

# Above the Law

by Bill Herbst

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Some legal scholars and many other idealistic or naïve types tell us that no one is above the Law. They are so wrong. The Rich and Powerful *are* above the Law, almost without exception. They are so far above it that not only does the Law not apply to them, it's not even relevant to their day-to-day lives. And they know this with a certainty that makes their Rich and Powerful adventures (and misadventures) much easier for them, but often more costly for us.

To whom does the Law actually apply? Most commonly, the Law (as practiced) applies mainly to ordinary people, which is to say, those of us who are not rich or powerful or famous or noteworthy. That means most of us. Beyond that general application, the Law applies more harshly to disenfranchised minorities, or to any people who are otherwise powerless for any reason. Not surprisingly, the Law is most severe toward anyone who attempts to warn the public about the Lawlessness of the Rich and Powerful. Such courageous risk-takers who reveal corporate or governmental malfeasance are called "whistleblowers," and the Law goes after them punitively, in an unforgiving manner, with a hard-on for vengeance that is downright stunning to behold — dogged, unrelenting, and never giving an inch. Julian Assange and Edward Snowden may survive their travails, but they will never be free of the threat of legal assassination.

The Rich and Powerful believe not only that they are above the Law in practice, but that they *deserve* to be above it as well. This is borne out by so many of them acting as if they have immunity for any crimes — past, present, or future. They do whatever the hell they want, whether within the Law or outside it, with precious little fear of social consequences. Either they get away with their transgressions without even trying to evade the Law, essentially getting off scot free, or they employ technically legal measures to block the wheels of justice from turning. That translates as having access to highly-paid lawyers, often entire cadres of them, who are skilled at working the chinks in the system to delay, derail, or prevent any real justice from occurring.

Think of O.J. Simpson's "Dream Team," the assembled group of high-public-profile lawyers who successfully engineered Simpson's defense in what was arguably the most infamous murder trial of the 20th century.

Donald Trump is another near-perfect example of a Rich and Powerful Person who has employed with great success the strategy of manipulating the legal system to benefit himself, and thus repeatedly thwart justice from being invoked against him. Yes, over a lifetime of criminality, Trump has suffered occasional

setbacks, usually in the form of out-of-court settlement payouts, but these are minor aggravations for the Donald rather than meaningful defeats. There is a strong possibility that Trump will never be held truly accountable for his most serious misdeeds. His mishandling as President of the COVID pandemic is a case in point. This culminating Trump fiasco allows us to state with certainty that he's literally "gotten away with murder." The hundreds of thousands of Americans who may have died needlessly, as well as the families of the dead, can't look to the Law to provide consolation or even recognition of their loss, much less material compensation or any form of justice.

Consider also Bernie Madoff, the now-infamous Wall Street investment manager and swindler who ran the largest Ponzi scheme in history (at least the biggest one that has come to light after turning sour...). Madoff was not "brought to justice." The long arm of the Law didn't unearth his larceny and grab him by the scruff of the neck. Very significantly, *Madoff turned himself in*. His scheme of investment fraud scheme was indeed collapsing in the wake of the 2008 financial meltdown and could not have continued, but he might still have evaded justice in any of numerous ways, rather than confess his crimes and face the music. So, Madoff's conviction doesn't really qualify as an exception to the rule that the Rich and Powerful are above the Law.

A similar but even more perverse logic applies to Jeffrey Epstein. Although Epstein didn't turn himself in, his apparent "suicide" while in custody can hardly be called justice. Instead, it was very possibly a stunning evasion of the Law engineered to protect the many Rich and Powerful people with whom Epstein colluded during his long career of corruption and sleaze. Like so many of the most infamous events of our times — JFK's assassination and 9-11 come to mind — the truth of what happened will probably never be revealed. We'll be left with a spinning compendium of conspiracy narratives, whether reasonable or outrageous. This suits the Rich and Powerful, who prefer their depredations to be shrouded in mystery and clouded by obfuscation. They don't mind being accused, as long as they aren't convicted and held accountable.

Earlier in this commentary, I mentioned lawyers whose defenses of clients often seem to be focused on evading justice rather than serving it. That's the inspiration behind a well-known joke: "*What do you call 5,000 lawyers at the bottom of the ocean?*" Answer: "*A good start.*" This and similar gibes concerning lawyers are very old (some go back to Shakespeare), and part of why they're funny is because everyone understands their punch lines.

No one thinks, "*Wait. That's not funny. Everyone deserves a legal defense, which lawyers provide. Many lawyers are upstanding and ethical people, dedicated to preventing miscarriages of justice.*" I'm sure that's true, just as there are honest used car salesmen. And yet, the cultural memes trumpeting the presumed corruption in high-status professions — lawyers, judges, politicians, bankers, corporate execs, etc. — as well as many lower-stature sales and service jobs — used car salesman, auto mechanics, insurance agents, etc. — continue to resonate. Jokes abound. Is it mere envy or pique that causes us to mistrust such people? Is the public unjustly invoking the victim card? Do we cynically

smear our targets with too broad a brush, out of sheer spite? Something's going on here.

From my perspective, the problem is that honesty and purity live at one end of a value continuum where larceny and depravity define the other end. The entire continuum is contained within reality. For a given person, or within a specific situation, one side of the values coin may manifest in expression more obviously or tangibly, but the other side is still present as a potential, even if invisibly. When we see anyone who postures as honest to a fault or pure as the driven snow, questions arise about the shadow side. Angel or Devil? Which is it? Can we be absolutely certain that one is true and the other false in ourselves or in others? Is it even possible to live on only one side without some of the other?

These are difficult questions. When I take aim at and go after the corruption of the Rich and Powerful as I'm doing in this commentary, am I inadvertently (or even intentionally) guilty of oversimplifying what is actually a complex and nuanced reality? Probably. Am I echoing the historical zealot Robespierre in the French Revolution during the Terror, vengefully sentencing all Royals to the guillotine: "*Off with their heads!*" I hope not, but it's possible.

Christianity assumes that we are all sinners in need of redemption. That idea does appeal to me, mostly because I'm very aware of my own faults and failings. Whenever I get up on my high horse of self-righteous indignation, it's never long before I'm painfully reminded of how flawed I am. "*Let him who is without sin cast the first stone...*"

And yet, I feel that the thrust of this commentary is still relevant and at least partially truthful. To the best of my ability to see reality clearly and interpret it accurately, the Rich and Powerful *are* generally above the Law, in America and everywhere else. In addition, from where I sit, that *does* appear to be a significant factor in our collective woes.

Shall we kill the Rich and disembowel the Powerful? No, even if we had the will and the means to exact such punishments, I don't think that would do much, if any, good. It sure as hell wouldn't magically solve our problems. Most likely, any meting out of retribution would just make everything worse. And yet, the human ideal of justice virtually demands that at least *something* be done.

But what? I'm left with the same disappointing conclusion I come to in most of my writing, namely, that we need to get on with the difficult spiritual work of maturity — one person at a time, starting with ourselves. This kind of inner discipline, which is challenging for everyone, may be even more difficult for the Rich and Powerful, because privilege is so seductive, like a cocoon of apparent invulnerability.

I worry that we don't have enough time, that individual efforts, however positive they may be, are simply too slow, given the mounting crises we face and our increasingly urgent need to collectively change how we live. But here we are. Even our best efforts may fall short, but sometimes that's all we've got.