

Seditious Conspiracy Is the Real Domestic Terrorism Statute



Most importantly, congressional action would have a major expressive effect. It would recognize that, as least as it applies to attacks on the government or in response to government action, domestic terrorism is a serious danger, on par with international terrorism, and would allow official condemnation of certain crimes as not merely violent or obstructive but terroristic. It is true that seditious conspiracy itself carries serious rhetorical weight, but it is ultimately a term of a different age and historical context. The proper contemporary analogue, because it carries the most symbolic weight in contemporary society, is

domestic terrorism. Moreover, the unfortunate broader history of sedition prosecutions—from the Alien and Sedition Acts of the Adams administration to the use of the seditious conspiracy statutes to punish objectors to World War I, including socialist leader Eugene Debs—undermines the normative force of calling something sedition.

Terrorism, with its clear connection to violence, is a more effective term of contemporary social opprobrium. To be sure, a wholesale replacement of the seditious conspiracy statute with one modeled on the domestic terrorism definition would raise its own challenges. If Congress, seeking to not expand the scope of existing criminal law, excluded from criminal liability acts meant to “intimidate or coerce a civilian population,” that would leave unaddressed much of the actual violent-extremism threat. For example, the racially motivated murder of nine people at a Black church in Charleston, South Carolina, by the white supremacist Dylann Roof, while falling under the current federal definition of domestic terrorism, would not fall under a domestic-terrorism law that tried to mirror the current scope of seditious conspiracy. Such a law would thus reinforce the problematic legal distinction between international and domestic terrorism. At the same time, Congress simply replacing seditious conspiracy with the current domestic-terrorism definition would substantially expand the scope of federal criminal law, raising legitimate civil liberties concerns.