

Let's Not Make A Federal Case Out Of It

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"Don't make a federal case out of it." That's what I used to hear growing up, meaning "don't blow things out of proportion." It can't really mean that anymore since so many seemingly trivial offenses are indeed now federal.

The framers of our Constitution envisioned a federal government focused on national issues such as war and peace. Most everything else was left up to the states. In fact, the Constitution mentions only three federal crimes: treason, piracy and counterfeiting. By using the power of Congress to regulate interstate commerce, we now have well over 4,500 federal offenses. Really, it's more than that. We don't know the exact number because in addition to the 4,500 actual written laws, there are thousands of regulations that carry criminal penalties. The very first federal criminal statute, signed into law April 30, 1790, fit onto two small pieces of paper. You can still see those at a museum. Well, we now have 27,000 pages of federal code!

When God delivered the children of Israel from bondage and sent them on the Exodus, He had to teach them His laws because only a handful of the leadership knew them at that point. So if you were to thumb through your Bible—you don't need to—starting in Exodus 20, you could read the headings: The Ten Commandments, The Law Concerning Servants, The Law Concerning Violence, Animal Control Laws, Responsibility for Property, and so on.

Moses had to initially act as judge for those millions of people. His father in law, Jethro, watched him one day and said "the thing that you do is not good." In effect, "you're going to kill yourself." So he suggested—I think with God's inspiration—a system of judges: rulers of tens, rulers of fifties, hundreds, thousands and so on. I have no way of knowing what went through the minds of the men who wrote our Constitution, but I'll bet they were familiar with this example. Small matters are best dealt with on local levels. Even Alexander Hamilton, an ardent supporter of federal power, wrote in *Federalist 17* that under the Constitution, "the ordinary administration of criminal and civil justice" would be left to the states.

So where did we jump the tracks? Funny I should mention tracks, because that's where it started—the railroads. Between 1830 and 1870, rails were laid across the continent and train travel began to dominate life. A lot of cows wandered onto tracks and were killed. A lot of embers, from wood burning locomotives, set fire to fields and barns. Farmers went to local and state courts and were compensated for their losses. Railroad companies were not happy with this. They learned very early that with a little lobbying, spreading around a little money, that they came out better in federal court. Federal court takes longer, costs more, is farther away, has more difficult procedures, and it's harder for an amateur to win in federal court. So, make a federal case out of it. Get the locals in federal court. It worked for the railroads, and it still works today. Hence, the federal courts are backlogged horrendously.

It seems that every day in the news you see something happening, and the reporter quotes a politician: "We need a new law!" I remember a long time ago—2004, actually—Barry Bonds, the baseball player, was caught using steroids. Immediately, Senator John McCain said, "We going to pass a law." Do the feds really need the FBI testing baseball players?

In the months leading up to 9-11, the FBI was engaged in an 18 month long sting operation at a brothel in New Orleans. I'm not saying that, had they not, we could have prevented 9-11. Not at all. But it is doubtful that the arrest of 12 prostitutes, after 18 months of work, was a good use of our resources. Thousands of dollars, thousands of man hours, and I'll bet those same women were back on the street the same day after posting bond. As far as I know, they never caught any higher ups.

In 2009, Eddie Anderson of Craigmont, Idaho, a retired logger and former science teacher, loaned his son some tools to dig for arrowheads. His son didn't find any that day, but he and his dad ended up charged with a federal crime. The Archaeological Resources Protection Act of 1979 doesn't require criminal intent. It does not even require you to have stolen something. But it carries a two year prison term if you *attempt* to take artifacts off federal land without a permit. The Andersons had no intent to break the law; they didn't even know the law existed. And where the son searched for arrowheads—and remember, he didn't find any—was a favorite camping area of theirs. Still, they were charged and prosecuted. Eventually they plead guilty to a misdemeanor and received a year's probation and a \$1500 fine each. Is this really what needs to occupy the U.S. Attorney for Idaho?

Some of you may remember Bobby Unser, a retired race-car champion. He has a federal misdemeanor conviction. A few years ago, when he was in his early 60s, he was snowmobiling in the backcountry of Colorado with a friend and they got lost in a blizzard. He says it was a life threatening experience—I don't doubt it. His snowmobile broke down and they wandered for 2 days. At night, they dug a snow cave after trudging through waist deep snow all day long. The next day, they walked for 18 hours until they found a barn with a phone. They were taken to a hospital and treated for exposure and minor injuries. When Bobby recovered, he went to the Forest Service for help finding his lost snowmobile. That's when he found out he had wandered onto protected federal land and violated the Wilderness Act, for which he was charged and convicted! Oddly enough, his friend wasn't charged, some say because he wasn't a celebrity. A spokesperson for the Denver office of The Wilderness Society said they were happy to see the government go to court to protect the Wilderness Act. Maybe they would have been even happier if the two men had died—that would serve them right for running a snowmobile on federal land! But he fought it, and he lost, and was convicted. He now has a record.

