

Red Flag Laws in the Age of Political Psychiatry

In the wake of recent horrific shooting sprees, Donald Trump and [other Republicans](#) wishing to appear to “do something” have seized the purported “middle ground”: [red flag laws](#). These laws would permit law enforcement or concerned family members to petition a court to remove firearms from individuals deemed dangerous after a summary judicial procedure.

Laws such as these enjoy popular support and a general perception of plausibility upon first glance. After all, there is a broad public consensus in favor of keeping guns out of the hands of convicted felons and other dangerous people. Recent mass shootings where the shooter made pre-incident threats, or otherwise instilled fear among those in his circle, appear to have offered several missed opportunities to prevent deadly violence.

Like so much else in life, however, the devil is in the details.

As a general matter, a goal of every healthy community is to prevent all violent crime. But there is no way to accomplish this goal in practice without a draconian police state. Crime has a cost, but so do infringements on civil liberties, such as detentions, convictions, institutionalization, and other lesser measures like injunctions and protection orders.

We know that our ability to detect criminal intent in the absence of a completed crime is a difficult matter. If everyone who had threatened harm on the internet meant it, for example, our society would be awash in blood.

But it's not. We know that people express anger and frustration in ways that may be unhealthy or disturbing. Most of those people, however, will never follow through on those

threats or actually commit violence. They're just [venting](#) or [fantasizing](#), and those ideas will forever remain confined to the imagination.

Psychiatry Is Uncertain and Easily Abused

As [I argued in 2018](#), the notion that we can detect and prevent mental illness on the basis of psychiatric assessment is a comforting myth. We know that mental illness is not a black and white thing. It exists on a continuum. [Not everyone](#) who has seen a therapist or who has taken an antidepressant is a danger to himself or to others. Sometimes such people are just people in pain – and temporary pain at that.

The human mind is infinitely complicated, and predicting anyone's future actions is nearly impossible. Not only is predicting violence a terribly uncertain business, any such inquiry inevitably would have to be refracted through a [highly political concept of mental health](#) and [human flourishing](#).

Given that, here's another thing we know: Psychologists and psychiatrists tend to be overwhelmingly [people of the left](#). The *Diagnostic and Statistical Manual of Mental Disorders* changes every few years, removing old diagnoses like [homosexuality](#) and [gender dysphoria](#), mostly because of political pressure from interest groups. A move is afoot to add [conspiracy thinking](#) to the manual. While conspiracy thinking can be an intellectual dead end, sometimes "they" really *are* out to get you. Ask [Carter Page](#). It should be obvious how changing and amorphous diagnoses will be used against those on the right.

At various times, psychiatry has been abused to suppress political dissent as an end-run around the publicity and procedural necessities of criminal trials. Summarizing an important [study](#) on the subject, even Wikipedia [warns](#):

Psychiatry possesses an inherent capacity for abuse that is

greater than in other areas of medicine. The diagnosis of mental disease can give the state license to detain persons against their will and insist upon therapy both in the interest of the detainee and in the broader interests of society. In addition, receiving a psychiatric diagnosis can in itself be regarded as oppressive. In a monolithic state, psychiatry can be used to bypass standard legal procedures for establishing guilt or innocence and allow political incarceration without the ordinary odium attaching to such political trials.

Even after the mass incarcerations of the Stalin era, the Soviet Union's psychiatric establishment suppressed political dissidents under the rubric of treating custom-made disorders such as "delusions of reform" and "sluggish schizophrenia." The Soviet experience is an event out of memory for those under 40, which is unfortunate, as its dark course was animated by the same ideology embraced by America's far-left today.

A [study of the Soviet practice](#) explained that religious dissenters, nationalists, and other critics of the regime – when not sent to labor camps – were often locked away for years and drugged up in psychiatric hospitals, forgotten by the world, their beliefs maligned as the rantings of madmen. These are the same groups being targeted as nonpersons by the frenzied political left in our own country.

Trump and other Republicans' embrace of red-flag laws is especially shocking in light of our own very recent history: the attempt to declare President Trump incompetent under the 25th Amendment.

