

EROSION OF CIVIL LIBERTY

Blinded by the “new morality” of pro-choice, affirmative action, environmentalism, greed for the common good and an insatiable drive for power, burgeoning “laws” are being passed, restricting the fabric of liberty in the United States. Some are coming through the legislative process. But most are evolving through regulatory decisions or directly from the bench, criminalizing social behavior which has no bearing to moral wrongs that traditionally defined a criminal act.

The majority of these statutes come under the guise of *administrative law* and are enforced by unelected regulatory authorities that have no accountability to the people. “Today Americans are drawing prison sentences for unknowingly violating vague regulations ...

“Law, which once served a concept of justice, has been replaced by a tyranny that answers only to the conscience of prosecutors. One might think this development would strike a chord among conservatives. However, intent on chasing down criminals and now terrorists, conservatives have turned a deaf ear to the collapse of the legal structure built over the centuries in order to protect the innocent.”¹

Examples of the risk to anyone comes with two illustrations. One: The Exxon Valdez oil spill was an accident of negligence which should have been prosecuted a civil matter. The whole argument was treated as a criminal case. Two: Edward Hanousel, *manager* of a railroad in Alaska, was off duty when a worker, on his own initiative, used a backhoe to remove rocks from a train track and accidentally ruptured an oil pipeline. Several thousand gallons spilled into the Skagway River. Ed Hanousel was given a stiff prison term for not supervising the worker properly.

Novel regulations are being created and equally novel interpretations are being levied by prosecutors to indict people for crimes that didn't even exist *before* the legal process began. In the past, felony charges were imposed when “intent” to commit was shown. Now that intent is no longer required, prosecution for criminal behavior can be actually created by an indictment. A conviction can be sought in the name of a “common good” regardless of moral innocence.

This crisis has now reached serious proportions. Between March 2001 and March 2002, Federal prosecutors initiated 62,957 regulatory cases. During that time 3,100 defendants were charged with criminal violations of “federal statutes.” More federal resources are going into this “new” and novel area of “crime” than murder, robbery, embezzlement, forgery or sex offences.²

Accidents and negligence can now be criminalized instead of being dealt with under civil law, and conviction can come for the misbehavior of another. This can be based on a “prohibited” act that is not morally wrong but declared by a prosecutorial opinion. Thus, loss of liberty, a severe sanction of freedoms can come from a social agenda by those in power.

How far has the prosecutorial arm gone in the United States in the area of indicting moral innocence?

¹ Roberts, Paul Craig; “Everyone a Criminal,” Townhall.com 5/7/03.

² Rosenzweig, Paul; “The Over-Criminalization of Social and Economic Conduct,” *The Heritage Foundation*, 2002. Paul Rosenzweig is Sens Legal Research Fellow in the Center for Legal and Judicial Studies at the Heritage Foundation and Adjunct Professor of Law at George Mason University.

1. Conviction can come for unknowingly committing an illegal act (i.e., transporting mislabeled medication on a truck across a state line when unaware of details of load) if the opportunity existed to learn of its wrong before hand (United States vs Dotterweich).
2. Conviction for negligence when an underling manager fails to follow through with an order in another state (United States vs Lark). (Acme Food president charged with a rodent problem when he had ordered a store manager to resolve it in another state. It wasn't completed in a timely manner.) Thus, Acme President Park was charged with "felony failure to supervise" and jailed.
3. Conviction for antitrust violations when successfully competing without any deliberate *intent* to monopolize (United States vs Gypsum Co.) (corporate executive indicted because he should have suspected a crime because company's shares were rising in value).
4. Conviction of a manager for wrongful acts of workers, even though not on duty (United States vs Hanousok – accidental break in oil pipeline).

"The use of the *public welfare doctrine* to address social goals enlists the criminal law as an agent of social regulation and change." "In effect, the criminal law, through *the public welfare doctrine* has become a tool of socialization ..." "Society has come, instead to rely on the 'conscience and circumspection' in prosecuting officers'

"Where once, to be a criminal, an individual had to do an act (or attempt to do an act) with willful intent to violate the law or with knowledge of the wrongful nature of his conduct, today it is possible to be found criminally liable and imprisoned for a substantial term of years for the failure to do an act required by law, without any actual knowledge of the law's obligations and with no wrongful intent whatsoever. These developments are advanced in the name of the 'public welfare' – an express invocation of broader social needs at the expense of individual liberty and responsibility."³

Criminal law has come to this strange and unusual point. Constitutional issues are being abrogated by regulatory officials for the "common good" and "public welfare" of society. Judicial decisions bypass the legislative process. A growing number of government leaders are seeing the constitution as "fluid" – it can be worked like a piece of clay. Personal liberties are being taken away, case by case. It is only a matter of time when such actions will be made on a corporate scale, restricting liberty on segments of society and not just individuals. Legal precedents have been made and upheld. The framework for unprecedented curtailment of liberty is in place. Biblical evidence suggests this will culminate in a moral mandate called the "abomination" (Daniel 8, 9, 11, 12; Matthew 24) "which leads to desolation" (utter ruin).

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³ *Ibid.*