

THE CASE AGAINST VICTIMLESS CRIME LAWS

A college student in Houston, Texas is convicted of possession of marijuana (his first offense) and is sentenced to 30 years imprisonment. A collector of antique guns in Washington, D.C. is critically wounded when police batter down the door of his apartment and gun him down while his wife stands screaming. A thirteen-year-old girl is tied for 77½ hours to a bed and given painful intermuscular injections as part of her psychiatric "treatment" at Elgin State Mental Hospital in Chicago.

These are just three of literally millions of examples of the way in which the coercive power of the government is used to violate the rights of peaceful men and women in America. In almost every case, legal blunders, incompetency and just plain brutality will be upheld by a legal system armed with millions of archaic and unjust laws.

In 1977, over ten million Americans, representing over 4½% of the population of the United States were arrested by the police. At least half of these persons, or well over five million Americans, were arrested not for attacks upon other people or upon their property, but for "victimless crimes", acts which the government violently (although very selectively) disapproves of, but which do no violate anyone's rights: drunkenness, possession of drugs, prostitution, homosexuality, gambling, vagrancy, loitering, pornography, and the like. (Figures from 1977 FBI Uniform Crime Reports.)

In order to police the morals of America and "protect" these men, women and children from themselves, many will be forcibly separated from their homes, families and jobs and thrust into a brutal sub-human prison environment, from which they will emerge as real threats to others, rather than simply as the imagined threats that they were to themselves before incarceration. To save offenders of the public morality from the scourge of indolence, or intoxication, or promiscuity, they will have their rights obliterated.

In the name of "due process", and in obedient conformity to the law, the state yearly commits aggressions of incredible magnitude: The harsh reality is that every year the number of Americans unjustly arrested and imprisoned exceeds the population of Norway. There are entire prisons filled with children whose crimes consist of running away from home or staying out past a curfew. And there are hundreds of Americans killed every year by police error, incompetence or brutality—which will usually not even bring a departmental reprimand.

The disgraceful reality is that 'justice' in America today is more often than not *injustice*; that the aggressions committed by police, judges, juries and jailers are vastly greater than all private American violence; and that the American 'justice' system produces more wholesale destruction and carnage than it even remotely beings to prevent.

Crimes And Aggressions

There is a vast difference between "crime" and "harm". While rationally the only acts which should be illegal are those which cause harm to others, today that is far from being the case. There are entire law books filled with acts termed "criminal" by the courts and legislatures which are violations of no one's rights. Examples are plentiful: In Virginia non-marital cohabitation is punishable by sentences of up to two years in jail. In Texas simple *possession* of marijuana can draw up to 30 years in prison. And in Georgia oral sex, even with one's own wife, is a felony which can incur the death penalty.

As insane as these laws are, they are paragons of justice compared to thousands of archaic state and local ordinances still in force: In Maryland it is illegal to wash your car on Sunday. In one locality in Kansas it is against the law to serve ice cream on cherry pie. And in Ohio it is a felony for an instructor of roller skating to seduce a female pupil.

In popular usage, a *crime* is simply any violation of any law, whether it is a law against murder or a law against masturbation. Anyone arrested for violating any law is generally considered a criminal and will in any event be listed in the FBI's crime statistics.

At the same time that the forces of law and order are waging a relentless campaign against topless go-go dancers and juvenile curfew violators, many acts which are clear violations of life and property are blessed by the state, including such things as knocking down people's homes without their consent under eminent domain, and dropping napalm on children in Indo-China. Thus whether or not theft, murder and every other violent act known to man are "crimes" depends not upon *what* is done, but rather *who* is doing *what* to *whom*. Clearly there is something basically wrong about a system of "justice" which simultaneously condemns private sexual relations and condones public infanticide.

In distinction to the hazy moral category of "crime", I use the term *aggression* to refer to deliberate acts which cause others harm and which violate their natural right to their own life, liberty and property. An aggression is an act of violence against a peaceful person, the initiation of force against an innocent victim. Deliberate acts which merely make others upset or a person's refusal to act as others decree, are not aggressions.

In order to aggress against you, it is first necessary that I actually *do* something. If I merely am sitting at home minding my own business, I am not *acting* in a way harmful to you. If I merely refuse to take an action that you desire me to take, I am not diminishing your welfare below what it was previously. You may be worse off than you *would have been* had I acted as you desired, but you are not worse off than you *were* through my inaction.

One's *inactions* which are prohibited by law, are therefore the most fundamental of victimless crimes. Such passive crimes include refusal to attend public school, vagrancy, draft resistance and working without a permit.

In order to aggress, I must do something *to you* which directly causes you physical damage or material loss. If I do something *to myself*, however ugly or stupid you regard it, I am not aggressing against you. If I get sick because I use proscribed drugs, if I become unemployable because I drink too much, or if I get my kicks by watching films of people having intercourse with animals, I am not aggressing against you. These actions may outrage you, or make you feel insecure, or infuriate you, but they do not harm your life or property. Simply, you have no right to interfere with what I do *by myself*.

Consider the alternative. If the mere fact that persons private actions make others upset is sufficient grounds for incarcerating them, then there is *no limit* to the scope of the law. Are gays and women in tight clothing to be jailed because some in society disapprove of their behavior? Do Christians have a right to imprison Jews because they reject Christ? Do vegetarians have the right to assault cattle farmers? To allow a legal system to "protect people from themselves" for ills real or imagined is to open a Pandora's Box of civil chaos, and to substitute opinion for objective law.

