

The Law Isn't Worth the Paper It's Written On

Kevin Carson

April 18, 2009

Sheldon Richman, in a recent commentary piece at the Future of Freedom Foundation, examined “the civics-book fairy tale that we are the government.” In honor of April 15, he wrote:

“You must report every dime you earned last year, and if you believe any of it should be beyond the state’s grasp, you’d better have the proof. If the government withheld more of your money than (you think) the rules require, it is your burden to prove that. You then must submit the official paperwork by a certain time. If the authorities are not satisfied with what you submit, they will demand that you prove you’ve done it right. If you can’t, you’ll have to do it their way and pay more.”

In such a situation, he asks, “Do you really feel as though you’re paying taxes to yourself and your neighbors?”

Let’s stipulate, for the sake of argument, to this “the government is just all of us working together” fairy tale of the soccer moms, exemplified at its most goo-gooish in the book “Why Mommy is a Democrat.” Let’s stipulate that the government’s policies really do reflect the will of the majority, and that it means well.

Nevertheless, the fact remains that an enormous, continent-sized administrative state entails a huge amount of bureaucratic friction. And it requires, of necessity, the delegation of a great deal of discretion to people with an enormous potential for abusing that discretion.

It should be self-evident that every regulation, no matter how “well-meaning,” requires an administrative bureaucracy. And administrative bureaucracies simply cannot function according to traditional standards of common law due process. If an administrative bureaucracy had to operate on the presumption of a defendant’s innocence until it met the burden of persuading a jury beyond a reasonable doubt, before it could levy fines or seize property, the government’s taxing and regulatory functions would be paralyzed. It would be utterly impossible to carry them out, because the cost of meeting common law standards of due process (especially in internal revenue cases) would exceed the public benefits. The government, fiscally speaking, would bleed to death.

Pursuant to that rationale, the same prerogative law that the American colonists rebelled against, the law exercised by the British admiralty with its writs of assistance, has been gradually imported on a piecemeal basis. Today there are several dozen government agencies with the power to fine or imprison, or condemn property under “civil forfeiture,” without anyone’s ever being convicted of a crime.

What's more, the petty functionaries running the rabbit warren of administrative law courts have a great deal of leeway to carry out personal vendettas. They can make life an utter hell for anyone who runs afoul of their whims, and force their enemies to bankrupt themselves fighting for justice. James Bovard's work contains hundreds of anecdotes of the Kafkaesque nightmare suffered by victims of the administrative state. Or you can just rent the movie "Brazil."

The late Harry Browne reminded us that, whenever we advocate a new law or regulation, we should always remember that it will almost certainly be interpreted and enforced by people we don't like, in a way that's 180 degrees removed from our intentions.

In considering the unintended consequences of laws, we should also avoid falling for the liberal faith, that words on a piece of paper have some magical effect on reality.

Several years ago, when the Northwest Arkansas community of Fayetteville was preparing to vote in a referendum to prohibit smoking in restaurants, local radio stations ran commercials in favor of the ban, by a group called YouthCAN! One ad had portrayed a maitre 'd asking a customer whether he'd rather sit in the "washing" or "non-washing" section of the restaurant. That is, would he prefer his waiter wash his hands after using the bathroom, or not? "That's disgusting!" the appalled customer said. "Isn't there some kind of a law?" In a similar ad, a visitor to a public swimming pool was confronted with the "peeing" and "non-peeing" sections. The outraged response, again—"Isn't there some kind of a law?"

This is a classic illustration of the liberal mindset: the belief that an unenforceable law will cause people to wash their hands, or to refrain from peeing in the pool.

This is fairly common among authoritarian personalities. They recognize, in theory, that some people refuse for whatever perverse reason to obey the law—but they attempt to solve the problem by passing a new law, on the implicit assumption that it will be obeyed. As Barney Fife said, "Rule Number One: Obey all the rules!" Here in Arkansas, gas pumps bear signs with the stern visage of a state trooper warning potential scofflaws that driving off without paying for gas will cause their drivers' licenses to be revoked. The assumption, apparently, is that someone who will steal gas without any moral qualm or fear of getting caught, will nevertheless be afraid to drive without a license.

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