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Rogue Prosecutors and the Rise of Crime

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The Heritage Foundation

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THE WRITERS of our Constitution placed their faith not in specific guarantees of rights—those came later—but in a system of checks on government power. Foremost is the separation of powers among the three branches of the federal government, as well as between the federal government and the states. For this system to work as designed, people in each branch of the federal government and in the state governments must do their jobs and stay in their respective lanes.

But what happens when district attorneys—members of their states' executive branches—refuse to execute the laws of the land? We are witnessing the results today in blue cities across America.



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Approximately 90 percent of criminal cases in the U.S. are handled by the 2,300 elected district attorneys spread across 3,143 counties. The rest are prosecuted by U.S. attorneys operating under the Department of Justice. Until recently, elected county district attorneys upheld their end of the social contract by firmly and fairly enforcing state criminal laws and protecting citizens' rights. Regardless of party affiliation, these gatekeepers of the criminal justice system did their job. Over the last 30 years, they played a critical role in driving down crime rates, which peaked in 1992, by prosecuting violent criminals, while at the same time creating thousands of alternatives to incarceration, such as drug courts, domestic violence courts, mental health courts, and other highly successful programs.

That changed in 2015 with the launching of the George Soros-funded “progressive prosecutor” movement. This movement is animated by two beliefs. The first is that the entire criminal justice system is systemically racist. The second is that the only way to fix the system is to dismantle it by replacing law-and-order district attorneys with pro-criminal and anti-police district attorneys. The sick irony of this movement is that in the areas where it has prevailed, the most harm has been done to the racial minorities whose interests it purports to represent.

ORIGINS OF THE MOVEMENT

The progressive prosecutor movement—more accurately called the rogue

prosecutor movement—is the predictable outgrowth of efforts by earlier Marxist radicals to alter or destroy the American way of life. At its root is the belief that our country and its institutions, including capitalism, are racist. One of the early leaders of the movement to abolish prisons is the infamous Angela Davis, now in her 80s, who in her 2003 book, *Are Prisons Obsolete?*, equated prisons to modern-day slavery. “The prison,” she wrote, “has become a black hole into which the detritus of contemporary capitalism is deposited”; throwing people into prison, she continued, “relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism.”

Patrisse Kahn-Cullors and Alicia Garza (a.k.a. Alicia Schwartz), co-founders of Black Lives Matter, have also had an enormous influence. Cullors, a militant radical and convicted felon, is a protégé of the director of the Labor Community Strategy Center, whose purpose is to build an anti-racist, anti-imperialist, anti-fascist united front. Garza said at an international gathering of Marxists in 2015: “It’s not possible for a world to emerge where black lives matter if it’s under capitalism. And it’s not possible to abolish capitalism without a struggle against national oppression and gender oppression.” During a 2017 PBS interview, Garza heaped praise on Angela Davis for her work exposing the “carceral state”—i.e., a state in which people are incarcerated in prisons—and called for its dismantling.

The involvement in this movement of billionaire George Soros, who had been funding liberal causes for years, can be traced to his hiring of attorney Whitney Tymas in 2015. Tymas, who had worked as a public defender and prosecutor, was connected to the Vera Institute of Justice, where she focused on “the role of prosecutors in perpetuating racial disparity.” There she met the ACLU’s Chloe Cockburn, who was

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working to end “mass incarceration,” and they discussed the role of prosecutors, the low visibility of elections for county district attorneys, and the fact that most people don’t even know who their local D.A. is.

As opponents of the death penalty, Tymas and Cockburn hatched a plan to elect anti-death penalty prosecutors and persuaded Soros to give over \$1 million to groups that were successful in electing such district attorneys in Louisiana and Mississippi. Eventually, that modest aim—to unseat pro-death penalty prosecutors—grew into a national movement with a more ambitious goal. Emily Bazelon, *New York Times Magazine* staff writer and Soros media fellow, summed up the goal in terms of “mak[ing] the system operate differently” by electing “prosecutors who will open the locks” of prisons. Rachel Barkow, a law professor and former member of the U.S. Sentencing Commission who supports the rogue prosecutor movement, summed up its goal as follows: “to reverse-engineer and dismantle the criminal justice infrastructure.”

