



Written by [Steve Byas](#) on September 5, 2023

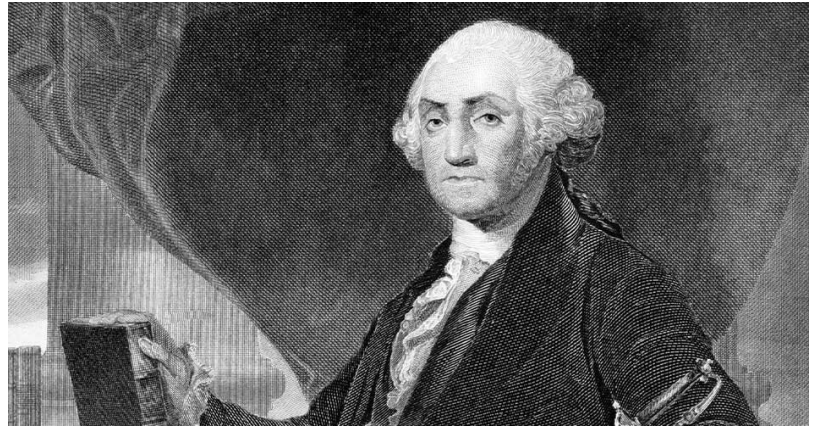
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## Political Lawfare

The party in power weaponizing the law to go after its political opponents may be routine in banana republics, but it is not what one would expect to see in the United States of America.

Yet it is painfully obvious that the law is now being weaponized to go after Donald Trump and MAGA. This is an extraordinary event in American political history, but it is not without precedent. In fact, examples of the politically powerful abusing their power to go after their political opponents can be found going back to the early days of the Republic.



GeorgiosArt/iStock/Getty Images Plus

National unity: George Washington was elected unanimously, and there were no political parties during his tenure as president. Divisions would soon develop, however.

## The Birth of Political Parties

The rancorous rhetoric and division of political parties helped create the conditions for officeholders to abuse their powers to harass their opponents. There were no formal political parties when General George Washington was unanimously elected as our nation's first president, but Washington's election masked growing political differences among some of the greatest of our Founding Fathers. Two men in Washington's first Cabinet — Secretary of State Thomas Jefferson and Secretary of the Treasury Alexander Hamilton — had some philosophical differences, and out of these differences emerged our first political parties. Hamilton's supporters styled themselves the Federalist Party, while Jefferson's countered, calling themselves the Republicans (not to be confused with the Republican Party of today, which was founded in the 1850s).

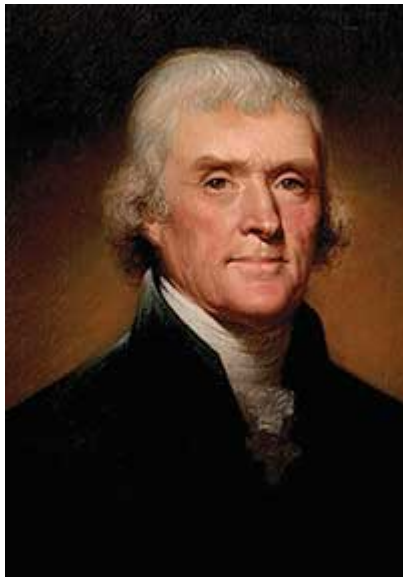
After Washington retired to Mount Vernon, Thomas Jefferson and Washington's vice president, John Adams, ran against each other for president in 1796. Adams ultimately prevailed. In 1800, Adams and Jefferson faced off again, this time as the candidates of the Federalist and Republican parties, respectively. When Jefferson won, it was the first time in American history that the party "out of power" had defeated the party "in power." Many wondered if Jefferson would retaliate against Adams and his supporters. In much of world history up to that time — and in many countries even today — losing an election could lead to incarceration, or worse.



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**Above the fray:** Thomas Jefferson refused to use his power as president to go after his political enemies, the Federalists, despite their use of the Alien and Sedition Acts to crack down on their opponents during John Adams' administration.

And Jefferson certainly had reasons to use the power of the government to punish Adams and his Federalist followers. In 1798, President Adams had signed the Alien and Sedition Acts, passed by the Federalist-controlled Congress, which made it illegal to “write, print, utter or publish ... any false, scandalous, and malicious writings against the government of the United States.” Jeffersonian Republicans argued that the law clearly violated the First Amendment to the Constitution, which said Congress could not abridge freedom of speech or press.

The law protected the president and Congress from defamatory speech or writings — but not Jefferson, who was the vice president of the United States (at that time, the Constitution provided that the second-place finisher in the Electoral College vote would become vice president). Federalist judges ignored arguments that the law was unconstitutional, and routinely jailed or fined those convicted of violating its provisions. One man was even punished for remarking — after leaving a tavern in an intoxicated state — that he would like to shoot a cannon ball right into President Adams' backside.

Newspaper editors were a particular target of federal prosecution under the Sedition Act.

It should be noted that there was legitimate concern that the madness of the bloody French Revolution could spread to the United States. In fact, the ambassador of France to the United States, “Citizen” Edmund Genet, had publicly called for the American people to overthrow President Washington. During the Whiskey Rebellion in western Pennsylvania, the revolutionary flag of France was raised over public buildings. So-called Democratic Societies were formed, promoting the radical philosophy of the French revolutionaries. Former President Washington denounced the malign foreign influence of the Jacobins and the Illuminati (radical secret societies that had brought on the French Revolution with its infamous Reign of Terror, in which thousands died on the guillotine).

## No Political Persecution

The 1800 election certainly took place in a toxic atmosphere, and it is not surprising that many Federalists feared that Jefferson would use the power of his presidential office to get revenge.



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Fortunately, President Jefferson was not so inclined. In his inaugural address, he called for a healing of the wounds generated over the past few years. “Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things,” he said. Noting that America had banished the “religious intolerance” that had divided the Old World, he remarked, “we have yet gained little if we countenance a political intolerance as despotic, as wicked, and as capable of bitter and bloody persecutions.” After all, he continued, “Every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all republicans — we are all federalists.”

Jefferson wisely refused to “weaponize” the criminal justice system against his political opponents.

However, it should be noted that Jefferson *did* favor the prosecution of his 1800 “running mate,” Aaron Burr. Because of the way the Constitution provided for the election to be conducted, with electors to vote for *two* individuals on their ballots, and with no reference to political parties, the electors who supported the Republican ticket of Jefferson — a Virginian — and Burr — a New Yorker — all voted for both Jefferson and Burr. This left them tied, with Adams and his running mate close behind. The Constitution provided that, in the event of a tie, the House of Representatives would elect the president and the Senate would elect the vice president.

Everyone understood that Jefferson was the presidential candidate of the Republicans, with Burr the vice-presidential candidate. But with the House — still under a Federalist majority for a few more weeks — to choose between them, Burr saw an opportunity to defeat Jefferson. Fortunately for Jefferson, Burr’s political foe, Alexander Hamilton, convinced enough Federalist members of Congress to abstain, allowing the Republican members of the House to elect Jefferson.

But Burr still got to be vice president. So, while Jefferson was able to eventually reconcile with John Adams, he detested Burr. And a few years later, when Burr conspired to separate the western part of the United States in collusion with Spain, Jefferson pressured federal prosecutors to put Burr in jail. Burr got off on what could best be described as a legal technicality, much to Jefferson’s chagrin, and the matter was eventually dropped.

Still, Jefferson’s refusal to disturb his Federalist foes set a precedent that was followed, for the most part, throughout the rest of our history. Even after the bitter 1828 election in which Andrew Jackson’s wife, Rachel, was smeared as an “adulteress” and his mother was called a “prostitute,” President Jackson made no move to go after his Whig Party opponents with criminal charges. The Whigs and the Democrats alternated political power for the next few years, with no weaponization of the criminal justice system of the federal government by either political party against the other party.

## Suppressing Dissent

Then came the Civil War, during which time President Abraham Lincoln of the modern Republican Party ignored civil liberties on a regular basis, unilaterally suspending the writ of habeas corpus (a provision that a person cannot be incarcerated without being charged with a specific crime and having the opportunity for a fair trial). This led to a case involving John Merryman of Maryland, whom Lincoln jailed without benefit of habeas corpus, and a ruling by Supreme Court Chief Justice Roger Taney that Lincoln had acted unconstitutionally.

Lincoln then issued an arrest warrant for *Taney*! Lincoln’s bodyguard, Ward Hill Lamon, who was U.S.



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Marshal for the District of Columbia and a personal friend of Lincoln's, apparently never served the warrant. It has been surmised that Lamon opted not to serve the warrant, and that Lincoln did not pursue the matter further. Although many Lincolnphiles dispute that Lincoln ever issued such a warrant for Taney, a federal judge, William Matthew Merrick of the U.S. Circuit Court for the District of Columbia, was arrested for ruling against Lincoln's suspension of habeas corpus.

