

You are currently viewing the printable version of this article, to return to the normal page, please [click here](#).

The Washington Times

BOOK REVIEW: Too many laws to keep straight

[0 Comments and 0 Reactions](#) | [Share](#) | [Tweet](#) | [Email](#) | [Print](#) |

[0](#)

By Roger Lott

-

The Washington Times

Tuesday, August 17, 2010

ONE NATION UNDER ARREST: HOW CRAZY LAWS, ROGUE PROSECUTORS, AND ACTIVIST JUDGES THREATEN YOUR LIBERTY

Edited by Paul Rosenzweig and Brian W. Walsh

The Heritage Foundation, \$14.95, 268 pages

With a good, honest conscience, you may think you have nothing to fear from the law. Think again. There's a good chance you're a criminal.

"One Nation Under Arrest" is the combined work of 12 contributors, all of whom (including The Washington Times' Quin Hillyer), are veteran practitioners or writers on the law. The first half of the book presents compelling examples of good, honest people getting on the wrong side of the law. The second half examines the history of criminal law, the concepts of blameworthiness and intent, "white-collar crime" and needed reforms.

As society has grown ever more complex, so, too, has the American legal system. There are just too many laws for people to keep track of, and yet we are told time and again that "ignorance of the law is no excuse." This old maxim was appropriate back when crimes included only immoral acts such as murder, rape and theft, where "criminal intent" is obviously present. Today, expecting people to have an awareness of all the laws means punishing a lot of fundamentally innocent people.

The book starts with the story of David McNab, a Honduran fisherman who hardly had "criminal intent" when he shipped spiny lobsters to the United States in plastic bags. Yet, when one of his shipments was intercepted in 1999, he was found to be in violation of a Honduran regulation prescribing cardboard boxes as the only legal container for exporting seafood. His 70,000-pound shipment was confiscated and taken to a giant freezer. Some of the lobsters were found to have undersized tails and traces of eggs, and prosecutors pressed charges for violating Honduran laws banning the harvesting of eggs and of lobsters with tails shorter than 5 1/2 inches.

On the basis of the Lacey Act, which prohibits taking wildlife in violation of foreign regulations, the U.S. government pressed charges against Mr. McNab and the three Americans who would have received the lobsters. Using laws intended to fight drugs and organized crime, prosecutors claimed there was a criminal conspiracy to smuggle the seafood in transparent plastic bags. In August 2001, three were sentenced to eight-year prison terms while one got "only" two years.

After the conviction, Mr. McNab's attorneys found that the Honduran law authorizing the packaging regulations had

been repealed in 1995, the restriction on lobster-tail size was not actually a law because the Honduran president hadn't signed it, and the prohibition on harvesting eggs was supposed to apply only to intentional, rather than accidental, harvesting. Two of the three appellate judges dismissed the Honduran testimony to this effect, finding Honduras unfit to interpret its own laws.

Many laws are so broad that the government cannot realistically prosecute every violation and therefore has to engage in selective enforcement. The book describes the case of 61-year-old Kay Leibrand of Palo Alto, Calif., who was arrested for refusing to trim her hedges to make them in accordance with the 2-foot height limit set by the city government. Yet there were likely hundreds of other violations elsewhere in the city left unaddressed. Such disproportionate treatment is unfair and immoral.

At the time of the nation's founding, the only federal crimes were treason, counterfeiting and piracy. Today, scholars don't even know how many federal criminal laws exist, though one 2007 study put the figure at 4,450. So one can hardly blame Carlton Wilson, who - despite never being informed that a restraining order meant he couldn't own a firearm - was sentenced in September 1997 to more than three years in prison. Contributor Tim Lynch cites the wise dissent of Judge Richard Posner that "a reasonable opportunity [to familiarize oneself on relevant laws] doesn't mean being able to go to the local law library and read Title 18."

Some laws are set up to protect entrenched businesses by making it a criminal offense to operate without appropriate licenses. Until just this summer, those looking to set up a flower shop in Louisiana were subject to a 7-decade-old law that required them to pass a lengthy and highly subjective licensing test graded by state-licensed florists. The passage rate was lower than that of the state bar exam.

The desire of politicians to appear "tough on crime" has resulted in overcriminalization, says editor Brian Walsh, a senior legal research fellow at the Heritage Foundation. Mr. Walsh says people need to understand that they could end up sharing fates similar to those of the well-meaning individuals featured in the book. Only with a shift in public opinion, he suggests, will the political dynamic change so that politicians will stand up to the ever-increasing scope of criminal law.

The change Mr. Walsh emphasizes most persistently is to re-establish the requirement of criminal intent. This would prevent people from accidentally becoming criminals by taking the wrong path in a maze of rules and regulations. Another reform he proposes would make the federal government issue public reports that present information critical to analyzing the justifications and benefits for all new criminalization. These reports would include the reason for the enactment of the law, the constitutional authority from which the government derives its power, an analysis of any overlap with existing laws and an explanation of how criminal intent would be determined.

Overcriminalization has a huge effect on our lives. Not only are we at risk of finding ourselves on the wrong side of the law, but many goods and services we buy, such as pharmaceuticals and health care, are much more expensive because the cost of defending against liability lawsuits is passed on to consumers. Yet the topic hasn't received nearly as much attention as it deserves because most politicians consider it political suicide to appear "soft on crime."

Changing public opinion is the first step to meaningful reform, and "One Nation Under Arrest" does an excellent job at impressing the vital importance of stopping the nation's criminal law system from getting in the way of the American people.

Roger Lott is a writer in Pennsylvania.