This well-funded and organized movement is not about liberal versus conservative, Democrat versus Republican, or black versus white. It is about power.

From the start, the movement focused on the fact that prosecutors, not police, are the gatekeepers of the criminal justice system. District attorneys decide whether to file charges and which charges to file. By replacing traditional prosecutors with attorneys who see defendants as victims, it would be possible to “reverse-engineer” and “dismantle” the existing criminal justice system.

It is no coincidence that Soros, the various political action committees that he controls or funds, and his wealthy far-Left allies have given huge financial support to rogue prosecutor candidates in deep blue cities. They target

these cities because their electorates are not paying close attention to down-ballot races and can be misled through a bombardment of often misleading advertisements.

Over the past decade, Soros has spent more than \$40 million on campaigns to elect rogue prosecutors. One group has estimated that he has donated as much as \$1 billion to the cause, if policy infrastructure, media relations, sponsored academic and think tank papers, lobbying campaigns, and grassroots organizing are taken into account. Other billionaires, like Mark Zuckerberg, Facebook co-founder Dustin Moskovitz and his wife Cari Tuna, and Patty Quillin, the wife of Netflix CEO Reed Hastings, have also generously contributed to the cause.

THE PLAYBOOK

One of the hallmarks of the rogue prosecutor movement has been its usurpation of the constitutional role of state legislatures. Once elected, rogue prosecutors refuse to prosecute entire categories of crimes that are on the books in their states, justifying their refusal by claiming “prosecutorial discretion.” But in fact, their refusal to prosecute crimes violates the separation of powers between the executive and legislative branches of government and distorts the entire legal system.

Prosecutorial discretion is not limitless. The principle behind it requires the enforcement of laws except in cases when prosecutors believe in good faith that an applicable law is unconstitutional. It does not give prosecutors the power to redefine crime and punishment. By refusing to prosecute entire categories of crime, they are in effect repealing criminal statutes—acting in place of the legislature. This is prosecutorial nullification, not discretion.

Valid prosecutorial discretion takes many forms, but when we allow for the chronic violation of law, we erode the foundation of our cities and

civilization—and respect for the rule of law evaporates.

Today, there more than 70 rogue prosecutors across the country. They represent more than 72 million people, or one in five Americans, and they proudly refuse to prosecute most misdemeanors, claiming that these are essentially harmless “quality of life” crimes that divert scarce resources. To take one example, Rachael Rollins, the former district attorney of Suffolk County (Boston), posted a list of 15 misdemeanors her office would not prosecute, including trespassing, shoplifting, larceny under \$250, disturbing the peace, receiving stolen property, operating a vehicle with a suspended or revoked license, wanton or malicious destruction of property, and possession with intent to distribute illegal drugs.

Other rogue prosecutors have followed suit. George Gascon, the district attorney of Los Angeles County, issued a written directive to his 1,000 prosecutors detailing the 13 misdemeanors that “shall be declined or dismissed before arraignment and without conditions” unless certain exceptions or other “factors” exist. In the same directive, he said it is not “an exhaustive list,” and that each prosecutor has the discretion to decline any of the hundreds of other misdemeanors in the California penal code that fall within the “spirit” of his directive.

Two weeks into the job, Kim Foxx of Chicago, the first big city Soros-funded rogue prosecutor, unilaterally raised the bar for prosecuting felony shoplifting from \$300 per incident to \$1,000 per incident, essentially declaring open season on retail stores. Philadelphia’s Larry Krasner, San Francisco’s former district attorney Chesa Boudin, New York City’s Alvin Bragg, and others

have acted similarly, contributing to the tsunami of shoplifting and organized theft from retail stores and pharmacies to national chains and family-run stores. Not surprisingly, many stores in these cities have closed.

Krasner was elected to office in Philadelphia in 2018 with the help of \$1.7 million from Soros-funded groups. He celebrated on election night by calling himself a “public defender with power.” The first day in office he fired 31 experienced violent crimes prosecutors, referring to them as “ticks.” This is common practice among the rogue prosecutors, who replace career prosecutors with public defenders or law students who sympathize with defendants and view the police suspiciously.