Lincoln also had a Democratic member of Congress, Clement Vallandigham, arrested for publicly opposing Lincoln's efforts to force the seceded Southern states back into the Union. The military arrested Vallandigham, but he was not incarcerated. Instead, he was escorted into Confederate territory. There were about 13,000 Northern citizens imprisoned without any warrant even being issued. Lincoln even had Christian ministers in Southern states jailed for refusing to pray for him.

After Lincoln, there is no evidence that any president attempted to weaponize federal law enforcement against political opponents until Democrat Woodrow Wilson. War ordinarily leads to a contraction of individual liberty, and such was the case with Wilson and the First World War. Two laws — the Espionage Act and the Sedition Act — were used to criminalize much of the political opposition to American involvement in the European conflict. About 2,000 Americans were arrested and prosecuted under these laws. Wilson argued that these anti-war individuals had "sacrificed their right to civil liberties." One man was prosecuted just for making a movie about the American Revolution because he portrayed the British (now our allies) in a bad light during the American War for Independence.

Wilson's prosecutors even jailed one of his 1912 political opponents, Socialist Party candidate Eugene V. Debs, for the "crime" of opposing the war. President Warren Harding had him released from prison in 1921.

Harding — a Republican — had won the 1920 presidential election by one of the largest landslides in American history, but he did not view his success as a political mandate to criminalize any actions of his predecessor Wilson or any other Democrat. But one of Harding's most important Cabinet officers, Secretary of the Treasury Andrew Mellon — who also served in the Cabinets of Calvin Coolidge and Herbert Hoover — was pursued by President Franklin D. Roosevelt, the next Democratic president, in the federal courts.

## **FDR and Political Persecution**

The persecution of Mellon and many of FDR's other political opponents centered on alleged violations of the income-tax laws. FDR's son, Elliot Roosevelt, said of him, "My father may have been the originator of the concept of employing the IRS as a weapon of political retribution."

Mellon's philosophy of reduced government spending and tax cuts to spur the economy was despised by FDR. Mellon's influence on Harding and Coolidge was so important that the Coolidge administration was often referred to as the Coolidge-Mellon administration. When FDR became president, he wanted to channel the anger of the American public about the Great Depression against what he called the "malefactors of great wealth." That made Mellon, one of the richest men in America, a convenient target.

FDR and his allies blamed the Great Depression on Hoover, of course, but concentrated much of their venom on Mellon, arguing that Mellon's policies of budget cuts and tax cuts had *caused* the Depression. As Paul Kengor of Grove City College contends, "FDR sought to ruin Andrew Mellon, discrediting him



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philosophically and personally. He ruthlessly sicced his IRS on Mellon. Mellon was ultimately fully exonerated, though FDR's hounding took its toll."

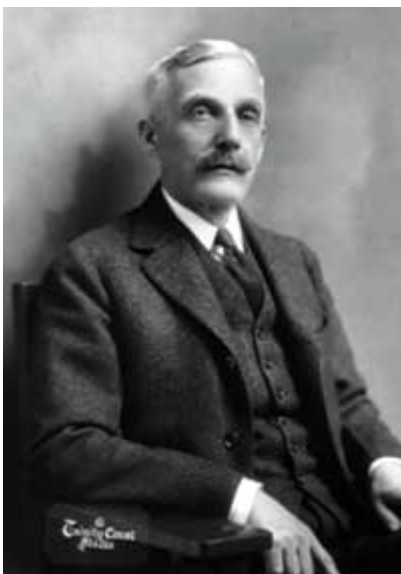
By the time cancer took Mellon's life in 1937, he had endured several years of hounding by the IRS and the Justice Department of President Roosevelt. Mellon was a founder of Alcoa and Gulf Oil, and by the 1920s was probably the third-wealthiest man in America, behind only Henry Ford and John D. Rockefeller. His advocacy of tax cuts greatly angered the New Deal crowd. Mellon argued that if taxes were too high it would result in less revenue for the federal government, and he was focused on ridding the country of the war debt. When Harding and Coolidge got Congress to slash taxes, under Mellon's guidance, total revenue from the income tax increased dramatically.

Mellon also reduced the size of the Internal Revenue Service and drastically reduced the number of its tax-fraud investigations. But that was not to FDR's liking, and Mellon was one of his principal targets. Elmer Irey, who led the Intelligence Unit of the IRS, said later, "The Roosevelt Administration made me go after Andy Mellon," despite Irey's opinion that Mellon's tax returns were accurate. According to Irey, future Attorney General (and Supreme Court Justice) Robert Jackson ordered Irey to investigate Mellon. When Irey balked, Secretary of the Treasury Henry Morgenthau called him and said, "Investigate Mellon. I order it." When Irey protested that Mellon was innocent, Morgenthau reiterated his order to investigate him.

