

There Should Be a Law . . . Really?

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You too are a criminal. Have you sifted through your household garbage lately? The State soon may.

The North Carolina General Statutes in §130A-309.10(f)(6) prohibit the disposal of aluminum cans in the landfills of North Carolina. As of October 1, 2009 the disposal of nearly every plastic container used in your home will be similarly prohibited. Like many of you, it came as a surprise to me that I had been an unwitting criminal under the existing law.

I am not writing to discuss the efficacy of conservation or recycling. What I am concerned about is the overcriminalization of our daily lives. The State Legislature is increasingly willing to take what are moral judgments about what is good for the public welfare and impose certain affirmative acts or prohibitions upon citizens as legal imperatives with criminal penalties. This is done without the former requirements of a criminal offense that one knowingly commit a criminal act with the intent to do wrong. Instead, these acts or prohibitions are criminal simply because the laws say they are illegal. The laws lack the inherent elements of identifiable wrong or harm to others.

Many may argue that these are prudent actions or rational constraints; however, few of us would naturally identify the act or omission as inherently wrong or expect that it should warrant criminal penalties. The debate is not necessarily whether any of these things are appropriate restrictions or represent proper behavior. I wore my seatbelt long before it was a law. I have never smoked a cigarette. And, I make an effort to safely use a cell phone while driving. Nevertheless, there is something distasteful about a politician making decisions about how best to live my life. There are much more important and pressing problems that warrant the attention of our elected officials.

Crimes represent behavior below that deemed acceptable in civilized society. Laws are ineffective in dictating behavioral ideals. Even if you agree with each and every one of the legislated acts or prohibitions, the overcriminalization of everyday activities is a very real danger to society. When minor breaches of decorum and generally accepted behavior are criminalized, nearly everyone eventually becomes a criminal. When this happens, the deterrent and stigma are lost. Only where the prohibited act is clearly harmful to others and generally condemned as an actionable wrong by citizens, should the act be criminalized.

Many of us have knowingly violated one or more of these public welfare laws, or likely will in the future. We violate them out of ignorance, blatant disregard, or simply with the knowledge that the laws are difficult to enforce or carry only nuisance penalties. Each of these reasons or justifications seriously undermines the protections of a criminal code.

When our adherence to criminal laws depends not upon our inherent sense of right and wrong but upon whether we are likely to get caught or upon the significance of the punishment imposed, we risk losing the ability to effectively enforce criminal laws at all levels. Law

enforcement agencies face a dilemma. They must expend precious time, effort, and resources in the enforcement of laws amounting to civil etiquette, or accept that these laws will likely be violated with impunity. The agencies generally will choose to selectively enforce many offenses (risking unequal application of the laws) and choose to concentrate efforts on offenses deemed “serious.”

In fact, many laws, including the one prohibiting aluminum cans and plastic bottles in landfills, are explicitly written with the expectation that they will be disregarded. Even where the expectation exists that the law will be enforced as written, the practical obstacles to enforcement make certain laws obsolete or nearly meaningless. Keeping antiquated laws on the books and criminalizing generally accepted behavior or selectively enforcing laws marginalize the effectiveness of other “more important” laws.

Citizens and law enforcement should not be put in the positions of picking and choosing what laws they obey and enforce. If a law is important enough to put on the books, then it is important enough to enforce. If there is not the will to abide by or enforce the law, then serious consideration should be given as to whether the law should exist.

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