

Legalizing Crime

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The state has a monopoly on behaviour usually deemed criminal. It murders, kidnaps, and locks up people. Sovereignty has come to be identified with the unbridled - and exclusive - exercise of violence. The emergence of modern international law has narrowed the field of permissible conduct. A sovereign can no longer commit genocide or ethnic cleansing with impunity, for instance.

Many acts - such as the waging of aggressive war, the mistreatment of minorities, the suppression of the freedom of association - hitherto sovereign privilege, have thankfully been criminalized. Many politicians, hitherto immune to international prosecution, are no longer so. Consider Yugoslavia's Milosevic and Chile's Pinochet.

But, the irony is that a similar trend of criminalization - within national legal systems - allows governments to oppress their citizenry to an extent previously unknown. Hitherto civil torts, permissible acts, and common behaviour patterns are routinely criminalized by legislators and regulators. Precious few are decriminalized.

Consider, for instance, the criminalization in the Economic Espionage Act (1996) of the misappropriation of trade secrets and the criminalization of the violation of copyrights in the Digital Millennium Copyright Act (2000) - both in the USA. These used to be civil torts. They still are in many countries. Drug use, common behaviour in England only 50 years ago - is now criminal. The list goes on.

Criminal laws pertaining to property have malignantly proliferated and pervaded every economic and private interaction. The result is a bewildering multitude of laws, regulations statutes, and acts.

The average Babylonian could have memorized and assimilated the Hammurabic code 37 centuries ago - it was short, simple, and intuitively just.

English criminal law - partly applicable in many of its former colonies, such as India, Pakistan, Canada, and Australia - is a mishmash of overlapping and contradictory statutes - some of these hundreds of years old - and court decisions, collectively known as "case law".

Despite the publishing of a Model Penal Code in 1962 by the American Law Institute, the criminal provisions of various states within the USA often conflict. The typical American can't hope to get acquainted with even a negligible fraction of his country's fiendishly complex and hopelessly brobdignagian criminal code. Such inevitable ignorance breeds criminal behaviour - sometimes inadvertently - and transforms many upright citizens into delinquents.

In the land of the free - the USA - close to 2 million adults are behind bars and another 4.5 million are on probation, most of them on drug charges. The costs of criminalization - both financial and social - are mind boggling. According to "The Economist", America's prison system cost it \$54 billion a year - disregarding the price tag of law enforcement, the judiciary, lost product, and rehabilitation.

What constitutes a crime? A clear and consistent definition has yet to transpire.

There are five types of criminal behaviour: crimes against oneself, or "victimless crimes" (such as suicide, abortion, and the consumption of drugs), crimes against others (such as murder or mugging), crimes among consenting adults (such as incest, and in certain countries, homosexuality and euthanasia), crimes against collectives (such as treason, genocide, or ethnic cleansing), and crimes against the international community and world order (such as executing prisoners of war). The last two categories often overlap.

The Encyclopaedia Britannica provides this definition of a crime: "The intentional commission of an act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under the criminal law."

But who decides what is socially harmful? What about acts committed unintentionally (known as "strict liability offences" in the parlance)? How can we establish intention - "mens rea", or the "guilty mind" - beyond a reasonable doubt?

A much tighter definition would be: "The commission of an act punishable under the criminal law." A crime is what the law - state law, kinship law, religious law, or any other widely accepted law - says is a crime. Legal systems and texts often conflict.

Murderous blood feuds are legitimate according to the 15th century "Qanoon", still applicable in large parts of Albania. Killing one's infant daughters and old relatives is socially condoned - though illegal - in India, China, Alaska, and parts of Africa. Genocide may have been legally sanctioned in Germany and Rwanda - but is strictly forbidden under international law.

Laws being the outcomes of compromises and power plays, there is only a tenuous connection between justice and morality. Some "crimes" are categorical imperatives. Helping the Jews in Nazi Germany was a criminal act - yet a

highly moral one.