TO PUT THE CARNAGE IN OUR CITIES INTO PERSPECTIVE, BETWEEN 2003-2010, THERE WERE 3,481 AMERICANS KILLED IN ACTION IN IRAQ, AN AVERAGE OF 435 A YEAR. IN THE WAR IN AFGHANISTAN, BETWEEN 2001 AND 2014, THERE WERE 1,833 AMERICANS KILLED IN ACTION, AN AVERAGE OF 141 PER YEAR. CHICAGO’S ANNUAL MURDER RATE DWARFS THESE FIGURES. IT IS NOT AN EXAGGERATION TO SAY THAT PARTS OF CHICAGO, ON ANY GIVEN WEEKEND, HAVE BECOME DOMESTIC WAR ZONES.

In addition to not prosecuting misdemeanors, rogue prosecutors often reduce felonies to misdemeanors and limit the number of charges a prosecutor can bring in a case to one, even though a suspect may have committed multiple offenses. One of Gascon’s most controversial directives in Los Angeles prohibits prosecutors from adding sentencing enhancements or allegations that would support such enhancements to an indictment—even though in some circumstances, California law requires prosecutors to do so. Prosecutors working in Gascon’s

office cannot allege any three- or five-year priors, add gang enhancements, file three-strikes allegations, or allege special circumstances that would result in a sentence of life without parole or the death penalty.

In many cities, young gang recruits commit violent felonies to prove their “street cred.” Yet most rogue prosecutors refuse to prosecute violent teenagers as adults, instead sending them to juvenile court, where the worst punishment they can get is juvenile detention until they turn 21.

One of the most pernicious policies to come out of the rogue prosecutor movement is the refusal to ask for cash bail, which represents a guarantee by a defendant (or by a person acting on behalf of a defendant) that the defendant will show up for trial. The amount required for bail varies by jurisdiction and by crime. Those who cannot afford to post bail remain in custody pending trial. But district attorneys including Foxx, Gascon, and Boudin have directed their prosecutors not to ask for cash bail in many cases. And they do not seem bothered by the fact that this has led to additional crimes, including murder.

PREDICTABLE RESULTS

Crime rates have exploded in the cities that have elected rogue prosecutors.

In the five years before 2018, when Larry Krasner was elected in Philadelphia, there was an average of 271 homicides per year. Since 2018, there has been an average of 457 per year—of which 83 percent of the victims were black. Non-fatal shootings have risen from an average of 1,047 per year to 1,588 per year; aggravated assault while armed with a handgun went from 2,209 per year to 3,116 per year; retail thefts went from 7,412 per year to 9,084 per year; and auto theft went from 5,691 to 8,665 per year.

In Chicago, in the six years before Kim Foxx became state’s attorney for

Cook County in 2017, there was an average of 510 homicides per year. That number rose to 660 in her first year, and through 2022 it averaged 666 per year—with over 75 percent of the victims being black.

To put this carnage into perspective, between 2003 and 2010, there were 3,481 Americans killed in action in Iraq, an average of 435 per year. In the war in Afghanistan, between 2001 and 2014, there were 1,833 Americans killed in action, an average of 141 per year. Chicago’s annual murder rate dwarfs these figures. It is not an exaggeration to say that parts of Chicago, on any given weekend, have become domestic war zones.

Although the rogue prosecutor movement is incredibly well funded, it is showing signs of electoral vulnerability. Voters in blue cities who were initially persuaded to vote for “reform minded” candidates who talked about “reimagining” the criminal justice system and eliminating so-called mass incarceration, are increasingly coming to their senses given the harsh reality of rising crime rates.

Voters in Baltimore and San Francisco have ousted rogue prosecutors Marilyn Mosby and Chesa Boudin, respectively. Ethically challenged rogue prosecutors Kim Gardner of St. Louis and Rachael Rollins of Boston have had to resign from their posts. George Gascon has barely survived two recall petitions in Los Angeles and most recently received only 25 percent of the primary vote in a field of eleven candidates.

The lesson for voters across America is to pay close attention to “low visibility” local races—such as district attorney races, which directly impact public safety—to protect their communities against the kind of devastation we see in so many of America’s once great cities. ■