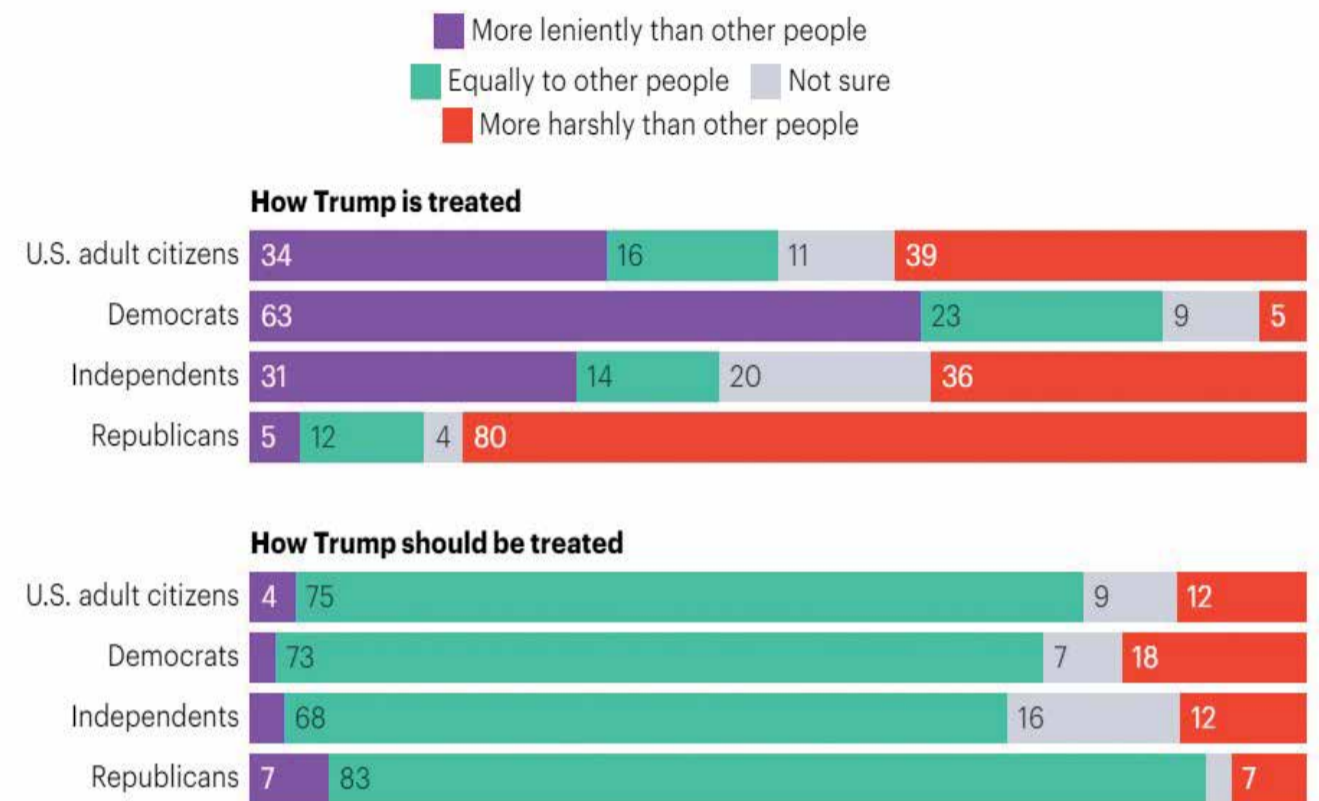


The illustration shows former US president Donald Trump, who was recently convicted of a felony, peering through a pair of handcuffs.
● PAUL SPENLA/THE ATLANTIC



Most Americans say Trump should be treated like any other defendant. Few think he is

Which comes closest to your view of how Donald Trump [is / should be] treated by the criminal justice system? (%)



YouGov

Chart: David H. Montgomery • The Economist / YouGov | June 2 - 4, 2024 • Get the data

and his threats to weaponize it himself have long gone hand in hand. “Trump ran, extraordinarily, in 2016 on a campaign of ‘lock her up,’” Pearlstein pointed out, referring to Trump and his supporters suggesting that his 2016 opponent Hillary Clinton should be imprisoned. “That was stunning at the time, it was what made so many of us worry about not just this particular candidate, but democracy more broadly, beginning then.”

That’s one reason why legal experts were concerned that the most recent prosecution of Trump would not only open the door for more of his attacks on the legal system but would further embolden Trump and other Republicans to call for retaliatory charges against Democrats — which could potentially be a step toward the slippery slope to authoritarianism. Indeed, enacting “retribution” on his opponents is something Trump has repeatedly suggested he might do if re-elected, and what some Republicans are calling for now.

“Prosecutorial discretion in the wrong hands is a truly dangerous thing,” Barkow said, arguing that the country is already “over-criminalized” such that almost anyone could be attacked for some kind of crime. “And now, you’re talking about the politicization of prosecution — that takes place in other countries that ... don’t have strong democratic norms. And that’s when we end up on that sliding scale to autocracy.”

Some of the other legal experts we spoke to were more confident about the checkpoints in place to prevent that. To charge someone with a crime, prosecutors have to convince juries and judges and meet the burden of proof in their cases. And, as a counterpoint to Trump’s claims of partisan bias from the courts, Lawless said the fact that President Joe Biden’s son, Hunter, has been convicted in his own trial might help bol-

ster faith in the justice system. Despite public approval of the Supreme Court being down, voters still have a lot of faith in the judicial system overall, she said. “People still generally believe in the way that the criminal justice system works, certainly for a billionaire white man,” she said. But one thing all of the experts noted is that Trump hasn’t hidden his ambitions to overhaul existing democratic systems and norms. Pearlstein pointed to reporting around conservatives’ “Project 2025” presidential transition blueprint, which includes plans to install political loyalists in key government positions — a move experts say would erode some of the guardrails that protect democracy. “If you start mucking with the systems that check the role of employees of the federal government who should be, in effect, impartial ... then you disable one of those checks that do

make the weaponization of the Department of Justice more likely,” Pearlstein said.

Still more Trump trials to come

No matter how well experts think the hush-money trial went, it is only one of several Trump-related challenges the system faces. Polling shows that most Americans view the charges in the three other pending criminal cases against Trump — the Florida case related to mishandling of classified documents, the Georgia election interference case, and the federal election interference case related to January 6 — as more serious than the New York case, but it seems unlikely there will be any resolution on those cases before the election. The fact that voters are waiting for those cases to unfold is a problem in and of itself, the experts said.

“In a functioning democracy, [if]

a person ... in a very public way, worked with numerous other people to stop the certification of a free and fair election, there would have been some sort of accountability mechanism that would have been allowed to play out fully,” Parker said. She felt it was “problematic” that voters likely won’t get a chance to see the evidence presented at trial and a verdict in many of these cases before they’re asked to make a choice in November.

The country’s deep political polarization is one of the main reasons for this delay, these experts said — an observation that underscores how legal challenges to the former president have become intrinsically tied to politics. As was evident in the discourse around Trump’s first trial, some liberals may be hesitant to target Trump in ways that rally his base to his defense, while some conservatives may be biased toward

Trump’s innocence. That hints at some of the problems that have already cropped up in future cases, like the classified documents case in Florida overseen by Judge Aileen Cannon. Cannon is a Trump-appointed judge who legal experts say, unlike Judge Juan Merchan in New York, has deviated from the norm in her handling of Trump’s case. Even before the trial began, Cannon appointed a special arbitrator to review the classified documents taken from Mar-a-Lago, a move that slowed the federal criminal investigation into those documents and was quickly overturned and criticized by an appeals court. And Cannon’s actions and decision-making as the case unfolds have continued to draw criticism from legal observers.

While some have noted Cannon’s relative inexperience as one reason for her unexpected decisions, most experts say she’s ex-

hibited a clear favoritism toward Trump. Pearlstein says Cannon’s actions thus far have seemed calculated and intentional. “If I were her and I were trying to make this take as long as possible ... and if I were trying to leave open channels for inappropriate outcomes, this is how I’d be behaving,” Pearlstein warned. “She’s not behaving normally for a criminal judge. And that’s what worries me about this case.”

Some have expressed concern that the Supreme Court’s long deliberations over Trump’s executive immunity case are a similar stalling tactic, and that likely outcomes for a ruling from the court’s conservative majority will effectively shield him from further criminal prosecution before the election, even if they don’t grant him complete immunity. Beyond that, if Trump wins in November, he’s reportedly working to try to shield himself from current and any further prosecution, a change that could fundamentally alter the rule of law.

This has been part of how Trump has operated from the beginning of his candidacy, from “lock her up” to trying to overturn the results of the 2020 election, Pearlstein said. And the fact that conservatives have largely reacted with indifference or renewed support in the face of Trump’s conviction shows just how far he’s come in reshaping democratic norms.

“Up to now, people who have sought to lead the executive branch of our federal government ... have bought into the idea that our constitutional system of government was a good one,” Parker said. “When you have an extremely powerful person and an extremely powerful set of actors acting in unison to tear down the legitimacy of a process ... that is going to have an effect.”



Republican presidential candidate, former US president Donald Trump (C), awaits the start of proceedings in his criminal trial at the New York State Supreme Court in New York, the United States, on May 2, 2024.
● DOUG MILLS/POOL

The article first appeared on ABC News.