In support of this effort, prominent psychologists [opined](#) contrary to their ethical rules about the president's mental health. The FBI deemed him unworthy of the normal deference and respect due to a president, treating him

instead as a target in his first days in office. Prominent [law professors](#) explained how his removal would be entirely lawful and reasonable. In a shocking departure from the norm, a rogue Department of Justice official, Rod Rosenstein, [offered to wear a wire](#) to entrap the president. If the president, with the power and platform he possesses, could be so harried by weaponized psychiatry, a run-of-the-mill gun owner stands little chance.

Even in the absence of intentional abuse, biases of various kinds can infect a psychological assessment. After all, for many in the mental health establishment, the mere fact of wanting to own guns may be [seen as a type of red flag](#). Should we entrust a treasured American liberty to this group of political leftists practicing an uncertain and malleable science employing *pro forma* judicial processes? The question answers itself.

A Cavalier Attitude About Due Process

A biased psychiatric establishment isn't our only problem. The [legal profession and the courts](#) also tend to lean left. They also may carry [certain biases](#) in conducting their fact-finding. After all, no one wants to let a dangerous person keep his gun, and it burdens the court little to rule in favor of a "red flag" confiscation. Such confiscation would likely be mostly seen as a reasonable middle ground far less burdensome than full institutionalization.

Judges who sometimes reject the constitutional right to bear arms are not likely to be good stewards of the rights of those who do. We have some experience of this in the world of domestic violence injunctions, which are subject to lesser procedural protections than criminal cases. They are frequently brought to bear by vindictive spouses, having become part of the "[gamesmanship of divorce](#)."

"The facts have become irrelevant," [wrote](#) the former head of

the Massachusetts state bar. “Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply, lest anyone be blamed for an unfortunate result ... In many [divorce] cases, allegations of abuse are now used for tactical advantage.”

Red Flag Laws May Do More Harm Than Good

Finally, political or not, many people have psychological suffering and get help from good therapy, support groups, and medication. The red-flag regime could interfere with people getting the care they need.

Doctors operating in a world of red flag laws likely would have some “duty to report” if they perceived some risk. But here, as in the case of the courts, the political biases of the doctors themselves would be a concern. The medical profession has come out in favor of [asking patients about guns in the home](#) and treating crimes involving guns as a [public health problem](#).

We have an important and cautionary tale in the case of the military, where many capable servicemen [do not get help](#) for PTSD and other maladies because of the perception psychological care would interfere with security clearances and be a “career killer.” This is a shame because people should get the help they need with the confidentiality and sense of partnership necessary to heal. It would be a tragic irony if red flag laws dissuaded people suffering from treatable mental illness from getting the help they need – fearing that they would permanently lose their gun rights – and they ended up hurting themselves or others as a consequence.

We already have legal procedures to confine the truly dangerous to themselves and keep them away from others. This procedure rightly has substantial protections to avoid the confinement of those who may be merely eccentric – troubled

even – but generally harmless to themselves and others. The idea of making the constitutional right to bear arms one of lesser dignity and peeling it off with lesser protections through specialized red-flag laws is a recipe for abuse.

The reason is obvious. As in the case of domestic violence injunctions, courts, police, and family members would perceive this middle ground as no serious imposition: after all, does anyone really need a gun? As psychiatry and life more generally become politically polarized, these laws could confiscate enormous numbers of guns and otherwise stigmatize dissidents of various kinds, just as psychiatry was used to deprive dissidents of liberty completely in the Soviet Union.

Our historic freedoms slowly are being diminished through the accretion such *ad hoc* procedures and exceptions, often imposed in the heated atmosphere following a tragic, but rare, mass shooting. Unfortunately, in this instance, the people who promised to protect our rights are leading the charge to diminish them.

Ordinary domestic violence restraining orders, along with misdemeanor domestic violence convictions, also impose the [loss of one's right to own or carry a gun](#). This has proceeded quietly to deprive millions of their Second Amendment rights, in spite of this general atmosphere of gamesmanship and indifference by the judiciary. Domestic violence is a serious problem, no doubt, but the judiciary's history in this realm inspires little confidence.

Not everyone gets along with their ex-wives, ex-lovers, or their family, but the vast majority of people do not go on a shooting spree. In a world with red-flag laws, however, increasingly they may be given a scarlet letter and deprived of their constitutional rights.

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