

NATIONAL REVIEW

Prosecute the Rioters

And make sure that we condemn them as well.

By Andrew C. McCarthy — February 4, 2017

From time to time over the years, the eminent historian Daniel Pipes has lamented that treason, not just as a crime but as a concept, appears defunct in the West. The question of bringing treason charges against jihadists has been raised from time to time. Often its very asking proves Dr. Pipes's point: Most radical Islamic terrorists are not American citizens; as to them, treason is not a cognizable offense because *traitorous* conduct is central to the crime.

Even against American jihadists, a treason charge is of dubious usefulness. The 1996 overhaul of federal counterterrorism law codified crimes tailored to terrorism that are easier to prove than treason. The aim of an indictment in a national-security case should be the surest route to the severest sentence. The point is not to teach a civics lesson, regrettable as our education system's default has been in that regard.

Yet what is true of treason is not true of sedition. There are charges to bring against those who would destroy our society. They should be brought. Case in point: the University of California at Berkeley.

As our NATIONAL REVIEW editorial observed in the aftermath of this week's Berkeley rioting, "there is within the American Left an increasingly active element that is not only deeply illiberal — fundamentally opposed to free speech — but also openly violent."

I'd further contend that the problem is not confined to this increasingly active element, the Left's "progressives in a hurry." Whether it is Berkeley or Benghazi, it is standard operating procedure among the most influential, most allegedly mainstream Democratic politicians to rationalize rioting as mere "protest." In their alternative reality, violence in the name of sedition is "free speech" — a passionate expression of political dissent — while the actual political speech they so savagely suppress is the atrocity.

There is no mystery about how we got to this dark place. Violent rampaging was the coming-of-age rite of the New Left. That would be the Sixties Left that eventually won the battle for control of the Democratic party and, in its extremism, has estranged that party from its traditional working-class base, and thus from much of the country. The New Left rioted against racism, capitalism, colonialism, and the Vietnam War. They gleefully announced their hatred for AmeriKKKa. They bombed and killed. And in large measure, they got away with it. In fact, *they got rewarded for it.*

One of the worst legacies of those Days of Rage was the failure of will to prosecute violent leaders of the radical Left to the full extent of the law — particularly the likes of Bill Ayers and Bernardine Dohrn, Weather Underground terrorists who got a complete pass. In its madness, the nation drew a moral equivalence between anti-American terrorism and the excesses of American government agents who pursued the terrorists, as if warrantless searches and spying, however concededly outrageous, were comparable to plots and attempts to commit mass murder. The government did not want the depths of its misconduct explored, so charges were dropped in some cases and pled away for a song in others — denying an exploration of the depths of the terrorists' depravity.

"Guilty as sin, free as a bird," crowed Ayers, waxing nostalgic on the eve of the 9/11 attacks.

It is worse than that, though, much worse. Ayers is not just free; he has been lionized — laundered into a respectable academic. It was a comfy fit for him and many of his confederates, once it dawned on them that indoctrination inside the schoolhouse was more effective than blowing up the schoolhouse.

The plaudits, moreover, have rained down from the government as much as they've pushed up from the campus.

It was famously in the Chicago living room of Ayers and Dohrn that their fellow “community organizer” Barack Obama made his political debut. Soon the radical leftists who actually had been prosecuted were being sprung from prison by President Bill Clinton with the help of his trusty deputy attorney general, Eric Holder — himself a onetime student radical, having participated in the occupation of an ROTC headquarters at Columbia University in 1970. First Clinton commuted the sentences of FALN terrorists. Then, in an infamous pardon spree on his last day in office, he released two Weather Underground confederates of Ayers and Dohrn.

Obama’s fondness for the radical Left was a hallmark of his administration, from its early dismissal of a civil-rights case against New Black Panther Party members who had menaced voters in Philadelphia through its outreach to Hugo Chávez, the mullahs of Tehran, and the Castro brothers, as well as its overt sympathies for anti-police rabble-rousers, and finally to its last-minute release of an unrepentant FALN leader.

The prevailing attitude was best expressed in the spring of 2015, when Baltimore police were directed to stand down as rioters looted and torched sections of the city after Freddie Gray, a lawfully arrested black man with a criminal record, died in police custody — as a result of injuries primarily caused by his own wild misbehavior. Mayor Stephanie Rawlings-Blake told the assembled press, “We also gave those who wish to destroy space to do that.” As if cracking down on arson, assault, and theft would have suppressed the right to peaceful protest.

Last summer, when Democrats gathered in Philadelphia to nominate Hillary Clinton for president, it was Mayor Stephanie Rawlings-Blake whom they chose to chair their convention.

The message could not be clearer: For the political Left in this country, violence in the pursuit of “social justice” is not to be condemned, it is to be understood. There is the occasional winking rebuke of the forcible methods, but the underlying “progressive” cause is always endorsed, and the seditionist vanguard is the object of adulation.

It is a huge problem in our country.

What is being championed is not dissent. It is the destruction of the right to dissent. It is the suspension of the rule of law, without which a free society protective of life, liberty, and property is impossible.

During the Civil War, Congress enacted the first seditious-conspiracy law. Aimed at rioting and other aggression by Confederate sympathizers, it criminalizes plots to levy war against the United States, or to oppose by force the government and its execution of the laws. It has been on the books ever since, though rarely invoked. (It was used against the FALN in the late Seventies, and I used it in 1993 to prosecute terrorists who bombed the World Trade Center and conspired to bomb other New York City landmarks.) It is similarly a felony to advocate the destruction of the federal or state governments and their subdivisions.

More pointedly, there is a sweeping federal anti-riot law, making it a crime to incite, organize, promote, participate in, or aid and abet a riot. In addition, the federal civil-rights laws make it a crime to conspire to “injure, oppress, threaten, or intimidate” people “in the free exercise or enjoyment” of their constitutional rights — including, obviously, the right to free speech. These laws further criminalize forcible acts and threats that interfere with people’s lawful enjoyment of any federally subsidized activity (note that the government provides lavish funding to universities). They outlaw interference with the conduct of commercial business during a riot or other civil disorder.

For too long, our elites have portrayed transgressive behavior (very much including its allegedly artistic expression) as virtue. The constant undercurrent is that our country, our principles, and our norms are not worth having — much less admiring or defending. We are perversely taught to loathe ourselves, and thus to excuse and even revere those who raise the loathing into intimidation, aggression, and violence. Much of this phenomenon is cultural, which means government cannot fix it. But government is duty-bound to uphold the rule of law, and thus to ensure that our problems can be addressed peacefully.

Sedition and its related pathologies must be prosecuted. Equally important, they must be condemned. Without that, there cannot be a pluralistic, flourishing society.

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