprisonment or deportation for lawful speech and political activism,” the professors write. Such government action, they warn, would contravene the First Amendment, “which was designed to make dissent and debate possible without fear of government punishment.”

The HLS professors rightly demand that government scrupulously adhere to free-speech requirements. If only the Harvard 96 had shown such firmness in defense of free speech over the last several decades. Instead, elite campuses have made a habit of punishing departures from progressive orthodoxy with censorship, ostracism, denial of job opportunities, and more. Indeed, if safeguarding free speech were a priority for the HLS professors, they had no further to go than their own back yard to come to its aid. Harvard

University recently finished dead last for the second consecutive year in the Foundation for Individual Rights and Expression (FIRE) rankings for protecting campus free speech. Yet this disgrace has not roused the HLS supermajority to action.

In a March 30 open letter to his students, which provides a trenchant reply to his HLS colleagues, Professor Adrian Vermeule observes that the supermajority's "ideological blindness" makes its letter "deeply corrosive of the shared ideal of the rule of law."

For instance, Vermeule notes, the signatories were nowhere to be found when Trump's lawyers were prosecuted for representing him; when activists threatened Republican-appointed Supreme Court justices' homes and families; and when outside the Supreme Court Senate Minority Leader Chuck Schumer threatened Justices Gorsuch and Kavanaugh with retribution for their rulings.

"The central vice of the collective letter, then, is that it is tendentious," Vermeule concludes. "It attempts to appropriate a shared ideal and turn it to sectarian ends, implicitly aiming to define anyone who disagrees as an opponent of the rule of law altogether. In doing so, it runs the grave danger of causing or at least licensing anyone who does not agree with those sectarian ends to see all talk of the rule of law as a political sham."

The Harvard Law School professors' self-discrediting reflects decades of squandered moral, political, and intellectual capital. At this precarious moment, the nation desperately needs citizens capable of rising above the political fray to adopt a constitutional perspective. Alas, our professors keep demonstrating that they are among the least likely to provide that crucial civic service.

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