Victimless Crimes For Everybody

The classic statement against legislating morality was made by John Stuart Mill over a hundred years ago in *On Liberty*. He wrote:

... the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their members is self-protection . . . the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise.

Since John Stuart Mill made that statement in 1859, the attempts of the state to legislate morality have increased rather than declined. According to *The Washington Post*, one-third of what are now called "crimes" were not called crimes in 1900.² Because laws are continuously made, but virtually never abolished, practically every admonishment against sin has been written into American law at some time. In the United States today there are some *five million laws*, and the total grows daily. Included in this tractless morass of legal strictures are prohibitions against long hair, statutes outlawing whistling, laws prohibiting going bare-footed, and tirades

against drink, drugs, kissing in public and ridiculing the public architecture.

Laws against sexual pleasure deserve special consideration. In thirty-six of the fifty states, oral-genital sex is still a crime punishable by sentences up to and including death. Adultery incurs legal penalties as high as a five year prison sentence. Sexual intercourse with a willing, even with a sexually aggressive female under the age of consent (which varies from ten years of age in Florida, South Dakota and New Mexico, to twenty-one in Tennessee), is called "statutory rape" (accounting for 60% of all criminal rapes) and carries punishments up to and including death. Every other conceivable form of sexual relationship and activity—including kissing one's wife in public—is illegal in most states under the sodomy laws.³

And these laws are still enforced. In 1977, no less than 68,300 persons were arrested for "statutory rape, offenses against chastity, common decency, morals and the like."⁴ According to Kinsey, some 95% of the adult male population of the United States are legally "sex criminals". The hatred of pleasure implicit in American sex laws is so great that one author has observed "it is as if the sex offense laws were designed to provide an enormous legislative chastity belt encompassing the whole population."⁵

But sex is only one area in which the laws of the United States are blatantly repressive. The number of legal prohibitions in force in the United States today is greater than those in force in any other society at any time in recorded history.⁶ There are laws against spitting, cursing and laughing too loud ("disorderly conduct"); laws against protesting illegal police actions ("interfering with an officer"); laws against making too much money ("price gouging", "unfair competition"); and laws against making too little money (vagrancy). There are in fact so many laws in force in the United States today that the concept of "obedience to the law" has become a logical absurd. To attempt to obey them all would be more difficult than walking on a tight rope in a lead suit.

In fact, most Americans do not even try to obey the laws. Until recently, over a million criminal abortions were performed in the U.S. each year. Over one million Americans are arrested every year for violation of the drunkenness laws.⁷ A recent study of 2,000 college students chosen at random found that 100% of them had broken a law for which other people were serving time in prison.⁸

Today there are so many laws in the United States that every man, woman and child is simply an unaccused criminal. What does "strict enforcement of the law" imply in such a context?—Simply that everyone should be put behind bars, including the politicians who make the laws in the first place. Contrary to popular opinion, it is not the strict enforcement of the law which brings order, peace and plenty to the land. In fact, they can only exist because most laws are *not enforced* and the remaining laws are *selectively enforced*. Any attempt to strictly enforce all laws would quickly spark a new civil war between a government determined to protect men from themselves, and a people scrambling to protect themselves from their protectors.

Victimless crime laws should be wiped from the law books. This would result in an enormous increase in human liberty, reduce the cost of running the legal system by over 50% and enable law enforcement officials to more effectively prosecute real aggressors. In addition the elimination of victimless crimes would result in a tremendous secondary reduction of violent crimes of all types: It is estimated that in most large cities, 80% of violent street crime (theft, assault, murder, etc.) is drug-related. Because heroin, cocaine and other such substances are illegal their street price is up to 5,000 times their cost to legal consumers, such as hospitals. This means that drug users must steal and kill to buy drugs whose cost would be tiny in the free market.⁹

Law And Liberty

Aggressive laws, laws which tell men and women how to make love, where to live, or what they may not put into their bodies, do not further the end of a peaceful and free society, nor do they contribute to the maintenance of a beneficent social order. On the contrary, aggressive laws create discord where there was none before and set men at each other's throats.

The willful and principled disobedience to aggressive laws is thus not a step toward social chaos, but a blow for freedom and human dignity. The mindless conformity to *all* laws would rob us of the very humanity that law should seek to preserve.

Those who demand without distinction "law and order" are effectively if unwittingly demanding that the country be turned into a vast concentration camp in which all are equally enslaved. Any law which makes legality inimical to liberty is itself anti-social, anti-human and anti-life.

Since there can be no such thing as an obligation to assist in one's victimization, there can be no such thing as an "obligation" to obey aggressive laws. Victimless crime laws rationally command only contempt, disobedience and immediate and complete abolition.

FOOTNOTES

¹Dick Hyman, *It's Against the Law* (Pleasantville, New York: Reader's Digest Press, 1971).

²Ben H. Bagdikian and Leon Dash, *The Shame of the Prisons* (New York: Pocket Books, 1972), p. 158.

³Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: University of Chicago Press, 1970).

⁴1977 FBI Uniform Crime Reports.

⁵Op. Cit., Morris and Hawkins, p. 16.

⁶Op. Cit., Morris & Hawkins.

⁷1977 FBI Uniform Crime Reports.

⁸Op. Cit., Bagdikian and Dash, p. 154.

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