

The Civil Prosecution of Donald Trump and the Nature of Law

As a business person and business lawyer, and not one who is particularly interested in politics, I have been bothered by the civil claims against Donald Trump for falsifying financial statements submitted to financial institutions for loans. I now realize why:

First of all, typically a civil claim has two parts, liability and damages. If there is an unlawful act but no injury, harm or damages, then there is no litigable civil claim.

Secondly, a typical civil case has an injured party. There is the party harmed by the conduct. It is the injured party who calls law enforcement or the lawyer to bring the civil claim. This is the "trigger," and this trigger is key. It is the presence, requirement and protection of the injured party that keeps the system more honest and restrained. Otherwise, not only the creation of regulatory law, but also its application, would reside solely in the hands of the government. There is also the practical question whether the government's prosecution of such civil claims is an effective, justifiable use of scarce public funds.

In the Trump case, as Trump has repeatedly argued, there is no victim, no injured third party. The banks (I understand) did not complain. In fact (I understand) they were repaid in full. Was it wrong of Trump to lie? Could a third party have a claim for misrepresentation or in some cases, slander, based on the lies of the protagonist? Of course, but allowing the state to decide to prosecute lies and seek substantial money damages when there are no actual damages to an actual injured party is an absurdly low threshold. Step back and think about it: What if I, the state, am going to sue you because you lied to your neighbor? That makes no sense. This difference between this simple example and the Trump case is one of degree, not of kind.

Such a system also grants dangerously excessive power and discretion to the government. In a less than ideal state the government could formulate law, create and pursue legal claims when there is no injured party or damages to a private citizen or company. Before the government pursues a civil claim there should be harm to someone

besides the government. Again, the existence of the private citizen and the harm to that injured party should be an essential part of the system. It promotes honesty and fair dealing along with the efficient use of public resources.

\$300,000,000 in damages in a civil case when no private citizen complained or was harmed is over the top. And whether the damages were \$1.00 or \$1,000,000, my point is the same. A civil action should have three parts, not two. The ability of the government to bring civil claims with no one harmed but the government – and again where is the damage? – is a recipe for tyranny. We need actual harm to an actual private citizen as the threshold for civil liability. The Supreme Court should strike down this exercise of government power.

Again, this comment has nothing to do with Trump or politics. It is a comment on the nature of law, by a business person and business lawyer, using the civil claims against Donald Trump as an extreme example. You say, Trump should be sued. I say, "Fine, bring me the harmed person with damages.