BILL BARR'S SCREED IS ABOUT MIKE FLYNN, NORA DANNEHY, AND ROBERT MUELLER

Bill Barr delivered a remarkable screed last night at the radical right Hillsdale College. Numerous people have and will unpack both the glaring contradictions and the dangerous assertions in it.

But I want to point out that it is quite obviously about Barr's attempts to overturn the prosecutions of Trump's flunkies for covering up their efforts to help Russia interfere in the election.

A big part of it is targeted towards independent counsels (though, tellingly, Barr assails the independent counsel statute that used to be, not the one that left Robert Mueller closely supervised by Rod Rosenstein).

> As Justice Scalia observed in perhaps his most admired judicial opinion, his dissent in *Morrison v. Olson*: "Almost all investigative and prosecutorial decisions—including the ultimate decision whether, after a technical violation of the law has been found, prosecution is warranted—involve the balancing of innumerable legal and practical considerations."
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> And those considerations do need to be balanced in each and every case. As Justice Scalia also pointed out, it is nice to say "*Fiat justitia, ruat coelum.* Let justice be done, though the heavens may fall." But it does not comport with reality. It would do far more harm than good to abandon all perspective and proportion in an attempt to ensure that every technical violation of criminal law by every person is

> tracked down, investigated, and prosecuted to the Nth degree.
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> [snip]
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> This was of course the central problem with the independent-counsel statute that Justice Scalia criticized in *Morrison v. Olson*. Indeed, creating an unaccountable headhunter was not some unfortunate byproduct of that statute; it was the stated purpose of that statute. That was what Justice Scalia meant by his famous line, "this wolf comes as a wolf." As he went on to explain: "How frightening it must be to have your own independent counsel and staff appointed, with nothing else to do but to investigate you until investigation is no longer worthwhile—with whether it is worthwhile not depending upon what such judgments usually hinge on, competing responsibilities. And to have that counsel and staff decide, with no basis for comparison, whether what you have done is bad enough, willful enough, and provable enough, to warrant an indictment. How admirable the constitutional system that provides the means to avoid such a distortion. And how unfortunate the judicial decision that has permitted it."
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> Justice Jackson understood this too. As he explained in his speech: "If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted." Any erosion in prosecutorial detachment is extraordinarily perilous. For, "it is in this realm—in which the prosecutor picks some person whom he dislikes or

> desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself."

And part of it is a restatement of the arguments Acting Solicitor General Jeff Wall made before the DC Circuit, arguing that even bribery was not reason for a judge to override DOJ's decisions on prosecutions.

> I want to focus today on the power that the Constitution allocates to the Executive, particularly in the area of criminal justice. The Supreme Court has correctly held that, under Article II of the Constitution, the Executive has virtually unchecked discretion to decide whether to prosecute individuals for suspected federal crimes. The only significant limitation on that discretion comes from other provisions of the Constitution. Thus, for example, a United States Attorney could not decide to prosecute only people of a particular race or religion. But aside from that limitation – which thankfully has remained a true hypothetical at the Department of Justice – the Executive has broad discretion to decide whether to bring criminal prosecutions in particular cases.

And the rest suggests that career prosecutors have been putting targets on the heads of politically prominent people and pursuing them relentlessly.

> Once the criminal process starts

> rolling, it is very difficult to slow it down or knock it off course. And that means federal prosecutors possess tremendous power – power that is necessary to enforce our laws and punish wrongdoing, but power that, like any power, carries inherent potential for abuse or misuse.
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> [snip]
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> Line prosecutors, by contrast, are generally part of the permanent bureaucracy. They do not have the political legitimacy to be the public face of tough decisions and they lack the political buy-in necessary to publicly defend those decisions. Nor can the public and its representatives hold civil servants accountable in the same way as appointed officials. Indeed, the public's only tool to hold the government accountable is an election – and the bureaucracy is neither elected nor easily replaced by those who are.
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> [snip]
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> We want our prosecutors to be aggressive and tenacious in their pursuit of justice, but we also want to ensure that justice is ultimately administered dispassionately.
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> We are all human. Like any person, a prosecutor can become overly invested in a particular goal. Prosecutors who devote months or years of their lives to investigating a particular target may become deeply invested in their case and assured of the rightness of their cause.
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> When a prosecution becomes "*your* prosecution"—particularly if the investigation is highly public, or has been acrimonious, or if you are confident early on that the target committed serious crimes—there is always

> a temptation to will a prosecution into existence even when the facts, the law, or the fair-handed administration of justice do not support bringing charges.
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> [snip]
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> That is yet another reason that having layers of supervision is so important. Individual prosecutors can sometimes become headhunters, consumed with taking down their target. Subjecting their decisions to review by detached supervisors ensures the involvement of dispassionate decision-makers in the process.

And it excuses, in one sentence, calling for probation even after a just prosecution.

> Other times it will mean aggressively prosecuting a person through trial and then recommending a lenient sentence, perhaps even one with no incarceration.

Of course, none of this makes sense, and Barr's own behavior — from removing Senate confirmed US Attorneys to put in people accountable only to him, from seeking prosecution of Democratic officials, and from launching the Durham investigation because he was just certain there was criminal wrong-doing in the Russian investigation — belies his words.

Perhaps it does so in the most basic way. If we hold our Attorney General politically accountable through elections, then we need to make sure elections are fair. We definitely need to make sure that elections are not influenced by hostile foreign powers cooperating with one candidate. The 2016 election wasn't fair, and Bill Barr is doing his damndest to make sure the voters won't be able to use the 2020 election to hold him politically accountable for interfering with the punishment of those who worked to cheat.

Because of Barr’s corrupt view on cheating at elections, he ensures that Vladimir Putin has more say over who gets prosecuted than experienced American prosecutors.