Morgenthau then told Jackson to prosecute Mellon. "You can't be too tough in this trial to suit me. I consider that Mellon is not on trial but Democracy and the privileged rich and I want to see who will win."

In the end, after several years, a grand jury in Pittsburgh — whose members, ironically, were mostly working-class Americans — refused to indict Mellon. This was followed by the Board of Tax Appeals' unanimous ruling that Mellon "did not file a false and fraudulent return with the purpose of evading taxes." By that time, Mellon was a dying and broken man. The message was clearly sent: Do not stand in the way of the Roosevelt administration.

**Convenient target:** Andrew Mellon, one of America's wealthiest men in the early 20th century and a high-ranking official in the administrations of Harding, Coolidge, and Hoover, was persecuted to the end of his life by FDR. (AP Images)





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FDR also directed the IRS to investigate newspaper publisher William Randolph Hearst, who had opposed some of Roosevelt's agenda, and Father Charles Coughlin, a popular "radio priest" based in Detroit. Hearst and Coughlin were instrumental in getting the U.S. Senate to defeat FDR's push for the United States to join the World Court and the League of Nations. In the end, nothing could be found to criminally charge either man.

FDR also tried to use the IRS against a New York member of Congress, Hamilton Fish, a Republican. After several years of pursuing Fish, the IRS eventually had to *refund* him money! FDR also attempted to get J. Edgar Hoover of the Federal Bureau of Investigation (FBI) to investigate Fish, but Hoover largely ignored the demand.

Perhaps the most serious political challenge that Roosevelt faced in getting reelected came from a fellow Democrat, Huey Long of Louisiana. Long, as governor, had constructed a rather formidable political machine based on all sorts of government benefits. This machine was so powerful that he remained the most potent political force in the state even after he was elected to the U.S. Senate. Initially considered a Roosevelt ally, over time Long became Roosevelt's chief opponent among Democratic Party officeholders. Finally, in February 1934, Long announced his "Share the Wealth" movement in a national radio broadcast. Share the Wealth Clubs sprouted up across the country, and Long began to be considered a possible opponent to FDR in 1936, as either a Democrat or an Independent.

FDR's pollster, James Farley, informed Roosevelt that his data indicated that Long could draw as many as six million votes as an Independent candidate, which would probably cost Roosevelt reelection. In South Carolina, Long's speaking tour attracted 140,000 signed cards, pledging support for any presidential bid. Roosevelt's solution was to order the IRS to investigate Long. Three days after Morgenthau was confirmed as secretary of the Treasury, he summoned Irey and told him, "Get all your agents back on the Louisiana job. Start the investigation of Huey Long." After reporting back to Morgenthau once a week for a year — as Morgenthau had ordered — Irey missed a week. On the eighth day, Irey received a call from Morgenthau reiterating that Irey was to keep pursuing Long. Morgenthau had Irey infiltrate the Long political machine and dig up something Long could be indicted and tried for. And there was certainly dirt to be dug up, as Long had failed to report his kickbacks from contractors as taxable income.

To gather enough evidence to successfully prosecute Long, the IRS began securing indictments against some small fish in Long's pond, an old prosecutor's method of getting associates to "flip" on the person the prosecutor really wants. Whether FDR would have ever gotten Long is not known, as in September 1935 Long was assassinated while walking through the Louisiana Capitol — just one month after announcing his candidacy for president. The motive is still debated, and the killer, Carl Weiss, the son-in-law of a political enemy, was in turn killed on the spot by Long's bodyguards. One month later, Abraham Shusan, a member of the Long machine, was acquitted of tax evasion. This was the last prosecution in Louisiana, as all other cases were dropped.

## **Kennedy, Johnson, and Nixon**

There appears to have been little, if any, use of the IRS against political opponents by the next two presidents — Harry Truman and Dwight Eisenhower — but that changed after John F. Kennedy entered the White House in 1961. In his book *Power to Destroy: The Political Uses of the IRS from Kennedy to*



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Nixon, Franklin and Marshall College Professor John Andrew documented how Kennedy, Lyndon Johnson, and Richard Nixon used the IRS against political enemies. Andrew made the case that Kennedy's IRS targeted The John Birch Society and other opposition groups, as well as wealthy conservatives such as H.L. Hunt. President Nixon tried to use the IRS against Democratic Senators George McGovern, Hubert Humphrey, and Edmund Muskie.