The ethical nature of some crimes depends on circumstances, timing, and cultural context. Murder is a vile deed - but assassinating Saddam Hussein may be morally commendable. Killing an embryo is a crime in some countries - but not so killing a fetus. A "status offence" is not a criminal act if committed by an adult. Mutilating the body of a live baby is heinous - but this is the essence of Jewish circumcision. In some societies, criminal guilt is collective. All Americans are held blameworthy by the Arab street for the choices and actions of their leaders. All Jews are accomplices in the "crimes" of the "Zionists".

In all societies, crime is a growth industry. Millions of professionals - judges, police officers, criminologists, psychologists, journalists, publishers, prosecutors, lawyers, social workers, probation officers, wardens, sociologists, non-governmental-organizations, weapons manufacturers, laboratory technicians, graphologists, and private detectives - derive their livelihood, parasitically, from crime. They often perpetuate models of punishment and retribution that lead to recidivism rather than to the reintegration of criminals in society and their rehabilitation.

Organized in vocal interest groups and lobbies, they harp on the insecurities and phobias of the alienated urbanites. They consume ever growing budgets and rejoice with every new behaviour criminalized by exasperated lawmakers. In the majority of countries, the justice system is a dismal failure and law enforcement agencies are part of the problem, not its solution.

The sad truth is that many types of crime are considered by people to be normative and common behaviours and, thus, go unreported. Victim surveys and self-report studies conducted by criminologists reveal that most crimes go unreported. The protracted fad of criminalization has rendered criminal many perfectly acceptable and recurring behaviours and acts. Homosexuality, abortion, gambling, prostitution, pornography, and suicide have all been criminal offences at one time or another.

But the quintessential example of over-criminalization is drug abuse.

There is scant medical evidence that soft drugs such as cannabis or MDMA ("Ecstasy") - and even cocaine - have an irreversible effect on brain chemistry or functioning. Last month an almighty row erupted in Britain when Jon Cole, an addiction researcher at Liverpool University, claimed, to quote "The Economist" quoting the "Psychologist", that:

"Experimental evidence suggesting a link between Ecstasy use and problems such as nerve damage and brain impairment is flawed ... using this ill-substantiated cause-and-effect to tell the 'chemical generation' that they are brain damaged when they are not creates public health problems of its own."

Moreover, it is commonly accepted that alcohol abuse and nicotine abuse can be at least as harmful as the abuse of marijuana, for instance. Yet, though somewhat curbed, alcohol consumption and cigarette smoking are legal. In contrast, users of cocaine - only a century ago recommended by doctors as tranquilizer - face life in jail in many countries, death in others. Almost everywhere pot smokers are confronted with prison terms.

The "war on drugs" - one of the most expensive and protracted in history - has failed abysmally. Drugs are more abundant and cheaper than ever. The social costs have been staggering: the emergence of violent crime where none existed before, the destabilization of drug-producing countries, the collusion of drug traffickers with terrorists, and the death of millions - law enforcement agents, criminals, and users.

Few doubt that legalizing most drugs would have a beneficial effect. Crime empires would crumble overnight, users would be assured of the quality of the products they consume, and the addicted few would not be incarcerated or stigmatized - but rather treated and rehabilitated.

That soft, largely harmless, drugs continue to be illicit is the outcome of compounded political and economic pressures by lobby and interest groups of manufacturers of legal drugs, law enforcement agencies, the judicial system, and the aforementioned long list of those who benefit from the status quo.

Only a popular movement can lead to the decriminalization of the more innocuous drugs. But such a crusade should be part of a larger campaign to reverse the overall tide of criminalization. Many "crimes" should revert to their erstwhile status as civil torts. Others should be wiped off the statute books altogether. Hundreds of thousands should be pardoned and allowed to reintegrate in society, unencumbered by a past of transgressions against an inane and inflationary penal code.

This, admittedly, will reduce the leverage the state has today against its citizens and its ability to intrude on their lives, preferences, privacy, and leisure. Bureaucrats and politicians may find this abhorrent. Freedom loving people should rejoice.

About The Author
Sam Vaknin is the author of Malignant Self Love - Narcissism Revisited and After the Rain - How the West Lost the East. He is a columnist for Central Europe Review, PopMatters, and eBookWeb, a United Press International (UPI) Senior Business Correspondent, and the editor of mental health and Central East Europe categories in The Open Directory Bellaonline, and Suite101 .

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