

# Trumped-Up Charges



by Theodore Dalrymple

**Several of my American friends expressed** to me their outrage at the recent trial of Donald Trump, his sons and associates, in New York for civil fraud, resulting in a huge and possibly ruinous fine; so I decided to read in full Judge Arthur F. Engoron's decision in the case.

Let me first lay bare my various prejudices. I am no great admirer of Mr. Trump; when it comes to telling the truth, he is not George Washington. Where truth is concerned, indeed, I suspect that he is of the severely pragmatist school. But I could not see how in natural justice he could be hauled into court by an attorney general who, before she was elected as such, had held up a placard in public saying "Resist Trump." The very word *Resist*, rather than *Oppose*, is inflammatory and bespeaks the kind of preexisting hatred that a law officer

either should not feel or ought to excuse him- or herself from prosecuting any case that involves the person whom he or she hates. Law should not be an instrument of vendetta, least of all by a law officer. In my days as an expert witness, I did not find it so very difficult to suppress my feelings when obliged to provide evidence that favored the case of someone I detested, or when obliged to provide evidence against the case of someone whom I liked.

The judge seemed to me on occasion to employ unjudicial language, for example when he said early on in his judgment that Mr. Trump had "crowed" that he had paid his loans back on time and in full. One senses a rancor inimical to objectivity.

Then I had great difficulty with the very concept of *civil fraud*. Indeed, I found it almost impossible to comprehend. Fraud is criminal or it is nothing; and to try a criminal offense—which the judge more than once implied that Donald Trump *et al.* had committed—according to the civil standard of proof seems to me in effect nothing but a ruse to procure a guilty verdict, and to punish heavily, without all the bother of the presumption of innocence or of having to prove something against the accused beyond reasonable doubt.

My American friends said that in overvaluing his assets, Trump only did what everyone else did, and furthermore that no one was harmed as a result. The banks from which he allegedly borrowed fraudulently, principally the Deutsche Bank, made no complaint against him and were repaid in full and on time, thereby making a handsome profit. But I am not sure that these are good arguments.

Let us suppose that I am issued a speeding ticket: Can I argue in my defense that I was only following a driver who was going just as fast but somehow was not issued a ticket? I do not think that I can.

On the other hand, I might justifiably feel aggrieved if I

were issued the ticket and the driver in front of me was not because the issuer of the ticket had decided to “get” me because he knew that I wrote articles and detested what I wrote. This would be like a Bill of Attainder writ small.

If “everyone does it”—and Judge Engoron considered this argument—the prosecuting authorities (and Letitia James was a prosecutor rather than a plaintiff in all but name) should be particularly careful not to single a person out for political reasons and for whom they have expressed political hostility. The prosecution authorities might say that they wanted to make an example of someone, and therefore chose someone very prominent; but there must be many prominent persons of whom they can make an example against whom they have expressed no prior animus. If Ms. James had prosecuted many, or even several, such cases before, the suspicion of political persecution might be laid to rest; but in the circumstances, it is difficult to believe in Ms. James’ uprightness or elementary probity in this case.

What of the argument that no one was harmed by the alleged dishonesty? This would not have been a good argument if the case had been a criminal and not a civil one. An attempted crime is still a crime; a housebreaker cannot say in his own defense that he was interrupted in his “work” and was therefore able to make off with nothing.

But surely civil fraud, insofar as anyone can understand what it is, must be more like a tort. For a tort action to succeed, not only must something wrong have been done, or something wrongly omitted to have been done, but some relevant person must have been injured by the act or omission. Furthermore, the action must be brought by the injured party, not by a bystander. Who in the case of Donald Trump *et al.* was the injured party?

The nearest to a notional answer that I can find is the city of New York. It was argued that if Mr. Trump’s dishonesty were

not corrected and made to appear costly, the reputation of the city for financial probity would suffer. To fine Mr. Trump a great deal of money would thus help compensate the city for the harm to its reputation that his dishonesty had done.

This all sounds both highly speculative and arbitrary to me. Surely harm worthy of such a fine has to be a good deal more specific than this? And to whom or toward what would all this money go?

The other justification for the fine was that it deprived Mr. Trump of his ill-gotten gains. These ill-gotten gains were composed of the difference in the rate of interest that he would have been charged by the banks had he valued his assets more honestly—if he had been offered loans at all—and the rate that he was actually offered as a result of his repeated overestimates.

The defense argument that the banks could and should have performed their own valuation of his assets, and not simply accepted his own estimate, is not very good, however. The charge of attempted fraud, or conspiracy to commit it, does not rely on whether the person on whom the fraud was attempted fraud was or was not a fool. It is the dishonesty and the intent that count.

If Judge Engoron's summary of the evidence presented at the trial is to any significant degree accurate (and, of course, in these matters the devil is in the details, which I do not have), I do not think that any unbiassed person could deny that Mr. Trump and the other defendants had been either dishonest or so careless as to be culpably negligent. As I have mentioned, I do not think it would help to claim that everyone else in similar circumstances is similarly dishonest or negligent.

But of course, a criminal charge against him would have been much more difficult to prove and would probably have failed,

hence the civil action. The real harm that the case has caused New York is not that done by Mr. Trump's overestimate of the value of his assets and claims to be making a profit when he was making a loss, but that done by a trial that makes the law nothing but an instrument of political enmity that can strike anyone, anywhere, anytime. This is the jurisprudence of tyranny.