



SCOTUS nominee Gorsuch and 'over-criminalization'

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President Donald Trump's nomination of [Neil Gorsuch](#), a judge on the U.S. Court of Appeals for the Tenth Circuit, sparked a predictably hostile response from Democrats. But Gorsuch's record on criminal justice reform offers a rare opportunity for bipartisan agreement.

Gorsuch tipped his hand at a gathering of conservative attorneys in Washington, D.C., three years ago by addressing the issue of "over-criminalization."

Speaking at the [Federalist Society](#)'s National Lawyers Convention in 2013, Gorsuch said, "we have about 5,000 federal criminal statutes on the books, most of them added in the last few decades, and the spigot keeps pouring, with literally hundreds of new statutory crimes inked every single year."

"Neither does that begin to count the thousands of additional regulatory crimes buried in the federal register. There are so many crimes cowled in the numbing fine print of those pages that scholars have given up counting and are now debating their number," he continued.

"What happens to individual freedom and equality when the criminal law comes to cover so many facets of daily life that prosecutors can almost choose their targets with impunity," he asked.

The question highlights an alarming problem, but one that hasn't gone unnoticed in some quarters of both the left and right.

"From federal agencies independently attaching jail time to otherwise noncriminal behavior to U.S. lawmakers punishing crimes best dealt with by states, the problem of over-criminalization is growing," [explains](#) the libertarian Cato Institute.

The conservative [Heritage Foundation](#) cites the explosion of criminal laws as a major area for reform, and the [American Bar Association](#) hosts an over-criminalization task force to educate attorneys on the "urgent problem."

The left-leaning American Civil Liberties Union has turned its attention to confronting [social inequities](#) born from criminalizing broad swaths of everyday life. It launched a [Criminal Justice](#)

Reform Project to reduce “excessively harsh criminal justice policies” that result in racial disparities and disproportionate sentencing.

One outgrowth of having too many criminal laws is what critics call “mass incarceration.”

“America, land of the free, has earned the disturbing distinction of being the world’s leading jailer. Representing just 5 percent of the world’s population, we now hold 25 percent of its inmates,” the ACLU says.

The Prison Policy Initiative, a nonprofit research organization, says over-criminalization and high rates of incarceration go hand-in-hand to “undermine our communities and national well-being.” The group cites Florida as having one of the highest incarceration rates in the country.

“Historically, ‘crime’ was a term restricted to morally blameworthy actions, but today, many ordinary activities are captured by the term,” says Right on Crime, a project of Texas Public Policy Foundation.

In his Federalist Society remarks, Gorsuch cited absurd examples of overreach.

“It’s now a federal crime to misuse the likeness of Woodsy the Owl,” Gorsuch said.

“Businessmen who import lobster tails in plastic bags rather than cardboard boxes can be brought up on charges. Mattress sellers who remove that little tag? Yes, they’re probably federal criminals too,” he said.

The full speech can be seen here: