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February 26, 2020: The Crisis Over Recusal

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Title: The Crisis Over Recusal

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2/26/2020—This topic requires more room than I can give it right now. President Trump is calling on Justices Ginsburg and Sotomayor to recuse in cases involving him. The real issue is judicial independence and the rule of law. If you believe that all law is now politics, not in the policy sense but in the partisan sense, then the idea of a rule of law is impossible. As one commentator wrote, *Bush v. Gore* was the first case in which people really thought the outcome turned on Party affiliation. That was a real low for the Court. It is no surprise that the Justices have ideological positions. But now, in our highly polarized setting, Party affiliation seems to be on display. Or, we think it is. Ginsburg had no business calling candidate Trump a “faker” when he was the likely Republican nominee in 2016. Roberts said we don’t have Obama judges and Trump judges, but, as I have written previously, no one agreed with him.