## **Clinton, Bush, and Obama**

After the Watergate scandal of the Nixon presidency, the next four presidents — Gerald Ford, Jimmy Carter, Ronald Reagan, and George H.W. Bush — appear to have made little if any use of the IRS or other criminal statutes against their political enemies. Then came President Bill Clinton, when the Heritage Foundation, the National Rifle Association, and Judicial Watch all complained of politically motivated audits. After Paula Corbin Jones filed a civil lawsuit against Clinton alleging sexual harassment, she received an IRS audit — despite her being a person with a rather modest income. Then, when Juanita Broaddrick accused Clinton of having raped her when Clinton was attorney general of Arkansas, she was also visited by IRS auditors. When the NAACP publicly criticized President George W. Bush in 2004, they were the target of their first IRS audit in decades.

Finally, in 2013, the Obama administration was accused of having targeted conservative political groups such as the Tea Party, an activity to which the IRS actually admitted. But the IRS claimed that these audits were undertaken by lower-level employees and not at the behest of high-ranking IRS officials, and certainly not President Barack Obama. However, Lois Lerner, the director of the Exempt Organizations Unit of the IRS, refused to testify before Congress, invoking her Fifth Amendment right not to incriminate herself.

## **Trump vs. Clinton**

When Donald Trump ran for president in 2016, the Democratic nominee, Hillary Clinton, was facing possible criminal charges for having mishandled classified government documents. She even destroyed her computer with a hammer and used a product known as BleachBit to erase computer files. Clinton argued that she was simply deleting “personal” files, such as those involving the wedding plans for her daughter, Chelsea. After her husband, Bill Clinton, infamously met on the tarmac at an Arizona airport with Attorney General Loretta Lynch while the Obama Justice Department was “investigating” these serious charges against Hillary, Lynch announced that she was leaving the decision on whether to file criminal charges up to FBI Director James Comey. This is analogous to a local district attorney opting to let the county sheriff decide whether to file criminal charges. In short, it was unprecedented.

Not surprisingly, a few days later, Comey announced that no criminal charges would be pursued against the Democratic nominee for president. At Trump's rallies, the huge crowds began chanting, “Lock her up.” At the Republican National Convention in Cleveland, when delegates began chanting, “Lock her up,” Trump held up his hand and said, “No, let's just beat her.” During the subsequent debates that fall, as Clinton began insinuating that Trump was conspiring with Russian President Vladimir Putin to get elected, an agitated Trump promised to put her in jail for her crimes. This was certainly not one of the high points in American political history, but after Trump scored his upset win over Clinton, he again changed his tune, saying, “now we don't care.” He later told *The New York Times* that he was not recommending any prosecution of her, saying prosecuting her was “just not something I feel very



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strongly about.”

Rather than be grateful that Trump had declined to appoint a special prosecutor to investigate her, Clinton joined with leading Democrats and their media allies in promoting the false narrative that Trump had colluded with Russia to win the race. This “Russian collusion” story dominated political news for the next two years, and no doubt contributed to the loss of the House of Representatives by the Republicans in 2018 and Trump’s own defeat in 2020.



**Power couple:** The Clintons revived the time-dishonored tradition of weaponizing the IRS against political enemies, a strategy now being implemented by the Biden administration. (AP Images)

## Biden

While Trump declined to weaponize the criminal justice system against Hillary Clinton, that generous spirit has certainly not been reciprocated by the Biden administration and his Justice Department, or by local Democratic prosecutors in New York and Georgia. On the contrary, they are determined to put an ex-president of the United States behind bars. In 1974, President Gerald Ford chose to pardon former President Richard Nixon for any crimes he might have committed while president, stating, “During this long period of delay and potential litigation, ugly passions would again be aroused.... My concern is the immediate future of this great country.” While one might argue that Ford’s pardon was for a fellow member of the Republican Party, it is widely believed by political experts and historians that Ford’s decision to pardon Nixon probably cost him reelection, with his close loss to Georgia Governor Jimmy Carter.

As we have seen, use of the criminal laws against political opponents is not unique in American history. But what is unique is the weaponizing of the criminal justice system against the person who is the most likely candidate of the opposition party in next year’s presidential race. The transparent politicization of criminal statutes against the likely nominee of the opposition party is without precedent in American history. Even Franklin Roosevelt did not dare to *openly* attempt to jail the leading candidate of the other major political party.

Whatever one thinks of Trump, every American who values our Constitution and our political institutions should reject this present effort to turn the country into a pale imitation of the world’s various banana republics, where people in power regularly jail their political opposition on flimsy





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charges rather than win a fairly run election at the ballot box.

Unfortunately, Joe Biden is no Thomas Jefferson.



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