Where is our common sense?

Did you know it is a federal crime to use the Smokey the Bear image without permission? Did you know it is a federal crime to use the slogan, "Give a Hoot, Don't Pollute"?

Gene Healy, writing in Reason.com (December 17, 2004) had some good thoughts:

In 2002, President Bush signed legislation making it a federal crime to move birds across state lines to engage in fights. The ban on cockfighting joined such notable federal crimes as interstate transport of unlicensed dentures (punishable by up to a year in prison), tampering with an odometer (up to three years) and pretending to be a member of the 4-H Club (up to six months). These and other offenses larded throughout the U.S. code could make for an interesting conversation with one's cellmate: "What are you in for, kid?"

And so many of these federal laws overlap with already existing state and local laws, forcing federal courts to handle mundane day-to-day criminal and civil matters and leading to huge delays. We have a constitutional right to a speedy trial, but everyone waits now because the courts are jammed up.

Then there are the exorbitant costs of this misguided set up. I would take you back to the example of Moses and how God inspired a system of judges to administer His laws, starting with the small ones and working the way up.

But it's not just the money and time spent by a federal government focused on everything from dentures to arrowheads. What about the costs to the rule of law? Again, according to Mr. Healy,

A federal criminal code that covers everything essentially delegates to prosecutors and police the power to pick targets they think they should get rather than offenses that need to be prosecuted, leaving everyone at risk.

In no way am I condoning breaking the law here; I am merely pointing out that common sense seems to have been lost in many cases, and judges are forced to deal with trivial matters better left to those back down the line. Federal penalties are set, a lot of the time, in the statute, meaning the judge has no leeway. If you choose to fight the charge and you lose, he has no option but to give you the penalty the statute says you are going to get. Which is why most people charged with a federal crime end up making a plea deal. If they go to trial and lose, the penalty is already known.

According to the Pew Research Center, last year in federal criminal cases, only 2% go to trial. 90% plead guilty and 8% have their cases dismissed. And of the 2% that went to trial, most of them were found guilty. Such as Bobby Unser. He had "money"—he lost.

Let's say that next year you are traveling to the Feast and you are stopped for speeding. I know it wouldn't happen with any of us, but just say it happened. Let's say you are found to be carrying a set of unlicensed dentures. Or maybe you are wearing them. And you have a drawing of Smokey the Bear sitting on the seat beside you. Are you going to plead guilty and take probation and a fine, or face trial and a year in jail? Is this what the nation's founders had in mind?

Zechariah 7:9 says,

Zechariah 7:9 Thus says the Lord of hosts, render true judgments, show kindness and mercy to one another.

A federal judge cannot do that under current law. They cannot show kindness and mercy; they have no say in the penalty phase if you are convicted. And the penalty will be much stiffer than the deal you were offered.

Isaiah 61:8 For I the Lord love justice; I hate robbery and wrong; I will faithfully give them their recompense. . .

God makes it clear He wants no part of wrongdoing and neither should we. Again, let me be clear, I am not advocating tolerance of sin or failure to punish evil. I am simply pointing out that we have become unbalanced. The scales of justice tilt too far toward micromanagement. Politicians have an inflated sense of their own importance. They think they are elected to go up and make more laws, but they are elected to govern, which is not quote the same thing.

God gives us Ten Commandments and the minds to take those basic principles and extrapolate them out in our lives and many different areas in how we live. However, with thousands and thousands of laws buried in the 27,000 pages of Federal Code, it's hard to know sometimes if we've broken a law.

It's quite possible that many of us within the sound of my voice could be charged with a federal offense. I could cite two examples right now—I'm not going to—of brethren trapped in the system for years through no fault of their own.

I Peter 2:13-17 (*Contemporary English Version*) The Lord wants you to obey all human authorities, especially the Emperor, who rules over everyone. You must also obey governors, because they are sent by the Emperor to punish criminals and to praise good citizens. God wants you to silence stupid and ignorant people by doing right. You are free, but still you are God's servants, and you must not use your freedom as an excuse for doing wrong. Respect everyone and show special love for God's people. Honor God and respect the Emperor.

Proverbs 21:15 When justice is done, it is a joy to the righteous but terror to evildoers.

So my advice is to do the best you can to live within the laws of man's government, so long as they don't contradict God's laws, and trust in God for His protection from overzealous officials.