

Arrests and Releases Without Charges: The Erosion of Due Process



Nicola Sturgeon

by Theodore Dalrymple

There seems to be a fashion these days for arresting politicians once they've left office. The latest victim of this fashion is Nicola Sturgeon, the former first minister of Scotland, who was recently arrested by the police in Scotland and then released without charge—yet.

The former president of France, Nicolas Sarkozy, is presently appealing the conviction that will confine him to house arrest should it be upheld.

Of Donald Trump's current travails with the law, I need hardly speak. Boris Johnson will probably be next.

I have no particular sympathy for Sturgeon. It seems that the finances of her political party are a swamp, and the idea that has been mooted, that she might find a job in the United Nations or some other transnational organization, appalls me. I think that failed politicians should fade into the background and preferably not be heard from again.

But to arrest someone and then release him or her almost immediately without charge seems to be the procedure of a police state. It's no excuse that Sturgeon was herself no friend of freedom, that in fact she circumscribed freedom by promoting draconian laws against hate speech. The point about the rule of law is that it extends its protection to everyone, whether or not they personally deserve it: for it's precisely this that makes it morally superior to arbitrary rule.

To arrest and then release without charge is a way of destroying someone's reputation, for there's a natural propensity for people to assume that there can be no smoke without fire. Surely there must have been something on Sturgeon for the police to have arrested her: such is the way that most people will think, except for a rump of fanatical supporters.

Furthermore, we're now mostly so cynical that we believe that no successful politician—successful in the careerist sense—could have been entirely honest or never have broken the law. The presumption of innocence doesn't apply in their case: We presume that they're guilty. The only question is of how much.

A person such as Sturgeon who has been arrested, immediately released, and then told that there's an ongoing investigation into her, has already been punished de facto, irrespective of any subsequent finding of guilt or innocence, for she must live with the Sword of Damocles hanging over her head. It seems elementary that in a case such as hers, no one should be arrested unless there's strong prima facie evidence of

wrongdoing, strong enough to charge.

Another technique wrongly used by police and prosecutors is to bring so many charges against a person that defense against them all requires superhuman efforts unlikely to be within any individual's mental capacity. It's like asking a country to fight a war on 30 fronts at once: it can't be done. It's calculated to strengthen the popular idea that there can be no smoke without fire. Moreover, it heightens the temptation of the accused to plead guilty to something in return for the withdrawal of other charges. No system of justice in which there's plea bargaining can be other than morally corrupt. A person should be charged with what he or she's believed to have done, not charged with more in the hope of securing some conviction or other against him or her.

The new leader of Sturgeon's party, Humza Yousaf, has been heavily criticized for not having at once suspended her from the party. I have no liking for Yousaf, but in this instance, he's perfectly right: As yet, Sturgeon has been found guilty of nothing. It would have been different had she been found guilty of something, but she hasn't.

The case illustrates the fragility of the presumption of innocence in the human mind, in effect, its unnaturalness: We find it much easier to believe in guilt than in innocence (in part, no doubt, because we know that we're all guilty of something). A legal system in which there's a genuine presumption of innocence is an achievement of civilization, not of nature.

When I examine my heart, I find that, because I dislike Sturgeon, I hope that she's found guilty of having broken the law and that this puts an end to her political career, but I believe myself to be capable of sufficient dispassion that I could sit on a jury and judge her strictly according to the evidence presented, to wipe the prejudice from my mind. Indeed, the jury system is predicated on the assumption that

I'm not alone in this, but that it's within the capacity of most citizens to do likewise if called upon to do so.

On the matter of the legal pursuit of wrongdoing by politicians, I find myself not of one mind. Complete impunity is obviously dangerous, and there must be a point at which they should be held liable for their misdeeds. On the other hand, we elect people, not saints, and given the nature of politics since time immemorial, even the most admirable politicians have usually done something not entirely in accord with the laws (of us ordinary citizens, I don't speak). The prosecution of politicians for crimes that are not in themselves very heinous risks a cycle of vendetta that can only end badly.

But the argument that they, the politicians, are all the same, or that there are politicians who have done worse things than the one who is being currently prosecuted, is not a very good one. Clearly, some people have got away with murder, but that would not excuse a burglary that I had committed or be a sufficient reason for not prosecuting me for it. Indeed, the rhetorical argument of *tu quoque*— you also—is an implicit admission of guilt.

If, on the one hand, we don't want our politicians to enjoy impunity, but on the other we don't want to start a self-destructive cycle of vengeance, we need to be able to trust some authority to exercise proper judgment in the matter: but that's precisely what we can't do, to a degree unprecedented in my lifetime. How to restore trust, I don't know: Perhaps training ourselves to behave as if we believed in the assumption of innocence would be a start.

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